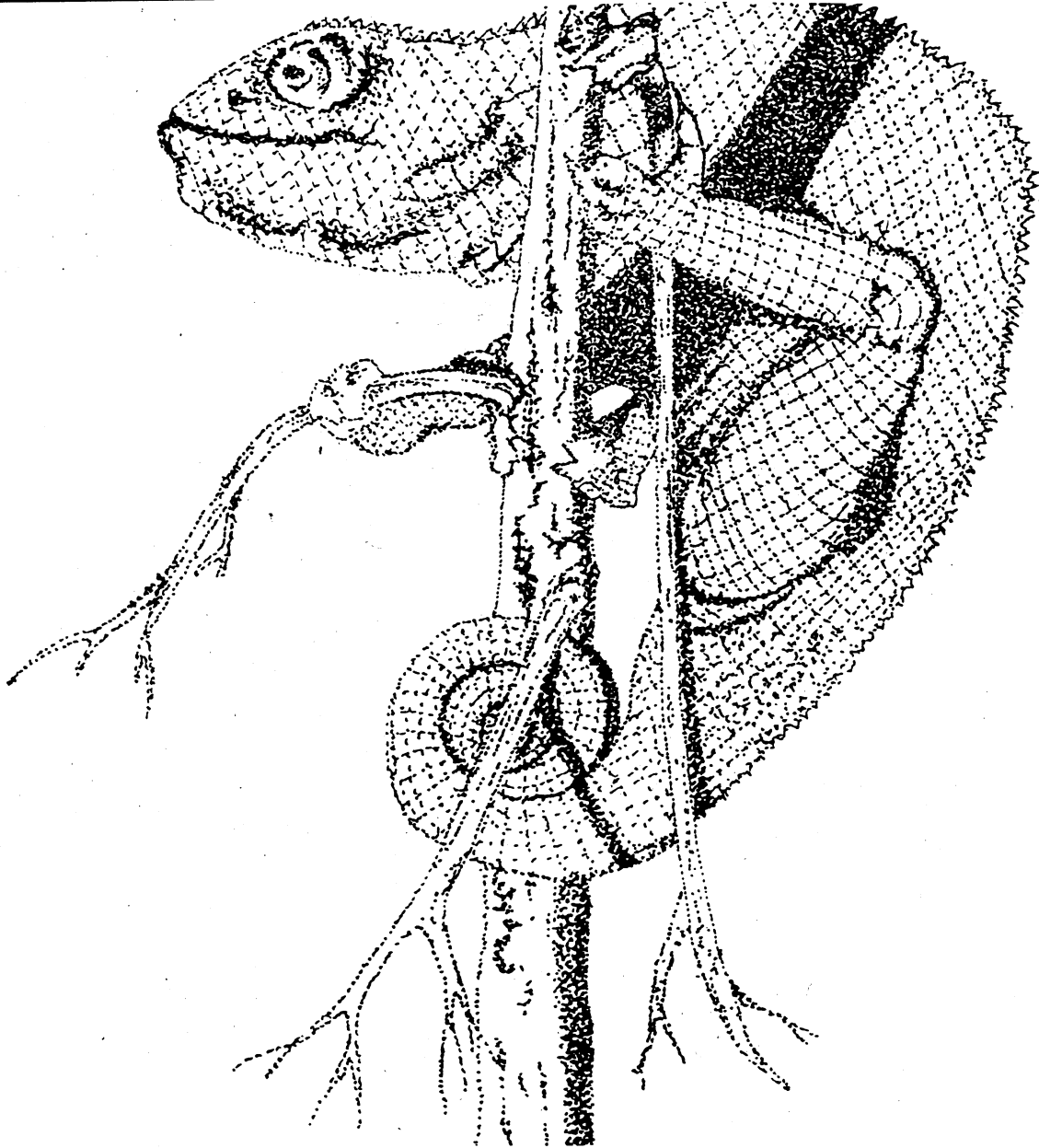

TEXAS REGISTER

Volume 22 Number 20 March 14, 1997

Page 2669-2829



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Artist: Brian Flanagan

11th Grade

Northbrook Sr. High, SBISD

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IN THIS ISSUE

ATTORNEY GENERAL

Letter Opinion

Request for Opinions.....2675

PROPOSED RULES

Texas Department of Licensing and Regulation

Elevators, Escalators, and Related Equipment

16 TAC §§74.20, 74.50, 74.100.....2677

Texas Department of Health

Home and Community Support Services Agencies

25 TAC §§115.1, §115.2.....2680

26 TAC §§115.4-115.7.....2683

25 TAC §§115.11, §115.12.....2683

25 TAC §§115.11-115.16.....2684

25 TAC §115.21.....2692

25 TAC §§115.21-115.28.....2692

25 TAC §§115.51-115.54.....2717

25 TAC §§115.61, §115.62.....2723

25 TAC §§115.71, §115.72.....2725

Texas Parks and Wildlife Department

Fisheries

31 TAC §§57.156, §57.158.....2730

37 TAC §§57.156-57.158.....2730

Oysters and Shrimp

31 TAC §58.160.....2731

Texas Department of Human Services

Income Assistance Services

40 TAC §3.501.....2732

Texas Department of Protective and Regulatory Services

Child Protective Services

40 TAC §§700.1501, 700.1502, 700.1505.....2733

Day Care Licensing

40 TAC §§715.412, 715.417, 715.421.....2735

40 TAC §715.417.....2737

ADOPTED RULES

Texas Department of Health

Medical Radiologic Technologists

25 TAC §§143.2, 143.4-143.9, 143.19, 143.20.....2744

25 TAC §143.16.....2750

Texas Department of Mental Health and Mental Retardation

ICF/MR Programs

25 TAC §§406.51-406.67.....2751

25 TAC §§406.101-406.103.....2759

25 TAC §§406.151-406.152, 406.154-406.160.....2760

25 TAC §§406.151, 406.152, 406.154-406.158.....2761

25 TAC §406.302.....2765

Medicaid Programs

25 TAC §§409.1-409.7.....2766

25 TAC §§409.1-409.9.....2767

25 TAC §§409.100, 409.101, 409.103, 409.106, 409.107, 409.118, 409.120.....2772

25 TAC §§409.103, 409.106, 409.107, 409.118.....2780

Texas Commission for the Deaf and Hard of Hearing

General Rules of Practice and Procedures

40 TAC §181.830.....2781

TABLES AND GRAPHICS

Tables and Graphics

Tables and Graphics.....2783

OPEN MEETINGS

State Office of Administrative Hearings

Thursday, April 3, 1997, 10:00 a.m.....2787

Friday, April 4, 1997, 9:00 a.m.....2787

Texas Department of Agriculture

Monday, March 24, 1997, 8:00 a.m.....2787

Texas Commission on Alcohol and Drug Abuse (TCADA)

Friday, March 21, 1997, 11:00 a.m.....2787

Wednesday, March 26, 1997, 10:00 a.m.....2788

Canadian River Compact Commission

Wednesday, April 30, 1997, 1:00 p.m.....2788

Comptroller of Public Accounts

Monday, March 17, 1997, 9:30 a.m.....2788

Texas Cosmetology Commission

Monday, March 17, 1997, 10:00 a.m.....2788

Texas County and District Retirement System

Monday, March 17, 1997, 9:00 a.m.....2788

Texas Department of Criminal Justice

Friday, March 14, 1997, 9:30 a.m.....2789

Texas Ethics Commission

Friday, March 14, 1997, 9:30 a.m.....2789

General Land Office

Tuesday, March 18, 1997, 10:00 a.m.....	2789	Thursday, March 20, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call"	2795
Texas Department of Housing And Community Affairs		Thursday, March 27, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call"	2795
Friday, March 14, 1997, 10:00 a.m.....	2790	Thursday, April 3, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call"	2796
Texas Department of Insurance		Thursday, April 10, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call."	2796
Monday, March 17, 1997, 9:00 a.m.....	2790	Thursday, April 17, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call"	2796
Monday, March 24, 1997, 9:00 a.m.....	2790	Thursday, April 24, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call"	2796
Wednesday, March 26, 1997, 9:00 a.m.....	2790	Texas State Board of Examiners of Psychologists	
Wednesday, March 26, 1997, 9:30 a.m.....	2790	Friday, April 4, 1997, 8:30 a.m.....	2796
Thursday, March 27, 1997, 9:00 a.m.....	2790	Public Utility Commission of Texas	
Friday, March 28, 1997, 9:00 a.m.....	2790	Tuesday, March 18, 1997, 1:00 p.m.....	2797
Board of Law Examiners		Monday, March 24, 1997, 9:00 a.m.....	2797
Friday, March 21, 1997, 8:30 a.m.....	2791	Tuesday, March 25, 1997, 9:00 a.m.....	2797
Texas State Library and Archives Commission		Railroad Commission of Texas	
Monday, March 17, 1997, 1:00 p.m.....	2791	Tuesday, March 18, 1997, 9:30 a.m.....	2797
Texas Appraiser Licensing and Certification Board		Monday, March 24, 1997, 2:00 p.m.....	2797
Friday, March 21, 1997, 12:00 noon.....	2791	Texas Real Estate Commission	
Texas Lottery Commission		Monday, March 17, 1997, 9:30 a.m.....	2798
Monday, March 17, 1997, 12:00 noon.....	2791	Recycling Market Development Board	
Monday, March 17, 1997, 10:00 a.m.....	2792	Tuesday, March 18, 1997, 10:00 a.m.....	2798
Texas State Board of Medical Examiners		Texas Rehabilitation Commission	
Friday, March 7, 1997, 9:00 a.m.....	2792	Wednesday, April 9, 1997, 4:00 p.m.....	2798
Wednesday, March 12, 1997, 1:00 p.m.....	2793	Wednesday, April 16, 1997, 10:00 a.m.....	2799
Thursday, March 13, 1997, 9:00 a.m.....	2793	Thursday, April 24, 1997, 2:00 p.m.....	2799
Friday, March 14, 1997, 8:00 a.m.....	2793	Rio Grande Compact Commission	
Texas Council on Offenders with Mental Impairments		Thursday, March 27, 1997, 9:00 a.m.....	2799
Friday, April 4, 1997, 8:30 a.m.....	2794	State Securities Board	
Texas Municipal Retirement System		Thursday, April 3, 1997, 9:00 a.m, rescheduled from January 31, 1997.....	2800
Saturday, March 22, 1997, 8:30 a.m.....	2794	Telecommunications Infrastructure Fund Board	
Texas National Guard Armory Board		Friday, March 14, 1997, 9:00 a.m.....	2800
Friday, March 21, 1997, 3:00 p.m.....	2794	Friday, March 14, 1997, 9:30 a.m.....	2800
Texas Natural Resource Conservation Commission		Friday, March 14, 1997, 10:00 a.m.....	2800
Thursday, April 3, 1997, 10:00 a.m.....	2794	University of Houston	
Wednesday, April 9, 1997, 10:00 a.m.....	2794	Monday, March 17, 1997, 2:00 p.m.....	2801
Board of Nurse Examiners		Texas Board of Veterinary Medical Examiners	
March 19, 1997, 6:30 p.m.....	2795	Saturday, March 15, 1997, 8:30 a.m.....	2801
Thursday, Friday, March 20-21, 1997, 8:30 a.m.....	2795		
Thursday, Friday, March 20-21, 1997, 8:30 a.m.....	2795		
State Pension Review Board			
Thursday, March 13, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call"	2795		

Tuesday, April 8, 1997, 10:30 a.m.....2801

Texas Worker's Compensation Insurance Fund

Tuesday, March 18, 1997, 8:00 p.m.....2801

Regional Meetings

IN ADDITION

Office of the Attorney General

Sexual Assault Prevention and Crisis Services Funding Notice .2805

Texas Clean Air Act Enforcement Settlement Notice2805

State Auditor's Office

Notice of Consultant Contract Award.....2805

Automobile Theft Prevention Authority

Request for Applications under the Automobile Theft Prevention Authority Fund2806

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program2806

Texas Court Reporters Certification Board

Revocation of Certification.....2807

Texas Court Reporters Certification Board

Certification of Court Reporters.....2807

Deep East Texas Council of Governments

Consulting Services.....2808

General Services Commission

State Energy Conservation Office Notice of Contract Award.....2808

General Services Commission

Summary of Other State Bidder Preference Laws2808

Texas Department of Health

Notice of Cancellation of Request For Proposal (Quality Monitoring Contractor)2810

Texas Department of Health

Request for Funding Proposal for Comprehensive Family Planning Services2810

Texas Department of Housing and Community Affairs, Manufactured Housing Division

Notice of Administrative Hearing (MHD1997000217-C).....2811

Notice of Administrative Hearing (MHD1996001810-M)2811

Notice of Administrative Hearing (MHD1996001174-D).....2812

Notice of Administrative Hearing (MHD1996001480-D).....2812

Notice of Administrative Hearing (MHD1996001810-M).....2812

Request for Proposal-Extension of Deadline Outside Counsel ..2812

Texas Department of Insurance

Insurer Services.....2813

Texas Department of Insurance

Texas Natural Resource Conservation Commission

Applications for Waste Disposal Permits2813

Enforcement Orders.....2815

Notice of Application for Amendment to Certificate of Adjudication2818

Notice of Application to Appropriate Public Waters of the State of Texas2819

Notices of Applications for Waste Disposal Permits.....2822

Notice of Public Hearing.....2825

Notice of Public Hearing (Chapter 113)

Provisionally-Issued Temporary Permits to Appropriate State Water.....2826

Texas Parks and Wildlife Department

Barton Springs Salamander Conservation Team Meeting.....2827

Battleship Texas Advisory Board Meeting.....2827

Texas A&M University System-Corpus Christi, Board of Regents

Request for Proposals2827

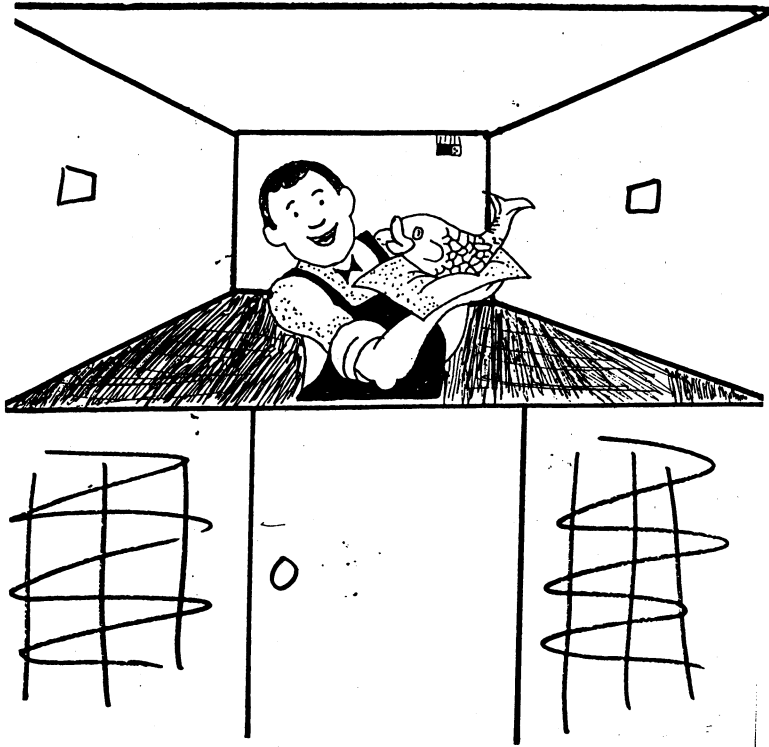
Texas Department of Transportation

Requests for Proposals.....2827

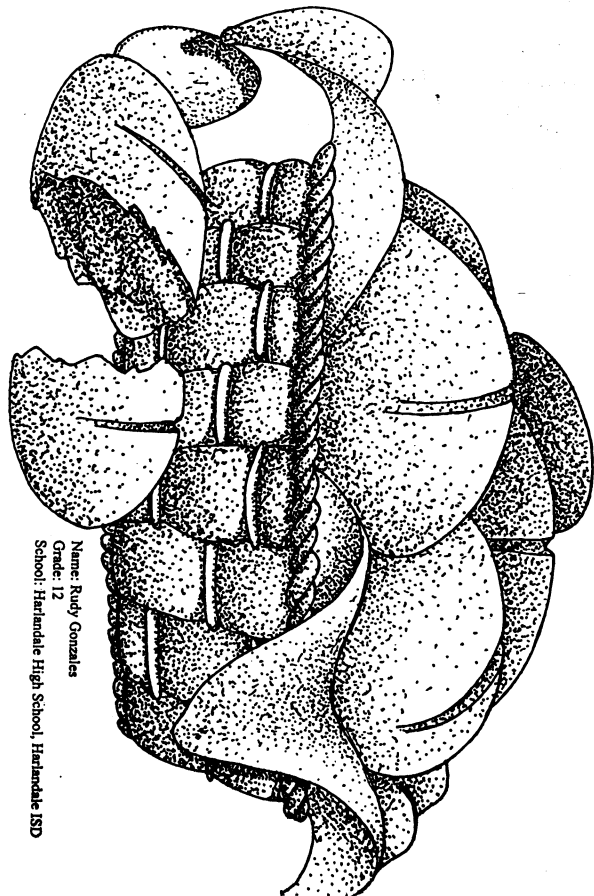
Texas Water Development Board

Applications Received.....2829

Name: Ruben Lara
Grade: 12
School: Harlandale High School, Harlandale ISD



Name: Ruben Lara
Grade: 12
School: Harlandale High School, Harlandale ISD



Name: Rudy Gonzales
Grade: 12
School: Harlandale High School, Harlandale ISD



Name: Edward Velasquez
Grade: 10
School: Harlandale High School, Harlandale ISD

OFFICE OF THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Letter Opinion

LO-#97-012. Request from the Honorable Ken Armbrister, Chair, Committee on State Affairs, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether the Edwards Aquifer Authority is authorized to borrow funds to cover a shortfall of operating funds and to repay the loan from permit fee revenues (ID# 39357).

SUMMARY. The Edwards Aquifer Authority is authorized to borrow funds to cover a shortfall of funds needed to organize the authority and to repay the loan from permit fee revenues pursuant to its enabling act and Water Code §36.157.

LO-#97-013. The Honorable Ken Armbrister, Chair, State Affairs Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether car rental companies may collect a separate reimbursement charge for title and registration fees and ad valorem taxes paid on rental car fleet (ID # 39185).

SUMMARY. There was no legal prohibition prior to September 1, 1995, against the collection by car rental companies from car renters of a reimbursement charge for certificate of title and registration fees and property taxes paid on rental car fleet. Legislation effective September 1, 1995, expressly authorizes this practice. Assuming adequate disclosures were and are made, such practice appears lawful. Whether in a particular case, a company has complied with the law is outside the scope of an attorney general opinion.

TRD-9703067

Request for Opinions

ID #39361. Request from the Honorable Dan C. Clower, Walker County Attorney, 1100 University Avenue, Huntsville, Texas 77340, regarding allocation of county funds for microfilming and indexing.

ID #39367. Request from Mr. Donald H. Hazelip, C.P.A., Eastland County Auditor, 100 West Main, Room 205, Eastland, Texas 76448,

regarding authority of a county auditor to pay certain legal expenses incurred by a sheriff.

ID #39385. Request from the Honorable Tom Maness, Criminal District Attorney, Jefferson County Courthouse, 1001 Pearl Street, 3rd Floor, Beaumont, Texas 77701-3545, regarding whether a navigation district must use competitive bidding procedures in contracting for labor and equipment.

ID #39389. Request from the Honorable Sherry L. Robinson, Waller County Criminal District Attorney, 836 Austin Street, Suite 103, Hempstead, Texas 77445, regarding authority to hear application for liquor licenses and permits under the Alcoholic Beverage Code.

ID #39396. Request from the Honorable Rick Perry, Commissioner, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, regarding recovery on a public warehouseman's land under subchapter C, chapter 14, Agricultural Code.

ID #39417. Request from Mr. Carlos Lara, Dimmit County Auditor, 103 North 5th Street, Carrizo Springs, Texas 78834, regarding whether a county attorney may simultaneously serve on the board of directors of a county hospital.

ID #39418. Request from the Honorable Jos, R. Rodriguez, El Paso County Attorney, County Courthouse, 500 East San Antonio, Room 203, El Paso, Texas 79901, regarding removal of appointees to a county purchasing board.

ID #39419. Request from the Honorable Lee Price Fernon, Baylor County Attorney, 101 South Washington, Seymour, Texas 76380, regarding whether a county commissioner may simultaneously serve as an unpaid reserve deputy sheriff.

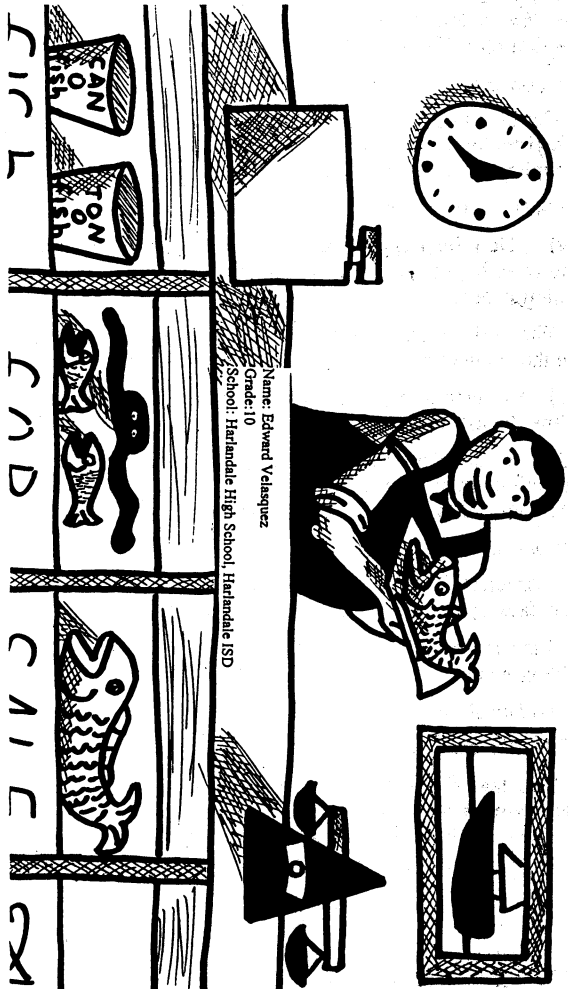
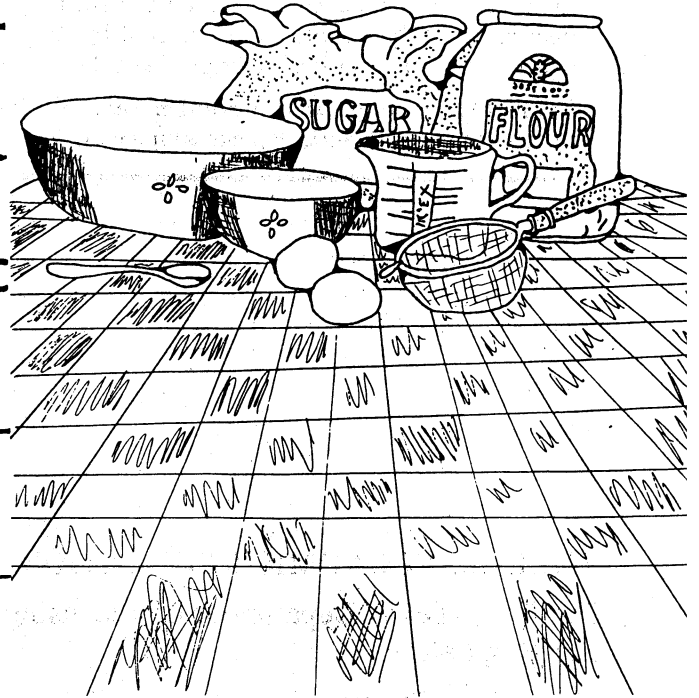
ID #39422. Request from Mr. Michael Criswell, Swisher County Attorney, Courthouse, Tulia, Texas 79088, regarding whether a school district may give monetary awards to students participating in a drug testing program.

TRD-9703160

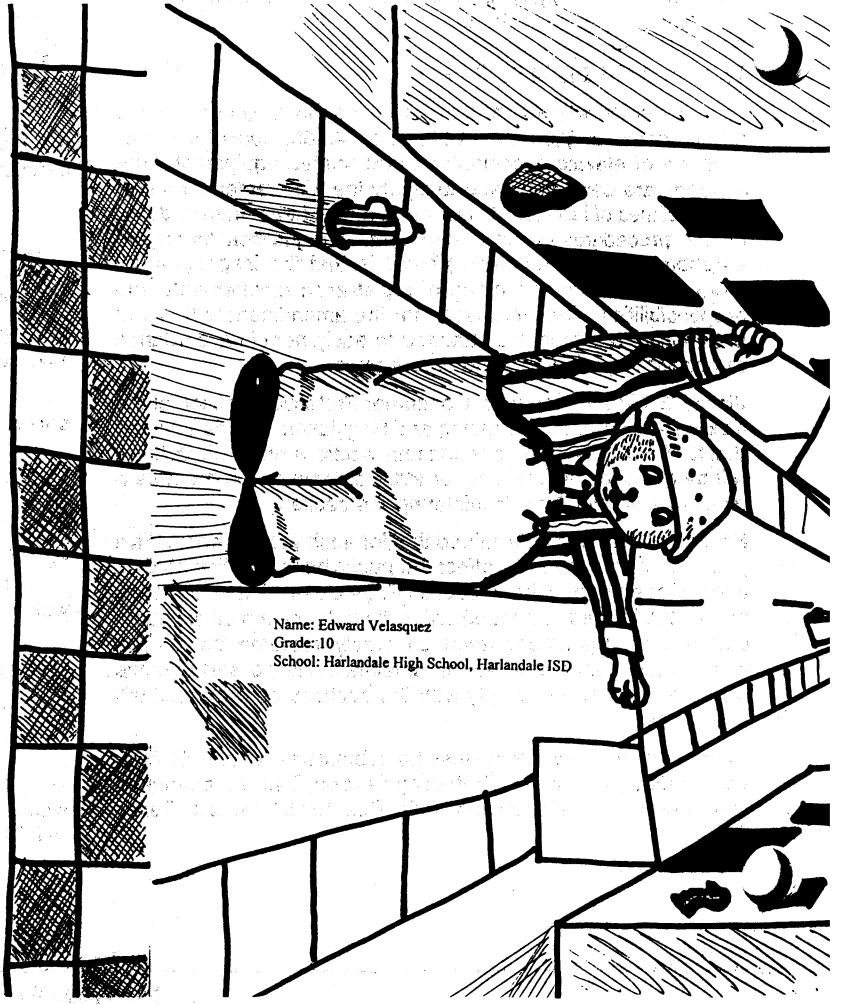
Name: Claudia Silva
Grade: 10
School: Harlandale High School, Harlandale ISD



Name: Ruben Lara
Grade: 12
School: Harlandale High School, Harlandale ISD



Name: Edward Velasquez
Grade: 10
School: Harlandale High School, Harlandale ISD



Name: Edward Velasquez
Grade: 10
School: Harlandale High School, Harlandale ISD

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 74. Elevators, Escalators, and Related Equipment

16 TAC §§74.20, 74.50, 74.100

The Texas Department of Licensing and Regulation proposes amendments to §§74.20, 74.50, and 74.100, concerning certification of elevators, escalators, and related equipment. The sections are being proposed to clarify the requirements and responsibilities of registered inspectors and to keep them updated on the procedures of the department. The justification for the amendments to §74.20 and §74.50 is that the inspectors will have a clearer understanding of registration requirements and responsibilities. The justification for the amendment to §74.100 is to ensure test tags are attached to equipment in accordance to specific requirements and time frames.

Jimmy G. Martin, Manager, Consumer Protection Section of the Texas Department of Licensing and Regulation, has determined that for the first five-year period these sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Martin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clearer implementation of the statute, and increased safety by determining all elevators and related equipment meet all safety requirements. The anticipated economic effect on small businesses and persons who are required to comply with the sections as proposed will be minimal.

Comments on the proposal may be submitted to Jimmy G. Martin, Manager, Consumer Protection Section, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The amendments are proposed under the Health and Safety Code, Chapter 754, which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the amended codes.

The following article is affected by these amendments. §74.20 — Chapter 754, §754.017; §74.50 — Chapter 754, §754.016; §74.100 — Chapter 754, §754.015.

§74.20. *Registration Requirements.*

(a) Certified inspectors shall submit a completed application for initial registration on the form provided by the department. A completed application shall include as a minimum:

(1)-(3) (No change.)

(4) New inspectors must also attend an orientation session conducted by the department regarding department forms and inspection procedures.

(b) The registration shall be renewed with the department annually on the anniversary of the QEI certification.

(1) Inspectors must attend an annual seminar conducted by the department to renew registration.

(2) Inspectors have a 15-day grace period to renew their registration after expiration of the previous registration. An inspector may conduct inspections during the grace period.

§74.50. *Reporting Requirements.*

(a) Inspectors shall report all inspections to the department within seven days by copy of the inspection report cover sheet.

(b) Inspectors shall submit a copy of the inspection report to the building owner within ten working days.

§74.100. *Technical Requirements.*

(a)-(b) (No change.)

(c) Test tags must be attached to equipment in accordance with the following procedures: [1994 edition of the ASME A17.1 and A17.3, Safety Code for Elevators and Escalators.]

(1) (No change.)

(2) The inspector shall inscribe all information on each test tag including the inspection date and signature.

(3)[(2)] Test tags shall be [dated and] attached to equipment [annually] with wire rope and lead seal which shall be purchased from the department.

(4) [(3)] The lead seal shall be crimped onto the wire rope using a crimping tool purchased from the department bearing the department's seal.

(5) Test tags shall be attached to equipment in accordance to the following schedule:

(A) Electric Elevators

(i) Acceptance/Five Year Test - Test tags shall be attached to the overspeed governor(s), safety releasing carrier, and each buffer or set of buffers and shall not be removed until next Five Year Test.

(ii) Annual Test - Test tags shall be attached to the overspeed governor(s) and shall be replaced annually.

(B) Hydraulic Elevators

(i) Acceptance Test - Test tags shall be attached to the relief valve.

(ii) Annual Test - Test tags shall be attached to the relief valve and replaced annually.

(C) Escalators

(i) Acceptance Test - Test tags shall be attached to the overspeed governor and/or emergency brake.

(ii) Annual Test - Test tags shall be attached to the main line disconnect and shall be replaced annually.

(d) The inspector shall identify each elevator, escalator or related equipment with a numbered decal issued by the department, which stays on the control panel for the life of the elevator.

(1)-(2) (No change.)

(3) All correspondence and inspection reports shall reference the decal number and building ID number.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703003

Tommy V. Smith

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: April 14, 1997

For further information, please call: (512) 463-7357

◆ ◆ ◆
TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 115. Home and Community Support Services Agencies

The Texas Department of Health (department) proposes amendments to §§115.1, 115.2, 115.13-115.15, 115.22-115.28, 115.51-115.54, and 115.61-115.62; the repeal of §§115.4-115.7, 115.11, 115.12, and 115.21; and new §§115.11, 115.12, 115.16, 115.21, 115.71, and 115.72 concerning the licensing of home and community support services agencies (HCSSAs). The amended sections cover purpose, definitions, change of ownership or services, application and issuance of branch office license, application and issuance of an alternate delivery site license, standards for licensed home health services, standards for licensed and certified home health services, standards for home dialysis designation, standards for hospice services, standards for personal assistance services, standards for branch offices, standards for alternate delivery sites, survey procedures, enforcement action, complaints, criminal history checks, home health aides, and home health medication aides. The repealed sections cover exemptions, unregulated agency, home and community support services advisory committee, Texas Department of Health/Board of Nurse Examiners memorandum of understanding advisory committee, application and issuance of temporary license for first-time applicants (unregulated agencies, new agencies, and certain relocations), issuance and renewal of annual license, and licensure requirements and standards for all home and community support services agencies. The new sections cover application and issuance of initial license; issuance and renewal of license; time periods for processing and issuing a license; licensure requirements and standards for agencies providing licensed home health, licensed and certified home health, or hospice services; home and community support services advisory committee; and Texas Department of Health/Board of Nurse Examiners memorandum of understanding advisory committee. New §§115.11, 115.12, 115.21, 115.71, and 115.72 contain new and existing text replacing repealed §§115.11, 115.12, 115.21, 115.6, and 115.7. New §115.16 contains new text specific to time periods for processing HCSSA license applications.

The existing licensing rules became effective in June 1994 to implement substantial changes to the licensing statute by the 73rd Legislature, 1993. Since the implementation of the existing rules, the department has received numerous questions and concerns regarding the sections of the rules relating to personal assistance services; registered nurse and physician delegation; financial solvency, business practices, and fraud and abuse; surveys, complaint investigations, and surveyor training; and licensing fees.

The department solicited feedback on recommended rule changes from HCSSAs, department survey staff, and other state agencies with programs affected by the rules during a five-day workshop held in Austin in August 1995. During this workshop, department staff listened to and discussed the issues mentioned above with affected stakeholders, and sought suggestions for solutions. The department received testimony from the workshop attendees confirming the need for rule changes and the areas marked for revision. In addition to these issues, the department is a party to two interagency memoranda of understanding (MOU): 1) between the depart-

ment and the Texas Department on Aging, Texas Department of Human Services, Texas Rehabilitation Commission, Texas Department of Mental Health and Mental Retardation, Texas Department of Protective and Regulatory Services, and the Texas Commission for the Blind; and 2) between the department and the Board of Nurse Examiners. In order for the department to effect enforcement of certain provisions of these MOUs, the provisions must be included in rules. The multi-state agency MOU provisions to be included in the rules address surveys of HCSSAs contracting with or certified by the state agencies named in the MOU. The provisions from the MOU between the department and the Board of Nurse Examiners address the delegation of gastrostomy tube feedings to unlicensed caregivers in respite situations.

With the advice of the Home and Community Support Services Advisory Committee, the rule amendment process involved the formation of an informal task force made up of two representatives from each of the major provider organizations: Texas Association for Home Care, Texas Hospice Organization, and Texas Respite Resource Network. The task force has held monthly meetings since November 1995 reviewing the existing rules, identifying existing rule language requiring revision, and seeking consensus on new rule language. The proposed rules are the collaborative product of the task force, the state agencies involved in the MOUs, and the department. This product reflects reorganization of existing sections of the rules; development of new language to address the areas of concern identified via the workshops and the task force meetings; and deletion of existing language to eliminate identified contradictions or unnecessary regulation.

Specifically, the amendments to §115.1 clarify that the rules are in addition to any requirements of private or public funding sources and that an HCSSA is responsible for researching the availability of such funding sources. The amendments to §115.2 clarify the definitions of "administrative support site," "alternate delivery site," "assistance with medication or treatment regimen," "branch office," "client," "dietitian," "director," "functional need," "licensed vocational nurse," "medication list," "occupational therapist," "personal assistance services," "physical therapist," "practitioner," "psychoactive treatment," "registered nurse," "respiratory therapist," "social worker," and "speech-language pathologist." New definitions include "advanced practice nurse," "audiologist," "notarized copy," "nutritional counseling," "physician assistant," "physician delegated tasks," "registered nurse delegation," "service area," "supervising nurse," and "survey."

The amendments to §115.13 clarify existing language, change the time frame a new owner is required to submit a change of ownership application to the department, require a new owner to notify the department of the effective date of the change of ownership, and require a new owner to submit a notarized affidavit that the previous owner agrees with the change of ownership and a copy of the documents filed with the secretary of state (for a corporation) or the sales agreement (for other business entities). The amendments to §§115.14 and 115.15 clarify the application process for a branch office and an alternate delivery site. The amendments to §115.22 include new language for clarification purposes and some existing text

in current §115.22 was relocated to §115.21 and §115.26. The amendments to §115.23 are for clarification purposes.

The amendments to §115.24 include clarifying language; delete provisions relating to dialysis technicians; expand provisions for hepatitis B screening and vaccination of clients and staff; change the qualifications of the medical director of a home dialysis provider to mirror those of a licensed end stage renal disease facility; change the qualifications of a registered nurse performing an initial assessment of a client for home dialysis and supervising the provision of dialysis in the home setting; set qualifications of a licensed nurse providing dialysis services in the home setting; establish provisions for preventive maintenance of dialysis equipment used by clients; and add provisions for reuse of dialyzers, if practiced. There are presently three licensed HCSSAs with the home dialysis designation, none of which utilize dialysis technicians.

The amendments to §115.25 include clarifying language; provisions that a comprehensive assessment be performed for each client to identify the client's needs for hospice care, including palliation and management of a terminal illness, and medical, nursing, social, emotional, and spiritual care; provisions relating to a hospice client's rights; and provisions relating to an inpatient hospice's development of a quality assessment and performance improvement program.

The amendments to §115.26 include clarifying language; requirements that an HCSSA providing personal assistance services establish a service area; qualifications for an administrator of an HCSSA providing personal assistance services; requirements for client records; qualifications for a supervisor of personal assistance services; provisions describing required policies; and provisions implementing the memorandum of understanding between the Texas Department of Health and the Board of Nurse Examiners relating to feeding and medication administration via a permanently placed gastrostomy tube in a respite situation.

The amendments to §115.27 clarify eligibility requirements for the establishment and supervision of a branch office. The amendments to §115.28 clarify eligibility requirements for the establishment and supervision of an alternate delivery site.

The amendments to §115.51 clarify the department's and an HCSSA's responsibilities in the survey process, including certain exclusions from the 18-month and 36-month survey cycle; an HCSSA's responsibility to submit a plan of correction; and an HCSSA's request that the department reconsider deficiencies cited during a survey. The amendments to §115.52 clarify the department's enforcement action process and an HCSSA's responsibilities in this process. The amendments to §115.54 implement changes to the Health and Safety Code, Chapter 250, relating to criminal history checks of unlicensed personnel. The amendments to §115.61 and §115.62 are for clarification purposes and change the time period a medication aide permit holder or program may request a hearing relating to a proposed enforcement action against the medication aide or program.

Section 115.4 is being repealed because it duplicates language in the Health and Safety Code, §142.003 relating to exemptions and is not necessary to repeat in rule language. Section 115.5 is being repealed because it is not necessary as rule language.

The purpose of §115.5 is covered in the Health and Safety Code, §142.002 and §142.009.

New §115.11 replaces repealed §115.11. New §115.11 provides for the issuance of an initial license valid for 12 months unless suspended, revoked, or denied and contains new provisions requiring an HCSSA to establish a service area. Further, the new section requires an applicant for an initial HCSSA license to submit with the application form the names and titles of management personnel; submit a curriculum vita for the supervising nurse (if the HCSSA provides skilled services) and the administrator; consider and submit a longer history of certain events concerning the applicant and the applicant's affiliates and managers; have available and ready for review at the time of the initial survey a list of the HCSSA's clients and the client record for each client admitted during the licensing period prior to survey; and assure that the administrator and supervising nurse or designee(s) are present at the entrance conference, available during the survey, and present at the exit conference. In addition, clarifying language was added describing the initial license application process and the HCSSA's responsibilities in the initial application process. New §115.12 replaces repealed §115.12 and clarifies the renewal application process and an HCSSA's responsibilities in the renewal application process.

New §115.16 establishes time periods for processing and issuing an HCSSA license. Presently, time periods for processing HCSSA license applications are covered in §113.2. Section 113.2 also refers to time periods for processing license applications for ambulatory surgical centers, birthing centers, and abortion facilities. The proposed time periods are the same as is described in current §113.2.

New §115.21 replaces the repealed §115.21, contains new and existing text, and was renamed to apply to HCSSAs providing licensed home health, licensed and certified home health, and hospice services. Section 115.21 no longer contains provisions applicable to an HCSSA providing personal assistance services. Requirements presently in §115.21 which are applicable to HCSSAs providing personal assistance services were moved to §115.26 (relating to personal assistance services). New provisions of §115.21 include requirements that an HCSSA establish a service area which is adequately staffed and supervised; investigate complaints concerning treatment or respect for property filed by its clients; provide its clients information relating to supervision of services provided, advance directives, durable power of attorney for health care, and out-of-hospital do-not-resuscitate orders; and meet payroll obligations. Further, the new requirements in §115.21 describe an HCSSA's responsibilities when transferring or discharging a client and when accepting physician delegation; increase the qualifications for an administrator; establish qualifications for a supervising nurse; and allow psychoactive treatments to be under the direction of any physician (presently, the requirement is that psychoactive treatments be under the direction of a psychiatrist). Existing text was reorganized for clarification purposes and better readability.

New §115.71 contains existing text currently in §115.6 which is being repealed. New §115.72 contains existing text currently in §115.7 which is being repealed.

Bernie Underwood, Chief of Staff Services, Health Care Quality and Standards, has determined that for the first five-year period the sections are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the amendments, repeals, and new sections. The department's costs associated with administering the amendments and new sections will be paid for by existing licensing fees.

Ms. Underwood also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be increased quality of care for clients receiving home and community support services through increased qualifications for the administrator and supervising nurse; the provision of more information to the department by an HCSSA applicant relating to background (e.g., felony criminal convictions) so that the department is in a better position to identify "bad actors" prior to issuing a license; and a clearer understanding for an HCSSA of the application requirements, the survey process, and its responsibilities to the clients served. In certain instances, the standards were strengthened to better protect the health and safety of clients of HCSSAs. There will be some fiscal implications to small businesses and an economic cost to persons required to comply with the amendments and new sections. The fiscal implications and economic costs would apply to currently licensed HCSSAs which do not have on staff an administrator or supervising nurse who has the proposed qualifications; to an applicant denied a license due to a criminal background; and to HCSSAs implementing a training program for unlicensed persons administering medications or feedings via a permanently placed gastrostomy tube in a respite situation. The department estimates an HCSSA which does not currently have an administrator who has the proposed qualifications will expend an estimated additional \$20,000 per year in salary and benefits. An HCSSA which does not currently have a registered nurse on staff with the proposed qualifications for a supervising nurse will expend an estimated additional \$20,000 per year in salary and benefits. An applicant denied a license due to a criminal background not previously required to be reported will forfeit the license fee of \$875.00 and incur the costs associated with an administrative hearing if the applicant requests a hearing. An HCSSA which holds a license to provide personal assistance services and which utilizes unlicensed persons to perform feedings or medication administration via gastrostomy tube in respite situations will expend an estimated additional training costs of \$75.00 to \$100 per person trained per year. The number of HCSSAs performing such a service in a respite situation is unknown.

Comments on the proposal may be submitted to Julia R. Beechinor, Director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, 512/834-6647. Comments will be accepted for a period of 30 days after publication of the proposal in the *Texas Register*. In addition, a public hearing will be held at 9:00 a.m., Tuesday, April 1, 1997, in the Lecture Hall, Room K-100, Main Building, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Subchapter A. General Provisions

25 TAC §115.1, §115.2

The amendments are proposed under the Health and Safety Code, §142.004(c), which provides the board with authority to adopt rules to require an applicant to provide documentation establishing the applicant has sufficient financial resources to provide services during the term of the license, a list of management personnel, a description of personnel qualifications, a plan for providing continuing training and education for personnel, documentation that the applicant is capable of meeting the minimum standards related to quality of care, and documentation that the applicant has a plan for the orderly transfer of care of clients if the applicant cannot maintain or deliver services under the license; under §142.008(b) which provides the board with authority to adopt rules to establish eligibility requirements for a branch office license; under §142.0085(b) which provides the board with authority to establish eligibility requirements for an alternate delivery site license; under §142.012 which provides the board with authority to adopt rules to set minimum standards relating to qualifications for professional and nonprofessional personnel (including volunteers), supervision of professional and nonprofessional personnel (including volunteers), the provision and coordination of treatment and services (including support and bereavement services), the management, ownership, and organizational structure (including lines of authority and delegation of responsibility and the composition of an interdisciplinary team), clinical and business records, financial ability to carry out the functions as proposed by the HCSSA, safety, fire prevention, and sanitary standards for residential and inpatient units, and any other aspects of home health, hospice, or personal assistance services as necessary to protect the public; under §142.023 which provides the board with the authority to establish minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide, curricula to train a home health medication aide, minimum standards for the approval of home health medication aide training programs and for rescinding approval, the acts and practices that are allowed or prohibited to a permit holder, and minimum standards for on-site supervision of a permit holder by a registered nurse; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed amendments will affect the Health and Safety Code, Chapter 142.

§115.1. Purpose.

(a)- (b) (No change.)

(c) Requirements established by private or public funding sources (e.g., health maintenance organizations or other private third-party insurance, Medicaid (Title XIX of the Social Security Act), Medicare (Title XIII of the Social Security Act), or state-sponsored funding programs) are separate and apart from the requirements in this chapter for agencies. No matter what funding sources or requirements apply to an agency, the agency must still comply with the applicable provisions in the statute and this chapter. The agency is responsible for researching availability of any funding source to cover the service(s) the agency provides.

§115.2. Definitions.

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

Administrative support site - A facility or site where an [a home and community support services] agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

Administrator - The [A] person who is responsible for the day-to-day operations of an agency [a physician, registered nurse, licensed vocational nurse, physical therapist, occupational therapist, speech-language pathologist, audiologist, social worker, or nursing home administrator; has a baccalaureate or postgraduate degree in administration or a health or human services field; or has one year of administrative experience in a health care setting].

Advanced practice nurse- A registered nurse approved by the Board of Nurse Examiners for the State of Texas to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist.

Alternate delivery site - A facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by an agency providing [a] hospice services;

(B) - (D) (No change.)

Applicant - The owner of an agency which is applying for a license under the statute. This is the person in whose name the license will be issued.

Assistance with medication or treatment regimen - Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid shall not include administration of any medication, unless the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.

Audiologist - A person who is currently licensed under Texas Civil Statutes, Article 4512j, as an audiologist.

Branch office - A facility or site in the service [geographical] area of [served by] a parent [home and community support services] agency from which [where] home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records which are stored at an unlicensed site.

[Certified copy - A sworn affidavit stating that attached copies are true and correct copies of original documents.]

Client - An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not include the spouse, significant other, or other family member living with the client who receives a one-time service

(e.g., vaccine) if the spouse, significant other, or other family member receives the service in connection with the care of a client.

[Council - The Home and Community Support Services Advisory Council.]

Dietitian - A person who is currently licensed under the laws of this state to use the title [titles] of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

Director - The director of the Health Facility Licensing [Licensure and Certification] Division of the Texas Department of Health or his or her designee.

Functional need - Needs [Services which are based on the functional needs] of the individual which require services without regard to [rather than on] diagnosis or label.

[Investigation - An inspection or survey conducted by a representative of the department to determine if a licensee is in compliance with this chapter.]

Licensed vocational nurse - A person who is currently licensed under Texas Civil Statutes, Article 4528c as a [the laws of this state to use the title] licensed vocational nurse.

Medication list - A list of a client's medications that includes the recommended dosage and the frequency and method of administration. The medication list is used to identify possible ineffective drug therapy or adverse reactions, significant side effects, drug allergies, and contraindications. The medication list does not include a medication profile.

Notarized copy - A sworn affidavit stating that attached copies are true and correct copies of the original documents.

Nutritional counseling - Advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include, but is not limited to, the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician, to include instructions for implementation;

(D) providing the client with motivation to help him or her understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

Occupational therapist - A person who is currently licensed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article

8851 as an occupational therapist [laws of this state to practice occupational therapy].

Personal assistance services - Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Board of Nurse Examiners through a memorandum of understanding with the department in accordance with Health and Safety Code, §142.016, and health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or physician.

Physical therapist - A person who is currently licensed under Texas Civil Statutes, Article 4512e [the laws of this state] as a physical therapist.

Physician assistant - A person who is licensed under the Physician Assistant Licensing Act, Texas Civil Statutes, Article 4495-1 as a physician assistant.

Physician delegated tasks - Tasks performed in accordance with the Medical Practice Act, Texas Civil Statutes, Article 4495d, §3.06 including orders signed by a physician which specify the delegated task(s), the individual to whom the task(s) is delegated, and the client's name.

Practitioner - A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is a registered nurse registered with the Board of Nurse Examiners for the State of Texas as an advanced practice nurse [practitioner].

Presurvey conference - A conference held with department staff and the applicant or his or her representatives to review licensure standards and survey documents and provide consultation prior to the on-site licensure survey. [Those present who represent the applicant shall include at least an individual who will be responsible for the day-to-day administration or supervision of care for the agency.]

Psychoactive treatment - The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician [psychiatrist] that includes one or more of the following:

(A) - (D) (No change.)

Registered nurse (RN) - A person who is currently licensed under the Nursing Practice Act, Texas Civil Statutes, Article 4513 et. seq. [laws of this state] as a registered nurse.

Registered nurse delegation - Delegation by a registered nurse in accordance with 22 Texas Administrative Code, §§218.1-218.11 (relating to Delegation of Selected Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel).

Respiratory therapist - A person who is currently licensed under Texas Civil Statutes, Article 4512i [Chapter 123 of this title (relating to Respiratory Care Practitioner Certification)] as a respiratory care practitioner.

Service area - The geographic area(s) established by an agency in which all or some of the agency's services are available.

Social worker - A person who is currently licensed as a social worker under Human Resource Code, Chapter 50. This term includes a

social worker associate, licensed social worker, or licensed master social worker.

Speech-language pathologist [or audiologist] - A person who is currently licensed under the Texas Civil Statutes, Article 4512j [laws of this state] as a speech-language pathologist [or audiologist].

Supervising nurse - The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §115.21(b)(3)(C) of this title (relating to Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health, or Hospice Services). This person may also be known as the director of nursing or similar title.

Survey - An inspection or investigation conducted by a representative of the department to determine if a licensee is in compliance with the statute and this chapter. A survey may be conducted on-site, by mail, by telephone or by electronic communication methods.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703061

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: April 14, 1997

For further information, please call: (512) 458-7236

◆ ◆ ◆
25 TAC §§115.4-115.7

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Health and Safety Code, §142.004(c), which provides the board with authority to adopt rules to require an applicant to provide documentation establishing the applicant has sufficient financial resources to provide services during the term of the license, a list of management personnel, a description of personnel qualifications, a plan for providing continuing training and education for personnel, documentation that the applicant is capable of meeting the minimum standards related to quality of care, and documentation that the applicant has a plan for the orderly transfer of care of clients if the applicant cannot maintain or deliver services under the license; under §142.008(b) which provides the board with authority to adopt rules to establish eligibility requirements for a branch office license; under §142.0085(b) which provides the board with authority to establish eligibility requirements for an alternate delivery site license; under §142.012 which provides the board with authority to adopt rules to set minimum standards relating to qualifications for professional and nonprofessional personnel (including volunteers), supervision of professional and nonprofessional personnel (including volunteers), the provision and coordination of treatment and services (including support and bereavement services), the management, ownership, and organizational structure (including lines of au-

thority and delegation of responsibility and the composition of an interdisciplinary team), clinical and business records, financial ability to carry out the functions as proposed by the HCSSA, safety, fire prevention, and sanitary standards for residential and inpatient units, and any other aspects of home health, hospice, or personal assistance services as necessary to protect the public; under §142.023 which provides the board with the authority to establish minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide, curricula to train a home health medication aide, minimum standards for the approval of home health medication aide training programs and for rescinding approval, the acts and practices that are allowed or prohibited to a permit holder, and minimum standards for on-site supervision of a permit holder by a registered nurse; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed repeals will affect the Health and Safety Code, Chapter 142.

§115.4. Exemptions.

§115.5. Unregulated Agency.

§115.6. Home and Community Support Services Advisory Committee.

§115.7. Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703062

Susan K. Steeg

General Counsel

Texas Department of Health

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For further information, please call: (512) 458-7236

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Subchapter B. Application and Issuance of A License

25 TAC §§115.11, §115.12

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Health and Safety Code, §142.004(c), which provides the board with authority to adopt rules to require an applicant to provide documentation establishing the applicant has sufficient financial resources to provide services during the term of the license, a list of management personnel, a description of personnel qualifications, a plan for providing continuing training and education for personnel, documentation that the applicant is capable of meeting the minimum standards related to quality of care, and documentation

that the applicant has a plan for the orderly transfer of care of clients if the applicant cannot maintain or deliver services under the license; under §142.008(b) which provides the board with authority to adopt rules to establish eligibility requirements for a branch office license; under §142.0085(b) which provides the board with authority to establish eligibility requirements for an alternate delivery site license; under §142.012 which provides the board with authority to adopt rules to set minimum standards relating to qualifications for professional and nonprofessional personnel (including volunteers), supervision of professional and nonprofessional personnel (including volunteers), the provision and coordination of treatment and services (including support and bereavement services), the management, ownership, and organizational structure (including lines of authority and delegation of responsibility and the composition of an interdisciplinary team), clinical and business records, financial ability to carry out the functions as proposed by the HCSSA, safety, fire prevention, and sanitary standards for residential and inpatient units, and any other aspects of home health, hospice, or personal assistance services as necessary to protect the public; under §142.023 which provides the board with the authority to establish minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide, curricula to train a home health medication aide, minimum standards for the approval of home health medication aide training programs and for rescinding approval, the acts and practices that are allowed or prohibited to a permit holder, and minimum standards for on-site supervision of a permit holder by a registered nurse; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed repeals will affect the Health and Safety Code, Chapter 142.

§115.11. Application and Issuance of Temporary License for First-Time Applicants (Unregulated Agencies, New Agencies, and Certain Relocations).

§115.12. Issuance and Renewal of Annual License.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703063

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: April 14, 1997

For further information, please call: (512) 458-7236

◆ ◆ ◆
25 TAC §§115.11-115.16

The amendments and new sections are proposed under the Health and Safety Code, §142.004(c), which provides the board with authority to adopt rules to require an applicant to provide documentation establishing the applicant has sufficient financial resources to provide services during the term of the license, a list of management personnel, a description of personnel qual-

ifications, a plan for providing continuing training and education for personnel, documentation that the applicant is capable of meeting the minimum standards related to quality of care, and documentation that the applicant has a plan for the orderly transfer of care of clients if the applicant cannot maintain or deliver services under the license; under §142.008(b) which provides the board with authority to adopt rules to establish eligibility requirements for a branch office license; under §142.0085(b) which provides the board with authority to establish eligibility requirements for an alternate delivery site license; under §142.012 which provides the board with authority to adopt rules to set minimum standards relating to qualifications for professional and nonprofessional personnel (including volunteers), supervision of professional and nonprofessional personnel (including volunteers), the provision and coordination of treatment and services (including support and bereavement services), the management, ownership, and organizational structure (including lines of authority and delegation of responsibility and the composition of an interdisciplinary team), clinical and business records, financial ability to carry out the functions as proposed by the HCSSA, safety, fire prevention, and sanitary standards for residential and inpatient units, and any other aspects of home health, hospice, or personal assistance services as necessary to protect the public; under §142.023 which provides the board with the authority to establish minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide, curricula to train a home health medication aide, minimum standards for the approval of home health medication aide training programs and for rescinding approval, the acts and practices that are allowed or prohibited to a permit holder, and minimum standards for on-site supervision of a permit holder by a registered nurse; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed amendments and new sections will affect the Health and Safety Code, Chapter 142.

§115.11. Application and Issuance of Initial License.

(a) All first-time applications for a license are applications for an initial license.

(b) Upon written request, the Texas Department of Health (department) will furnish a person with an application packet for an agency license.

(c) If the applicant is an individual, the applicant shall be at least 18 years of age.

(d) The applicant shall retain a copy of all documentation that is submitted to the department.

(e) An agency operating in another state must receive a license as a parent agency in Texas in order to operate as an agency in Texas.

(f) A separate license is required for each principal place of business.

(g) The applicant shall apply for a license in accordance with this subsection.

(1) The applicant may request one or a combination of the following categories of service under the license. An agency is not required to be licensed in more than one category of service if the agency's category of service covers the provided services:

- (A) licensed and certified home health services;
- (B) licensed and certified home health services with home dialysis designation;
- (C) licensed home health services;
- (D) licensed home health services with home dialysis designation;
- (E) hospice services which may include residential or inpatient units; or
- (F) personal assistance services.

(2) The applicant for a license shall submit the information listed in subparagraphs (A) - (T) of this paragraph to the department within six months from the date the department mails the application packet to the applicant. If the department does not receive the information listed in subparagraphs (A) - (T) of this paragraph within six months from the mailing date, the applicant must request a new application packet. The following documents must be submitted with the original application form and shall be originals or notarized copies:

(A) an accurate and complete application form which contains original signatures. The address provided on the application must be the address from which the agency will be operating and providing services. The address for its place of business to be licensed by the department must be located in the State of Texas;

(B) a description of the agency's service area. The service area shall be established in accordance with §115.21(a)(6) of this title (relating to Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health, or Hospice Services);

(C) a nonrefundable license fee;

(D) the name of the applicant;

(E) a list of names of all persons who own at least a 10% interest in the applicant;

(F) a list of any businesses with which the applicant subcontracts and in which the persons listed under subparagraph (E) of this paragraph hold at least 5% of the ownership;

(G) the name and business address of:

(i) each limited partner and general partner if the applicant is a partnership; and

(ii) each director and officer if the applicant is a corporation, limited liability company or other business entity;

(H) if the applicant has held or holds an agency license or has been or is an affiliate of another licensed agency, the relationship, including the name and current or last address of the other agency and the date such relationship commenced and, if applicable, the date it was terminated;

(I) if the applicant is a subsidiary of another organization, the names and addresses of the parent organization, the names

and addresses of the officers and directors of the parent organization and the name of each subsidiary of the parent organization; and

(J) if the facility is operated by or proposed to be operated under a management contract, the names and addresses of any person and organization having an ownership interest of 10% or more in the management company;

(K) for a parent agency:

(i) a proposed budget covering the period of time of the license;

(ii) a notarized affidavit attesting to the following:

(I) that the applicant has not been adjudged insolvent or bankrupt in a state or federal court during the seven-year period preceding the application date;

(II) that the applicant is not a party in a state or federal court to a bankruptcy or insolvency proceeding with respect to the applicant; and

(III) that the applicant has the financial resources to meet its proposed budget and to provide the services required by the statute and by the department during the term of the license;

(iii) its organizational structure, a list of management personnel (including names and titles), and a job description of each administrative and supervisory position. The job description must contain at a minimum the job title, qualifications including required education and training, and job responsibilities. The applicant must submit a plan to provide annual continuing education and training for management personnel;

(iv) the resume or curriculum vita of the agency administrator. The resume or curriculum vita shall reflect that the administrator has the qualifications described in §115.21(b)(3)(B) of this title; and

(v) the resume or curriculum vita of the agency supervising nurse (if applicable). The resume or curriculum vita shall reflect that the supervising nurse has the qualifications described in §115.21(b)(3)(C) of this title;

(L) a written plan for the orderly transfer of care of the applicant's clients and clinical records if the applicant is unable to maintain services under the license;

(M) a notarized statement attesting that the applicant is capable of meeting the requirements of this chapter for the provision of home health, hospice, or personal assistance services;

(N) if an applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification that the tax owed to the state under the Tax Code, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171;

(O) if accredited, documentation from:

(i) the Joint Commission for Accreditation of Healthcare Organizations indicating the agency holds a current one-year accreditation for the applicable service; or

(ii) the Community Health Accreditation Program indicating the agency is accredited for the applicable service;

(P) if accredited by another accrediting organization, documentation regarding the accrediting organization to show that the accrediting organization's standards meet or exceed this chapter;

(Q) if certified by the Texas Department of Mental Health and Mental Retardation (TXMHMR), documentation from TXMHMR indicating the applicant is certified as a home and community services or home and community services-OBRA provider;

(R) the following data concerning the applicant, the applicant's affiliates, and the managers of the applicant:

(i) denial, suspension, or revocation of an agency license or a license for any health care facility in any state or any other enforcement action, such as court civil or criminal action;

(ii) denial, suspension, or revocation of or other enforcement action against an agency license or a license for any health care facility in any state which is or was proposed by the licensing agency and the status of the proposal;

(iii) surrendering a license before expiration of the license or allowing a license to expire in lieu of the department proceeding with enforcement action;

(iv) federal or state Medicaid or Medicare sanctions or penalties relating to the operation of an agency or health care facility;

(v) federal or state (any state) criminal felony convictions;

(vi) operation of an agency that has been decertified in any state under Medicare or Medicaid; or

(vii) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;

(S) for the two-year period preceding the application date, the following data concerning the applicant, the applicant's affiliates, and the managers of the applicant:

(i) federal or state (any state) criminal misdemeanor convictions;

(ii) federal or state (any state) tax liens;

(iii) unsatisfied final judgements;

(iv) eviction involving any property or space used as an agency in any state;

(v) unresolved final state or federal Medicare or Medicaid audit exceptions; or

(vi) injunctive orders from any court; and

(T) notice that the agency has attended a presurvey conference at the office designated by the department, or that the designated survey office has waived the presurvey conference. The application is not considered complete and correct unless the department has received this notice.

(i) It is the agency's responsibility to contact the designated survey office to schedule a presurvey conference.

(ii) The administrator and supervising nurse (if applicable) shall attend the presurvey conference.

(iii) The designated survey office shall verify compliance with the applicable provisions of this chapter and recommend

that the agency be issued an initial license or that the application be denied pursuant to §115.52 of this title (relating to Enforcement Action).

(3) Upon the department's receipt of the application form, the required information described in paragraph (2) of this subsection, and the fee from an applicant, the department shall review the material to determine whether it is complete and correct.

(A) The time periods for reviewing the material shall be in accordance with §115.16 of this title (relating to Time Periods for Processing and Issuing a License).

(B) If an agency receives a notice from the department that some or all of the information required under paragraph (2) of this subsection is deficient, the agency shall submit the required information no later than six months from the date of the notice.

(i) An agency which fails to submit the required information within six months from the notice date is considered to have withdrawn its application for an initial agency license. The license fee will not be refunded.

(ii) An agency which has withdrawn its application must reapply for a license in accordance with this section, if it wishes to continue the application process. A new license fee is required.

(C) Information received by the department relating to the competence and financial resources of the applicant is confidential and may not be disclosed to the public.

(4) Once the department has determined that the application form, the information described in paragraph (2) of this subsection required to accompany the application form, and the license fee are complete and correct, the department shall issue the initial license. The initial license shall expire:

(A) on the last day of the preceding month of the next year if issued on the first day of a month; or

(B) on the last day of the month of issuance of the next year if issued on the second or any subsequent day of a month.

(5) The department shall mail the initial license certificate to the licensee. The license certificate will designate the category(ies) of service the agency is authorized to provide at or from the designated place of business.

(h) An agency may not admit a client or initiate services until it has received the initial license certificate.

(i) The agency shall admit at least one client and initiate services during the initial license period.

(1) Upon admitting the first client, the agency shall inform the designated survey office of the admission and the name of the client and request that an initial survey be conducted.

(2) The agency is not required to admit a client(s) under each category of service authorized under the license in order to be surveyed by the department.

(j) A department surveyor shall conduct an onsite survey of the agency after the issuance of the initial license.

(1) Upon receiving an agency request for an initial survey, the designated survey office shall schedule the survey of the agency and shall inform the agency of the survey date and time.

(2) An initial survey shall not be required if:

(A) the agency has received accreditation by the Community Health Accreditation Program or one-year accreditation by the Joint Commission on Accreditation for Healthcare Organizations since the issuance of the initial license; or

(B) the survey is not required by the memorandum of understanding between the department and the Texas Department of Mental Health and Mental Retardation.

(3) All applicants issued an initial license must be providing or have provided services to one or more clients at the time of the initial survey.

(4) At the time of the initial survey, the agency shall:

(A) have the following available and ready for review by the surveyor upon the surveyor's arrival:

(i) a list(s) of clients who are receiving services or who have received services from the agency. This list(s) must include the name(s), address(es), and telephone number(s) of the clients served and the service(s) provided; and

(ii) the client record for each client admitted during the licensing period prior to survey; and

(B) assure that the administrator and supervising nurse or designee(s), if applicable, are present at the entrance conference, available during the survey, and present at the exit conference. If the administrator and supervising nurse or designee(s) are not present at the surveyor's arrival, the survey will not be conducted, the initial license may be revoked and the renewal license denied in accordance with §115.52 of this title (relating to Enforcement Action).

(5) The department will not renew the license unless the designated survey office has conducted an initial survey of the agency.

(k) A person who has requested the category of licensed and certified home health services on the initial license application shall also make application for certification by the United States Department of Health and Human Services (USDHHS) as a Medicare certified agency under the Social Security Act, Title XVIII.

(1) Pending approval by the USDHHS Health Care Financing Administration (HCFA), the person:

(A) will receive an initial license reflecting the category of licensed home health services; and

(B) shall comply with the Medicare conditions of participation for home health agencies in 42 Code of Federal Regulations, Part 484, as if the person were duly certified.

(2) Upon becoming certified by HCFA to participate in the Medicare program during the initial licensing period, the department shall send notice to the agency that the category of licensed and certified home health services has been added to the license. The agency shall submit a written request for deletion or retention of the licensed home health category of service.

(3) If HCFA denies certification to the person or if the person withdraws application for participation in the Medicare program, the person will retain the category of licensed home health services. An agency's retention of the licensed home health services category of service does not preclude the department from taking enforcement action, as appropriate, under §115.52 of this title.

(1) Continuing compliance with the minimum standards and the provisions of this chapter for the services authorized to be provided under the license is required during the initial licensing period in order for a first renewal license to be issued.

(1) An agency authorized under the license to provide licensed home health, licensed and certified home health, or hospice services shall comply with §115.21 of this title.

(2) An agency authorized under the license to provide licensed home health services shall comply with §115.22 of this title (relating to Standards for Licensed Home Health Services).

(3) An agency authorized under the license to provide licensed and certified home health services shall comply with §115.23 of this title (relating to Standards for Licensed and Certified Home Health Services).

(4) An agency authorized under the license to provide home dialysis shall comply with §115.24 of this title (relating to Standards for Home Dialysis Designation).

(5) An agency authorized under the license to provide hospice services shall comply with §115.25 of this title (relating to Standards for Hospice Services).

(6) An agency which holds a license with the category of personal assistance services shall comply with §115.26 of this title (relating to Standards for Personal Assistance Services).

(m) If the department determines that compliance with the minimum standards and the provisions of this chapter is not substantiated after the issuance of the initial license, the department may propose to revoke the initial license and deny the first renewal license and shall notify the applicant of a license revocation and denial as provided in §115.52 of this title.

(n) If an applicant decides not to continue the application process for an initial license, the application may be withdrawn. If a license has been issued, the applicant shall cease providing services and return the license to the department with its written request to withdraw. The department shall acknowledge receipt of the request to withdraw. The license fee will not be refunded.

(o) A person may not engage in the business of providing home health, hospice, or personal assistance services, or represent to the public that the person is a provider of home health, hospice, or personal assistance services for pay or other consideration without a license.

§115.12. Issuance and Renewal of License.

(a) Eligibility for license renewal.

(1) An agency shall renew a license annually. The Texas Department of Health

(department) shall issue a renewal license to an agency which meets the minimum standards for a license.

(2) The renewal license shall expire 12 months from the date of issuance. For each annual license period, the agency shall provide services to one or more clients and document the provision of services. The agency must show proof that services have been provided under the license within the previous 12 months. Such documentation shall be available for review by a department surveyor.

(3) An agency with an initial license is eligible for first renewal of the license when the agency has met the provisions of

§115.11(h)-(j) of this title (relating to Application and Issuance of Initial License), continues to comply with the provisions of this chapter applicable to the category(ies) of services authorized under the license, and has applied for renewal of the license in accordance with subsection (b) of this section.

(4) An agency with a renewal license is eligible for subsequent renewal of the license annually when the agency continues to comply with the applicable provisions of this chapter and has applied for renewal of the license in accordance with subsection (b) of this section.

(5) An agency is not required to admit a client(s) under each category of service authorized under the license as a condition for renewal of the license.

(6) An agency license will not be renewed with the category of licensed and certified home health services if the agency withdraws from or is terminated (voluntarily or involuntarily) from participation in the Medicare program. However, if continued compliance with the requirements for licensed home health services is demonstrated, the license shall be renewed with the category of licensed home health services.

(7) A license will not be renewed if renewal is prohibited by the Texas Education Code, §57.491 relating to defaults on guaranteed student loans.

(8) A license will not be renewed if it is suspended under the Family Code, Chapter 232 relating to license suspension of delinquent child support obligors.

(9) If an agency makes a timely application for renewal of a license, and action to revoke, suspend, or deny renewal of the license is pending, the license does not expire but does extend until the application for renewal is granted or denied after the opportunity for a formal hearing. A renewal license certificate will not be issued unless the department has determined the reason for the proposed action no longer exists but the department will issue a letter acknowledging the extension of the license.

(b) Renewal application.

(1) The department will send notice of expiration to an agency at least 60 calendar days before the expiration date of the license. If the agency has not received notice of expiration from the department 45 calendar days prior to the expiration date, it is the duty of the agency to notify the department and request a renewal application for a license.

(2) The agency shall submit to the department postmarked prior to the expiration date of the license:

(A) a complete and correct application renewal form which includes updated disclosure information and ownership and management information as required by §115.11(g)(2)(R) and (S) of this title;

(B) the renewal license fee;

(C) if accredited, documentation from:

(i) the Joint Commission for Accreditation of Healthcare Organizations indicating the agency holds a current one-year accreditation for the applicable service; or

(ii) the Community Health Accreditation Program indicating the agency is accredited for the applicable service;

(D) if accredited by another accrediting organization, documentation regarding the accrediting organization to show that the accrediting organization's standards meet or exceed this chapter;

(E) if certified as a home and community based services or home and community based services-OBRA provider by the Texas Department of Mental Health and Mental Retardation (TXMHMR), documentation from the TXMHMR verifying the agency's certification; and

(F) if an applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification that the tax owed to the state under the Tax Code, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171.

(3) All documents submitted with the renewal application shall be notarized copies or originals. The time periods for processing an application shall be in accordance with §115.16 of this title (relating to Time Periods for Processing and Issuing a License).

(c) Timely application required. An agency which fails to make timely and sufficient application for renewal of its license shall not provide home health, hospice, or personal assistance services after the expiration date of the license. If an agency fails to make timely and sufficient application for renewal of a license prior to the expiration date of the license, the agency must cease operation upon expiration of the license. In order to resume operations, the agency must apply for an initial license in accordance with §115.11 of this title.

(d) Active military duty exception. If a licensee fails to timely renew his or her license on or after August 1, 1990, because the licensee is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee may renew the license pursuant to this subsection.

(1) Renewal of the license may be requested by the licensee, the licensee's spouse, or an individual having power of attorney from the licensee. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after the expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the licensee is or was on active military duty serving outside the State of Texas shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the licensee shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this section.

(5) A licensee renewing under this subsection shall pay the applicable renewal fee.

(6) A licensee is not authorized to operate the agency for which the license was obtained after the expiration of the license unless and until the licensee actually renews the license.

(7) This subsection applies to a licensee who is a sole practitioner or a partnership with only individuals as partners where

all of the partners were on active duty with the armed forces of the United States serving outside the State of Texas.

(e) Withdrawal of application. If an agency decides not to continue the application process for the renewal of a license, the application may be withdrawn. If a license has been issued, the applicant shall return the license to the department with its written request to withdraw and cease providing services. The department shall acknowledge receipt of the request to withdraw.

§115.13. Change of Ownership or Services.

(a) No license may be transferred from one person to another person.

(1) A person who desires to receive a license in its name for an agency currently licensed under the name of another person or to change the ownership of any agency must comply with the following provisions.

(A) The person must submit a license application [at least 60 calendar days] prior to the date of the change of ownership [desired date of licensure]. The application shall be, if applicable, in accordance with §115.11(g) of this title (relating to Application and Issuance of Initial [Temporary] License [for First-Time Applicants (Unregulated Facilities, New Agencies, and Certain Relocations)]), §115.14 of this title (relating to Branch Office License [Licenses]) or §115.15 of this title (relating to Application and Issuance of an Alternate Delivery Site License [Licenses]). The application shall include:

(i) the effective date of the change of ownership;

and

(ii) a notarized affidavit signed by the previous owner acknowledging agreement with the change of ownership. If the applicant is a corporation, the application shall include a copy of the applicant's articles of incorporation. If the applicant is an business entity other than a corporation, the applicant shall include a copy of the sales agreement.

(B) The on-site survey [inspection] required by §115.11(i) [(o)] of this title may be waived by the department.

(C) When the person has complied with the provisions of §115.11 of this title, the department shall issue an initial [a temporary] license which shall be effective the date of the change of ownership [unless the department waives the inspection in accordance with subparagraph (B) of this paragraph. If the inspection is waived, the department shall issue an annual license, in lieu of the temporary license, effective the date of the change of ownership]. The department shall renew the license in accordance with §115.12 of this title (relating to Issuance and Renewal of License without an initial survey if waived under subparagraph (B) of this paragraph).

(D) The initial license issued to the new owner shall expire:

(i) on the last day of the preceding month of the next year if issued on the first day of a month; or

(ii) on the last day of the month of issuance of the next year if issued on the second or any subsequent day of the month.

(E) [D] The previous owner's license shall be void on the effective date of the new initial [temporary] license [or annual license] and must be surrendered to the department.

(2) (No change.)

(3) A change of ownership of a licensed agency under this subsection occurs when the name of the licensed person or entity as reflected on the license certificate and original application will be changed, unless a [corporate] licensee who is a business entity is simply amending its official documents [articles of incorporation] to revise its name.

(4) A change of ownership for a parent agency is a change of ownership for the parent agency's branch office(s) or alternate delivery site(s) and requires the submittal of a new initial application(s) and fee(s) for the branch office(s) or alternate delivery site(s).

(5) [(4)] The provisions of this subsection are in addition to any applicable federal law or regulations relating to change of ownership or control.

(b) An agency shall notify the department in writing and within 15 [30] calendar days after [of] any of the following:

(1) change in state agency certification or accreditation status; and

(2) cessation of operation of the agency, branch office, or alternate delivery site. The agency shall include in the written notice the reason for closure, the location of the client records, and the name and address of the client record custodian. If an agency closes with an active client roster, a copy of the active client record shall be transferred with the client to the receiving agency in order to assure continuity of care and services to the client. The initial [temporary] license or renewal [annual] license shall be mailed or returned to the department at the end of the day services were terminated.

(c) An agency which wishes to add or delete a category of service to the license shall inform the department in writing 30 calendar days prior to the addition or deletion of the category of service.

(1)The department will approve or disapprove the addition of a category of service.

(A) At the discretion of the department, an agency shall attend a presurvey conference at the designated survey office prior to the department approving the addition of a category of service.

(B) If disapproved, the department shall inform the agency of the reason for disapproval.

(2) At the discretion of the department an on-site survey may be conducted following the approval of a category of service.

(3) The department's receipt of an agency request to delete a category of service from the license does not preclude the department from taking enforcement action as appropriate in accordance with §115.52 of this title (relating to Enforcement Action).

(d) If an agency changes the name under which it is licensed or is doing business as but not the ownership, it must send written notification to [notify] the department within five business days after

the effective date of the name change and a notarized copy of the documents filed with the secretary of state reflecting the name change. The department shall determine if the change is a transfer under subsection (a) of this section.

§115.14. Application and Issuance of a Branch Office License [Licenses].

(a) The Texas Department of Health (department) may issue a branch office license to a person who holds a current agency license to provide home health or personal assistance services. A person who holds a current agency license is eligible to apply for a branch office license:

(1) for an agency with an initial license, if the agency has received a license to provide home health or personal assistance services in the State of Texas and successfully completed an initial onsite survey to verify compliance with the statute and this chapter; or for an agency with a first renewal license or subsequent renewal license, if the agency has demonstrated substantial compliance with the statute and this chapter during the licensure period; and

(2) if enforcement action against the agency license is not proposed under §115.52 of this title (relating to Enforcement Action).

(b) (No change.)

(c) The parent agency applicant shall submit to the department:

(1) a complete and correct application; [and]

(2) the required license fee; [.]

(3) the organizational structure of the branch office which shows its relationship under the parent agency and includes the names and titles of the branch office management, supervisory, and administrative personnel;

(4) a proposed budget specific to the branch office covering the period of time of the license; and

(5) a description of the branch office's service area. The service area must meet the criteria in §115.27 of this title (relating to Standards for Branch Offices).

(d) (No change.)

(e) The department shall review the application and accompanying material to determine whether it is complete and correct.

(1) The time frames for review shall be in accordance with §115.16 of this title (relating to Time Periods for Processing and Issuing a License).

(2) An agency which fails to respond to the department's notice of an incomplete application for a branch office license described in §115.16(b) of this title within six months from the date of the notice is considered to have withdrawn the application for a branch office license. The branch office license fee will not be refunded.

(3) An agency which has withdrawn its application for a branch office license must reapply for a branch office license in accordance with subsection (c) of this section. A new branch office license fee is required.

(f) [(e)] The department shall notify the designated survey office of the agency's request to establish a branch office.

(g) [(f)] The designated survey office will conduct a review of the applicant's request to establish a branch office. The survey office will recommend to approve or disapprove the branch office request. At the discretion of the department, the designated survey office may conduct an onsite survey of the branch office prior to recommending approval or disapproval of the branch office request.

(h) [(g)] The [If the recommendation is to disapprove the branch office application, the] department may [shall] propose denial of the application according to §115.52 of this title (relating to Enforcement [Disciplinary] Action) after consideration of the designated survey office's recommendation.

(i) [(h)] Upon approval of the branch office license application, the [The] department will issue the branch office [an annual] license, which shall [to] expire on the same expiration date as the parent agency's [annual] license and shall be renewed with the parent agency's [annual] license.

(j) At the discretion of the department, an onsite survey of the branch office may be conducted after issuance of the license to determine compliance with the statute and this chapter.

(k) [(i)] The department will mail the branch office license to the licensee. The branch office license shall be posted in a conspicuous place on the licensed branch office premises.

(l) The branch office shall comply with §115.27 of this title and the standards relating to the category(ies) of services authorized under the license.

§115.15. Application and Issuance of an Alternate Delivery Site License [Licenses].

(a) The department may issue an alternate delivery site license to a person who holds a current agency license to provide hospice services. A person who holds a current agency license to provide hospice services is eligible to apply for an alternate delivery site license:

(1) for an agency with an initial license, if the agency has received a license to provide hospice services in the State of Texas and has successfully completed an initial onsite survey to verify compliance with the statute and this chapter; or for an agency with a first renewal or subsequent renewal license, if the agency has demonstrated substantial compliance with the statute and this chapter during the licensure period; and

(2) if enforcement action against the agency license is not proposed under §115.52 of this title (relating to Enforcement Action).

(b) Upon written request, the department shall furnish a hospice license holder with an application for an alternate delivery site license.

(c) The hospice [applicant] shall submit to the department:

(1) a complete and correct application; [and]

(2) the required license fee; [.]

(3) the organizational structure of the alternate delivery site which shows its relationship under the hospice and

includes the names and titles of the alternate delivery site management, supervisory, and administrative personnel;

(4) a proposed budget specific to the alternate delivery site covering the period of time of the license; and

(5) a description of the alternate delivery site's service area. The service area must meet the criteria in §115.28 of this title (related to Standards for Alternate Delivery Sites).

(d) The hospice [applicant] shall retain a copy of all documentation that is submitted to the department.

(e) The department shall review the application and accompanying material to determine whether it is complete and correct.

(1) The time frames for review shall be in accordance with §115.16 of this title (relating to Time Periods for Processing and Issuing a License).

(2) An agency which fails to respond to the department's notice of an incomplete application for an alternate delivery site license described in §115.16(b) of this title within six months from the date of the notice is considered to have withdrawn the application for an alternate delivery site license. The alternate delivery site license fee will not be refunded.

(3) An agency which has withdrawn its application for an alternate delivery site license must reapply for an alternate delivery site license in accordance with subsection (c) of this section. A new alternate delivery site license fee is required.

(f)(e) The department shall notify the designated survey office of the hospice's request to establish an alternate delivery site.

(g) [(f)] The designated survey office shall conduct a review of the hospice's [applicant's] request to establish an alternate delivery site. The survey office will recommend to approve or disapprove the alternate delivery site request. At the discretion of the department, the designated survey office may conduct an onsite survey of the alternate delivery site prior to recommending approval or disapproval of the alternate delivery site request.

(h) [(g)] The [If the recommendation is to disapprove the alternate delivery site application, the] department may [shall] propose denial of the application according to §115.52 of this title [(relating to Disciplinary Action)] after consideration of the designated survey office's recommendation.

(i) [(h)] Upon approval of the alternate delivery site application, the [The] department will issue the alternate delivery site a [an annual] license, which shall [to] expire on the same expiration date as the hospice's [annual] license, and shall be renewed with the hospice's [annual] license. The alternate delivery site license shall be posted in a conspicuous place on the licensed alternate delivery site premises.

(j) [(i)] The alternate delivery site shall comply with §115.25 of this title (relating to Standards for Hospice Services) and §115.28 of this title. The designated survey office will conduct an on-site [expansion] survey after a license has been issued to verify compliance with §115.25 of this title [(relating to Standards for Hospice Services)].

(k) [(j)] If the designated survey office recommends that the licensed alternate delivery site seek a license as a hospice, a written

report supporting the recommendation shall be submitted to the department for review.

§115.16. Time Periods for Processing and Issuing a License.

(a) General.

(1) The date a license application is received is the date the application reaches the Health Facility Licensure Division, Texas Department of Health (department).

(2) An application for an initial license is complete when the department has received, reviewed, and found acceptable the information described in §115.11 of this title (relating to Application and Issuance of Initial License).

(3) An application for a renewal license is complete when the department has received, reviewed and found acceptable the information described in §115.12 of this title (relating to Issuance and Renewal of License).

(4) An application for a change of ownership license is complete when the department has received, reviewed, and found acceptable the information described in §115.13 of this title (relating to Change of Ownership or Services).

(b) Time periods. An application from an agency for an initial license, renewal license, or change of ownership license shall be processed in accordance with the following time periods.

(1) The first time period begins on the date the department receives the application and ends on the date the license is issued, or if the application is received incomplete, the period ends on the date the facility is issued a written notice that the application is incomplete. The written notice shall describe the specific information that is required before the application is considered complete. The first time period is 45 days.

(2) The second time period begins on the date the last item necessary to complete the application is received and ends on the date the license is issued. The second time period is 45 days.

(c) Reimbursement of fees.

(1) In the event the application is not processed in the time periods stated in subsection (b) of this section, the applicant has the right to request that the department reimburse in full the fee paid in that particular application process. If the department does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(d) Appeal. If the request for reimbursement as authorized by subsection (c) of this section is denied, the applicant may then appeal to the commissioner of health for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting

reimbursement of the fee paid because the application was not processed within the established time period. The department shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will make the final decision and provide written notification of the decision to the applicant and the director.

(e) Hearings. If a hearing is proposed during the processing of the application, the time periods in §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearing) are applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703064

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: April 14, 1997

For further information, please call: (512) 458-7236



Subchapter C. Service Standards

25 TAC §115.21

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Health and Safety Code, §142.004(c), which provides the board with authority to adopt rules to require an applicant to provide documentation establishing the applicant has sufficient financial resources to provide services during the term of the license, a list of management personnel, a description of personnel qualifications, a plan for providing continuing training and education for personnel, documentation that the applicant is capable of meeting the minimum standards related to quality of care, and documentation that the applicant has a plan for the orderly transfer of care of clients if the applicant cannot maintain or deliver services under the license; under §142.008(b) which provides the board with authority to adopt rules to establish eligibility requirements for a branch office license; under §142.0085(b) which provides the board with authority to establish eligibility requirements for an alternate delivery site license; under §142.012 which provides the board with authority to adopt rules to set minimum standards relating to qualifications for professional and nonprofessional personnel (including volunteers), supervision of professional and nonprofessional personnel (including volunteers), the provision and coordination of treatment and services (including support and bereavement services), the management, ownership, and organizational structure (including lines of authority and delegation of responsibility and the composition of an interdisciplinary team), clinical and business records, financial ability to carry out the functions as proposed by the HCSSA, safety, fire prevention, and sanitary standards for residential and inpatient units, and any other aspects of home health, hospice, or personal assistance services as necessary to protect the public; under §142.023 which provides the board with the

authority to establish minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide, curricula to train a home health medication aide, minimum standards for the approval of home health medication aide training programs and for rescinding approval, the acts and practices that are allowed or prohibited to a permit holder, and minimum standards for on-site supervision of a permit holder by a registered nurse; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed repeal will affect the Health and Safety Code, Chapter 142.

§115.21. *Licensure Requirements and Standards for All Home and Community Support Services Agencies.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

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General Counsel

Texas Department of Health

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For further information, please call: (512) 458-7236



25 TAC §§115.21-115.28

The amendments and new sections are proposed under the Health and Safety Code, §142.004(c), which provides the board with authority to adopt rules to require an applicant to provide documentation establishing the applicant has sufficient financial resources to provide services during the term of the license, a list of management personnel, a description of personnel qualifications, a plan for providing continuing training and education for personnel, documentation that the applicant is capable of meeting the minimum standards related to quality of care, and documentation that the applicant has a plan for the orderly transfer of care of clients if the applicant cannot maintain or deliver services under the license; under §142.008(b) which provides the board with authority to adopt rules to establish eligibility requirements for a branch office license; under §142.0085(b) which provides the board with authority to establish eligibility requirements for an alternate delivery site license; under §142.012 which provides the board with authority to adopt rules to set minimum standards relating to qualifications for professional and nonprofessional personnel (including volunteers), supervision of professional and nonprofessional personnel (including volunteers), the provision and coordination of treatment and services (including support and bereavement services), the management, ownership, and organizational structure (including lines of authority and delegation of responsibility and the composition of an interdisciplinary team), clinical and business records, financial ability to carry out the functions as proposed by the HCSSA, safety, fire prevention, and sanitary standards for residential and inpatient units, and any other aspects of home health, hospice, or personal assistance services as nec-

essary to protect the public; under §142.023 which provides the board with the authority to establish minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide, curricula to train a home health medication aide, minimum standards for the approval of home health medication aide training programs and for rescinding approval, the acts and practices that are allowed or prohibited to a permit holder, and minimum standards for on-site supervision of a permit holder by a registered nurse; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed amendments and new sections will affect the Health and Safety Code, Chapter 142.

§115.21. *Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health, or Hospice Services.*

(a) Conditions of license. An agency licensed to provide licensed home health, licensed and certified home health, or hospice services shall comply with the requirements in this section.

(1) A license shall be displayed in a conspicuous place in the designated place of business.

(2) A license may be transferred from one location to another without prior approval from the Texas Department of Health (department). If an agency is considering relocation, the agency shall notify the department 30 calendar days prior to the intended relocation. The department will provide written notification to the agency amending the annual license to reflect the new location.

(3) The relocation of a branch office or alternate delivery site to a different parent agency shall require submission of a new application for the branch office or alternate delivery site and shall comply with §115.14 of this title (relating to Application and Issuance of a Branch Office License) and §115.15 of this title (relating to Application and Issuance of an Alternate Delivery Site License) as appropriate.

(4) An agency shall notify the department in writing of any change in its telephone number within 30 calendar days after the change.

(5) A license shall not be materially altered.

(6) An agency shall provide services only within its service area.

(A) The agency shall maintain adequate staff to provide services and to supervise the provision of services within the service area.

(B) An agency may expand its service area at any time during the licensure period. To expand its service area, an agency must submit to the department a written notice for the expansion which includes revised boundaries of the agency's original service area, the effective date of the expansion, and an updated list of management and supervisory personnel (including names), if changes are made. The notice must be submitted either before or within 30 calendar days after the effective date of the expansion.

(C) An agency may reduce its service area at any time during the licensure period by sending the department written

notification of the reduction, revised boundaries of the agency's original service area, and the effective date of the reduction.

(D) A branch office or alternate delivery site shall be located within the parent agency's service area.

(7) A separate license is required for each principal place of business.

(b) Agency responsibilities.

(1) General.

(A) An agency shall adopt, implement, and enforce the provisions of the Human Resources Code, Chapter 102 (relating to Rights of the Elderly), for clients 55 years and older.

(B) An agency shall investigate complaints made by a client or the client's family or guardian or the client's health care provider regarding treatment or care that is (or fails to be) furnished or regarding the lack of respect for the client's property by anyone furnishing services on behalf of the agency and must document the receipt of the complaint and the disposition of the complaint.

(C) An agency shall meet the requirements set forth by the department in §§1.131 - 1.137 of this title (relating to Definition, Treatment and Disposition of Special Waste from Health Care-Related Facilities). This requirement does not apply to disposition of special waste in a client's place of residence, but would apply to any special waste disposed of from an agency's office location.

(D) An agency that provides laboratory services shall meet the Clinical Laboratory Improvement Amendments of 1988, 42 United States Code, §263a, Certification of Laboratories (CLIA 1988). CLIA 1988 applies to all agencies with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(E) An agency shall comply with the Nursing Practice Act, Texas Civil Statutes, Articles 4525a and 4525b, relating to professional nurse reporting and peer review.

(F) An agency shall comply with 22 TAC §§240.11-240.13, relating to licensed vocational nurse peer review and reporting.

(G) An agency can accept delegation from a physician only if the agency receives the following from the physician:

(i) the name of the client;

(ii) the name of the delegating physician;

(iii) the task(s) to be performed;

(iv) the name of the individual(s) to perform the task(s);

(v) the time frame for the delegation order; and

(vi) if the task is medication administration, the medication to be given, route, dose, and frequency.

(2) Provision of services.

(A) An agency shall conduct an ongoing, comprehensive, integrated, self-assessment of the quality and appropriateness of care provided, including services provided under arrangement. The findings are to be used by the agency to correct identified problems

and to revise policies, if necessary. The agency staff responsible for the quality assurance program shall:

(i) ensure that all service providers involved in the care of a client (e.g., contracted health care professional or another agency) are engaged in an effective interchange, reporting, and coordination of care regarding the client. The agency shall document the steps taken to meet this standard;

(ii) implement and report on activities and mechanisms for monitoring the quality of care;

(iii) identify and, when possible, resolve problems; and

(iv) make suggestions for improving care.

(B) If an agency utilizes independent contractors, there shall be a written agreement between such independent contractors (i.e. per hour, per visit) and the agency. The agreement shall be enforced by the agency and clearly designate:

(i) that clients are accepted for care only by the licensed agency;

(ii) the services to be provided;

(iii) the necessity to conform to all applicable agency policies, including personnel qualifications;

(iv) the plan of care or care plan to be carried out;

(v) the manner in which services will be coordinated and evaluated by the licensed agency in accordance with subparagraph (A) of this paragraph;

(vi) the procedures for submitting information and documentation regarding the client's needs and services, including clinical and progress notes, if required; the scheduling of visits; and periodic client evaluation or supervision; and

(vii) the procedures for determining charges and reimbursement.

(C) Services provided by an agency under arrangement with another agency or organization shall be subject to a written agreement conforming with the requirements specified in subparagraph (B) of this paragraph.

(D) The agency shall provide for back-up services when an employee or contractor is not able to deliver the services.

(E) A person who is not licensed to provide hospice services may not use the word "hospice" in a title or description of a facility, organization, program, service provider or services or use any other words, letters, abbreviations, or insignia indicating or implying that the person holds a license to provide hospice services.

(F) The agency shall have a written contingency plan which is implemented in the event of dissolution to assure continuity of client care. The plan must be consistent with subparagraph (I) of this paragraph and include provisions for notifying the client of the agency's dissolution and for documenting the notification, and procedures for carrying out the notification.

(G) The agency and the client or his family shall have a written agreement for services. The agency shall obtain an acknowledgment of receipt of the agreement. The agency shall

comply with the terms of the agreement. The agreement shall include, but may not be limited to, the following:

(i) notification of the Human Resources Code, Chapter 102 (relating to Rights of the Elderly), for clients 55 years of age and older;

(ii) documentation concerning durable power of attorney for health care, advance directive or DNR orders executed in accordance with the applicable law;

(iii) services to be provided;

(iv) supervision by the agency of services provided; and

(v) agency charges for services rendered if the charges will be paid in full or in part by the client or the client's family, or on request.

(H) An agency shall maintain a current list of clients which includes the services being delivered by the agency and establish a record for each client which is maintained in accordance with and contains the information described in paragraph (4)(I) of this subsection.

(I) Except in an emergency situation, an agency intending to transfer or discharge a client shall notify the client or the client's parent, family, spouse, significant other, or legal representative; and the client's attending physician not later than five days before the date on which the client will be transferred or discharged.

(J) An agency may transfer or discharge a client without five days notice;

(i) upon the client's request;

(ii) if the client's medical needs require transfer (e.g., a medical emergency);

(iii) in the event of a natural disaster where if not transferred, the client's health and safety is at risk;

(iv) for the protection of staff or a client after the agency has made a documented reasonable effort to notify the client, the client's family and physician, and appropriate state or local authorities of the agency's concerns for staff or client safety, and in accordance with agency policy;

(v) according to physician orders; or

(vi) if the client fails to pay for services, except as prohibited by federal law.

(3) Staffing.

(A) A personnel record shall be maintained on each employee and volunteer. All information shall be kept current. A personnel record shall include, but not be limited to, the following:

(i) job description. In lieu of the job description and qualifications for employment, the personnel record may include a statement signed by the employee that the employee has read the job description and qualifications for the position accepted;

(ii) qualifications;

(iii) application for employment or volunteer agreement;

(iv) verification of license, permits, reference(s), job experience, and educational requirements as appropriate; and

(v) performance evaluations and disciplinary actions.

(B) The agency shall appoint an administrator who shall administratively supervise the provision of all services.

(i) The administrator shall:

(I) be a physician, registered nurse, social worker, or nursing home administrator;

(II) have a baccalaureate or postgraduate degree in administration in a health or human services field and at least one year of full-time administrative experience as the administrator of an agency or licensed health care facility; or

(III) have training and experience in health service administration and at least one year of full-time supervisory or administrative experience in home health care or related health programs.

(ii) The administrator shall not have been employed in the last five years as an administrator with another agency at the time the agency was cited with violations of the statute or this chapter which resulted in enforcement action taken against the agency.

(iii) The administrator shall not have been convicted of a felony or misdemeanor listed in §115.52(b)(2) of this title (relating to Enforcement Action).

(iv) The administrator shall be able to read, write and comprehend English.

(v) The administrator shall:

(I) organize and direct the agency's ongoing functions;

(II) assure documentation of services provided is accurate and timely;

(III) employ qualified personnel and ensure adequate staff education and evaluations;

(IV) ensure the accuracy of public information materials and activities;

(V) implement an effective budgeting and accounting system; and

(VI) authorize in writing an assistant administrator or other individual to act in his or her absence. The administrator, assistant administrator, or other designee shall be available during the agency's usual working hours. The administrator's designee shall be able to read, write, and comprehend English.

(C) An agency with a license to provide licensed home health, licensed and certified home health, or hospice services shall appoint a supervising nurse. The supervising nurse shall designate an alternate to serve as supervising nurse in his or her absence, provided the alternate meets the qualifications of this subparagraph. The supervising nurse may also be the administrator of the agency if the supervising nurse meets the qualifications of an administrator described in subparagraph (B) of this paragraph. The supervising nurse or designee shall:

(i) be a registered nurse;

(ii) have at least one year experience in nursing obtained within the last 24 months;

(iii) be available at all times during operating hours;

(iv) be able to read, write, and comprehend English;

(v) participate in all activities relevant to professional services furnished including the development of qualifications and assignment of agency personnel;

(vi) assure a client's plan of care is executed as written;

(vii) assure a reassessment of a client's needs is performed by the appropriate health care professional:

(I) when there is a significant health status change in the client's condition;

(II) at the physician's request; or

(III) after hospitalization; and

(viii) if the agency holds the home dialysis designation, have the qualifications described in §115.24(r)(1)(A) of this title (relating to Standards for Home Dialysis Designation).

(4) Client record. An agency shall establish and maintain a client record system to assure that the care and services provided to each client is completely and accurately documented, readily available, and systematically organized to facilitate the compilation and retrieval of information.

(A) For each client an agency may keep a single file or separate files for each category of service provided to the client and the client's family.

(B) The agency shall have written procedures which are adopted, implemented, and enforced regarding the removal of records and the release of information. An agency shall not release any portion of a client record to anyone other than the client except as allowed by law.

(C) All information regarding the client's care and services shall be centralized in the client's record and be protected against loss or damage.

(D) The agency shall establish an area for client record storage at the agency's place of business. The client record shall be stored at the place of business (e.g. parent agency location, branch office, or alternate delivery site) from which services are actually provided. Active client records shall not be stored at an administrative support site.

(E) The agency shall ensure that each client's record is treated with confidentiality, safeguarded against loss and unofficial use, and is maintained according to professional standards of practice.

(F) The clinical record shall be an original, a micro-filmed copy, an optical disc imaging system, or a certified copy. An original record includes manually signed paper records or electronically signed computer records. Computerized records shall meet all requirements of paper records including protection from unofficial use and retention for the period specified in subparagraph (J) of this paragraph. Systems shall assure that entries regarding the delivery of care or services may not be altered without evidence and explanation of such alteration.

(G) Each entry to the client record shall be accurate, signed, and dated with the date of entry by the individual making the entry. Correction fluid or tape shall not be used in the record. Corrections shall be made by striking through the error with a single line and shall include the date the correction was made and the initials of the person making the correction.

(H) Inactive client records may be preserved on microfilm, optical disc or other electronic means and may be stored at the parent agency location, branch office, alternate delivery site, or administrative support site. Security shall be maintained and the record must be readily retrievable by the agency.

(I) Each client record shall include:

- (i) appropriate identifying information;
- (ii) name of the client's practitioner;
- (iii) initial assessment;
- (iv) care plan and plan of care. The plan of care shall include, as applicable, medication, dietary, treatment, and activities orders;
- (v) clinical and progress notes, if applicable. Such notes are to be written the day service is rendered and incorporated into the client record on a timely basis;
- (vi) medication list and medication administration record, if applicable;
- (vii) records of supervisory visits;
- (viii) documentation to show that effective interchange, reporting, and coordination of care occurs as described by the agency policy required in subsection (c)(23) of this section;
- (ix) acknowledgment of the client's receipt of a copy of the Human Resources Code, Chapter 102, Rights of the Elderly, for clients 55 years or older;
- (x) acknowledgment of the client's receipt of the agency's policy relating to the reporting of abuse, neglect or exploitation of a client;
- (xi) client agreement to and acknowledgment of services by home health medication aides, if home health medication aides are used; and
- (xii) discharge summary, including the reason for discharge or transfer and the agency's documented notice to the client, the client's physician, and other individuals as required in paragraph (2)(I) of this subsection.

(J) An agency shall retain original client records for a minimum of five years after the discharge of the client. The agency may not destroy client records that relate to any matter that is involved in litigation if the agency knows the litigation has not been finally resolved.

(K) If an agency closes, there shall be an arrangement for the preservation of inactive records to insure compliance with this subsection. The agency shall send the department written notification of the reason for closure, the location of the client records and the name and address of the client record custodian. If an agency closes with an active client roster, a copy of the active client record shall be transferred with the client to the receiving agency in order to assure continuity of care and services to the client.

(5) Financial solvency. An agency shall have the financial ability to carry out its functions.

(A) An agency shall not intentionally or knowingly pay employees with checks from accounts with insufficient funds.

(B) An agency shall have sufficient funds to meet its payroll.

(C) The agency shall make available to the department upon request financial records relating to its ability to carry out its functions. If there is a question relating to the accuracy of the records or financial ability, the department or its's designee may conduct a more extensive review of the records.

(D) An agency shall maintain business records in their original state. Each entry shall be accurate and dated with the date of entry. Correction fluid or tape shall not be used in the record. Corrections shall be made in accordance with standard accounting practices.

(6) Administration of medication. Administration of medication must be ordered by the client's practitioner. A current medication list and medication administration records may be incorporated into one document. Notation will be made in clinical notes of medications not given and the reason. Any untoward action will be reported to a supervisor and documented in the client record.

(c) Policies required. An agency shall develop, adopt, implement, and enforce a written policy(ies):

(1) which includes written procedures governing the use and removal of records, the release of information, and the incorporation of clinical, progress or other notes into the client record;

(2) describing protocols and procedures agency staff must follow when performing physician delegated tasks. The policy shall be consistent with subsection (b)(2)(G) of this section and address the time frame for the timely counter signature of a physician's verbal orders;

(3) to ensure compliance of the agency and its employees and contractors with the Health and Safety Code, Chapter 85, Subchapter I, relating to the prevention of the transmission of human immunodeficiency virus and hepatitis B virus;

(4) to ensure compliance of the agency and its employees and contractors with the Health and Safety Code, §161.091 et seq relating to the prohibition of illegal remuneration for securing or soliciting clients or patronage;

(5) for publicly known natural disaster preparedness for clients receiving services. The written policy shall include a plan for the reasonable mechanism for triaging clients, the notification of appropriate personnel and clients in the event of a disaster if possible, the identification of appropriate community resources, and the identification of possible evacuation procedures. The plan need not require that the agency actually evacuate, transport, or triage the clients;

(6) to ensure compliance with the rules of the Board of Nurse Examiners for the State of Texas adopted at 22 TAC Chapter 218 (relating to Delegation of Selected Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel);

(7) to ensure compliance with the rules of the Board of Vocational Nurse Examiners adopted at 22 TAC Chapters 231 - 240

relating to vocational nursing education, licensure and practice in the State of Texas;

(8) on pronouncement of death if that function is carried out by a physician assistant or an agency registered nurse. The policy shall be in compliance with the Health and Safety Code, §671.001;

(9) to ensure that the agency submits accurate billings and insurance claims;

(10) addressing the orientation of all personnel to the policies, procedures, and objectives of the agency;

(11) addressing participation by all personnel in appropriate employee development programs;

(12) ensuring the periodic evaluation of employee and volunteer performance;

(13) specifying the agency's personnel policies;

(14) specifying the agency's client care policies;

(15) addressing employee and volunteer disciplinary action(s) and procedures;

(16) to include a job description (statement of those functions and responsibilities which constitute job requirements) and job qualifications (specific education and training necessary to perform the job) for each position within the agency;

(17) addressing infection control including the prevention of the spread of infectious and communicable disease;

(18) to include the agency's organizational structure and operational policies. Such policies must be clearly stated in writing and include the lines of authority and delegation of responsibility down to the client care level and the services provided;

(19) to ensure a quality assurance program which provides for accountability and desired client outcomes. The policy shall meet the minimum requirements in subsection (b)(2)(A) of this section;

(20) to provide for back-up services when an employee or contractor is not able to deliver the services;

(21) describing protocols and procedures agency staff must follow when receiving physician orders;

(22) addressing compliance with out-of-hospital do-not-resuscitate orders and advance directives. The policy shall:

(A) be consistent with the Health and Safety Code, Chapter 674 relating to out-of-hospital do-not-resuscitate; the Natural Death Act; Health and Safety Code, Chapter 672; and Civil Practice and Remedies Code, Chapter 135 relating to durable power of attorney for health care; and

(B) address the provision of information regarding advance directives to its clients and assure its clients are allowed, but not required, to formulate such directives to the extent permitted by law;

(23) to assure that all agencies providing services to a client are engaged in an effective interchange, reporting, and coordination of care regarding the client;

(24) establishing time frame(s) for the initiation of care or services;

(25) for the safe handling and disposal of biohazardous waste and materials, if applicable;

(26) to implement and enforce the Human Resources Code, Chapter 102 relating to the rights of the elderly;

(27) relating to the reporting of abuse, neglect or exploitation of clients;

(28) relating to the use of volunteers if volunteers are used by the agency;

(29) describing the agency's written contingency plan developed in accordance with subsection (b)(2)(F) of this section;

(30) relating to the provision of psychoactive treatments, if applicable, consistent with subsection (e) of this section;

(31) relating to the retention of records in accordance with subsection (b)(4)(J) of this section;

(32) relating to the provision of hospice services, if applicable, in accordance with §115.25 of this title (relating to Standards for Hospice Services);

(33) relating to criminal history checks of unlicensed personnel in accordance with §115.54 of this title (relating to Criminal History Checks);

(34) relating to the supervision of branch offices or alternate delivery sites, if established. This policy shall be consistent with:

(A) for a branch office, §115.14 of this title and §115.27 of this title (relating to Standards for Branch Offices); or

(B) for an alternate delivery site, §115.15 of this title and §115.28 of this title (relating to Standards for Alternate Delivery Sites);

(35) relating to the agency's procedures for investigating complaints. Such procedures shall require the agency to initiate a complaint investigation within 10 days of the agency's receipt of the complaint and to document all components of the investigation; and

(36) maintaining a current medication list and medication administration record.

(d) Medicare certification optional.

(1) An agency which makes application for participation in the Medicare program shall comply with the regulations in the Medicare Conditions of Participation for Home Health Agencies, 42 Code of Federal Regulations, Part 484, pending approval of certification granted by the Health Care Financing Administration (HCFA).

(2) Upon the department's receipt of written approval from HCFA, the department will amend the licensing status of the agency to include the licensed and certified home health services category of service.

(e) Psychoactive services. An agency that provides skilled nursing psychoactive treatments shall comply with the requirements of this subsection.

(1) Skilled nursing psychoactive treatments shall be under the direction of a physician. Psychoactive treatments may only be provided by a physician or a registered nurse.

(2) A registered nurse providing skilled nursing psychoactive treatments shall have one of the following qualifications:

(A) a master's degree in psychiatric or mental health nursing;

(B) a bachelor's degree in nursing with one full-time year of experience in an active treatment unit in a mental health facility or outpatient clinic;

(C) a diploma or associate degree with two full-time years of experience in an active treatment unit in a mental health facility or outpatient clinic; or

(D) for a registered nurse for Medicare certified agencies, as allowed by the fiscal intermediary for Texas contracting with the United States Department of Health and Human Services (USDHHS) Health Care Financing Administration (HCFA).

(3) An agency shall have written documentation that a registered nurse providing skilled nursing psychoactive treatments is qualified under paragraph (2) of this subsection.

(4) The initial assessment of a client receiving skilled nursing psychoactive treatments shall include:

(A) mental status including psychological and behavioral status;

(B) sensory and motor function;

(C) cranial nerve function;

(D) language function; and

(E) other criteria established by an agency's policy.

(f) Home intravenous therapy. An agency furnishing intravenous therapy directly or under arrangement shall comply with the following standards of care.

(1) A physician's order shall be written specifically for intravenous therapy.

(2) Intravenous therapy shall be provided by a licensed nurse.

(3) To insure that prescribed care is administered safely, the licensed nurse shall have the knowledge and documented competency to interpret and implement the written order.

(4) Responsibilities of the licensed nurse shall be clearly delineated in written policies and procedures.

(5) A registered nurse shall be available 24 hours per day.

(6) The client and caregiver shall be assessed for the ability to safely administer the prescribed intravenous therapy as per agency written criteria.

(7) If the client and caregiver can safely administer the prescribed intravenous therapy, the agency must teach the client and caregiver such administration. The teaching process based on the client and caregiver needs may include written instructions, verbal explanations, demonstrations, evaluation and documentation of competency, proficiency in performing therapy, scope of physical activities and safe disposal of equipment.

(8) Actions shall be implemented prior to and during all intravenous therapy to minimize the risk of anaphylaxis or other adverse reactions as stated in the agency's written policy.

(9) An ongoing assessment of client and caregiver compliance in performing therapy related procedures shall be done at periodic intervals.

(10) Written policies and procedures regarding the agency's provision of intravenous therapy shall include, but are not limited to, addressing initiation, medication administration, monitoring, and discontinuation.

(11) Care coordination shall be provided in order to assure continuity of care.

(12) The client and caregiver shall be provided with 24-hour access to appropriate health care professionals.

§115.22. Standards for Licensed Home Health Services.

(a) In addition to the standards in §115.21 of this title (relating to Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health, or Hospice Services), an [An] agency providing licensed home health services shall meet the standards of this section.

[(b) The administrator of an agency will administratively supervise the provision of all health services. The administrator shall organize and direct the agency's ongoing functions; employ qualified personnel and ensure adequate staff education and evaluations; ensure the accuracy of public information materials and activities; and implement an effective budgeting and accounting system. A person who meets the qualifications of an administrator shall be authorized in writing by the administrator to act in his or her absence.

[(c) The agency shall maintain a current roster of clients and have a clinical record for each client which is maintained according to professional standards.

[(1) A clinical record shall include appropriate identifying information; name of practitioner; initial assessment, plan of care (which shall include as applicable medication, dietary, treatment, and activities orders) or a care plan; clinical and progress notes; and medication list. The following shall be included if applicable: records of supervisory visits; medication administration record; record of case conference; acknowledgment of receipt of a copy of the Human Resources Code, Chapter 102, Rights of the Elderly, for clients 55 years or older; client agreement to and acknowledgment of services by home health medication aides; and discharge summary. All entries shall be signed and dated by the person making the entry and supervisory personnel as is necessary.

[(2) Records shall be retained for five years at a designated place and safeguarded against loss and unofficial use. The agency shall have written procedures which are enforced governing the use and removal of records and the release of information.

[(3) An agency shall provide a copy of the clinical record to a person who has obtained consent from the client or authorized representative for the release of the record.

[(4) The clinical record shall be either an original, a microfilmed copy, an optical disc imaging system copy, or a certified copy. If the clinical record is microfilmed or maintained on an optical disc imaging system, the microfilm and the equipment needed to read the record must be accessible at the time and at the office of the on-site survey of the agency.

[(5) Clinical notes are to be written the day service is rendered and incorporated into the clinical record on a timely

basis. An agency shall adopt, implement, and enforce a policy on incorporation of clinical notes into the clinical record.]

[(d) The agency must have the financial ability to carry out its functions.

[(e) The agency must have a written contingency plan which is implemented in the event of dissolution for continuity of client care. All records shall be retained even if the agency discontinues operations.]

(b) [(f)] The agency shall accept a client for home health services on the basis of a reasonable expectation that the client's medical, nursing, and social needs can be met adequately in the client's residence. An agency has made a reasonable expectation that it can meet a client's needs if, at the time of the agency's acceptance of the client, the client and the agency have agreed as to what needs the agency would meet (i.e., the agency and the client could agree that some needs would be met but not necessarily all needs).

(1) The agency shall start providing licensed home health services to a client within a reasonable time from acceptance of the client and according to the agency's policy. The initiation of licensed home health services shall be based on the client's health service needs. [An agency shall adopt, implement, and enforce a policy on the time frame for the initiation of home health services.]

(2) [(1)] An initial assessment shall be performed in the client's residence by the appropriate health care professional prior to or at the time that licensed home health services are initially provided to the client. The assessment shall determine whether the agency has the ability to provide the necessary services.

(A) If a practitioner has not ordered skilled care for a client, then the appropriate health care professional shall prepare a care plan. The care plan shall be developed after consultation with the client and the client's family and shall include potential services to be rendered, the frequency of visits or hours of service, identified problems, method of intervention, and projected date of resolution. The care plan shall be [is] revised as necessary, but it shall be reviewed and updated by all appropriate staff members involved in client care at least annually.

(B) If a practitioner orders skilled treatment, then the appropriate health care professional shall prepare a plan of care. The plan of care must be signed and approved by a practitioner in a timely manner. The plan of care shall be developed in conjunction with agency staff and shall cover all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits at the time of admission, prognoses, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, and any other appropriate items. The appropriate health care personnel shall perform services as specified in the plan of care. The plan of care shall be revised as necessary, but it shall be reviewed and updated at least every six months. [An agency shall adopt, implement, and enforce a policy on the time frame for the timely countersignature of a practitioner's verbal orders.]

[(2) The agency will inform the client or his family in writing of the terms of their agreement for services and obtain an acknowledgment of receipt of the agreement. The agency shall comply with the terms of the agreement. The agreement shall include, but not be limited to, the following:

[(A) Human Resources Code, Chapter 102 (concerning Rights of the Elderly), for clients 55 years of age and older;

[(B) health services to be provided;

[(C) supervision by the agency of services provided; and

[(D) agency charges for services rendered if the charges will be paid in full or in part by the client or his family, or on request.]

[(g) A clinical record or minutes of case conferences shall show that effective interchange, reporting, and coordination of care occurs. An agency shall adopt, implement and enforce a policy on documentation of coordination of care.

[(h) Administration of medication must be ordered by the client's practitioner. An agency shall adopt, implement, and enforce a policy on maintaining a current medication list and medication administration records. A current medication list and medication administration records shall be maintained and incorporated into the clinical record. A current medication list and medication administration records may be incorporated into one document. Notation will be made in clinical notes of medications not given and the reason. Any untoward action will be reported to a supervisor and documented.]

(c) [(i)] An agency shall provide at least one home health service. All services shall be rendered and supervised by qualified personnel. The appropriate health professional shall be available to supervise as needed, when services are provided.

(1) If nursing service is provided, a registered nurse shall be employed by or under contract with the agency to provide services or supervision.

(2) If physical therapy service is provided, a physical therapist shall be employed by or under contract with the agency to provide services or supervision.

(3) If occupational therapy service is provided, an occupational therapist shall be employed by or under contract with the agency to provide services or supervision.

(4) If speech-language pathology [or audiology] services are provided, a speech-language pathologist [or audiologist] shall be employed by or under contract with the agency to provide services or supervision.

(5) If audiology services are provided, an audiologist shall be employed by or under contract with the agency to provide services or supervision.

(6) [(5)] If medical social service is provided, a social worker shall be employed by or under contract with the agency to provide services or supervision.

(7) [(6)] If nutritional counseling is provided, a dietitian shall be employed by or under contract with the agency to provide services or supervision.

(8) [(7)] If services are provided by unlicensed personnel, a qualified person shall be employed by or under contract with the agency to provide the service and a registered nurse shall be employed by or under contract with the agency to perform the initial assessment, prepare the client care plan, as appropriate, and supervise the unlicensed personnel.

(9)[(8)] If respiratory therapy service is provided, a respiratory therapist [care practitioner] shall be employed by or under contract with the agency to provide services.

(d) An agency may utilize a home health aide who meets the qualifications in §115.61(a) of this title (relating to Home Health Aides) or other individuals under the delegation of a registered nurse or physician. This subsection applies only to an agency providing licensed home health services that implements a home health aide training and competency evaluation program.

(1) An agency providing licensed home health services is not required to utilize home health aides. Unlicensed personnel utilized by an agency providing licensed home health services are not required to undergo the training and competency evaluation program described in paragraphs (2)-(4) of this subsection.

(2) An agency providing licensed home health services that implements a home health aide training and competency evaluation program shall meet the requirements in §115.61 (d)-(f) of this title.

(3) An agency providing licensed home health services that implements a home health aide competency evaluation program shall comply with §115.61(f) of this title.

(4) Since the individual's most recent completion of a training and competency evaluation program or a competency evaluation program, if there has been a continuous period of 24 consecutive months during which the individual has not furnished home health services, the individual shall not be considered as having completed a training and competency evaluation program or a competency evaluation program.

§115.23. Standards for Licensed and Certified Home Health Services.

(a) In addition to the standards in §115.21 of this title (relating to Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health, or Hospice Services), an [An] agency providing licensed and certified home health services shall comply with the requirements of the Social Security Act and the [federal] regulations in Title 42 of the Code of Federal Regulations, Part 484. Copies of the regulations adopted by reference in this section are indexed and filed in the Health Facility Licensing [Licensure and Certification] Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

(b) - (g) (No change.)

§115.24. Standards for Home Dialysis Designation.

(a) An agency may [only provide peritoneal dialysis and treatments provided by licensed personnel, but shall] not provide peritoneal dialysis or hemodialysis [other home dialysis] services in a client's residence, independent living environment, or other appropriate location unless the agency holds a license to provide licensed home health or licensed and certified home health services [is licensed] and designated to provide home dialysis services. In order to receive a home dialysis designation, the agency shall meet the licensing standards specified in this section and the standards for home health services in accordance with §115.22 of this title (relating to Standards for Licensed Home Health Services) except for the standards §115.22(b)(2)(A) and (B) [(f)(1)(A) and (B), (g), and (i)(1)(7)] of this title. In the event there is a conflict between

the standards specified in this section and those specified in §115.22 of this title, the standards specified in this section shall apply to the home dialysis services.

(b) The agency shall have a governing body. The governing body shall appoint a medical director and the physicians who are on the agency's medical staff. The governing body shall annually approve the medical staff policies and procedures. [Approval of new medical staff members and termination of current medical staff members shall be made on occurrence.] The governing body on a biannual basis shall review and consider for approval continuing privileges of the agency's medical staff. The minutes from the governing body of the agency shall be on file in the agency office.

(c) An agency shall establish [Provisions concerning written agreements relating to hospital services are as follows.]

[(1) There must be] an effective procedure for the immediate transfer to a local Medicare certified hospital for clients requiring emergency medical care. The agency must have a written transfer agreement with such a hospital, or all physician members of the agency's medical staff must have admitting privileges at such a hospital.

[(2) An agency which supplies home staff assisted dialysis shall have a written agreement with a Medicare certified hospital based End Stage Renal Disease (ESRD) center for the provision of inpatient care and other hospital services. Similar agreements may be made with other hospitals if desired. This agreement must provide for the following:]

[(A) the responsibility of a client's care;

[(B) ready acceptance of clients in emergency situations;

[(C) timely acceptance and admission, when determined medically appropriate by the attending physician;

[(D) medical information, including the long term program and client care plan, being transferred within one working day; and

[(E) security and accountability for a client's personal effects.]

(d) An [The] agency which supplies home staff assisted dialysis shall have an agreement with a licensed [Medicare-certified] End Stage Renal Disease (ESRD) [ESRD center or] facility to provide backup outpatient dialysis services.

(e) A home staff assisted dialysis agency must provide for the exchange of medical and other information necessary or useful in the care and treatment of clients transferred between treating facilities. This provision must also include the transfer of the client care plan, hepatitis status, and long term program.

(f) (No change.)

(g) The agency shall conduct [There shall be] routine testing of home dialysis clients and agency employees to ensure detection of hepatitis in employees and clients.

(1) An agency shall offer hepatitis B vaccination to previously unvaccinated, susceptible new staff members in accordance with 29 Code of Federal Regulations, §1910.1030(f)(1)-(2) (relating to Bloodborne Pathogens).

(A) Staff vaccination records shall be maintained in each staff member's personnel file.

(B) New staff members providing home dialysis care shall be screened for hepatitis B surface antigen (HBsAg) and the results reviewed prior to the staff providing client care, unless the new staff member provides the agency documentation of positive serologic response to hepatitis B vaccine.

(C) The agency shall establish, implement, and enforce a policy for repeated serologic screening of staff. The repeated serologic screening shall be based on each staff member's HBsAg/antibody to HBsAg (anti-HBs), and shall be congruent with Appendices i and ii of the National Surveillance of Dialysis Associated Disease in the United States, 1993, published by the United States Department of Health and Human Services (USDHHS). This document may be obtained by writing or calling the department at the Health Facility Licensing Division, 1100 West 49th Street, Austin, 78756-3199, 512-834-6647 or the USDHHS at the Public Health Service, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Hospital Infection Program, Mail Stop C01, Atlanta, Georgia 30333, 404-639-2318.

(2) With the advice and consent of a client's nephrologist or attending physician, the agency shall make the hepatitis B vaccine available to a client who is susceptible to hepatitis B, provided that the client has coverage or is willing to pay for vaccination.

(A) The agency shall make available to clients literature describing the risks and benefits of the hepatitis B vaccination.

(B) Candidates for home dialysis shall be screened for HBsAg within one month before or at the time of admission to the agency.

(C) Repeated serologic screening shall be based on the antigen or antibody status of the client.

(D) Monthly screening for HBsAg is required for clients whose previous test results are negative for HBsAg.

(E) Screening of HBsAg-positive or anti-HBsAg-positive clients may be performed on a less frequent basis, provided that the agency's policy on this subject remains congruent with Appendices i and ii of the National Surveillance of Dialysis Associated Diseases in the United States, 1993, published by the USDHHS.

(h) All direct client care employees shall have current CPR certification.

(i) [(h)] The medical director must be a physician licensed in the State of Texas who: [is licensed in the State of Texas.] ;

(1) is eligible for certification or is certified in nephrology or pediatric nephrology [internal medicine or pediatrics] by a professional board ; or [, and]

(2) during the five-year period prior to September 1, 1996, has served at least 12 months as director of a dialysis facility or program [of experience or training in the care of clients at an ESRD facility].

(j) [(i)] The medical director shall be responsible for:

(1) participating in the selection of a suitable treatment modality for all clients;

(2) assuring adequate training of nurses [and technicians] in dialysis techniques;

(3) assuring adequate monitoring of the client and the dialysis process; and

(4) assuring the development and availability of a client care policy and procedures manual and its implementation.

(k)[(j)] All physicians, including the medical director, shall have on file the following:

(1) a curriculum vitae which documents undergraduate, medical school, and all pertinent post graduate training;

(2) evidence of current licensure, and evidence of current United States Drug Enforcement Administration certification, Texas Department of Public Safety registration, and the board eligibility or certification, or the experience or training described in subsection (j) of this section [to the appropriate board; and]

[(3) evidence of 12 months experience or training in the care of the renal client].

(l) [(k)] Assessment of the client's residence shall be made to ensure a safe physical environment for the performance of dialysis. The initial admission assessment shall be performed by a qualified registered nurse. A qualified registered nurse is a registered nurse who has at least 18 months experience in hemodialysis obtained within the last 24 months and has completed the orientation and training described in subsections (t) and (u) of this section.

(m) [(l)] The agency shall develop a long term program for each client admitted to home dialysis. Criteria shall be defined in writing which shall guide the agency in the selection of clients suitable for home staff assisted dialysis and in noting changes in a client's condition which would require discharge from the program.

(n)[(m)] If home staff assisted dialysis is selected, then the physician shall prepare orders outlining specifics of prescribed treatment. If these physician's orders are received verbally, they must be confirmed in writing within a reasonable time frame. An agency shall adopt, implement, and enforce a policy on the time frame for the timely countersignature of a physician's verbal orders. Medical orders for home staff assisted dialysis shall be revised as necessary but reviewed and updated at least every six months.

(o) [(n)] The initial orders for home staff assisted dialysis must be received prior to the first treatment and shall cover all pertinent diagnoses, including mental status, prognosis, functional limitations, activities permitted, nutritional requirements, medications and treatments, and any safety measures to protect against injury. Orders for home staff assisted dialysis shall include frequency and length of treatment, dry weight, type of dialyzer, dialysate, heparin dosage, and blood flow rate, and shall specify the level of preparation required for the care given (i.e. [qualified dialysis technician,] licensed vocational nurse[, or registered nurse]).

(p)[(o)] The client care plan shall be developed after consultation with the client or the client's family by the interdisciplinary team.

(1) The initial client care plan shall be completed by the interdisciplinary team within ten calendar days after the first home dialysis treatment.

(2) The client care plan shall implement the medical orders and shall include potential services to be rendered, such as the identification of problems, methods of intervention, and the assignment of health care personnel.

(3) The client care plan shall be in writing, personalized for the individual, and reflect the ongoing medical, psychological, social, nutritional, and functional needs of the client, including treatment goals. [The initial client care plan shall be completed by the interdisciplinary team within ten calendar days after the first home dialysis treatment.]

(4) The client care plan shall include written evidence of coordination with other service providers (e.g., dialysis facilities or transportation providers) as needed to assure the provision of safe care.

(5) The client care plan shall include written evidence of the client's (or client's legal representative's) input and participation, unless they refuse to participate. At a minimum, the client care plan shall demonstrate that the content was shared with the client or the client's legal representative.

(6) The client care plan for non-stabilized clients (e.g. change in modality, unacceptable laboratory work, uncontrolled weight changes, infections, and a change in family status) shall be reviewed at least monthly by the interdisciplinary team. Evidence of the review of the client care plan with the client and the interdisciplinary team to evaluate the client's progress or lack of progress toward the goals of the care plan, and interventions taken when progress toward stabilization or the goals are not achieved, shall be documented and included in the client record.

(7) For a stable client, the client care plan shall be reviewed and updated as indicated by any change in the client's medical, nutritional, or psychosocial condition or at least every six months. The long term program shall be revised as needed and reviewed annually. Evidence of the review of the client care plan with the client and the interdisciplinary team to evaluate the client's progress or lack of progress toward the goals of the care plan, and interventions taken when the goals are not achieved, shall be documented and included in the client record.

(q) [(p)] An agency shall provide to each client a statement of client's rights and responsibilities, which shall include the following:

(1) the right to be informed of all rules and regulations governing client conduct and responsibilities, services available in the facility, and the client's medical condition unless medically contraindicated;

(2) the opportunity to participate in planning his or her medical treatment and to be transferred only for medical reasons, the client's welfare or that of other clients, or nonpayment of fees. Clients shall be given advance notice to ensure orderly transfer or discharge;

(3) the right to be treated with consideration, respect, and full recognition of his or her individuality and personal needs;

(4) the right to confidential treatment of his or her personal and medical records; and

(5) the right to have assistance in understanding and exercising his or her rights. There shall be a written grievance mechanism under which a client can participate without fear of reprisal.

(r)[(q)] Medications shall [will] be administered only by licensed personnel and if such medication is ordered by the client's physician. [Qualified dialysis technicians may administer only those medications routinely necessary for the performance of dialysis. Specifically, these medications are lidocaine, which must be administered subcutaneously, and heparin and normal saline, which must be administered intravenously. Such administration shall be in accordance with the provisions of the Medical Practice Act, Texas Civil Statutes, Article 4495b. The Act, §3.06(d)(1), specifically refers to delegation of medical acts by a licensed physician in the State of Texas. Upon request by a client or his family for assistance with medications, the RN may assign a dialysis technician to assist with administration of oral medications which are ordinarily self-administered. The request shall be documented in the client's clinical record. The record of the administration of drugs routinely given as part of dialysis treatment (e.g. lidocaine, heparin, and normal saline) shall be contained in the dialysis treatment record.]

(s) [(r)] An agency which provides home staff assisted dialysis shall, at a minimum, provide nursing service, nutritional counseling, and medical social service. These services shall be provided as necessary and appropriate at the client's home, by phone, or by a client's visit to a licensed [the] ESRD facility [center or unit]. A qualified registered nurse (referenced in subsection (l) of this section) shall be available whenever dialysis treatments are in progress in a client's home. The agency administrator shall designate a qualified alternate to this registered nurse. A [qualified] social worker qualified under paragraph (3) of this subsection and a dietitian shall be employed by or under contract with the agency to provide services.

(1) The use of dialysis technicians in home dialysis is prohibited.

(2) [(1)] Dialysis services shall be:

(A) supervised by:

(i) a registered nurse (RN) who:

(I) has at least three years current experience¹ in hemodialysis; or

(II) has at least two years experience as an RN and holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis; or

(ii) a nephrologist or physician with training or demonstrated experience in the care of ESRD clients; and

(B) provided by a [A] qualified licensed [registered] nurse. A qualified licensed nurse is a person who:

(i) is licensed as a registered or licensed vocational nurse in Texas [and] ;

(ii) has at least 18 months [12 months] experience in hemodialysis obtained within the last 24 months [clinical nursing]; and

(iii) has completed the orientation and training described in subsections (t) and (u) of this section [and an

additional six months of experience in nursing care of a client with permanent kidney failure].

(3) [(2)] A qualified social worker is a person who:

(A) is currently licensed under the laws of the State of Texas as a social worker and has a master's degree in [of science of] social work [(MSSW)] from a graduate school of social work accredited by the Council on Social Work Education; or

(B) has served for at least two years as a social worker, one year of which was in a dialysis facility [unit] or [transplantation] program prior to September 1, 1976, and has established a consultative relationship with a licensed master social worker [certified MSSW].

(4)[(3)] A qualified dietitian must meet the definition in §115.2 of this title (relating to Definitions) and have at least one year of experience in clinical nutrition after obtaining eligibility for registration by the American Dietetic Association, Commission on Dietetic Registration.

[(s)] A qualified dialysis technician shall be employed by or under contract with the agency to provide dialysis care for a client in the home under the supervision of a qualified RN or a licensed physician and shall meet the following requirements.]

[(1)] A qualified home dialysis technician shall have:

[(A)] a minimum of a high school education or GED and two years of full-time dialysis experience; or

[(B)] a minimum of a high school education or GED and one year full-time dialysis experience with one additional year of direct client care in a hospital.

[(2)] If the dialysis technician is performing peritoneal dialysis (e.g. intermittent peritoneal dialysis, continuous ambulatory peritoneal dialysis, or continuous cycles peritoneal dialysis), one of the two years of full-time experience shall be with peritoneal dialysis.

[(3)] A dialysis technician shall not:

[(A)] initiate hemodialysis via subclavian catheter administration;

[(B)] administer blood products, antibiotics, albumin, or insulin;

[(C)] perform non-access site venipuncture;

[(D)] draw arterial blood gases;

[(E)] administer deferoxamine mesylate;

[(F)] utilize the technique of tight heparinization; or

[(G)] initiate home education on dialysis procedures, diagnosis, safety, and medications.]

(t) All personnel providing direct client care shall receive orientation and training and demonstrate knowledge of the following:

(1) - (15) (No change.)

(16) performance of laboratory tests (hematocrit and blood glucose); [and]

(17) the theory of blood products and blood administration; and [.]

(18) water treatment to include:

(A) standards for treatment used for dialysis as described in §3.2.1 (relating to Hemodialysis Systems) and §3.2.2 (relating to Maximum Level of Chemical Contaminants) of the American National Standard, Hemodialysis Systems, March 1992 Edition, published by the Association for the Advancement of Medical Instrumentation (AAMI), 3330 Washington Boulevard, Suite 500, Arlington, Virginia 22201. Copies of the standards are indexed and filed in the Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756 and are available for public inspection during regular working hours;

(B) systems and devices;

(C) monitoring; and

(D) risks to clients of unsafe water.

[(u)] Physician delegation of medical acts to a dialysis technician shall be as follows.

[(1)] The medical director shall attest that each dialysis technician demonstrates competency in subsection (t)(1)-(17) of this section. This evidence shall be documented in writing and maintained in each individual dialysis technician personnel file and updated at least annually.

[(2)] If a physician delegates a medical act to a technician not employed by the agency, the governing body of the agency shall delineate the dialysis technician's privileges according to approved medical staff policies and procedures.

[(3)] The dialysis technician shall contact the registered nurse if there is a change in a client's condition. The registered nurse shall notify the physician of a client's status to obtain orders if necessary.]

(u) [(v)] The requirements concerning an orientation and training period are as follows.

(1) The agency shall develop an 80-hour written orientation program including classroom theory and direct observation of the licensed [dialysis technician or] nurse performing procedures on a client in the home. The orientation program shall be provided by a [qualified] registered nurse qualified to supervise the provision of dialysis services under subsection (s)(1)(A) of this section. A written skills examination or competency evaluation shall be administered to the licensed [dialysis technician or] nurse at the conclusion of the orientation program and prior to the time the licensed nurse [or technician] delivers independent client care.

(2) The licensed nurse [or dialysis technician] shall complete the required theory of the classroom component as described in subsection (t)(1)-(5), (11)-(15), [and] (17), and (18) of this section and satisfactorily return demonstrate the skills described in subsection (t)(6)-(10) and (16) of this section. The orientation program may be waived by written examination as described in paragraph (1) of this subsection.

(3) A [qualified] registered nurse qualified to supervise the provision of dialysis services shall complete an orientation competency skills checklist relating to the licensed [dialysis technician or] nurse in order to reflect the progression of learned skills, as described in subsection (t)[(1)-(17)] of this section.

(4) Prior to the delivery of independent client care, the [qualified] registered nurse qualified to supervise the provision

of dialysis services shall directly supervise the licensed [dialysis technician or] nurse for a minimum of three dialysis treatments and ensure satisfactory performance. Dependent upon the trainee's experience and accomplishments on the skills checklist, additional supervised dialysis treatments may be required.

(5) Continuing education for employees shall be quarterly. Performance evaluations shall be annually. The registered nurse qualified to supervise the provision of dialysis services shall provide direct supervision to [directly (on-site) supervise] the licensed [vocational] nurse [and qualified dialysis technician] monthly or more often if necessary. Direct supervision means that the supervisor described in subsection (s)(2)(A) of this section is on the premises but not necessarily immediately present where dialysis services is being provided.

(v)[(w)] In addition to the applicable information described in §115.21(b)(2) of this title (relating to Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health, or Hospice Services), records [Records] of home staff assisted dialysis clients shall include the following:

- (1)a medical history and physical; [.]
- (2)clinical progress notes by the physician, qualified licensed [registered] nurse, qualified dietitian, and qualified social worker; [.]
- (3)dialysis treatment records; [.]
- (4)laboratory reports ; [.]
- (5)client care plan ; [.]
- (6) long term program ; [.] and
- (7)documentation of supervisory visits.

(w) The agency shall ensure that the history and physical is conducted upon the client's admission or no more than six months prior to the date of admission, then annually after the date of admission.

(x) The agency shall ensure that biohazardous waste (needles, syringes, artificial kidneys, arterial and venous lines, and any other blood contaminated material) is disposed according to state and local regulations and ordinances (i.e. incineration, Type 1 landfill, steam sterilization), as appropriate. [An agency shall adopt, implement, and enforce policies and procedures for safe handling and disposal of biohazardous waste and materials.]

(y) Water treatment for home dialysis shall be as follows.

(1) Water used for dialysis purposes shall be analyzed for chemical contaminants every six months. Additional chemical analysis shall be conducted if test results exceed the maximum levels of chemical contaminants listed in §3.2.2 (relating to Maximum Level of Chemical Contaminants) of the American National Standards for Hemodialysis Systems, March 1992 Edition, published by the AAMI [periodically]. Copies of the standards are indexed and filed in the Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 and are available for public inspection during regular working hours.

(2) Water used for dialysis shall be [and] treated as necessary to maintain a continuous water supply that is biologically and chemically compatible with acceptable dialysis techniques.

(3)[(2)] Water used to prepare dialysate shall meet the requirements set forth in §3.2.1 (relating to Hemodialysis Systems) and §3.2.2 (relating to Maximum Level of Chemical Contaminants), March 1992 Edition, published by the AAMI [3.2 and §4.2 of the American National Standards for Hemodialysis Systems, published by the Association for the Advancement of Medical Instrumentation (AAMI), approved March 16, 1992, 1909 North Fort Meyer Drive, Suite 602, Arlington, Virginia 22209, and approved by the American National Standards Institute, Inc. (ANSI). Additionally, frequency of monitoring water purity shall be in accordance with the suggestions in Appendix B, §B5 of the same standards]. Copies of the standards are indexed and filed in the Health Facility Licensing [Licensure and Certification] Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 and are available for public inspection during regular working hours.

(4) [(3)] Records of test results and equipment maintenance shall be maintained at the agency.

(z) The agency shall develop, implement, and enforce a written preventive maintenance program to ensure client care related equipment receives electrical safety inspections, if appropriate, and maintenance at least annually or more frequently if recommended by the manufacturer. The preventive maintenance may be provided by agency or contract staff qualified by training or experience in the maintenance of dialysis equipment. [Preventive maintenance for home dialysis equipment shall be as follows.]

(1) All equipment used by a client in home dialysis shall be maintained free of defects which could be a potential hazard to clients, the client's family or agency personnel. [A planned program of preventive maintenance of dialysis equipment shall be established.]

(A) Agency staff shall be able to identify malfunctioning equipment and report such equipment to the appropriate agency staff. Malfunctioning equipment shall be immediately removed from use.

(B) Written evidence of all preventive maintenance and equipment repairs shall be maintained.

(C) After repairs or alterations are made to any equipment, the equipment shall be thoroughly tested for proper operation before returning to service.

(D) An agency shall comply with the federal Food, Drug, and Cosmetic Act, 21 United States Code (USC), §360i(b), relating to reporting when a medical device as defined in 21 USC §321(h) has or may have caused or contributed to the injury or death of an agency client.

[(2)] Preventive maintenance of home dialysis equipment shall be in accordance with the machine manufacturer's suggestions and on an as needed basis. In the absence of specific manufacturer's recommendations, preventive maintenance shall be in accordance with the guidelines published by the Emergency Care Research Institute in Health Devices, July 1978, Volume 7, Number 9. Copies of the standards are indexed and filed in the Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West

49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.]

(2) [(3)] In the event that the water used for dialysis purposes or home dialysis equipment is found not to meet safe operating parameters, and corrections can not be effected to ensure safe care promptly, the client shall be transferred to a licensed hospital (if inpatient care is required) or licensed [Medicare certified] ESRD facility [or center] until such time as the water or equipment is found to be operating within safe parameters.

(aa) Reuse or reprocessing of disposable medical devices, including but not limited to, dialyzers, end-caps, and blood lines shall be in accordance with this subsection [the Medicare conditions of participation for ESRD].

(1) An agency's reuse practice shall comply with the American National Standard, *Reuse of Hemodialyzers, 1993 Edition*, published by the AAMI. A facility shall adopt, implement and enforce a policy for dialyzer reuse criteria (including any agency-set number of reuses allowed) which is included in client education materials.

(2) A transducer protector shall be replaced when wetted during a dialysis treatment and shall be used for one treatment only.

(3) Arterial lines may be reused only when the arterial lines are labeled to allow for reuse by the manufacturer and the manufacturer-established protocols for the specific line have been approved by the United States Food and Drug Administration.

(4) An agency shall consider and address the health and safety of clients sensitive to disinfectant solution residuals.

(5) An agency shall provide each client and the client's family or legal representative with information regarding the reuse practices of the agency, the opportunity to tour the reuse facility used by the agency, and the opportunity to have questions answered.

(6) An agency practicing reuse of dialyzers shall:

(A) ensure that dialyzers are reprocessed via automated reprocessing equipment in a licensed ESRD facility or a centralized reprocessing facility;

(B) maintain responsibility and accountability for the entire reuse process;

(C) adopt, implement, and enforce policies to ensure that the transfer and transport of used and reprocessed dialyzers to and from the client's home does not increase contamination of the dialyzers, staff, or the environment; and

(D) ensure that department staff has access to the reprocessing facility as part of an agency inspection.

(bb) Provision of laboratory services shall be as follows.

(1) All laboratory services ordered for the client by a physician shall be performed by a laboratory which meets the [approved according to the requirements of Federal Public Law 100-578,] *Clinical Laboratory Improvement Amendments of 1988*, 42 United States Code, §263a, *Certification of Laboratories (CLIA 1988)* and in accordance with a written arrangement or agreement with the agency. CLIA 1988 applies to all agencies with laboratories that examine human specimens for the diagnosis,

prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(2) (No change.)

(3) Hematocrit and blood glucose tests may be performed at the client's home [by the dialysis technician] in accordance with §115.21(b)(1)(D)[(k)] of this title (relating to Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health, or Hospice Services [All Home and Community Support Services Agencies]). Results of these tests shall be recorded in the client's medical record and signed by the qualified licensed nurse providing the treatment [technician]. Maintenance, calibration and quality control studies shall be performed according to the equipment manufacturer's suggestions, and the results shall be maintained at the agency.

(4) Blood and blood products shall only be administered to dialysis clients in their homes by a licensed nurse or physician [personnel].

(cc) (No change.)

(dd) In addition to the policies and procedures described in §115.21(d) of this title, the [The] agency shall have policies and procedures for emergencies addressing fire, natural disaster, and medical emergencies, as follows.

(1) - (4) (No change.)

(5) In the event of a medical emergency requiring transport to a hospital for care, the agency [physician] shall assure the following:

(A) - (C) (No change.)

§115.25. *Standards for Hospice Services.*

(a) In addition to the standards in §115.21 of this title (relating to Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health, or Hospice Services), an [An] agency providing hospice services shall meet the standards of this section.

(b) - (c) (No change.)

(d) The hospice shall determine, implement, and monitor [have a governing body that assumes full legal responsibility for determining, implementing and monitoring] policies governing the hospice's total operation. An [The governing body shall designate an] individual who is responsible for the day to day management of the hospice program shall be designated. The hospice [governing body] shall ensure that all services provided are consistent with accepted standards of practice.

(e) The hospice shall have a medical director who: [shall be]

(1) is a hospice employee or volunteer; [who]

(2) is a doctor of medicine or osteopathy licensed in the State of Texas; and [, who]

(3) assumes overall responsibility for the medical component of the hospice's client care program.

(f) Subject to subsections (p) [(o)] and (u) [(t)] of this section, the hospice may arrange for another individual or entity to furnish services to the hospice clients. If services are provided under arrangement, the hospice shall meet the following standards.

(1) - (5) (No change.)

(g) The hospice shall perform and make available to each client admitted for hospice services a client-specific comprehensive assessment that identifies the client's need for hospice care and the client's need for medical, nursing, social, emotional, and spiritual care which includes, but is not limited to, the palliation and management of the terminal illness and related conditions.

(1) The hospice shall complete the comprehensive assessment in a timely manner consistent with the client's immediate needs, but no later than 14 calendar days after the start of hospice care.

(2) Prior to the start of care, the hospice physician or registered nurse shall make an initial assessment visit to determine the immediate care and support needs of the client. The initial assessment visit shall be held within 48 hours after the hospice's receipt of the physician's referral for hospice care, unless ordered otherwise.

(3) The comprehensive assessment shall include:

(A) input from the appropriate interdisciplinary team member(s) and an assessment of:

(i) each client's physical condition, including functional ability and nutritional status;

(ii) each client's pain and other symptoms and the management of discomfort and symptom relief;

(iii) the client's and the client's family's social and emotional well-being;

(iv) the client's spiritual orientation and needs;

(v) the survivor risk factors to be considered in developing the bereavement care plan; and

(vi) any other information necessary to develop an effective, interdisciplinary plan of care;

(B) a review of the client's drug profile, repeated as necessary, and which includes over-the-counter drugs, to assure that all drugs are indicated and to identify any potential problems including, but not limited to:

(i) ineffective drug therapy;

(ii) significant side effects;

(iii) significant drug interactions;

(iv) significant drug or food interactions;

(v) duplicate drug therapy; and

(vi) noncompliance with drug therapy; and

(C) a system of measures that captures significant outcomes that are essential to optimal hospice care, that are used in the care planning and coordination of services, and that are an essential part of the hospice's quality assessment and performance improvement program. The measures shall include, but are not limited to:

(i) pain;

(ii) nutritional status;

(iii) continence;

(iv) respiratory comfort;

(v) infections;

(vi) skin integrity;

(vii) level of consciousness;

(viii) anxiety;

(ix) depression;

(x) client emotional well being and satisfaction, including anxiety and depression;

(xi) spiritual well being;

(xii) social well being;

(xiii) family knowledge and understanding; and

(xiv) client and family satisfaction.

(4) The comprehensive assessment shall be updated and revised:

(A) as frequently as the condition of the client requires, as determined by changes in the client's physical, social, emotional or spiritual status, family environment, or suboptimal response to care, treatments or therapies; and

(B) within 48 hours of the client's return home from an inpatient stay.

(h)[(g)] A written plan of care shall be established and maintained for each client admitted to the hospice program, and the care provided to a client shall be in accordance with the plan. The plan of care shall specify the care and services necessary to meet the client-specific needs identified in the comprehensive assessment described in subsection (f) of this section, include all client care orders, reflect planned interventions for problems identified, and ensure that care and services are appropriate to the severity level of each client's and the client's family's specific needs.

(1) The plan shall be established by the attending physician, the medical director or physician designee, and interdisciplinary team prior to providing care.

(2) The plan shall be reviewed and updated as necessary, at intervals specified in the plan, by the attending physician, the medical director or physician designee and interdisciplinary team. These reviews shall be documented. An updated plan must include information from the client's comprehensive assessment and information concerning the client's progress toward outcomes specified in the plan.

(3) The plan shall include:

(A) a comprehensive [an] assessment of the client's needs and identification of the services including the management of discomfort and symptom relief. The plan shall state in detail the scope and frequency of services needed to meet the client's and family's needs;

(B) interventions to facilitate the management of pain and symptoms;

(C) frequency and mix of services necessary to meet the client and family specific needs identified in the comprehensive assessment;

(D) measurable outcomes that the hospice anticipates will occur as a result of implementing and coordinating the plan of care;

(E) drugs and treatments necessary to meet the needs of the patient as identified in the assessment;

(F) medical supplies and appliances necessary to meet the needs of the client identified in the assessment; and

(G) client and family understanding, agreement, and involvement with the plan as desired.

(i) [(h)] The hospice shall not discontinue [or diminish] care provided to or discharge a client because of the client's inability to pay for that care. The interdisciplinary team may reassess the client for an appropriate level of care, as long as the reassessment does not reduce core services.

(j)[(i)] The hospice shall ensure [demonstrate respect for a client's rights by ensuring] that an informed consent form that specifies the type of care and services that may be provided as hospice care during the course of the illness has been obtained for every client, either from the client or representative (a person, who because of the client's mental or physical incapacity, is authorized [and] in accordance with state law to execute or revoke an election for hospice care or terminate medical care on behalf of the terminally ill client). The client or representative shall sign or mark the consent form.

(1) The hospice shall provide a client or legal representative with a written notice of the client's rights in advance of furnishing care to the client or during the initial evaluation visit before the initiation of treatment.

(2) The hospice shall protect and promote a client's rights.

(3) The hospice shall maintain documentation showing that it has complied with the requirements of this subsection and the client demonstrates understanding of their rights.

(4) The client has the right to exercise his or her rights as a client of the hospice.

(5) In the case of a client adjudged incompetent, the rights of the client are exercised by the person appointed by law to act on the client's behalf.

(6) In the case of a client who has not been judged incompetent, any legal representative may exercise the client's rights to the extent permitted by law.

(7) The client has the right to have his or her person and property treated with respect.

(8) The client has the right to voice grievances regarding treatment or care that is or fails to be furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the hospice and shall not be subjected to discrimination or reprisal for doing so.

(9) The hospice shall investigate complaints made by a client or the client's family or guardian regarding treatment or care that is or fails to be furnished, or regarding the lack of respect for the client's property by anyone furnishing services on behalf of the hospice, and must document both the existence of the complaint and steps taken to resolve the complaint.

(10) The client has the right to be informed, in advance about the care to be furnished, the plan of care, expected outcomes, barriers to treatment and of any changes in the care to be furnished.

(11) The hospice shall advise or consult with the client or legal representative in advance of any change in the plan of care.

(12) The client has the right to participate in the planning of the care.

(A) The hospice shall advise the client in advance of the right to participate in planning the care or treatment and in planning changes in the care or treatment.

(B) The client has the right to refuse care and services.

(C) The client has the right to be informed of the availability of short term inpatient care for pain control, management and respite purposes and the names of the facilities with which the hospice has a contract agreement.

(D) The client has the right to be informed, before care is initiated, of the extent to which payment may be expected from the client, third-party payers, and any other source of funding known to the hospice.

(k)[(j)] The hospice shall provide a continuing systematic program for the training of its employees. The staff including volunteers shall be properly oriented to tasks performed, and these individuals shall be [are] informed of changes in techniques, philosophies, goals, and products, relating [as it relates] to the client's care.

(l) [(k)] The hospice shall designate an interdisciplinary team or teams composed of individuals who provide or supervise the care and services offered by the hospice.

(1) The interdisciplinary team or teams shall include at least the following individuals who are employees of the hospice:

- (A) a physician;
- (B) a registered nurse;
- (C) a social worker; and
- (D) a pastor or counselor.

(2) The interdisciplinary team shall be responsible for:

- (A) participation in the establishment of the plan of care;
- (B) provision and supervision of hospice care and services;
- (C) periodic reviews and updates of the plan of care for each client receiving hospice care; and
- (D) establishment of policies governing the day to day provision of hospice care and services.

(3) If the hospice has more than one interdisciplinary team, the hospice shall designate in advance the team it chooses to execute the functions described in paragraph (2)(D) of this subsection.

(4) The hospice shall designate a registered nurse to coordinate the implementation of the plan of care for each client.

(m)[(1)] The hospice shall use volunteers in defined roles under the supervision of a designated hospice employee.

(1) The hospice shall provide appropriate orientation and training that is consistent with acceptable standards of hospice practice.

(2) Volunteers may [shall] be used in administrative and direct client care roles.

(3) The hospice shall document active and ongoing efforts to recruit and retain volunteers.

(4) The hospice shall document the cost savings achieved through the use of volunteers. Documentation shall include the following:

(A) the identification of necessary positions which are occupied by volunteers;

(B) the work time spent by volunteers occupying those positions; and

(C) estimates of the dollar costs which the hospice would have incurred if paid employees occupied the positions identified in subparagraph (A) of this paragraph for the amount of time specified in subparagraph (B) of this paragraph.

(5) The hospice shall provide volunteer activity at the level and in the manner described below.

(A) The hospice shall document and maintain a volunteer staff sufficient to provide administrative and direct client care in an amount that at a minimum, equals 5.0% of the total client care hours of all paid hospice employees and contract staff.

(B) The hospice shall document a continuing level of volunteer activity.

(C) The hospice shall record expansion of care and services achieved through the use of volunteers, including the type of services and the time worked.

(6) The hospice shall document [make] reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to clients who request such visits and shall advise clients of this opportunity.

(n) [(m)] The hospice and all its employees shall be currently licensed in accordance with applicable federal and [.] state [and local] laws and regulations.

(o) [(n)] In accordance with accepted principles of practice, the hospice shall establish and maintain a clinical record for every client receiving care and services. Services provided to the client's family shall be documented in the clinical record. The record shall be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval.

(1) Each clinical record shall contain a comprehensive compilation of information. Entries shall be made for all services provided. Entries shall be made and signed by the person providing the services. The record shall include all services whether furnished directly or under arrangements made by the hospice. Each client's record shall contain:

(A) the initial and subsequent assessments;

(B) the plan of care;

(C) identification data;

(D) consent and authorization and election forms;

(E) pertinent medical history; and

(F) complete documentation of all services and events (including evaluations, treatments and progress notes).

(2) The hospice shall safeguard the clinical record against loss, destruction and unauthorized use.

(p) [(o)] The hospice shall ensure that substantially all the core services described in subsections (q) - (t) [(p)-(s)] of this section are routinely provided directly by hospice employees. The hospice may use contracted staff if necessary to supplement its employees in order to meet the needs of clients during periods of peak client loads or under extraordinary circumstances. If contracting is used, the hospice shall maintain professional, financial, and administrative responsibility for the services and assure that the qualifications of staff and services provided meet the requirements specified in subsections (q) - (t) [(p)-(s)] of this section.

(q) [(p)] The hospice shall provide nursing care and services by or under the supervision of a registered nurse.

(1) Nursing services shall be directed and staffed to assure that the nursing needs of the clients are met.

(2) Client care responsibilities of nursing personnel shall be specified.

(3) Services shall be provided in accordance with recognized standards of practice.

(r) [(q)] Medical social services shall be provided by a social worker under the direction of a physician.

(s)[(r)] In addition to palliation and management of terminal illness and related conditions, physician employees of the hospice, including physician member(s) of the interdisciplinary team, shall meet the general medical needs of the clients to the extent that these needs are not met by the attending physician. The physician employee(s) may meet these requirements either by directly providing the services or through coordination with the attending physician. If the attending physician is unavailable, the physician employee is responsible for the care of the client.

(t) [(s)] Counseling services shall be available to both the client and the family. Counseling includes bereavement counseling provided after the client's death as well as dietary, spiritual, and any other counseling services for the client and family provided while the client is enrolled in the hospice program.

(1) Bereavement counseling service shall be available to the family.

(A) There shall be an organized program for the provision of bereavement services under the supervision of [a qualified professional. Bereavement counseling shall be supervised by] the interdisciplinary team, a social worker, a mental health professional, a counselor, or other person with documented evidence of training and experience in dealing with bereavement and structured training in bereavement counseling. Persons providing bereavement counseling shall have documented evidence of training in personnel folders.

(B) The plan of care for these services shall reflect family needs, as well as a clear delineation of services to be provided and the frequency of service delivery (up to one year following the death of the client).

(2) [Dietary counseling, when required, shall be provided by a qualified individual.] Dietary counseling shall be planned by a registered or licensed dietitian, a person who is eligible for registration by the American Dietetic Association, or an individual who has documented equivalency in education or training. Dietary counseling shall meet specific client needs as described in the client's plan of care. Although a dietitian need not be a full-time employee, there shall be a record of this individual's credentials on file in the hospice. **Dietary counseling shall be supervised by a registered or licensed dietitian or a registered nurse.**

(3) Spiritual counseling shall include notice to clients as to the availability of clergy as required under subsection (1)(6) of this section. Spiritual counseling may be conducted by a clergy of the client's choice.

(4) Counseling may be provided by other members of the interdisciplinary team as well as by other [qualified] professionals **qualified by license or education to perform the type of counseling provided** as determined by the hospice. Counseling, other than bereavement, dietary, or spiritual shall be provided by [qualified] persons **qualified by license or education to perform the type of counseling to be provided**[and] in accordance with the client's plan of care. The counseling requirements do not preclude other members of the interdisciplinary team or other professionals from serving in the capacity of counselor. If the need is for hand holding, a nonprofessional volunteer may be utilized.

(u) [(t)] The hospice shall ensure that the services described in subsections (v) - (y) [(u)-(x)] of this section are provided directly by hospice employees or under arrangements made by the hospice as specified in subsection (f) of this section. **The hospice shall maintain a system of communication and integration of services, whether provided directly or under arrangement, that ensures the identification of client needs and the ongoing liaison of all disciplines providing care.**

(v) [(u)] Physical therapy services, occupational therapy services, and speech-language pathology services shall be available, and when provided, shall be offered in a manner consistent with accepted standards of practice.

(w) [(v)] Home health aide and homemaker services shall be available and adequate in frequency to meet the needs of the clients. A home health aide shall be a person who meets the training and competency evaluation requirements or the competency evaluation requirements as specified in §115.61 (d)-(f) of this title (relating to Home Health Aides).

(1) A registered nurse shall visit the residence site no less frequently than [at least] every two weeks when aide services are being provided, and the visit shall include an assessment of the aide services. The aide need not be present each supervisory visit.

(2) Written instructions for client care shall be prepared by a registered nurse.

(x) [(w)] Medical supplies and appliances, including medications, shall be provided as needed for the palliation and management of the terminal illness and related conditions.

(1) All medications shall be administered in accordance with accepted standards of practice.

(2) The hospice shall have and enforce a policy for the disposal of controlled medications maintained in the client's residence when those medications are no longer needed by the client.

(3) Medications shall be administered only by the following individuals:

- (A) a licensed nurse or physician;
- (B) a permitted home health medication aide;
- (C) the client if his or her attending physician has approved; or

(D) another individual acting in accordance with applicable federal and state laws, or as specified in the rules adopted by the Board of Nurse Examiners at Title 22, Chapter 218 (relating to Delegation of Selected Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel [§115.21(m) of this title (relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies)]).

(4) The persons who are authorized to administer medications shall be specified in the client's plan of care.

(y) [(x)] **Inpatient** [The inpatient] care shall be available for pain control, symptom management, or [and] respite purposes [and shall be provided in a nursing facility, as appropriate].

(1) Inpatient care [for pain control and symptom management] shall be provided by[.]

[(A)] a **freestanding hospice** [that meets the requirements in subsection (y) of this section for providing inpatient care directly;] or

[(B)] a hospital or a nursing facility that [also] meets the requirements specified in subsection (z) [(y)](1) and (5) of this section, regarding 24-hour nursing service and client areas.

(2) A hospice shall develop, implement, maintain and evaluate an ongoing, comprehensive integrated self assessment of the quality and appropriateness of care provided, including inpatient care, home care, and care provided under arrangement. The findings shall be documented and used by the hospice to correct identified problems and to revise hospice policies if necessary. Corrective action of performance shall be taken and tracked to ensure that improvements are sustained over time.

(A) **The hospice's quality assessment and performance improvement program shall include, but not be limited to, the use of objective measures to demonstrate improved performance with regard to:**

(i) the system of measures that the hospice uses to determine if individual and aggregate outcomes are achieved compared to a previous time period;

(ii) current clinical practice guidelines and professional practice standards applicable to hospice care;

(iii) utilization data, as appropriate (e.g., numbers of staff, types of visits, inpatient care; and

(iv) effectiveness and safety of services (including services such as parenteral therapy or infusion controlling de-

vices, if provided), including competency of clinical staff, promptness of service delivery, appropriateness of responses to client and family problems.

(B) The hospice shall set priorities for performance improvement, considering prevalence and severity of identified problems and giving priority to improvement activities that affect clinical outcomes. The hospice must immediately correct identified problems that directly or potentially threaten the care and safety of clients.

[(2) Inpatient care for respite purposes shall be provided by:]

[(A) a provider specified in paragraph (1) of this subsection; or

[(B) a nursing facility that meets the requirements specified in subsection (y)(1) and (5) of this section, regarding 24-hour nursing services and client areas.]

[(3) The total number of inpatient days used by clients who elect hospice coverage in any 12-month period preceding a survey in a particular hospice shall not exceed 20% of the total number of hospice days for clients receiving care.]

(z)[(y)] A freestanding hospice that provides inpatient care directly shall comply with the following standards in addition to the standards in subsections (a)-(y) of this section.

(1) A freestanding hospice that provides inpatient care directly shall have on-site 24-hour nursing service provided by registered nurses and licensed vocational nurses.

(A) The facility shall provide 24-hour nursing services which are sufficient to meet total nursing needs and which are in accordance with the client's plan of care. Each client shall receive treatments, medications, and diet as prescribed, and shall be kept comfortable, clean, well-groomed, and protected from accident, injury and infection.

(B) Each shift shall include a registered nurse who provides and supervises direct client care.

(2) The hospice shall have a written plan, periodically rehearsed with staff, with procedures to be followed in the event of an internal or external disaster and for the care of casualties (clients and personnel) arising from such disasters.

(3) The hospice shall meet all federal, state, and local laws, regulations, and codes pertaining to health and safety, such as provisions regulating the following:

(A) construction, maintenance, and equipment for the hospice;

(B) sanitation;

(C) communicable and reportable diseases; and

(D) post-mortem procedures.

(4) Except as provided in this subsection, the hospice shall meet National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 1994 Edition (NFPA 101), Chapter 12 (relating to new health care occupancies) and Chapter 13 (relating to existing health care occupancies), published by the National Fire Protection Association (NFPA). All documents published by the NFPA as referenced in this

subsection may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, Batterymarch Park, Quincy, Massachusetts 02169, 1-800-344-3555. [the health care occupancy provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association which is incorporated by reference].

(A) The department recognizes the Health Care Financing Administration (HCFA) waiver of specific provisions of the NFPA 101 [Life Safety Code] required by this paragraph[,] for a certified hospice[,] for as long as HCFA honors the waiver [it considers appropriate], if the waiver would not adversely affect the health and safety of the clients[;] and rigid application of specific provisions of the NFPA 101 [Code] would result in unreasonable hardship for the hospice. The department may waive specific provisions of the NFPA 101 [Life Safety Code] for a licensed hospice, if the waiver would not adversely affect the health and safety of the clients; and rigid application of specific provisions of the NFPA 101 [Code] would result in unreasonable hardship for the hospice.

(B) Any existing facility of two or more stories that is not of fire-resistive construction and is participating on the basis of a waiver of construction type or height, may not house blind, nonambulatory, or physically disabled clients above the street-level floor unless the facility is one of the following construction types (as defined in the NFPA 101 [Life Safety Code]):

(i) Type II (1,1,1)-protected noncombustible;

(ii) fully-sprinklered Type II (0,0,0)-noncombustible;

(iii) fully-sprinklered Type III (2,1,1)[-Type III (2,1,1)]-protected ordinary;

(iv) fully-sprinklered Type V (1,1,1)-protected wood frame; or

(v) achieves a passing score on the Fire Safety Evaluation System (FSES) for Health Care Occupancies, National Fire Codes, Volume 10, NFPA 101A, Guide on Alternative Approaches to Life Safety, Chapter 3, 1995 Edition published by the NFPA.

(5) The hospice shall be designed and equipped [design and equip areas] for the comfort and privacy of each client and family member. The hospice shall provide [include the following]:

(A) physical space for private client and family visiting;

(B) accommodations for family members to remain with the client throughout the night;

(C) accommodations for family privacy after a client's death;

(D) decor which is homelike in design and function; and

(E) accommodations where clients are permitted to receive visitors at any hour, including small children.

(6) Client rooms shall be designed and equipped for adequate nursing care and the comfort and privacy of clients. Each client's room shall:

(A) be equipped with or conveniently located near toilet and bathing facilities;

(B) be at or above grade level;

(C) contain a suitable bed for each client and other appropriate furniture;

(D) have closet space that provides security and privacy for clothing and personal belongings;

(E) contain no more than four beds;

(F) measure at least 100 square feet for a single room or 80 square feet for each client for a multient room; and

(G) be equipped with a device for calling the staff member on duty.

(7) For an existing building, the department recognizes the HCFA waiver for the space and occupancy requirements of paragraph (6)(E) and (F) of this subsection for a certified hospice[,] for as long as HCFA honors the waiver [it is considered appropriate], if the department [it] finds that the requirements would result in unreasonable hardship on the hospice if strictly enforced, and the waiver serves the particular needs of the clients and does not adversely affect their health and safety. For an existing building, the department may waive the space and occupancy requirements of paragraph (6)(E) and (F) of this subsection for a licensed hospice for as long as it is considered appropriate, if it finds that the requirements would result in unreasonable hardship on the hospice if strictly enforced and the waiver serves the particular needs of the clients and does not adversely affect their health and safety.

(8) The hospice shall provide bathroom facilities. The bathroom facilities shall include the following:

(A) an adequate supply of hot water at all times for client use; and

(B) plumbing fixtures with control valves that automatically regulate the temperature of the hot water used by clients.

(9) The hospice shall have available at all times, a quantity of linen essential for the proper care and comfort of clients. Linens shall be handled, stored, processed and transported in such a manner as to prevent the spread of infection.

(10) The hospice shall make provisions for isolating clients with infectious diseases.

(11) The hospice shall provide and supervise meal service and menu planning. The hospice shall:

(A) serve at least three meals or their equivalent each day at regular times, with not more than 14 hours between a substantial evening meal and breakfast;

(B) procure, store, prepare, distribute, and serve all food under sanitary conditions;

(C) have a staff member trained or experienced in food management or nutrition if the staff member responsible for dietary services is not a dietitian. The person shall be a graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association; or shall be a graduate of a state-approved course that provided 90 or more hours of classroom instruction in food service supervision and shall have experience as a supervisor in a health care

institution with consultation from a dietitian; or shall have training and experience in food service supervision and management in a military service equivalent in content to the program in this paragraph. This staff member shall be responsible for:

(i) planning menus that meet the nutritional needs of each client, following the orders of the client's physician and, to the extent medically possible, the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences (Recommended Dietary Allowances (10th ed., 1989 that is available from the Printing and Publications Office, National Academy of Sciences, Washington, D.C. 20418). The menus shall be approved by a licensed dietitian. The hospice shall use written guidelines for substitutions that are approved by the licensed dietitian; and

(ii) supervising the meal preparation and service that is conducted to ensure that the menu plan is followed; and

(D) have the menus for those clients who require medically prescribed special diets planned by a dietitian who monitors the preparation and serving of meals to ensure that the client accepts the special diet.

(12) The hospice shall provide appropriate methods and procedures for dispensing and administering medications. Whether medications are obtained from community or institutional pharmacists or stocked by the facility, the facility shall be responsible for medications for its clients, insofar as they are covered under the program, and for ensuring that pharmaceutical services are provided in accordance with accepted professional principles and appropriate federal and state laws.

(A) The hospice shall employ a licensed pharmacist or have a formal agreement with a licensed pharmacist to advise the hospice on ordering, storage, administration, disposal, and recordkeeping of medications.

(B) A physician shall order all medications for the client.

(C) If the medication order is verbal, the physician shall give it only to a licensed nurse, pharmacist, or another physician.

(D) If the medication order is verbal, the individual receiving the order shall record and sign it immediately and have the prescribing physician sign it in a manner consistent with good medical practice.

(E) Medications shall be administered only by one of the following individuals:

(i) a licensed nurse or physician;

(ii) a permitted home health medication aide or an employee as specified in the rules adopted by the Board of Nurse Examiners at Title 22, Chapter 218 (relating to Delegation of Selected Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel [§115.21(m) of this title (relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies)]; or

(iii) the client if his or her attending physician has approved.

(F) The pharmaceutical service shall have procedures for control and accountability of all medications throughout the fa-

cility. Medications shall be dispensed in compliance with federal and state laws. Records of receipt and disposition of all controlled medications shall be maintained in sufficient detail to enable an accurate reconciliation. The pharmacist shall determine that medication records are in order and that an account of all controlled medications is maintained and reconciled.

(G) The labeling of medications shall be based on currently accepted professional principles, and shall include the appropriate accessory and cautionary instructions, as well as the expiration date when applicable.

(H) In accordance with state and federal laws, all medications shall be stored in locked compartments under proper temperature controls and only authorized personnel shall have access to the keys. Separately locked compartments shall be provided for storage of controlled medications listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 United States Code, §801 et seq and other medications subject to abuse, except under single-unit package medication distribution systems in which the quantity stored is minimal and a missing dose is readily detected. An emergency medication kit shall be kept readily available.

(I) Controlled medications no longer needed by the client shall be disposed of in compliance with state requirements. The pharmacist and registered nurse shall dispose medications and prepare a record of the disposal.

§115.26. Standards for Personal Assistance Services.

(a) An agency holding a license with the [providing] personal assistance services category of service shall meet the standards of this section. A separate license is required for each principal place of business.

(b) An agency shall provide personal assistance services only within its service area.

(1) The agency shall maintain adequate staff to provide services and to supervise the provision of services within the service area.

(2) An agency may expand its service area at any time during the licensure period. To expand its service area, an agency must submit to the department a written notice for the expansion which includes revised boundaries of the agency's original service area, the effective date of the expansion, and an updated list of management and supervisory personnel (including names), if changes are made. The notice must be submitted either before or within 30 calendar days after the effective date of the expansion.

(3) An agency may reduce its service area at any time during the licensure period by sending the department written notification of the reduction, revised boundaries of the agency's original service area, and the effective date of the reduction.

(c)[(b)] Personal assistance services may be performed by an unlicensed person who is at least 18 years of age and is competent to perform the tasks assigned by the supervisor.

(d) The agency shall comply with §115.54 of this title (relating to Criminal History Checks).

(e) [(c)] Personal assistance services are designed to meet the needs of a person with functional disabilities and the person's family,

allowing the person and the family to engage in activities of daily living. The following tasks may be performed under a personal assistance services category:

(1) personal care (feeding, preparing meals, transferring, toileting, ambulation and exercise, grooming, bathing, dressing, routine care of hair and skin, and assistance with medications that are normally self administered);

(2) health-related tasks which may be delegated by an RN in accordance with the agency's written policy adopted, implemented and enforced to ensure compliance with the rules of the Board of Nurse Examiners for the State of Texas adopted at 22 TAC, §§218.1 - 218.11, (relating to Delegation of Selected Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel) [pursuant to §115.21(m) of this title (relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies)] except for nursing tasks that may not be delegated and nursing tasks that may not be routinely delegated; [and]

(3) health related tasks that are not the practice of professional nursing under the memorandum of understanding between the Texas Department of Health and the Board of Nurse Examiners ; and

(4) health related tasks that are delegated by a physician under the Medical Practice Act, Texas Civil Statutes, Article 4495d, §3.06.

(f) [(d)] The agency shall develop organizational, operational, programmatic, and personnel policies consistent with the principles of individual and family choice and control, functional need, and accessible and flexible services.

(g)[(e)] The agency shall have an individual [or individuals] to act as the administrator who assumes [assume full legal] responsibility for the overall conduct of the agency and is [are] responsible for compliance with all applicable laws and rules of the department.

(1) The administrator of the agency shall: [will]

(A) administratively supervise the provision of services; [The administrator organizes and directs]

(B) organize and direct the agency's ongoing functions;

(C) employ [employs] qualified staff;

(D) ensure [ensures] adequate education and evaluations of staff;

(E) ensure [ensures] the accuracy of public information materials and activities; and

(F) implement [implements] an effective budgeting and accounting system.

(2) The administrator shall authorize in writing a [A] person who meets the qualifications of an administrator [shall be authorized in writing by the administrator] to act as the administrator in the administrator's [on his or her] absence.

(3) The administrator or designee shall not have been employed in the last five years as an administrator with another agency at the time the agency was cited with violations of the

statute or this chapter which resulted in enforcement action taken against the agency.

(4) The administrator or designee shall be able to read, write and comprehend English.

(5) The administrator or designee shall not have been convicted of a felony or misdemeanor listed in §115.52(b)(2) of this title (relating to Enforcement Action).

(h) [(f)] The agency shall maintain a file for each client or family with all entries kept current, dated and signed by the recorder.

(1) An agency shall retain original client files for a minimum of five years after the discharge of the client. The agency may not destroy client files that relate to any matter that is involved in litigation if the agency knows the litigation has not been finally resolved.

(2) If an agency closes, there shall be an arrangement for the preservation of inactive client files to insure compliance with this subsection. The agency shall send the department written notification of the reason for closure, the location of the client files and the name and address of the client file custodian. If an agency closes with an active client roster, a copy of the active client file shall be transferred with the client to the receiving agency in order to assure continuity of care and services.

(3) The client file shall include the following:

(A) [(1)] application for services including, but not limited to: full name; sex; date of birth; name, address, and telephone number of parent(s) of a minor child, or legal guardian, or other(s) as identified by the individual; physician's name and telephone numbers, including emergency numbers; and services requested;

(B) [(2)] documentation that client or family has received a copy of the complaint procedures, and Human Resources Code, Chapter 102 (relating to Rights of the Elderly), for clients 55 years and older;

(C) acknowledgment of the client's receipt of the agency's policy relating to the reporting of abuse, neglect or exploitation of a client;

(D) [(3)] documentation of determination of services based on an on-site visit by the supervisor where services will be primarily delivered and records of supervisory visits, if applicable;

(E) [(4)] an individualized service plan developed, agreed upon, and signed by the client or family and the agency to include, but not limited to, the following:

(i) [(A)] types of services, supplies, and equipment to be provided;

(ii) [(B)] locations of services;

(iii) [(C)] frequency and duration of services, including the planned date of service initiation;

(iv) [(D)] charges for services rendered if the charges will be paid in full or in part by the client or significant other(s), or on request; and

(v) [(E)] plan of supervision; [and]

(F) [(5)] documentation that the services have been provided according to the individualized service plan, and to include

a medication record, if applicable. The agency shall assure that the individualized service plan is followed through a documented quality management review of the plan and services provided under the plan; and

(G) documentation that all agencies providing care to a client engage in an effective interchange, reporting, and coordination of care regarding the client.

(i) [(g)] The agency shall provide services with personnel who meet the qualifications and competencies to perform requested and agreed upon services of the client or family. The agency is responsible for [the following regarding personnel services]:

(1) orientation of personnel to their job responsibilities including, but not limited to: the philosophy and values of community integration and consumer-driven care; report of abuse or neglect; and change in the client's health condition requiring emergency procedures or health services; [and]

(2) maintenance of documentation to demonstrate that an individual is competent in those services he or she performs; and[.]

(3) [(h)] supervision of personnel [Personnel shall be supervised] in accordance with the agency's policies and applicable state laws and rules, including 22 Texas Administrative Code, §§218.1 - 218.11 relating to the delegation of selected nursing tasks by registered professional nurses to unlicensed personnel adopted by the Board of Nurse Examiners, and the Medical Practice Act, Texas Civil Statutes, Article 4495d, §3.06 relating to physician delegation.

(A) A supervisor must be a licensed nurse or have completed two years of full-time study at an accredited college or university. An individual with a high school diploma or general equivalence diploma (GED) may substitute one year of full-time employment in a supervisory capacity in a health care facility, agency, or community-based agency for each required year of college.

(B) The client in a client managed attendant care program funded by Texas Department of Human Services or Texas Rehabilitation Commission is not required to meet the standard in subparagraph (A) of this paragraph.

[(1)] The agency shall adopt, enforce, and implement a policy on supervision of personnel with input from the client or family on frequency of supervision.

[(2)] Supervisors must be licensed nurses or have completed two years of full-time study at an accredited college or university. Individuals with a high school diploma or general equivalence diploma (GED) may substitute one year of full-time employment in a supervisory capacity in a health care facility, agency, or community-based agency for each required year of college.

[(3)] Unlicensed Persons performing health related tasks that fall within the practice of professional nursing shall be supervised by an RN.

(j) The agency shall adopt, implement, and enforce a policy(ies):

(1) establishing time frame(s) for the initiation of care or services;

(2) addressing the supervision of personnel with input from the client or family on the frequency of supervision;

(3) including written procedures governing the use and removal of records; the release of information; and the incorporation of clinical, progress or other notes into the client record;

(4) relating to the retention of records in accordance with subsection (h) of this section;

(5) describing protocols and procedures agency staff must follow when performing physician delegated tasks. The policy shall include and address the time frame for the timely countersignature of a physician's verbal orders;

(6) ensuring compliance of the agency and its employees and contractors with the Health and Safety Code, Chapter 85, Subchapter I, relating to the prevention of the transmission of human immunodeficiency virus and hepatitis B virus;

(7) ensuring compliance of the agency and its employees and contractors with the Health and Safety Code, §161.091 et seq relating to the prohibition of illegal remuneration for securing or soliciting clients or patronage;

(8) ensuring compliance with the rules of the Board of Nurse Examiners for the State of Texas adopted at 22 TAC Chapter 218, Delegation of Selected Nursing Tasks (relating to Delegation of Selected Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel);

(9) ensuring that the agency submits accurate billings and insurance claims;

(10) addressing the orientation of all personnel to the policies, procedures, and objectives of the agency;

(11) ensuring the periodic evaluation of employee performance;

(12) specifying the agency's personnel policies;

(13) relating to criminal history checks of unlicensed personnel in accordance with §115.54 of this title;

(14) specifying the agency's client care policies;

(15) addressing employee disciplinary action(s) and procedures;

(16) relating to the agency's procedures for investigating complaints. Such procedures shall require the agency to initiate a complaint investigation within 10 days of the agency's receipt of the complaint, and to document all components of the investigation;

(17) including a job description (statement of those functions and responsibilities which constitute job requirements) and job qualifications (specific education and training necessary to perform the job) for each position within the agency;

(18) including the agency's organizational structure and operational policies. Such policies must be clearly stated in writing and include the lines of authority and delegation of responsibility down to the client care level and the services provided;

(19) ensuring a quality assurance program which provides for accountability and desired client outcomes. The policy shall meet the minimum requirements in subsection (h)(3)(E) and (F) of this section;

(20) providing for back-up services when an employee or contractor is not able to deliver the services;

(21) assuring that all agencies providing services to a client are engaged in an effective interchange, reporting, and coordination of care regarding the client;

(22) implementing and enforcing the Human Resources Code, Chapter 102 relating to the rights of the elderly;

(23) relating to the reporting of abuse, neglect and exploitation of clients;

(24) relating to the use of volunteers if volunteers are used by the agency;

(25) for publicly known natural disaster preparedness for clients receiving services. The written policy shall include a plan for the reasonable mechanism for triaging clients, the notification of appropriate personnel and clients in the event of a disaster if possible, the identification of appropriate community resources, and the identification of possible evacuation procedures. The plan need not require that the agency actually evacuate, transport, or triage the clients;

(26) describing the agency's written contingency plan;

(27) addressing compliance with out-of-hospital do-not-resuscitate orders and advance directives. The policy shall:

(A) be consistent with the Health and Safety Code, Chapter 674 relating to out-of-hospital do-not-resuscitate; the Natural Death Act, Health and Safety Code, Chapter 672; and Civil Practice and Remedies Code, Chapter 135 relating to durable power of attorney for health care; and

(B) address the provision of information regarding advance directives to its clients and assure its clients are allowed, but not required, to formulate such directives to the extent permitted by law; and

(28) relating to the supervision of branch offices, if established. This policy shall be consistent with §115.14 of this title (relating to Application and Issuance of Branch Office Licenses) and §115.27 of this title (relating to Standards for Branch Offices).

(k) Tube feedings through a permanently placed gastrostomy tube (g-tube) by unlicensed personnel may be performed only in a short-term respite care setting after the client has been admitted under the personal assistance services category of service. Such feedings and medication administration shall be in accordance with this subsection.

(1) In a short-term respite care setting where the client is admitted under the personal assistance services category, g-tube feedings shall be performed:

(A) under delegation by a physician in accordance with the Medical Practice Act, Texas Civil Statutes, Article 4495d, §3.06;

(B) under delegation by an RN under 22 Texas Administrative Code, §§218.1 - 218.11; or

(C) by an unlicensed person after successful completion of the training and competency program described in paragraphs (3) and (4) of this subsection.

(2) The training and competency program for the performance of g-tube feedings by an unlicensed person shall be taught by an RN, physician, physician assistant (PA) or qualified trainer as specified in paragraph (5) of this subsection, and shall meet the requirements in paragraphs (3) and (4) of this subsection.

(3) The minimum training program shall include:

(A) a description of the g-tube placement, including the purpose;

(B) infection control procedures and universal precautions to be utilized when performing g-tube feedings or medication administration through a g-tube;

(C) a description of conditions which must be reported to the client or the primary caregiver, or in the absence of the primary caregiver, to the agency administrator, supervisor, or the client's physician;

(D) review of a written procedure for g-tube feeding or medication administration through a g-tube. The written procedure must be equivalent to current acceptable nursing standards of practice, including addressing the crushing of medications;

(E) conditions under which g-tube feeding or medication administration shall not be performed; and

(F) demonstration of a g-tube feeding and medication administration to a client. If the trainee will become a qualified trainer, the demonstration must be done by the RN, PA, or physician. If the trainee will not become a qualified trainer, the demonstration may be done by an RN, PA, physician, or qualified trainer.

(4) The minimum competency evaluation shall be documented and maintained in the employee's file and shall include:

(A) a score of 100% on a written multiple choice test that consists of situational questions to include the criteria in paragraph (3)(A)-(E) of this subsection and evaluate the trainee's judgment and understanding of the essential skills, risks, and possible complications of a g-tube feeding or medication administration through a g-tube;

(B) a skills checklist demonstrating that the trainee has successfully completed the necessary skills for a g-tube feeding and medication administration via g-tube, and if the trainee will become a qualified trainer, the skills checklist shall also demonstrate the ability to teach another person to perform the task. The skills checklist must be completed by an RN, physician, or PA if the trainee will become a qualified trainer. The skills checklist for a trainee who will not become a qualified trainer may be completed by an RN, physician, PA, or qualified trainer; and

(C) documentation of an accurate demonstration of the g-tube feeding and medication administration performed by the trainee as required by paragraph (3)(F) of this subsection. If the trainee will become a qualified trainer, documentation of competency to teach this task shall be maintained in the file of the qualified trainer. The person responsible for the training of the trainee shall document the successful demonstration of the g-tube feeding and medication administration via g-tube by the trainee and the trainee's competency to perform this task in the trainee's file.

(5) The following persons may teach the trainee and may conduct the training and competency evaluation program:

(A) an RN, physician, or PA; or

(B) a qualified trainer who:

(i) has successfully completed the training and competency program described in paragraphs (3) and (4) of this subsection taught by an RN, physician, or PA;

(ii) has demonstrated on return demonstration to an RN, physician or PA the performance of the task and the ability to teach the task; and

(iii) has been deemed competent by an RN, physician, or PA to train unlicensed personnel in these procedures. Documentation of competency to perform, train and teach shall be maintained in the employee's or contractor's file. Competency shall be evaluated and documented by an RN, physician or PA annually.

(6) The client or primary caregiver must provide information on the client's g-tube feeding or medication administration to the agency supervisor. If the client is not capable of directing his or her own care, the client's primary caregiver must be present to instruct and orient the supervisor regarding the client's g-tube feeding and medication regime. A copy of the current regime including unique conditions specific to the client shall be placed in the client's file by the agency supervisor and provided to the respite caregiver. The respite caregiver must be oriented by the client, the client's primary caregiver, or the agency supervisor. The supervisor of the delivery of these services must have successfully completed a training and competency program outlined in paragraphs (3) and (4) of this subsection or be a qualified trainer.

(7) Legend medications that are to be administered shall be in a legally labeled container from a pharmacy that contains the name of the client. Instructions for dosages according to weight or age for over the counter drugs commonly given the client shall be furnished by the primary caregiver to the respite caregiver performing the tube feeding or medication administration.

§115.27 Standards for Branch Offices.

(a) A parent agency is eligible to apply for a branch office license:

(1) for an agency with an initial license, if the agency has successfully completed an initial onsite survey to demonstrate substantial compliance with the statute and this chapter; or for an agency with a first renewal or subsequent renewal license, if the agency continues to demonstrate substantial compliance with the statute and this chapter; and

(2) if enforcement action against the agency license is not proposed under §115.52 of this title (relating to Enforcement Action).

(b) [(a)] A branch office providing licensed home health or personal assistance services shall comply with the requirements of the rules relating to the parent agency and the standards relating to the provided category(ies) of service [services].

(c) [(b)] A branch office providing licensed and certified home health services shall comply with the standards for certified agencies in §115.23 of this title (relating to Standards for Licensed and Certified Home Health Services).

(d) An branch office shall establish a service area within the parent agency's service area.

(1) A branch office shall provide services only within its established service area.

(2) The branch office shall maintain adequate staff to provide services and to supervise the provision of services within the service area.

(3) A branch office may expand its service area at any time during the licensure period. To expand its service area, a branch office must submit to the department a written notice for the expansion which includes revised boundaries of the branch office's original service area, the effective date of the expansion, and an updated list of management and supervisory personnel (including names), if changes are made. The notice must be submitted either before or within 30 calendar days of the effective date of the expansion.

(4) A branch office may reduce its service area at any time during the licensure period by sending the department written notification of the reduction, revised boundaries of the branch office's original service area, and the effective date of the reduction.

(e) [(c)] A parent agency and a branch office providing home health or personal assistance services shall meet the following requirements.

(1) On-site supervision of the branch office shall be conducted at least monthly by the parent agency administrator, administrator's designee, or supervising nurse or designee [at least monthly]. More frequent supervision may be required considering the size of the service area and the scope of services provided by the parent agency. [Supervision shall be provided by the administrator or licensed professional who is in a supervisory position.] The supervisory visits must be documented and include the date of the visit, the content of the consultation, the individuals in attendance, and the recommendations of the staff.

(2) Original personnel files may be kept in any location, as determined by the agency. Original personnel files shall be accessible and readily retrievable for inspection by the department at the site of the survey.

(3) [The clinical record shall be an original, a microfilmed copy, an optical disc imaging system copy, or a certified copy. If the clinical record is microfilmed or maintained on an optical disc imaging system, the microfilm and the equipment needed to read the record must be accessible at the time and at the office of the on-site survey of the agency.] The clinical record may be kept at the branch

or parent agency, as determined by the agency. Duplicate records are not required.

(4) The parent agency shall approve all branch office policies and procedures. Such approval shall be documented and filed in the parent and branch office(s).

(f) [(d)] The department shall issue to or renew a branch office license for applicants who meet the requirements of this section.

(1) Issuance or renewal of a branch office license is contingent upon compliance with the statute and this chapter by the parent agency and branch office.

(2) The department may take enforcement action against a parent agency license for a branch office's failure to comply with the statute or this chapter. Enforcement action shall be in accordance with §115.52 of this title (relating to Enforcement Action).

(3) Revocation, suspension, denial, or surrender of a parent agency license will result in the same enforcement action against all branch office licenses of the parent agency.

(g)[(e)] A branch office may offer fewer health services or categories of services than the parent office but may not offer health services or categories of services that are not also offered by the parent agency.

§115.28. Standards for Alternate Delivery Sites.

(a) A hospice is eligible to apply for an alternate delivery site license:

(1) for a hospice agency with an initial license, if the agency has successfully completed an initial onsite survey to demonstrate substantial compliance with the statute and this chapter; or for a hospice agency with a first renewal or subsequent renewal license, if the agency continues to demonstrate substantial compliance with the statute and this chapter; and

(2) if enforcement action against the agency is not proposed under §115.52 of this title (relating to Enforcement Action).

(b) [(a)] An alternate delivery site providing hospice services shall comply with the requirements of §115.25 of this title (relating to Standards for Hospice Services).

(c) [(b)] An alternate delivery site shall independently meet §115.25(c), (f)(1), (h)[g]), and (o) [(n)] of this title [(relating to Standards for Hospice Services)].

(d) An alternate delivery site must be established within the parent hospice's service area.

(1) The alternate delivery site shall provide services only within its established service area.

(2) The alternate delivery site shall maintain adequate staff to provide services and to supervise the provision of services within the service area.

(3) A alternate delivery site may expand its service area at any time during the licensure period. To expand its service area, an alternate delivery site must submit to the department a written notice for the expansion which includes revised boundaries of the alternate delivery site's original service area, the effective date of the expansion, and an updated list

of management and supervisory personnel (including names), if changes are made. The notice must be submitted either before or within 30 calendar days of the effective date of the expansion.

(4) An alternate delivery site may reduce its service area at any time during the licensure period by sending the department written notification of the reduction, revised boundaries of the alternate delivery site's original service area, and the effective date of the reduction.

(e) [(c)] A hospice [parent agency] and an alternate delivery site providing hospice services shall meet the following requirements.

(1) On-site supervision of the alternate delivery site shall be conducted by the parent agency at least monthly. More frequent supervision may be required considering the size of the service area provided by the parent agency. The parent agency [Supervision shall be provided by the] administrator, administrator's designee, or supervising nurse or designee shall conduct supervisory visits to the alternate delivery site [or licensed professional who is in a supervisory position]. The supervisory visits must be documented and include the date of the visit, the content of the consultation, the individuals in attendance, and the recommendations of the staff.

(2) Original personnel files may be kept in any location, as determined by the agency. Original personnel files shall be accessible and readily retrievable for inspection by the department at the site of the survey.

(3) [The clinical record shall be an original, a microfilmed copy, an optical disc imaging system copy, or a certified copy. If the clinical record is microfilmed or maintained on an optical disc imaging system, the microfilm and the equipment needed to read the record must be accessible at the time and at the office of the on-site survey of the agency.] The clinical record must be kept at the alternate delivery site office. Duplicate records are not required.

(4) The parent agency shall approve all alternate delivery site policies and procedures. Such approval shall be documented and filed in the parent and alternate delivery sites.

(f) [(d)] The department shall issue to or renew an alternate delivery site license for applicants who meet the requirements of this section.

(1) Issuance or renewal of an alternate delivery site office license is contingent upon compliance with the statute and this chapter by the parent agency and alternate delivery site.

(2) The department may take enforcement action against a parent agency license for an alternate delivery site's failure to comply with the statute or this chapter. Enforcement action shall be in accordance with §115.52 of this title.

(3) Revocation, suspension, denial or surrender of a parent agency license will result in the same enforcement action against all alternate delivery sites.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703066
Susan K. Steeg
General Counsel

Texas Department of Health

Earliest possible date of adoption: April 14, 1997

For further information, please call: (512) 458-7236

Subchapter D. Enforcement

25 TAC §§115.51-115.54

The amendments are proposed under the Health and Safety Code, §142.004(c), which provides the board with authority to adopt rules to require an applicant to provide documentation establishing the applicant has sufficient financial resources to provide services during the term of the license, a list of management personnel, a description of personnel qualifications, a plan for providing continuing training and education for personnel, documentation that the applicant is capable of meeting the minimum standards related to quality of care, and documentation that the applicant has a plan for the orderly transfer of care of clients if the applicant cannot maintain or deliver services under the license; under §142.008(b) which provides the board with authority to adopt rules to establish eligibility requirements for a branch office license; under §142.0085(b) which provides the board with authority to establish eligibility requirements for an alternate delivery site license; under §142.012 which provides the board with authority to adopt rules to set minimum standards relating to qualifications for professional and nonprofessional personnel (including volunteers), supervision of professional and nonprofessional personnel (including volunteers), the provision and coordination of treatment and services (including support and bereavement services), the management, ownership, and organizational structure (including lines of authority and delegation of responsibility and the composition of an interdisciplinary team), clinical and business records, financial ability to carry out the functions as proposed by the HCSSA, safety, fire prevention, and sanitary standards for residential and inpatient units, and any other aspects of home health, hospice, or personal assistance services as necessary to protect the public; under §142.023 which provides the board with the authority to establish minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide, curricula to train a home health medication aide, minimum standards for the approval of home health medication aide training programs and for rescinding approval, the acts and practices that are allowed or prohibited to a permit holder, and minimum standards for on-site supervision of a permit holder by a registered nurse; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed amendments will affect the Health and Safety Code, Chapter 142.

§115.51. Survey [Surveys and Investigation] Procedures.

(a) An on-site survey shall determine if the requirements of the statute and the rules are being met.

(1) The Texas Department of Health (department) or its authorized representative(s) (surveyor) [representatives] may enter the premises of a license applicant or license holder at reasonable times to conduct an on-site survey incidental to the issuance of

a license, and at other times as it considers necessary to ensure compliance with the statute and the rules adopted under the statute. A standard-by-standard evaluation is required before the first renewal [initial annual] license is issued unless waived in accordance with §115.13(a)(1)(B) of this title (relating to Change of Ownership or Services).

(2) (No change.)

(3) If there is a question relating to the accuracy of an agency's financial records relating to the operation of the agency or the agency's financial ability to carry out its functions, the department or designee may conduct an extensive review of the records.

(4) The agency administrator, supervising nurse, or other authorized representative from the agency shall be present at the time of a survey by the department.

(b) Except for a survey conducted for the purposes of issuing a first renewal license, a survey conducted by the department shall be unannounced.

(c) [(b)] Except for the investigation of complaints [and initial surveys], an agency licensed by the department is not subject to additional surveys relating to home health, hospice, or personal assistance services while the agency maintains a one-year accreditation for the applicable services from the Joint Commission on Accreditation of Healthcare Organizations, the Community Health Accreditation Program[,] or certification as a home and community-based services or home and community-based services - OBRA agency by the Texas Department of Mental Health and Mental Retardation (TXMHMR) [or other accreditation organizations that meet or exceed the standards adopted under this chapter].

(1) An initial survey after issuance of an initial license shall be done by the department if the agency is not yet accredited.

(2) An initial survey after the issuance of an initial license shall be done by the department if required by the memorandum of understanding between the department and the TXMHMR.

(d) [(c)] The department's surveyor [authorized representative (surveyor)] shall hold a conference with the person who is in charge of an agency prior to commencing the on-site survey [or investigation] for the purpose of explaining the nature and scope of the survey. The department's representative shall hold an exit conference with the person who is in charge of the agency when the survey is completed, and the department's representative shall identify any records that were duplicated. Any original agency records that are removed from an agency shall be removed only with the consent of the agency.

(e) [(d)] The department's authorized representative shall hold an exit conference and fully inform the person who is in charge of the agency of the preliminary findings of the survey and shall give the person a reasonable opportunity to submit additional facts or other information to the department's authorized representative in response to those findings. The response shall be made a part of the survey for all purposes and must be received by the department within ten calendar days of receipt of the preliminary findings of the survey by the agency.

(f) [(e)] After a survey [or investigation] of an agency, the department shall provide the person in charge of the agency specific and timely written notice of the findings of the survey including:

- (1) the specific nature of the survey;
 - (2) any alleged violations of a specific statute or rule;
 - (3) the specific nature of any finding regarding an alleged violation or deficiency;
 - (4) if a deficiency is alleged, the severity of the deficiency;
- and
- (5) if there are no deficiencies found, a statement indicating this fact.

(g) [(f)] The surveyor shall:

(1) conduct a survey for all categories of services authorized under the license;

(2) conduct a minimum of three home visits unless the agency has only three clients;

(3) review a minimum of ten client records unless the agency has had less than ten clients;

(4) obtain a client's signature consenting to the home visit. A client may refuse a home visit without effect on the level and nature of care or benefit to the client;

(5) [(1)] prepare a statement of deficiencies, if any;

(6) [(2)] obtain a plan of correction for deficiencies which is provided by the agency either on-site or within ten calendar days of the agency's receipt of the statement of deficiencies and indicates the date(s) by which correction(s) will be made;

(7) [(3)] obtain the signature of the person in charge of the agency acknowledging the receipt of the statement of deficiencies and plan of correction form. The person's signature does not indicate the person's agreement with deficiencies stated on the form; [and]

(8) [(4)] obtain within ten calendar days of the survey [or investigation] written comments, if any, by the person in charge of the agency. Additional facts, written comments or other information provided by the agency in response to the findings shall be made a part of the record of the survey for all purposes; and [.]

(9) inform the person in charge of the agency of the agency's right of reconsideration of any deficiency(ies) cited and of the procedures for requesting a reconsideration. A reconsideration requested by an agency does not excuse the agency from submitting a plan of correction required in subsection (h)(1) of this section.

(h) The agency shall:

(1) submit an acceptable written plan of correction for each deficiency no later than ten days from its receipt of a statement of deficiencies. A plan of correction date shall not exceed 45 days from the date the deficiency was cited; and

(2) correct each deficiency no later than the plan of correction date for that deficiency. Failure of an agency to correct each deficiency by the plan of correction date may result in disciplinary action in accordance with §115.52 of this title (relating to Enforcement Action).

(i) If Medicare certification is denied by the Health Care Financing Administration (HCFA) or the agency withdraws from the Medicare program, the agency's license will revert to the category of and be governed by the standards for licensed home health services. The effective date of the change shall be the date indicated on the final termination letter issued the agency by HCFA. This change does not preclude the department from taking enforcement action, if appropriate, under §115.52 of this title.

(j) [(g)] If deficiencies are cited and the plan of correction is not acceptable, the department shall notify the agency in writing and request that the plan of correction be resubmitted no later than 30 calendar days of the agency's receipt of the department's written notice. Upon resubmission of an acceptable plan of correction, written notice will be sent by the department to the agency acknowledging same.

(k) [(h)] The department will provide upon completion of the review and processing of the survey:

(1) information on the identity, including the signature, of each department representative conducting, reviewing, or approving the results of the survey and the date on which the department representative acted on the matter; and

(2) if requested by the agency, copies of all documents relating to the survey maintained by the department or provided by the department to any other state or federal agency that are not confidential under state law.

[(i)] If the survey relates to the issuance of the initial annual license, the agency shall come into compliance no later than 30 calendar days prior to the expiration of the temporary license. If evidence of compliance is not provided to the department prior to expiration of the temporary license, an initial annual license shall be denied to the applicant in accordance with §115.52 of this title (relating to Disciplinary Action).

(j) If the survey relates to the issuance of the renewal license or a complaint investigation, the agency shall come into compliance 30 calendar days prior to the expiration date of the license or no later than the dates designated in the plan of correction, whichever comes first. If evidence of compliance is not provided to the department, an annual license may be revoked, suspended, or denied, in accordance with §115.52 of this title.]

[(l)(k)] The Texas Department of Health (department) shall verify the correction of deficiencies by mail or by an on-site survey within 90 days of the department's receipt of an acceptable plan of correction.

[(l)] If a subsequent survey results in evidence of further deficiencies, a plan of correction may be requested in accordance with the provisions of this section or the department may propose action to deny, suspend, or revoke the license.]

(m) Acceptance of a plan of correction does not preclude the department from taking enforcement action as appropriate under §115.52 of this title. [Even if a plan of correction is accepted and completed, the department may initiate disciplinary action if the deficiencies resulted in physical, mental or emotional harm to a client of the agency or if there is the potential for such harm.]

(n) (No change.)

(o) If a person is renewing or applying for a license to provide more than one category of service under the statute or for a branch office or alternate delivery site license, the required surveys for each of the services or location(s) the license holder or applicant seeks to provide shall be completed during the same survey visit.

§115.52. Enforcement [Disciplinary] Action.

(a) The Texas Department of Health (department) may deny, suspend, suspend on an emergency basis, or revoke a temporary, annual, branch office or alternate delivery site license issued to an applicant or agency if the applicant or agency:

(1) - (4) (No change.)

(5) has aided, abetted, or permitted the commission of an illegal act; [or]

(6) fails to provide the required application or renewal information;

(7) [(6)] fails to comply with an order of the commissioner of health or another enforcement procedure under the statute; or

(8) discloses action as described in §115.11(g)(2)(R) and (S) of this title (relating to Application and Issuance of Initial License) or §115.12(b)(2)(A) of this title (relating to Issuance and Renewal of License).

[(b)] The department may deny a license (temporary or annual) if the applicant or licensee:

[(1)] fails to provide the required application or renewal information; or

[(2)] discloses any of the following actions against or by the applicant or the licensee or against or by affiliate(s), or manager(s) of the applicant or the licensee within the two-year period preceding the application:

[(A)] operation of an agency that has been decertified or had its contract cancelled under the Medicare or Medicaid program in any state;

[(B)] federal Medicare or state Medicaid sanctions or penalties;

[(C)] state or federal criminal convictions which imposed incarceration;

[(D)] federal or state tax liens;

[(E)] unsatisfied final judgement;

[(F)] eviction involving any property or space used by an agency in any state;

[(G)] unresolved state Medicaid or federal Medicare audit exceptions;

[(H)] denial, suspension, or revocation of an agency license or a license for any health care facility or agency in any state; or

[(I)] a court injunction prohibiting ownership or operation of an agency.]

(b) [(c)] The department may suspend or revoke an existing valid license or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensed agency.

(1) In determining whether a criminal conviction directly relates, the department shall consider the provisions of Texas Civil Statutes, Article 6252-13c.

(2) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to own or operate an agency. These offenses also relate to the holding of a home health medication aide permit or an entity approved under §115.62 (o) of this title (relating to Home Health Medication Aides), to conduct a home health medication aide training program:

- (A) a misdemeanor violation of the statute;
- (B) a conviction relating to deceptive business practices;
- (C) a misdemeanor or felony offense involving moral turpitude;
- (D) the misdemeanor of practicing any health-related profession without a required license;
- (E) a conviction under any federal or state law relating to drugs, dangerous drugs or controlled substances;
- (F) an offense under the Texas Penal Code, Title 5, involving a client or client of a health care facility or agency;
- (G) a misdemeanor or felony offense under various titles of the Texas Penal Code, as follows:
 - (i) Title 5, concerning offenses against the person;
 - (ii) Title 7, concerning offenses against property;
 - (iii) Title 9, concerning offenses against public order and decency;
 - (iv) Title 10, concerning offenses against public health, safety, and morals;
 - (v) Title 4, concerning offenses of attempting or conspiring to commit any of the offenses in clauses (i)-(iv) of this subparagraph; and
 - (vi) other misdemeanors and felonies which indicate an inability or tendency for the person to be unable to own or operate an agency, hold a permit, or receive program approval under §115.62 (o) of this title (relating to Home Health Medication Aides), if action by the department will promote the intent of the statute, this chapter, or Texas Civil Statutes, Article 6252-13c.

(3) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, the license shall be revoked.

(c)[(d)] If the department proposes to deny, suspend, or revoke a license, the department shall notify the agency by certified mail, return receipt requested, or personal delivery of the reasons for the proposed action and offer the agency an opportunity for a hearing.

(1) The agency must request a hearing within 15 [30] calendar days of receipt of the notice. Receipt of the notice is presumed to occur on the tenth day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.

(2) The request for a hearing must be in writing and submitted to the Director, Health Facility Licensing [Licensure and

Certification] Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(3) A hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).

(4) If the agency does not request a hearing in writing within 15 [30] calendar days of receipt of the notice, the agency is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(5) If the agency fails to appear or be represented at the scheduled hearing, the agency has waived the right to a hearing and the proposed action shall be taken.

(d) [(e)] The department may suspend or revoke a license to be effective immediately when the health and safety of persons are threatened. The department shall immediately give the chief executive officer of the agency adequate notice of the action taken, the legal grounds for the action, and the procedure governing appeal of the action. The department shall also notify the agency of the emergency action including the legal grounds for the action and the procedure governing appeal of the action by certified mail, return receipt requested, or personal delivery of the notice and of the date of a hearing, which shall be not later than [within] seven calendar days after [of] the effective date of the suspension or revocation. The effective date of the emergency action shall be stated in the notice. The hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).

(e) [(f)] If a person violates the licensing requirements of the Act, the department may petition the district court to restrain the person from continuing the violation.

(f) [(g)] If a person operates an agency without a license issued under the Act, the person is liable for a civil penalty of not less than \$1,000 nor more than \$2,500 for each day of violation.

(g) [(h)] A person who has had an agency license revoked under this section, may not apply for an agency license for one year following the date of revocation.

(h) [(i)] If the department suspends a license, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. An authorized representative of the department shall conduct a survey of the agency [investigate] prior to making a determination.

(1) During the time of suspension, the suspended license holder shall return the license to the department.

(2) If a suspension overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in this chapter; however, the department may not renew the license until the department determines that the reason for suspension no longer exists.

(i)[(j)] If the department revokes or does not renew a license, a person may reapply for a license by complying with the requirements and procedures in this chapter at the time of reapplication. The department may refuse to issue a license if the reason for revocation or nonrenewal continues to exist.

(j) [(k)] Upon revocation or nonrenewal, a license holder shall return the license to the department.

(k) After a survey in which deficiencies were cited by the surveyor, an agency may surrender its license before expiration or allow its license to expire in lieu of the department proceeding with enforcement action. An agency may surrender before the expiration date by returning its original license to the department. If an agency surrenders or allows expiration of the license, the agency, its owner(s), and its affiliates may not reapply for a license for six months from the date of the surrender.

§115.53. Complaints.

(a) An agency shall provide to each person who receives home health, hospice, or personal assistance services a written statement that informs the consumer that a complaint against the agency may be directed to the Texas Department of Health (department). The statement shall be provided at the time of admission and shall direct the consumer to register complaints with the Director, Health Facility Compliance [Licensure and Certification] Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, 1-800-228-1570.

(b) - (d) (No change.)

(e) Procedures concerning complaints about permitted home health medication aides or [.] home health medication aide programs [or another person] shall be as follows.

(1) The initial notification of a complaint may be in writing or by telephone. The complaint may be submitted to the Director, Health Facility Compliance [Licensure and Certification] Division, 1100 West 49th Street, Austin, Texas 78756-3183, 1-800-228-1570.

(2)- (6) (No change.)

§115.54. Criminal History Checks [and Administrative Review].

(a) (No change.)

(b) An agency may not employ a person in a position, the duties of which involve direct contact with a consumer, unless the agency has applied for a criminal history check on the applicant for employment unless [and has received a response from the Texas Department of Health (department) unless] there is an emergency situation [or, the 60 calendar days waiting period described in subsection (h) of this section has expired].

(1) An agency or a private entity working with the agency may submit a request for a criminal history check to the Texas Department of Health (department).

(2) An agency may have a request submitted to the Texas Department of Public Safety (TDPS) by a private entity working with the agency, instead of submitting the request to the department.

(3) If a private entity is used, it must submit requests in a timely manner.

(4) If the agency is a parent agency, the parent agency must submit a request for a criminal history check on behalf of a branch office or alternate delivery site.

(5)[1] The requirement to request a criminal history check only applies if the person to be employed will have direct contact with a client of [consumer in] the agency. [This means that the person

must have direct contact with a client of the agency, the client's family, or the client's visitors.]

(6)[(2)] A criminal history check is not required if the applicant for employment is licensed under Texas law and will be working within the scope of that license.

(7)[(3)] Criminal history checks may be requested only for applicants for employment to whom an offer of employment is made or, in the case of an agency's change of ownership, current agency employees. Criminal history checks may not be requested for persons who will not be employed by the agency, such as volunteers or independent contractors. An employee or applicant for employment is a person for whom the agency is or will be required to issue a W-2 form on behalf of the person.

(8)[(4)] A previous criminal history check on the person done under this section or through other means does not satisfy the requirements of the law or this section. A new criminal history check must be requested for any person each time an offer of employment is made to that person or for any person employed by an agency undergoing a change of ownership.

(c) An agency may employ an applicant [prior to receiving a response to the request for a criminal history check only] in an emergency situation requiring immediate employment under the following circumstances.

(1) (No change.)

(2) The prospective employee must furnish to the agency a written statement stating that he or she has no conviction for an offense described in the Health and Safety Code, §250.006 [§250.005], which lists the types of offenses which bar employment.

(3) The written statements shall [should] be maintained in the agency personnel records [at least until the 60 calendar days waiting period described in subsection (h) of this section has expired].

(4) The agency or a private entity working with the agency must request the criminal history check within 72 hours of employment for a person employed in an emergency situation.

(d) If an agency is not having the requests submitted directly to the TDPS by a private entity working with the agency, an [An] agency shall file a request for a criminal history check on official forms of the department. The requests shall be forwarded to the designated representative of the department. The request must be completely filled out including the mailing address, other names or alias(es), date of birth, race, and sex of the applicant or employee.

(e) An agency must inform each person that applies for employment that the agency is required to conduct a criminal history check prior to making [before it may make] an offer of employment to the applicant (except in an emergency situation) and that the agency will request a criminal history check on each applicant to whom an offer of employment is made.

[(f)] The department shall review the criminal history received from the Department of Public Safety (DPS) to determine if a conviction on the record bars the person from employment in an agency under the Health and Safety Code, §250.005 or §250.006.]

(f) [(g)] Convictions which are not reflected on the criminal history received from DPS do not trigger the requirements of this section or the Health and Safety Code, Chapter 250.

[(h) If no response has been received by the agency from the department within 60 calendar days of submission of the request for a criminal history check, the agency may assume that it is likely that no conviction barring employment was found and that the person is employable by the agency.

[(1) No notice will be sent by the department that the person is employable.

[(2) Subsections (i) and (j) of this section shall apply to a criminal history received after the 60 calendar day period.]

[(g) [(i) If the department receives a criminal history from DPS [that indicates that the person has been convicted of an offense under the Health and Safety Code, §250.005, which bars employment], the department shall notify the [person who was the subject of the check and the] agency requesting the check of the results. Criminal histories for employees of or applicants for employment to a branch office or alternate delivery site will be sent to the parent agency. The parent agency shall notify the branch office or alternate delivery site of the findings.

[(1) The notice shall be a preliminary finding that the person is unemployable.

[(2) If the person believes that the conviction does not fall within the Health and Safety Code, §250.005, the person (not the agency) may object by filing a written request for informal review with the director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

[(3) The written request must be submitted to the department not later than 20 calendar days after the date the notice from the department is received by the person. That person is presumed to have received the notice on the tenth day after it was mailed to the person unless another date appears on the United States Postal Service return receipt.

[(4) If the person makes a timely request for informal review, the department shall review the criminal history only to verify that the conviction falls within the Health and Safety Code, §250.005.

[(A) If the conviction does fall within that section, the department shall issue a notice of a final finding to the person and the agency that the person is unemployable by the agency.

[(B) If the department finds that an error was made and that the person is employable, the department shall notify the person and the agency.

[(C) If the department determines that the conviction does not fall under the Health and Safety Code, §250.005, but falls under the Health and Safety Code, §250.006, which makes the person potentially unemployable, the department shall follow the procedures in subsection (j) of this section relating to an administrative review panel.

[(5) If the person fails to request an informal review, the department shall issue a notice of final finding that the person is unemployable. The notice shall be sent to the person and the agency.

[(j) If the conviction is a potential bar to employment under the Health and Safety Code, §250.006, the department will notify the person and the agency of this preliminary finding.

[(1) The notice shall allow the person who was the subject of the criminal history check the opportunity to appeal to an administrative review panel established by the department.

[(2) The purpose of the panel will be to determine if mitigating circumstances existed at the time of the offense or whether the person has been substantially rehabilitated since that time. The panel will determine whether the person is likely to be a threat to clients, their families, or their visitors.

[(3) The person (not the agency) may request appeal to the administrative review panel by submitting a written request to the Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

[(4) One original and five copies of the request must be submitted to the department no later than 20 calendar days after the date the person receives the notice from the department. The person is presumed to have received the notice on the tenth day after it was mailed to the person unless another date appears on the United States Postal Service return receipt.

[(5) The request must include six copies of any written documentation which the person wishes to have the administrative review panel consider. Such documentation may include information on the following:

- [(A) whether the conviction was a misdemeanor or felony;
- [(B) the person's age when the offense was committed;
- [(C) the length of time since the offense was committed;
- [(D) what the person did when he or she committed the offense;
- [(E) any court imposed punishment and whether the person has completed that punishment;
- [(F) any rehabilitation since the offense;
- [(G) any mitigating circumstances when the offense was committed;
- [(H) any other convictions since the time of the offense;
- [(I) the person's employment history, especially in a health care facility or agency, since the offense; and
- [(J) such other matters as the person may wish to submit.

[(6) The criminal history received from DPS and the documentation submitted by the person shall be forwarded to the administrative review panel for its review. The panel shall determine whether the person remains potentially unemployable by the agency or is employable.

[(A) If the panel decides that the person is now employable by the agency, the person and the agency will be notified of that decision in writing.

[(B) If the panel determines that the person remains potentially unemployable by the agency, the person will be notified of the opportunity to personally appear before the panel. The notice

shall include the date, time and place where the person can meet with the panel. After the opportunity for an appearance and if the panel determines that the person is unemployable by the agency, the department will notify the agency and the person of the final finding in writing.

[(C) The person or the agency may not contact any member of the panel directly except at the personal appearance before the panel.

[(D) Quorum of the panel is three members. Any decision of the panel must be by agreement of three members.

[(E) Deliberations of the panel are not subject to the Open Meetings Act, Government Code, Chapter 551.

[(7) If the person fails to request an administrative review panel after notice that the person is potentially unemployable or if the person fails to exercise his or her opportunity to personally appear before the panel, the department shall send a notice of unemployability to the agency and the person.

[(8) If the person fails to appeal to the administrative review panel, the department shall issue a final finding of unemployability to the agency and the person.

[(h) [(k)] The [initial notice to the person and the] agency [under subsection (i) and (j) of this section] shall inform the person how corrections to the criminal history may be made by contacting DPS.

(1) Such corrections may include updating or making accurate the conviction information or clarifying that the conviction is actually the conviction of another person.

(2) The department cannot provide assistance in correcting a criminal history[; however, the department will receive a copy of any corrected criminal history and will reevaluate the information received in the same manner that the original criminal history was evaluated].

(3) It is the responsibility of the applicant for employment or the employee to correct errors of fact or identity in the criminal history received from DPS. The individual [person] should contact DPS directly and provide whatever positive identification information may be required for a verification of the record and request a corrected criminal history.

[(4) A person should request a review by the department under subsections (i) or (j) of this section of the finding of potentially unemployable or unemployable at the same time that a correction of the record by DPS is being requested.

[(A) The request to the department should indicate that the person is seeking a correction of the records by DPS.

[(B) The corrected criminal history should be presented to the department as part of the documentation submitted by the person.

[(I) If an agency receives a preliminary finding under subsections (i) or (j) of this section on a person who is no longer employed by the agency or is no longer an applicant with an offer of employment, the agency shall immediately inform the department in writing of this fact.

[(1) Since the Health and Safety Code, Chapter 250, and this section do not apply to a person who is not an employee of or an applicant with an offer of employment from the agency requesting

the criminal history check, the department shall immediately cease all procedures under this section upon receiving notice from an agency pursuant to this subsection.

[(2) The department shall notify the person who was the subject of the criminal history check and the agency of the cessation of procedures.

[(i) [(m)] The special provisions of the Health and Safety Code, Chapter 250, concerning nurse aides and the nurse aide registry do not apply to persons hired as home health aides.

[(j) [(n)] An agency must immediately discharge any employee in a position the duties of which involve direct contact with a client[, a client's family, or a client's visitors] if the criminal history reveals a conviction of a crime listed in the Health and Safety Code, §250.006 that bars employment [as designated by the department in its letter to the person and the agency with a final finding (not a preliminary finding) of unemployability. The law does not require discharge of an employee when the finding is only preliminary].

[(k) [(o)] It is not necessary for the agency to notify the department of any actions taken in response to the results of the criminal history on any individual.

[(l) [(p)] The criminal history records are for the exclusive use of the department and the requesting agency.] The criminal history records and the information they contain may not be released or otherwise disclosed to any person or entity except on court order or with the written consent of the person being investigated.

(1) An agency may not share information with another agency or other providers except with the written consent of the person who is the subject of the criminal history check.

(2) It is a criminal offense to release information in violation of the law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703043

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: April 14, 1997

For further information, please call: (512) 458-7236

◆ ◆ ◆
Subchapter E. Home Health Aides and Medication Aides

25 TAC §115.61, §115.62

The amendments are proposed under the Health and Safety Code, §142.004(c), which provides the board with authority to adopt rules to require an applicant to provide documentation establishing the applicant has sufficient financial resources to provide services during the term of the license, a list of management personnel, a description of personnel qualifications, a plan for providing continuing training and education for personnel, documentation that the applicant is capable of meeting the minimum standards related to quality of care, and documenta-

tion that the applicant has a plan for the orderly transfer of care of clients if the applicant cannot maintain or deliver services under the license; under §142.008(b) which provides the board with authority to adopt rules to establish eligibility requirements for a branch office license; under §142.0085(b) which provides the board with authority to establish eligibility requirements for an alternate delivery site license; under §142.012 which provides the board with authority to adopt rules to set minimum standards relating to qualifications for professional and nonprofessional personnel (including volunteers), supervision of professional and nonprofessional personnel (including volunteers), the provision and coordination of treatment and services (including support and bereavement services), the management, ownership, and organizational structure (including lines of authority and delegation of responsibility and the composition of an interdisciplinary team), clinical and business records, financial ability to carry out the functions as proposed by the HCSSA, safety, fire prevention, and sanitary standards for residential and inpatient units, and any other aspects of home health, hospice, or personal assistance services as necessary to protect the public; under §142.023 which provides the board with the authority to establish minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide, curricula to train a home health medication aide, minimum standards for the approval of home health medication aide training programs and for rescinding approval, the acts and practices that are allowed or prohibited to a permit holder, and minimum standards for on-site supervision of a permit holder by a registered nurse; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed amendments will affect the Health and Safety Code, Chapter 142.

§115.61. *Home Health Aides.*

(a) A home health aide may be used by an agency providing licensed home health services if the aide meets one of the following requirements:

(1) - (5) (No change.)

(6) be on the Texas Department of Human Services' [department's] nurse aide registry with no finding against the aide relating to client abuse or neglect or misappropriation of client property.

(b) (No change.)

(c) A home health aide may perform those tasks that are delegated and supervised by a registered nurse in accordance with §115.21 (b)(6) [(m)] of this title (relating to Licensure Requirements and Standards for [All Home and Community Support Services] Agencies Providing Licensed Home Health, Licensed and Certified Home Health or Hospice Services).

(d) (No change.)

(e) The classroom instruction and clinical experience content of the training portion of a training and competency evaluation program must include, but is not limited to:

(1) - (12) (No change.)

(13) any other task that the agency may choose to have the home health aide perform in accordance with §115.21 (b)(6) [(m)] of this title [(relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies)]; and

(14) (No change.)

(f) - (g) (No change.)

§115.62. *Home Health Medication Aides.*

(a) General.

(1) A person may not administer medication to a client unless the person:

(A) - (B) (No change.)

[(C) performs duties of a qualified dialysis technician within the scope authorized under §115.24 of this title (relating to Standards for Home Dialysis Designation)];

(C) [(D)] administers a medication to a client of an agency in accordance with rules of the Board of Nurse Examiners that permit delegation of the administration of medication to a person not holding a permit under this section; or

(D) [(E)] administers noninjectable medication under circumstances authorized by the memorandum of understanding between the Board of Nurse Examiners and the department.

(2) - (3) (No change.)

(b) Required actions.

(1) - (4) (No change.)

(5) The RN shall make a supervisory visit while the medication aide is in the client's residence in accordance with §115.21 (b)(6) [(m)] of this title (relating to Licensure Requirements and Standards for [All Home and Community Support Services] Agencies Providing Licensed Home Health, Licensed and Certified Home Health or Hospice Services).

(c) (No change.)

(d) Prohibited actions. Permit holders shall not:

(1) - (4) (No change.)

(5) calculate a client's medication doses for administration except that the permit holder may measure a prescribed amount of a liquid medication to be administered or break a scored tablet for administration to a client provided the registered nurse has calculated the dosage. The client's medication administration record shall accurately document how the tablet must be altered prior to administration;

(6) (No change.)

(7) administer medications or feedings by way of a tube inserted in a cavity of the body except as specified in §115.21 (b)(6) [(m)] of this title [(relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies)];

(8) - (16) (No change.)

(e) - (n) (No change.)

(o) Training program requirements.

(1) - (5) (No change.)

(6) The program instructors of the classroom hours shall be a registered nurse and registered pharmacist.

(A) The nurse instructor shall have a minimum of two years of full-time experience in caring for the elderly, chronically ill, or pediatric clients or been employed full time for a minimum of two years as a registered nurse with a home and community support services agency. An instructor in a school of nursing may request a waiver of the experience requirement.

(B) The pharmacist instructor shall have a minimum of one year of experience and be currently employed as a practicing pharmacist.

(7) - (9) (No change.)

(p) - (q) (No change.)

(r) Denial, suspension, or revocation.

(1) - (2) (No change.)

(3) The department may suspend or revoke an existing permit or program approval or disqualify a person from receiving a permit or program approval because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a home health medication aide or training program. In determining whether a conviction directly relates, the department shall consider the elements set forth in §115.52(c) of this title (relating to Enforcement [Disciplinary] Action).

(4) If the department proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, the director shall notify the permit holder or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offer the permit holder or home health medication aide program an opportunity for a hearing.

(A) The permit holder or home health medication aide program must request a hearing within 15 [30] calendar days of receipt of the notice. Receipt of notice is presumed to occur on the tenth calendar day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.

(B) The request must be in writing and submitted to the Director, Health Facility Licensing [Licensure and Certification] Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(C) If the permit holder or home health medication aide program does not request a hearing, in writing, within 15 [30] calendar days of receipt of the notice, the permit holder or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(5) - (9) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703044

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: April 14, 1997

For further information, please call: (512) 458-7236

Subchapter F. Advisory Committees

25 TAC §115.71, §115.72

The new sections are proposed under the Health and Safety Code, §142.004(c), which provides the board with authority to adopt rules to require an applicant to provide documentation establishing the applicant has sufficient financial resources to provide services during the term of the license, a list of management personnel, a description of personnel qualifications, a plan for providing continuing training and education for personnel, documentation that the applicant is capable of meeting the minimum standards related to quality of care, and documentation that the applicant has a plan for the orderly transfer of care of clients if the applicant cannot maintain or deliver services under the license; under §142.008(b) which provides the board with authority to adopt rules to establish eligibility requirements for a branch office license; under §142.0085(b) which provides the board with authority to establish eligibility requirements for an alternate delivery site license; under §142.012 which provides the board with authority to adopt rules to set minimum standards relating to qualifications for professional and nonprofessional personnel (including volunteers), supervision of professional and nonprofessional personnel (including volunteers), the provision and coordination of treatment and services (including support and bereavement services), the management, ownership, and organizational structure (including lines of authority and delegation of responsibility and the composition of an interdisciplinary team), clinical and business records, financial ability to carry out the functions as proposed by the HCSSA, safety, fire prevention, and sanitary standards for residential and inpatient units, and any other aspects of home health, hospice, or personal assistance services as necessary to protect the public; under §142.023 which provides the board with the authority to establish minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide, curricula to train a home health medication aide, minimum standards for the approval of home health medication aide training programs and for rescinding approval, the acts and practices that are allowed or prohibited to a permit holder, and minimum standards for on-site supervision of a permit holder by a registered nurse; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed new sections will affect the Health and Safety Code, Chapter 142.

§115.71. *Home and Community Support Services Advisory Committee.*

(a) The committee. The Home and Community Support Services Advisory Committee (committee) shall be governed by this section. The committee is established under the Health and Safety Code, §142.015.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the Texas Board of Health

(board) in the area of home and community support services agencies.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to the licensing of home and community support services agencies.

(2) The committee shall make recommendations relating to the memoranda of understanding required by the Health and Safety Code, §142.009(k).

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By July 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 13 members.

(1) The composition of the committee shall include three consumer representatives and ten nonconsumer representatives.

(2) The members of the committee are appointed by the governor as follows:

(A) three consumer representatives;

(B) two representatives of agencies that are licensed to provide certified home health services;

(C) two representatives of agencies that are licensed to provide home health services but are not certified home health services;

(D) three representatives of agencies that are licensed to provide hospice services with one representative appointed from:

(i) a community-based non-profit provider of hospice services;

(ii) a community-based proprietary provider of hospice services; and

(iii) a hospital-based provider of hospice services; and

(E) three representatives of agencies that are licensed to provide personal assistance services.

(g) Terms of office. The term of office of each member shall be two years.

(1) Members shall be appointed for staggered terms so that the terms of seven members will expire on January 31 of each even-numbered year and the terms of six members will expire on January 31 of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31 of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or any three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the members' duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a

statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each January. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. A committee member may not receive reimbursement for the member's expenses incurred for each day the member engages in official business unless allowed under the Texas Civil Statutes, Article 6252-33.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

§115.72. Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee (committee).

(2) The Health and Safety Code, §142.016(b) allows the Texas Board of Health

(board) and the Board of Nurse Examiners (BNE) to jointly establish and appoint the committee.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board and the BNE regarding circumstances under which

the provision of health-related tasks or services provided by an agency are not considered to be the practice of professional nursing under the personal assistance services category.

(d) Tasks.

(1) The committee shall advise the board and the BNE concerning the development, modification, and renewal of a memorandum of understanding (MOU) governing the circumstances under which the provision of health-related tasks or services do not constitute the practice of professional nursing.

(2) The committee shall carry out any other tasks given to the committee by the board and the BNE which are reasonable and necessary to accomplish the purpose of the MOU.

(e) Review and duration. By July 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 10 members jointly appointed by the board and the BNE. The members of the committee shall be appointed as follows:

(1) one representative from the BNE and one representative from the Texas Department of Health (department);

(2) one representative from the Texas Department of Mental Health and Mental Retardation;

(3) one representative from the Texas Department of Human Services;

(4) one representative from the Texas Nurses Association;

(5) one representative from the Texas Association for Home Care, Incorporated, or its successor;

(6) one representative from the Texas Hospice Organization, Incorporated, or its successor;

(7) one representative of the Texas Respite Resource Network or its successor; and

(8) two representatives of organizations such as the Personal Assistance Task Force or the Disability Consortium that advocate for clients in community-based settings.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on January 31 of each even-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The representatives from the department and the BNE will serve as co-chairmen of the committee.

(1) The co-chairmen shall preside at all committee meetings at which they are in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board.

(2) In the absence of one co-chairman, the appropriate state agency shall designate a temporary co-chairman. The temporary

co-chairman shall act in full authority for the designated period of time.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff, BNE staff, and either the co-chairmen or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The co-chairmen may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify a co-chairman or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department in conjunction with designated staff of the BNE.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the co-chairmen shall be provided to the board, the BNE designated staff, and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the co-chairmen.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The co-chairmen shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The co-chairmen may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board and the BNE in sufficient detail to allow each agency to report to the legislative budget board pursuant to Texas Revised Civil Statutes Annotated, Article 6252-33, §7.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board and the BNE each January. It shall be signed by the co-chairmen and appropriate department staff.

(p) Reimbursement for expenses. Except in accordance with the requirements set forth in Texas Revised Civil Statutes Annotated, Article 6252-33, §4, a committee member shall not be reimbursed for expenses incurred.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703042

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: April 14, 1997

For further information, please call: (512) 458-7236

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

The Texas Parks and Wildlife Department proposes repeal of §§57.156 and §57.158, concerning Freshwater Mussels, and new §§57.156-57.158, concerning Freshwater Mussels and Clams. Parks and Wildlife Code, §78.006 authorizes the Commission to regulate the taking, possession and sale of mussels and clams by proclamation. Before issuing proclamations to regulate mussels and clams, the Commission is required to investigate the need for such regulation and make findings based on: (1) utilization of the best scientific information available; (2) consideration of measures necessary to prevent depletion; (3) consideration of measures necessary to manage; (4) consideration of measures, where practicable, that will minimize cost and avoid unnecessary duplication in administration; and (5) consideration of measures that will enhance enforcement.

The Department conducted research into mussels and clams and published its investigations and recommendations in "Freshwater Mussels of Texas" (Robert G. Howells, Raymond W. Neck, and Harold D. Murray Authors, 1996). Copies of this publication are available from Melissa Plant, (512-389-4594). The results of this published investigation are the basis of the proposed regulations.

Proposed changes to §57.156 (concerning Definitions) provide definitions necessary for implementation of following sections. Proposed changes to §57.157 (concerning Mussels and Clams)

provides general rules, means and methods, bag, possession and size limits, seasons, times and places for taking of mussels and clams. New §57.158 (concerning Penalties) sets penalties for violation of the proposed regulations.

Robin Riechers, staff economist, has determined that the first five-years the rules are in effect there will be no fiscal implications to state or local governments as a result of administering and enforcing the rules. There will be fiscal implications to small businesses as a result of administering and enforcing the rules.

Fiscal implications to small businesses may be directly associated with the reduction in the limits allowed each day and indirectly through reduced sales of gear, supplies, etc. small businesses as a result of the amended rules.

Robin Riechers, staff economist, has determined that for each of the first five years the rules as proposed are in effect the public benefits anticipated as a result of enforcing the amendments as proposed will permit appropriate take of fisheries and wildlife resources consistent to maintain viable populations.

It is anticipated there will be fiscal implications to persons who are required to comply with the rules as proposed. Persons who depend upon the expenditures of others that exercise their commercial harvest privileges may find reduced income as a result of the rules.

The department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the administrative Procedure and Texas Register Act, Section 4A.

All of the resources affected by the proposed rules are publicly owned resources in public waters. No private property is directly affected by or the subject of these rules. The proposed action was reviewed in the context of the Private Real Property Rights Preservation Act, Government Code, Chapter 2007 (Act). The rules do not affect any individual or particular parcel of private real property. There is no takings impact within the purview of Chapter 2007. Furthermore, there are no governmental actions allowed by the proposed regulations which fall under the purview of the definition of a "taking" in §2007.002(5) of the Act.

Comments on the proposed repeal and proposed new rules may be submitted to Earl Chilton, Inland Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4652 or 1-800-792-1112, ext. 4652.

Freshwater Mussels

31 TAC §§57.156, §57.158

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Parks and Wildlife Code, §78.006.

The proposed repeals affect Parks and Wildlife Code, §78.006.

§57.156. Definitions.

§57.158. Mussels and Clams.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702940

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 14, 1997

For further information, please call: (512) 389-4642

Freshwater Mussels and Clams

37 TAC §§57.156-57.158

The new rules are proposed under Parks and Wildlife, Code §78.006.

The proposed new rules affect Parks and Wildlife Code, §78.006.

§57.156. Definitions.

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

Day - A 24-hour period of time that begins at midnight and ends at midnight.

Freshwater mussel - Bivalve mollusks of the family Unionidae (collectively including Amblimidae and Margaritiferidae) as listed by the American Fisheries Society Special Publication 16.

Mussels and clams - As used in these regulations include all freshwater and marine bivalve mollusks, except oysters, including shells and soft parts found either separately or together.

§57.157. Mussels and Clams.

(a) The Commission finds that the publication "Freshwater Mussels of Texas" (Robert G. Howells, Raymond W. Neck, and Harold D. Murray Authors, 1996), represents the best available scientific information and incorporates this publication by reference into the findings of fact as follows:

- (1) the regulations prevent the depletion of mussels and clams;
- (2) the regulations are based on the best scientific information available;
- (3) the regulations represent management methods for mussels and clams;
- (4) the regulations, to the extent practicable, minimize cost and avoid unnecessary duplication in administration; and
- (5) the regulations enhance enforcement of the protection of mussels and clams.

(b) General rules.

- (1) It is unlawful for any person to take or possess mussels and clams, within a protected size limit, in greater numbers, by other

means, or at any time or place, other than as permitted under these rules.

(2) No person may take mussels, clams, or their shells from the public waters of this state for personal use without being licensed under provisions of Parks and Wildlife Code, Chapter 46, Subchapter A, or Chapter 43, Subchapter M.

(3) No person may take mussels, clams, or their shells from the public waters of this state for commercial purposes except as provided in these regulations.

(c) Bag, possession, and size limits.

(1) It is unlawful for any person while fishing on public waters to have in his possession mussels and clams in excess of the daily bag limit or within a protected size limit.

(2) No person may take or possess more than 25 pounds, per day, of whole mussels and clams, or 12 pounds of mussel and clam shells from the public waters of this state.

(3) A person may take or possess mussels and clams, including their shells, of the following species provided their shells will not pass through a ring with an inside diameter (I.D.) specified for that species.

Figure: 31 TAC §57.157(c)(3)

(d) Means, and methods.

(1) It is unlawful for any person to take or possess mussels and clams taken by any means or method other than as authorized in these rules or in this subsection.

(2) Mussels and clams may be taken only by hand.

(e) Seasons, times, and places.

(1) It is unlawful for any person to take mussels and clams from 30 minutes after sunset to 30 minutes before sunrise of each day.

(2) All public waters of the state are open to mussel and clam harvest except that mussels and clams may not be taken from the following reservoirs, rivers creeks and tributaries:

(A) Sabine River from the dam at Lake Tawakoni downstream to State Highway 19 in Rains and Van Zandt Counties, from FM 14 to State Highway 155 in Smith County and from State Highway 43 downstream to U.S. Highway 59 in Harrison and Panola Counties;

(B) Neches River from the Dam at Lake B.A. Steinhagen downstream to its confluence with Pine Island Bayou in Orange County;

(C) the Concho River from the mouth of Kickapoo Creek downstream to the U.S. Highway 83 bridge in Concho County;

(D) Pine Creek from its source in Lamar County to its confluence with the Red River in Red River County;

(E) Sanders Creek from its source in Fannin County to the confluence with the Red River in Lamar County; and

(F) Elm Creek from its source downstream to the dam at Elm Creek Lake at Ballinger City Park in Runnels County.

(f) Mussel and clam shells and pearls which have been harvested legally under the recreational bag limit of 25 pounds, per

day, of whole mussels and clams, or 12 pounds of mussel and clam shells, may be used and sold in jewelry, and as collectibles.

§57.158. *Penalties.*

Penalties for violation of §57.156 and §57.157 of this title (relating to Freshwater Mussels and Clams) are prescribed in Parks and Wildlife Code, §78.007.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702941

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 14, 1997

For further information, please call: (512) 389-4642

Chapter 58. Oysters and Shrimp

Subchapter B. Statewide Shrimp Fishery Proclamation

31 TAC §58.160

The Texas Parks and Wildlife Department proposes an amendment to §58.160, concerning the statewide Shrimp Fishery Proclamation. Responsibility for establishing seasons, bag limits, means and methods for taking wildlife resources is delegated to the Texas Parks and Wildlife Commission under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983). The proposed amendment clarifies the restrictions on retention of other aquatic life captured during legal shrimping operations; increases the length of the seasonal exemption of the 50% rule from the period June 15 through August 14 to the period June 1 through September 30; increases the number of live non-game fish (not regulated by bag or size limit) allowed to be retained on board a commercial bait-shrimp boat from 1,200 to 1,500 fish; and establishes a limit of 200 fish for persons fishing with an individual bait-shrimp trawl.

New language clarifies the intent of the 50% rule thus reducing confusion for the fishermen and improving law enforcement. The rule change will provide additional live fish for sport anglers, thus increasing the social and economic benefits from the saltwater sport fishery. Changes in the possession limits will allow shrimpers to better maximize their efficiency while providing for a more equitable distribution of the limited number of non-game fish available for harvest. Imposing a possession limit of fish retained from individual bait-shrimp trawls establishes a more equitable but conservative allocation of resources.

Robin Riechers, staff economist, has determined that for each of the first five years that the rule as proposed is in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rule. Since the rule is less restrictive than those rules currently in

place, the fiscal implications to small businesses should be positive.

Mr. Riechers has also determined that for each of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be a simplification of enforcement, and public benefits will occur through the extended season and increased bag limit for bait fish, enhancing the availability of bait for sport fishermen.

There will be some positive effect on small businesses as the increased season and bag limit for harvesting bait fish should provide enhanced market opportunities to sell bait-fish.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Paul Hammerschmidt, Coastal Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 or 1-800-792-1112 extension 4650.

The amendment is proposed under Parks and Wildlife Code, Chapter 61, §61.052, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The amendment affects Parks and Wildlife Code, Chapter 61, §61.052, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983).

§58.160. Taking or Attempting to Take Shrimp (Shrimping) - General Rules.

(a)-(d) (No change.)

(e) Other aquatic life taken incidental to legal shrimping operations.

(1) Licensed Commercial Shrimp Boats.

(A) Other aquatic life taken incidental to legal shrimping operations may not be retained except as provided in these rules. The term "legal shrimping operations" is defined as the use of a legal trawl in places, at times, and in manners as authorized by the department.

(B) On board a licensed commercial shrimp boat a catch of finfish and/or other aquatic life, in any combination, may be retained in an amount not to exceed 50% by weight of the total trawl catch of shrimp by weight.

(i) Within the provision provided in this subparagraph, species regulated by bag and size limits under provisions of proclamation of the Parks and Wildlife Commission may not be retained in numbers in excess of the daily bag limit established for those species.

(ii) From June 1 through September 30 of each year, in addition to the provision of this subparagraph, up to 1,500 live non-game fish, not regulated by bag or size limits, may be retained on board a licensed commercial bait-shrimp boat for bait purposes only. The provisions of this clause will expire September 1, 1998.

(2) Non-commercial shrimping. A person using an individual bait shrimp trawl for non-commercial purposes may

retain for bait purposes only up to 200 non-game fish, not regulated by bag or size limits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702939

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 14, 1997

For further information, please call: (512) 389-4642

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter E. Household Determination

40 TAC §3.501

The Texas Department of Human Services (DHS) proposes an amendment to §3.501, concerning household determination in its Income Assistance Services rule chapter. The purpose of the amendment is to implement severe personal and economic hardship exemptions for time limits in the Aid to Families with Dependent Children (AFDC) program.

Terry Trimble, interim commissioner, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect is an estimated additional cost of \$5,126 in fiscal year (FY) 1997; \$441,179 in FY 1998; \$1,103,544 in FY 1999; \$1,512,933 in FY 2000; and \$1,512,933 in FY 2001. There will be no effect on local government or small businesses as a result of enforcing or administering the section.

Mr. Trimble also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of the amendment will be that DHS will be in compliance with state legislation.

Questions about the content of the proposal may be directed to Rita King at (512) 438-4148 in DHS's Client Self-Support Section. Comments on the proposal may be submitted to Unit Supervisor, Rules and Handbooks Unit-131, Texas Department of Human Services W-103, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The amendment implements the Human Resources Code §§22.001-22.030.

§3.501. Household Determination.

(a) (No change.)

(b) Aid to Families with Dependent Children. The following persons are not included in an AFDC certified group:

(1)-(2) (No change.)

(3) Disqualified persons.

(A) (No change.)

(B) Once time limits are exhausted, the caretakers and second parents are not eligible to receive AFDC cash benefits for five years, unless they have complied with employment services requirements during their time-limited months and meet one of the following hardship criteria: [meet one of the criteria for severe personal hardship or local economic hardship.]

(i) Severe personal hardship is met if the client:

(I) has a terminal or permanently disabling illness or injury,

(II) is incapacitated by illness or injury for a temporary period, or

(III) is needed in the home for more than 30 days to provide care for a close family member in or out of the household who has a temporarily or permanently disabling illness or injury, or terminal illness.

(ii) Local economic hardship is met if the client

(I) lives in a county which is classified by DHS as economically depressed for purposes of AFDC time limits. DHS determines a county is economically depressed if the county's unemployment rate exceeds 10%.

(II) has done independent job search, contacting at least 40 employers within a 30-day period, and cannot find employment that replaces the sum of the individual's grant amount and the applicable work expense disregard. While exempt for employment hardship, the client must contact at least 40 employers during each month of the exemption period, unless good cause exists, or no subsequent employment hardship exemption is allowed during the client's five-year freeze-out period.

(iii) Severe personal hardship must be requested within 90 days after the illness or injury begins or the client is needed in the home to care for a close family member.

(iv) County hardship may be requested at any time during the client's five-year freeze-out period.

(v) Employment hardship must be requested within 90 days after exhausting the AFDC time limit, loss of a job, or the reduction of the number of work hours.

(C) (No change.)

(4)-(7) (No change.)

(c)-(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

TRD-9702972

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: May 1, 1997

For further information, please call: (512) 438-3765

Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

Subchapter O. Foster and Adoptive Home Development

40 TAC §§700.1501, 700.1502, 700.1505

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§700.1501, 700.1502, and 700.1505, concerning decision on foster home applications, adoptive home screening, and administrative review, in its Child Protective Services (CPS) chapter. The purpose of the amendments is to update and clarify policy, update best practice standards, and update the philosophy of mutual assessment with foster and adoptive families.

Cindy Brown, deputy director for finance, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be public access to correct information regarding foster and adoptive home development. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Patsy Buida at (512) 438-4986 in TDPRS's Placement Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbook Unit-129, Texas Department of Protective and Regulatory Services W-103, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Texas Family Code, Title 5, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect. In addition, the amendments are proposed under Public Law Number 96-272, Title I, which authorizes the department to administer foster-care and adoption assistance programs provided for under the Social Security Act, Title IV-E.

The amendments are also proposed under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services; and authorizes the department

to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC; and grants authority to contract to that Department.

The amendments implement the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

§700.1501. Decision on Foster Home Applications.

(a) To be accepted as a foster home, the home must meet the department's minimum standards, and the Texas Department of Protective and Regulatory Services must have determined, through the foster-home screening and study, that the parents can provide adequate care for foster children in the department's managing conservatorship and that they will follow the department's policies for discipline of these children as specified in §700.1502(14) [§700.1502(13)] of this title (relating to Adoptive Home Screening).

(b) Foster parents and foster parent recruits and applicants have a right to an administrative review of the decision to not approve their application to be foster parents or to close the foster home.

§700.1502. Adoptive Home Screening.

The Texas Department of Protective and Regulatory Services' (TDPRS') policies for screening and approval of adoptive homes are as follows:

(1) **Age.** All applicants must be at least 21 years of age or older. Age is evaluated in relation to life expectancy and maturity. The applicants' life expectancy must be long enough for the applicants to be able to raise the child to adulthood. Applicants who are nearing retirement age usually are only considered and approved for adolescent [and teenage] children.

(2) **Marriage.** If married, both spouses must apply and their license or declaration of marriage must be recorded. If separated and not divorced, adoptive applicants must finalize the divorce prior to being approved as an adoptive parent.

(3) **Length of marriage.** Couples must be married at least two years before TDPRS [PRS] accepts an adoption application, unless the following exception is made. [PRS may allow exceptions to this policy only to meet the needs of a specific child.] **Exception:** If the couple cohabitated for two years prior to the marriage or obtained a civil registration of common law marriage for the length of time required, the worker should assess the impact of the marriage on the stability of the couple's relationship to determine the appropriateness of making an exception.

(4) **Significant loss.** Foster and/or adoptive families unrelated to the child applied for must wait at least one year before being initially verified or approved if they have experienced loss of an immediate family member or someone who served in that role.

(5)[(4)] **Single parents.** Single parents are evaluated in terms of their ability to nurture and provide for a child without the assistance of a spouse. Placement with a single parent is considered the best plan for some children.

(6)[(5)] **Fertility.** Fertility assessments [studies] are required only if TDPRS [PRS] believes the couple needs to know

more about their fertility before they adopt a child. The couple's fertility is important only in relation to resolution of their feelings about their infertility and their ability to accept and parent a child not born to them.

(7)[(6)] **Disabilities [Handicaps].** Disabilities [Handicaps] are evaluated in relation to the applicants' adjustment to the disability [handicap] and the limits, if any, the disability [handicap] imposes on the applicants' ability to care for a child.

(8)[(7)] **Residence.** Adoptive home studies are started only if the applicants will live in the community long enough for PRS to complete a study and make a placement. Exceptions are made in unusual situations which involve a child with special needs if another licensed child placing agency in the new community agrees to complete the adoption services.

(9)[(8)] **Adoption by foster families.** Foster families are evaluated using the same criteria applied to any other adoptive applicants. The home study must be updated to meet the minimum standards for adoptive homes. The evaluation focuses on the family's demonstrated skill and ability to parent the children TDPRS [PRS] has placed in the family's care and determines the attachment the family and the child have to each other.

(10)[(9)] **Family's ability to help the child [Race or ethnicity].** Applicants are evaluated based on their ability to [Placing a child with adoptive parents whose race or ethnicity is the same as the child's ordinarily helps the child develop a sense of identity consistent with his racial or ethnic background. The department will, however, consider placing a child with adoptive parents of a different race or ethnicity if staff determine that the adoptive parents are able to]:

(A) help the child:

(i) develop a sense of identity consistent with the child's racial and ethnic background; and

(ii) learn to cope with difficulties that may arise from racial or ethnic differences, both within and outside the adoptive family; and

(B) develop a plan for helping the child manage the issues described above as the child reaches developmental milestones.

(11)[(10)] **Finances.** Although there are no specific income requirements, the applicants must have enough income, and be able to manage it well enough, to meet the child's basic material needs. Income is also evaluated in terms of past and present management.

(12)[(11)] **Health.** The applicants' physical and mental health must be sufficient to assume parenting responsibilities. Physical and mental conditions are considered to protect the child against another loss of parenting through death, incapacity, or repetition of abuse or neglect.

(13)[(12)] **Religion.** There are no specific religious requirements. Applicants are evaluated based on:

(A) Their willingness to respect and encourage a child's religious affiliation.

(B) Their willingness to provide a child opportunity for religious, spiritual, and ethical development.

(C) The health protection they plan to give a child if their religious beliefs prohibit certain medical treatment.

(14)[(13)] Discipline. Physical discipline may not be used on a child in any TDPRS foster or adoptive home prior to consummation. TDPRS evaluates applicants based on their willingness and ability to:

(A) recognize and respect differences in children, especially children who have been abused or neglected;

(B) employ methods of discipline that suit the particular needs and circumstances of each child; and

(C) employ methods of discipline that conform to the policies specified in §700.1340(c) of this title (relating to Special Issues).

(15)[(14)] Criminal History.

(A) Criminal history checks are required for all persons 18 years old and older who live in the applicant's home. A criminal history check may be completed for persons who have child care responsibilities for the children in the managing conservatorship of TDPRS. Criminal history is evaluated in terms of the potential danger it presents to placement, rearing, and protection of children. Persons who have been convicted of offenses against the person, offenses against the family, public indecency, or a felony violation of the Texas Controlled Substances Act must submit proof of rehabilitation to TDPRS for their application to be considered further.

(B) TDPRS staff may provide a copy of the criminal records check received from the Texas Department of Public Safety or local law enforcement to the court when the court will accept the material in lieu of ordering adoptive parents to provide their own criminal records check to the court.

§700.1505. Administrative Review.

Adoptive recruits and applicants are entitled to an administrative review of the decision not to approve their adoptive home for placement of a child.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

TRD-9702971

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Earliest possible date of adoption: June 1, 1997

For further information, please call: (512) 438-3765

◆ ◆ ◆
Chapter 715. Day Care Licensing

Subchapter E. Minimum Standards for Day Care Centers

The Texas Department of Protective and Regulatory Services (TDPRS) proposes the repeal of §715.417; amendments to §715.412 and §715.421; and new §715.417, concerning space requirements, child/staff ratios, and water activities, in its

Day Care Licensing chapter. The purpose of the repeal, amendments, and new section is to reflect the changes in the availability and affordability of day care since the original adoption of these rules. The department believes that these changes reach a balance between costs and risk to children.

Cindy Brown, deputy director for finance, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that cost for child day care and the risk to children will be minimized. Day care will be made more affordable and children's needs for safety, health, and welfare will be protected. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Mary Panella at (512) 438-3246 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Mary Panella, Mail Code E-550, Texas Department of Protective and Regulatory Services, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.
40 TAC §§715.412, 715.417, 715.421

The amendments and new section are proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describe the department's regulatory and rulemaking authority.

The amendments and new section implement HRC, Chapters 40 and 42.

§715.412. Space Requirements.

(a) The following space requirements must be met:

(1) Centers licensed prior to August 31, 1997. Centers licensed prior to August 31, 1997, must provide thirty [Thirty] square feet of indoor activity space measured wall-to-wall, on the inside, for each child in the facility not including single-use areas such as restrooms and kitchens [must be provided]. If a center changes location or ownership, they must meet requirements described in paragraph (2) of this subsection, unless they meet the conditions described in paragraph (3) of this subsection.

(2) Centers licensed after August 31, 1997. Centers licensed after August 31, 1997, must have at least thirty square feet of indoor activity space measured wall-to-wall on the inside for each child in the center, not including single-use areas, such as restrooms and kitchens. Each child under 18 months of age must have 30 square feet of indoor activity space in the areas in which care is being given.

(3) Newly owned centers licensed prior to September 1, 1997. If the new owner of a center that had been licensed prior to September 1, 1997, can demonstrate that the property easement, deed restrictions, building code or fire code restrictions prohibit compliance with square foot requirement for children under 18 months of age, the center will be required to meet the standards described in paragraph (1) of this subsection.

(b)[(A)] Children under 18 months of age must be cared for in rooms and outdoor play areas separate from older children,

unless there are 12 or fewer children in the center as described in §715.417(j) [§715.714(b)(5)] of this title (relating to Child/Staff Ratios and Groupings).

[(B) Each child under 18 months old must have 30 square feet of indoor activity space in the areas in which care is given.]

(c)[(2)] There must be 80 square feet of outdoor play space for each child using the outdoor area at one time.

(d)[(b)] Unless the only children using the outdoor area are five years old and older, the outdoor play area must be enclosed by a fence at least four feet high with at least two exits that can be opened immediately by staff. One exit may be an entrance to the building.

§715.417. Child/Staff Ratios and Groupings.

(a) Child/staff ratios and groupings. In a day care center, the number of children per staff member and the group size must not exceed the following, except as described in subsection (b) of this section regarding the delayed implementation of the child/staff ratio for children 12-17 months of age, and except under the conditions described in subsections (f) through (j) of this section.
Figure 1: 40 TAC §715.417(a)

(b) Child/staff ratio for children age 12-17 months of age. Implementation of the child/staff ratio for children age 12-17 months of age, as described in subsection (a) of this section, is delayed until September 1, 1999. The following child/staff ratio for children 12-17 months of age is in effect upon adoption of this section and remains in effect until September 1, 1999.
Figure 2: 40 TAC §715.417(b)

(c) Age majority of the children in the group. The child/staff ratio as described in subsection (a) of this section is based on the age of more than half of the children in the group. The larger number indicating the child/staff ratio for ages two through five years are the ratios for groups where more than half of the children are a year or more older than the specified age group.

(d) The maximum group size when two staff are present. The maximum group size described in subsections (a) and (b) of this section is also the child/staff ratio allowed when two staff are present.

(e) Facilities caring for 35 two-year old children. Facilities caring for 35 two-year old children, in one room, may do so when the following conditions are met:

(1) The room is divided so that groups are separated; for example, a group of 25 children and another group of ten children can be cared for in the same room if the placement of shelves, accordion doors, or low movable walls, divides the area so that children in one group do not freely mix with children in another group.

(2) Child/staff ratios must be maintained for each group.

(3) Teachers must know which children they are responsible for and children must know which is their teacher, so that consistency of care can be maintained.

(4) Groups may move from one activity area to another within the classroom during the day, but individual children may not freely mingle. Joint activities in which groups can be mixed as specified in subsection (h) of this section are allowable.

(f) Exceeding maximum group size. Maximum group size may be exceeded, provided child/staff ratio is maintained for each group, under the following conditions:

(1) For children 18 months through four years of age for a maximum of 30 minutes.

(2) For children five years old and older for a maximum of 1 1/2 hours.

(3) For field trips, outdoor play, and naptimes for the length of that activity.

(g) Naptime. During naptime, children 18 months of age and older may be under the supervision of 50% of the child/staff ratio if an additional 25% of the child/staff ratio is maintained in the building and not counted in the child/staff ratio for another group.

(h) Ratios forty-five minutes after opening and before closing. Forty-five minutes after opening and 45 minutes before closing, the children may be regrouped at a ratio of one staff member per group of 16 children 18 months of age and older.

(i) Groups with a child under 18 months of age. When a child in the group is under 18 months of age, the oldest child in the group must not be more than 18 months of age older than the youngest child unless there are fewer than 12 children at the center.

(j) Care of 12 or fewer children. If 12 or fewer children are in care at the center, the following child/staff ratios may be used. One adult may care for any combination of children as shown in the following chart.
Figure 3: 40 §715.417(j)

(1) Children under 18 months of age do not have to be cared for in separate areas.

(2) The caregiver can be involved in meal preparation but must be able to supervise the children.

(3) Supervision cannot be reduced during naptime.

§715.421. Water Activities.

(a) (No change.)

(b) The child/staff ratio for water activities, where permitted, must be met as follows.

(1) When a center uses a splashing or a wading pool with less than two feet of water, the following apply: [For wading/splashing activities (less than two feet of water) the child/staff ratio is as required for regular classroom activities as specified in §715.417 of this title (relating to Child/Staff Ratios and Groupings), except when the wading/splashing activity includes children under four years of age, at least two adults must be present.]

(A) the center must meet the child/staff ratio for wading;

Figure 4: 40 TAC §715.421(b)(1)(A)

(B) When a child under four years old is in the water, two staff members must supervise.

(2) (No change.)

(c)-(k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

TRD-9702999

C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: September 1, 1997
For further information, please call: (512) 438-3765

◆ ◆ ◆
40 TAC §715.417

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describe the department's regulatory and rulemaking authority.

The repeal implements HRC, Chapters 40 and 42.

§715.417. Child/Staff Ratios and Groupings.

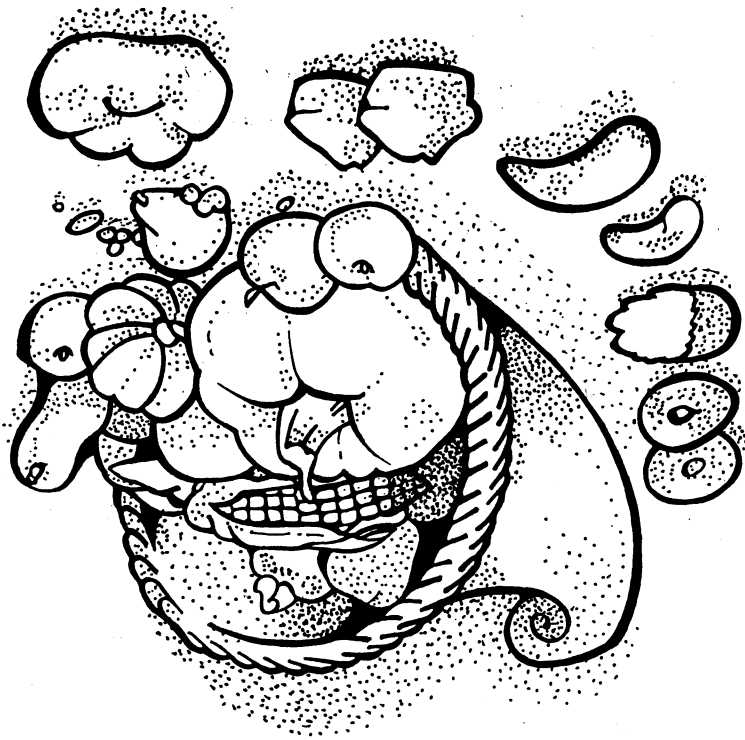
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 4, 1997.

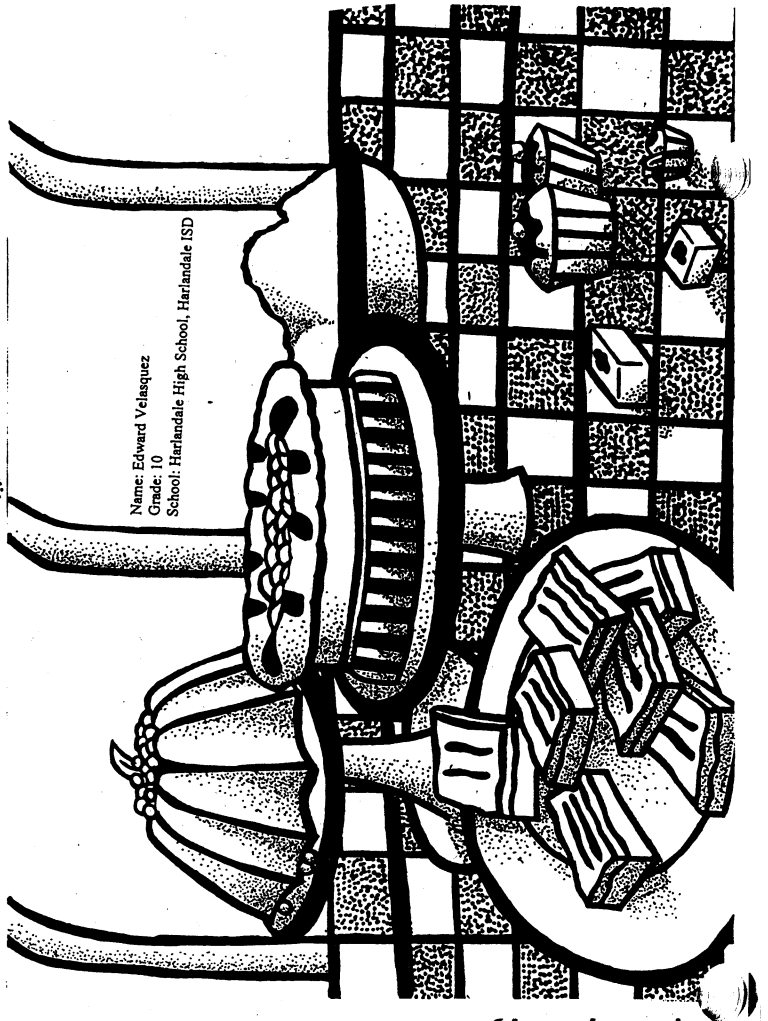
TRD-9702998

C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: September 1, 1997
For further information, please call: (512) 438-3765

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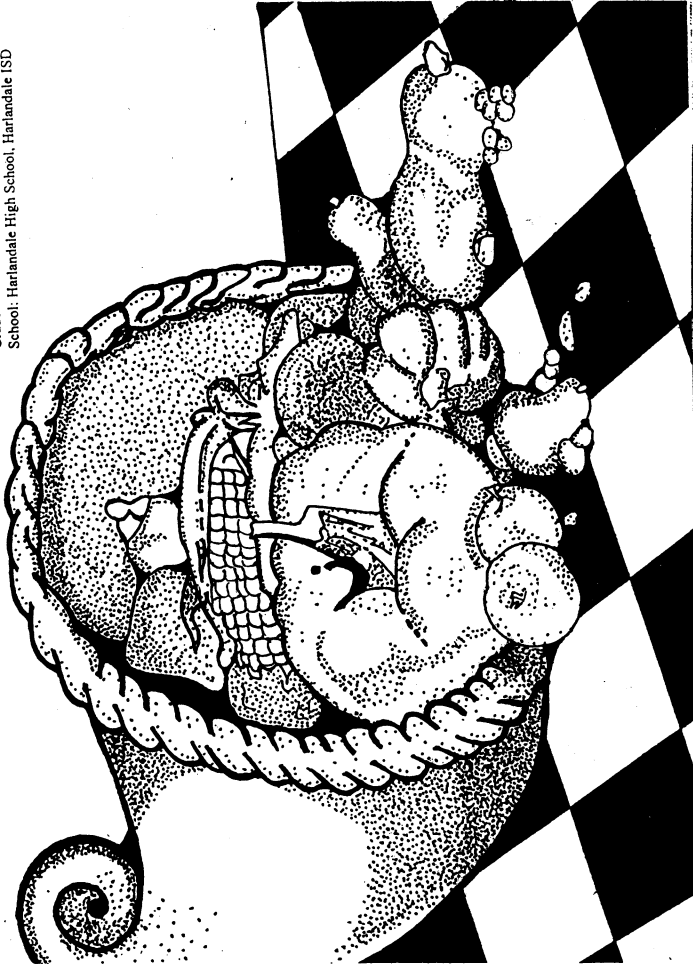


Name: Daniel Ramirez
 Grade: 11
 School: Harlandale High School, Harlandale ISD

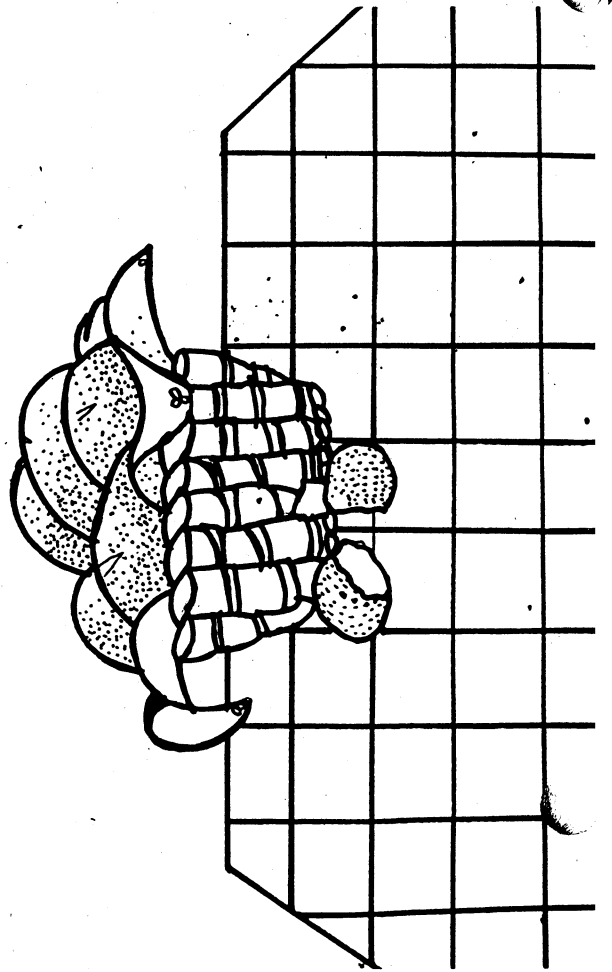


Name: Edward Velasquez
 Grade: 10
 School: Harlandale High School, Harlandale ISD

Name: Jacob Ybarra
 Grade: 12
 School: Harlandale High School, Harlandale ISD



Name: Claudia Silva
 Grade: 10
 School: Harlandale High School, Harlandale ISD



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 143. Medical Radiologic Technologists

The Texas Department of Health (department) adopts amendments to §§143.2, 143.4-143.9, and new §§143.16, 143.19 and 143.20, concerning the regulation of persons performing radiologic procedures. Sections 143.2, 143.4, 143.7, 143.8, 143.9, 143.16, 143.19 and 143.20 are adopted with changes to the proposed text as published in the October 1, 1996, issue of the *Texas Register* (21 TexReg 9399). Section 143.5 and §143.6 are adopted without changes and therefore will not be republished.

The amendments add a definition for cardiovascular; add fees for limited curriculum programs offered by accredited education programs and amendments to training programs; clarify the applicability of the rules and hardship exemptions; establish new and clarify existing application requirements and procedures; establish a new type of certificate and applicant eligibility; add a limited examination for the cardiovascular category; set out new procedures and strengthen the existing standards for the approval of curricula and instructors; identify dangerous or hazardous radiologic procedures; establish hardship exemption criteria and procedures; and establish alternative training requirements for registered nurses (RNs), physician assistants (PAs), and podiatric medical assistants (PMAs) who perform radiologic procedures.

The amendments add a new limited certificate category for cardiovascular; provide administrative procedures that allow general certificate programs to qualify as limited curriculum programs, strengthen the rules related to limited certificate programs, provide an administrative procedure and require submission of fees for amending education programs, and update and clarify the existing rules. The sections as amended update the existing rules so they are consistent with new sections and new legislation, to provide pathways for qualified persons to obtain limited certificates in medical radiologic technology, to strengthen the regulation of limited certificate education programs and to recover the cost of administering the limited certificate education programs.

New §143.16 covers dangerous or hazardous radiologic procedures which may be performed only by a practitioner or medical radiologic technologist (MRT), unless otherwise stated in the

rule. This will assure that the public is protected from the harmful effects of radiation used for medical purposes by regulation specifying that certain procedures should only be performed by persons, such as practitioners, MRTs, limited medical radiologic technologists (LMRTs), RNs, PAs or PMAs who have additional medical or health care training and/or licensure over and above that of a non-certified technician (NCT).

New §143.19 sets out the administrative procedures for applying for and granting hardship exemptions for hospitals, federally qualified health centers and practitioners. The criteria is intended to reflect the statutory language. By providing a procedure for approving bona-fide hardship exemptions from the regulations, this section should minimize the effect of the new regulations on access to care. It is important to note that a person or entity with an approved hardship exemption may not employ a person who is not a practitioner or MRT to perform the procedures listed as dangerous or hazardous in §143.16.

New §143.20 establishes training requirements for RNs, PAs and PMAs which are an alternative to existing §143.17, Mandatory Training Programs for Non-Certified Technicians, adopted in June 1996. This section recognizes the post-secondary school education of RNs and PAs and specifies unique training requirements for persons who will x-ray only the foot and ankle. The particular training requirements for these groups are intended to minimize the possibility of redundant or unnecessary training.

New §§143.16, 143.19 and 143.20 implement Acts 1995, 74th Legislature, Chapter 613 (House Bill 1200), which amends the Medical Radiologic Technologist Certification Act (Act), Texas Civil Statutes, Article 4512m.

A summary of the comments received and the department's responses are as follows.

Comment: Concerning §143.2, a comment was received indicating that the definition of "cardiovascular" was too broad, and speculated that cardiovascular technologists may expand their scope of practice to cover other parts of the circulatory system if the definition was adopted as proposed.

Response: The department agrees and has amended the definition to clearly indicate that the cardiovascular category is limited to the coronary vessels, atria, ventricula, ascending aorta and aortic arch.

Comment: Concerning §143.2, several comments were received in support of the definition of "cardiovascular" and the

new limited certificate category of "cardiovascular" in §143.7, the recognition of the invasive cardiovascular technology exam in §143.8, and recognition of the cardiovascular curriculum in §143.9.

Response: The department agrees and appreciates the support of the commenters.

Comment: Concerning §143.2, a comment was received stating that pediatric radiologic procedures should be removed from §143.16 regarding dangerous or hazardous procedures, and the definition of "pediatric" should be removed from the rules.

Response: The department has agreed to remove the definition of "pediatric" from §143.2. Future rule-making will be needed to address pediatric radiography training for NCTs in §143.17.

Comment: Concerning §143.2, a comment was received stating that the wording of the definition of "pediatric" could be improved.

Response: The department agrees. No changes were made based on the comment. The definition was removed from the rule altogether.

Comment: Concerning §143.4, a comment was received asking if there was a fee for a currently approved training program which adds the new training requirements set out in §143.20.

Response: The department agrees that a fee is needed and has amended §143.4, to add a training program amendment fee.

Comment: Concerning §143.6(c)(2)(B)(iii)(I) and (II) which was proposed for deletion, a commenter questioned the prudence of deleting the subclauses.

Response: The department agrees with the commenter and will retain the language.

Comment: Concerning §143.7(f)(3), a comment was received indicating that there could be confusion as to the meaning of the first sentence.

Response: The department agrees and has changed the wording of the first sentence in the paragraph.

Comment: Concerning §143.8(d), a comment was received stating that a limited certificate is not issued upon successful completion of an examination. Rather, it is issued upon payment of a fee which is determined after the person passes an examination.

Response: The department agrees and wording has been added to clarify the administrative procedure for issuing a limited certificate after a person passes the examination.

Comment: Concerning §143.9(h) regarding instructor qualifications, a comment was received objecting to the new requirement for only classroom teaching experience as qualifying a person to be an approved limited curriculum instructor.

Response: The department agrees with the commenter and has added wording to clarify that classroom or clinical instruction experience qualifies the person to be an approved instructor.

Comment: Regarding §143.9, a comment was received questioning why the department had proposed the new limited category for cardiovascular technology because the preamble of

the essentials and guidelines for the Joint Review Committee in Cardiovascular Technology (JRCCVT) stated it was not the intent that a cardiovascular technologist (CVT) expose patients to ionizing radiation.

Response: No changes were made as a result of the comment. Testimony was provided to the department by the chairman of the JRCCVT explaining that in 1985 when the essentials and guidelines were developed, a representative of the American College of Radiology strongly advocated that the language be added to clarify that the professional education of CVTs was not intended to make radiologic technologists of them. In the intervening 12 years since the essentials were written, the technology had advanced and proliferated dramatically. Often the CVT makes the exposures in a cardiac catheterization laboratory, rather than the cardiologist or an MRT. Furthermore, the department will only issue a limited certificate in the cardiovascular category to CVTs. The department does not intend to make general radiographers out of CVTs. The department, however, acknowledges the formal training and credentialing examination for the cardiovascular category only. The limited medical radiologic technologist (LMRT) certificate issued in CVT does not authorize the performance of radiologic procedures of other anatomical parts. In order to do so, the person must complete the educational requirements for another LMRT category, or complete the educational requirements for the general certificate, or complete the training described in §143.17, relating to mandatory training programs for NCTs.

Comment: Regarding §143.16, a comment was received asking whether chest radiography, which constitutes 20-45% of all radiographs taken according to the commenter, could be performed by anyone.

Response: No changes were made based on the comment. Chest radiography may be performed by an NCT, MRT or LMRT-chest.

Comment: Concerning §143.16, a commenter stated that the rules relating to all radiologic procedures should be the same as the rules relating to mammography.

Response: The department disagrees and no changes were made to the rules as a result of the comment. Section 2.05(g) and (j) of the Act clearly indicate that the Texas Legislature intended for the department to recognize that there were radiologic procedures which could be performed by non-certified persons.

Comment: Concerning §143.16, a comment was received recommending that dangerous or hazardous procedures be classified as Class A or Class B procedures, respectively, to avoid the perceived alarm at the terms "dangerous" and "hazardous."

Response: The department agrees that the terms may have an undesirable connotation but did not accept the comments for changes to the rules. The classification suggested may further complicate or obfuscate the rules. The terms dangerous or hazardous are taken from the statutory language in §2.05(g).

Comment: A comment was received regarding §143.16(b) indicating that NCTs should be permitted to perform dangerous procedures in JCAHO accredited or Medicare certified hospitals. Absent that allowance the commenter stated that the list

should be reconsidered so that RNs and PAs be allowed to perform specific dangerous procedures, as they are today under the direction and supervision of a physician.

Response: The department disagrees and no changes were made as a result of the first comment. Changes were made to §143.16(c)(5), (7), and (8) allowing an RN or PA to perform shoulder girdle radiography, sternum radiography and radiographs involving contrast media, while under the direction and supervision of a practitioner. Corresponding training will be required for the RNs and PAs who will perform the procedures. The additional training will be addressed in future rule-making. Training must be completed by January 1, 1998, or before performing the procedure after January 1, 1998.

Comment: Concerning §143.16(b)(1), a comment was received requesting that diagnostic and therapeutic nuclear medicine procedures be separated so that diagnostic nuclear medicine procedures would be identified as "dangerous," and therapeutic nuclear procedures would be identified as "hazardous."

Response: The department disagrees and no changes were made to the rules based on the comment. There appeared to be no benefit to separating the types of nuclear medicine procedures because procedures identified as either dangerous or hazardous may only be performed by a practitioner or MRT. There are specific dangerous or hazardous procedures which may be performed by LMRTs, RNs and PAs.

Comment: Concerning §143.16(b)(2), a comment asked that the qualifier, "who is appropriately trained," be deleted. The commenter stated that the required training for RNs, and PAs is set out in §143.20 and is crossreferenced in §143.16(a).

Response: The department disagrees and no changes were made to the rules based on the comment. The training specified in §143.20 does not cover dangerous or hazardous radiologic procedures identified in §143.16. The appropriate training for persons handling radioactive materials is determined by the department's Bureau of Radiation Control (BRC) and language was added to clarify this.

Comment: Concerning §143.16(b)(4), a comment was received indicating that the rules should be changed to allow NCTs to perform, under physician direction and supervision, superficial radiotherapy (80 kilovolts) and grenz ray procedures (14 kilovolts) for dermatologic treatments.

Response: The department disagrees and no changes were based on the comment. The rules of the Texas State Board of Medical Examiners (BME) do not authorize such procedures to be performed by registrants under 22 Texas Administrative Code (TAC), §193.7, adopted in 1989. These procedures may only be performed by practitioners, RNs or certified MRTs. The voltage mentioned in the comment for superficial radiotherapy is more than double mammographic voltage of 27 to 38 kVp. Mammography is a radiologic procedures which is regulated by the Mammography Quality Standards Act, and may only be performed by MRTs who have met additional qualifications. It is the training of the operators which impacts the safe administration to patients, not just the low voltages as emphasized by the commenter.

Comment: Regarding §143.16(b)(6), a comment was received indicating that since RNs and PAs in the field today are

performing fluoroscopy and fluorography, the rules should be changed to allow this to continue.

Response: The department agrees with the comments as long as the procedures are performed under the direction and supervision of a practitioner. Changes were made to §143.16(c)(5), (7), and (8) allowing an RN or PA to perform shoulder girdle radiography, sternum radiography and radiographs involving contrast media, while under the direction and supervision of a practitioner. Corresponding training will be required for the RNs and PAs who will perform the procedures. The additional training will be addressed in future rule-making. Training must be completed by January 1, 1998, or before performing the procedure after January 1, 1998.

Comment: A similar comment was received regarding §143.16(c) indicating that NCTs should be permitted to perform some hazardous procedures in JCAHO accredited or Medicare certified hospitals. Absent that allowance the list should be reconsidered so that RNs and PAs be allowed to perform specific procedures such as sternum radiographs, as they are today under the direction and supervision of a physician.

Response: The department disagrees and no changes were made as a result of the first comment. Changes to the rules allowing RNs and PAs to perform sternum radiographs has already been covered.

Comment: Concerning §143.16(c), a comment was received indicating that NCTs should be allowed to perform pediatric chest radiography and KUB's (kidney-urinary bladder) in JCAHO accredited hospitals because JCAHO makes sure that all radiographers have competency for "all age groups..."

Response: The department partially disagrees and no changes were made as a result of the comments. Pediatric radiography was removed from the hazardous list; thus, pediatric chest radiography may be performed by NCTs. KUBs are radiologic procedures which require the use of contrast media. Sometimes sedation is required to obtain a good radiograph. Because of the potential of patient harm due to these additional requirements, contrast media procedures should remain on the list of hazardous procedures.

Comment: Concerning §143.16(c), two commenters asked why oblique spine views could not be performed by NCTs when the rules allowed flexion and extension spine radiography. One commenter wanted oblique spines taken off the list of hazardous procedures and the other wanted flexion and extension views added to the list of hazardous procedures.

Response: The department did not accept the comments for rule changes. Oblique spines are on the list of hazardous procedures due to the high degree of difficulty with positioning and technique, and the high exposure potential of this spinal radiograph.

Comment: Concerning §143.16(c), a commenter asked why portable x-rays of the hand and chest were identified as hazardous.

Response: Portable x-ray machines have a high potential for exposure of persons other than the patient or the technician. Portable x-ray machines, due to the fact that they are mobile, have a higher potential for needed adjustments and mainte-

nance, which minimally trained personnel may not be aware of or may overlook. More training in radiation protection for the patients, self and others and equipment operation and maintenance is required for persons who perform mobile or portable radiography, and should only be performed by an MRT.

Comment: Concerning §143.16(c)(3), a comment was received indicating that some physicians use hand-held, low voltage x-ray units for imaging the hand, forearm and elbow. The commenter stated that NCTs should be allowed to operate the specific model mentioned under the instruction and direction of a practitioner, and that the training should be minimal.

Response: The department partially agrees. No changes were made as a result of the comment. Rules addressing specific types of equipment did not appear to be prudent as they might become quite lengthy, tedious and outdated repeatedly when new models are introduced and others are discontinued. In other words, the issue appears to be a "moving target." Should the U.S. Food and Drug Administration or the department's BRC determine a new classification for these devices or exempt these devices from state regulation, the issue could be addressed through future rule-making. However, the department agreed, on a trial basis, to add a "hardship exemption" to §143.19 for the specific unit used by the commenter for imaging upper extremities only.

Comment: Several comments were received requesting that pediatric procedures be removed from the hazardous procedures list at §143.16(c)(4). The commenters asked that the restrictions for pediatric procedures match the restrictions for adult procedures.

Response: The department agrees and has removed pediatric radiography, excluding extremities, from the rule identifying hazardous procedures. It is important to note here that future rule-making will be needed to address pediatric radiography training for NCTs in §143.17.

Comment: A comment was received asking that all shoulder girdle radiographs be deleted from the list of hazardous procedures in proposed §143.16(c)(6).

Response: The department disagrees and no changes were made to the rules as a result of the comments. There are significant difficulties in positioning for imaging the articulation of the shoulder girdle. The rule now found at §143.16(c)(5) allows four views of the shoulder at the present time: anterior-posterior (AP) and lateral shoulder views, AP scapula and AP clavicle. The rule as specified is necessary to protect the public from the hazardous of excessive radiation used for medical purposes.

With reports indicating repeat exposure rates as high as 67% due to technical errors made by non-certified personnel, the department is very concerned about the impact on the public health. The department continues to receive concerns and complaints about radiographs of non-diagnostic quality which indicate the use of no collimation, wrong film size and poor positioning. Poor quality radiographs predispose physicians to misinterpretations and misdiagnoses. Furthermore, repeated x-rays result in higher costs and more radiation to the patients. The department urges the complainants to file complaints with the BME.

Comments and responses have noted the RNs and PAs may perform shoulder girdle radiography.

Comment: A commenter requested that proposed §143.16(c)(8) be changed to allow RNs and PAs to perform sternum radiographs under the instruction and direction of a practitioner.

Response: The department agrees and has changed the rule now at §143.16(c)(7) to allow RNs and PAs to perform sternum radiographs under the direction and supervision of a practitioner. Caution must be exercised because the sternum is a major blood forming bone. The mammary glands are exposed during sternum radiography. Correct sternum radiography poses a high degree of difficulty in projections and in positioning the patient. Excessive radiation to this part of the body would be hazardous and has the potential of increasing morbidity and mortality.

Comment: A commenter requested that proposed §143.16(c)(9) be changed to allow RNs and PAs to perform radiographic procedures which utilize contrast media if the procedure were performed under the instruction and direction of a physician certified in a medical specialty which utilized the procedure.

Response: The department disagrees. No changes were made to the rule as proposed based on the comments. The suggested verbiage would create problems for radiation control inspectors, complaint investigations, and state-agency administrative staff. Furthermore, the verbiage could be misunderstood by physicians and their staff. The department does not plan to adopt rules which require checking or validating physicians' credentials.

The department agreed to allow RNs and PAs to perform radiographic procedures utilizing contrast media under the direction and supervision of a practitioner in the rule now at §143.16(c)(8).

Comment: A commenter suggested adding a new subsection to §143.16 which addresses the administrative procedure for identifying a dangerous or hazardous radiologic procedure.

Response: The department disagrees and no changes were made to the rules as a result of the comment. The department believes there is no reason to reiterate statutory language from §§2.04(d), 2.05(g) and 2.05(k) in the administrative rules.

Comment: Concerning the effective date of §143.16(i), a commenter recommended postponement of the effective date to allow a transition period for those who are required to comply.

Response: The department agrees and has extended the effective date until June 1, 1997 in §143.16(i)(1).

Comment: Regarding §143.16(i), a comment was received suggesting that additional wording was needed to address the effective date for the section as it applied to RNs or PAs before and after January 1, 1998.

Response: The department agrees and added wording as to procedures performed before January 1, 1998, and those performed after that date. Before performing radiologic procedures on or after January 1, 1998, RNs or PAs must either complete

training under §143.17 or §143.20, or a hardship exemption must be granted under §143.19. See §143.16(i)(2).

Comment: Concerning §143.16(i), many comments were received asking that the effective date of the section be delayed as long as possible due to concerns about Attorney General Letter Opinion 96-077, issued in July 1996 regarding students performing dangerous or hazardous procedures as a part of the educational program approved under §2.05(f) of the Act.

Response: The department disagrees. Following the issuance of another letter opinion on November 5, 1996, indicating the department could issue student certificates which would allow students to perform dangerous or hazardous procedures as a part of an educational program, further clarification was obtained from the Office of the Attorney General. The department added language in §143.16(j) which clarifies the specific circumstances in which students may perform dangerous or hazardous procedures. The department does not anticipate issuing student certificates at this time.

Comment: Concerning §143.19(c)(4)(B), a comment was received indicating that a distance of 50 miles from a school of radiologic technology did not constitute a hardship and that a hardship existed only if the distance was in excess of 200 miles.

Response: No changes were made as a result of the comment. In its original proposal published in the December 22, 1995, issue of the *Texas Register*, the department proposed a distance of 100 miles. Based on comments received in response to the earlier proposal supporting a lesser number of miles, the department reduced the distance for this subsequent proposal.

Comment: A comment was received stating that the hardship exemption in §143.19(c)(4)(B) would not permit an applicant located less than 50 miles from a school to present extenuating circumstances as to why the distance is a hardship, when "the applicant and the school are separated by urban density of suburban sprawl so as to make travel between them a hardship."

Response: The department disagrees and no changes were made to the rules on the basis of the comments. Fifty miles is an appropriate distance for a hardship.

Comment: Concerning §143.19, comments were received indicating that there should be no hardship exemptions adopted.

Response: No changes were made to the rules as a result of the comments. The department is adopting the rules relating to hardship exemptions in response to the statutory language in HB 1200.

Comment: A comment was received concerning the language in §143.19(c)(4)(A). The commenter noted that the terms "comparable" and "area" were not defined. The commenter stated that entities will be unsure of their meaning. The commenter stated that the terms are unnecessary in rule-making.

Response: The department disagrees with the comments and no changes were made to the rules based on the comments. Without the terminology, the department feels that entities could be jeopardized because a salary for an urban area is not a comparable salary for a rural area. Likewise, a comparable

salary in rural west Texas might not be comparable for a rural area in south Texas. Should the terms be applied illogically once the department begins granting hardship exemptions, then perhaps the terminology will need to be revisited in future rule-making

Comment: A comment was received asking that the last sentence in §143.19(c)(4)(A) be deleted. Otherwise, an applicant which needed to hire an MRT would have to submit an affidavit stating its inability to hire an LMRT.

Response: The department disagrees with the rationale and no changes have been made as a result of the comment. The department believes that the language "or LMRT" is appropriate. The ability of the applicant to describe in narrative form its attempts to fill a vacancy may certainly include information relative to the duties to be performed, if pertinent. The department emphasizes that if granted a hardship exemption, the persons at that location could not perform radiologic procedures identified as dangerous or hazardous in §143.16.

Comment: Regarding §143.19, several comments were received concerning the appropriate training requirements for persons performing bone densitometry utilizing x-radiation. The commenters asked that these procedures be exempt from the training requirements in §143.17.

Response: The department agrees with the concerns and has added new language in §143.19(c)(4)(G) to address hardship exemptions for persons operating bone densitometry units.

Comment: Regarding §143.19, a commenter stated the reasons why the training requirements in §143.17 were not appropriate for a particular hand-held fluoroscope utilized for imaging the upper extremities only.

Response: The department agrees, on a trial basis, to consider granting a hardship exemption in this case, but is concerned that the rule will lead to future rule-making burdens addressed in §143.16. Language was added in §143.19(c)(4)(H) to address hardship exemptions for persons operating certain hand-held fluoroscopes for imaging upper extremities only.

Comment: Comments were received asking that additional criteria be included in §143.19, which would allow for a hardship exemption to be granted due to the cost of the mandatory training (tuition, travel expenses, overtime pay and time away from practice), as set out in §143.17 adopted in June 1996, if a practitioner has determined the NCT to be competent.

Response: The department agrees and two additional hardships (I) and (J) were added to §143.19(c)(4) as a result of the comments.

Comment: Concerning §143.16 and §143.19, several commenters raised concerns about access to care.

Response: The department partially agrees with the commenters. The impact on access to care is expected to be minimized by adjusting or rearranging job duties for non-certified persons who perform radiologic procedures identified as dangerous or hazardous in §143.16; practitioners performing radiologic procedures, as necessary, whenever a certified technologist, RN or PA is unavailable; allowing a variety of exemptions in documented hardship situations; and adopting specific training requirements for RNs, PAs, and PMAs. It is important to note

that a practitioner or entity with an approved hardship exemption may not employ a person who is not a practitioner or MRT to perform a procedure listed in §143.16. There are specific radiologic procedures identified in §143.16 which an appropriately trained RN or PA may perform under the direction and supervision of a physician.

Comment: Several commenters had questions concerning costs and accessibility of training programs.

Response: The department agrees and strongly recommends the exercise of responsible consumer choice when selecting the training program which will best fulfill the needs of the trainee. The department is unable to offer or provide the training for RNs, PAs, PMAs or NCTs. The department urges practitioners, medical schools, educational programs, and technologists to proactively respond to the need for cost-effective training programs by setting up innovative training programs using distance learning vehicles. In addition, there are new hardship exemptions in §143.19(c)(4)(G)-(J).

Minor editorial changes were made throughout the rules for clarification purposes and to improve grammar and style.

The following provided comments on the proposed rules: Texas Academy of Family Physicians; Texas Academy of Physician Assistants; Texas Hospital Association; Texas Medical Association; Texas Nurses Association; Texas Osteopathic Medical Association; Texas Society of Radiologic Technologists; Texas Society of Plastic Surgeons; Texas Orthopedic Association; Texas Dermatological Society; El Centro College, Health and Legal Studies Division, Dallas County Community College District; Tyler Junior College; MASI Healthcare Services; Methodist Medical Center- Dallas; Houston Community College; Odessa College, Advanced Healthcare Education Center (AHEC); Austin Community College; Baylor College of Medicine; Blinn College; Houston Area Radiologic Technologist Society; Scott and White Clinic; Thomas Consulting; Baptist Hospital of Southeast Texas, School of Radiologic Technology; Del Mar College; Irving Healthcare System; Texas Medical Clinic; Scenic Mountain Medical Center, School of Radiologic Technology; Amarillo College; Midwestern State University; Texas Hand Center; Lakeland Medical Center; Marshall Regional Medical Center; The Family Doctors; Methodist Hospital-Lubbock; South Plains College; East Texas Society of Radiologic Technologists; Kilgore College; Presbyterian Hospital-Winnsboro; University of Texas Health Science Center - San Antonio; GSMC Medical Imaging; Medical Physics Consultants; and department staff. While none of the commenters were against the rules in their entirety, they expressed concerns, questions and made recommendations.

25 TAC §§143.2, 143.4-143.9, 143.19, 143.20

The amendments and new sections are adopted under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e), which provide the Texas Board of Health (board) with the authority to adopt rules necessary to implement the Act; §2.05(a), concerning rules on certificates, education programs, instructors, and the registry; §2.05(f), concerning minimum standards for mandatory training; §2.09, concerning rules on applications for certificates and approval of curricula, training programs, and instructors; and the Texas Health and Safety Code, §12.001, which provides

the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§143.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Cardiovascular (CV)-Limited to the coronary vessels, atria, ventricula, ascending aorta and aortic arch.

§143.4. Fees.

(a) (No change.)

(b) The schedule of fees is as follows:

(1)-(16) (No change.)

(17) training program application fee-\$350;

(18) training program amendment fee-\$40;

(19) training program renewal fee-\$150;

(20) limited curriculum amendment fee-\$40; and

(21) annual limited curriculum approval fee for general certificate programs - \$225.

§143.7. Types of Certificates and Applicant Eligibility.

(a)-(c) (No change.)

(d) Minimum eligibility requirements for certification. The following requirements apply to all individuals applying for certification who do not meet the requirements of subsections (b) or (c) of this section:

(1)-(5) (No change.)

(6) eligibility for the specific certificate requested as set out in subsections (e), (f), (g), (h), or (i) of this section.

(e) (No change.)

(f) Limited medical radiologic technologist. To qualify for a limited certificate, an applicant shall meet the requirements in paragraph (4) of this subsection and subsection (d) of this section.

(1) The limited categories shall be as follows: skull; chest; spine; extremities; chiropractic; podiatry; and cardiovascular.

(2) (No change.)

(3) Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, bedside radiography, nuclear medicine, and/or radiation therapy procedures. However, a person holding a limited certificate in the cardiovascular category may perform radiologic procedures involving the use of contrast media and fluoroscopic equipment for the purposes of diagnosing or treating a disease or condition of the cardiovascular system.

(4) To qualify for a certificate as an LMRT an applicant must provide documentary evidence satisfactory to the department of the following:

(A) (No change.)

(B) current licensure or registration as an LMRT by another state, District of Columbia, or territory of the United States of America whose requirements are more stringent than or substantially

equal to the requirements for the Texas limited certificate at the time of application to the department; or

(C) current general certification as an MRT issued by the department. The MRT must surrender the general certificate and submit a written request for a limited certificate indicating the limited categories requested. The request shall be postmarked on or before the certificate expiration date and shall be accompanied by the general certificate and the certificate and/or identification card replacement fee.

(g) Temporary medical radiologic technologist (general). To qualify as a temporary medical radiologic technologist (general), an applicant shall meet at least one of the following requirements. These are in addition to those listed in subsection (d) of this section. For the general temporary certificate, an applicant must:

(1) have successfully completed or be within 28 calendar days of successful completion of a course of study in radiography, radiation therapy technology, or nuclear medicine technology which is accredited by the Committee on Allied Health Education and Accreditation (CAHEA);

(2) be approved by the ARRT as examination eligible;

(3) be approved by the NMTCB as examination eligible;

or

(4) be currently licensed or otherwise registered as an MRT by another state, District of Columbia, or territory of the United States whose requirements are not substantially equal to the Texas requirements for certification at the time of application to the department.

(h) Temporary limited medical radiologic technologist. The applicant shall meet at least one of the following requirements. These are in addition to those listed in subsection (d) of this section. The applicant must:

(1) have successfully completed or be within 28 calendar days of successful completion of a limited certificate program in the categories of skull, chest, spine, abdomen or extremities, which is approved in accordance with §143.9(c) of this title (relating to Standards for the Approval of Curricula and Instructors);

(2) be currently enrolled in a course of study in a general certificate program approved in accordance with §143.9(b) of this title (relating to Standards for the Approval of Curricula and Instructors) and have been issued a certificate of completion by the program signifying that the person has completed classroom instruction, clinical instruction, evaluations and competency testing in all areas included in the limited curriculum, as set out in §143.9(e) of this title; or

(3) be licensed or registered as an LMRT by another state, District of Columbia, or territory of the United States whose requirements are not substantially equal to the Texas requirements for certification at the time of application to the department.

(i) Special provisions for technologists on active military duty. An MRT or LMRT whose certificate has expired and was not renewed under §143.10(h) of this title (relating to Certificate Issuance, Renewals, and Late Renewals) may file a complete application for another certificate of the same type as that which expired.

(1) The application shall be on official department forms and be filed with the application processing fee.

(2) An applicant shall be entitled to a certificate of the same type as that which expired based upon the applicant's previously accepted qualification and no further qualifications or examination shall be required except payment of the certification fee.

(3) The application must include a copy of the official orders or other official military documentation showing that the holder was on active duty during any portion of the period for which the applicant was last certified.

(4) An application is subject to disapproval in accordance with §143.6(e) of this title (relating to Application Requirements and Procedures).

(5) An applicant for a different type of certificate than that which expired must meet the requirements of this chapter generally applicable to that type of certificate.

(j) Alternate eligibility. An individual who does not qualify under subsections (a)-(i) of this section may qualify under §143.15 of this title (relating to Alternate Eligibility Requirements).

§143.8. Examinations.

(a)-(c) (No change.)

(d) Approved examination for the limited certificate. An approval letter requesting the limited certification fee shall be issued upon successful completion of the appropriate examination, as follows:

(1)-(4) (No change.)

(5) chiropractic-the ARRT examinations for the limited scope of practice in radiography (spine and extremities);

(6) podiatric-the ARRT examination for the limited scope of practice in radiography (podiatry); or

(7) cardiovascular-the Cardiac Credentialing International invasive registry examination.

(e)-(i) (No change.)

§143.9. Standards for the Approval of Curricula and Instructors.

(a)-(b) (No change.)

(c) Limited certificate programs. All curricula and programs to train individuals to perform limited radiologic procedures must:

(1) be accredited by the JRCERT to offer a limited curriculum in radiologic technology;

(2) be accredited by the Joint Review Committee for Cardiovascular Technology (JRCCVT) to offer a curriculum in invasive cardiovascular technology;

(3) be accredited by JRCERT under subsection (b) of this section; or

(4) be approved by the department and be offered within the geographic limits of the State of Texas. Subsections (d)-(h) of this section apply only to department-approved programs.

(d) Application procedures for limited certificate programs which are not accredited by JRCERT or JRCCVT. An application shall be submitted to the department at least ten weeks prior to the starting date of the program to be offered by a sponsoring institution. Official application forms are available from the department and must be completed and signed by the program director of the sponsoring institution's program. Program directors shall be responsible for

the curriculum, the organization of classes, the maintenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.

(1)-(5) (No change.)

(6) The application shall include:

(A)-(D) (No change.)

(E) a list of clinical facilities, written agreements on forms prescribed by the department from clinical facilities signed by the program director and the chief executive officer(s) of each facility, and clinical schedules, including the following items identified for each clinical site utilized. A clinical facility which is not listed on the application may not be utilized for a student's clinical practicum until the department has accepted the additional clinical facility in accordance with paragraph (10) of this subsection. The items are:

(i)-(v) (No change.)

(vi) copies of the current identification cards issued by the department to the LMRTs or MRTs who will supervise the students at all times while performing radiologic procedures;

(vii) an acknowledgement that the students in a limited curriculum program in the categories of skull, chest, spine, abdomen, extremities, chiropractic or podiatric shall not perform procedures utilizing contrast media, mammography, fluoroscopy, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum; and

(viii) an acknowledgement that the students in a limited curriculum program in the cardiovascular category shall not perform mammography, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum. Such students may only perform radiologic procedures of the cardiovascular system which involve the use of contrast media and fluoroscopic equipment.

(F) clearly defined and written policies regarding admissions, costs, refunds, attendance, disciplinary actions, dismissals, re-entrance, and graduation which are provided to all prospective students prior to registration and by which the program director shall administer the program. The admission requirements shall include the minimum eligibility requirements for certification in accordance with §143.7(c)(1)-(2) of this title (relating to Types of Certificates and Applicant Eligibility).

(G)-(J) (No change.)

(7) (No change.)

(8) In making application to the department, the program director shall agree in writing to:

(A)-(E) (No change.)

(F) keep an accurate record of each student's attendance and participation, evaluation instruments and grades, clinical experience including radiation exposure history, and subjects completed for not less than five years from the last date of the student's attendance. Such records shall be made available to examining boards, regulatory agencies, and other appropriate organizations, if requested;

(G)-(J) (No change.)

(9) (No change.)

(10) Following program approval, a written request(s) for amendment(s) shall be submitted to and approved by the department in advance of taking the anticipated action. The request to add or drop an instructor, clinical site, category of instruction, program director or other change, shall be accompanied by the limited curriculum program amendment application and fee in accordance with §143.4 of this title (relating to Fees).

(e)-(f) (No change.)

(g) Instructor approval for limited certificate programs.

(1) All persons who plan to or who will provide instruction and training in the limited certificate courses of study or programs shall:

(A)-(C) (No change.)

(2)-(4) (No change.)

(h) Instructor qualifications for limited certificate programs.

(1) An instructor(s) shall have education and not less than six months classroom or clinical experience teaching the subjects assigned, shall meet the standards required by a sponsoring institution, if any, and shall meet at least one or more of the following qualifications:

(A)-(C) (No change.)

(2) (No change.)

(i) Transition. Limited certificate programs approved as of June 28, 1996, shall have one year to comply with the requirements adopted on June 28, 1996. Limited certificate programs approved after June 28, 1996, shall comply with the requirements in effect at the time of application to the department.

(j) Application procedures for limited certificate programs accredited by JRCERT or JRCCVT.

(1) Application shall be made by the program director on official forms available from the department.

(2) The application must be notarized and shall be accompanied by the following items:

(A) the limited curriculum application fee, in accordance with §143.4 of this title (relating to Fees);

(B) a copy of the current accreditation issued to the program by the JRCERT;

(C) a description in narrative and/or table format clearly indicating that the curriculum of the general certificate program and the sequencing of the curriculum are equal to the limited certificate curriculum; and

(D) an agreement to allow the department to conduct an administrative audit of the program to determine compliance with this section.

§143.19. Hardship Exemptions.

(a) Purpose. The purpose of this section is to set out the procedure for applying for a hardship exemption under the Medical Radiologic Technologist Certification Act (Act), §2.05(i) and (j) for a hospital, federally qualified health center (FQHC), or practitioner.

(b) General.

(1) A hospital, FQHC or practitioner may apply to the Texas Department of Health (department) for an exemption from employing a medical radiologic technologist (MRT), limited medical radiologic technologist (LMRT), or non-certified technician (NCT).

(2) The applicant must demonstrate a hardship as described in subsection (c)(4) of this section in employing an MRT, LMRT, or NCT.

(3) The applicant shall not allow a person who is not an MRT, LMRT, or NCT to perform a radiologic procedure until the department grants a hardship exemption.

(4) A hardship exemption granted by the department does not constitute licensure, certification, registration, or authorization to perform a dangerous or hazardous radiologic procedure or mammography.

(c) Required application materials.

(1) The applicant must apply for a hardship on the forms prescribed by the department. The date of application shall be the date the application is postmarked. If there is no visible postmark, or if the application is hand-delivered, the application date shall be the date the administrator received the application.

(2) The application must be accompanied by documentation clearly indicating that the applicant is a licensed hospital, FQHC or licensed practitioner. A copy of the current hospital license, certificate of qualification issued to the FQHC, or current license of the practitioner shall be acceptable documentation.

(3) If the application is from a hospital or FQHC, the administrator or chief executive officer of the hospital or FQHC must sign the application form. If the applicant is a practitioner, the practitioner must sign the application form.

(4) The application shall be accompanied by one or more of the following:

(A) if the applicant is unable to attract or retain an MRT or LMRT, a sworn affidavit describing in narrative form the applicant's attempts to attract and retain an MRT or LMRT at a comparable salary for the area;

(B) if the applicant is located more than 50 highway miles from the nearest school of medical radiologic technology approved in accordance with §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors), a sworn affidavit describing in narrative form the physical address of the nearest school of medical radiologic technology; the physical address of the applicant hospital, FQHC, or primary practice location of the practitioner; and the actual distance in highway miles between the school and the applicant hospital, FQHC, or practitioner's primary practice. The applicant shall include a map of the area clearly indicating the locations of each entity;

(C) if the nearest school of medical radiologic technology approved in accordance with §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) has a waiting list of school applicants due to a lack of faculty or space, a sworn affidavit from the applicant indicating that admissions to the school are pending because of a lack of faculty or space;

(D) if the need for graduates in medical radiologic technology of the applicant exceeds the number of graduates from the nearest school of medical radiologic technology approved in ac-

cordance with §143.9 of this title, a sworn affidavit from the applicant indicating that the number of graduates from the nearest school does not meet the applicant's needs for radiologic technologists;

(E) if emergency conditions have occurred during the 90 days prior to making application for the hardship exemption, a sworn affidavit from the applicant describing the emergency conditions, the hardship(s) the emergency conditions have created and how long the hardship(s) is anticipated to continue. For the purposes of this subparagraph, emergency conditions may include a disaster, epidemic, or other catastrophic event;

(F) documentation that the United States government has declared a state of war;

(G) if the equipment operated is a bone densitometry unit(s) which utilizes x-radiation, a sworn affidavit from the applicant indicating the name of the person operating the equipment and proof that the person has completed at least 20 hours of training as follows:

(i) specific bone densitometry equipment utilizing x-radiation to be used by the operator-16 hours presented by a medical radiologic technologist (MRT) or an equipment applications specialist knowledgeable of the specific equipment to be utilized; and

(ii) radiation safety and protection for the patient, self and others - 4 hours presented by an MRT or a licensed medical physicist within the 24-month period prior to application or reapplication for a hardship exemption;

(H) if the applicant uses only a hand-held fluoroscope with a maximum operating capability of 65 kilovolts and 1 milliamperere, or a similar type of x-ray unit for imaging upper extremities only, at the location indicated on the application form and the applicant believes that the radiation produced by the radiographic equipment represents a minimal threat to the patient and the operator of the equipment, the following is required to be submitted:

(i) a copy of the current certificate of registration issued by the Bureau of Radiation Control; and

(ii) a sworn affidavit describing the equipment used; the types of radiographs performed; the training completed by the operator of the equipment within the 24-month period prior to application or reapplication for a hardship exemption; the date(s) the training was completed by the operator; the radiation safety measures taken for the patient, operator and others; the level or amount of supervision provided by an MRT or a practitioner(s) to the operator while performing the radiographic procedure; and the equipment manufacturer's specifications for the diagnostic radiographic equipment utilized at the location indicated on the application form, including the maximum operating capability;

(I) if the applicant employs, for the purpose of performing radiologic procedures, a person registered in accordance with rules adopted under §2.08 of the Act on or before January 1, 1998, a sworn affidavit indicating the name(s) of the person(s) and proof that the person(s) was registered on or before January 1, 1998. Such affidavit shall be on a form attesting that the training under §143.17 or §143.20 of this title (relating to Medical Radiologic Technologists) causes a fiscal hardship for the applicant. The affidavit shall include a statement that the person(s) performing radiologic procedures is adequately supervised and trained for the procedures being performed. If the applicant is a practitioner or FQHC, the person who will perform radiologic procedures must be registered in accordance with

rules adopted under §2.08 of the Act at the time of application for the hardship exemption. If the person who will perform radiologic procedures is not an RN, the name of the practitioner for whom the radiologic procedures are performed, as named on the current registration permit, shall match the name or location of the applicant for whom the hardship is granted; or

(J) if the applicant is a hospital accredited by the Joint Commission on the Accreditation of Health Care Organizations or which participates in the federal Medicare cost reimbursement program, an original letter on hospital letterhead stating the name(s) of the person(s) performing radiologic procedures in compliance with §2.07(d) of the Act on or before January 1, 1998. The letter shall be accompanied by a sworn affidavit from the applicant attesting that the training under §143.17 or §143.20 of this title causes a fiscal hardship for the applicant. The affidavit shall include a statement that the person(s) performing radiologic procedures is adequately supervised and trained for the procedures being performed.

(5) All application materials and information are subject to verification by the department.

(6) The department shall send a written notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of the written notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(d) Application approval.

(1) The administrator shall be responsible for reviewing all applications. The administrator shall approve any application which is in compliance with this section and which properly documents applicant eligibility.

(2) If granted by the department, a letter of exemption shall be issued for a period of one year.

(e) Disapproved applications.

(1) The department shall disapprove the application if the applicant has not met the application requirements set out in this section or has failed or refused to complete or submit any form or documentation required by the department to verify the eligibility for the exemption.

(2) If the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the disapproval. The applicant may appeal the decision to the associate commissioner over the administrator by submitting a written request within ten days after receipt of the written notice of the reason(s) for the disapproval.

(3) Based upon the application and any additional information submitted by the applicant or the administrator, the associate commissioner shall approve or disapprove the application.

(4) An applicant whose application has been disapproved under this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit a new application and supporting information. The applicant may reapply for an exemption anytime the basis for the exemption application changes.

(f) Application processing. The department shall use the same process as described in §143.6(f) of this title (relating to

Application Requirements and Procedures), except the time periods are as follows:

- (1) letter of acceptance-30 days;
- (2) letter of application deficiency-30 days;
- (3) letter of approval-42 days; and
- (4) letter of denial of exemption-42 days.

(g) Reapplication for hardship exemption.

(1) The hospital, FQHC, or a practitioner must reapply annually for the exemption and meet the then current requirements for a hardship exemption.

(2) A hospital, FQHC, or a practitioner who does not reapply for an exemption shall not allow a person to perform a radiologic procedure unless the person is a practitioner, MRT, LMRT, or NCT.

§143.20. *Alternate Training Requirements.*

(a) Purpose. The purpose of this section is to set out the minimum standards for registered nurses (RNs), physician assistants (PAs) and podiatric medical assistants (PMAs).

(b) Instructor direction required. All hours of the training program completed for the purposes of this section must be live and interactive and directed by an approved instructor. Distance learning activities and audiovisual teleconferencing may be utilized, provided these include two-way, interactive communications which are broadcast or transmitted at the actual time of occurrence. Appropriate on-site supervision of persons participating in the distance learning activities or teleconferencing shall be provided by the approved training program. No credit will be given for training completed by self-directed study or correspondence.

(1) Effective January 1, 1998, before an RN or PA performs a radiologic procedure, the RN or PA must complete the hours stated in subsection (d) of this section, or the hours stated in §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians).

(2) Effective January 1, 1998, before a PMA performs a radiologic procedure, the PMA must complete the hours stated in subsection (e) of this section, or the hours stated in §143.17(d) of this title (relating to podiatric radiologic procedures).

(3) Individuals who complete training approved under this section may not use that training toward the educational requirements for a general or limited certificate as set out in §143.7 of this title (relating to Types of Certificates and Eligibility).

(c) Approved instructors.

(1) For purposes of this section, an individual is approved by the Texas Department of Health (department) to teach in a training program if the individual meets the requirements of §143.9(h)(1)-(2) of this title (relating to Standards for the Approval of Curricula and Instructors). The application for the training program must demonstrate that the instructors meet the qualifications. No application for individual instructor approval is required.

(2) A limited medical radiologic technologist (LMRT) may not teach, train, or provide clinical instruction in a portion of a training program which is different from the LMRT's level of certification. For example, an LMRT holding a limited certificate

in the chest and extremities categories may not participate in the portion of a training program relating to radiologic procedures of the spine. The LMRT may participate in the portions of the training program which are of a general nature and those specific to the specific categories on the limited certificate.

(d) Training requirements for registered nurses and physician assistants. A training program preparing RNs and PAs to perform radiologic procedures shall be designed to build on the health care knowledge base and skills acquired through completion of an educational program that qualifies the person for licensure as an RN or PA. The training shall consist of:

(1) a minimum of 32 classroom hours of coursework that are fundamental to diagnostic radiologic procedures covering all of the following items:

- (A) radiation safety and protection for the patient, self, and others-10 classroom hours;
- (B) radiologic equipment-10 classroom hours;
- (C) image production and evaluation-10 classroom hours; and
- (D) methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects-two classroom hours; and

(2) one or more of the following units of classroom instruction in radiologic procedures:

- (A) chest and abdomen (non-pediatric)-eight classroom hours;
- (B) spine (non-pediatric)-eight classroom hours;
- (C) skull (non-pediatric)-eight classroom hours;
- (D) extremities (including pediatric)-eight classroom hours; and

(3) if the RN or PA will perform pediatric radiologic procedures other than extremities, a minimum of two classroom hours for each of the areas identified in paragraph (2)(A)-(C) of this subsection.

(e) Training requirements for podiatric medical assistants.

(1) In order to successfully complete a program, a PMA must complete the following training:

- (A) radiation safety and protection for the patient, self, and others-10 classroom hours;
- (B) radiographic equipment used in podiatric medicine, including safety standards, operation, and maintenance-3 classroom hours;
- (C) podiatric radiologic procedures, imaging production and evaluation - 5 classroom hours; and
- (D) methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects-2 classroom hours.

(2) Successful completion of PMA training allows the PMA to perform radiologic procedures only under the instruction or direction of a podiatrist.

(f) Application procedures for training programs. The Texas Department of Health (department) shall use the same process as described in §143.17(e) of this title.

(g) Application materials. The department shall require the same materials as described in §143.17(f) of this title.

(h) Application approval. The department shall use the same process as described in §143.17(g) of this title.

(i) Application processing. The department shall use the same process as described in §143.17(h) of this title.

(j) Renewal. The department shall use the same process as described in §143.17(i) of this title.

(k) Previously completed training. A person who has completed part or all of the training described in subsections (d) or (e) of this section shall be considered to have completed an approved training program for part or all of the training but shall be required to complete the remainder of the training program described in subsections (d) or (e) of this section prior to the person's placement on the registry, as set out in §143.18 of this title (relating to Registry of Non-Certified Technicians).

(1) Unless the person is an RN or PA, the previously completed training shall be acceptable only if completed within two years of the time of the person's initial placement on the registry.

(2) Previously completed training shall be acceptable only if it was:

(A) completed at an education program approved under §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) or §143.17 of this title;

(B) live, inter-active, and instructor-directed and meets the requirements for acceptance as continuing education credit for medical radiologic technologists or LMRTs as set out in §143.11 of this title (relating to Continuing Education Requirements); or

(C) accepted for continuing education credits by the Board of Nurse Examiners.

(3) If a person has completed part of the training described in subsections (d) or (e) of this section, the program director of the training program shall verify that the previously completed hours comply with this section.

(4) If a person has completed all of the training described in subsections (d) or (e) of this section, the department shall verify that the previously completed hours comply with this section at the time of the person's placement on the registry.

(5) Verification of previously completed training shall be made by reviewing only original certificates, official transcripts, printed course curriculum, syllabi, outlines or other documentation acceptable to the department issued in the name of the person who is seeking credit for previously approved training. Photocopied certificates or transcripts will be not accepted for review.

(6) This subsection shall expire on January 1, 1998.

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

Issued in Austin, Texas, on March 4, 1997.

TRD-9703011

Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: March 24, 1997
Proposal publication date: October 1, 1996
For further information, please call: (512) 458-7236

25 TAC §143.16

The new section is adopted under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e), which provide the Texas Board of Health (board) with the authority to adopt rules necessary to implement the Act; §2.05(a), concerning rules on certificates, education programs, instructors, and the registry; §2.05(f), concerning minimum standards for mandatory training; §2.09, concerning rules on applications for certificates and approval of curricula, training programs, and instructors; and the Texas Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§143.16. *Dangerous or Hazardous Procedures.*

(a) Purpose. The purpose of this section is to identify the radiologic procedures which are dangerous or hazardous and may only be performed by a practitioner, medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT). There are specific procedures identified in subsections (b) and (c) of this section which may be performed by a registered nurse (RN) or a certified physician assistant (PA) trained under §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) or §143.20 of this title (relating to Alternative Training Programs). A person trained under §143.17 or §143.20 of this title (relating to Medical Radiologic Technologies) and placed on a registry under §143.18 of this title (relating to Registry of Non-Certified Technicians) is not an MRT, LMRT or otherwise certified under the Medical Radiologic Technologist Certification Act (Act) and shall not perform a dangerous or hazardous procedure identified in this section unless expressly permitted under this section.

(b) Dangerous procedures identified. Unless otherwise noted, the list of dangerous procedures which may only be performed by a practitioner or MRT are:

- (1) nuclear medicine studies;
- (2) administration of radio-pharmaceuticals, unless performed by an RN or PA who is appropriately trained as authorized by the department's Bureau of Radiation Control for licensure of radioactive materials;
- (3) radiation therapy, including brachytherapy;
- (4) computed tomography (CT) or any variation thereof;
- (5) interventional radiographic procedures, including angiography, unless performed by an LMRT with a certificate issued in the cardiovascular category;
- (6) fluoroscopy and/or fluorography, unless performed by an LMRT with a certificate issued in the cardiovascular category, or by an RN or PA who performs the procedure under the direction and supervision of a practitioner; and

(7) cineradiography, unless performed by an LMRT with a certificate issued in the cardiovascular category.

(c) Hazardous procedures identified. Unless otherwise noted, the list of hazardous procedures which may only be performed by a practitioner or MRT are:

- (1) conventional tomography;
- (2) skull radiography, excluding anterior-posterior/posterior-anterior (AP/PA), lateral, Townes, Caldwell, and Waters views;
- (3) mobile radiography;
- (4) spine radiography, excluding AP/PA, lateral and lateral flexion/extension views;
- (5) shoulder girdle radiographs, excluding AP and lateral shoulder views, AP clavicle and AP scapula, unless performed by an RN or PA who performs the procedure under the direction and supervision of a practitioner;
- (6) pelvic girdle radiographs, excluding AP or PA views;
- (7) sternum radiographs, unless performed by an RN or PA who performs the procedure under the direction and supervision of a practitioner; and
- (8) radiographic procedures which utilize contrast media, unless performed by an RN or PA who performs the procedure under the direction and supervision of a practitioner.

(d) Performance of a hazardous procedure by an LMRT. An LMRT may perform a radiologic procedure listed in subsection (c) of this section only if the procedure is within the scope of the LMRT's certification, as described in §143.7(f) of this title (relating to Types of Certificates and Applicant Eligibility).

(e) Performance of a dangerous or hazardous procedure by a practitioner. This section does not authorize a practitioner to perform a radiologic procedure which is outside the scope of the practitioner's license.

(f) Dental radiography. This section does not apply to a radiologic procedure involving a dental x-ray machine, including panorex or other equipment designed and manufactured only for use in dental radiography.

(g) Mammography. In accordance with the Health and Safety Code, §401.421 et seq, mammography is a radiologic procedure which may only be performed by an MRT (not an LMRT) who meets the qualifications set out in §289.230(d)(2) of this title (relating to Mammography). Mammography shall not be performed by a practitioner, an LMRT, an NCT, or any other person.

(h) Prohibited act. A person who performs a dangerous or hazardous procedure in violation of the Act, §2.13(a)(1) commits a Class B misdemeanor, punishable by up to 180 days in jail or a fine up to \$2,000, or both.

(i) Effective date.

- (1) This section shall become effective on June 1, 1997.
- (2) Until January 1, 1998, an RN or PA may perform procedures listed in subsections (b)(2), (b)(6), (c)(5), (c)(7), or (c)(8) of this section under the direction and supervision of a practitioner. On or after January 1, 1998, an RN or PA must be trained under

§143.17 or §143.20 of this title, or have been approved to perform radiologic procedures under a hardship exemption granted under §143.19 of this title (relating to hardship exemptions), in addition to performing the listed procedure under the direction and supervision of a practitioner.

(j) Student performance of dangerous or hazardous procedures. The procedures identified in this section are not considered dangerous and hazardous for purposes of §2.05(g) of the Act if the person performing the procedures is a student enrolled in a program which meets the minimum standards adopted under §2.05 of the Act and if the person is performing radiologic procedures in an academic or clinical setting as part of the program. Therefore, such students may perform these procedures in such settings. Students may not perform procedures in an employment setting.

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

Issued in Austin, Texas, on March 4, 1997.

TRD-9703010

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: March 24, 1997

Proposal publication date: October 1, 1996

For further information, please call: (512) 458-7236

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 406. ICF/MR Programs

Subchapter B. Contracting Requirements

25 TAC §§406.51-406.67

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of existing §§406.51-406.67 of Chapter 406, Subchapter B, governing Contracting Requirements. The repeal accommodates the contemporaneous proposal of new §§406.51-406.67 in this issue of the *Texas Register*. Existing §§406.51-406.67 are repealed without changes to the proposed text as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12362).

The repeals would enable the addition of new sections to Chapter 406, Subchapter B.

There was no oral or written testimony regarding the repeal at a public hearing held on January 13, 1997.

The repeals are adopted under the Health and Safety Code, §532.015(a), relating to Rules and Policies, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Government Code, §531.021, relating to Administration of Medicaid Programs, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects Texas Human Resources Code, §§32.001-32.040, relating to General Provisions, and Texas Government Code, §531.021, relating to Administration of Medicaid Programs.

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

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

TRD-9703057

Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: March 25, 1997

Proposal publication date: December 24, 1997

For further information, please call: (512) 206-4516

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§406.51-406.67 of Chapter 406, Subchapter B, governing Contracting Requirements. Sections 406.51, 406.53, 406.57 and 406.61-406.67 are adopted with changes to the proposed text as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12362). Sections 406.52, 406.54-406.56, and 406.58-406.60 are adopted without changes. Existing §§406.51-406.67 are contemporaneously repealed in this issue of the *Texas Register*.

The new sections remove the one-half mile location requirement for ICFs/MR and delete programmatic requirements that are no longer applicable to the ICF/MR provider application process.

Minor changes were made throughout the subchapter to consolidate information, provide or correct references, and correct grammatical usage. In §406.51(c)(5), clarifying language was added and the term "individual's guardian" was changed to "guardian of the estate." In §406.51(c)(10), clarifying language was added addressing an individual's right to make decisions concerning his/her medical care and formulate advance directives. In §406.53(d), clarifying language was added addressing an extensions for applicants in obtaining certification. In §406.61, language was deleted which allowed contract termination if the department determined it was in its best interest.

A public hearing was held on January 13, 1997, no testimony was presented. Written comments were received from Private Provider Association of Texas, Austin and the Reimbursement Advisory Panel of TDMHMR, Austin.

Two commenters requested that all references to "resident" be changed to "consumer." The department responds by making the requested modifications.

Regarding §406.51(c)(5), two commenters suggested replacing the term "individual's guardian" to "guardian of the estate" to avoid conflict with program standards. The department responds by making the requested modifications.

Regarding §406.51(c)(6) and (8), two commenters stated that the department previously made assurances it would add clarifying language to the paragraph. The department responds that it is actively seeking clarifying language in the form of federal guidelines. The department, however, was unable to

identify the federal guidelines cite before the subchapter was scheduled to be adopted. Federal employees are currently researching the Social Security regulations in an attempt to locate the guidelines necessary for clarification. The rule will be amended when the federal guidelines are identified.

Regarding §406.57, two commenters suggested adding language clarifying that providers are not expected to seek approval of consultant subcontracts commonly used in the provision of professional services. The department responds by adding clarifying language.

Regarding §406.61(a), two commenters requested that language indicate contract termination occurs only for cause, i.e., significant contract violations that remain uncorrected. The department responds by deleting language allowing contract termination if it is in the department's best interest.

Regarding §406.62(g), two commenters questioned if this subsection is consistent with Home and Community-based Services rules on the same issue and with the new level-of-need rules. The department responds by ensuring consistency in affected rules.

Regarding §406.64(a)(3)(B), two commenters suggested including a reference to materiality and intent to ensure that the rules are not used unfairly. The department responds that if an administrative hearing is requested to appeal the issue, then the administrative law judge will determine materiality and intent.

Two commenters identified several references to Chapter 409 which should be Chapter 406. The department responds by correcting the references.

The new sections are adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Government Code, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

§406.51. Participation Requirements.

(a) To participate in the Title XIX Texas Medical Assistance Program and receive state and federal reimbursements for services to eligible individuals, Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) must satisfy the following conditions.

(1) The facility must have an approved application on file with the Medicaid Administration section of the Texas Department of Mental Health and Mental Retardation (TDMHMR) or its designated agent to participate as an ICF/MR in the Title XIX Texas Medical Assistance Program, as specified in §406.52 of this title (relating to Application for Enrollment (General Provisions)) and §406.53 of this title (relating to Provider Application Requirements Specific to ICF/MR).

(2) The Texas Department of Human Services (TDHS) must have furnished TDMHMR or its designated agent with a valid certification for the facility.

(3) The facility's owner or authorized representative must have a written contract with the department to provide services to eligible individuals.

(4) When applicable, the facility must be currently licensed under TDHS minimum licensing standards for facilities serving people with mental retardation or a related condition.

(b) Each facility must comply with federal and state standards for participation on an ongoing basis as stated in its contract. To continue participating, facilities must immediately correct deficiencies affecting the health and safety of clients. Failure to correct deficiencies under the contract or under federal or state standards within specified time periods is cause for immediate suspension of vendor payments and may result in contract suspension, cancellation, or other actions including, but not limited to:

- (1) requesting payment of valid audit exceptions, and
- (2) requiring contract compliance by a specified date.

(c) No participating facility may engage in any of the following restrictive practices:

- (1) requiring an individual to make a will designating the facility as a legatee or devisee;
- (2) requiring an individual to assign life insurance to the facility;
- (3) requiring an individual to transfer property to the facility;
- (4) requiring an individual to pay a lump-sum entrance fee or make any other payment or concession to the facility beyond TDMHMR or its designated agent's recognized rates for room, board, and care;

(5) inappropriately restricting an individual, the guardian of the estate, or any other responsible party in the use of the individual's personal needs allowance;

(6) prohibiting an individual from leaving the facility at will except as provided by state law;

(7) preventing an individual from applying for Medicaid for a specified period of time;

(8) withholding services from an individual solely because the individual has refused to accept a particular dosage of medication or a particular method of administering it;

(9) denying appropriate care to an individual because of the individual's race, religion, color, national origin, sex, age, handicap, marital status, or source of payment; and (10) preventing an adult from exercising the right to make decisions concerning the individual's medical care, or to formulate advance directives.

(d) Each contracting facility must comply with the Civil Rights Act of 1964, Title VI (Public Law 88-352); the Rehabilitation Act of 1973, §504 (Public Law 93-112); the Americans with Disabilities Act of 1990 (Public Law 101-336); and all amendments to these acts and all requirements imposed by the regulations issued under these acts. These acts and regulations prohibit persons in the United States from being excluded from participation in, or denied, any aid, care, service, or other benefits provided by federal and/or state funding, or otherwise being subjected to any discrimination on the basis of race, color, national origin, sex, age, disability, or religion. In addition, each facility must comply with Chapters 81 and 85 of the Texas Health and Safety Code (relating to workplace and confidentiality guidelines regarding human immunodeficiency virus

(HIV) and acquired immune deficiency syndrome (AIDS)), and Texas Administrative Code, Title 40, Chapter 73.

(e) Each contracting facility must comply with applicable TDMHMR contracting rules in Chapter 401, Subchapter E, of this title (relating to Contracts Management) and Chapter 401, Subchapter D of this title (relating to Contracts Management for Community-Based Services). If there is a conflict between the applicable sections of those subchapters and the provisions of this subchapter, the provisions of this subchapter will prevail.

§406.53. Provider Application Requirements Specific to ICF/MR.

(a) The words and terms in paragraphs (1)-(3) of this subsection, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant-The individual(s) and/or entities specified on TDMHMR's or its designated agent facility ownership information form who:

- (A) operate a for-profit organization,
- (B) serve as the authorizing entity for a nonprofit organization, or
- (C) have management or ownership control.

(2) Affiliate-An individual or entity associated with either the applicant or the facility so that any one of them directly or indirectly controls or has the power to control one another in whole or in part.

(3) Designated representative-The chief executive officer, the chief financial officer, the president or executive director, or other individual who serves in an upper management, decision-making capacity and has financial responsibility for the proposed facility.

(b) All applicants for participation in the ICF/MR program must submit an application to the TDMHMR or its designated agent for review and approval. The application must include documentation to verify the applicant's ability to ensure the delivery of quality care and services.

(1) The documentation submitted must indicate that the following persons will have completed the ICF/MR preapplication training course prior to approval of the application:

- (A) the applicant and/or a designated representative, other than a consultant; and/or
- (B) the individual who will be responsible for the direct management of the facility; or
- (C) those who, at the time of application, are not owners of an ICF/MR facility in the Texas ICF/MR program.

(2) If the employment status of the persons specified in paragraph (1) of this subsection changes prior to approval of the application, approval of the application will be postponed until the appropriate persons complete the training.

(c) All applications must meet the requirements specified in paragraphs (1)-(3) of this subsection.

(1) Requested certification is limited to a maximum of six beds per facility. This includes new facilities seeking initial certification and currently certified facilities seeking to increase the certified bed capacity.

(2) The proposed facility is in compliance with applicable special use permit requirements, local zoning, and/or occupancy code requirements, and §406.51 of this title (relating to Participation Requirements).

(3) The proposed facility must submit documentation to verify that the mental retardation authority (MRA) in whose catchment area the proposed facility is located has been notified of the development of the proposed facility and the proposed facility's admission criteria.

(d) The applicant has 270 calendar days from the date an application for participation in the ICF/MR program has been approved by TDMHMR or its designated agent to obtain certification by TDHS. If, at the end of the 270 calendar day period, the provider is unable to obtain certification, the request for program participation will be withdrawn by TDMHMR or its designated agent and the application will be returned to the applicant.

(1) TDMHMR or its designated agent may grant applicants one 90- calendar-day extension for new construction delayed by inclement weather, natural disaster, construction strike, requirements of governmental entities other than the survey agency, or other causes beyond the provider's control. New construction does not include renovations or modifications to existing structures. The request for the extension must:

(A) be submitted in writing to TDMHMR or its designated agent prior to the end of the 270 calendar day period, and

(B) include documentation to support the circumstance which caused the delay.

(2) If there is a delay by the survey agency that is not the fault of the applicant which results in failure to obtain certification within the 270-calendar-day period, TDMHMR will grant an extension to enable completion of the process. The extension will continue until the date of the scheduled survey. A copy of the notification granting an extension will be forwarded to the provider and other governmental entities as appropriate.

(3) Extension periods due to litigation may be granted:

(A) until litigation is resolved, plus 270 days if construction was stopped because of a court order, but in no event will the extension period be longer than two years; or

(B) for a length of time at TDMHMR's discretion, if:

(i) there was no construction; or

(ii) construction was not stopped as provided in subparagraph (A) of this paragraph.

(4) If an applicant must change locations following application approval by TDMHMR or its designated agent, the change in location must:

(A) be requested within the first 30 days from the date of the original application approval and include the relocation information required by TDMHMR or its designated agent;

(B) meet all requirements set forth in this section and be approved by TDMHMR Medicaid Administration or its designated agent;

(C) remain within the same general geographic region as the previously approved location; and

(D) not alter the applicant's ability to obtain certification within the 270-calendar-day period set forth in this subsection.

(e) TDMHMR will approve applications that meet all requirements set forth in this section and are within the service capacity set forth in The Plan on Long-Term Care for People with Mental Retardation or Related Conditions. Applications that have not received approval from TDMHMR or its designated agent within a 90-calendar-day period from the date submitted will be withdrawn from the review process and returned to the applicant.

(1) TDMHMR or its designated agent reserves the right to deny the approval of any application if the applicant or an affiliate has been excluded from Medicaid program participation under Chapter 409, Subchapter C of this title (relating to Fraud and Abuse and Recovery of Benefits) or debarred from contracting with TDMHMR in accordance with this subchapter. TDMHMR or its designated agent also reserves the right to postpone the approval of any application if the applicant or an affiliate is currently under investigation or review for potential fraud, abuse, or misuse of Medicaid funds or for any violation for which a sanction could be taken under Chapter 409, Subchapter C of this title (relating to Fraud and Abuse and Recovery of Benefits).

(2) As necessary, staff from TDMHMR or its designated agent will contact the applicant to facilitate completion of the application process. Upon approval, TDMHMR or its designated agent will notify TDHS that the facility can begin the certification survey process. If a facility's license is revoked, then the:

(A) facility's certification will be revoked; and

(B) the facility's provider contract will be canceled.

(3) The contract for services is dependent on compliance with the provisions of this section.

§406.57. Subcontracts.

(a) Subcontracts are contracts for providing a part or all of the program components. Such contracts are between the party contracting with the department and the subcontractor.

(b) Each subcontract, except those for ancillary or support services, such as janitorial services, must contain a provision that the subcontractor agrees to accept and abide by all terms and conditions imposed on subcontractors under the primary contract between the department and the contractor.

§406.61. Notice of Termination.

(a) If TDMHMR intends to terminate a facility provider agreement for contract violations, it will notify the provider. The notice at minimum must include the effective date of the termination and a notice of the contractor's right to appeal the adverse action in accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions).

(b) The department may immediately terminate a contract for cause if not disallowed by law.

§406.62. Sanction Provisions for Violations of Title XIX ICF/MR Contractual Agreements.

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

(1) Direct or immediate adverse effect-A situation in which a significant, unfavorable risk or source of danger exists. Direct or immediate adverse effect does not include remote or minimal risk or effect.

(2) Immediate jeopardy-A situation in which a facility's noncompliance with one or more standards for participation poses a serious threat to the health and safety of an individual(s) residing in the facility, making immediate corrective action necessary.

(3) New admission-The admission of an individual who has never been previously admitted to the facility or who, if previously admitted, was discharged or voluntarily left the facility. New admissions do not include:

(A) individuals who lived in the facility before the effective date of denial of payment for new admissions, even if the individuals become eligible for Medicaid after that date; and

(B) individuals who, after a temporary absence from the facility for a therapeutic visit or extended therapeutic visit as described in §406.211 of this title (relating to Payment for Absences from the Facility), are readmitted to beds reserved for them.

(b) TDMHMR takes the following action(s) when a Title XIX contracted facility fails to meet the requirements specified in this chapter, as cited in writing by TDHS, which is the state survey agency.

(1) When TDHS notifies TDMHMR in writing that TDHS is terminating the facility's certification because cited deficiencies pose immediate jeopardy to the health and safety of its consumers, TDMHMR:

(A) does not offer a compliance period;

(B) imposes an immediate vendor hold on state Medicaid payments to the facility; and

(C) cancels the facility's contract. TDMHMR normally makes no payment for services provided by the facility after the effective date of TDHS's termination of the facility's certification. However, in certain instances, TDMHMR may continue payments for as many as 30 days after the date that TDMHMR cancels or fails to renew the provider contract. Specifically, TDMHMR may continue payments if TDHS notifies TDMHMR in writing that:

(i) the facility is making reasonable efforts to transfer its consumers to another facility or into alternate care, and

(ii) additional time is needed to effect an orderly transfer of the facility's consumers.

(2) When TDHS recommends a vendor hold on state Medicaid payments to the facility and notifies TDMHMR in writing that cited deficiencies do not pose immediate jeopardy, but do constitute health or safety hazards that have a direct or immediate adverse effect on the facility's consumers' health, safety, security, or training as outlined in their individualized plans of care, TDMHMR takes the following actions.

(A) TDMHMR imposes an immediate vendor hold on state Medicaid payments to the facility.

(B) If the cited deficiencies are not corrected within 60 days from the date that TDHS finds the facility in noncompliance after an on-site visit, TDMHMR cancels the facility's contract for breach of contract. If the facility appeals an adverse action by

TDMHMR and the adverse action is sustained by a contract appeals committee or judicial proceeding, the effective date of the contract cancellation is the date specified in the notice of contract cancellation. Except as otherwise provided in this paragraph, TDMHMR makes no payment for services provided by the facility after the effective date of the facility's contract termination. In certain instances, TDMHMR may continue payments for as many as 30 days after the date that TDMHMR terminates or fails to renew the provider contract. Specifically, TDMHMR may continue payments if TDHS notifies TDMHMR in writing that:

(i) the facility is making reasonable efforts to transfer its consumers to another facility or into alternate care, and

(ii) additional time is needed to effect an orderly transfer of the facility's consumers.

(C) When TDMHMR cancels a facility's contract as specified in this paragraph, the department may enter into a probationary contract with the facility, as specified in §406.55(4) of this title (relating to Duration of the Contract). TDMHMR may enter into this contract only after TDHS conducts an on-site, follow-up visit and notifies TDMHMR that:

(i) all previously cited deficiencies have been corrected,

(ii) no other deficiencies have been found that pose immediate jeopardy to the consumers, and

(iii) no other deficiencies have been found that constitute health or safety hazards or that relate to the provision of training as outlined in the consumers' individualized plans of care.

(D) After the probationary contract period, TDMHMR may enter into a nonprobationary contract as specified in §406.55(1), (2), (3), or (5) of this title (relating to Duration of the Contract). TDMHMR may enter into this contract only after TDHS conducts an on-site, follow-up visit and notifies TDMHMR that:

(i) no deficiencies have been found that pose immediate jeopardy to the consumers, and

(ii) no deficiencies have been found that constitute health or safety hazards or that relate to the provision of training as outlined in the consumers' individualized plans of care.

(3) If a facility is placed on vendor hold three times in any 18-month period for deficiencies in consumer care, as specified in subsection (b)(1) and (2) of this section, TDMHMR takes the following actions.

(A) TDMHMR cancels the facility's contract for breach of contract. If the facility appeals an adverse action by TDMHMR and the adverse action is sustained by a contract appeals committee or judicial proceeding, the effective date of the contract cancellation is the date specified in the notice of contract cancellation. Except as otherwise provided in this paragraph, TDMHMR makes no payment for services provided by the facility after the effective date of the facility's contract termination. In certain instances, TDMHMR may continue payments for as many as 30 days after the date that TDMHMR terminates or fails to renew the provider contract. Specifically, TDMHMR may continue payments if TDHS notifies TDMHMR in writing that:

(i) the facility is making reasonable efforts to transfer its consumers to another facility or into alternate care, and

(ii) additional time is needed to effect an orderly transfer of the consumers.

(B) When TDMHMR cancels a facility's contract as specified in this paragraph, the department may enter into a probationary contract with the facility, as specified in §406.55(4) of this title (relating to Duration of the Contract). TDMHMR may enter into this contract only after TDHS conducts an on-site, follow-up visit and notifies TDMHMR that:

(i) all previously cited deficiencies have been corrected,

(ii) no other deficiencies have been found that pose immediate jeopardy to the consumers, and

(iii) no other deficiencies have been found that constitute health or safety hazards or that relate to the provision of training as outlined in the consumers' individualized plans of care.

(C) After the probationary contract period, TDMHMR may enter into a nonprobationary contract as specified in §406.55(1), (2), (3), or (5) of this title (relating to Duration of the Contract). TDMHMR may enter into this contract only after TDHS conducts an on-site, follow-up visit and notifies TDMHMR that:

(i) no deficiencies have been found that pose immediate jeopardy to the consumers, and

(ii) no deficiencies have been found that constitute health or safety hazards or that relate to the provision of training as outlined in the consumers' individualized plans of care.

(c) TDMHMR takes the following action(s) when a Title XIX contracted facility fails to meet applicable agency rules or contractual provisions that are not specified in this chapter, as cited in writing by TDMHMR or TDHS.

(1) TDHS citations result in the following actions.

(A) At its discretion, TDHS may grant the facility a compliance period of no more than 30 days to correct cited deficiencies. If TDHS finds on a follow-up visit that the cited deficiencies have not been corrected, but the facility has made substantial progress towards correcting them, TDHS may extend the compliance period for a maximum of 15 days. No more than one compliance extension can be granted.

(B) If the cited deficiencies are not corrected within the compliance period, TDMHMR imposes a vendor hold on state Medicaid payments to the facility.

(C) If the cited deficiencies are not corrected within 60 days after the date the facility is placed on vendor hold, TDMHMR cancels the facility's contract for breach of contract. If the facility appeals an adverse action by TDMHMR and the adverse action is sustained by a contract appeals committee or judicial proceeding, the effective date of the contract cancellation is the date specified in the notice of contract cancellation. Except as otherwise provided in this paragraph, TDMHMR makes no payment for services provided by the facility after the effective date of the facility's contract termination. In certain instances, TDMHMR may continue payments for as many as 30 days from the date that TDMHMR terminates or fails to renew the provider contract. Specifically, TDMHMR may continue payments if TDHS notifies TDMHMR in writing or TDMHMR determines that:

(i) the facility is making reasonable efforts to transfer consumers to another facility or into alternate care, and

(ii) additional time is needed to effect an orderly transfer of the consumers.

(2) TDMHMR administrative citations result in the following actions.

(A) At its discretion, TDMHMR may grant the facility a compliance period of no more than 30 days to correct deficiencies cited by TDHS. If TDMHMR determines during the compliance period that the cited deficiencies have not been corrected, but the facility has made substantial progress towards correcting them, TDMHMR may extend the compliance period for a maximum of 15 days. No more than one compliance extension can be granted.

(B) If the deficiencies cited by TDHS are not corrected within the compliance period, TDMHMR imposes a vendor hold on state Medicaid payments to the facility.

(C) If the cited deficiencies are not corrected within 60 days after the date the facility is placed on vendor hold, TDMHMR cancels the facility's contract for breach of contract. If the facility appeals an adverse action by TDMHMR and the adverse action is sustained by a contract appeals committee or judicial proceeding, the effective date of the contract cancellation is the date specified in the notice of contract cancellation. Except as otherwise provided in this paragraph, TDMHMR makes no payment for services provided by the facility after the effective date of the facility's contract termination. In certain instances, TDMHMR may continue payments for as many as 30 days from the date that TDMHMR terminates or fails to renew the provider contract. Specifically, TDMHMR may continue payments if TDHS notifies TDMHMR in writing or TDMHMR determines that:

(i) the facility is making reasonable efforts to transfer consumers to another facility or into alternate care, and

(ii) additional time is needed to effect an orderly transfer of the consumers.

(d) The facility must not charge Title XIX consumers, their families, guardians, or other responsible parties to recoup vendor payments not received because of the imposition of sanctions against the facility. The facility is entitled to collect only the applied income established in the individual's payment plan.

(e) If a facility charges a Title XIX consumer any member of his family, or any other party in order to supplement TDMHMR payments or to secure payment for services that TDMHMR disallows, TDMHMR is entitled to cancel the facility's existing contract or to deny its application to participate in the Title XIX Texas Medical Assistance program, unless the department's policies and regulations explicitly permit the charge(s) in question.

(f) A provider may request an administrative hearing in accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions) if TDMHMR takes or proposes to take the following adverse action:

- (1) vendor hold;
- (2) contract termination;
- (3) recoupment of payments made to the provider; or
- (4) denial of a provider's request for payment.

(g) If the basis of an administrative hearing requested under subsection (a) of this section is a dispute regarding a level-of-need assignment, the provider may receive an administrative hearing only if reconsideration was requested by the provider in accordance with §406.214(e) of this title (relating to Reconsideration of Level of Need).

§ 406.63. Debarment and Suspension of Current and Potential Contractor's Rights.

(a) Applicability. Requirements in this section are applicable to all types of Medicaid contracts with TDMHMR. These requirements are in addition to, and do not supersede, rules in Chapter 409, Subchapter C of this title (relating to Fraud or Abuse and Recovery of Benefits.)

(b) Definitions. The following words and terms when used in §§406.63-406.67 of this title relating to (Contracting Requirements) shall have the following meanings, unless the context clearly indicates otherwise:

(1) Contractor and subcontractor-Individuals or legal entities who have existing TDMHMR contracts or are otherwise participating providers, including managers of contractors' operations, such as managers and administrators of ICF/MR facilities.

(2) Debarment-Termination of rights to continue an existing contract, to receive a new contract, to participate as a provider or manager, or to make a bid, offer, application or proposal for a TDMHMR contract. The debarment is for a specified time commensurate with the seriousness of the violation, the extent of the violation, prior impositions of sanctions or penalties, willingness to comply with program rules and directives, and other pertinent information. The maximum period of debarment is six years, unless a longer time is mandated by requirements other than those in this subchapter.

(3) Potential contractor-Individuals or legal entities who wish to submit a bid, offer, application, or proposal for a TDMHMR contract or subcontract, or otherwise request participation as a provider, including managers of contractors' operations, such as managers and administrators of ICF/MR.

(4) Suspension of contractual rights-Temporary suspension of a contractor's or potential contractor's right to conduct business with TDMHMR. A suspension is in effect until an investigation, hearing, or trial is concluded and TDMHMR can make a determination about:

(A) the contractor's future right to contract or subcontract, or

(B) a potential contractor's future right to have TDMHMR consider its offer, bid, proposal, or application.

(c) Scope. For purposes of both suspension of contractual rights and debarment, TDMHMR may impute the conduct of an individual, corporation, partnership, or other association to the contractor, potential contractor, or the responsible component or entity of the contractor or potential contractor with whom the individual, corporation, partnership, or other association is employed or otherwise associated. Even though the underlying conduct may have occurred while an individual, corporation, partnership, or other association was not associated with the contractor or potential contractor, suspension of contractual rights or debarment may be imposed. Remedial actions taken by the responsible officials of the contractor or potential contractor will be considered in determining

whether either suspension of contractual rights or debarment is warranted.

(d) Choice of sanction. Severe violations of the type specified in §406.64 of this title (relating to Causes and Conditions for Debarment) may be the basis for suspension of contract rights or debarment even if there is only a single occurrence. However, isolated and less severe violations of TDMHMR contract provisions do not necessarily lead to suspension and/or debarment. Sanctions for isolated and less severe violations may be found in TDMHMR's rules governing the specific program area in which the violations occurred.

§406.64. Causes for and Conditions of Debarment.

(a) Causes for debarment. TDMHMR may remove contractual rights from an individual or legal entity for causes including, but not limited to, the following:

(1) being found guilty, pleading guilty, pleading nolo contendere, or receiving a deferred adjudication in a criminal court, relating to:

(A) obtaining, attempting to obtain, or performing a public or private contract or subcontract;

(B) embezzlement, theft, forgery, bribery, falsification or destruction of records, any form of fraud, receipt of stolen property, or any other offense indicating moral turpitude or a lack of business integrity or honesty;

(C) dangerous drugs, controlled substances, or other drug-related offense;

(D) federal antitrust statutes arising from the submission of bids or proposals; or

(E) any physical or sexual abuse or neglect offense;

(2) being debarred from contracting by any unit of the federal government or any unit of a state government;

(3) violating TDMHMR contract provisions including failing to perform according to the terms, conditions, and specifications or within the time limit(s) specified in the TDMHMR contract, including, but not limited to, the following:

(A) failing to abide by applicable federal and state statutes, such as those regarding persons with disabilities and those regarding civil rights;

(B) having a record of failure to perform or of unsatisfactory performance according to the terms of one or more contracts or subcontracts, if that failure or unsatisfactory performance has occurred within five years preceding the determination to debar. Application of this subsection will be made only for actions occurring after the effective date of these rules. Failure to perform and unsatisfactory performance includes, but is not limited to, the following:

(i) failing to correct contract performance deficiencies after receiving written notice about them from TDMHMR or its authorized agents;

(ii) failing to repay or make and follow through with arrangements satisfactory to the Department to repay identified overpayments or other erroneous payments, or assessed liquidated damages or penalties;

(iii) failing to meet standards that are required for licensure or certification, or that are required by state or federal law, TDMHMR rule, or TDMHMR policy concerning TDMHMR contractors;

(iv) failing to execute amendments required by TDMHMR;

(v) billing for services or merchandise not provided to the consumer or TDMHMR;

(vi) submitting cost reports containing costs not associated with and/or not covered by the contract or TDMHMR rules and instructions. Intent to increase individual or statewide rates or fees by submission of unallowable costs must be shown for a single cost report, but intent may be inferred when a pattern of submitting cost reports with unallowable costs is shown;

(vii) submitting a false statement or misrepresentation which, if used, may increase individual or statewide rates or fees;

(viii) charging consumer or patient fees contrary to TDMHMR rules or policy;

(ix) failing to notify and reimburse TDMHMR or its agents for services TDMHMR paid for when the contractor received reimbursement from a liable third party;

(x) failing to disclose or make available, upon demand, to TDMHMR or its representatives (including appropriate federal and state agencies) any records the contractor is required to maintain;

(xi) failing to provide and maintain services within standards required by statute, regulation, or contract; or

(xii) violating the TDMHMR provisions applicable to the contract or any rule or regulation issued by TDMHMR;

(4) submitting an offer, bid, proposal or application that contains a false statement or misrepresentation or omits pertinent facts or documents that are material to the procurement;

(5) engaging in any abusive or neglectful practice that results in or could result in death or injury to the consumers served by the contractor; or

(6) violating any of the provisions outlined in §409.055 of this title (relating to Grounds for Fraud Referral and Administrative Sanction). For purposes of this subsection, any reference in Chapter 409, Subchapter C of this title (relating to Fraud and Abuse and Recovery of Benefits), to a violation of the Medicaid (Title XIX), Medicare (Title XVIII), or Title XX programs is expanded to include an identical violation within any programs of federal or state governments;

(7) knowingly and willingly using a debarred person or entity as an employee, independent contractor, or agent to perform a contract with TDMHMR.

(b) Conditions of debarment. Individuals, parts of entities, and entities that have been debarred may not:

(1) receive a contract;

(2) be allowed to retain a contract which has been awarded before debarment;

(3) bid or otherwise make offers to receive a contract or subcontract;

(4) participate in TDMHMR programs which do not require the provider to sign a contract or agreement; or

(5) either personally or through a clinic, group, corporation or other association bill to or receive payment from TDMHMR for any services or supplies provided by the debarred entity on or after the effective date of the debarment. Additionally, TDMHMR will not pay for any services ordered, prescribed, or delivered by the debarred entity for TDMHMR recipients after the date of debarment. No costs associated with a debarred entity, including the salary, fringe benefits, overhead, payments to, or any other costs associated with an employee, owner, officer, director, board member, independent contractor, manager, or agent who was debarred may be included in a TDMHMR cost report or any other document which will be used to determine an individual payment rate, a statewide payment rate, or a fee.

(c) Entities that may be debarred. Debarment may be applied against an individual, an entire legal entity, or a specified part of a legal entity.

§406.65. Causes for and Conditions of Suspension.

(a) Causes for suspension. TDMHMR may place a contractor or potential contractor's contractual rights in suspension whenever TDMHMR finds that there is a reasonable basis to believe that grounds for debarment as specified in §406.64 of this title (relating to Conditions for and Conditions of Debarment) exists. Suspension may be imposed immediately following TDMHMR's notification to a contractor or potential contractor. In addition, suspension may be imposed on a potential contractor or subcontractor if he has an outstanding indictment or the department has information about an offense that is grounds for debarment.

(b) Conditions of suspension.

(1) TDMHMR may withhold payments, in whole or in part, to the affected contractor during the period of suspension.

(2) TDMHMR may refuse to accept a bid, offer, application, or proposal from, or to award a contract to, the affected potential contractor during the period of suspension.

(3) TDMHMR may cease referrals of additional consumers to the suspended entity.

(4) If TDMHMR determines that the underlying reasons for the suspension have been resolved in favor of the contractor, TDMHMR must, if applicable:

(A) pay the withheld payments for any services that may have been provided during the suspension and which meet the terms of an existing contract, and

(B) resume contract payments.

(5) If TDMHMR determines that underlying reasons for the suspension have not been resolved in favor of the contractor, TDMHMR will institute debarment proceedings.

(6) Individuals and entities whose contractual rights have been placed in suspension may not:

(A) receive a contract; or

(B) submit an offer, bid, application or proposal for a contract.

(c) Entities that may be suspended. A suspension may be applied against an individual, an entire legal entity, or a specified part of a legal entity.

§406.66. Proof Required for Debarment and Suspension.

(a) Causes identified in §406.64(a)(1) of this title (relating to Causes for and Conditions of Debarment) are established by proof of pleading guilty or nolo contendere, or of the issuance of a deferred adjudication of guilt. If an appeal results in a reversal, contractual rights must be restored upon written request, unless another cause for their removal exists.

(b) Causes identified in §406.64(a)(2) of this title (relating to Causes for and Conditions of Debarment) are based entirely upon the other state or federal agency's official notice that the contractor or potential contractor's rights have been removed.

(c) The existence of all other causes for debarment or suspension must be established by a preponderance of the evidence.

§406.67. Notice Requirements for Debarment and for Suspension.

(a) Contractors' right of notice and appeal. Contractors who have been placed in suspension or who have been debarred or who have been notified of proposed debarment have the appeal rights provided in Chapter 409, Subchapter B of this title (relating to Adverse Actions), governing provider appeal processes for adverse actions.

(b) Potential contractors' rights of notice and appeal. Potential contractors who are placed in suspension or who have been debarred have all the notice and appeal rights provided in Chapter 409, Subchapter B of this title (relating to Adverse Actions), governing provider appeal processes for adverse actions.

(c) Required content for notices of suspension and debarment. In addition to information required in the notice of adverse actions specified in Chapter 409, Subchapter B of this title (relating to Adverse Actions), notices must include the following, when applicable:

(1) the grounds for the action (if an indictment or information is pending or has been returned, the nature of the irregularities is described in general terms without disclosing evidence);

(2) the length of the suspension or debarment;

(3) a statement explaining the effect of the suspension or debarment; and

(4) a statement of whether the suspension or debarment is in effect throughout TDMHMR.

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

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

TRD-9703056

Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

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For further information, please call: (512) 206-4516

Subchapter C. Vendor Payments

25 TAC §§406.101-406.103

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of existing §§406.101-406.103 of Chapter 406, Subchapter C, governing Vendor Payments. The repeal accommodates the contemporaneous adoption of new §§406.101-406.103 in this issue of the *Texas Register*. Existing §§406.101-406.103 are repealed without changes to the text as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12372).

The repeal would enable the addition of new sections to Chapter 406, Subchapter C.

There was no oral or written testimony regarding the repeal at a public hearing held on January 13, 1997.

The repeals are adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects Texas Human Resources Code, §§32.001-32.040, and Texas Government Code, §531.021.

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

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

TRD-9703055

Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: March 25, 1997

Proposal publication date: December 24, 1997

For further information, please call: (512) 206-4516

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§406.101-406.103 of Chapter 406, Subchapter C, governing Vendor Payments. Existing §§406.101-406.103 are contemporaneously repealed in this issue of the *Texas Register*. Sections 406.101-406.103 are adopted with changes to the proposed text as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12373).

The adopted new §§406.101-406.103 revise the formula for the applied income daily reimbursement rate for Title XIX consumers by including the daily rate for an individual's level of need (LON); and revise the special provisions regarding reduced, denied, and incorrect vendor payments and the prohibition of charging or penalizing a Medicaid consumer, a Medicaid consumer's family members, or a Medicaid consumer's repre-

sentatives for provider claims denied or reduced as the result of the change of an individual's level of need.

Language in §406.101 is modified to reference the ICF/MR program rather than Title XIX Texas Medical Assistance Program. Language in §406.102 is modified to include the process by which ICF/MR consumers may be responsible for paying a portion of the cost of their care, and to delete references to the Texas Department of Human Services. Language in §406.103 is modified to correct references.

Written comments were received from three respondents regarding adoption of the rule, with several commenters offering recommendations for revision. Those respondents offering comment on the rule include: Private Provider Association of Texas; Develocepts; and, Reimbursement Advisory Panel of TDMHMR.

Concerning proposed §406.102(c), two commenters state that the language needs to be more clear and flexible.

The department responds that it agrees with the comment and has clarified the language.

Concerning proposed §406.102(e), two commenters stated the language in this section needs to be clarified and should include language referencing materiality and intent to commit fraud as critical to the determination of a violation.

The department responds that it is not appropriate to include in this rule all of the elements necessary to prove a violation of the referenced federal statute. The department has changed the rule language to clarify that collection of certain amounts may constitute a violation of the referenced federal statute.

The new sections are adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section affects Texas Human Resources Code, §§32.001-32.040, and Texas Government Code, §531.021.

§406.101. Vendor Payments.

(a) The Texas Department of Mental Health and Mental Retardation (TDMHMR) or its authorized agent makes vendor payments only for periods of time in which all of the following conditions are met:

(1) TDMHMR or its designated agent has approved the facility's application to participate in the ICF/MR Program;

(2) the state survey agency, the Texas Department of Human Services (TDHS), has licensed, if applicable, and certified the facility for operation;

(3) the facility has a signed contract with TDMHMR or its designated agent to provide services to eligible consumers; and

(4) the state survey agency has determined that the facility is in compliance with federal regulations and state standards for participation.

(b) The state survey agency determines the effective date of eligibility for participation.

§406.102. Applied Income and the Daily Reimbursement Rate.

(a) ICF/MR consumers may be responsible for paying for a portion of the cost of their care, depending on their income. The amount a consumer pays, called "applied income," is established by their Medicaid eligibility worker. The Medicaid eligibility worker then develops a payment plan that the facility uses to determine the amount of applied income to be collected from the consumer. TDMHMR pays providers the portion of the daily reimbursement rate that is not billed as applied income.

(b) A Medicaid eligibility worker calculates the daily reimbursement rate paid to the provider by TDMHMR for each ICF/MR consumer by:

(1) multiplying the rate established by TDMHMR for the individual's level of need (LON) times the number of days in the month,

(2) subtracting the individual's applied income for the month, and

(3) dividing the result by the number of days in the month.

(c) The facility is entitled to collect from the individual only the monthly amount of applied income specified on the individual's payment plan.

(d) When an individual's payment plan requires correction or revision, the facility contacts the Medicaid eligibility worker to request a plan change. The facility may not collect an increased amount of applied income from the individual unless and until the Medicaid eligibility worker changes the payment plan.

(e) If an individual does not have a payment plan, the facility contacts the Medicaid eligibility worker to determine how much applied income the individual must pay. If the Medicaid eligibility worker subsequently determines that the individual's correct payment amount is lower than initially specified, the facility must immediately return the amount overpaid and notify the Medicaid eligibility worker of the refund.

(f) No facility may collect applied income payments that exceed the payment plan. A violation of this requirement may be a violation of 42 USC Section 1320a-7b, which makes solicitation of supplementation a felony punishable by a fine of up to \$25,000 or imprisonment for up to five years or both. Texas Department of Human Services regional staff must report all apparent violations of this requirement. If an investigation verifies an apparent violation, TDMHMR is entitled to recoup or withhold vendor payments, terminate or suspend the contract, take other contract actions, and/or refer the matter to the appropriate legal authority.

§406.103. Special Provisions Regarding Reduced, Denied, and Incorrect Vendor Payments.

(a) If the department or its authorized agent makes vendor payments for services performed during a period in which a facility is not participating in the Title XIX Texas Medical Assistance Program, the facility must refund the payments or the department will recoup the funds.

(b) Providers of Title XIX services may not charge or penalize Medicaid consumers, their family members, or their representatives for any claim that the department denies or reduces as a result of a change of LON or the provider's failure to comply with the department rules, regulations, or procedures.

(c) Payments may be adjusted by TDMHMR due to the provider's submission of any false statement, misrepresentation, or omission of facts, as indicated in Chapter 409, Subchapter C of this title (relating to Fraud and Abuse and Recovery of Benefits).

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

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Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

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For further information, please call: (512) 206-4516

Subchapter D. Reimbursement Methodology

25 TAC §§406.151-406.152, 406.154-406.160

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of existing §§406.151-406.152 and §§406.154-406.160 of Chapter 406, ICF/MR Programs, Subchapter D, governing reimbursement methodology. The repeal accommodates the contemporaneous adoption of new §§406.151-406.152 and §§406.154-406.158 in this issue of the *Texas Register*. Existing §§406.151-406.152 and §§406.154-406.160 are repealed without changes to the proposed text as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12374).

The repeal would enable the adoption of new sections to Chapter 406, Subchapter D.

There was no oral or written testimony regarding the repeal at a public hearing held on January 13, 1997.

The repeals are adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects Texas Human Resources Code, §§32.001-322.040, and Texas Government Code, §531.021.

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

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Ann Utley

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For further information, please call: (512) 206-4516

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25 TAC §§406.151, 406.152, 406.154-406.158

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§406.151-406.152 and §§406.154-406.158 of Chapter 406, Subchapter D, governing reimbursement methodology, with changes to the proposed text as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12375). Existing §§406.151-406.152 and §§406.154-406.160 are contemporaneously repealed in this issue of the *Texas Register*.

The adopted new sections create a new reimbursement methodology that will target funding to provide more supports for persons with greater needs for staff supervision and intervention.

Minor changes were made throughout the subchapter to consolidate information; to provide or correct references; and to correct grammatical usage. Language in §406.151 is modified to incorporate definitions of terms used in the subchapter and to identify the two types of facilities: state-operated and non-state operated. Language in §406.152 is modified to indicate the time lines for submitting direct services surveys and cost reports; to indicate that requests for extension of due dates must be in writing; and to indicate the department will respond within ten days to a request for an extension. Language was added to §406.153(m) clarifying that the records are directly or indirectly related to the provision of contracted services. Clarifying language was added to §406.153(n) and (o) regarding exclusions and adjustments of cost reports and notification of such exclusions and adjustments. Language in §406.154 is modified to indicate submission time lines for full cost reports and direct cost data. Language in §406.155 is modified regarding the conditions under which the actual cost of durable medical equipment is reimbursed and language was deleted regarding the types of services provided. Language in §406.156 is modified to identify classes of non-state operated facilities and to outline reimbursement rate determination procedures for non-state operated facilities. Language in §406.157 is modified to indicate that fiscal accountability gauges financial performance and to direct service cost survey procedures. Language in §406.158 is modified to indicate that the department will seek to obtain a consultant to conduct an independent analysis of cost and operational information for a sample of service providers throughout the state.

A public hearing was held on January 13, 1997. No testimony was presented. Written comment was received from Private Provider Association of Texas (PPAT), Austin; Develocepts; Educare; and the Reimbursement Advisory Panel of TDMHMR, Austin.

Regarding §406.152(e), two commenters suggested language be deleted or modified to address materiality, intent, and opportunity to remedy. The department responds that it is not appropriate to include in this rule all of the elements necessary to establish liability for civil or criminal penalties. The department notes that §406.152(j) allows a provider an opportunity to properly complete its cost report.

Regarding §406.152(f), two commenters suggested the language be modified to allow at least 60 days for quarterly direct cost "surveys" and at least 90 days for full cost reports. The

department responds that it believes 45 days is sufficient for direct cost surveys; language has been changed allowing 90 days for full cost reports.

Regarding §406.152(m), two commenters suggested adding "that are directly or indirectly related to the provision of contracted services" to the end of the second sentence. The department responds by adding the suggested language.

Regarding §406.152(o), two commenters suggested adding language which required the department to notify a provider of all adjustments to its costs, including any caps. The commenter stated that notifications should not be limited to the desk review and on-site audit processes. The department responds by adding language addressing the commenters' concern.

Regarding §406.154(b)(1), two commenters suggested adding language exempting those providers that are selected to file a full cost report for the same reporting period. The department responds by adding language addressing the commenters' concern.

Regarding 406.154(b)(1), one commenter stated that the department should be careful in its use of the term "facilities" so as to not restrict unnecessarily its ability to collect costs on a provider agency basis. The commenter also stated that if individual cost reports or surveys are required of each separate facility, then the 45-day requirement in §406.152(f) is totally unreasonable. The department responds that the commenter's concern is unclear. The department does not believe the use of the term "facility" will restrict its ability to collect cost information from any facility or provider. The 45-day requirement only applies to direct services cost surveys; the time frame for submitting a full cost report is 90 days regardless of the number of facilities.

Regarding §406.155(d), two commenters suggested modifying the language for clarification regarding the model rate calculation components. The department responds by deleting the subsection.

Regarding §406.156(b), one commenter expressed dissatisfaction with the way in which facility sizes are defined. Regarding the same section, another commenter expressed concern that the proposed rules would allow ICF/MR providers to manipulate their capacities solely to put their facilities in classes with higher rates, thereby resulting in fewer people receiving ICF/MR services at a higher cost than the current certification configuration would yield.

The department responds that the classes of facilities were determined based on data collected by an independent consultant and resulting estimates of the cost of operating various sized facilities. The department further responds that the definitions regarding facility size have been clarified to provide that the size will be determined as of the first day of the full month immediately preceding a rate's effective date in order to avoid the suggested manipulation of certified capacity, to avoid displacement of ICF/MR residents, and to more accurately project program costs during the rate setting process.

Regarding §406.156(d), two commenters recommended deleting the next to the last sentence in the subsection since the language relates to fiscal accountability and should not be used to rebase rates. The department agrees with the

commenters' concerns about this sentence but instead of simply deleting the sentence the department has rewritten the subsection to clarify the fiscal accountability process for this methodology.

Regarding §406.157(a), two commenters suggested replacing the term "validity" with "financial performance." The department responds by replacing the term.

Regarding §406.157(b) and (c), two commenters suggested replacing the subsections with language developed by the Reimbursement Advisory Panel in cooperation with department Medicaid staff which more clearly describes fiscal accountability procedures and is consistent with rules governing the Home and Community-based Services Program (HCS). The department agrees and has modified the language as requested.

Regarding §406.156, one commenter disagreed with the category of facility sizes that placed 14- and 15-bed group homes in the large facility category. The department responds that after outside consultants completed a thorough study of costs associated with facility size, data indicated that costs of 14- and 15-bed facilities should be covered in the new large category.

Regarding §406.158(a), two commenters suggested deleting the term "at least." The department responds that the intent is to establish the minimum frequency for rebasing the model rates and not to restrict the Texas MHMR Board's ability to manage the program.

The new sections are adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Government Code, Chapter 531 which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

§406.151. Definitions and General Reimbursement Information.

(a) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise: Cost Report-Any cost data or financial information submitted by a provider to TDMHMR. Direct Services Cost Survey-Annual survey conducted by TDMHMR in which cost data related to direct care services is submitted by providers. Full Cost Report-Cost data required by TDMHMR that includes all costs of providing services including direct services costs, administration, facility costs, and all other operating costs relevant to the provision of services. GAAP-Generally accepted accounting principles. GAAS-Generally accepted auditing standards. ICF/MR-An intermediate care facility for persons with mental retardation and related conditions. Person-An individual, partnership, corporation, association, governmental subdivision or agency, or a public or private organization of any character. Provider-Any person with whom TDMHMR has an ICF/MR provider agreement. Provider agreement-Any written agreement that obligates TDMHMR to pay money to a person for goods or services under the Title XIX Medical Assistance Program. Rebase-The revision to the underlying assumptions on which the modeled rates are calculated, including revisions to staffing ratios, pay structure, the composition of direct care staff, or other cost factors used in the formula for modeling the rates. State-operated facility-An ICF/MR for which a facility or division of TDMHMR is the provider. TDMHMR-The Texas Department of Mental Health and Mental Retardation or its designee.

(b) TDMHMR reimburses providers for services provided to eligible recipients in ICFs/MR. The Texas MHMR Board determines reimbursement rates at least annually in accordance with Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs) and this subchapter. There are two types of facilities: non-state operated and state-operated.

(1) Non-state operated facilities.

(A) Except for demonstration or pilot projects involving experimental classes as specified in §406.156 of this title (relating to Rate Setting Methodology), reimbursement rates for levels-of-need are uniform statewide for the same class of non-state operated facilities. Rates are set prospectively with no annual settlement.

(B) Classes of non-state operated facilities. Classes of non-state operated facilities are based upon facility size.

(2) State-operated facilities. Rates for state-operated facilities are set prospectively based on each facility's historical cost pattern with adjustments for inflation. There is no differentiation based on client level-of-need categories.

§406.152. Cost Reporting Procedures.

(a) Reporting costs. Each provider must submit financial and statistical information on forms provided by TDMHMR on facsimiles which are formatted according to TDMHMR's specifications and are preapproved by TDMHMR.

(b) Record keeping requirements. Each provider must retain records according to the requirements in Chapter 406, Subchapter G of this title (relating to Additional Facility Responsibilities). Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and statistical information provided to TDMHMR.

(c) Noncompliance with record keeping requirements. Failure to retain records that support the information submitted to TDMHMR constitutes an administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in §406.62(c)(2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF/MR Contractual Agreements).

(d) Allowable and unallowable costs. Providers must complete cost reports in accordance with §406.153 of this title (relating to Allowable and Unallowable Costs) and §409.008 of this title (relating to Allowable and Unallowable Costs).

(e) Certification. Providers must certify the accuracy of cost reports submitted to TDMHMR. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to TDMHMR requirements.

(f) Due date. Providers must submit direct services cost surveys no later than 45 calendar days after the end of the reporting period or 45 days after the date that TDMHMR mails the form to the provider, whichever is later. Providers must submit full cost reports no later than 90 days after the reporting period or 90 days after the date that TDMHMR mails the form to the provider, whichever is later.

(g) Extension of due date. TDMHMR may grant extensions of due dates for good cause. Good cause is defined as one that the provider could not reasonably be expected to control. A provider must submit a written request for extension to TDMHMR before

the cost report due date. TDMHMR will respond to a request for extension within 10 working days of its receipt.

(h) Cost data. TDMHMR may at times require additional financial and statistical information to ensure the fiscal integrity of the Texas Medicaid ICF/MR Program. Each provider must submit additional information to TDMHMR upon request, unless the information is not at the provider's disposal.

(i) Failure to submit requested data. Failure to submit acceptable cost data by the due date constitutes an administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in §406.62(c)(2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF/MR Contractual Agreements).

(j) Review of cost data. TDMHMR reviews each provider's cost data to ensure that the financial and statistical information submitted conforms to all applicable rules and instructions. Forms that are not completed according to TDMHMR's instructions or rules may be returned to the provider for proper completion.

(k) On-site audits. TDMHMR performs a sufficient number of on-site financial audits to ensure the fiscal integrity of the TDMHMR Medicaid Programs. The number of on-site audits performed may vary.

(l) On-site audit standards. TDMHMR performs on-site financial audits in a manner consistent with the generally accepted auditing standards (GAAS) approved by the American Institute of Certified Public Accountants and included in Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the United States Comptroller General.

(m) Access to records. Each provider must allow access to any and all records necessary to verify cost data submitted to TDMHMR. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider that are directly or indirectly related to the provision of contracted services. Failure to allow inspection of pertinent records within 10 working days following written notice from TDMHMR constitutes an administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in §406.62 (c)(2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF/MR Contractual Agreements). If a central office or other entity pertaining to a multi-facility operation refuses access to records, then the penalties are extended to all of the provider's entities having Medicaid contracts with TDMHMR. Additional rules regarding access to records that are out-of-state are in §409.002 of this title (relating to Methods for Cost Determination).

(n) Reviews of exclusions or adjustments. A provider who disagrees with TDMHMR's exclusion or adjustment of items in cost reports may request an informal review and, when necessary, an administrative hearing as specified in §409.007 of this title (relating to Reviews and Administrative Hearings).

(o) Notification of exclusions and adjustments. TDMHMR will notify a provider of exclusions and any adjustments including caps applied to reported costs made during TDMHMR's desk reviews and on-site audits.

§406.154. Frequency of Reporting Costs.

(a) All state-operated provider agencies must annually submit full cost reports as directed by TDMHMR in accordance with Chapter

409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs) and §406.152 of this title (relating to Cost Reporting Procedures).

(b) Non-state operated facilities must submit cost report information as directed by TDMHMR in accordance with Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs).

(1) Except for facilities selected to file a full cost report for the same reporting period, all non-state operated facilities will annually submit direct service cost surveys according to §406.152 of this title (relating to Cost Reporting Procedures) and §406.157 of this title (relating to Fiscal Accountability).

(2) Every three years, a sample of non-state operated facilities will be required to submit full cost reports according to §406.152 of this title (relating to Cost Reporting Procedures) and §406.158 of this title (relating to Rebasing the Non-State Operated Facility Modeled Rates).

§406.155. Payments to Non-State Operated Facilities.

(a) TDMHMR will pay to non-state-operated facilities modeled rates that will vary by class of facility and a client's level-of-need.

(b) The non-state operated facility modeled rates include payment for both residential and day program services. Individuals receive medical and dental services through the Medicaid identification card. Any medical expenses other than covered services are the responsibility of the provider.

(c) With a limit of \$5,000 per client per year, TDMHMR will pay a provider for the actual cost of a client's durable medical equipment if:

(1) the cost of the equipment exceeds \$1,000;

(2) the facility receives approval from TDMHMR to purchase the equipment;

(3) the provider submits a voucher to TDMHMR for the cost of the equipment; and

(4) the client is eligible for Medicare benefits and the provider has submitted a Medicare claim and received a response to the claim prior to requesting payment from TDMHMR.

(d) There are modeled rates for each level of need for each class of non-state operated facilities.

§406.156. Rate Setting Methodology.

(a) Types of facilities. There are two types of facilities for purposes of rate setting: state-operated and non-state operated. Non-state operated facilities are further divided by classes that are determined by the size of the facility.

(b) Classes of non-state operated facilities. There is a separate set of reimbursement rates for each class of non-state operated facilities, which are as follows.

(1) Large facility-A facility with a Medicaid certified capacity of 14 or more as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(2) Medium facility-A facility with a Medicaid certified capacity of nine through 13 as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(3) Small facility-A facility with a Medicaid certified capacity of eight or fewer as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(c) State-operated facilities. There are no classes of state-operated facilities. State-operated facilities are reimbursed on a facility-based per diem rate which is determined by each facility's allowable costs, inflated forward to the rate period. The reimbursement rates include residential, day, and comprehensive medical services.

(d) Reimbursement rate determination for non-state operated facilities effective January 1, 1997. The Texas MHMR Board determines reimbursement for non-state operated facilities in accordance with Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs) and this subchapter.

(1) The initial modeled rates for calendar year 1997 are set according to paragraph (7) of this subsection.

(2) Annual rates for the time period between the years that modeled rates are rebased are set by inflating the previous year's direct cost rates by the IPD-PCE as defined in Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs). These rates are uniform by class of facility and client level-of-need, and determined prospectively and annually. There is no cost settlement.

(3) Every three years, the models from which the rates are based are analyzed to determine if rebasing is necessary.

(4) Reimbursement rates combine residential and day program services, i.e., payment for the full 24-hours of daily service.

(5) Reimbursement rates are differentiated based on client level-of-need as outlined in Chapter 406, Subchapter E of this title (relating to Eligibility and Review). The levels of need are intermittent, limited, extensive, pervasive, and pervasive plus.

(6) Modeled rates are rebased according to §406.158 of this title (relating to Rebasing the Non-State Operated Facility Modeled Rates).

(7) The modeled rates are based on cost components deemed appropriate for economically and efficiently operated services. The determination of these components is based on a combination of data including, but not limited to, historical costs and operational information collected from a representative sample of ICF/MR providers. Every three years an advisory panel consisting of service providers, advocates, and department personnel, and an independent consultant retained by TDMHMR analyzes available information regarding historical cost and operational data and level-of-need assessment to determine if revisions to the models are necessary. TDMHMR will use the analysis to make recommendations to the Texas MHMR Board regarding rates.

(e) Rate determination for state-operated facilities. The Texas MHMR Board determines reimbursement rates for state-

operated facilities in accordance with Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs) and this subchapter. Rates are facility specific, determined prospectively, and cost related. A per diem rate for each facility, which is based on the total projected allowable costs for selected cost centers, is divided by the total days of service the facility delivered either in the rate period or in the cost reporting period.

(1) Reimbursement rates for state-operated ICFs/MR are based on the most current costs reported on their cost reports.

(2) Costs for each facility are divided into three groups: salaries and benefits, comprehensive medical, and other. These costs are inflated by the factors identified in §409.004 of this title (relating to Determination of Inflation Indices). Each facility will have its own per diem rate.

(3) Reimbursement rates for newly certified state-operated ICFs/MR facilities are based on a pro forma model. The pro forma rate is the average of all available similarly sized state-operated facilities' per diem rates for that particular rate year. Newly certified facilities will be required to submit three-month cost reports to reflect costs incurred during the first 90 days of certified operation. These costs will be used to determine the facility's specific per diem rate within 180 days of certification.

(f) Experimental class. TDMHMR may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless the Texas MHMR Board and the Health Care Financing Administration (HCFA) approve the experimental methodology.

§406.157. Fiscal Accountability.

(a) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the non-state operated facility reimbursement rates.

(b) Fiscal accountability will consist of the annual reporting of direct service costs including wages, benefits, staffing, and supervisory span-of-control information from all non-state operated providers. The data will be collected on a cost survey designed by TDMHMR.

(c) In 1997, providers are required to submit direct services costs on a survey during a uniform three month period of the year, as selected by the department. The survey will reflect the provider's actual direct costs for the three month period. The direct service costs will be compared to the "direct service cost" component of the modeled rates. In instances where a provider's actual direct service costs, as captured by the quarterly cost surveys, are less than 85% of the direct service revenues in the model, TDMHMR will require additional reporting of costs and other information from the provider.

(d) TDMHMR will review the results obtained from the direct services cost surveys submitted for 1997 with representatives of provider associations and advocacy groups to further refine the fiscal accountability process. Direct services cost surveys will be collected for each rate year and in instances where a provider's actual direct service costs are less than 85% of the direct service revenues in the model, TDMHMR may require the provider to:

- (1) report more detailed financial information;
- (2) submit to a quality assurance survey and review;
- (3) submit to a utilization review of all services provided;

and/or

- (4) submit to a detailed audit of all relevant financial records.

§406.158. Rebasing the Non-State Operated Facility Modeled Rates. At least every three years TDMHMR will assess the viability of the non-state-operated modeled rates using the following process:

(1) TDMHMR will seek to obtain a consultant to conduct an independent, detailed analysis of cost and operational information for a sample of ICF/MR service providers throughout the state in accordance with Texas Government Code, Chapter 2254.

(2) Site visits will be made to each of the sample providers to collect cost data and discuss operations.

(3) An advisory panel consisting of service providers, advocates, and department personnel will analyze available information regarding historical cost and operational data and level-of-need assessment. TDMHMR will use the analysis to make recommendations to the Texas MHMR Board for adjusting the rates or rebasing model-based rates.

(4) TDMHMR will recommend adjustments to rate factors if required, based on the results of the analysis of the sample of cost and operational information.

(5) Revised rates, as well as the rationale supporting the rates, will be presented to the Texas MHMR Board for final approval and implementation.

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

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

TRD-9703052

Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: March 25, 1997

Proposal publication date: December 24, 1997

For further information, please call: (512) 206-4516

Subchapter G. Additional Facility Responsibilities

25 TAC §406.302

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of existing §406.302, of Chapter 406, ICF/MR Programs, Subchapter G, relating to additional facility responsibilities. The repeal accommodates the contemporaneous adoption of new §406.302 in this issue of the *Texas Register*. Existing §406.302 is repealed without changes to the text as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12379).

The repeal would enable the adoption of a new section to Chapter 406, Subchapter G.

There was no oral or written testimony regarding the repeal at a public hearing held on January 13, 1997.

The repeal is adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects Texas Human Resources Code, §§32.001-32.040, and Texas Government Code, §531.021.

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

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Ann Utley

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The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §406.302 of Chapter 406, Subchapter G, governing Additional Facility Responsibilities. Existing §406.302 is contemporaneously repealed in this issue of the *Texas Register*. Section 406.302 is adopted with changes to the proposed text as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12379).

The adopted new §406.302 clarifies services reimbursed under day services (e.g., community integration supports and supported employment).

The language in §406.302 is modified to more fully outline the service components of day services and to enhance grammar and readability.

Written comments were received from three respondents regarding adoption of the rule, with several commenters offering recommendations for revision. Those respondents offering comment on the rule include: Private Provider Association of Texas; Reimbursement Advisory Panel of TDMHMR; and, Parents of the Retarded in Texas.

Concerning proposed §406.302(d)(1), two commenters stated that the phrase "unless contraindicated by the interdisciplinary team (IDT)" should be added to the text, or the entire last sentence should be deleted.

The department responds that it agrees with the comment and has deleted the last sentence in 406.302(d)(1).

Concerning proposed §406.302(d)(2), one commenter stated that it is not clear whether supported employment is a service

that can be billed in addition to day habilitation or whether the two services are mutually exclusive.

The department responds that it agrees with the comment regarding the wording and has reorganized the section for reading clarity. There were no changes to the meaning of the text. Supported employment remains a type of day services and there will be no additional funding beyond the day services rate.

The new section is adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section affects Texas Human Resources Code, §§32.001- 32.040, and Texas Government Code, §531.021.

§406.302. *Day Services.*

(a) In accordance with the requirements of 42 Code of Federal Regulations (CFR) §483.410(d)(3) and §483.440(a), each facility must ensure that day services furnished by an outside source meet the needs of each client and are integrated with the other components of the client's active treatment program.

(b) When an outside source furnishes services to a client, the client's facility must establish and maintain a written agreement with the outside source in accordance with 42 CFR §483.410(d)(1)-(3).

(c) If subminimum wages are paid to a client, the service provider must maintain the appropriate certification required by the United States Department of Labor.

(d) Day services include day habilitation and supported employment.

(1) Day habilitation assists individuals in the acquisition, retention, and/or improvement of self-help, socialization, cognitive, and adaptive skills necessary to be successful in the community. Day habilitation provides individuals with opportunities to participate in activities that increase attendance to task, elicit appropriate social and emotional interaction, relieve isolation, and encourage independent utilization of community resources. These opportunities may include enclaves, mobile crews, and other congregate training sites. Day habilitation services include individual assessments, career development, other person-centered services, transportation to and from day services, and attendant care for individuals who are unable to manage their personal care needs away from the residential setting. Whenever possible, public transportation will be utilized. Day habilitation must be designed to provide individuals with opportunities for meaningful activities that enhance their self-esteem, maximize their functioning level, and increase their level of independence.

(2) Supported employment is individualized employment in an integrated setting with on-going support services. Employment is work performed by the individual for which the individual is compensated by an employer in accordance with the Fair Labor Standards Act. An integrated setting is a job site away from the individual's place of residence, in which generally no more than one employee or three percent of the employees, whichever is more, have mental retardation or a related condition. Supported employment

includes activities that are necessary to sustain paid work by an individual with developmental disabilities. Supported employment is intended to assist individuals in maintaining employment in the community.

(A) Reimbursement for supported employment services is available only if documentation verifies that supported employment services have been denied or are otherwise unavailable to the client through either the Texas Rehabilitation Commission or the public school system.

(B) All clients receiving supported employment services must have an identified need and desire for employment.

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

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Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

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For further information, please call: (512) 206-4516

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Chapter 409. Medicaid Programs

Subchapter A. General Reimbursement Methodology for all Medical Assistance Programs

25 TAC §§409.1-409.7

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of existing §§409.1-409.7 of Chapter 409, Medicaid Programs, Subchapter A, governing reimbursement methodology for all Medicaid assistance programs. New sections would replace existing §§409.1-409.7 of Chapter 409, Medicaid Programs, Subchapter A, which are adopted contemporaneously in this issue of the *Texas Register*. Existing §§409.1-409.7 are repealed without changes as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12380).

The repeals would allow for the adoption of new sections governing eligibility and review.

There was no oral or written testimony regarding the repeal at a public hearing held on January 13, 1997.

The repeals are adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Government Code, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects Texas Human Resources Code, §§32.001-32.040, relating to General Provisions, and Texas Government Code, §531.021.

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

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Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

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For further information, please call: (512) 206-4516

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25 TAC §§409.1-409.9

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§409.1-409.9 of Chapter 409, Subchapter A, governing general reimbursement methodology for all medical assistance programs. Existing §§409.1-409.7 of Chapter 409, Subchapter A, are contemporaneously repealed in this issue of the Texas Register. Sections 409.1-409.5 and §§409.7-409.8 are adopted with changes to the proposed text as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12381). Section 409.006 and 409.009 are adopted without changes.

The new sections provide a uniform cost reporting process for all Medicaid programs administered by TDMHMR; outline general allowable and unallowable Medicaid costs and reporting practices; and require compliance with federal circular OMB A-87, with additional clarifying information.

Language in §409.001 was modified to add several definitions. Language in §409.2 was modified to identify the sources for cost determination rules. Language in §409.3 was modified to incorporate procedures regarding cost of out-of-state audits, which was moved from §409.3. Language in §409.007 was modified to state informal reviews of exclusions or adjustments will be made by persons not involved in prior reviews of the cost report. Language in §§409.004-409.006 and §409.008 were modified to correct grammatical usage.

A public hearing was convened on January 13, 1997; no testimony was presented. Written comments were received from the Private Provider Association of Texas (PPAT), Austin; Volunteers of America, Arlington; Develocepts, Austin; Educare, Austin; and the Reimbursement Methodology Advisory Panel consisting of representatives of provider agencies, provider associations, advocates, and community mental health and mental retardation centers.

Five commenters said they could not support the rules without having an opportunity to review the final versions. The department responds that staff have attempted to provide all interested parties with working drafts of revisions. The response to comments included below reflect an evolving set of rules crafted by numerous interested parties.

One commenter expressed concern that massive changes to the computer system would result in disruptions in billing. The department responds that it has attempted to anticipate billing problems and has worked closely with the Texas Department of Human Services (TDHS) to ensure that providers will be paid

accurately and on a timely basis. It is anticipated that minor billing edits will occur throughout the spring.

Two commenters recommended that generally accepted accounting principles (GAAP) should be referenced in §409.001 as the primary standard for determining the cost of services. The department responds that GAAP is used as the accounting methodology used in the rules, and has reorganized the GAAP references to clarify this point. The method of determining the allowability of costs is contained in federal circular OMB A-87.

Two commenters requested that §409.002(b) should specify that the department will provide adequate notice and reasonable timelines for the completion of requested reports and surveys. The department responds that the proposed rules provide for adequate notice and reasonable deadlines for reports and surveys and has not altered the text as proposed.

Two commenters requested that "may" be changed to "will" in the last line of §409.002(d). The department agrees with the commenter and has reorganized the section for reading clarity. In subsection (e) of the same section, two commenters requested the addition of language requiring that providers be notified of any exclusions or adjustments made under this section. The department agrees and has revised the language accordingly. In subsection (i) of the same section, two commenters requested that language be included which requires the department to include any data used to determine the payment rates in the rate packet provided to the public prior to a public hearing. The department responds that the material to be provided prior to a public hearing is defined in the state law which requires a public hearing for Medicaid rates. All other data used for rate analysis are available through an open records request and is usually too voluminous to include in a rate packet. In subsection (j) of the same section two commenters requested "cost report based rates" be replaced with "methodology based rates." The department responds that the rule states "may", not "will", so the department does not agree with the comment and has made no changes to the proposed text.

Concerning §409.003(a), two commenters recommended that "or its designee" be added after the reference to TDMHMR to allow flexibility. The department agrees and has developed new language that provides more specificity regarding the responsibilities of the department.

Concerning §409.005(c), two commenters requested that on-site audit reports and notices of desk review exclusions and adjustments be mailed to the address provided by the provider on the cost report. The department agrees with the suggestion and modified the language

Concerning §409.006(a) and (b), two commenters recommended that "may" be changed to "shall" and that the sentence referencing a 2.0% threshold be deleted. The department responds that the suggested language would restrict the Texas MHMR Board's decision making ability and would require board action for minor shifts in cost and declines to make the recommended revisions.

Concerning §409.007(b)(4), two commenters recommended that the membership of the review panel assembled to hear informal reviews should be clearly spelled out and should en-

sure at least some measure of objectivity by utilizing individuals from outside of the Medicaid Office or from outside of the department. The department concurs with the recommendation and has revised the language accordingly.

Concerning §409.008(a), two commenters stated that GAAP should provide the primary standard for determining costs and should be mentioned in this section in that context. The commenters further suggested that OMB A-87 should be only a supplementary guide. The department responds that GAAP is used as the accounting methodology used in the rules, and has reorganized the GAAP references to clarify this point. In addition, the department notes that the definitive authority for determining the allowability of costs is federal circular OMB A-87. In subsection (c) of the same section, two commenters recommended that the last sentence of the first paragraph is unnecessary and confusing. The department concurs and has deleted the sentence.

Concerning §409.008(c)(3) and (4), two commenters stated that the definitions of direct and indirect costs are inconsistent with those used in the model based rates for ICF/MR and HCS. The department agrees and has clarified the language.

In §409.008(e)(1), two commenters requested the addition of language describing circumstances under which expenses related to preparation of tax forms and audit/management reports are allowable. The department concurs with the suggestion and has revised the language accordingly. In paragraph (e)(2) of the same subsection, two commenters requested that the second sentence be deleted as unnecessary and inappropriate. The department has clarified the language but declines to delete the language as requested. Still in the same subsection but concerning paragraph (10), two commenters recommended revising the definition of related party and stated that a provider automatically should be limited to the lessor of costs. The department disagrees with the recommendations and declines to revise the language as proposed.

The new sections are adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

§409.1. Definitions and General Specifications.

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise: Cost Report-any cost data or financial information submitted by a provider to TDMHMR. Direct Services Cost Survey-annual survey conducted by TDMHMR in which cost data related to direct services is submitted by providers. Full Cost Report-cost data required by TDMHMR that includes all costs of providing services including direct care costs, administration, facility costs, and all other operating costs relevant to the provision of services. GAAP-Generally accepted accounting principles. GAAS-Generally accepted auditing standards. Person-An individual, partnership, corporation, association, governmental subdivision or agency, or a public or private organization of any character. Provider-Any person with whom TDMHMR has a provider agreement. Provider agreement-Any written agreement that obligates TDMHMR to pay money to a

person for goods or services under the Title XIX Medical Assistance Program. Related Party-Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other. TDMHMR-The Texas Department of Mental Health and Mental Retardation or its designee.

(b) The Texas Department of Mental Health and Mental Retardation (TDMHMR) reimburses Texas Medicaid contracted providers for medical assistance provided to Medicaid recipients. The Texas Mental Health and Mental Retardation Board determines prospective uniform reimbursement rates at least annually. When program specific rules are in conflict with sections of this subchapter, the program specific rules shall prevail.

§409.2. Method For Cost Determination.

(a) Cost determination rules. Except when otherwise specified under this title, the TDMHMR follows the requirements set forth in the Generally Accepted Accounting Principles (GAAP), the Generally Accepted Auditing Standards (GAAS), and federal circular OMB A-87, Attachment B, and in subsections (b) through (j) of this section as the cost determination rules for providers of services to Medicaid recipients. In cases in which cost reporting rules differ from GAAP, GAAS, IRS, or other authorities, the individual program rules take precedence for provider cost-reporting purposes.

(b) Cost reports and cost surveys. Cost reports, when used in this subchapter, will include all types of cost data requested by the TDMHMR including, but not limited to, the Time and Financial Information (TAFI), cost surveys of direct service costs, cost reports, and special cost studies. Cost report due dates will be included with the request for cost data or on the report form.

(c) Cost report due dates.

(1) Cost Reports. All contracted providers must submit cost reports to the Texas Department of Mental Health and Mental Retardation (TDMHMR) in a manner prescribed by the department. The Department will provide adequate notice and reasonable time lines for the completion of requested reports. The due date of the cost report is included in the cost report instructions. Failure to submit cost reports by the deadline could result in administrative penalties against the provider.

(2) Amended Cost Reports. TDMHMR accepts amended cost reports submitted on the request of the provider until 45 days after the due date. Since this is a prospective reimbursement system without a provision for reconciliation, amended cost reports filed after this 45 day extension have no effect on the rate and are not accepted. Amended cost report information that cannot be verified within ten working days of receipt will not be used in rate determination.

(d) Exclusions and adjustments. In addition to the exclusions and adjustments made during desk reviews and on-site audits, TDMHMR may exclude or adjust certain expenses in the cost report data base in order to base rates on the reasonable and necessary costs that an economical and efficient provider must incur. These adjustments include, but are not necessarily limited to, revenue offsets, fixed capital asset cost limits, percentile cap limits on administration and facility costs, occupancy adjustments, and cost projections. As specified in §409.005 of this title (relating to Notification), providers will be notified about exclusions and adjustments to their reported expenses.

(e) Cost inflation. TDMHMR projects expenses in the cost report data base to account for cost inflation between the reporting period and the prospective rate period. The department's procedures for determining inflation indices to account for cost inflation between the reporting period and the prospective rate period are specified in §409.004 of this title (relating to Determination of Inflation Indices)

(f) Other adjustments. TDMHMR may also adjust rates when new legislation, regulations, or economic factors affect costs, as specified in §409.006 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs).

(g) Projecting cost per unit for programs that are cost-based. After making appropriate exclusions and adjustments, TDMHMR uses the adjusted cost report data to project the cost per unit of service during the prospective rate period.

(h) Public hearing. TDMHMR must hold a public hearing before the Texas Mental Health and Mental Retardation Board sets payment rates. The purpose of the hearing is to give interested persons an opportunity to comment on the department's proposed rates. The department must provide notice of the hearing to the public; and at least ten days before the hearing takes place, the department must make material pertinent to the proposed rates available to the public. At a minimum, this material must include the department's proposed rates, the inflation rates used to determine them, and the impact on rates of the major cost limits applied under the provisions of subsection (d) of this section. TDMHMR must furnish this material to anyone who requests it from the TDMHMR division responsible for rate recommendations. After the hearing, TDMHMR must provide the Texas Mental Health and Mental Retardation Board with a written summary of the comments made during the public hearing.

(i) Pro forma analysis. If, in the professional opinion of TDMHMR staff, an insufficient number of accurate, full-year cost reports is submitted or there is information that causes doubt about the accuracy or applicability of the available data, the Texas Mental Health and Mental Retardation Board may promulgate payment rates based on a pro forma analysis by TDMHMR. A pro forma analysis is defined as an item-by-item calculation of the essential expenses necessary for an economic and efficient provider to operate. The pro forma analysis must be based on all the information available, including valid cost report data and survey data, in a way that ensures that the resultant rates are sufficient to support an economical and efficient provider. The analysis may involve assumptions about the salary of the administrator, staff salaries, employee benefits and payroll taxes, facility depreciation, mortgage interest, dietary expenses, and other facility and administration expenses. To determine the cost per unit of service, TDMHMR adds all the pro forma expenses and divides the total by the estimated number of units of service that a fully operational provider is likely to provide. When TDMHMR determines that sufficient and reliable cost report data have become available, the Texas Mental Health and Mental Retardation Board may replace pro forma rates with cost report based rates.

§409.3. Basic Objectives and Criteria for Review of Cost Reports.

(a) TDMHMR conducts desk reviews of all provider cost reports to ensure that the financial and statistical information submitted in the cost reports conforms to all applicable rules and instructions.

(b) The basic objective of TDMHMR desk reviews is to verify that each provider's cost reports:

(1) display financial and statistical information in the format required by TDMHMR,

(2) report expenses in conformity with TDMHMR's lists of allowable and unallowable costs, and

(3) follow generally accepted accounting principles except as otherwise specified in TDMHMR's lists of allowable and unallowable costs, or as otherwise permitted in the case of governmental entities operating on a cash basis.

(c) TDMHMR verifies the information specified in subsection (b) of this section by:

(1) comparing each provider's reported costs to:

(A) past patterns of expenditures for similar services;

(B) the results of previous on-site audits;

(C) normal operating cost relationships; and

(D) industry average costs;

(2) reviewing each provider's reported costs to search for:

(A) reported unallowable costs;

(B) omitted allowable costs; and

(C) overstated or understated allowable costs;

(3) checking for completion of required information;

(4) checking the format for proper cost classification;

(5) checking for mathematical accuracy; and

(6) adjusting improperly prepared reports.

(d) TDMHMR may conduct on-site audits of cost reports.

(e) Cost of out-of-state audits. As specified in §409.003(a) of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports), TDMHMR conducts desk reviews of all the cost reports that it receives. The department also conducts on-site audits of provider records and cost reports. Although the number of on-site audits performed each year may vary, the department seeks to maximize the number of on-site audited cost reports available for use in its cost projections. Whenever possible, the records necessary to verify information submitted to TDMHMR on Medicaid cost reports, including related party transactions and other business activities engaged in by the provider, must be accessible to TDMHMR audit staff in the state of Texas. When records are not available to TDMHMR audit staff within the state, the provider must pay the actual costs for TDMHMR staff to travel and review the records out of state. If a provider fails to reimburse TDMHMR for these costs within 60 days of the request for payment, TDMHMR will place a hold on the vendor payments until the costs are paid in full. As specified in §409.005 of this title (relating to Notification), providers will be notified about exclusions and adjustments to reported expenses made during desk reviews and on-site audits.

§409.4. Determination of Inflation Indices.

(a) Function and types of indices. To account for cost inflation between the reporting period and the prospective rate period as specified in §409.002 of this title (relating to Methodology), the Texas Department of Mental Health and Mental Retardation (TDMHMR) uses a general cost inflation index and several item-specific and program-specific inflation indices.

(b) General cost inflation index. For all medical assistance programs TDMHMR uses the Implicit Price Deflator-Personal Consumption Expenditures (IPD-PCE) as its general cost inflation index. The IPD-PCE is a nationally recognized measure of inflation published by the Bureau of Economic Analysis of the U.S. Department of Commerce. To project or inflate costs from the reporting period to the prospective rate period, TDMHMR uses the lowest feasible IPD-PCE forecast consistent with the forecasts of nationally recognized sources available to TDMHMR at the time rates are prepared for public dissemination and comment.

(c) Item-specific and program-specific inflation indices. When TDMHMR can obtain item-specific or program-specific inflation indices for cost report line items such as wages, facility depreciation, and lease appreciation, the department uses these specific indices in place of the general cost inflation index specified in subsection (b) of this section. The specific indices that the department uses include the following:

(1) Wage and benefit inflation rates for state school ICF-MR employees are determined by the Texas Legislature and Department merit policy.

(2) The inflation index for facility depreciation and lease appreciation is limited by federal regulations (OBRA 1984, COBRA 1985) that require the use of no more than one-half of the Consumer Price Index For All Urban Consumers (CPI-U) for depreciated ICF-MR facilities that change ownership after July 18, 1984. All leased ICF-MR facilities are inflated by no more than one-half of the CPI-U compounded annual rate of change for the most recent consecutive two year period for which information is available at the time reimbursement rates are determined. Other medical assistance programs use the IPD-PCE inflation index to project facility lease costs.

(3) The medical care CPI-U is used as the inflation index for the state school ICFs/MR comprehensive medical cost center. To project costs from the reporting period to the prospective rate period, TDMHMR uses the lower of the two medical care CPI-U forecasts reported by Data Resources Incorporated and Wharton Econometric Forecasting Associates.

§409.5. Notification.

(a) TDMHMR mails notification of the exclusions and adjustments to reported expenses. TDMHMR mails notices of desk review exclusions and adjustments within ten working days after entering them in the cost report data base. The notice consists of a letter to the provider and a one page desk review adjustment sheet that specifies:

- (1) the line items on the cost report that have been adjusted or excluded;
- (2) the amount of each adjustment or exclusion; and
- (3) the principal reason for each adjustment, capitation, or exclusion.

(b) TDMHMR also furnishes providers with written reports of the results of on-site audits. TDMHMR mails each on-site audit report within 30 days after the final exit interview with the provider. An exit interview is final when TDMHMR has received, reviewed, and analyzed all documentation from the provider pertinent to the scope of the audit. The on-site audit report consists of a multiple page professional report prepared by TDMHMR to enumerate the results

of an on-site audit. Each on-site audit report includes a specification of:

- (1) cost report line items that have been adjusted or excluded;
- (2) the amount of each adjustment or exclusion; and
- (3) the principal reason for each adjustment or exclusion.

(c) TDMHMR mails on-site audit reports and notices of desk review exclusions and adjustments to the address provided by the provider on their cost report.

(d) A provider may also submit a written request for TDMHMR to provide additional information about exceptions and adjustments to the provider's cost reports, including citations of the laws or regulations that constitute the grounds for the exceptions and adjustments. TDMHMR must respond to such requests in writing within 30 calendar days of receiving the request.

§409.7. Reviews and Administrative Hearings.

(a) General requirements. A provider who disagrees with an exclusion or adjustment made during a desk review or on-site audit of that provider, the determination of an inflation index, or a rate adjustment made in response to new legislation, regulations or economic factors under the provisions of this subchapter (relating to General Reimbursement Methodology for Medical Assistance Programs) must follow the procedures for informal reviews and administrative hearings set forth in this section to appeal the action.

(b) Informal review. An informal review is conducted according to the following procedures:

(1) If a provider disagrees with an exclusion or adjustment made during a desk review or on-site audit of that provider and the provider wants to appeal the exclusion or adjustment, the provider must submit a written request for an informal review within 30 calendar days of receiving TDMHMR's written notification of the exclusion or adjustment.

(2) If a provider disagrees with TDMHMR's determination of an inflation index or with a rate adjustment made in response to legislation, regulations or economic factors, and the provider wants to appeal the inflation index or rate adjustment, the provider must submit a written request for an informal review within 30 calendar days of the setting of rates by the TDMHMR Board. An informal review requested under the provisions of this paragraph may only consider whether the requirements of this chapter were followed in developing the rates.

(3) A written request for an informal review must be submitted to TDMHMR Medicaid Administration.

(4) On receipt of a timely request for an informal review, TDMHMR will appoint a review panel, to be composed of no less than two persons not involved in prior reviews of the cost report. The panel will arrange a meeting at the earliest possible date convenient to both the provider and the panel members. At the meeting, the provider may present any information it considers pertinent to its position. The review panel will consider information presented by the provider and any information from TDMHMR that the panel deems necessary to reach a decision. Within 30 calendar days from the meeting, the panel will send the provider the panel's written decision. The decision will be sent by certified mail, return receipt requested.

(c) Administrative hearings. If a provider disagrees with the decision reached in an informal review and the provider wants to appeal the decision, the provider must request an administrative hearing in accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions) within 15 days after receiving the review panel's decision.

(d) Rate not stayed. An informal review or administrative hearing requested under the provisions of this section will not stay the determination, adoption, or implementation of reimbursement rates by TDMHMR.

§409.8. Allowable and Unallowable Costs.

(a) General principles. Allowable and unallowable costs, both direct and indirect, identify expenses which are reasonable and necessary to provide contracted services and are consistent with federal and state laws and regulations. If a particular type of expense is classified as unallowable, then the classification means only that the expense will not be included in the database for reimbursement determination purposes because the expense is not considered reasonable and/or necessary. The classification does not mean that individual contracted providers may not make the expenditure. The description of allowable and unallowable costs is designed to be a general guide and to clarify certain key expense areas. The primary determinant of allowability is whether or not the cost is consistent with the criteria set forth in GAAP and federal circular OMB A-87, Attachment B. This circular is not comprehensive, and the failure to identify a particular cost does not necessarily mean that the cost is an allowable or unallowable cost.

(b) Generally accepted accounting principles. Except as otherwise specified by the cost determination rules of this chapter, cost report instructions, or policy clarifications, cost reports should be prepared consistent with generally accepted accounting principles (GAAP) which are those principles approved by the American Institute of Public Accountants (AICPA). Internal Revenue Service (IRS) laws and regulations do not necessarily apply in the preparation of the cost report. In cases in which cost reporting rules differ from GAAP, IRS, or other authorities, TDMHMR rules take precedence for provider cost reporting purposes.

(c) Allowable costs. Allowable costs are expenses, both direct and indirect, that are reasonable and necessary, as defined in paragraphs (1) and (2), of this subsection, and which are required in the normal conduct of operations to provide contracted client services meeting all pertinent state and federal requirements.

(1) "Reasonable" refers to the amount expended. The test of reasonableness includes the expectation that the provider seeks to minimize costs and that the amount expended does not exceed what a prudent and cost-conscious buyer pays for a given item or service.

(2) "Necessary" refers to the relationship of the cost, direct or indirect, incurred by a provider in the provision of client care. Necessary costs are direct and indirect costs appropriate in developing and maintaining the required standard of operation for providing client care in accordance with the contract, and with state and federal regulations.

(3) Direct service costs are those costs which are incurred by a provider which are definitely attributable to the operation of providing contracted client services. Whether or not a cost is considered a direct service cost depends upon the specific rules that

define the methodology for each program and the contracted client services covered by the program.

(4) Indirect costs are those shared costs which benefit, or contribute to, the operation of providing contracted services, other business components, or the overall entity with which the TDMHMR has contracted. Unless defined otherwise in program methodology rules, indirect costs must be allocated, directly or as a pool of costs, across those business components sharing in the benefits of those costs.

(d) Unallowable costs. Unallowable costs are expenses that are not reasonable or necessary to the provision of contracted services. The placement as an allowable cost on a cost report of a cost which has been determined to be unallowable may constitute an administrative contract violation and/or may constitute fraud.

(e) Specifications for allowable and unallowable costs. The primary criteria of allowability is whether or not the cost meets the definitions as set forth in the federal circular OMB A-87, Attachment B. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles in subsections (a) and (b) of this section and/or in circular OMB A- 87, Attachment B. The following are exceptions, or elaborations, to circular OMB A-87, Attachment B and subsection (b):

(1) Accounting and audit fees. Except for Schedule C or Partnership returns related to a contracted provider, expenses for preparation of personal tax returns, and production and/or distribution of annual reports for stockholders or investors are not allowable. Expenses for the preparation of audit/management reports for use by management staff or board members in directing or managing provider operations are allowable.

(2) Legal expenses. Legal retainers are not allowable in and of themselves. Legal costs associated with the provision of client services are allowable. Legal costs associated with litigation between the provider and a governmental entity are unallowable. Legal costs associated with any other unallowable cost are also unallowable.

(3) Depreciation and use allowances/equipment and other capital expenditures. Purchases of equipment with an asset value at, or more than, \$2,500 and an estimated useful life of more than one year must be depreciated or amortized, using the straight line method. In determining whether to expense or depreciate a purchased item, a contracted provider may expense any single item costing less than \$2,500 or having a useful life of one year or less. Depreciation and amortization expenses for unallowable assets and costs are also unallowable, including amounts in excess of those resulting from the straight line method, capitalized lease expenses in excess of actual lease payments, and goodwill or any excess above the actual value of physical assets at the time of purchase.

(4) Tax expense and credits. Income taxes (federal, state and local) are not allowable. Taxes in connection with financing, refinancing, or refunding operations, such as taxes on the issuance of bonds, property transfers, issuance or transfer of stocks are unallowable as a tax expense. Expenses based on tax fines or tax penalties, and any associated interest, are not allowable.

(5) Grants, gifts, and income from the endowments and operating revenue.

(A) Grants and contracts from federal government such as transportation grants, United States Department of Agriculture

grants, education grants, Housing and Urban Development grants, and Community Service Block Grants, should be offset, prior to reporting on the cost report, against the particular cost or group of costs for which the grant was intended.

(B) Contracts, grants, gifts, and income from endowments from private sources, or state and/or local governments, used to purchase allowable program items should not be offset by the contracted provider prior to reporting on the cost report. All such funds which are properly allocable to the cost report should be reported on a contracted provider's cost report, as well as any allowable costs to which the unrestricted funds were applied.

(C) Nonroutine revenues such as income from operations not associated with providing contracted services should be offset or reduced by the related expenses prior to reporting the revenue on the cost report. Expenses related to providing these types of non-contracted operations are unallowable costs. If nonroutine operating expenses, (including overhead costs) generate nonroutine operating revenue, in excess of nonroutine operating revenues, the net nonroutine operating expenses are not allowable costs.

(6) Losses resulting from theft or embezzlement. Losses resulting from theft or embezzlement of property or funds of clients held in trust by the contracted provider are not allowable costs.

(7) Direct reimbursement. Any expenses directly reimbursable to the contracted provider which are considered outside the reimbursement payment system are not allowable costs.

(8) Charity or courtesy allowance. A charity allowance is a reduction in normal charges due to the indigence of the client or resident. A courtesy allowance is a reduction in charges granted as a courtesy to certain individuals, such as physicians and clergy. These allowances themselves are not costs since the costs of the services rendered are already included in the contracted provider's costs.

(9) Partial allocation of expenses for items not used entirely in the provision of contracted services. Whenever otherwise allowable expenses for facilities, materials, supplies, or services are attributable partially to personal or other business interests and partially to contracted services, the latter portion may be allowed on a pro rata basis if the proportion used for contracted services is well-documented.

(10) Related-party transactions. Allowable costs are those which result from arm's length transactions involving unrelated parties. In related-party transactions, the allowable cost is limited to the cost to the related party, either the actual purchase prices paid by the related party or to the usual and customary charges for comparable goods and services, whichever is less. Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other. This can be based on common ownership, past or present mutual interests in any type of enterprise, or family ties.

(11) Fines assessed as administrative penalties and costs or interest associated with such penalties are unallowable.

(f) Medicaid as payor of last resort. Medicaid is the payor of last resort. Costs for which a recipient had Medicare Part A or B benefits, third-party payor benefits, vendor drug coverage, or any other benefits available are not allowable unless the provider can document that a provider of services was not accessible. At a

minimum, the documentation must include a list of the providers contacted, date(s) of contact, person to whom spoken, telephone number, and reason for rejection.

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

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

TRD-9703048

Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

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For further information, please call: (512) 206-4516

Subchapter D. Home and Community-based Services

25 TAC §§409.100, 409.101, 409.103, 409.106, 409.107, 409.118, 409.120

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §409.101 and new §§409.100, 409.103, 409.106, 409.107, 409.118, and 409.120 of Chapter 409, Subchapter D, relating to home and community-based services (HCS). Existing §§409.103, 409.106, 409.107, and 409.118 are contemporaneously repealed in this issue of the Texas Register. Sections 409.100-409.101, 409.103, 409.106, 409.107, 409.118, and 409.120 are adopted with changes to the proposed text as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12386).

New §409.100 specifies the service components provided by the HCS program, with any associated exclusions or limitations, and the service delivery units for each component. The amendments to §409.101 revise the current rule language to indicate the specific conditions under which an applicant or participant may request a fair hearing. New §409.103 defines a process and criteria for the initial assignment and annual reevaluation of a payment category assignment for a program participant based on a determination of an individual's level of need. This section replaces the current per diem reimbursement methodology with a fee-for-service methodology and defines the general and specific conditions for payment of program provider claims for reimbursement for each HCS service component. New §409.106 delineates the specific circumstances under which an HCS program provider may request an administrative hearing from the department. New §409.107 revises the cost reporting process and requirement to conform to the proposed reimbursement and rate setting methodology. New §409.118 implements a model-based rate setting methodology by which the fee-for-service reimbursement rates are established for each HCS service component. New §409.120 provides criteria and processes for departmental review and approval of revisions to level-of-need assignments and of specified individual plans of care.

Language in §409.100 has been revised from the proposal to include the basis for selecting HCS Program service components, to remove references to billable service units and to include re-

quirements for documenting an individual's need for services. This section was also modified to clarify that respite care is reimbursable under HCS when provided to individuals living in their family homes and to indicate that supported employment is provided in conjunction with day habilitation and may be provided to individuals without a previous history of institutionalization with general revenue funding. Section 409.101(c) was revised to allow greater flexibility in determining program eligibility with regard to maximum estimated service costs. Language in §409.103 was revised to clarify the level of need assignment process and to remove inconsistencies in terminology. Section 409.107 was revised to exclude providers submitting full cost reports from requirements to submit a direct service cost survey for the same reporting period, to change the cost reporting period to the state fiscal year, and to remove inconsistencies in terminology. Reporting and record keeping requirements included in this section were revised to parallel the requirements for the intermediate care facilities for the mentally retarded (ICF/MR) program. Section 409.107 was modified to include a section addressing fiscal accountability. Section 409.118 was revised to change the term "model-based rates" to modeled rates, to specify that relevant historical and operation cost information will be used in determining modeled rates and to specify that an independent firm will be included on the reimbursement advisory panel. Other terminology in §409.118 was revised to correct inconsistencies with Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs) and §409.107 of this title (relating to Reporting Costs). Section 409.120 was reorganized and revised to delineate the department's authority to conduct utilization and review activities, to specify the responsibilities of the department and of providers in the utilization review process, the conditions for reimbursement approval, and procedures providers must use to request the department to reconsider its decision.

A public hearing regarding the proposed rules was held January 13, 1997, at which no comments were received. Written comment was received from the Reimbursement Methodology Advisory Panel consisting of representatives of provider agencies, provider associations, advocates, and community mental health and mental retardation centers; Central Gulf State-Operated Community MHMR Services, Richmond; Educare, Austin; and the Private Providers Association of Texas (PPAT), Austin.

Several commenters requested the inclusion of clarifications of specific billing units and billing procedures in the §409.100. The department responds that in order to retain the original purpose of the section and avoid misunderstanding of the actual billing process, references to the billable service delivery units in the section have been removed and detailed instructions and explanations are being included in the billing procedures distributed to HCS Program providers. The section will retain the reimbursement limits for supported employment, adaptive aids, minor home modifications, and dental treatment. The billing and reimbursement procedures also will be revised to address the following concerns expressed by commenters: clarification of billing for case management services in the event a consumer transfers between program providers mid-month; and the need for definitions of the allowable full and partial billing units for each service component.

One commenter expressed concern that the term "supported home living" in the HCS service array may cause confusion with another service term "supported living" which is used by the department. The department appreciates the commenter's concern and will track and respond to any confusion that may result from the use of the two terms. The HCS waiver request and the provider instructions will contain a specific definition of the services covered under the supported home living service component and the qualifications of eligible service providers.

Two commenters suggested that the proposed description of respite care implied that individuals receiving HCS residential support or HCS foster care could not receive respite through a source other than the HCS program. The department has revised §409.100(a)(5) to clarify that respite care provided to individuals receiving residential support or HCS foster care is not reimbursable through the HCS program. This service could be included on the portion of the individual plan of care detailing community services provided through other resources.

One commenter urged the department to allow up to six program participants to receive respite in the same setting. The capacity of HCS respite settings is outside the purview of this proposed rule and the rule will not be revised to address the capacity of these settings. However, the department is studying this recommendation and, if a decision is made to change the capacity of respite settings, the change will be reflected in a revision to the HCS Consumer Principles for Evidentiary Certification.

Two commenters recommended that the department clarify the distinction between the supported home living component and the respite care component as soon as possible. The department agrees this distinction requires clarification and will distribute guidelines to providers in the near future.

Two commenters recommended that §409.100(a)(6) specify that documentation of a denial of services for day habilitation is not required in order to provide these services through the HCS Program. The department appreciates the commenters' concern but declines to revise the rule as recommended. In most cases, the department does not intend to require documentation of a denial of day habilitation services through another source in order for day habilitation to be initially approved as part of an individual plan of care. The department needs to retain the option to review such documentation and to challenge a provider's billing for day habilitation when the service is provided free of cost to the provider or is clearly available through and the responsibility of another source.

Two commenters requested that the department revise §409.100(a)(7) to clearly state that supported employment may be provided as a billable service in addition to day habilitation services for an individual. Three commenters additionally recommended that this section clearly include the department's intent to reimburse providers for supported employment provided to individuals who had not been previously institutionalized in an ICF/MR or nursing facility. The department has revised the language to stipulate that supported employment may be provided in conjunction with day habilitation and that supported employment may be provided as a state fund reimbursed, but not Medicaid reimbursed, service to individuals

without a history of such institutionalization, contingent on availability of state funding.

Two commenters stated that the allowable lifetime maximum expenditure specified in §409.100(a)(9) for minor home modifications of \$7,500 per individual was too restrictive and did not allow for changes in an individual's choice of residence or extenuating circumstances requiring a change in a living setting. It was recommended that a special review and approval process be available when additional minor home modifications were needed. The department appreciates the commenters' concerns but declines to make adjustments to this maximum expenditure. The department will investigate the alternative processes for review and approval suggested by the commenters.

One commenter recommended that the department eliminate the requirement for day habilitation services to be provided six hours per day since it will be possible to bill for this service in partial units. The department responds that although providers were not reimbursed through the HCS program, they historically have been required to assure that six hours of age appropriate day services be available to program participants. Inclusion of day habilitation as a reimbursable service does not change this program standard and, therefore, §409.100(6) will not be revised as recommended.

A commenter asked for clarification in this subchapter that consumers can pay for services in excess of the yearly or lifetime maximum HCS reimbursement amounts for services. The department responds that while the commenter is correct that consumers may pay for additional services in excess of the allowable maximum, the department does not agree this should be stipulated in this rule.

One commenter urged the department to examine the impact of the new fee-for-service reimbursement methodology on continued eligibility of currently enrolled consumers and to consider an alternative to the current criteria limiting the annual cost of services for an individual to a maximum of 125% of the average annualized per capita cost of ICF/MR services. The commenter recommended more flexibility in the criteria while continuing to place limits on the maximum cost of services for an individual. The department agrees and has revised §409.101(c) to allow flexibility to approve service plans with an estimated cost exceeding the average ICF/MR cost of services based on the demonstration of an individual's need for more extensive services. The revised section incorporates the program standard requiring services to be necessary to prevent an individual's institutionalization, to supplement rather than replace the individual's natural supports, and to be based on needs identified through assessment of the individual's condition. The revised section limits the cost of HCS program services to a maximum cost equal to 125% of the cost of services delivered in a small ICF/MR facility to an individual having a comparable level of need or equal to 125% of the average annualized per capita cost for ICF/MR services, whichever is greater. In addition, the process and criteria for approving individual service plans exceeding the average annual ICF/MR cost has been included in §409.120.

Two commenters recommended that, in the future, the department consider including definitions of services and billing units within §409.103. The department appreciates the commenters'

remarks and will consider their recommendation in future rule revisions.

Two commenters requested that §409.103(b) be modified to define the terminology "at cost" to include reimbursement for a "nominal administrative fee" as part of the cost for providing adaptive aids, minor home modifications and dental treatment. The department does not agree that an additional administrative charge over and above that in the case management rate should be included in the reimbursement for provision of these services.

Two commenters recommended that §409.103(c)(1)(B) be revised to allow the department some discretion in reviewing level of need assignments that do not directly correspond to the Inventory for Client and Agency Planning (ICAP) service level scores. The department agrees and has revised this section to indicate that levels of need not directly corresponding to the ICAP service level score are subject to utilization review.

Two commenters pointed out an apparent error in §409.103 regarding the Form 3650 documentation related to the intervention code designating the staff intervention necessary to classify an individual as having a pervasive plus level of need. The department has corrected the language to state "an intervention code of 2 on at least one of the Items 70-73" and thanks the commenters.

Two commenters specified that timelines for billing stated in §409.103(g)(4) appeared to be acceptable but asked for clarification on how the timelines were determined and documented. The department has reviewed this section and believes the explanation of timelines to be clear and consistent with the billing instructions for other Medicaid programs operated by the department.

A commenter recommended that the department modify language in §409.103(g)(3) to provide a mechanism to remedy situations in which payment for services is denied when an individual plan of care has expired but services continued to be provided. The department responds that the existence of a current individual plan of care is an eligibility requirement and the department cannot make a payment for an ineligible individual.

A commenter stated that the timelines for billing for service contained in §409.103(g)(4) were not acceptable for billing for adaptive aids or minor home modifications due to the process being more cumbersome than for other services. The commenter also requested that the rule be modified to require the department to process claims for adaptive aids and home modifications on a timely basis. The department responds that adaptive aids and home modifications are considered to be provided on the date they are delivered or completed. The department believes that 95 days from the date the aid or modification is provided is an adequate amount of time for a provider to submit the reimbursement request.

A commenter recommended that §409.103(g)(5) be revised to allow opportunities for providers to retroactively revise individual plans of care to include, and, therefore, allow billing for services which were delivered based on an individual's legitimate need but were not listed on the plan at the time the services were delivered. The department appreciates the commenter's concern but declines to allow this exception until the implications

can be studied in light of the new policies concerning approvals of IPC service cost maximums and the new fee-for-service methodology.

Two commenters recommended that §409.107 parallel the comparable section in ICF/MR program. The department has revised appropriate portions of §409.107 to parallel the reporting process for the ICF/MR program.

Two commenters recommended the addition of a new subsection to §409.107 regarding fiscal accountability. The department agrees with the recommendation and has added §409.107(s) to address fiscal accountability.

Two commenters recommended that §409.118(d) specify that the model rates are based on relevant information. The department revised the subsection as requested.

Two commenters recommended that §409.118(f) be revised to specify the inclusion of an independent consultant in the development of model rate recommendations. The department has revised this section to specify the inclusion of an independent firm along with service providers, advocates and department personnel in the development of model rate recommendations.

Two commenters suggested that proposed language in §409.118(g)(1) be revised to be consistent with new language included in §409.107 relating to fiscal accountability. The department agrees and has removed language inconsistent with the new language regarding fiscal accountability.

Two commenters requested that the reference in §409.118(g)(2) to the department's analysis of the model rates "at least every three years" be changed to "every three years." The department declines the revised language as requested, and explains that the intent of the rule is to establish the minimum frequency for rebasing the model rates and not to restrict the ability of the Texas MHMR Board to manage the program.

Two commenters recommended that the process used to adjust the model rates parallel the ICF/MR process for non-stated operated ICF/MRs. The department responds that language in §409.118(g)(2) parallels the process used to adjust the model rates for non-state operated ICF/MRs with the exception that the HCS process will be based on a state fiscal year cycle.

Two commenters recommended that the requirement for a written request for approval of a plans of care would be unnecessarily burdensome and bureaucratic since the department is able to identify plans which exceed the specified cost threshold. The commenters recommended that provider initiated requests for approval be limited to instances of increases in levels of need. The department revised the proposed section on utilization review to indicate instances requiring utilization review prior to authorization of reimbursement and to clarify provider and departmental responsibilities for completing the process. The revised section incorporates the proposed process for reconsideration of departmental decisions.

The new sections and amendments are adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rule-making authority; and under the provisions of Texas Government Code, which provides the Texas Health and Human Ser-

vices Commission with the authority to administer federal medical assistance funds.

§409.100. Service Components of Home and Community-based Services (HCS) Program.

(a) HCS service components are selected for inclusion in an applicant's or program participant's Individual Plan of Care (IPC) to supplement rather than replace that individual's natural community supports. HCS service components are selected based on assessments which identify specific services and supports necessary for the individual to continue living in the community and prevent the individual's admission to institutional based services. The following service components are available to all individuals enrolled in the HCS Program unless indicated otherwise:

(1) Case management is provided to all individuals enrolled in the HCS Program.

(2) Counseling and therapies, consisting of physical therapy, occupational therapy, speech and language pathology, audiology, social work, psychology, and dietary services may be provided according to the IPC.

(3) Nursing care may be provided in accordance with the IPC by licensed nurses.

(4) Residential assistance does not include payments for room and board and may be provided in accordance with the IPC in one of the following three ways:

(A) Supported home living is provided to individuals who are living in their own homes or the homes of their natural families;

(B) HCS foster care is provided to individuals who are living in the home of a foster family provider or paid companion; or

(C) Residential support is provided to individuals who reside in homes in which residential assistance is provided by staff who share the residence or who provide assistance on a scheduled shift basis.

(5) Respite care may be provided to individuals who are living in the homes of their natural or adoptive family. Respite care is not an HCS reimbursable service for individuals who are receiving HCS foster care or residential support. Respite care may be provided in the individual's residence or in an approved setting outside of the individual's residence. Reimbursement for overnight respite care provided in a setting other than the individual's residence includes payment for room and board. The maximum annual reimbursement per IPC year (an IPC year is defined by the begin and end dates of an individual's IPC, which encompasses a 12-month period of time) is equal to 30 multiplied by the daily reimbursement rate for respite care.

(6) Day habilitation may be provided to all enrolled individuals participating in day habilitation program activities which are exclusive of any other separately funded service including but not limited to, public school educational services, rehabilitative services for persons with mental illness, or programs funded by the Texas Department of Human Services or the Texas Rehabilitation Commission. Day habilitation is normally provided outside the individual's residence six or more hours per day five days per week.

(7) Supported employment is provided in conjunction with day habilitation and may be provided up to an annual maximum of \$3,000 per individual. Supported employment reimbursement is available only if documentation verifies that supported employment services have been denied or are otherwise unavailable to the individual through either the Texas Rehabilitation Commission or the public school system. Medicaid-reimbursed supported employment may be provided only if the participant has a documented previous history of institutionalization in a nursing facility or an intermediate care facility for persons with mental retardation or a related condition. Supported employment may be provided as a state-funded, non-Medicaid reimbursed HCS service component for individuals without a prior history of institutionalization subject to the availability of state funding. Any person receiving supported employment must have an identified need and desire for employment.

(8) Adaptive aids may be provided for each individual up to a maximum of \$10,000 per IPC year. The individual's interdisciplinary team must approve the provision of all adaptive aids. Provision of adaptive aids outside the scope of those specified in the HCS waiver as approved by the Health Care Financing Administration (HCFA) must be preapproved by TDMHMR Medicaid Administration.

(9) Minor home modifications may be provided to each individual up to a life-time maximum of \$7,500, after which \$300 per IPC year may be provided for maintenance or additional modifications. Provision of minor home modifications outside the scope of those specified in the HCS waiver as approved by HCFA must be preapproved by TDMHMR Medicaid Administration.

(10) Dental services may be provided to each individual according to the IPC up to a maximum of \$1,000 per IPC year. Dental services outside those specified in the HCS waiver as approved by HCFA will not be reimbursed.

(b) The provider must retain in the individual's record results and recommendations of individualized assessments documenting the current need for each service component included in the IPC. IPCs must be developed and updated in accordance with the Consumer Principles for Evidentiary Certification and with §409.101(4) of this title (relating to Client Eligibility Criteria.)

§409.101. Client Eligibility Criteria.

(a)-(b) (No change.)

(c) An individual will be determined eligible for HCS Program services if the estimated annual cost of services in the individual's IPC (IPC cost) does not exceed 100% of the estimated annualized per capita cost for ICF/MR services. If an individual's IPC cost exceeds 100% of the estimated annualized per capita cost for ICF/MR services, the individual will be eligible for HCS Program services if TDMHMR approves reimbursement, in accordance with §409.120 of this subchapter, and the IPC cost does not exceed 125% of the annual ICF/MR reimbursement rate paid to a small ICF/MR, as defined in §406.156 of this title (relating to Rate Setting Methodology) for the individual's level of need as it would be assigned under §406.204(b) of this title (relating to Level-of-Care Determination and Level-of-Need Assignment) or 125% of the estimated annualized per capita cost for ICF/MR services, whichever is greater. Services included in the IPC must be based on the individual's condition and environment, must be necessary to prevent institutionalization and must supplement rather than replace the individual's natural supports in the community.

(d) (No change)

(e) Any individual whose request for eligibility for the HCS Program is denied or is not acted upon with reasonable promptness, or whose HCS Program services have been terminated, suspended or reduced by TDMHMR is entitled to a fair hearing, conducted by TDHS, in accordance with 40 TAC §79.1101 et seq, except that a request for a fair hearing must be submitted to the TDMHMR Office of Medicaid Administration and received within 90 days from the date of the notice of denial of eligibility for the HCS Program or notice of termination, suspension, or reduction of HCS Program services.

§409.103. Payment Category Assignment and Provider Claims Payment.

(a) Reimbursement to providers for case management, supported home living, counseling and therapies, nursing, and respite care is based upon the unit reimbursement rate for the specific service component.

(b) TDMHMR will reimburse providers the actual cost of minor home modifications, adaptive aids, and dental services in accordance with waiver request as approved by HCFA, the HCS provider contract, the individual's IPC, and provider manual requirements.

(c) Reimbursement for HCS foster care, residential supports, and day habilitation is based upon the program participant's payment category assignment and the reimbursement rate for the specific service component provided.

(1) The payment category for a program participant is based upon a level-of-need (LON) assignment completed by TDMHMR or its designee as part of the level-of-care determination according to 25 TAC §406.203. LON assignments are derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the program applicant/participant and from selected items on the Level-of-Care Assessment Form (TDHS Form 3650).

(A) An HCS Program applicant or participant is assigned one of the following five levels of need;

(i) An intermittent LON (LON 1) is assigned if the ICAP service level score equals 7, 8, or 9;

(ii) A limited LON (LON 5) is assigned if the ICAP service level score equals 4, 5, or 6;

(iii) An extensive LON (LON 6) is assigned if the ICAP service level score equals 2 or 3;

(iv) A pervasive LON (LON 8) is assigned if the ICAP service level score equals 1.

(v) A "pervasive plus" LON (LON 9) is assigned when the TDHS Form 3650 documents an intervention code of 2 on at least one of Items 70-73.

(B) The LON assignment may be modified to take into account extraordinary service needs that result from unusual behavioral challenges. The LON for these individuals combines ICAP service level scores and needs identified on selected items on the TDHS Form 3650. A LON that does not directly correspond to the ICAP service level score will be subject to utilization review by TDMHMR or its designee.

(i) Individuals who have very challenging behaviors that require a behavior intervention program that includes constant preventive actions by additional provider staff will be assigned the next higher LON from the original level. Additional staff may assist in the supervision of other individuals. Individuals originally assigned a pervasive LON will retain that assignment. Very challenging behaviors have the following characteristics:

(I) The behavior presents a danger to the individual or to others;

(II) The behavior warrants individualized objectives which include written intervention procedures;

(III) The frequency of the behavior is reduced only with constant staffing and a highly structured environment;

(IV) The behavior is difficult or impossible for a single staff person to control when it occurs;

(V) The behavior precludes some activities and an environment that cannot be structured. The interventions used to control the behavior require regular documentation, monitoring, and revisions as needed to meet the needs of the individual; and

(VI) TDHS Form 3650 indicates an intervention code of 1 on at least one of Items 70-73.

(ii) Individuals who have extremely challenging behaviors which pose a risk of harm to themselves or others and who require constant one-to-one staff supervision, 16 hours per day, will be assigned a pervasive plus LON. Extremely challenging behaviors have the following characteristics:

(I) The behavior may be life-threatening;

(II) The behavior warrants the highest priority of individualized objectives which include a written record of every occurrence of the behavior;

(III) The frequency of the behavior is difficult to reduce;

(IV) The consequences of the behavior are difficult to minimize; and

(V) TDHS Form 3650 indicates an intervention code of 2 on at least one of the Items 70-73.

(2) The provider completes the ICAP, enters the resulting service level score on the TDHS Form 3650, and completes the remainder of Form 3650. Information entered on the Form 3650 must represent the applicant's/participant's current status. Completed Form 3650 is submitted to TDHS for initial program enrollment or to TDMHMR for annual eligibility reevaluation.

(3) TDMHMR reviews LON assignments and, if made in accordance with criteria in this subsection, approves the LON assignment.

(A) If TDMHMR determines that information submitted for a LON was not correct or if information previously submitted has changed, the LON assignment is reevaluated and may be changed by TDMHMR. If the LON assignment is changed, reimbursement paid to providers will be adjusted back to the date of the original LON assignment in order to reflect the appropriate LON assignment.

(B) The provider in disagreement with an individual's changed LON assignment may request reconsideration by TDMHMR

or its designee. Providers must submit written requests for reconsideration of a changed LON assignment in accordance with §409.120 to TDMHMR or its designee within ten-calendar days of notification of a changed LON assignment.

(4) TDMHMR performs annual reevaluations of LON assignments in conjunction with annual reevaluations of ICF-MR LOC.

(A) If a higher LON assignment is requested at the time of the annual eligibility reevaluation, the provider must submit supporting documentation to TDMHMR describing the changes in the individual's needs in accordance with §409.120 relating to Utilization Review.

(B) A provider in disagreement with TDMHMR's denial to increase an individual's LON assignment may request reconsideration by TDMHMR. The provider must submit written requests for reconsideration of the denial in accordance with §409.120 to TDMHMR or its designee within ten calendar days of notification of the denial.

(5) Providers requesting a change to a higher LON at times other than the annual reevaluation must submit TDHS Form 3650 with supporting documentation describing the changes in the individual's needs to TDMHMR in accordance with §409.120, relating to Utilization Review. A provider in disagreement with TDMHMR's denial to increase an individual's LON assignment may request reconsideration by TDMHMR or its designee. The provider must submit written requests for reconsideration of the denial in accordance with §409.120 to TDMHMR within ten calendar days of notification of the denial.

(d) Units of service must be provided and documented according to the individual plan of care.

(e) The provider must submit reimbursement requests in accordance with TDMHMR procedures and accept TDMHMR's payment as payment in full for waiver services.

(f) Room and board are not included in the reimbursement rate to providers except in the case of overnight respite care provided in a residence other than the participant's own home or family home.

(g) The provider is not entitled to payment if:

(1) the client is ineligible for the HCS program, Medicaid benefits, or is an inpatient of a hospital, nursing facility, or ICF-MR;

(2) TDMHMR has not authorized client enrollment on the Approval of Application for Enrollment form;

(3) services were delivered during gaps in the coverage period for the IPC for HCS form. Coverage periods are defined by the begin and end dates on the IPC for HCS form;

(4) the initial claim for service is not received by TDMHMR within 95 calendar days from the end of the month of service or within 30 days of notification of approval of enrollment by TDMHMR, whichever is later;

(5) the provider bills for services not included in the IPC during the time the services were provided;

(6) the service billed was not provided;

(7) the client is discharged from the HCS program. Payment is not made for the day of discharge from the HCS program.

§409.106. Provider's Right to Administrative Hearing.

(a) A provider may request an administrative hearing in accordance with 25 TAC, Chapter 409, Subchapter B of this title, relating to Adverse Actions, if TDMHMR takes or proposes to take the following action:

- (1) vendor hold;
- (2) contract termination;
- (3) recoupment of payments made to the provider; or
- (4) denial of a provider's request for payment.

(b) If the basis of an administrative hearing requested under subsection (a) is a dispute regarding a level-of-need assignment, the provider may receive an administrative hearing only if reconsideration was requested by the provider in accordance with §409.103, of this title (relating to Payment Category Assignment and Provider Claims Payment).

§409.107. Reporting Costs.

(a) On an annual basis, all state-operated providers must submit cost reports as directed by TDMHMR or its designee in accordance with Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medicaid Assistance Programs).

(b) Non-state operated providers must report direct service costs as specified in this subsection and in accordance with Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medicaid Assistance Programs).

(1) On an annual basis, non-state operated providers will submit direct service cost data except for providers selected to file a full cost report for the same reporting period.

(2) Providers must report the following costs:

(A) Staff wages related to the delivery of direct services including residential assistance, and day habilitation services; and the direct supervision of the delivery of these services.

(B) These costs may be either the provider's actual expense or contracted expenditures.

(c) At least every three state fiscal years beginning September 1, 1997, TDMHMR will select a sample of non-state operated providers which will be required to submit a full and accurate account of all costs related to the provision of services for a provider's fiscal year.

(d) TDMHMR will conduct desk audits of all cost reports and/or direct service cost surveys, and will conduct on-site reviews of a sample of providers submitting cost reports and/or cost surveys.

(e) Record keeping requirements. Each provider must retain records according to the department's requirements. Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and statistical information provided to TDMHMR.

(f) Noncompliance with record keeping requirements. Failure to maintain records that support the information submitted to TDMHMR constitutes a violation of the HCS provider contract.

(g) Allowable and unallowable costs. Providers must complete cost reports in accordance with §409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs).

(h) Certification. Providers must certify the accuracy of cost reports submitted to TDMHMR. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to TDMHMR requirements.

(i) Due date. Providers must submit direct service cost surveys no later than 45 calendar days after the end of the reporting period or 45 days after the date that TDMHMR mails the form to the provider, whichever is later. Providers must submit full cost reports no later than 90 days after the reporting period or 90 days after the date that TDMHMR mails the form to the provider, whichever is later.

(j) Extension of due date. TDMHMR may grant extensions of due dates for good cause. Good cause is defined as one that the provider could not reasonably be expected to control. A provider must submit a request for extension in writing to TDMHMR before the cost survey/cost report due date. TDMHMR will respond to a request for extension within ten working days of its receipt.

(k) Cost data. TDMHMR may at times require additional financial and statistical information to ensure the fiscal integrity of the HCS Program. Each provider must submit additional information to TDMHMR upon request, unless the information is not at the provider's disposal.

(l) Failure to submit requested data. Failure to submit acceptable cost data by the due date constitutes a violation of the HCS provider contract.

(m) Review of cost data. TDMHMR or its designee reviews each provider's cost data to ensure that the financial and statistical information submitted conforms to all applicable rules and instructions. Forms that are not completed according to TDMHMR's instructions or rules may be returned to the provider for proper completion.

(n) On-site audits. TDMHMR or its designee performs a sufficient number of on-site financial audits to ensure the fiscal integrity of the HCS Programs. The number of on-site audits performed may vary.

(o) On-site audit standards. TDMHMR or its designee performs on-site financial audits in a manner consistent with the generally accepted auditing standards (GAAS) approved by the American Institute of Certified Public Accountants and included in Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the United States Comptroller General.

(p) Access to records. Each provider must allow access to TDMHMR or its designee to any and all records necessary to verify cost data submitted to TDMHMR or its designee. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider that are directly or indirectly related to the provision of contracted services. Failure to allow inspection of pertinent records within ten working days following written notice from TDMHMR constitutes a violation of the HCS provider contract. If the administrative office or other entity pertaining to a multi-contract operation refuses access to records, then the penalties are extended to all of the provider's entities having Medicaid contracts with TDMHMR. Additional rules regarding access to records that are out-of-state may be found in Chapter 409, Subchapter A, §409.002 (relating to Methods for Cost Determination).

(q) Reviews of exclusions or adjustments. A provider who disagrees with TDMHMR's exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §409.007 of this title (relating to Reviews and Administrative Hearings).

(r) Notification of exclusions and adjustments. TDMHMR will notify a provider of exclusions and any adjustments, including caps applied, to reported costs in accordance with §409.005 of this title (relating to Notification).

(s) Fiscal Accountability.

(1) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the non-state operated reimbursement rates.

(2) Fiscal accountability will consist of the annual reporting of direct service costs including wages, benefits, staffing, and supervisory span-of-control information from all non-state operated providers. The data will be collected on a cost survey designed by TDMHMR.

(3) In the initial rate period, providers are required to submit direct services costs on a survey during a uniform three month period of the year, as selected by the department. The survey will reflect the provider's actual direct costs for the three month period. The direct service costs will be compared to the "direct service cost" component of the modeled rates. Instances where a provider's actual direct service costs, as captured by the quarterly cost surveys, are less than 85% of the direct service revenues in the model, will require additional reporting of costs and other information from the provider.

(4) TDMHMR will review the results obtained from the direct services cost surveys submitted for 1997 with representatives of provider associations and advocacy groups to further refine the fiscal accountability process. Direct services cost surveys will be collected in each fiscal year and instances where a provider's actual direct service costs are less than 85% of the direct service revenues in the model, TDMHMR may require the provider to:

- (A) Report more detailed financial information;
- (B) Submit to a quality assurance survey and review;
- (C) Submit to a utilization review of all services provided, and/or;
- (D) Submit to a detailed audit of all relevant financial records.

§409.118. Reimbursement Methodology for Home and Community-Based Services (HCS).

(a) TDMHMR determines reimbursement rates according to Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medicaid Assistance Programs).

(b) Reimbursement rates apply to all non-state operated providers uniformly by type of service component provided and the individual's level-of-need. Reimbursements for state-operated providers are adjusted based on allowed costs reported at the end of the state fiscal year, in accordance with Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medicaid Assistance Programs). The state-operated cost adjustment will not exceed allowable federal maximums.

(c) Rates are adopted annually by the board and are prospective in nature.

(d) Modeled rates are based on relevant cost information including a sample of historical cost information and operational experience of service providers in Texas. The modeled rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(e) Rates for service components may also take into account the individual's level of need as defined in §409.103 of this title (relating to payment category assignment and provider claims payment). Rates vary by level of need for residential support, HCS foster care, and day habilitation.

(f) The modeled rates effective January 1, 1997, are based on cost components deemed appropriate for a provider. The determination of these components is based on historical cost and operational information collected from a representative sample of providers. An advisory panel consisting of service providers, advocates, an independent firm and department personnel, will analyze available information regarding historical cost and operational data and level-of-need assessment. The analysis will result in recommendations to the board for rates which are reasonable and adequate.

(g) The rates are derived for each type of service and, when appropriate, each level-of-need and include the following cost factors: direct service staffing costs (wages for direct care, direct care supervisors, benefits, modeled staffing ratios); non-personnel operating costs; facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administrative costs; and professional consultation and program support costs.

(1) Annual rates for the time period between the years that modeled rates are rebased are set by inflating the direct cost portion of the previous year's rates by the IPD-PCE as defined in Chapter 409, Subchapter A of this title, (relating to General Reimbursement Methodology for All Medical Assistance Programs.) TDMHMR will collect the direct costs on a survey during a three month period of the current rate year. The data will reflect the provider's actual costs for the fiscal quarter ending during the three-month period. The direct service costs will be compared to the direct service cost component of the modeled rates.

(2) Beginning September 1997, the modeled rates will be analyzed at least every three state fiscal years to determine if rebasing is necessary, using the following process:

(A) TDMHMR will seek to retain an independent firm in accordance with Texas Government Code, Chapter 2254, to perform a detailed analysis of cost and operational information for a sample of providers throughout the state.

(B) Site visits will be made to each of the sample providers to collect cost data and discuss operations.

(C) An advisory panel will be formed consisting of service providers, advocates, and department personnel who will analyze available information regarding historical cost and operational data and level-of-need assessment. TDMHMR will use the analysis to make recommendations to the board for rates which are deemed appropriate.

(D) The advisory panel, TDMHMR, and the independent firm will recommend adjustments to rate factors if required, based on the results of the analysis of the sample of cost and operational information.

(E) Revised rates, as well as the rationale supporting the rates, will be presented to the TDMHMR Board for final approval and implementation.

(3) Refinement/adjustment of the cost factors and model assumptions will be considered, as appropriate, by the TDMHMR Board based on the overall industry results and recommendations of department staff.

§409.120. Utilization Review.

(a) TDMHMR or its designee may conduct a utilization review prior to authorization for HCS reimbursement in any circumstance including but not limited to the following:

(1) The provider submits an initial, revised or renewal IPC having an annual cost exceeding 100% of the estimated annualized average per capita cost for ICF/MR services;

(2) The provider reports an increase in an individual's LON either at the time of the annual eligibility reevaluation or at any other time;

(3) The HCS provider reports the consumer's LON is 9 (Pervasive Plus); and/or;

(4) The provider reports a LON for the consumer which appears inconsistent with other clinical or service provision evidence/history about the consumer.

(b) TDMHMR or its designee will not approve reimbursement in the circumstances included in subsection (a)(1)-(3) of this section until the provider has submitted documentation supporting the level of service delivery included in the IPC, an increase in a previous LON assignment or the assignment of an LON 9. Providers should send this documentation to TDMHMR, Medicaid Administration, at the same time as the electronic submission of the IPC or the TDHS Form 3650.

(1) In order for reimbursement to be approved, providers must submit documentation to TDMHMR which demonstrates the following, as appropriate:

(A) that the IPC services proposed for the individual are derived from assessments of the individual's needs, are necessary to prevent the individual from being institutionalized, and support rather than replace the individual's natural community supports and;

(B) that the proposed initial or revised LON assignment reflects the individual's current service level need which is expected to continue for at least 12 months.

(2) Information submitted by providers must include the Individual Service Plan containing the interdisciplinary team deliberations and conclusions and, as applicable, documentation of assessments or interventions by qualified psychologists or other professional staff/consultants, staff requirements to conduct behavioral intervention plans, medical and physical assessment results and recommendations; time sheets of assigned service providers, and any other documentation providing support of the LON assignment or the level of IPC services.

(3) Within ten working days of receiving the supporting documentation, TDMHMR or its designee will notify the provider in writing of the approval or disapproval of the requested LON or the level of service delivery. TDMHMR will establish the effective date of approved requests.

(A) If additional documentation is requested by TDMHMR, the provider must respond to the request within five working days of receipt of the request.

(B) Within five working days of receipt of the additional information, TDMHMR will inform the provider in writing of the approval or disapproval of the requested LON or the level of service delivery.

(c) The provider may request a reconsideration of TDMHMR's decision by submitting a written request to TDMHMR, Medicaid Administration within ten days of the date of notification of the department's decision. The request will be considered and the provider will be notified in writing of the results of TDMHMR's reconsideration within ten working days of receipt of the request.

(d) Providers in disagreement with a reconsideration decision related to a LON assignment may request an administrative hearing in accordance with §409.106 of this title (relating to Provider's Right to Administrative Hearing).

(e) TDMHMR Medicaid Utilization Review Department, or its designee, will conduct periodic retrospective reviews. Based on such reviews, TDMHMR may recoup or deny payment to a provider.

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

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

TRD-9703046

Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: March 25, 1997

Proposal publication date: December 24, 1997

For further information, please call: (512) 206-4516

25 TAC §§409.103, 409.106, 409.107, 409.118

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of existing §§409.103, 409.106, 409.107, and 409.118 of Chapter 409, Subchapter D, relating to home and community-base services. The repeal accommodates the contemporaneous adoption of new §§409.103, 409.106, 409.107, and 409.118 in this issue of the *Texas Register*. Existing §§409.103, 409.106, 409.107, and 409.118 are repealed without changes as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12390).

The repeals would enable the adoption of new sections to Chapter 409, Subchapter D.

There was no oral or written testimony regarding the repeal at a public hearing held on January 13, 1997.

The repeals are adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority;

and under the provisions of Texas Government Code, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects Texas Human Resources Code, §§32.001-32.040, relating to General Provisions, and Texas Government Code, §531.021.

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

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

TRD-9703047

Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: March 25, 1997
Proposal publication date: December 24, 1997
For further information, please call: (512) 206-4516

◆ ◆ ◆
**TITLE 40. SOCIAL SERVICES AND AS-
SISTANCE**

**Part VI. Texas Commission for the Deaf
and Hard of Hearing**

**Chapter 181. General Rules of Practice and Pro-
cedures**

Subchapter F. Fees

40 TAC §181.830

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §181.830, concerning Recommended Fees Schedule for the Payment of Certified Interpreters for the Deaf and Hard of Hearing without changes to the proposed text as published in the September 24, 1996, issue of the *Texas Register* (21 TexReg 9155).

This amendment will clarify the issues of minimum assignment time, portal to portal calculation, and cancellation of assignment pay.

No comments were received regarding adoption of the amend-
ment.

This amendment is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

Issued in Austin, Texas, on February 21, 1997.

TRD-9702530

David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: March 13, 1997
Proposal publication date: September 24, 1996
For further information, please call: (512) 451-8494

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Name: Melonie Hopson

Grade: 12

School: Skyline High School, Dallas Independent School District



Melonie Hopson

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure 31 TAC §57.157(c)(3)

Species	Ring ID in inches
Washboard, <i>Megalonaias nervosa</i>	4.00
Threeridges and roundlakes, <i>Amblema</i> spp.	2.75
Mapleleafs and pimplebacks, <i>Quadrula</i> spp.	2.75
Tampico pearlymussel, <i>Cyrtonaias tampicoensis</i>	2.75
Bleufer, <i>Potamilus purpuratus</i>	2.75
All Other Species of Freshwater Mussels	2.50

Figure 1: 40 TAC 715.417(a)

Age of Child	Child/Staff Ratio	Maximum Group Size
0-11 months	4	10
12-17 months	5	13
18-23 months	9	18
2 years	11-13	22-26
3 years	15-17	30-34
4 years	18-20	35
5 years	22-24	35
6-8 years	26	35
9-12 years	26	35

Figure 2: 40 TAC 715.417(b)

Age of Child	Child/Staff Ratio	Maximum Group Size
12-17 months	6	14

Figure 3: 40 TAC 715.417(j)

Number of Children 0-17 months	Number of Children 18 months through 4 years	Number of Children 5 through 13 years	Maximum Allowed Number of Children
0	8 7 6 5 4 3 2 1 0	4 5 6 7 8 9 10 11 12	12
1	5 4 3 2 1 0	5 6 7 8 9 10	11
2	4 3 2 1 0	4 5 6 7 8	10
3	2 1 0	2 3 4	7
4	0	0	4

Figure 4: 40 TAC 715.421 (b)(1)(A)

Age of Youngest Child in Group	Number of Children	Number of Adults
0-1 months	4	2
13-17 months	5	2
18-23 months	7	2
2 years	9	2
3 years	13	2
4 years	16	1
5 years	20	1
6-8 years	22	1
9-13 years	25	1

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Thursday, April 3, 1997, 10:00 a.m.

1701 North Congress Avenue

Austin

Utility Division

AGENDA:

A Hearing on the Merits is scheduled for the above date and time in SOAH DOCKET Number 473-97-0060; Complaint of Joe Holmes against Texas Utilities Electric Company (PUC Docket Number 16650).

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

Filed: March 5, 1997, 11:15 a.m.

TRD-9703070



Friday, April 4, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Utility Division

AGENDA:

A Hearing on the Merits is Rescheduled for the above date and time in SOAH DOCKET Number 483-97-0559; PUC Docket Number 17153: Application of Advanced Radio Telecom Corporation for a facilities- Based Certificate of Operating Authority.

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

Filed: March 6, 1997, 3:54 p.m.

TRD-9703151



Texas Department of Agriculture

Monday, March 24, 1997, 8:00 a.m.

Sheraton Austin Hotel, 500 North IH35

Austin

Texas Grain Sorghum Producers Board

AGENDA:

Call to Order

Discussion and Action: Swearing in of Levi Heath and a Replacement for Dick Perry

Discussion and Action: Minutes; Financial Reports; Appointment of Office Manager; Supplemental Budget; New Building Blueprints; Research/Marketing Proposals; USFGS Update, Director Attendance; National Guidelines.

Discussion: Other Business

Adjourn

Contact: Travis Taylor, P.O. Box 560, Abernathy, Texas 79311-0560, (806) 298-4501.

Filed: March 5, 1997, 1:40 p.m.

TRD-9703082



Texas Commission on Alcohol and Drug Abuse (TCADA)

Friday, March 21, 1997, 11:00 a.m.

3930 Kirby, Suite 207, Texas Youth Commission

Houston

Regional Advisory Consortium (RAC), Region 6

AGENDA:

Call to order; welcome and introductions of guests; approval of minutes; strategic plan discussion; definition of the RAC; new business; old business; public comment; and adjourn.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753, (512) 349-6669.

Filed: March 5, 1997, 3:48 p.m.

TRD-9703098



Wednesday, March 26, 1997, 10:00 a.m.

3001 Sanguinet Challenge, Inc.

Fort Worth

Regional Advisory Consortium (RAC), Region 3

AGENDA:

Call to order; welcome and introductions of guests; approval of minutes; TCADA update and comments; old business; new business; public comment; and adjourn.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753, (512) 349-6669.

Filed: March 7, 1997, 1:40 p.m.

TRD-9703195



Canadian River Compact Commission

Wednesday, April 30, 1997, 1:00 p.m.

4630 50th Street, Suite 600

Lubbock

AGENDA:

1. Call to Order by the Chairman
2. Approval of the Agenda
3. Approval of minutes of meeting held April 6, 1996
4. Report of the Chairman
5. Report of the Secretary
6. Report of the Treasurer
7. Report of the Engineering Committee
8. Report of the Legal Committee
9. Reports of the States
10. Reports of the State and Federal Agencies
11. Palo Duro Reservoir
12. New Business
13. Adjourn.

Contact: Herman Settemeyer, MC-157, 12100 Park 35 Circle, Austin, Texas 78711-3087, (512) 239-4707.

Filed: March 7, 1997, 2:22 p.m.

TRD-9703213



Comptroller of Public Accounts

Monday, March 17, 1997, 9:30 a.m.

LBJ State Office Building, 111 East 17th Street, Room 114

Austin

TexPool Advisory Board

AGENDA:

- I. Call to Order
- II. Approval of Minutes
- III. Presentation on transition of TexPool from the Comptroller's Office to Texas Commerce Bank/First Southwest Asset Management, Inc.
- IV. Briefing on Independent Audit Report
- V. Briefing on TexPool Investments
- VI. Briefing on TexPool Operations
- VII. Adjourn

Contact: Oscar Ramirez, 200 East 10th Street, Suite 427, Austin, Texas 78701, (512) 463-2834.

Filed: March 6, 1997, 2:29 p.m.

TRD-9703141



Texas Cosmetology Commission

Monday, March 17, 1997, 10:00 a.m.

Texas Cosmetology Commission Hearing Room, 5717 Balcones Drive

Austin

AGENDA:

Call to Order; Excuses for Absent Members; Approval of Prior Commission Minutes; Agreed Orders; General Discussion of Concurrent Hours Rule Change (89.14); Review of Proposed Legislative Changes, Status Update, Appropriations Bill Update, and Possible Vote on Further Recommended Statutory changes; Executive Session; Reconvene from Executive Session and Possible Vote; Adjourn.

Contact: Catherine Nahay, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: March 7, 1997, 12:00 p.m.

TRD-9703190



Texas County and District Retirement System

Monday, March 17, 1997, 9:00 a.m.

Hyatt Regency Hotel, 208 Barton Springs Road

Austin

Board of Trustees

AGENDA:

REVIEW AND APPROVAL OF: Minutes of December 1996 Regular Board Meeting, Applications for Service and Disability Re-

irement Benefits, Applications for TCDRS Participation, Financial Statements, Revised Actuarial Assumption. **CONSIDER AND ACT ON:** Supplemental Death Benefits Fund Claim, Legislation, Property Sales Procedures, Methods and Contracts, Insurance Coverage, 457 Plans, Adoption of the Barclay Global Investors' (BGI) Proxy Guidelines as the TCDRS Guideline for Voting of Proxies on Equity Securities Managed by BGI, Administrative and Investment Policy, Practices, Budgets, and Personnel. **REPORTS FROM:** Actuary, Legal Counsel, Fiduciary counsel, Investment Committee, Investment Officer, Chairman, Director. **AUTHORITY FOR DIRECTOR TO SIGN:** Documents relating to sale of office building, Custodian agreement; Documents relating to.

Contact: Terry Horton, P.O. Box 2034, Austin, Texas 78768-2034, (512) 328-8889, Extension 223.

Filed: March 7, 1997, 10:26 a.m.

TRD-9703187

Texas Department of Criminal Justice

Friday, March 14, 1997, 9:30 a.m.

Price Daniel Sr. Building, Conference Room, Fifth Floor, 209 West 14th Street

Austin

Correctional Managed Health Care Advisory Committee

AGENDA:

- A. Call to Order
- B. Approval of Minutes from December 12, 1997, Committee Meeting
- C. Texas Board of Criminal Justice Update
- D. Executive Director Report
- E. Joint Publication on Teleconsultation
- F. State Audit Update
- G. Medical Director Activity Report
 - 1. University of Texas Medical Branch at Galveston
 - 2. Texas Tech Health Sciences Center
 - 3. Texas Department of Criminal Justice
- H. Action: Renaming Psychiatric Services to Mental Health Services
- I. TB Testing for Employees
- J. Medical Facility Update
- K. Inmate Co-payment Issues
- L. Legislation Update/Appropriations Update
- M. FY98-99 CMHC Contract Issues
- N. Discussion of next CMHCAC Meeting

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: James E. Riley, P.O. Box 99, Huntsville, Texas 77340, (409) 294-2972.

Filed: March 6, 1997, 8:33 a.m.

TRD-9703109

Texas Ethics Commission

Friday, March 14, 1997, 9:30 a.m.

Capitol Extension, Room E1.010

Austin

AGENDA:

The commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the February 14, 1997 meeting; briefing, discussion, and possible action to waive certain fines assessed for late filing of campaign finance or lobby reports; briefing, discussion, and possible action concerning an additional recommendation to be made to the 75th Legislature for a necessary statutory change; discussion and possible action in response to the following Advisory Opinion Requests Numbers 3899, 400 and 401; adjourn.

Contact: Tom Harrison, 201 East 14th Street, 10th Floor, Austin, Texas 78701, (512) 463-5800.

Filed: March 6, 1997, 3:53 p.m.

TRD-9703150

General Land Office

Tuesday, March 18, 1997, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board

AGENDA:

Approval of precious board meeting minutes; Vermejo (Ellenburger) Field, Loving County; McFaddin, North (5100) Field, Victoria County; Wildcat Field, Calhoun county; East Green Fox Field, Marion County; Wildcat field, Jefferson County; direct land sales, Hood county; consideration of tracts, terms and conditions of a sealed bid land sale to be held on May 20, 1997; coastal public lands, easement amendment, Colorado river, Matagorda County; Executive Session and Open Session- consideration of waiver of statutory first option to purchase state agency lands, Ellis county; concerning Paseo Del Este, El Paso County; Executive Session- pending or contemplated litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, Room 836, (512) 463-5016.

Filed: March 7, 1997, 4:35 p.m.

TRD-9703235

Texas Department of Housing And Community Affairs

Friday, March 14, 1997, 10:00 a.m.

507 Sabine Street, Fourth Floor

Austin

Advisory Commission

AGENDA:

The Manufactured Housing Committee of the Texas Department of Housing and Community Affairs Board, will conduct a conference call to consider nominees and select individuals for the remaining four positions on the advisory commission.

Contact: L.P. Manley, 507 Sabine, Suite 900, Austin, Texas 78701, (512) 475-3934.

Filed: March 6, 1997, 4:16 p.m.

TRD-9703155

◆ ◆ ◆
Texas Department of Insurance

Monday, March 17, 1997, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

Prehearing conference in the matter of a Private Passenger Automobile Rating Filing by ALLSTATE INDEMNITY COMPANY.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code, 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 7, 1997, 10:23 a.m.

TRD-9703186

◆ ◆ ◆
Monday, March 24, 1997, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

To consider whether disciplinary action should be taken against MARY A. CABELLO, Houston, Texas, who holds a Local Recording Agent's License issued by the Texas Department of Insurance (continued from 1/23/97).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code, 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 7, 1997, 10:23 a.m.

TRD-9703185

◆ ◆ ◆
Wednesday, March 26, 1997, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

To consider whether disciplinary action should be taken against TERRY LEE GINGELL, Houston, Texas, who holds a Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code, 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 7, 1997, 10:23 a.m.

TRD-9703184

◆ ◆ ◆
Wednesday, March 26, 1997, 9:30 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

Hearing to consider whether WEST TEXAS ABSTRACT & TITLE COMPANY and MARION S. DAILY violated 28 TAC, 9.1.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code, 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 7, 1997, 10:23 a.m.

TRD-9703183

◆ ◆ ◆
Thursday, March 27, 1997, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

To consider whether disciplinary action should be taken against SAMUEL THOMAS RUSS, Texas City, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and a Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code, 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 7, 1997, 10:22 a.m.

TRD-9703182

◆ ◆ ◆
Friday, March 28, 1997, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

In the Matter of THOMAS K. LAWLESS d.b.a NATIONAL PROCESSING CENTER (continued from 2/12/97).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code, 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 7, 1997, 10:22 a.m.

TRD-9703181

Board of Law Examiners

Friday, March 21, 1997, 8:30 a.m.

Suite 500, Tom C. Clark Building, 205 West 14th Street

Austin

Panel Hearings

AGENDA:

The hearings panel will hold public hearings and conduct deliberations; including the consideration of proposed agreed orders, on the character and fitness of the following applicants, declarants and/or probationary: James A. Haugh; Curtis Lewis; William G. Zachary; Robert F. Bichelbaum; Jay B. Carter; and Steven Erik Johnston (character and fitness deliberations may be conducted in executive session, pursuant to §82.004(a), Texas Government Code.)

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: March 10, 1997, 7:24 a.m.

TRD-9703250

Texas State Library and Archives Commission

Monday, March 17, 1997, 1:00 p.m.

Room 314, Lorenzo de Zavala State Archives and Library Building, 1201 Brazos and Texas Council for the Humanities and the Texas Humanities Resource Center, Bannister Place, A, 3809 South Second Street

Austin

AGENDA:

1. Approve minutes of the February 10, 1997 Commission meeting.
2. Report of the Director and Librarian.
3. Adopt Library Services and Technology Act State Plan.
4. Adopt Affirmative Action Plan.
5. Accept bid on Director and Officer Liability Insurance.
6. Discussion of current legislation.
7. Discussion of establishment of an independent support group.
8. Public comments.
9. Executive Session: Receive report of Committee to Evaluate the Director and Librarian.
10. Orientation tour of the Texas Council for the Humanities and the Texas Humanities Resource Center, Bannister Place A, 3809 South Second Street, Austin, Texas.

Contact: Nancy Webb, P.O. Box 12927, Austin, Texas 78711, (512) 463-5460.

Filed: March 6, 1997, 3:01 p.m.

TRD-9703146

Texas Appraiser Licensing and Certification Board

Friday, March 21, 1997, 12:00 noon

TALC Conference Room, 235A, 1101 Camino La Costa

Austin

Enforcement Committee

AGENDA:

Call to order: Discussion and possible action or adoption of recommendations to the Texas Appraiser Licensing and Certification Board concerning complaint files numbered: 95-003, 95-005, 95-008, 95-012, 96-001, 96-003, 96-008A, 96-010, 96-012, 96-013, 96-018, 96-019, 96-020, 96-022, 96-024, 96-025, 96-027, 96-028, 96-031, 96-035, 97-001, 97-002, 97-003, 97-004, 97-005, 97-006, 97-006, 97-007, 97-008, 97-009, 97-010, 97-011, 97-012, 97-013, 95-014, and 97-0015; enforcement and complaint resolution policies and procedures; informal conference with respondent and/or complainant concerning complaint file numbered 96-012; and possible action or adoption of recommendations to the Texas Appraiser Licensing and Certification Board; Informal conference with respondent and/or complainant concerning complaint file numbered 95-012; and possible action or adoption of recommendations to the Texas Appraiser Licensing and Certification Board; Informal conference with respondent and/or complainant concerning complaint files numbered 95-011 and 96-001; and possible action or adoption of recommendations to the Texas Appraiser Licensing and Certification Board; Informal conference with respondent and/or complainant concerning complaint file numbered 95-003; and possible action of adoption of recommendations to the Texas Appraiser Licensing and Certification Board; Adjourn.

Contact: Renil C. Liner, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3950.

Filed: March 5, 1997, 1:08 p.m.

TRD-9703073

Texas Lottery Commission

Monday, March 17, 1997, 12:00 noon

6937 North IH35, First Floor Auditorium

Austin

AGENDA:

According to the complete agenda, the Texas Lottery Commission Chair will call the meeting to order;

1. Briefing by General Counsel of Texas Lottery Commission regarding resources available to Bingo Advisory Committee, including availability of legal services of General Counsel fo Bingo Advisory Committee and consideration and possible action on available legal services;
2. Consideration, public comment, and possible action of the Bingo Advisory Committee conducting meetings according to the Texas Open Meetings Act, including requesting a legal opinion and/or Attorney General Opinion;
3. Consideration, public comment, review and possible action regarding Texas Government Code, §467.021, requiring one of the three Texas Lottery Commissioners to have experience in the bingo industry;

4. Discussion of the background of statutes related to prohibition of sale of lottery tickets at licensed bingo premises and the enhancement of income source of bingo conductors;
5. Consideration, public comment and possible action on adopted rule 402.567 regarding Bingo Advisory Committee;
6. Consideration, public comment, and possible action on Internal Revenue Service Tax of Instant Bingo as unrelated business income, including requesting a legal opinion, attorney general opinion and/or revenue ruling;
7. Consideration, public comment, and possible action on reformulating the current 35% Charitable Distribution formula based on the adjusted gross income;
8. Consideration, public comment, and possible action on any and all recommendations proposed by the House Interim Committee regarding Charitable Bingo;
9. Consideration, public comment and possible action on proposed Bingo-related legislation;
10. Update on the status of approved electronic gaming machines;
11. Update on current status of eight liner machines and calling card machines in Bingo Halls;
12. Consideration of and public comment regarding the needs and concerns of the state's charitable bingo industry including but not limited to current rules and statutes;
13. Review agenda items for future Bingo Advisory Committee meetings; and;
14. Adjourn

For ADA assistance, call Michelle Guerrero at (512) 323-3791 at least two days prior to meeting.

Contact: Kimberly L. Kiplin, P.O. Box 16630, Austin, Texas 78761, (512) 323-3791.

Filed: March 7, 1997, 4:20 p.m.

TRD-9703226

Monday, March 17, 1997, 10:00 a.m.

6937 North IH35, First Floor Auditorium

Austin

Bingo Advisory Committee

AGENDA:

According to the complete agenda, the Texas Lottery Commission Chair will call the meeting to order;

1. Consideration and possible approval of the minutes of the February 21, 1997 Committee Meeting;
2. Briefing by General Counsel of Texas Lottery Commission regarding resources available to Bingo Advisory Committee, including availability of legal services of General Counsel to Bingo Advisory Committee and consideration and possible action on available legal services;
3. Consideration, public comment, review and possible action of the Bingo Advisory Committee conducting meetings according to the

Texas Open Meetings Act, including requesting a legal opinion and/or Attorney General Opinion;

4. Consideration, public comment, review and possible action regarding Texas Government Code, §467.021, requiring one of the three Texas Lottery Commissioners to have experience in the bingo industry;
5. Discussion of the background of statutes related to prohibition of sale of lottery tickets at licensed bingo premises and the enhancement of income source of bingo conductors;
6. Consideration, public comment and possible action on adopted rule 402.567 regarding Bingo Advisory Committee;
7. Consideration, public comment, and possible action on Internal Revenue Service Tax of Instant Bingo as unrelated business income, including requesting a legal opinion, attorney general opinion and/or revenue ruling;
8. Consideration, public comment, and possible action on reformulating the current 35% Charitable Distribution formula based on the adjusted gross income;
9. Consideration, public comment, and possible action on any and all recommendations proposed by the House Interim Committee regarding Charitable Bingo;
10. Consideration, public comment and possible action on proposed Bingo-related legislation;
11. Update on the status of approved electronic gaming machines;
12. Update on current status of eight liner machines and calling card machines in Bingo Halls;
13. Consideration of and public comment regarding the needs and concerns of the state's charitable bingo industry including but not limited to current rules and statutes;
14. Review agenda items for future Bingo Advisory Committee meetings; and;
15. Adjourn

For ADA assistance, call Worlanda Neal at (512) 371-4713 at least two days prior to meeting.

Contact: Kimberly L. Kiplin, P.O. Box 16630, Austin, Texas 78761, (512) 323-3791.

Filed: March 7, 1997, 4:21 p.m.

TRD-9703229

Texas State Board of Medical Examiners

Friday, March 7, 1997, 9:00 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Hearings Division

EMERGENCY MEETING AGENDA:

Probation Appearance, 9:00 a.m. — Larry J. Breitenstein, DO, Conroe, Texas

Probation Appearance, 9:00 a.m. — Steven E. Stern, MD, Houston, Texas

Probation Appearance, 9:00 a.m. — Kenneth M. Piazza, MD, Jasper, Texas

Probation Appearance, 9:00 a.m. — Mary M. Poage, MD, Houston, Texas

Modification Request, 10:30 a.m. — Kathy A. Pullam, MD, Stone Mountain, Georgia

Termination Request, 10:00 a.m. — Robert E. Galloway, MD, Houston, Texas

Termination Request, 11:00 a.m. — Leopold Villegas III, DO, Bridge City, Texas

Executive session under authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b) and 2.09(o), Texas Revised Civil Statutes, regarding pending or contemplated litigation.

REASON FOR EMERGENCY: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016.

Filed: March 5, 1997, 1:37 p.m.

TRD-9703080

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Wednesday, March 12, 1997, 1:00 p.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Hearings Division

EMERGENCY AGENDA:

Probation Appearance, 1:00 a.m. — Joe W. Rhoades, DO, Fort Worth, Texas

Probation Appearance, 1:00 a.m. — Bruce S. Hinkley, MD, Arlington, Texas

Probation Appearance, 1:00 a.m. — Darryl D. Nix, DO, Arlington, Texas

Probation Appearance, 1:00 a.m. — Weldon E. Bond Jr., DO, Arlington, Texas

Probation Appearance, 2:00 a.m. — Richard F. Morrison, MD, Dallas, Texas

Probation Appearance, 2:00 a.m. — Febe Linda Panal Oro, MD, Denison, Texas

Probation Appearance, 3:00 a.m. — George R. Smith, MD, Mt Pleasant, Texas

Modification Request, 2:00 p.m. — Brandt H. McCorkle, DO, Arlington, Texas

Termination Request, 1:00 p.m. — Daniel A. Boudreau, DO, Mesquite, Texas

Termination Request, 3:00 p.m. — James M. Rampoldi, MD, Denton, Texas

Termination Request, 3:30 p.m. — William C. Martin, MD, Weatherford, Texas

REASON FOR EMERGENCY: Information has come to the attention of the agency and requires prompt consideration.

Executive session under authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b) and 2.09(o), Texas Revised Civil Statutes, regarding pending or contemplated litigation.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016.

Filed: March 5, 1997, 1:38 p.m.

TRD-9703081

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Thursday, March 13, 1997, 9:00 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Hearings Division

AGENDA:

Probation Appearance, 9:00 a.m. — Debra K. Epps, MD, Kerrville, Texas

Probation Appearance, 10:00 a.m. — Donna C. Cromwell, M.D., San Antonio, Texas

Probation Appearance, 10:00 a.m. — Keith D. Beck, MD, San Antonio, Texas

Probation Appearance, 10:00 a.m. — Rahul K. Challapalli, MD, McAllen, Texas

Modification Request, 9:00 a.m. — Eugene N. Clayton III, MD, Kerrville, Texas

Termination Request, 9:00 a.m. — Phillip W. Caterbone, MD, Pflugerville, Texas

Executive session under authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b) and 2.09(o), Texas Revised Civil Statutes, regarding pending or contemplated litigation.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016.

Filed: March 5, 1997, 2:18 p.m.

TRD-9703086

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Friday, March 14, 1997, 8:00 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Hearings Division

AGENDA:

Probation Appearance, 8:00 a.m. — William W. Follett III, MD, El Paso, Texas

Probation Appearance, 8:00 a.m. — J. Paul Reynolds, MD, Coleman, Texas

Modification Request, 8:30 a.m. — Alberto N. Martinez, MD, Junction, Texas

Termination Request, 9:00 a.m. — Melville R. Monte, MD, Lubbock, Texas

Executive session under authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b) and 2.09(o), Texas Revised Civil Statutes, regarding pending or contemplated litigation.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016.

Filed: March 5, 1997, 1:37 p.m.

TRD-9703079

◆ ◆ ◆
Texas Council on Offenders with Mental Impairments

Friday, April 4, 1997, 8:30 a.m.

Embassy Suites Hotel, 5901 IH35 North

Austin

Program/Research Committee

AGENDA:

I. Call to Order

II. Introductions

III. Public Comments

IV. Approval of Minutes

V. Draft of Action Plans

VI. TCOMI Program Update

Adjourn

Contact: Diane Menchaca, 8610 Shoal Creek, Austin, Texas 78757, (512) 406-5406.

Filed: March 10, 1997, 9:59 a.m.

TRD-9703293

◆ ◆ ◆
Texas Municipal Retirement System

Saturday, March 22, 1997, 8:30 a.m.

1200 North IH35, Texas Municipal Retirement System

Austin

AGENDA:

To hear and approve Minutes of the regular December 14, 1996 meeting; review and approve Service Retirements, Disability Retirements; review and approve Extended Supplemental Death Benefits coverage; Supplemental Death Benefits payments; consider, review and act on Financial Statements; Consider and act on Proposal for Decision in Docket Number 100-96-1909 in the Matter of Edwin Branch, Deceased; Consider and act on resolutions authorizing amendment of amendment of Merger Agreement dated May 2, 1996, relating to Merger on the Village Fire Department Pension Plan and Trust and Merger Agreement dated April 22, 1996, relating to Merger of the Village Police Department Money Purchase Pension Plan; Review and act on legislation affecting TMRS; Report by Actuary; Director

and Staff reports; Report by Legal Counsel; Consider any other business to come before the Board; Adjourn.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714-9153, (512) 476-7577.

Filed: March 7, 1997, 4:03 p.m.

TRD-9703223

◆ ◆ ◆
Texas National Guard Armory Board

Friday, March 21, 1997, 3:00 p.m.

Plano Convention Center, 2000 Spring Creek Parkway, Fairview One
Plano

Full Board

AGENDA:

Persons with disabilities who plan to attend this meeting and who may require auxiliary aids or services are requested to contact Julie Wright at least seven days prior to the meeting so that arrangements can be made.

Contact: Julie Wright, P.O. Box 5426, Austin, Texas 78763, (512) 406-6971.

Filed: March 10, 1997, 9:20 a.m.

TRD-9703262

◆ ◆ ◆
Texas Natural Resource Conservation Commission

Thursday, April 3, 1997, 10:00 a.m.

Building B, Room 201A, 12100 Park 35 Circle

Austin

AGENDA:

The Texas Natural Resource Conservation Commission has referred the enforcement case on QUANTUM TECH, INC. aka R. CUBE S, INC. and QUANTUM TECH L.L.C. and revocation of registrations for QUANTUM TECH, INC. to the State Office of Administrative Hearings (SOAH). SOAH has scheduled a public hearing on the assessment of administrative penalties and requiring certain actions of the Quantum Tech, Inc. aka R. Cube S, Inc. and Quantum Tech, L.L.C., SOAH Docket Number 582-97-0496.

Contact: Pablo Carrasquillo, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 475-3445.

Filed: March 6, 1997, 1:37 p.m.

TRD-9703135

◆ ◆ ◆
Wednesday, April 9, 1997, 10:00 a.m.

Denton County Courthouse, 110 West Hickory

Denton

AGENDA:

The Texas Natural Resource Conservation Commission has referred the application for an air standard exemption registration from

CEMTEX CONCRETE, L.L.C. to the State Office of Administrative Hearings (SOAH). Cemtex Concrete, L.L.C. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for Proposed Registration Number 32892 to authorize construction of a concrete batch plant at 1923 Hill Lane, near Little Elm in Denton County, Texas. This matter has been assigned SOAH Docket Number 582-97-0397.

Contact: Pablo Carrasquillo, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 475-3445.

Filed: March 6, 1997, 2:05 p.m.

TRD-9703136

Board of Nurse Examiners

March 19, 1997, 6:30 p.m.

333 Guadalupe, Suite 3-460

Austin

Executive Committee

AGENDA:

Call to Order — 6:30 p.m.

Roll Call

Old Business

1. Review Board's Mission Statement and Governance Policies

New Business

1. Discuss Bylaws

2. Discuss Executive Director Evaluation Process

Adjourn

Contact: Erlene Fisher, Box 430, Austin, Texas 78767, (512) 305-6811.

Filed: March 5, 1997, 11:04 a.m.

TRD-9703069

Thursday, Friday, March 20-21, 1997, 8:30 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

REVISED AGENDA:

Add Under 8.2 Agreed Orders:

David Joe Ham, #623853.

Contact: Erlene Fisher, Box 430, Austin, Texas 78767, (512) 305-6811.

Filed: March 5, 1997, 11:00 a.m.

TRD-9703058

Thursday, Friday, March 20-21, 1997, 8:30 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

REVISED AGENDA:

Add Under 3.4 Education/Examination:

3.4.5 The University of Texas at Tyler, BSN, appeal

Contact: Erlene Fisher, Box 430, Austin, Texas 78767, (512) 305-6811.

Filed: March 5, 1997, 4:34 p.m.

TRD-9703108

State Pension Review Board

Thursday, March 13, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call"

300 West 15th Street, Fourth Floor Room 406, Clements Building
Austin

Legislative Advisory Committee

EMERGENCY MEETING AGENDA:

Preparation of Actuarial Impact Statements on bills from which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Additional Telephones will be available for the Conference Call

REASON FOR EMERGENCY: In order to obtain a quorum to respond to request in appropriate time.

Reason for Emergency: In order to obtain a quorum and respond to request in appropriate time

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: March 7, 1997, 4:21 p.m.

TRD-9703230

Thursday, March 20, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call"

300 West 15th Street, Fourth Floor Room 406, Clements Building
Austin

Legislative Advisory Committee

AGENDA:

Preparation of Actuarial Impact Statements on bills from which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Additional Telephones will be available for the Conference Call

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: March 7, 1997, 4:31 p.m.

TRD-9703233

Thursday, March 27, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call"

300 West 15th Street, Fourth Floor Room 406, Clements Building

Austin

Legislative Advisory Committee

AGENDA:

Preparation of Actuarial Impact Statements on bills from which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Additional Telephones will be available for the Conference Call

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: March 7, 1997, 4:50 p.m.

TRD-9703237

◆ ◆ ◆
Thursday, April 3, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call"

300 West 15th Street, Fourth Floor Room 406, Clements Building
Austin

Legislative Advisory Committee

AGENDA:

Preparation of Actuarial Impact Statements on bills from which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Additional Telephones will be available for conference call.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: March 7, 1997, 4:51 p.m.

TRD-9703239

◆ ◆ ◆
Thursday, April 10, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call."

300 West 15th Street, Fourth Floor Room 406, Clements Building
Austin

Legislative Advisory Committee

AGENDA:

Preparation of Actuarial Impact Statements on bills from which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Additional Telephones will be available for conference call.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: March 10, 1997, 7:25 a.m.

TRD-9703255

◆ ◆ ◆
Thursday, April 17, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call"

300 West 15th Street, Fourth Floor Room 406, Clements Building
Austin

Legislative Advisory Committee

AGENDA:

Preparation of Actuarial Impact Statements on bills from which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Additional Telephones will be available for conference call.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: March 10, 1997, 7:25 a.m.

TRD-9703251

◆ ◆ ◆
Thursday, April 24, 1997, 9:30 a.m., rescheduled from 9:00 a.m., "Telephone Conference Call"

300 West 15th Street, Fourth Floor Room 406, Clements Building
Austin

Legislative Advisory Committee

AGENDA:

Preparation of Actuarial Impact Statements on bills from which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Additional Telephones will be available for conference call.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: March 10, 1997, 7:25 a.m.

TRD-9703253

◆ ◆ ◆
Texas State Board of Examiners of Psychologists

Friday, April 4, 1997, 8:30 a.m.

333 Guadalupe, Suite 2-225

Austin

AGENDA:

The Psychological Associate Advisory Committee to the Texas State Board of Examiners of Psychologists will meet to consider public comments, minutes of the January 1997 meeting; rules; reports from the Chair of the Committee, the Executive Director of the Agency and the General Counsel of the Agency; reports from the Following sub-committees: Disciplinary Sanctions, Financial Advisory, Legislative, Legal Issues, Policies and Procedures, Public Information and Relations, Professional/Ethical Standards and Development, Professional Reimbursement Guidelines, Publications and Research and Supervisory Guidelines. The Committee will also plan for the next Advisory Committee meeting and will hold an executive session to seek legal advice. The Committee will also hold an election for the officers of the Committee for the next year.

Contact: Sherry L. Lee, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

Filed: March 7, 1997, 3:00 p.m.

TRD-9703217

Public Utility Commission of Texas

Tuesday, March 18, 1997, 1:00 p.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Docket Number 14965 (SOAH Docket Number 473-95-1563) Application of Central Power and Light Company for Authority to Change Rates: SEC Rule 58; Legislative matters; Adjourn for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7145.

Filed: March 7, 1997, 3:59 p.m.

TRD-9703222



Monday, March 24, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

A Hearing on the Merits will be held by the State Office of Administrative Hearings in Docket Number 17159-Application of KeRo Communications for a Service Provider Certificate of Operating Authority (SPCOA). Applicant intends to provide resold local switched services, including but not limited to, monthly recurring, flat rate local exchange service, extended metro service, foreign exchange service, custom calling services, caller ID and any other services which are available for resale from the underlying incumbent local exchange carrier or other carriers authorized to do business with the designated service area. Applicant's requested SPCOA geographic area follows the Public Utility Commission's certified boundaries of the existing service areas of the local exchange carriers, including but not limited to the eligible local exchange companies that are located in the Dallas/Ft. Worth area electing to participate in Public Utility Regulatory Act, Subtitle H, §3.351, Incentive Regulation of Telecommunications, including Southwestern Bell Telephone Company and General Telephone of the Southwest (GTE). Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by March 19, 1997.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7152.

Filed: March 5, 1997, 3:48 p.m.

TRD-9703099



Tuesday, March 25, 1997, 9:00 a.m.

University of Texas at Arlington, Nedderman Hall, Room 100, 416 Yates Street

Arlington

Synchronous Interconnection Committee

AGENDA:

Project Number 14894: A Meeting of the Synchronous-Interconnection committee will be held to investigate the most economical, reliable, and efficient means to synchronously interconnect the alternating current electric facilities of the electric utilities with the Electric Reliability Council of Texas reliability area to the alternating current electric facilities of the electric utilities with the Southwest Power Pool reliability area, including the cost and benefit to effect the interconnection, an estimate of the time to construct the interconnecting facilities, and the service territory of the utilities in which those facilities will be located, pursuant to Texas Civil Statutes, Article 1446c-0, §2.056(b).

Hearing- and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136. Additional information regarding directions for the meeting location may be obtained from Vicki Munoz, Energy Systems Research Center, UTA Box 19048, Arlington, Texas 76019-0048, (817) 272-2268.

Contact: Jim Neeley, 1701 North Congress Avenue, Austin, Texas 78711-3326, (512) 936-7342.

Filed: March 6, 1997, 3:32 p.m.

TRD-9703149



Railroad Commission of Texas

Tuesday, March 18, 1997, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the attached agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Kathy Way, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: March 7, 1997, 1:28 p.m.

TRD-9703194



Monday, March 24, 1997, 2:00 p.m.

1701 North Congress Avenue, 12th Floor Conference Room 12-126

Austin

AGENDA:

The Commission will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider an/or take action on matters listed on the agenda posted with the Secretary of State's Office.

Contact: Kathy Way, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729.

Filed: March 7, 1997, 1:24 p.m.

TRD-9703193

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Texas Real Estate Commission

Monday, March 17, 1997, 9:30 a.m.

Conference Room 235, TREC Headquarters Office, 1101 Camino La Costa

Austin

AGENDA:

Call to order; Minutes of February 10, 1997 and February 14, 1997 Commission meetings; Staff reports; Committee reports; General comments from visitors; Discussion and possible action to adopt amendment to 22 TAC §535.66, concerning accredited schools, Discussion and possible action to propose amendments to 22 TAC §535.61, regarding acceptance of courses offered by out-of-state schools and of credit awarded by examination only or for other learning; Discussion and possible action on proposed legislation; Executive session to discuss pending litigation pursuant to §551.071, Texas Government Code; Discussion and possible action to authorize payments from recovery funds; Discussion and possible action to propose amendment or repeal of rules relating to standard Contract forms: (a) 22 TAC §537.11, relating to promulgation of forms; (b) 22 TAC §537.13, relating to the property condition addendum (repeal); (c) 22 TAC §537.29, relating to the FHA/VA one-to-four family contract; (f) 22 TAC §537.30, relating to new home incomplete construction contract; (g) 22 TAC §537.31, relating to new home completed construction contract; (h) 22 TAC §537.32, relating to form and ranch contract; (I) 22 TAC §537.34, relating to addendum for inspection (repeal); (j) 22 TAC §537.37, relating to condominium resale contract; (L) 22 TAC §537.42, relating to agreement for mediation (repeal); Discussion and possible action regarding disguised commissions and rebates; Discussion and possible action to approve: (a) courses to be offered by Alamo Real Estate Institute; (b) MCE courses to be offered by: Champions School of Real Estate, Nancy Hawes Real Estate School, SIOR (Society of Industrial and Office Realtors), Lincoln Graduate Center, Real Estate Education Services; (c) MCE providership for Hotel and Motel Brokers of America (HMBA); Consideration of complaint information concerning: Southeast Texas Real Estate School, Olga Marie Henderson, James Richard Fambro, Mark Alan Wilkinson, William Hunter, Fronie Brady Stall, Debbie Lozno Casas, Angela Marie Miller, Hamid Reza Razmgir, Charles Petyon Collins, George B. Graves, Dorothy Faye Hancock, Bret Austin Barnett, George Edward Johnson, Shelly J. Shillings, John Brandon Wolf, Dax Thomas Sullivan Mitchell; Motion for Rehearing in the Matter of Joe Frank Veytia, Hearing Number 97-18-961135.; Entry of orders in contested cases; Scheduling of future meetings.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark a. Mosely, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: March 7, 1997, 1:22 p.m.

TRD-9703191

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Recycling Market Development Board

Tuesday, March 18, 1997, 10:00 a.m.

Stephen F. Austin Building, Room 300A, 1700 North Congress Avenue

Austin

AGENDA:

I. Call to Order

II. Announcements

III. Reading of Minutes from January 9, 1997 Meeting

IV. Old Business

V. New Business:

1) Consideration of Resolutions of Appreciation

2) Report of State Agency Purchases of Recycled Content Products

3) Approval to Establish Training for State Agency Purchasers to Buy Recycled.

4) Update on RMDB Action Plan for FY 1997.

5) Report on Surplus Computer Equipment Stockpiles and Disposal Procedures.

6) Report on Methods of Calculating Recycling Rates in Texas.

7) Report on News Clip Sharing Activity.

VI. Public Comment

VII. Adjourn

Contact: Terry Robinson, 1700 North Congress Avenue, Room 620, Austin, Texas 78701, (512) 463-5344.

Filed: March 6, 1997, 11:41 a.m.

TRD-9703129

◆ ◆ ◆
Texas Rehabilitation Commission

Wednesday, April 9, 1997, 4:00 p.m.

McAllen City Hall, 1300 Houston Avenue

McAllen

AGENDA:

STATE PLAN FOR VOCATIONAL REHABILITATION SERVICES, INDEPENDENT LIVING SERVICES, AND THE VR STRATEGIC PLAN

A. Welcome

Regional Director, Texas Rehabilitation Commission

B. Introduction

C. Overview of Town Meeting Purpose

How Are We Doing In the Provision of Services?

VR Services

Transition Services

Independent Living Services

Supported Employment Services

D. Public Comment

Group Discussions:

What Can We Do Now To Improve Services and Service Delivery?

What Can We Do In the Future To Improve Services and Service Delivery?

E. Wrap-up

F. Concluding Remarks

Persons planning to attend this meeting who may need auxiliary aids or services such as interpreters, readers, large print or Braille should contact Lena Jackson at least five days before the meeting.

Contact: Lena Jackson, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-4113.

Filed: March 5, 1997, 3:48 p.m.

TRD-9703097

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Wednesday, April 16, 1997, 10:00 a.m.

Will Rogers Memorial Complex, Amon Carter Exhibit Hall, South Texas Room, 3400 Burnett Tandy Drive

Fort Worth

AGENDA:

STATE PLAN FOR VOCATIONAL REHABILITATION SERVICES, INDEPENDENT LIVING SERVICES, AND THE VR STRATEGIC PLAN

A. Welcome

Regional Director, Texas Rehabilitation Commission

B. Introduction

C. Overview of Town Meeting Purpose

How Are We Doing In the Provision of Services?

VR Services

Transition Services

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D. Public Comment

Group Discussions:

What Can We Do Now To Improve Services and Service Delivery?

What Can We Do In the Future To Improve Services and Service Delivery?

E. Wrap-up

F. Concluding Remarks

Persons planning to attend this meeting who may need auxiliary aids or services such as interpreters, readers, large print or Braille should contact Lena Jackson at least five days before the meeting.

Contact: Lena Jackson, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-4113.

Filed: March 5, 1997, 3:48 p.m.

TRD-9703096

◆ ◆ ◆
Thursday, April 24, 1997, 2:00 p.m.

Alpine Field Office, Old Town Square, 106 West Sul Ross Avenue, Suite E

Alpine

AGENDA:

STATE PLAN FOR VOCATIONAL REHABILITATION SERVICES, INDEPENDENT LIVING SERVICES, AND THE VR STRATEGIC PLAN

A. Welcome

Regional Director, Texas Rehabilitation Commission

B. Introduction

C. Overview of Town Meeting Purpose

How Are We Doing In the Provision of Services?

VR Services

Transition Services

Independent Living Services

Supported Employment Services

D. Public Comment

Group Discussions:

What Can We Do Now To Improve Services and Service Delivery?

What Can We Do In the Future To Improve Services and Service Delivery?

E. Wrap-up

F. Concluding Remarks

Persons planning to attend this meeting who may need auxiliary aids or services such as interpreters, readers, large print or Braille should contact Lena Jackson at least five days before the meeting.

Contact: Lena Jackson, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-4113.

Filed: March 5, 1997, 3:48 p.m.

TRD-9703106

◆ ◆ ◆
Rio Grande Compact Commission

Thursday, March 27, 1997, 9:00 a.m.

12100 Park 35 Circle, Building E, Room 201-S

Austin

AGENDA:

1. Call to Order by the Chairman

2. Announcements

3. Report of the Secretary

4. Report of the Engineer Advisors

5. Report of the Commissioners
6. Report of Federal Agencies and other agencies
7. Presentation of costs of operation FY 1996 (July 1, 1995 to June 30, 1996)
8. Presentation of the budget for FY 1998 (July 1, 1997 to June 30, 1998)
9. Cooperative Agreement with U.S. Geological Survey for secretarial services
10. Approval of the minutes of the 57th Annual meeting and the 75th Special Meeting
11. Other business
12. Approval of the letter to Governors of the signatory states
13. Adjourn.

Contact: Herman Settemeyer, MC-157, 12100 Park 35 Circle, Austin, Texas 78711-3087, (512) 239-4707.
 Filed: March 5, 1997, 4:34 p.m.

TRD-9703107

State Securities Board

Thursday, April 3, 1997, 9:00 a.m, rescheduled from January 31, 1997

William P. Clements Building, 300 West 15th Street, Suite 502

Austin

AGENDA:

A hearing will be held for the purpose of determining whether the application of Norman Howard Sher for registration with the State Securities board as a securities agent should be denied.

Contact: David Grauer, 200 East 10th Street, Fifth Floor, Austin, Texas 78701, (512) 305-8392.

Filed: March 5, 1997, 3:54 p.m.

TRD-9703102

Telecommunications Infrastructure Fund Board

Friday, March 14, 1997, 9:00 a.m.

1000 Red River, Fifth Floor Board Room, East Building

Austin

Finance and Audit Committee

AGENDA:

The Finance and Audit Committee of the Telecommunications Infrastructure Fund Board will convene in open session to deliberate and possibly take formal action on the following items:

- I. Call Committee Meeting to Order Open Meeting/ Quorum Call-Chairman Roger Benavides
- II. Grant Procedures of First Grant Offering
- III. The Amount of Funds for the Second Grant Offering

IV. Financial Report

V. Future Agenda Items

VI. Adjourn Committee Meeting

Contact: Dawn Efaw, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 469-3070.

Filed: March 6, 1997, 3:54 p.m.

TRD-9703152

Friday, March 14, 1997, 9:30 a.m.

1000 Red River, Fifth Floor Board Room, East Building

Austin

Libraries and Telemedicine Committee

AGENDA:

The Libraries and Telemedicine Committee of the Telecommunications Infrastructure Fund Board will convene in open session to deliberate and possibly take formal action on the following items:

I. Call Committee Meeting to Order Open Meeting/Quorum Call-Chairman John Collins

II. Minutes from Prior Meetings

III. Reports from Advisory Committees

IV. Future Grant Offerings

V. Future Agenda Items

VI. Adjourn Committee Meeting

Contact: Dawn Efaw, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 469-3070.

Filed: March 6, 1997, 3:54 p.m.

TRD-9703153

Friday, March 14, 1997, 10:00 a.m.

1000 Red River, Fifth Floor Board Room, East Building

Austin

AGENDA:

The Telecommunications Infrastructure Fund Board will convene in open session to deliberate and possibly take formal action on the following items:

I. Call Committee Meeting to Order Open Meeting/ Quorum Call-Chairman Carolyn Bacon

II. Minutes from Prior Meetings

III. Executive Director's Report

IV. Financial Report

V. Invited Testimony by Anita Givens, Senior Director of Instructional Technology with the Texas Education Agency-Report on the Technology Literacy Challenge Fund.

VI. Statistics of workstations per students

VII. The amount of funds for the Second Grant Offering

VIII. Future Agenda Items

IX. Adjourn Open Meeting

Contact: Dawn Efaw, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 469-3070.

Filed: March 6, 1997, 3:54 p.m.

TRD-9703154

◆ ◆ ◆
University of Houston

Monday, March 17, 1997, 2:00 p.m.

4800 Calhoun Boulevard, S&R II Building, Room 201, University of Houston

Houston

Institutional Animal Care and Use Committee

AGENDA:

To discuss and/or act upon the following:

Approval of February 17, 1997 Minutes

New Protocol

Renewal Protocol

Other Business

Contact: Charles Raflo, 4800 Calhoun Boulevard, Houston, Texas, 77204, (713) 743-9191.

Filed: March 10, 1997, 8:48 a.m.

TRD-9703260

◆ ◆ ◆
Texas Board of Veterinary Medical Examiners

Saturday, March 15, 1997, 8:30 a.m.

333 Guadalupe, Tower 2, Room 400-A

Enforcement Committee

Austin

EMERGENCY MEETING AGENDA:

In accordance with §14C, of the Veterinary Licensing Act, Article 8890, and Board Rule 573.67, the Enforcement Committee is meeting to determine whether disciplinary action should be initiated against Dr. Lissa P. Lucas. The board's Executive Disciplinary Committee took action to temporarily suspend Dr. Lucas' veterinary license on February 27, 1997; the Enforcement committee meeting must be held on or before March 13, 1997.

The Committee may hold an Executive Session to deliberate relative to licensee disciplinary actions as authorized in §15(b) of the Veterinary Licensing Act, Article 8890.

REASON FOR EMERGENCY: The Board's investigation has revealed that the conduct and medical practices of Dr. Lucas may constitute an imminent and continuing threat to public health and safety.

Persons requiring reasonable accommodations are requested to contact Judy Smith, 333 Guadalupe, #2-330, Austin, Texas 78701-3998,

(512) 305-7555 or TDD 1-800-735-2989 to make appropriate arrangements.

Contact: Judy Smith, 333 Guadalupe, #2-330, Austin, Texas 78701-3998, (512) 305-7555.

Filed: March 6, 1997, 12:54 p.m.

TRD-9703134

◆ ◆ ◆
Tuesday, April 8, 1997, 10:30 a.m.

Room 140, Memorial Student Center Building, Texas A&M University Campus

Examination Review Committee

Austin

AGENDA:

The Committee will meet to review the results of the April 7, 1997 State board Examination for licensure.

Persons requiring reasonable accommodations are requested to contact Judy Smith, 333 Guadalupe, #2-330, Austin, Texas 78701-3998, (512) 305-7555 or TDD 1-800-735-2989 to make appropriate arrangements.

Contact: Judy Smith, 333 Guadalupe, #2-330, Austin, Texas 78701-3998, (512) 305-7555.

Filed: March 6, 1997, 3:01 p.m.

TRD-9703147

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Texas Worker's Compensation Insurance Fund

Tuesday, March 18, 1997, 8:00 p.m.

Four Seasons, 98 San Jacinto, Plaza Suite 716

Austin

AGENDA:

The Board of Directors of the Texas Workers' Compensation Insurance Fund ("Fund") will have an informal dinner at 8:00 p.m. on Tuesday, March 18, 1997. The dinner is intended to be a social event, and there is no formal agenda. No formal action will be taken but it is possible that discussions could occur which could be construed to be "deliberations" within the meaning of the Open Meetings Act; therefore, the dinner will be treated as an "open meeting" and the public will be allowed to observe. However, dinner will be provided only for the Board of Directors of the Fund and certain staff of the Fund. No dinner or refreshments will be provided for members of the public who may wish to attend.

Contact: Jeanette Ward, 221 West Sixth Street, Suite 300, Austin, Texas 78701, (512) 404-7142.

Filed: March 5, 1997, 2:49 p.m.

TRD-9703091

◆ ◆ ◆
Regional Meetings

Meetings filed March 5, 1997

Texas Automobile Insurance Plan Association, Governing Committee, met at Omni Austin Hotel Southpark, 4140 Governor's Row, Austin, March 13, 1997 at 9:00 a.m. Information may be obtained from Dianna Brooks, P.O. Box 18447, Austin, Texas 78760-8447, (512) 444-5999. TRD-9703088.

Bi-County Water Supply Corporation, met at Arch Davis Road, (FM 2254, Bi-County Office, Pittsburg, March 11, 1997 at 7:00 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9703103.

Capital Area Planning Council, Executive Committee, met at 2512 IH35 South, Suite 220, March 12, 1997 at noon. Information may be obtained from Kathy Allen, 2512 IH35 South, Suite 220, Austin, Texas 78704, (512) 443-7653. TRD-9703071.

Coastal Bend Area Workforce Development Board, Board of Directors, met at Silverado Steakhouse, 3802 Five Points Road, (Calallen), Corpus Christi, March 11, 1997 at 4:00 p.m. Information may be obtained from Shelley Franco, 1616 Martin Luther King Drive, Corpus Christi, Texas 78401, (512) 889-5300, Extension 107. TRD-9703083.

Coastal Bend Area Workforce Development Board, CEO Council Meeting, met at Silverado Steakhouse, 3802 Five Points Road, Corpus Christi, March 11, 1997 at 4:00 p.m. Information may be obtained from Shelley Franco, 1616 Martin Luther King Drive, Corpus Christi, Texas 78401, (512) 889-5300, Extension 107. TRD-9703093.

Elm Creek Water Supply Corporation, Board, met at 508 Avenue "E", Moody, March 10, 1997 at 7:00 p.m. Information may be obtained from Rita Foster, 508 Avenue E, Moody, Texas 76557, (817) 853-3838. TRD-9703072.

Guadalupe-Blanco River Authority, Joint Board Workshop, SAWS and GBRA, met at 1001 East Market Street, San Antonio, March 13, 1997 at 10:00 a.m. Information may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, (210) 379-5822. TRD-9703092.

High Plains Underground Water Conservation District Number One, Board, met at 2930 Avenue Q, Board Room, Lubbock, March 11, 1997 at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9703084.

South Texas Development Council, Board of Directors, met at Commissioners Courtroom, Courthouse Annex, Zapata, March 13, 1997 at 11:00 a.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78004-3995, (210) 722-3995. TRD-9703104.

STED Corporation, Board of Trustees, met at Commissioners Courtroom, Courthouse Annex, Zapata, March 13, 1997 at 10:00 a.m. Information may be obtained from Robert Mendiola, P.O. Box 2187, Laredo, Texas, 78044-2187, (210) 722-3995. TRD-9703105.

Upshur County Appraisal District, Board of Directors, met at Warren and Trinity Streets, Gilmer, March 10, 1997 at 1:00 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, (903) 843-3041. TRD-9703095.

Meetings Filed March 6, 1997

Barton Springs/Edwards Aquifer Conservation District, Board of Directors-Public Hearing, met at 300 San Marcos Street, Buda, March

10, 1997, at 7:00 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441 or fax: (512) 282-7016. TRD-9703113.

Barton Springs/Edwards Aquifer Conservation District, Board of Directors-Public Hearing, met at 5500 Manchaca, Road, Austin, March 12, 1997, at 7:00 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441 or fax: (512) 282-7016. TRD-9703114.

Barton Springs/Edwards Aquifer Conservation District, Board of Directors-Executive Session, met at 1124A Regal Row, Austin, March 13, 1997, at 8:00 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441 or fax: (512) 282-7016. TRD-9703115.

Barton Springs/Edwards Aquifer Conservation District, Board of Directors-Called Meeting, met at 1124A Regal Row, Austin, March 13, 1997, at 9:00 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441 or fax: (512) 282-7016. TRD-9703116.

Bell County Tax Appraisal District, Board of Directors, will meet at 411 East Central Avenue, Belton, March 18, 1997 at 7:00 p.m. Information may be obtained from Carl Moore, P.O. Box 390, Belton, Texas 76513, (817) 939-5841. TRD-9703125.

Blanco County Appraisal District, Board of Directors, met at 200 North Avenue G, Johnson City, March 11, 1997 at Noon. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868-4013, TRD-9703112.

Cass County Appraisal District, Board of Directors, met at 502 North Main Street, Linden, March 11, 1997 at 7:00 p.m. Information may be obtained from Janelle Clements, P.O. Box 1139, Linden, Texas 75563, (903) 756-7545. TRD-9703148.

Education Service Center, Region One, Board, will meet at 1900 West Schunior Street, Edinburg, March 18, 1997 at 7:00 p.m. Information may be obtained from Dr. Sylvia R. Hatton, 1900 West Schunior, Edinburg, Texas 78539, (210) 383-5611. TRD-9703124.

Ellis County Appraisal District, Appraisal Review Board, met at 400 Ferris Avenue, Waxahachie, March 10, 1997 at 8:30 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas 75168, (972) 937-3552. TRD-9703132.

Garza Central Appraisal District, Board of Directors, met at 124 East Main Street, Post, March 11, 1997 at 9:00 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9703111.

Jones County Appraisal District, Board of Directors, will meet at 1137 East Court Plaza, Anson, March 20, 1997 at 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, (915) 823-2422. TRD-9703137.

Middle Rio Grande Development Council, Board and Workforce Board, met at 307 West Nopal Street, MRGDC Central Office, March 11, 1997 at 10:30 p.m. Information may be obtained from Leodoro Martinez, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9703133.

Nortex Regional Planning Commission, Executive Committee, will meet at The Galaxy Center, 4309 Jacksboro Highway, Wichita Falls, March 20, 1997 at 12:00 noon. Information may be obtained from

Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307-5144, (817) 322-6743. TRD-9703138.

Northeast Texas Municipal Water District, Board of Directors, will meet at Highway 250 South, Hughes Springs, March 14, 1997 at 10:00 a.m. Information may be obtained from J.W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD-9703117.

Rockwall County Central Appraisal District, Board of Directors, met at 106 North San Jacinto, Rockwall, March 11, 1997, at 7:30 p.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (972) 771-2034. TRD-9703128.

Shackelford Water Supply Corporation, Membership meeting, met at County Road 109 at the Office/Warehouse, North of Albany, March 11, 1997, 7:00 p.m. Information may be obtained from Gaynell Perkins, P.O. Box 11, Albany, Texas 76430, (915) 762-3568. TRD-9703131.

Shackelford Water Supply Corporation, Directors meeting, met at County Road 109 at the Office/Warehouse, North of Albany, March 11, 1997, 8:30 p.m. Information may be obtained from Gaynell Perkins, P.O. Box 11, Albany, Texas 76430, (915) 762-3568. TRD-9703130.

Tarrant Appraisal District, Review Board, met March 11, 1997 and will meet March 17, 18, and 20, 1997 at 2329 Gravel Road, Fort Worth, at 8:00 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9703118.

Wise County Appraisal District, Board of Directors, met at 206 South State Street, Decatur, March 11, 1997 at 7:00 p.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9703145.

Meetings filed March 7, 1997

Aqua Water Supply Corporation, Board of Directors, met at 305 Eskew, Bastrop, March 10, 1997 at 7:30 p.m. Information may be obtained from Carol Ducloux, Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9703163.

Atascosa County Appraisal District, Appraisal Review Board, will meet at Fourth and Avenue J Streets, Poteet, March 19, 1997 at 9:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139, (210) 742-3591. TRD-9703214.

Austin-Travis County MHMR Center, Public Relations Committee, met at 1430 Collier Street, Board Room, Austin, March 13, 1997, at noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440-4031. TRD-9703215.

Brazos Valley Development Council, Joint Meeting of Board of Directors and Criminal Justice Advisory Committee, met at 1706 East 29th Street, Bryan, March 12, 1997 at 1:30 p.m. Information may be obtained from Mary Stevens, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9703169.

Brazos Valley Development Council, Personnel Committee, met at 1706 East 29th Street, Bryan, March 12, 1997 at 3:30 p.m. Information may be obtained from Mary Stevens, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9703170.

Coleman County Water Supply Corporation, Board of Directors, met at 214 Santa Anna Avenue, Coleman, March 12, 1997 at 1:30 p.m.

Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9703180.

Dallas Area Rapid Transit, Committee of the Whole, met at 1401 Pacific Avenue, Conference Room C, First Floor, Dallas, March 11, 1997 at 1:00 p.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9703208.

Dallas Area Rapid Transit, Board of Directors, met at 1401 Pacific Avenue, First Floor Board Room, Dallas, March 11, 1997 at 6:30 p.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9703210.

East Texas Council of Governments, Workforce Development Board, RFP Task Force, met at 3800 Stone Road, Kilgore, March 13, 1997 at 9:00 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9703162.

Education Service Center, Region One, Board, will meet at 1900 West Schunior, Edinburg, March 18, 1997 at 7:00 p.m. Information may be obtained from Dr. Sylvia R. Hatton, 1900 West Schunior, Edinburg, Texas 78539, (210) 383-5611, TRD-9703220.

Edwards Aquifer Authority, Ad-Hoc Water Quality/Technical Committee, met at 1615 North St. Marys' Street, San Antonio, March 11, 1997 at 4:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Marys' Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9703228.

Edwards Aquifer Authority, Permit Committee, met at 1615 North St. Marys' Street, San Antonio, March 11, 1997 at 4:30 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Marys' Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9703227.

Edwards Aquifer Authority, Legal Committee, met at 1615 North St. Marys' Street, San Antonio, March 11, 1997 at 5:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Marys' Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9703225.

Edwards Aquifer Authority, Board, met at 1615 North St. Marys' Street, San Antonio, March 11, 1997 at 6:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Marys' Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9703224.

El Oso Water Supply Corporation, Board of Directors, met at FM99, Karnes City, March 11, 1997 at 7:00 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9703221.

Hays County Appraisal District, Appraisal Review Board, will meet at 21001 North IH35, Kyle, March 25, 1997 at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH35, Kyle, Texas 78640, (512) 268-2522. TRD-9703212.

Hickory Underground Water Conservation District Number One, Board and Advisors, met at 2005 South Bridge, Brady, March 13, 1997 at 7:00 p.m. Information may be obtained from Stan Reinhard, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9703189.

Hockley County Appraisal District, Board of Directors, met at 1103 Houston Street, Levelland, March 10, 1997 at 7:30 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9703216.

Houston-Galveston Area Council, Board of Directors, will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, March 14, 1997 at 6:30 p.m. Information may be obtained from Mary Ward, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9703161.

Hunt County Appraisal District, Board of Directors, met at 4801 King Street, Greenville, March 13, 1997, at noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9703165.

Lower Colorado River Authority, Planning and Public Policy Committee, met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, March 11, 1997 at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9703188.

Northeast Texas Rural Rail Transportation District, Board, met at Sulphur Springs State Bank, 100 Jefferson Street, Sulphur Springs, March 12, 1997, at 3:00 p.m. Information may be obtained from Sue Ann Harting, 2821 Washington Street, Greenville, Texas 75401, (903) 450-0140. TRD-9703158.

North Texas Regional Library System, Board of Directors, will meet at Hurst Public Library, 901 Precinct Line Road, Hurst, April 24, 1997 at 10:00 a.m. Information may be obtained from Cynthia Brown, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, (817) 335-6076. TRD-9703218.

Rockwall County Central Appraisal District, Board of Directors, met at 106 North San Jacinto, Rockwall, March 11, 1997 at 7:30 p.m., rescheduled from January 14, 1997. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (972) 771-2034. TRD-9703209.

Sulphur-Cypress SWCD, #419, met at 1809 West Ferguson, Mount Pleasant, March 13, 1997 at 10:00 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson Road, Suite D, Mount Pleasant, Texas 75455, (903) 572-5411. TRD-9703211.

Meetings filed March 10, 1997

Ark-Tex Council of Governments (ATCOG); Board Retreat and New Board Orientation, will meet at Jan-Kay Ranch, Detroit, March 14, 1997 at 9:00 a.m. Information may be obtained from Sandie Brown, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9703259.

Callahan County Appraisal District, Board of Directors, will meet at 130A West Fourth Street, Baird, March 17, 1997, at 7:00 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9703272.

Denton Central Appraisal District, Appraisal Review Board, will meet at 3911 Morse Street, Denton, March 19, 1997 at 9:00 a.m. Information may be obtained from Connie Bradshaw, P.O. Box 2816, Denton, Texas 76208, (817) 566-0904. TRD-9703290.

Denton Central Appraisal District, Board of Directors, will meet at 3911 Morse Street, Denton, March 27, 1997 at 4:00 p.m. Information may be obtained from Connie Bradshaw, P.O. Box 2816, Denton, Texas 76202-2816, (817) 566-0904. TRD-9703273.

Mills County Appraisal District, Board of Directors, will meet at Mills County Courthouse, Jury Room, Fisher Street, Goldthwaite, March 18, 1997, at 6:30 p.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9703258.

North Central Texas Council of Governments, TWC Programs Subcommittee of the North Central Texas Workforce Development Board, met at 616 Six Flags Drive, Arlington, March 11, 1997 at 2:00 p.m. Information may be obtained from Casandra J. Vines, NCTCOG, 616 Six Flags Drive, Arlington, Texas 76011, (817) 695-9176. TRD-9703288.

North Central Texas Council of Governments, JTPA Committee (Conference Call) of the North Central Texas Workforce Development Board, met at 616 Six Flags Drive, Arlington, March 17, 1997 at 9:00 a.m. Information may be obtained from Casandra J. Vines, NCTCOG, 616 Six Flags Drive, Arlington, Texas 76011, (817) 695-9176. TRD-9703287.

North Central Texas Council of Governments, Quality Assurance Committee of the North Central Texas Workforce Development Board, met at 616 Six Flags Drive, Arlington, March 18, 1997 at 2:00 p.m. Information may be obtained from Casandra J. Vines, NCTCOG, 616 Six Flags Drive, Arlington, Texas 76011, (817) 695-9176. TRD-9703286.

North Central Texas Council of Governments, Finance Committee (Conference Call) of the North Central Texas Workforce Development Board, met at 616 Six Flags Drive, Arlington, March 21, 1997 at 9:30 a.m. Information may be obtained from Casandra J. Vines, NCTCOG, 616 Six Flags Drive, Arlington, Texas 76011, (817) 695-9176. TRD-9703285.

North Central Texas Council of Governments, North Central Texas Workforce Development Board, met at 616 Six Flags Drive, Arlington, March 25, 1997 at 9:30 a.m. Information may be obtained from Casandra J. Vines, NCTCOG, 616 Six Flags Drive, Arlington, Texas 76011, (817) 695-9176. TRD-9703289.

San Antonio River Authority, Board of Directors, will meet at 100 East Guenther Street Boardroom, San Antonio, March 19, 1997 at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9703274.

Upper Rio Grande Private Industry Council, Upper Rio Grande Private Industry Council Board, met at 5919 Brook Hollow, El Paso, March 12, 1997 at 7:30 a.m. Information may be obtained from Norman R. Haley, URGPIC, 5919 Brook Hollow, El Paso, Texas 79925, (915) 772-5627, Extension 406. TRD-9703249.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of the Attorney General

Sexual Assault Prevention and Crisis Services Funding Notice

The Office of the Attorney General is accepting letters of intent to apply for Sexual Assault Prevention and Crisis Services funding under the Preventive Health and Health Services block grant and State funds. Funds will be available October 1, 1997. Letters of intent to apply for funds should be sent by April 22, 1997 to Pam Rodgers, Grants Program Director, Sexual Assault Prevention and Crisis Services, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. Applications will be due on or before June 17, 1997 at 5:00 p.m.

Eligible entries who send letters of intent will receive application kits consisting of materials pertinent to submitting an application. An eligible entity is a sexual assault program which has been providing service on or before January 1, 1997. The program must provide a 24-hour hotline, advocacy and accompaniment, liaison, professional training and public education.

For more information, contact Pam Rodgers, Grants Program Director, (512) 936-1423 or Lynda Edmonson, Office Manager (512) 936-1270.

Issued in Austin, Texas, on March 6, 1997.

TRD-9703142

Suzanne Marshall

Special Assistant Attorney General

Office of the Attorney General

Filed: March 6, 1997

Texas Clean Air Act Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. Section 382.096 of the Texas Health & Safety Code provides that before the State may settle a judicial enforcement action under the Clean Air Act, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General

will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act.

Case Title and Court: State of Texas v. Griffin Industries, Inc., Cause Number 21,728 in the 21st District Court, Bastrop County, Texas.

Nature of Defendant's Operations: Griffin Industries owns and operates a rendering plant on Farm to Market Road 2336, eight miles north of Bastrop in Bastrop County, Texas. This facility is the subject of this litigation and proposed settlement.

Proposed Agreed Judgment: The Agreed Final Judgment provides for a Ten Thousand Dollar (\$10,000) contribution by the Defendant Griffin Industries, Inc. towards a Supplemental Environmental Project ("SEP") Agreement between Bastrop County and the Texas Natural Resource Conservation Commission to be used for the Bastrop County septic system project described in the SEP agreement.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and the SEP agreement should be reviewed. Requests for copies of the judgment and SEP agreement, and written comments on the proposed settlement should be directed to David Preister, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

Issued in Austin, Texas, on March 6, 1997.

TRD-9703143

Suzanne Marshall

Special Assistant Attorney General

Office of the Attorney General

Filed: March 6, 1997

State Auditor's Office

Notice of Consultant Contract Award

The State Auditor's Office has awarded a consulting contract to Winfred Arthur, Jr., Ph.D., 2828 Bishops Gate Circle, Bryan, Texas 77807. The total amount of Dr. Arthur's contract is not to exceed \$77,900.00. The contract commenced on February 26, 1997, and will terminate January 30, 1998. A final report is due November 28, 1997. Dr. Arthur will design and administer a management assessment/development center to measure the managerial and leadership skills of managers and Supervising Assistant State Auditors at the State Auditor's Office. A Notice of Request for Proposals was published in the December 27, 1996, issue of the *Texas Register* (21 TexReg 12590).

Issued in Austin, Texas, on March 10, 1997.

TRD-9703263

Lawrence F. Alwin, CPA

State Auditor

State Auditor's Office

Filed: March 10, 1997

Automobile Theft Prevention Authority

Request for Applications under the Automobile Theft Prevention Authority Fund

Notice of Invitation for Applications:

The Automobile Theft Prevention Authority is soliciting applications for grants to be awarded for projects under the Automobile Theft Prevention Authority (ATPA) Fund. This grant cycle will be one year in duration and will begin on September 1, 1997. One or more of the following types of projects may be awarded depending on the availability of funds:

Law Enforcement/Detection/Apprehension Projects, to establish motor vehicle theft enforcement teams and other detection/apprehension programs. Priority funding may be provided to state, county, precinct commissioner, general or home rule cities for enforcement programs in particular areas of the state where the problem is assessed as significant. Enforcement efforts covering multiple jurisdictional boundaries may receive priority for funding.

Prosecution/Adjudication/Conviction Projects, to provide for prosecutorial and judicial programs designed to assist with the prosecution of persons charged with motor vehicle theft offenses. Grants could include funding of efforts to implement changes in the prosecution of auto thieves and forfeiture of their property.

Prevention Projects, to test experimental equipment which is considered to be designed for theft deterrence.

Reducing the Sale of Stolen Parts Projects, for the development of vehicle identification number labeling, including component part labeling and etching methods designed to deter the sale of stolen parts.

Education/Information Projects, to provide education and specialized training to law enforcement officers in auto theft prevention procedures, provide information linkages between state law enforcement agencies on auto theft crimes, and develop a public information and education program on theft prevention measures.

Eligible Applicants:

An applicant may be county, commissioner precinct, general or home rule city, school district, university, or state agency; or it may be a department, division, or office within the governmental unit having authority and responsibility for carrying out the proposal to be funded. An applicant may also be a neighborhood, community organization or business organization, or a department, division or office within such an organization having authority and responsibility for carrying out the proposal to be funded.

Contact Person:

Detailed specifications, including selection process and schedule for regional workshops for applicants will be made available through ATPA. Contact Deanna Citerne, Acting Executive Director, Texas Automobile Theft Prevention Authority, One Commodore Plaza, 800 Brazos Street, Suite 620, Austin, Texas 78701, (512) 494-0039.

Application Workshops:

March 25th, Houston, 9:30 a.m.-12:00 noon, Houston Police Officers' Union Building, 1602 State Street, Main Meeting Hall, (713) 221-0715; April 4th, Brownsville, 1:30-4:00 p.m., Holiday Inn Fort Brown Hotel, 1900 East Elizabeth Street, Calvary Room, (210) 546-2201; April 8th, Odessa, 1:30-4:00 p.m., Radisson Hotel, 5200 East University, San Jacinto Ballroom, (915) 368-5885; April 11th, El Paso, 1:30-4:00 p.m., Hilton Hotel, 2027 Airway Boulevard, Acacia Room, (915) 778-4241; April 23rd, Arlington, 9:30 a.m.-12:00 noon, North Central Texas Council of Governments, 616 Six Flags Drive, Suite 200, Board Room; (817) 695-9165; April 24th, San Antonio, 9:30 a.m.-12:00 noon, Sheraton Four Points (formerly Holiday Inn Riverwalk-North), 110 Lexington, Taos - B Room, (210) 223-9461.

Closing Date for Receipt of Applications:

The original and eight copies of the proposal must be received by the Texas Automobile Theft Prevention Authority by 5 p.m., May 13, 1997, or postmarked by May 13, 1997. If mailed, applications must be marked "Personal and Confidential" and addressed to the contact person listed above. If delivered, please leave application with the contact person (or designee) at the address listed.

Selection Process:

Applications will be rated according to the standard point system in the application kit by the ATPA acting executive director and by an Application Review Committee composed of the seven members of the Automobile Theft Prevention Authority, or their designees.

Final selection may depart from the standard rating.

Grants will be awarded on or before September 1, 1997.

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

TRD-9703094

Deanna Citerne

Acting Executive Director

Automobile Theft Prevention Authority

Filed: March 5, 1997

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following projects(s) during the period of February 27, 1997 through March 6, 1997:

FEDERAL ACTIONS:

Applicant: North Central Oil Corporation

Location: High Island Block 51, Lease OCS-G 15770, OCS Federal Offshore Waters, Gulf of Mexico

Project Number: 97-0038-F1

Type of Application: Initial Plan of Exploration, Title 30 CFR 250.33 (f) and (h).

Applicant: Gulf Shores Joint Venture

Location: Packery Channel, east of Park Road 22 and south of Park Road 53, on North Padre Island, Nueces County, Texas

Project Number: 97-0039-F1

Description of Proposed Action: The applicant is requesting an extension of time and amendment to permit dredging of an open water area for a radial-configured marina and dredging of Packery Channel.

Type of Application: U.S.C.O.E. permit application #17760(05) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: A.H. Rogers

Location: Caney Creek, at 193 Creekside, Sargent, Matagorda County, Texas

Project Number: 97-0040-F1

Description of Proposed Action: The applicant proposes to construct a 442 square-foot covered boat lift with walkway for recreational purposes.

Type of Application: U.S.C.O.E. permit application #20926 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: William C. Bagby and Barton D. Riley

Location: Water Street, near the intersection of 2nd Street in Port O'Connor, Calhoun County, Texas

Project Number: 97-0041-F1 **Description of Proposed Action:** The applicants propose to construct a commercial marina. Approximately 26,000 cubic yards of material will be dredged from a 5.24 acre site, a concrete retaining wall will be constructed, an 11,800 square-foot area will be filled for a parking lot, and 318 feet of concrete bulkheading will be constructed.

Type of Application: U.S.C.O.E. permit application #20904 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 S.C.A. §1451- 1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management

Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

Issued in Austin, Texas, on March 10, 1997.

TRD-9703292

Gary Mauro

Chairman

Coastal Coordination Council

Filed: March 10, 1997

Texas Court Reporters Certification Board

Revocation of Certification

The Texas Court Reporters Certification Board determined at a disciplinary hearing held on February 1, 1997, that Ms. Gwen Stricklen, Certified Shorthand Reporter (CSR) Number 3368, of Pilot Point, Texas, violated Section 52.029(a) of the Texas Government Code and the Standards and Rules for Certification of Certified Shorthand Reporters as promulgated by the Supreme Court of Texas. The Board found that Ms. Stricklen was dishonest with the trial court and the Court of Appeals, willfully and negligently failed to perform her duties as a court reporter, engaged in unprofessional conduct by failing to deliver a Statement of Facts to the attorneys and court in a timely manner and produced an incomplete Statement of Facts in six cases.

The certification of Ms. Gwen Stricklen as a shorthand reporter in the State of Texas was revoked upon receipt of the Final Order of the Board on February 27, 1997, provided, however, that such revocation does not apply to any outstanding shorthand notes taken by Ms. Stricklen prior to receipt of the Board's Final Order on February 27, 1997. Upon request, said outstanding work shall be completed by Ms. Stricklen in a timely manner.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703168

Peg Liedtke

Executive Secretary

Texas Court Reporters Certification Board

Filed: March 7, 1997

Texas Court Reporters Certification Board

Certification of Court Reporters

Following the examination of applicants on January 31, 1997, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

ORAL STENOGRAPHY: Kassie Jay Anglin-Rowlett; Gina Perez Ortiz-Fort Worth; and Ann Marie Thornton-Arlington.

MACHINE SHORTHAND: Brenda Lee Bellah-Bridgeport; Wendi Arlene Broberg-Angleton; Mary Beth Carson-Stafford; Kasi L Chapman-Austin; Marion Grey Cheney-Houston; Ruthye Wallace Cox-Fort Worth; Teresa R. Dixon-Bay City; Lisa M Durham-

Mesquite; Shanna Roxane Fajkus-Deer Park; Joy Elaine Fowler-Comanche; Carol J Gannaway-Corpus Christi; Mary Elizabeth Goan-Dickinson; Jennifer Jill Hamby-Pasadena; Sherri J Harvey-Arlington; Robin Suzanne Howe-Joshua; Monica Marie Jonas-San Antonio; Gail L Jones-Plano; Tara Leigh Kelly-Denton; Kelly Rene Kirkland-Baytown; Robin Danette Kulhanek-Houston; Julie Carroll Lambert-Center; Kristel Lynn Malone-Decatur; Erica J Manual-Anahuac; Felicia Owens-Irving; Cynthia M Perez Lenz-Kingsville; Donna Lynette Shearmire-Abilene; Kelly Michelle Shipley-Boerne; Michelle Lynn Snyder-Spring; Lance W Steinbeisser-Brooklyn, NY; Kelly Laird Stoabs-Corpus Christi; Kimberly Dawn Tuttle-Houston; Marlene Esther Waters-Lexington, KY; Bryan Adam Wayne-Richardson; Dawn Elizabeth Workman-Balch Springs; and Linda Vaughn York-Lake Butler, FL.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703085

Peg Liedtke

Executive Secretary

Texas Court Reporters Certification Board

Filed: March 5, 1997

Deep East Texas Council of Governments

Consulting Services

The Deep East Texas Council of Governments invites applications for consulting services to provide technical assistance to the workforce division in the writing of plans and developing, implementing and identifying priorities for programs. In addition, services may include agency strategic planning, internal audit, and technology development.

Selection will be based on competence, knowledge, qualifications, and reasonableness of cost.

Closing date: 5:00 p.m. Friday, March 21, 1997.

Contact person: Walter Diggles or Rusty Phillips (409) 384-5704.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703192

Walter G. Diggles

Executive Director

Deep East Texas Council of Governments

Filed: March 7, 1997

General Services Commission

State Energy Conservation Office Notice of Contract Award

In accordance with Chapter 2254, Subchapter B of the Texas Government Code, the General Services Commission, State Energy Conservation Office (SECO) publishes this notice of contract award under the LoanSTAR Revolving Loan Program. The Request for Proposals was published in the October 4, 1996, issue of the Texas Register (21 TexReg 9680).

Description of Service. The contractors will provide energy engineering services for projects implemented under the LoanSTAR Program. The contractors will prepare energy assessments reports according to the Texas LoanSTAR Program Technical Guidelines and Format.

Contractors will also perform energy assessment review, project design review and construction monitoring.

Name of Contractors and Amount of Awards. The contractors selected are Energy Engineering Associates, 500 Capital of Texas Highway North, Building 3, Austin, Texas 78746 (received two contracts at \$150,000 each); CCRD Partners, 712 Main Street, Suite 2700, Houston, Texas 77002-3215 (one contract at \$150,000); Kinsman and Associates, 1701 North Greenville Avenue, Suite 600, Richardson, Texas 75081 (received two contracts at \$150,000 each). Effective dates of all contracts are February 17, 1997.

Deliverables and Due Date. Deliverables are due February 17, 1997 through August 31, 1998. The final project reports are due 60 days after contract completion.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703234

Judy Ponder

General Counsel

General Services Commission

Filed: March 7, 1997

General Services Commission

Summary of Other State Bidder Preference Laws

The General Services Commission publishes this list of other state bidder preference laws in accordance with Texas Codes Annotated, Government Code, Title 10, §2252.003, which requires the publication of a list of states which have laws or regulations regarding the award of contracts for general construction, improvements, services, or public works projects or purchases of supplies, materials, or equipment to nonresident bidders, together with a citation to and summary of the most recent law or regulation of each state relating to the evaluation of bids from and award of contracts to nonresident bidders.

ALABAMA: Code of Alabama, F539-3-5 (1992) Reciprocal preference for public contracts in which any state, county or municipal funds are utilized; F541-16-27 (1991) - Preference to commodities produced in Alabama or sold by Alabama persons, firms, or corporations in the purchase of or contract for personal property or contractual services; F541-16-57 (Supp. 1995) - Preference to commodities produced in Alabama or sold by Alabama persons, firms, or corporations in the awarding of contracts generally;

ALASKA: Alaska Statutes, Title 36, F536.30.170 (Supp. 1996) Preference of 5.0% for Alaska products. Preference of 15% to resident bidder offering services through an employment program. Preference of 5% for insurance related contracts. Preference of 10% to resident sole proprietors with a disability.

ARIZONA: Arizona Revised Statutes Annotated, Title 34, F534-243 (1990) - Preference of 5.0% for construction materials.

ARKANSAS: Arkansas Code Annotated, F519-11-259 (1994) Preference of 5.0% for materials and equipment used in public works projects.

CALIFORNIA: California Government Code Annotated, F54331 (1995)-Preference for supplies manufactured or produced in California. F54334 (1995) - Preference of 5% to resident bidders in contracts for public works, with the construction of public bridges, buildings and other structures, or with the purchase of supplies for any public use.

COLORADO: Colorado Revised Statutes Annotated, F58-18-101 (Supp. 1996) - Reciprocal preference in contracts for commodities and services; F58-19-101 (1994) - Reciprocal preference in construction contracts; F543-2-208 (Supp. 1996) - Preference for Colorado labor in highway construction projects.

FLORIDA: Florida Statutes Annotated, Title XIX, F5287.084 (Supp.1997) - Preference to Florida businesses for purchases of personal property.

GEORGIA: Georgia Code Annotated, F550-5-60 (1994) Preference in the purchase and contracting of supplies, materials, equipment manufactured and printing produced in Georgia. Reciprocal preference for resident vendors.

HAWAII: Hawaii Statutes Annotated, F5103D-1001 (1995) - Preference of 3% for Class I Hawaii products that have 25% to 49% of their manufactured cost in Hawaii; preference of 5% for Class II Hawaii products that have 50% to 74% of their manufactured cost in Hawaii; and a preference of 10% for Class III Hawaii products that have 75% or more of their manufactured cost in Hawaii.

IDAHO: Idaho Code Annotated, F560-101 (1996) Preference for resident bidder in state printing contracts. F560-103 (1994) - Preference of 10% for residents who perform printing, engraving, binding, and stationery work in cases of excessive charge or lack of production facilities.

ILLINOIS: Illinois Compiled Statutes Annotated, 30 ILCS F55 05/6 (Supp. 1996) - Reciprocal preference for public contracts; 10% preference for using products made from recycled materials in public contracts.

INDIANA: Indiana Code Ann., Title 4, F54-13.4-2-9 (Supp. 1 1996)-Reciprocal preference. Title 5, F55-17-6-20 (Supp. 1996) - Preference of 10% for supplies in which 50% of volume of the original component of supplies consists of recycled materials, or the cost of purchasing recycled materials equals at least 50% of cost of producing supplies; Title 5, F55-17-6-20.1 (Supp. 1996) - Preference of 15% for supplies that contain at least 50% by volume of recycled materials that have been used by an ultimate consumer of the materials; Title 5, F55-17-6-22 - Preference of 10% for soybean oil based ink; Title 5, F55-17-6-23 - Preference of 10% for soy diesel/bio diesel.

IOWA: Iowa Code Annotated, F518.6 (1989) - Resident preference in tie bids, and reciprocal preference with states that mandate a percentage preference for the purchase of equipment, supplies, or services; F573A.21 (Supp. 1996) - Reciprocal preference for public improvement contracts.

KANSAS: Kansas Statutes Annotated, F575-3740 (Supp. 1995) Resident preference in tie bids; preference for paper products containing highest percentage of recycled materials in tie bids. F575-3740(a) (1989) - Reciprocal preference in construction and public work contracts. F575-3740(b) (Supp. 1995) - Preference for recycled paper that contains not less than 50% waste paper by weight.

LOUISIANA: Louisiana Revised Statutes Annotated, F538:2225 (1989) -Reciprocal preference in public works contracts. F538:2251 (Supp. 1997) - 5% Preference for products produced or manufactured in Louisiana. F538:2251.1 (1989) - 10% Preference for milk and dairy products produced or processed in Louisiana. F538:2251.2 (1989) - 10% Preference for steel rolled in Louisiana. F538:2253 (1989) - Preference to firms doing business in the State of Louisiana.

F539:1595 (Supp. 1997) - Preference of 7.0% for products produced, grown or harvested in Louisiana; preference of 4.0% for meat and meat products and domesticated catfish processed in Louisiana; F539:1595.1 (1989) - Reciprocal preference for all contracts except high way construction; F539:1595.2 (1989) - Reciprocal preference in public works contracts; F539:1595.3 (1989) - 5.0% Preference for resident vendors to organize or administer rodeos and livestock shows; F539:1595.5 (Supp. 1997) - Reciprocal preference for items purchased from Louisiana retailers; F539:1595.6 (1989) - 10% Preference for steel rolled in Louisiana.

MAINE: Maine Revised Statutes Annotated Title 26, F51301 (1996)-Preference in tie bids for construction or public works contracts.

MARYLAND: Annotated Code of Maryland, State Finance and Procurement Article, F514-401 (1995) - Reciprocal preference for procurement contracts.

MASSACHUSETTS: Massachusetts General Laws Annotated, Chapter 149, F5179A (1996) - Preference to U.S. citizens in awarding of public work contracts.

MICHIGAN: Michigan Compiled Laws Annotated, F518.1261 (1994) Preference in tie bids.

MINNESOTA: Minnesota Statutes Annotated, F516B.102 (1995) - Reciprocal preference for construction or repairs contracts and purchases of supplies, materials, and equipment rental.

MISSISSIPPI: Mississippi Code 1972 Annotated, F519-13-111 (1995)-Resident preference in tie bids for printing, stationery and office supplies; F531-3-21 (Supp. 1996) - Reciprocal preference for public works contracts, and resident preference in tie bids; F531-7-15 (Supp. 1996) - Resident preference in tie bids for commodities; F531-7-47 (1996) - Reciprocal preference for public contracts, and resident preference in tie bids; F531-7-77 (1990) - Reciprocal preference in purchases of meat products; F573-13-45 (1995) - Reciprocal preference and resident preference in tie bids for professional engineering services.

MISSOURI: Missouri Annotated Statutes, F534.070 (1992) Resident preference in tie bids; F534.076 (Supp. 1997) - Reciprocal preference for products and for public works contracts, except for contracts for highways and public transportation.

MONTANA: Montana Code Annotated, F518-1-102 (1995) Reciprocal preference in award of public contracts for construction, repair, or public works; preference of 3.0% for purchases of goods; and preference of 5.0% for residents offering Montana made goods; F518-1-111 (1995) - Preference in tie bids for goods.

NEBRASKA: Nebraska Revised Statutes, F573-101.01 (1990) Reciprocal preference.

NEW JERSEY: New Jersey Statutes Annotated, F552:32-1.4 (1986) Reciprocal preference for contracts for goods and services. **NEW**

MEXICO: New Mexico Statutes Annotated, F513-1-21 (Supp. 1996) -Preference of 5.0% to resident manufacturers and resident businesses; preference of 5% to resident manufacturers and resident businesses for the purchase of recycled content goods or virgin content goods; preference of 10% to resident manufacturers and resident business for the purchase of both recycled content goods and virgin content goods. F513-4-1 (1992) - Preference for residents in public works contracts "whenever practicable"; F513-4-2 (1992) - Preference of 5.0% to resident contractors for public works contracts.

NORTH CAROLINA: North Carolina General Statutes Article 3, F5 143-59 (Supp. 1996) - Preference in tie bids for foods, supplies, materials, equipment, printing or services.

NORTH DAKOTA: North Dakota Century Code, F544-08-01 (1995) Reciprocal preference for goods, merchandise, supplies, equipment, and construction and repair contracts.

OHIO: Ohio Revised Code Annotated Title 1, F5153.012 (1994) Reciprocal preference in highway and public works contracts.

OKLAHOMA: Oklahoma Statutes 1991 Title 74, F585.17 (1995) Reciprocal preference.

OREGON: Oregon Revised Statutes, F5279.029 (1995) Reciprocal preference.

PENNSYLVANIA: Pennsylvania Statutes Annotated, Title 73, F5 1645.7 (1993) - Reciprocal preference for goods, supplies, equipment, printing, or materials.

SOUTH CAROLINA: Code Of Laws Of South Carolina Annotated, Article 5, F511-35-1520 (Supp. 1995) - Preference in tie bids; preference of 2.0% on purchases up to \$2.5 million, and 1.0% on purchases over \$2.5 million. Preferences do not apply to construction contracts or to purchases of goods if the price of a single unit of the item is more than \$10,000.

SOUTH DAKOTA: South Dakota Codified Laws Annotated, F55-19-3 (1994)- Reciprocal preference in contracts for public works, goods, merchandise, supplies, and equipment; F55-23-13 (1994) - Preference to resident bidders and products in tie bids; F55-23-21.2 (1994) - Reciprocal preference.

TENNESSEE: Tennessee Code Annotated, F512-4-802 (1992) Reciprocal preference in construction contracts for states contiguous to Tennessee.

TEXAS: Texas Government Code Annotated, Title 10, Subtitle D, 52155.444 (1996) - Preference in tie bids for goods and agricultural products produced or grown in Texas, or offered by Texas bidders, that are of equal cost and quality to other states of the United States. Preference in tie bids for goods and agricultural products from other states of the United States over foreign goods and agricultural products that are of equal cost and quality. Texas Government Code, F52252.002 - Reciprocal preference.

UTAH: Utah Code Annotated, F563-56-20.5 (1993) Reciprocal preference for goods, supplies, equipment, materials, and printing; F563-56-20.6 (1993) - Reciprocal preference for construction contracts.

VERMONT: Vermont Statutes Annotated, F5F51401 and 1402 (Supp. 1995)- Preference to resident companies and licensed resident agents in the purchase of insurance coverage for the State of Vermont and its employees

VIRGINIA: Code of Virginia 1950 Annotated, F511-47 (1993) Preference in tie bids; reciprocal preference for goods, services, and construction.

WASHINGTON: Revised Code of Washington, F543.19.704 Reciprocal Preference Washington Administrative Code, F5236-48-085 (1989) - Reciprocal Preference

WEST VIRGINIA: West Virginia Code Annotated, F55A-3-37 (Supp.1996) - Preference of 2.5% to resident bidders for construction contracts over \$50,000; preference of 2.5% to resident bidders who employ at least 75% West Virginia residents; and preference of 2.5%

to nonresident vendors who employ at least 100 residents and have at least 75% resident employees; Section 5A-3-37a (1993) - Reciprocal preference for commodities or printing.

WISCONSIN: Wisconsin Statutes, F516.75 (Supp. 1995) Preference to resident bidders in the purchase of materials, supplies, equipment, and contractual services against states that impose a resident preference; F516.855 (Supp. 1995) - Preference to resident bidders in construction projects against states that impose a resident preference; F544.57 (Supp. 1995) - Preference to resident artists for works of art in state buildings.

WYOMING: Wyoming Statutes Annotated, F516-6-102 (Supp. 1995) Preference of 5.0% in public works contracts; F516-6-301 (Supp. 1995) - Preference of 10% in printing contracts.

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

TRD-9703087

Judy Ponder

General Counsel

General Services Commission

Filed: March 5, 1997

Texas Department of Health

Notice of Cancellation of Request For Proposal (Quality Monitoring Contractor)

Purpose. The Texas Department of Health (department), Health Care Financing Associateship is canceling the Request For Proposal (RFP) number HCF-96-03 to contract with a qualified and experienced firm capable of providing the department with external quality review services which will meet the department's obligation to monitor, review, evaluate and report on the services of health plans participating in the Texas Medicaid Managed Care program (known as the "State of Texas Access Reform" or STAR program). The RFP was released on December 4, 1996. A Notice of Request for Proposal (Quality Monitoring Contractor) was published in the December 13, 1996 issue of the *Texas Register* 21 TexReg 11997.

Description. Pursuant to the limitations provision set out in the December 13, 1996 notice, the department has deemed it to be in the best interest of the department to cancel this RFP.

Contact. Requests for information concerning the cancellation of this RFP must be addressed in writing to Mr. Larry Fisher, Procurement Officer, Texas Department of Health, Mail Code Y-921, 1100 West 49th Street, Austin, Texas 78756-3199. Fax (512) 338-6544.

Issued in Austin, Texas, on March 10, 1997.

TRD-9703261

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: March 10, 1997

Texas Department of Health

Request for Funding Proposal for Comprehensive Family Planning Services

Purpose: The Texas Department of Health (TDH), Bureau of Clinical and Nutrition Services requests proposals for the provision of comprehensive family planning services to facilitate achievement of its mission to assist low-income Texans with their family planning goals, improve their health, and reduce poor pregnancy outcomes. The areas targeted for services under this contract include the following Public Health Regions:

- PHR 1) Amarillo, Lubbock, and surrounding counties;
- PHR 2) Abilene, Wichita Falls, and surrounding counties;
- PHR 3) Arlington, Dallas/Fort Worth, and surrounding counties;
- PHR 4) Tyler, Sulphur Springs, and surrounding counties;
- PHR 5) Beaumont, Nacogdoches, and surrounding counties;
- PHR 6) Houston and surrounding counties;
- PHR 7) Austin, Temple, and surrounding counties;
- PHR 8) San Antonio, Uvalde, and surrounding counties;
- PHR 9) Midland/Odessa and surrounding counties;
- PHR 10) El Paso and surrounding counties; and
- PHR 11) Corpus Christi, Harlingen, and surrounding counties.

Comprehensive family planning services include medical history, physical assessment and laboratory testing, client education and counseling, provision of contraceptives and methods, pregnancy testing; counseling and referral, screening and treatment and/or referral for treatment of sexually transmitted diseases, treatment and/or referral of other medical or genetic problems, client outreach, community education, and basic infertility services, as defined in the request for funding proposal. Public and private nonprofit agencies and organizations providing family planning services are eligible to apply for funds under Title XX of the Social Security Act for Fiscal Year 1998 (September 1, 1997-August 31, 1998). Individual private physicians' offices are not eligible for reimbursement under Title XX. Programs must be directed by a physician currently licensed to practice in Texas (M.D. or D.O.) and must meet the criteria in 25 TAC §§56.301-56.306 relating to Family Planning Provider Program Requirements.

Contact: Parties interested in obtaining a copy of the Request for Proposal (RFP) application kit and who plan to submit an application should contact Jeannette McGowan, Family Planning, Bureau of Clinical and Nutrition Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3101, (512) 458-7444 (Internet address: jmcgowan@wcl.tdh.state.tx.us).

Due Date and Submittal Location: Request for Proposal application kits will be available on March 31, 1997. Completed applications must be received by 5:00 p.m. C.D.T., on May 6, 1997, by Jeannette McGowan and the appropriate TDH Public Health Regional Director. The names and addresses of the Public Health Regional Directors are listed in the RFP. Faxes will not be accepted and late applications will not be considered. An original and three copies of the application must be submitted to Jeanette McGowan and three copies of the application to the appropriate Public Health Regional Director(s) in the applicant's target area(s) by the due date.

Award Procedure: All entities that submit proposals by the due date and which are reviewed will receive written notification of the results

of the proposal review process on July 1, 1997, or as soon as possible thereafter.

TDH reserves the right to accept or reject any of the proposals received. TDH is under no legal obligation to execute a resulting contract on the basis of this notice or distribution of the RFP. Neither this notice nor the RFP commits TDH to pay for any costs incurred prior to the execution of a contract.

Anticipated Schedule of Events: The anticipated schedule of events is as follows: RFP available for request on March 31, 1997; proposals to be received by TDH Regional Director(s) and Central Office by 5:00 p.m. C.D.T. on May 6, 1997; review of proposals to begin on May 7, 1997; and notice of award(s) on July 1, 1997, or as soon as possible thereafter.

Issued in Austin, Texas, on March 6, 1997.

TRD-9703123
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 6, 1997

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**Texas Department of Housing and Community
Affairs, Manufactured Housing Division**

Notice of Administrative Hearing (MHD1997000217-C)

Tuesday, March 18, 1997, 1:00 p.m.

State Office of Administrative Hearing, 300 West 15th Street, Suite 502

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Crosby Estates Inc. dba Liberty Mobile Home aka Crosby Estates, Inc. dba Dayton Mobile Homes on failure to comply with the initial report and warranty order of the Director and provide the Department with copies of completed work orders in accordance with the Texas Manufactured Housing Standards Act, Texas Revised Statutes Annotated Article 5221f, §14(f)(j)(k) and 10 Texas Administrative Code, §80.132(a)(6). SOAH 332-97-0518. Department MHD1997000217-C.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703171
Larry Paul Manley
Executive Director
Texas Housing and Community Affairs
Filed: March 7, 1997

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Notice of Administrative Hearing (MHD1996001810-M)

State Office of Administrative Hearing, 300 West 15th Street, Suite 502

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Newco Homes L.P. dba Palm Harbor Village for placing an advertisement without disclosing the Annual Percentage Rate and the number of payments or the period of repayment in accordance with the Federal Truth In Lending Regulations, 12 Code of Federal Regulation, §226.24 (1996) and the Texas Manufactured Housing Standards Act, Tex. Rev. Statutes Annotated Article 5221f, §6(j) and §7(k)(1). SOAH 332-97-0519. Department MHD1996000615-O.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703175

Larry Paul Manley

Executive Director

Texas Housing and Community Affairs

Filed: March 7, 1997



Notice of Administrative Hearing (MHD1996001174-D)

Wednesday, March 19, 1997, 1:00 p.m.

State Office of Administrative Hearing, 300 West 15th Street, Suite 502

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Newco Homes L.P. dba Palm Harbor Village for placing an advertisement without disclosing the down payment amount, the Annual Percentage Rate, and the number of payments or the period of repayment; also for placing an advertisement without disclosing the amount of repayments and the number of payments or period of repayment in accordance with the Federal Truth In Lending Regulations, 12 Code of Federal Regulation, §226.24 (1996) and the Texas Manufactured Housing Standards Act, Texas Revised Statutes Annotated Article 5221f, §6(j) and §7(k)(1). SOAH 332-97-0521. Department MHD1996001174-D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703174

Larry Paul Manley

Executive Director

Texas Housing and Community Affairs

Filed: March 7, 1997



Notice of Administrative Hearing (MHD1996001480-D)

Wednesday, March 19, 1997, 1:00 p.m.

State Office of Administrative Hearing, 300 West 15th Street, Suite 502

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Newco Homes L.P. dba Palm Harbor Village for placing an advertisement without disclosing the down payment amount, the Annual Percentage Rate, and the number of payments or the period of repayment in accordance with the Federal Truth In Lending Regulations, 12 Code of Federal Regulation, §226.24 (1996) and the Texas Manufactured Housing Standards Act, Texas Revised Statutes Annotated Article 5221f, §6(j) and §7(k)(1). SOAH 332-97-0520. Department MHD1996001480-D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703173

Larry Paul Manley

Executive Director

Texas Housing and Community Affairs

Filed: March 7, 1997



Notice of Administrative Hearing (MHD1996001810-M)

Thursday, March 20, 1997, 9:00 a.m.

State Office of Administrative Hearing, 300 West 15th Street, Suite 502

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Ahern Enterprises, Inc. on failure to properly submit monthly Installation Summary Reports for December 1995 through July 1996, showing the number of homes installed in accordance with the Texas Manufactured Housing Standards Act, Texas Revised Statutes Annotated Article 5221f, §7(k)(6) and 10 Texas Administrative Code, §80.28(a). SOAH 332-97-0522. Department MHD1996001810-M.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703172

Larry Paul Manley

Executive Director

Texas Housing and Community Affairs

Filed: March 7, 1997



Request for Proposal-Extension of Deadline Outside Counsel

SUMMARY. The Texas Department of Housing and Community Affairs, through its Legal Division, is issuing this Request for Proposal (RFP) for outside counsel to represent TDHCA in low income housing tax credit matters. TDHCA anticipates the need for legal services in connection with the administration of the low income housing tax credit program at the request of TDHCA. Due to the requirement that TDHCA be represented before the IRS, there is a special requirement in the RFP that such outside counsel be qualified to appear before the IRS on behalf of TDHCA.

DEADLINE FOR SUBMISSION. The extended deadline for submission in response to the Request for Proposal is 5:00 p.m. Central Standard Time, Friday, June 6, 1997. No proposal will be accepted after this deadline. The original RFP was previously published in the February 4, 1997 *Texas Register*.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposal in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

For additional information concerning the requirements of this request for proposals, or to request an RFP package, please contact Betty J. Marks, General Counsel, at (512) 475-3902. Communication with any member of the board of directors, the executive director, or TDHCA staff other than Ms. Marks, concerning any matter related to this request for proposals is grounds for immediate disqualification.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703176

Larry Paul Manley
Executive Director

Texas Housing and Community Affairs
Filed: March 7, 1997

Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for Salem Life Insurance Company, a foreign life, accident and health company. The home office is in Raleigh, North Carolina.

Application for a name change in Texas for Integon Life Insurance Corporation, a foreign life, accident and health company. The proposed new name is Integon Life Insurance Company. The home office is in Raleigh, North Carolina.

Application for a name change in Texas for Professional Insurance Corporation, a foreign life, accident and health company. The proposed new name is Professional Life Insurance Company. The home office is in Jacksonville, Florida.

Application for a name change in Texas for Alamo Title Insurance of Texas, a domestic title company. The proposed new name is Alamo Title Insurance. The home office is in San Antonio, Texas.

Application for a name change in Texas for Mother Frances Group Hospital Service Corporation, a domestic group hospital service corporation. The proposed new name is Heritage Health Group Hospital Service Corporation. The home office is in Tyler, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on March 10, 1996.

TRD-9703291

Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: March 10, 1996

Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of WellPoint Pharmacy Management, Inc., a foreign third party administrator. The home office is Woodland Hills, California.

Application for admission to Texas of TyNet Corporation, a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on March 6, 1996.

TRD-9703144

Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: March 6, 1996

Texas Natural Resource Conservation Commission

Applications for Waste Disposal Permits

Attached are Notices of Applications for waste disposal permits issued during the period of February 13th thru February 28, 1997.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement

"I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105 P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

CITY OF ALEDO, P.O. Box 1, Aledo, Texas 76008, the City of Aledo Wastewater Treatment Facilities are located approximately 0.5 mile west of the intersection of Farm-to-Market Road 5 and Farm-to-Market Road 2376 in the City of Aledo in Parker County, Texas.

CITY OF BAY CITY, 1901 Fifth Street, Bay City, Texas 77414, the wastewater treatment facilities are approximately 4,000 feet east of State Highway 60 on the west side of Cottonwood Creek and approximately 9,200 feet south of State Highway 35 in the City of Bay City in Matagorda County, Texas, renewal, 10123-04.

B & B SEWER COMPANY, P.O. Box 2209, Spring, Texas 77383-2209, the Shadow Bay Wastewater Treatment Plant, the plant site is located approximately 200 feet south of Lake Conroe, approximately 5500 feet north of Kleimann Lane, approximately 5000 feet west of Lewis Creek Reservoir, and approximately 7000 feet north of the intersection of Long Street and Farm-to-Market Road 1097 in Montgomery County, Texas, renewal, 11419-01.

CITY OF BLANCO, P.O. Box 750, Blanco, Texas 78606, the City of Blanco Water Treatment Plant is located approximately 3,000 feet southwest of the intersection of Farm-to-Market Road 1623 and U.S. Highway 281, on the north bank of the Blanco River in the City of Blanco in Blanco County, Texas, renewal, 10549-01.

BLUETEX, L.C., P.O. Box 142365, Austin, Texas 78714-2365, proposes to operate a cattle hide tannery utilizing the through-the-blue process. the tannery is located approximately 1.4 miles southeast of the intersection of Loop 143 and State Route 377, southeast of the Community of Perryton, Ochiltree County, Texas, new, 03921.

BRAZOS RIVER AUTHORITY, 4400 Cobbs Drive, Waco, Texas 76714-7555, the Sugar Land Regional Wastewater Treatment Facilities are located approximately two miles south of Sugar Land at the intersection of Beltz Road and U.S. Highway 59 in Fort Bend County, Texas, renewal, 11317-01.

BRIGHT LIGHT HOSPITALITY INC., Quality Inn - Intercontinental Airport, P.O. Box 60135, Houston, Texas 77205, the wastewater treatment facilities are at 6115 Will Clayton Parkway approximately 0.6 mile west of the intersection of S. Highway 59 and Will Clayton Parkway in Harris County, Texas, renewal, 11609-01.

CITY OF COMMERCE, 1119 Alamo Street, Commerce, Texas 75428-2693, from the City of Commerce Water Pollution Control Facility, the facility is located approximately 0.5 mile south of the

intersection of Charity Road and Farm-to-Market Road 3218, on the east side of Farm-to-Market Road 3218 in Hunt County, Texas, renewal, 10555-01.

CITY OF DENTON, 215 East McKinney Street, Denton, Texas 76201, the wastewater treatment facilities are east of the City of Denton along Pecan Creek, approximately 5,700 feet east of State Highway 288 and approximately two miles upstream from the Lewisville Lake in Denton County, Texas, renewal, 10027-03.

EL PASO WATER UTILITIES PUBLIC SERVICE BOARD, P.O. Box 511, El Paso, Texas 79961, the Northwest Wastewater Treatment Facilities are located at the intersection of Interstate Highway 10 and Executive Center Boulevard in El Paso County, Texas, renewal, 10408-09.

CITY OF GEORGETOWN, P.O. Box 409, Georgetown, Texas 78627-0409, the Dove Springs Wastewater Treatment Plant is located at 400 Rock Dove Lane, approximately 1000 feet west of County Road 102, approximately 4000 feet south of the intersection of State Highway 29 and County Road 102, and approximately 2.75 miles east of the intersection of State Highway 29 and State Highway Spur 418 in the City of Georgetown in Williamson County, Texas, renewal, 10489-03.

CITY OF GRUVER, P.O. Box 947, Gruver, Texas 79040, the City of Gruver Wastewater Treatment Plant, the plant site is located approximately 0.6 mile west of State Highway 15 and approximately 0.8 mile east of State Highway 136, southeast of the City of Gruver in Hansford County, Texas, renewal, 10751-01.

CITY OF HUMBLE, P.O. Box 1627, Humble, Texas 77338, the wastewater treatment facilities are approximately 150 feet west of the intersection of Kingfisher and Pheasant Run and approximately 2,000 feet west of the crossing of Garners Bayou and Atascotia Road, south of the City of Humble in Harris County, Texas, renewal, 10763-03.

CITY OF JACKSONVILLE, P.O. Box 1390, Jacksonville, Texas 75766-1390, the Canada Street Wastewater Treatment Facilities are located on Canada Street, southeast of the crossing of Ragsdale Creek by Canada Street, southeast of the City of Jacksonville in Cherokee County, Texas, amendment, 10693-01.

LOUISIANA-PACIFIC CORPORATION, P.O. Box 3107, Conroe, Texas 77305, the applicant operates a wood products manufacturing facility, the plant site is on the east side of U.S. Highway 75, approximately three miles north of the City of New Waverly, Walker County, Texas, amendment, 01905.

NORTHGATE CROSSING MUNICIPAL UTILITY DISTRICT NO. 2, c/o Coats, Rose, Yale, Holm, Ryman & Lee, P.C., 1001 Fannin, Suite 800, Houston, Texas 77002, the wastewater treatment facilities are approximately 4,500 feet southeast from the intersection of Interstate Highway 45 and Spring Creek and approximately 1.3 miles northeast of the intersection of Stuebner Road and Interstate Highway 45 in Harris County, Texas, renewal, 12979-01.

RENE HINOJOSA, 11902 Suburban, Houston, Texas 77050, the wastewater treatment facilities are on Herman Street, 350 feet east of Suburban Drive and approximately 1,400 feet northeast of the intersection of Suburban Drive and Mount Houston Road in Harris County, Texas, renewal, 13559-01.

RODDIE WOOL SCOURING COMPANY, INC., P.O. Box 30, Brady, Texas 76825, the applicant operates a raw wool scouring facility. The plant site is at the intersection of East 2nd Street and

A.L. Reed Street in the City of Brady, McCulloch County, Texas, renewal, 01297.

S. I. ENTERPRISES, LLC, 16643 Jacintoport Boulevard, Channelview, Texas 77015, the wastewater treatment facilities are at 16643 Jacintoport Boulevard in the City of Houston in Harris County, Texas, renewal, 13316-01.

SOUTHWEST UTILITIES, INC., P.O. Box 907, El Campo, Texas 77437, the Greenwood Village Wastewater Treatment Facilities, the facilities are located at 3010 Kowis Street, approximately 3500 feet west-northwest of the intersection of State Highway 59 and Little York Road, 1600 feet north-northwest of the intersection of Little York Road and Foy Street in Harris County, Texas, renewal, 11255-01.

CITY OF WICKETT, P.O. Box 185, Wickett, Texas 79788, the wastewater treatment facility and the disposal site are south of the City of Wickett between U.S. Highway 80 and Interstate Highway 20 in Ward County, Texas, renewal, 10622-01.

Issued in Austin, Texas, on February 28, 1997.

TRD-9703200

Eugenia K. Brumm

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 7, 1997

Enforcement Orders

An agreed enforcement order was entered regarding NORTHEAST TEXAS TRAVEL CENTERS, INC., Docket Number 96-1530-PST-E (Facility Number 54968, Enforcement ID Number E11570) on January 28, 1997, assessing \$17,200 in administrative penalties with \$5,160 deferred.

Information concerning any aspect of this order may be obtained by contacting Walter Ehresman, Staff Attorney at (512) 239-0600 or Mick Wilson, Enforcement Coordinator at (512) 239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding IMAD WADI, Docket Number 96-1617-PST-E (Facility Number 4275, Enforcement ID Number E11693) on January 28, 1997, assessing \$600. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney at (512) 239-3400 or Srini Kusumanchi, Enforcement Coordinator at (512) 239-5874, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding TRAVIS COUNTY TRANSPORTATION AND NATURAL RESOURCE DEPARTMENT, Docket Number 96-0393-PST-E (Facility Number 40880, Enforcement ID Number E11500) on January 28, 1997, assessing \$400. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney at (512) 239-0600 or Mick Wilson, Enforcement Coordinator at (512) 239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding JIM PARK, Docket Number 96-1726-PST-E (Facility Number 47814, Enforcement ID Number E11267) on January 28, 1997, assessing \$3,600 in administrative penalties with \$1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Walter Ehresman, Staff Attorney at (512) 239-0573 or Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding PRESBYTERIAN PAN AMERICAN SCHOOL, Docket Number 96-0676-PWS-E (PWS Number 1370009) on January 28, 1997, assessing \$930. in administrative penalties with \$279. deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-3400 or Katharine Wheatley, Enforcement Coordinator at (512) 239-4466, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding GRADY BOYD, Docket Number 96-1150-OSI-E (Certificate Number 1201) on January 28, 1997, assessing \$500. in administrative penalties with \$150. deferred.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6224 or Lee Parham, Enforcement Coordinator at (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding JAMES COLLEY, Docket Number 96-1681-OSI-E (Certificate Number 4557) on January 28, 1997.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6224 or Lee Parham, Enforcement Coordinator at (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding JOE HILL, Docket Number 96-1024-OSI-E (Certificate Number 1233) on January 28, 1997, assessing \$500. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney at (512) 239-0477 or Lee Parham, Enforcement Coordinator at (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding RONNIE ABSTON, Docket Number 96-0658-WWD-E (License Number 2386-WPK) on January 28, 1997, assessing \$250. in administrative penalties with \$75. deferred.

Information concerning any aspect of this order may be obtained by contacting Lee Parham, Enforcement Coordinator at (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding JERRY KASHER, Docket Number 96-0661-WWD-E (License 1727-WI) on January 28, 1997, assessing \$500. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lee Parham, Enforcement Coordinator at (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding DONALD DEAN DAVIS, Docket Number 96-1365-WWD-E (License Number 3104-W) on January 28, 1997, assessing \$750. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lee Parham, Enforcement Coordinator at (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding LONE STAR INDUSTRIES, INCORPORATED, Docket Number 96-0771-MLM-E (SWR Number 32552, Air Permit Nos. 5918B, 5918C, 5918D, Air Account Number ND-0014-S) on January 28, 1997, assessing \$36,960 in administrative penalties with \$11,088 deferred.

Information concerning any aspect of this order may be obtained by contacting John Sadlier, Enforcement Coordinator at (512) 239-6012, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding SIGNTECH U.S.A., Docket Number 96-0951-MLM-E (SWR Number 39225) on January 28, 1997, assessing \$31,920 in administrative penalties with \$9,576 deferred.

Information concerning any aspect of this order may be obtained by contacting Adele Noel, Enforcement Coordinator at (512) 239-1045, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Issued in Austin, Texas, on February 7, 1997.

TRD-9703205

Eugenia K. Brumm

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 7, 1997

An amended order was entered regarding LEWIS, MARK, Docket Number 96-0346-WWD-E (License Number 4586M) on February 7, 1997.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney at (512) 239-0678 or Lee Parham, Enforcement Coordinator at (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding DAISY GODBEY DBA CREATIVE KIDS EXPRESS CHILD CARE, Docket Number 95-1514-PWS-E (PWS Number 0840222) on February 7, 1997, assessing \$1,030 in administrative penalties with \$309. deferred.

Information concerning any aspect of this order may be obtained by contacting Nolan Ward, Staff Attorney at (512) 239-5803 or Katharine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding TOM BEAN, CITY OF, Docket Number 95-1014-PWS-E (PWS Number 0910008) on February 7, 1997, assessing \$1,530 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patricia Capps, Staff Attorney at (512) 239-0682 or Katharine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding TRAIL DUST CITY (LINCOLN PARK), Docket Number 96-1741-PWS-E (PWS Number 0610055) on February 7, 1997, assessing \$930. in administrative penalties with \$279. deferred.

Information concerning any aspect of this order may be obtained by contacting Patti Hershey, Staff Attorney at (512) 239-0587 or Katharine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding SIVELLS BEND INDEPENDENT SCHOOL DISTRICT, Docket Number 96-1744-PWS-E (PWS Number 0490039) February 7, 1997, assessing \$930. in administrative penalties with \$279. deferred.

Information concerning any aspect of this order may be obtained by contacting Patti Hershey, Staff Attorney at (512) 239-0587 or Katharine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding B & B WATER SUPPLY CORPORATION, Docket Number 95-1016-PWS-E (PWS Number 1750028, CCN Number 11317) on February 7, 1997, assessing \$1530. in administrative penalties with \$460. deferred.

Information concerning any aspect of this order may be obtained by contacting Patti Hershey, Staff Attorney at (512) 239-0587 or Katharine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding TEXAS A&M UNIVERSITY AT GALVESTON, Docket Number 96-0533-MWD-E (Permit Number 11085-001) on February 7, 1997, assessing \$3,800 in administrative penalties with \$1,140 deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-6259 or Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding ASCENSION RESORTS, LIMITED, Docket Number 96-1409-MWD-E (Permit Number 12482-001) on February 7, 1997, assessing \$13,520 in administrative penalties with \$4,056 deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-6259 or Merrilee Mears, Enforcement Coordinator at (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding HOLCOMB WASTE OIL, Docket Number 95-1088-IHW-E (SWR Number 66471) on February 7, 1997.

Information concerning any aspect of this order may be obtained by contacting Barbara Lazard, Staff Attorney at (512) 239-0674 or Mohammed Moheeth, Enforcement Coordinator at (512) 239-2262, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding THE CITY OF SAN ANTONIO AND VIA METROPOLITAN TRANSIT AUTHORITY, Docket Number 96-1973-MLM-E (SWR Number 30549) on February 11, 1997, assessing \$1,047,250. in administrative penalties with \$418,900. deferred.

Information concerning any aspect of this order may be obtained by contacting Paul Sarahan, Staff Attorney at (512) 239-3422 or John Sadlier, Enforcement Coordinator at (512) 239-6012, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703202

Eugenia K. Brumm

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 7, 1997

An agreed enforcement order was entered regarding OSCAR LEE MARTIN, Docket Number 95-1425-MWD-E (no permit) on February 25, 1997.

Information concerning any aspect of this order may be obtained by contacting Raymond Winter, Staff Attorney at (512) 239-0477 or Merrilee Mears, Enforcement Coordinator at (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding JAMES CALDWELL, Docket Number 96-0925-PST-E (Facility Number 55343, Enforcement ID Number E11504) on February 22, 1997, assessing \$5,200 in administrative penalties with \$1,560 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney at (512) 239-0600 or Mick Wilson, Enforcement Coordinator at (512) 239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding ALI AHMED HIRANI, Docket Number 96-1599-PST-E (Facility Number 66462, Enforcement ID Number E10950) on February 22, 1997, assessing \$1,800 in administrative penalties with \$540. deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney at (512) 239-0600 or Sushil Modak, Enforcement Coordinator at (512) 239-2126, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding L & M GROCERY, INCORPORATED, Docket Number 96-1837-PST-E (Facility Nos. 27149, 27142, 27143, 27136, 27138, 27139, 27148, 27141,

27145, & 27146, Enforcement ID Numbers. E11557, E11413, E11412, E11415, E11416, E11417, E10967, E11414, E11387 & E11206) on February 25, 1997, assessing \$80,000 in administrative penalties with \$49,316.87 deferred.

Information concerning any aspect of this order may be obtained by contacting Walter Ehresman, Staff Attorney at (512) 239-0573 or Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding BLACKJACK WATER SUPPLY CORPORATION, Docket Number 95-1009-PWS-E (PWS Number 0370029, CCN Number 11402) on February 22, 1997, assessing \$1,530. in administrative penalties with \$459. deferred.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6224 or Katharine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding CITY OF PHARR, Docket Number 96-1854-MWD-E (Permit Number 10596-001) on February 22, 1997.

Information concerning any aspect of this order may be obtained by contacting Roxanne Cook, Enforcement Coordinator at (512) 239-4496, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding CITY OF MAGNOLIA, Docket Number 96-1751-MWD-E (Permit Number 11871-001) on February 22, 1997.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-6259 or Mary Smith, Enforcement Coordinator at (512) 239-4484, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT 19, Docket Number 96-1406-MWD-E (Permit Number 11970-001) on February 22, 1997, assessing \$11,360 in administrative penalties with \$11,360 deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-6259 or Gilbert Angelle, Enforcement Coordinator at (512) 239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding EDSSEL JONES, Docket Number 96-1883-MWD-E (Permit Number 12015-001) on February 22, 1997.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-3400 or Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding WEST HOUSTON AIRPORT CORPORATION, Docket Number 96-1408-MWD-

E (Permit Number 12516-001) on February 22, 1997, assessing \$3,240 in administrative penalties with \$972. deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-6259 or Lin Zhang, Enforcement Coordinator at (512) 239-4497, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding MONTE ALLEN, Docket Number 96-1629-IWD-E (no permit) on February 22, 1997, assessing \$1,020 in administrative penalties with \$306. deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-6259 or Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding CDR ENVIRONMENTAL, INCORPORATED, Docket Number 96-1545-IWD-E (Permit Number 03524) on February 24, 1997, assessing \$16,640 in administrative penalties with \$4,992 deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-6259 or Laurie Evans, Enforcement Coordinator at (512) 239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding BICC CABLES CORPORATION, Docket Number 96-1544-IWD-E (Permit Number 01270) on February 24, 1997, assessing \$2,760 in administrative penalties with \$828. deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-6259 or Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding TEXAS INDUSTRIAL RADIATOR, Docket Number 96-1608-IHW-E (FOD Number F0027) on February 22, 1997, assessing \$8,000 in administrative penalties with \$2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting William Foster, Staff Attorney at (512) 239-3407 or Subhash Jain, Enforcement Coordinator at (512) 239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding OXY PETRO-CHEMICALS, INCORPORATED, Docket Number 96-1905-IHW-E (SWR Number 31685) on February 22, 1997, assessing \$8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Greg Warmink, Staff Attorney at (512) 239-0612 or Deborah Magouirk, Enforcement Coordinator at (512) 239-2578, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding WORLD TIRE RECYCLING, INCORPORATED, Docket Number 96-1585-MSW-E (Registration Number 44147) on February 22, 1997.

Information concerning any aspect of this order may be obtained by contacting Linda Sorrells, Staff Attorney at (512) 239-3408 or John Mead, Enforcement Coordinator at (512) 239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703197

Eugenia K. Brumm

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 7, 1997

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Notice of Application for Amendment to Certificate of Adjudication

Notice of Application for Amendment to Certificate of Adjudication, pursuant to Texas Water Code §11.122 requiring notice to Interjacent Appropriators. Notice was mailed 2-11-97 on Application Number 14-2536A to amend Certificate of Adjudication Number 14-2536; Colorado River Basin; San Saba and Mills Counties, Texas; Applicant, ONYX EXPLORATION, INC., seeks to amend Certificate of Adjudication Number 14-2536 by changing the place of use of 96 acre-feet of irrigation water to a 134.97 acre tract of land, approximately 17 river miles downstream, surveyed in two separate tracts, lying in the County of Mills, and being out of the Francisco Vegereal Survey Number 60, Abstract Number 696, and the James Christian Survey Number 61, Abstract Number 126. Said 134.97 acre tract is the same land described in a deed from Tom Worth Moore, et ux to Tom Wilton Moore, et al in Volume 212, Page 842 of the Mills County Deed Records. Applicant further seeks to change the diversion point of the 96 acre-feet of irrigation water to the northwest corner of the James Christian Survey Number 61, Abstract Number 126, also being located at Latitude 31.368° N, Longitude 98.704° W, in Mills County, Texas. The time priority of the owner's right is December 31, 1912.

The Executive Director may issue an amendment to the Certificate of Adjudication on or after March 14, 1997, unless a written hearing request is filed in the Chief Clerk's Office of the TNRCC on or before March 3, 1997. To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; and (5) the location of your property relative to the applicant's operations.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

Requests for hearing must be submitted in writing to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. Written public comments may also be submitted to the Chief Clerk's Office on or before March 3, 1997. For information concerning technical aspects of the permit, contact Mike Howard, MC 160, at the same above P.O. Box address. For information concerning

hearing procedures or citizen participation, contact the Public Interest Counsel, MC 103, at the same P.O. Box address. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Issued in Austin, Texas, on February 11, 1997.

TRD-9703204

Eugenia K. Brumm
Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 7, 1997

Notice of Application to Appropriate Public Waters of the State of Texas

The following notices of application for permits to appropriate Public Waters of the State of Texas were issued during the period January 3, 1997, through February 3, 1997.

Application Number 5041A; EASTMAN CHEMICAL COMPANY; to amend Water Use Permit Number 5041 pursuant to 11.122, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. Water Use Permit Number 5041 authorizes Eastman Chemical Company to maintain a dam and 66 acre-foot capacity reservoir on an unnamed tributary of Black Fork Creek, tributary of Prairie Creek, tributary of the Neches River, Neches River Basin and to divert and use not to exceed 100 acre-feet of water per annum from the reservoir for industrial use at the applicant's Tyler plant. The dam and reservoir are located in Smith County approximately two miles northeast of Tyler, Texas. Priority date for the water right is January 29, 1986. The permit includes a special condition indicating that authorization to divert water for industrial purposes would expire and become null and void on December 31, 1996, unless prior to such date permittee applied to extend or eliminate the term. Applicant seeks to amend Water Use Permit Number 5041 to delete the term or, at a minimum, extend it for at least 10 years.

Application Number 5151A; GRAND PRAIRIE METROPOLITAN UTILITY AND RECLAMATION DISTRICT; to amend Permit Number 5151 pursuant to 11.122, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. Water Use Permit Number 5151 authorized diversion and use of not to exceed 384 acre-feet of water per annum from the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin into two existing off-channel reservoirs (referred to as Lake Number 1 and Lake Number 2). The reservoirs are authorized to be used for recreational purposes and subsequent irrigation of 129 acres of land approximately 10.5 miles west of the Dallas County Courthouse in Dallas County, Texas. The permit included several special conditions, a few of which are: A) The permit granted a permanent right to use not to exceed 166 acre-feet of water per annum and to use not to exceed 218 acre-feet of water per annum for a term that expires on December 31, 1997, unless permittee applied for and is granted an extension or a perpetual right for the additional 218 acre-feet of water per annum; B) A priority date of July 29, 1987, for the permit and any extensions thereof; C) Authorized the use of water under the permit for irrigation of land. Applicant seeks to amend Permit Number 5151 by: A) Adding an additional 55 acres of land to be irrigated which includes a horse racetrack facility owned by Grand Prairie Sports Facilities Development Corporation;

B) Construct three additional off-channel reservoirs (Lakes A, B and C) with a total surface area of 9.87 acres and to allow diversion into these lakes of a portion of the water now authorized for use from the West Fork Trinity River; C) Delete or extend the expiration date for the referenced 218 acre-feet of water per annum; D) Specify the diversion and use of 384 acre-feet of water per annum to 92 acre-feet of water be used for industrial use (dirt track watering) and 292 acre-feet of water be used for irrigation use.

Application Number 5571; CITY OF LONGVIEW; for a permit pursuant to 11.121, Texas Water Code, and TNRCC 30 TAC 295.1, et seq. to construct and maintain a dam creating a reservoir on an unnamed tributary of the Sabine River, Sabine River Basin, approximately 4 miles southwest of Longview, Texas in Gregg County. Applicant further requests authorization to: A) Impound in the reservoir "municipal" water diverted from the Sabine River as follows: 1) 1086.5 acre-feet per annum as authorized by the City's Certificate of Adjudication Number 05-4624; 2) 20,000 acre-feet per annum pursuant to the City's contract with the Sabine River Authority of Texas dated March 5, 1975; and 3) 13,860 acre-feet per annum during the months of January through May and during the month of December of the same year, as authorized by the City of Longview's Water Use Permit Number 5090. B) Impound in the reservoir 8500 acre-feet of "industrial" water per annum diverted from the Sabine River pursuant to the aforesaid contract with the Sabine River Authority of Texas. C) Divert from the reservoir only that water discharged into the reservoir which would include a total of not to exceed 34,946.5 acre-feet per annum for municipal use and not to exceed 8500 acre-feet per annum for industrial use. D) Divert water from the perimeter of the proposed reservoir at a maximum rate of 36.4 cubic feet per second. The proposed reservoir will have a capacity of 453.8 acre-feet and a surface area of 17 acres. Applicant has indicated that the average inflow into the reservoir is approximately twice the average evaporation. As the maximum amount of water diverted from the reservoir per annum will not exceed the amount discharged into it from the Sabine River, the application does not include a request to divert an additional appropriation of water.

Application Number 14-5475A; LOWER COLORADO RIVER AUTHORITY; to amend Certificate of Adjudication Number 14-5475 pursuant to 11.122, Texas Water Code, and TNRCC Rules 30 TAC 21;295.1, et seq., by combining water rights authorized by Certificate Number 14-5477B with those rights under Certificate of Adjudication Number 14-5475, and then amending Certificate Number 14-5475, as combined. Certificate of Adjudication Number 14-5475 (the "Lakeside Permit"), issued on June 28, 1989, includes authorization to maintain an existing 9600 acre-foot capacity natural reservoir (known as Eagle Lake) on Moores Branch, Colorado River, Colorado River Basin, and divert to and impound therein not to exceed 131,250 acre-feet of water per year from the Colorado River, Colorado River Basin, for subsequent irrigation of 25,000 acres of land located within the LCRA Lakeside Water Division Service Area in Colorado and Wharton Counties, Texas, within the Colorado River Basin and the Brazos-Colorado Coastal Basin. Water is diverted from a point on the Colorado River, approximately 13 miles southeast of Columbus, Colorado County, Texas. Certificate of Adjudication Number 14-5477B issued on March 18, 1993, includes authorization for the LCRA to divert and use not to exceed 55,000 acre-feet of water per annum from the Colorado River, Colorado River Basin, for irrigation and municipal purposes in the Colorado River Basin in accordance with conditions contained in the Certificate amendment, including: 1. No

point of diversion is authorized for the use of this water; 2. No water may be diverted, used, or sold until owner establishes a place of use and point of diversion for this water; 3. The owner of this water right shall request an amendment to specify the place of use and point of diversion by March 18, 1996; 4. No water may be used for municipal purposes until a water conservation plan is filed with the Commission, and applicant obtains a Commission order approving such plan or amending this certificate; and 5. Authorization to use this water for municipal purposes will expire and become null and void if a water conservation plan for the use or sale of water for municipal purposes is not filed with the Commission by March 18, 2003. Applicant is seeking to combine the water rights authorized by Certificate Number 14-5477B with the water rights authorized by 14-5475, and to amend Certificate Number 14-5475, as combined, by: 1. Establishing the point of diversion for the aforesaid 55,000 acre-feet of municipal and irrigation water to the existing diversion point for Certificate Number 14-5475 on the Colorado River, which is approximately 26 miles upstream of the location included in Certificate Number 14-5477, as amended. This proposed diversion location is at a point on the east bank of the Colorado River approximately 13 miles southeast of Columbus, Colorado County, Texas; 2. Establishing the place of use for the aforesaid 55,000 acre-feet of water to land located within the LCRA's Lakeside Water Division Service Area in Colorado and Wharton Counties, within the Colorado River Basin and the Brazos-Colorado Coastal Basin; and 3. Increasing the number of acres to be irrigated per year from 25,000 acres to 28,300 acres. The applicant has agreed that all of the aforesaid 55,000 acre-feet of water per year will be used only for irrigation purposes until the aforementioned municipal water conservation plan is submitted and approved.

LOWER COLORADO RIVER AUTHORITY for an extension of time to commence and complete construction of a dam and reservoir pursuant to 11.145, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. Certificate of Adjudication Number 14-5474 was issued to the applicant on June 28, 1989, and authorized certificate owner to maintain Cedar Creek Dam and Reservoir on Cedar Creek, tributary of the Colorado River, Colorado River Basin, and impound therein not to exceed 71,400 acre-feet of water at an elevation of 390.0 feet above mean sea level, and to construct Baylor Creek Dam and Reservoir on Baylor Creek, tributary of the Colorado River, Colorado River Basin, and to impound therein not to exceed 46,600 acre-feet of water at an elevation of 390.0 feet mean sea level, approximately seven miles east of LaGrange, in Fayette County, Texas. On January 24, 1991, the Commission issued an Order granting a request that the commencement and completion dates be extended to September 18, 1996, and September 18, 1999, respectively. LCRA is presently requesting the commencement date for the construction of the reservoir be extended to September 18, 1999, and the completion date be extended to September 18, 2002.

Application Number 5570; DAVID MOODY, individually and as Trustee; JOHN MOODY; MICHAEL MOODY; JANET MOODY LAMB, individually and as custodian for LAURA KAYE MOODY, a minor; NANCY MOODY JOHNSON and JUDY MOODY, applicants, seek a permit pursuant to 11.121, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. to divert and use not to exceed 720 acre-feet of water per annum from the Navasota River, tributary of the Brazos River, Brazos River Basin. Diverted water will be used to irrigate 480 acres of land (bermuda grasses, sorghum, sudan hybrids, oats, wheat rye and rye grasses) within four tracts

totaling 1103.36 acres in Grimes County, approximately 10 miles west-northwest of Navasota, Texas.

Application Number 5568; MORRISON TRUST c/o William A. Ansley, Jr. and Ken D. Lipscomb, Co-Trustees, for a permit pursuant to 11.121, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. to divert and use not to exceed 1,120 acre-feet of water per annum from West Bernard Creek, tributary of the San Bernard River, Brazos-Colorado Coastal Basin, for irrigation purposes on a maximum of 300 acres of land located approximately 10.0 miles northeast of Wharton, in Wharton County, Texas. Water which is diverted by not beneficially used will be returned to West Bernard Creek.

Application Number 5564; NATIONAL INSTRUMENTS CORPORATION; for a permit pursuant to 11.121, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. for authorization to construct and maintain a dam creating a reservoir on an unnamed tributary of Walnut Creek, tributary of the Colorado River, Colorado River Basin, in Travis County, Texas. The reservoir would be located approximately 13 miles north-northwest of Austin, Texas and would be used for in-place recreational purposes (water quality and amenity pond). The reservoir would have a surface area of 0.66 acres and a capacity of 4.1 acre-feet. Applicant is aware that because of the effect on downstream water rights, granting of the application would need to be conditioned upon an alternate source of water to keep the reservoir full. Applicant has made arrangements for this with the City of Austin.

Application Number 5565; OUR SAVIOR LUTHERAN CHURCH for a permit pursuant to 121, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. for authorization to divert 99.1 acre-feet of water per annum from White Oak Bayou, tributary of Buffalo Bayou, tributary of the San Jacinto River, San Jacinto River Basin, in Harris County, Texas. Water would be diverted to an off-channel reservoir with a capacity of 4.0 acre-feet and a surface area of 0.8 acres at a maximum rate of 150 gallons per minute (0.33 cubic feet per second) to be used for in place recreational purposes and for subsequent irrigation of 46 acres of land located at 5000 West Tidwell, Houston, Harris County, Texas.

Application Number 5572; PROPERTIES OF THE SOUTHWEST for a permit pursuant to 11.121, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. for authorization to construct and maintain a dam creating a reservoir (referred to as Pond A) on an unnamed tributary of Walnut Creek, tributary of Spring Creek, tributary of West Fork San Jacinto River, tributary of the San Jacinto River, San Jacinto River Basin. The dam and reservoir will be used for in-place recreational purposes (a stormwater detention and amenity pond) at a proposed housing development located in Montgomery County approximately 23 miles southwest of Conroe, Texas. The reservoir will have a surface area of 2.3 acres and a capacity of 11 acre-feet.

Application Number 14-1318A; SAN ANGELO WATER SUPPLY CORPORATION; to amend Certificate of Adjudication Number 14-1318 pursuant to 11.122, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. Certificate of Adjudication Number 14-1318 includes authorization, with a time priority of May 6, 1959, for the San Angelo Water Supply Corporation to divert and use not to exceed 25,000 acre-feet of water per annum from Twin Buttes Reservoir on the Middle Concho River, Spring Creek and the South Concho River, Colorado River Basin, to irrigate 10,000 acres of land

within the boundaries of the Tom Green County Water Control and Improvement District Number One. The certificate also includes authorization, with the same time priority, for the diversion and use of not to exceed 29,000 acre-feet of water per annum from Twin Buttes Reservoir for municipal use. In addition, the certificate includes a Special Condition requiring that all water diverted from the reservoir for municipal use by the City of San Angelo, but not consumed, be treated and returned to the Concho River. Applicant seeks to amend Certificate of Adjudication Number 14-1318 by increasing the amount of land authorized for irrigation per year within the Tom Green County WCID's Service area from 10,000 acres to 15,000 acres. No additional irrigation water is requested and the Tom Green County WCID has agreed to the requested amendment. Applicant also seeks to amend the certificate to delete the condition that requires the return to the Concho River of "surplus" municipal water diverted from Twin Buttes Reservoir for the City of San Angelo. The applicant has indicated that this condition is not applicable as the City of San Angelo's Water Quality Permit requires land application of this surplus water (effluent). They have also indicated that even before the issuance of the old Twin Buttes Reservoir permit in 1959, the City of San Angelo had utilized its treated wastewater effluent for land application. No other changes are requested in the application.

Application Number 5567; SAND SUPPLY, INC.; for a permit pursuant to 11.121, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. to divert 2,100 acre-feet of water per annum from the Brazos River, Brazos River Basin and to store diverted water in two off-channel settling ponds to be used for mining of sand and gravel from the Brazos River in Fort Bend County, Texas. Water would be diverted at a rate not to exceed 4,000 gallons per minute (8.91 cfs) to the settling ponds which have a surface area of approximately three acres each. Once the sand and gravel product materials are separated from the slurry, the remaining transport water will be discharged first into a three acre primary settling pond where suspended materials ranging in size up to fine sands are initially removed, and then into a three acre secondary settling pond where the more fine-grained materials such as very fine sand and silts will be substantially removed. A portion of the transport water in the secondary settling basin will be recycled to the material grading plant for material washing, and the remainder discharged directly back into the river through a 12 inch pipe. Approximately 12% of the diverted surface water will not be returned to the river. The consumed water will be either absorbed in the product materials, lost through evaporation or seepage from the settling ponds, or lost through leakage and overflows from the transport and/or classifying plant facilities. The quantity of surface water diverted from the river each day will be determined by multiplying the recorded pumping time when the dredge is in operation times the pumping capacity of the centrifugal pump, taking into account the water content of the pumped water-sediment slurry (75% of 5,300 gpm equals approximately 4,000 gpm of water diverted). It should be noted that the applicant has obtained a temporary permit and is currently authorized to divert water, during a one year period, for mining purposes. The permit expires on December 23, 1997.

Application Number 5562; TEXAS UTILITIES MINING COMPANY for a permit pursuant to 11.121, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. to divert and use a total of 125 acre-feet of water per annum from the Ripley Creek Watershed, including Ripley Creek, Dorsey Creek (tributary of Ripley Creek), and various unnamed tributaries of Ripley Creek and Dorsey Creek, which are all tributaries of White Oak Creek, tributary of the Sulphur

River, Sulphur River Basin. Diverted water will be used for surface-mining related purposes (dust suppression, mining construction and other miscellaneous uses related to surface mining operations) within the Monticello-Winfield North Lignite Mining Area in Titus County, northwest of Mt. Pleasant, Texas. Water will be diverted at a combined maximum rate of not to exceed 13.4 cfs (6000 gallons per minute) from across the Ripley Creek Watershed, upstream of any of nine diversion points located at the mine boundary intersection with Ripley Creek and/or its tributaries.

Application Number 5566; STEWART THOMPSON & WIFE MARY LYNNE PERRY (GUTHRIE) THOMPSON AND STEWART THOMPSON AS TRUSTEE OF THE BRYAN HOWARD PERRY TRUST; for a permit pursuant to 11.121, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. to divert 300 acre-feet per annum from the Navasota River, tributary of the Brazos River, Brazos River Basin, directly to 100 acres of land in Grimes County, Texas or to divert said water into an existing 7 acre-foot capacity off-channel reservoir to be used for subsequent irrigation of said 100 acres.

Application Number 5569; WEIRICH BROS., INC., for a permit pursuant to 11.121, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. to divert not to exceed 180 acre-feet of water per annum from the Pedernales River, tributary of the Colorado River, Colorado River Basin, approximately 4.1 miles southeast of Fredricksburg, Texas for the transportation of sediments and solids from a gravel mining operation in Gillespie County, Texas. There will be very little consumptive use as the water will be used solely for transport of the material and then returned to the river through an existing off-channel settling pond. Consumptive use is estimated to be approximately 36 acre feet per year. Because of the effect on downstream water rights, granting of the application will be conditioned upon maintenance by the applicant of a water supply contract with the Lower Colorado River Authority, without which the permit will expire and become null and void.

Application Number 5563; W. T. AND BERMA HELBERT ESTATE, c/o Brenda and Jim Phillips; for a permit pursuant to 11.121, Texas Water Code, and TNRCC Rules 30 TAC 295.1, et seq. to divert and use not to exceed 525 acre-feet of water per annum from the Brazos River, Brazos River Basin to irrigate 700 acres of land in Falls County, Texas, approximately 6.5 miles northwest of Marlin, Texas.

The Executive Director may approve these applications unless a written hearing request is filed in the Chief Clerk's Office of the TNRCC within 30 days after newspaper publication of the notice of application. To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the application number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; and (5) the location of your property relative to the applicant's operations.

If a hearing request is filed, the Executive Director will not approve the application and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing must be submitted in writing to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Issued in Austin, Texas, on February 14, 1997.

TRD-9703203

Eugenia K. Brumm

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 7, 1997

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Notices of Applications for Waste Disposal Permits

Attached are Notices of Applications for waste disposal permits issued during the period of January 31st thru February 7, 1997.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

AMERICAN NATIONAL CAN COMPANY, 1001 Fisher Road, Longview, Texas 75604, an aluminum can manufacturing plant, the plant site is approximately 800 feet southwest of the intersection of U.S. Highway 80 and Fisher Road, in the City of Longview, Gregg County, Texas, new, 03917.

CORONADO FEEDERS, DIVISION OF CONTINENTAL GRAIN CO., P.O. Box 872, Dalhart, Texas 79022, the beef cattle feedlot is located one mile north of Farm-to-Market Road 297 at a point

approximately 12 miles due east of Dalhart, Dallam County, Texas, amendment, 01770.

CITY OF CROSS PLAINS, P.O. Box 129, Cross Plains, Texas 76443, the Cross Plains Wastewater Treatment Facilities are located approximately 2300 feet west of State Highway 279 and 3400 feet south of State Highway 36 in Callahan County, Texas, amendment, 10434-01.

DOVE MEADOWS REGIONAL PLANT, c/o Johnson, Radcliffe & Petrov, L.L.P., 450 Gears Road, Suite 700, Houston, Texas 77067, the wastewater treatment facilities are approximately two miles west of the intersection of Interstate Highway 45 and Farm-to-Market Road 2920 in Harris County, Texas, amendment, 11215-01.

DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT, P.O. Box 479, Dripping Springs, Texas 78620, the wastewater treatment facility and the disposal site are located approximately 3,800 feet north and 8,800 feet west of the intersection of State Highway 12 and U.S. Highway 290 in Hays County, Texas, new, 13748-02.

FAIRWAY PARK ON 7 UTILITY, INC., P.O. Box 219, Port Neches, Texas 77651, the wastewater treatment plant is located approximately 1.5 miles north of the intersection of State Highway 73 and Country Club Road and approximately 2.9 miles northeast from the intersection of State Highway 73 and La Belle Road in Jefferson County, Texas, renewal, 13565-01.

GUADALUPE-BLANCO RIVER AUTHORITY, 933 East Court Street, Seguin, Texas 78155, the wastewater treatment facilities are approximately 1,700 feet east-northeast of the intersection of Seguin-Sutherland Spring Road and State Highway 123 in the City of Seguin in Guadalupe County, Texas, renewal, 11427-01.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 105, c/o Smith, Murdaugh, Little and Bonham, 1100 Louisiana, Suite 400, Houston, Texas 77002, the wastewater treatment plant is located approximately one mile south of the intersection of Freeman Road and Settlers Village Street, 2.3 miles southeast of the crossing of Bear Creek by Freeman Road (Farm-to-Market Road 529), and 5 miles west-southwest of the intersection of State Highway 6 and Farm-to-Market Road 529 (Spencer/Freeman Road) in Harris County, Texas, renewal, 11792-02.

H.H.J., INC., 30502 Tomball Parkway, Tomball, Texas 77375, the wastewater treatment plant is located on the northeast side of State Highway 249 and on the east side of Cripple Creek Drive approximately 0.8 mile north of the intersection of State Highway 249 and Hardin Store Road and approximately 2.7 miles southeast of the intersection of Farm-to-Market Roads 149 and 1774 and approximately 4.0 miles northwest of the City of Tomball in Montgomery County, Texas, new, 13863-01.

HUNGERFORD MUNICIPAL UTILITY DISTRICT NO. 1, P.O. Box 11, Hungerford, Texas 77448, the wastewater treatment facilities are approximately 250 feet northwest of the intersection of West Live Oak Road and Habermacher Street, approximately 0.5 mile north-northwest of the intersection of State Highway 60 and Farm-to-Market Road 1161 in Wharton County, Texas, renewal, 13240-01.

JASPER COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 1, P.O. Box 1207, Buna, Texas 77612, the wastewater treatment plant is located approximately 2,000 feet due south of the intersection of U.S. Highway 96 and State Highway 62 in Jasper County, Texas, renewal, 10808-01.

CITY OF MOUNT VERNON, P.O. Box 597, Mount Vernon, Texas 75457, the wastewater treatment facilities are approximately 1,500 feet east of State Highway 37 and 1,500 feet north of U.S. Highway 67 in Franklin County, Texas, renewal, 11122-02.

TESSENDERLO KERLEY, INC., AND FKP, INC., 2801 West Osborn Road, Phoenix, Arizona 85061, the plant site is at 1050 Jefferson Road, approximately two miles north of the intersection of Highway 225 and Bearle Street, in the City of Pasadena, Harris County, Texas, new, 03889.

TEXAS UTILITIES ELECTRIC COMPANY, Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201-3411, the Martin Lake Steam Electric Station, the plant site is adjacent to Martin Lake, east of Farm-to-Market Road 2658 and approximately five miles southwest of the City of Tatum, Rusk and Panola Counties, Texas, renewal, 01784.

CITY OF VALLEY MILLS, P.O. Box 641, Valley Mills, Texas 76689, the wastewater treatment facilities are approximately 1.0 mile northeast of the intersection of State Highway 6 and Farm-to-Market Road 56, northeast of the City of Valley Mills in Bosque County, Texas, renewal, 10307-01.

VALUE FROZEN FOODS, INC., Route 1, Box 320, Edcouch, Texas 78538, a frozen vegetable processing plant, the plant site is approximately one-fourth mile west of Farm-to-Market Road 88, adjacent to the abandoned Missouri Pacific Railroad Track in the community of Monte Alto in Hidalgo County, Texas, amendment, 02803.

CITY OF WEBSTER, 311 Pennsylvania Avenue, Webster, Texas 77598, the Webster Central Wastewater Treatment Facilities are located at 613 Magnolia, at the east corner of the intersection of Texas Street and Magnolia Street in the City of Webster in Harris County, Texas, renewal, 10520-01.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703206

Eugenia K. Brumm
Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 7, 1997

Attached are Notices of Applications for waste disposal permits issued during the period of February 6th thru February 14, 1997.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation

Commission, Chief Clerks Office MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

BELL HELICOPTER TEXTRON, INC., P.O. Box 482, Fort Worth, Texas 76101, a facility which manufactures aircraft components and assembles complete helicopters, the plant site is at 600 East Hurst Boulevard in the City of Fort Worth in Tarrant County, Texas, renewal, 00367.

BETZDEARBORN, INC., 3901 Williams Drive, West Orange, Texas 77630, an inorganic/organic blending chemicals company, the plant site is at 3901 Williams Drive in the City of West Orange, Orange County, Texas, renewal, 02792.

CYPRESS SEMICONDUCTOR (ROUND ROCK), INC., 17 Cypress Boulevard, Round Rock, Texas 78664, a semiconductor fabrication facility, the plant site is located on the east side of I 35 between FM 1431 and the intersections of I 35 and FM 3406, approximately one mile north of the City of Round Rock, in Williamson County, Texas, new, 03906.

MABRY FOUNDRY COMPANY, LTD., P.O. Box 21777, Beaumont, Texas 77720, a metal molding and casting facility, the plant site is at 695 Industrial Road, north of the Community of Cheek, Jefferson County, Texas, renewal, 03438.

CITY OF NASSAU BAY, 1800 Nasa Road One, Nassau Bay, Texas 77058, the wastewater treatment facilities are at 18920 Point Lookout, approximately one mile south of Nasa Road One at the confluence of Clear Creek and Clear Lake and adjacent to Lake Nassau (Pearsons Lake) and approximately one mile east of the City of Webster in the City of Nassau Bay in Harris County, Texas, amendment, 10526-01.

PCS PHOSPHATE COMPANY, INC., P.O. Box 600, Boling, Texas 77420, the applicant disposes of wastes from a closed Frasch process sulphur mine, the plant site is approximately three miles south from the intersection of Farm-to-Market Roads 1994 and 762 in Fort Bend County, Texas, amendment, 00004.

SHELL CHEMICAL COMPANY, Deer Park Plant, P.O. Box 100, Deer Park, Texas 77536, which authorizes the subsurface disposal of non-hazardous wastes generated on-site by the permittee's facility. Shell Chemical Company currently operates a chemical manufacturing facility which produces phenol acetone, bisphenol acetone, epoxy resins, toluene, and butadiene. Wastes disposed at this facility include water with small amounts of diglycidyl ether of bisphenol acetone, phenol, acetone, and phenolic organic chlorides, the facility is located at 5900 Highway 226, approximately nine miles east of Loop 610 and one-half mile north of Deer Park, Harris County, Texas, renew and amend Permit Number WDW-173.

SHINTECH INCORPORATED, 5618 Highway 332 East, Freeport, Texas 77541, a facility which produces polyvinyl chloride resins, the plant site is located at 5618 Highway 332 East, approximately 1.5 miles north-west of the intersection of State Highway 332 and Farm-to-Market Road 523, and approximately 2.0 miles north of the City of Freeport, Brazoria County, Texas, amendment, 01871.

USX/TEXAS URANIUM OPERATIONS, Drawer V, George West, Texas 78022, which authorize the subsurface disposal of non-hazardous wastes generated by the permittees facility for aquifer restoration, the waste disposal wells are located six to ten miles southwest of the town of George West, along State Highways 59 and 889 in Live Oak County, renew and amend Permit Numbers WDW-123, WDW-124, WDW-130, WDW-140, WDW-141, and WDW-174.

WIMBERLEY INDEPENDENT SCHOOL DISTRICT, P.O. Box 1809, Wimberley, Texas 78676, the wastewater treatment facilities and the disposal site are approximately 900 feet southwest of the intersection of Farm-to-Market Road 2325 and County Road 278 (Carney Lane) in Hays County, Texas, new, 13824-01.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703201

Eugenia K. Brumm

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 7, 1997

Attached are Notices of Applications for waste disposal permits issued during the period of March 3rd thru March 7, 1997.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

BAYER CORPORATION, 8701 Park Place, Houston, Texas 77017, operates an organic chemicals and polychloroprene rubber manufacturing plant, the plant site is at 8701 Park Place, bounded on the north by Route 225, on the west by Sims Bayou, on the east by Park Place Boulevard, and on the south by Galveston Boulevard, in the City of Houston, Harris County, Texas, 02392.

CHEN'S INTERNATIONAL CORPORATION, P.O. Box 1385, Salt Lake City, Utah 84110, operates an industrial business park, the plant site is north of U.S. Highway 90 and the Southern Pacific Railroad,

approximately 3000 feet west of the intersection of U.S. Highway 90 and State Loop 8 (East Belt Drive) northeast of the City of Houston in Harris County, Texas. renewal, 03206.

DR. ALBERT P. RIBISI, 3800 East 29th Street, Bryan, Texas 77802, the wastewater treatment facilities are approximately 300 feet northwest of Cain Road on Old Wellborn Road, approximately 3,500 feet south-southeast of the intersection of Farm-to-Market Road 2818 (West-By-Pass) and Farm-to-Market Road 2154 in Brazos County, Texas, renewal, 12284-01.

LAGUNA MADRE WATER DISTRICT, 105 Port Road, Port Isabel, Texas 78578, the wastewater treatment facilities are approximately 4,000 feet south of the east end of the Queen Isabella Causeway on the south end of Padre Island in Cameron County, Texas, renewal, 10757-01.

MAPCO PETROLEUM, INC., 1101 Kermit Drive, Suite 800, Nashville, Tennessee 37217-5111, the applicant operates a service station, truck stop and convenience store for retail sales, the plant site is located at 2205 State Highway 62 in the City of Orange, Orange County, Texas, new, 03920.

CITY OF PETERSBURG, P.O. Box 326, Petersburg, Texas 79250, the wastewater treatment facilities and the disposal site are approximately one mile southeast of the intersection of Farm-to-Market Roads 54 and 789, and east of the City of Petersburg in Hale County, Texas, renewal, 10246-01.

CITY OF RALLS, P.O. Box 785, Ralls, Texas 79357, the wastewater treatment facilities and the disposal site are near the intersection of Pecan Street and First Street; 3,000 feet southeast of the intersection of U.S. Highway 82 and State Highway 207 in Crosby County, Texas, renewal, 10116-01.

TEXAS DEPARTMENT OF TRANSPORTATION, 421 Interstate Highway 45 EFR, Huntsville, Texas 77340, the Walker County (IH 45) Southbound Rest Area Wastewater Treatment Facilities are located on the west side of Interstate Highway 45, approximately 8.5 miles north of Huntsville in Walker County, Texas, renewal, 11325-01.

TEXAS DEPARTMENT OF TRANSPORTATION, 421-Interstate Highway 45 EFR, Huntsville, Texas 77340, the Walker County (IH 45) Northbound Rest Area Wastewater Treatment Facilities are located on the east side of Interstate Highway 45, approximately seven (7) miles north of Huntsville in Walker County, Texas, renewal, 11326-01.

UNION OIL COMPANY OF CALIFORNIA, P.O. Box 237, Nederland, Texas 77627, applicant operates the Beaumont Terminal, a bulk oil storage and shipment terminal for crude oil, intermediates, and refined petroleum products, the plant site is on the north side of State Highway 366, approximately 1500 feet east of the intersection of State Highway 366 and State Highway 347, adjacent to the City of Nederland, Jefferson County, Texas, amendment, 00316.

WESTERN TOWING COMPANY, Post Office Box 418, Channelview, Texas 77530, operates a facility which cleans and repairs barges, the plant site is approximately 0.5 mile north of Interstate Highway 10 on the Crosby-Lynchburg Road and on the east side of the San Jacinto River, Harris County, Texas, renewal, 03349.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703196

Eugenia K. Brumm
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: March 7, 1997

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Notice of Public Hearing

NOTICE OF PUBLIC HEARING BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION ON PROPOSED REVISIONS TO 30 TAC CHAPTER 113 AND TO THE STATE IMPLEMENTATION PLAN

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 113 and to the SIP.

The purpose of this rulemaking is to incorporate seven federal maximum achievable control technology (MACT) standards and the associated General Provisions into a new Subchapter C of Chapter 113. The proposal also includes the repeal of Subchapter B and the adoption of a new Subchapter B which will allow the sections contained in the subchapter to be renumbered in a more logical fashion. There are no substantive changes being proposed to the language in Subchapter B, except for updating the name of the agency and a rewording to reflect that the original compliance dates were long passed for facilities affected at the time of the original adoption of the rules.

These changes are proposed in response to requirements by the United States Environmental Protection Agency (EPA) and the Federal Clean Air Act Amendments of 1990 for states to control emissions of hazardous air pollutants. The commission intends to take delegation of these standards to relieve industry of the burden of duplicative and/or conflicting federal and state regulations that may address related emissions control, reporting, recordkeeping, monitoring, and testing requirements. With delegation, the commission will be responsible for administration and enforcement of the MACT requirements.

A public hearing on this proposal will be held in Austin on April 11, 1997, at 10:30 a.m. in Building F, Room 2210, at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Circle, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., April 17, 1997. For further information, please contact Phil Harwell, Air Policy and Regulations Division, (512) 239-1517.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should

contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on March 6, 1997.

TRD-9703140
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: March 6, 1997

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Notice of Public Hearing (Chapter 113)

NOTICE OF PUBLIC HEARINGS BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION ON PROPOSED REVISIONS TO THE STATE IMPLEMENTATION PLAN

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct public hearings to receive testimony regarding revisions to the SIP concerning the Inspection and Maintenance (I/M) Program.

The proposed revisions would delete the "test-on-resale" element of the I/M SIP which will eliminate the requirement for persons selling their vehicles in the I/M core program areas to obtain emissions testing prior to the title transfer of such vehicles. The revisions would also add to the SIP the Memorandum of Understanding (MOU) between the commission and Department of Public Safety (DPS), which was adopted on November 20, 1996.

Public hearings on this proposal will be held in Houston on April 10, 1997, at 7:00 p.m. at the City of Houston Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston; and in Irving on April 10, 1997, at 7:00 p.m. at the City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; however, agency staff members will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., April 14, 1997. For further information, please contact Thomas Ortiz, Air Policy and Regulations Division, (512) 239-1054.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on March 6, 1997.

TRD-9703139
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: March 6, 1997

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Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued during the period of February 7, 1997.

Application Number TA-7774 by Shell western E&P, Inc. For diversion of 2 acre-feet in a 6-month period for mining (gas well development) purposes. Water may be diverted from the Pecos River, approximately 12 miles northwest of Pandale, Crockett County, Texas, Rio Grande Basin.

Application Number TA-7775 by QL Corp dba Quick Line Service Company for diversion of four acre-feet in a three month period for mining (oil and gas exploration) purposes. Water may be diverted from the Sabine River, just east of FM 2991, approximately 20 miles northeast of Newton in Newton County, Texas, Sabin River Basin.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 787311, Telephone (512) 239-3300.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703207

Eugenia K. Brumm

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 7, 1997

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Listed below are permits issued during the period of February 28, 1997.

Application Number TA-7777 by Silver Oil and Gas Co. for diversion of two acre-feet in a one year period for mining (oil and gas drilling) use. Water may be diverted from the Pecos River, approximately 12 miles northwest of Pandale in Crockett County, Texas, Rio Grande Basin.

Application Number TA-7778 by M. Hanna Construction Co., Inc. for diversion of two acre-feet in a six month period for industrial (highway construction US 59) purposes. Water may be diverted from the Sabine River, approximately 12.5 miles north of Carthage, Panola County, Texas, Sabine River Basin.

Application Number TA-7779 by T.J. Lambrecht Construction for diversion of ten acre-feet in a six month period for industrial (landfill liner construction) purposes. Water may be diverted from the West Fork Trinity River, just west of FM 157, approximately 13 miles east of Fort Worth in Tarrant County, Texas, Trinity River Basin.

Application Number TA-7780 by T.J. Lambrecht Construction for diversion of eight acre-feet in a six month period for industrial (landfill liner construction) purposes. Water may be diverted from the Elm Fork Trinity River, just south of SH 121, approximately 16 miles southeast of Denton in Denton County, Texas, trinity River Basin.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be cancelled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 787311, Telephone (512) 239-3300.

Issued in Austin, Texas, on February 28, 1997.

TRD-9703199

Eugenia K. Brumm

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 7, 1997

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Listed below are permits issued during the period of March 7, 1997.

Application Number TA-7781 by Warren Petroleum Company for diversion of two acre-feet in a six month period for industrial purposes. Water may be diverted from the Red River, to be diverted approximately one mile north of FM 120, near Wild Kingdom Road, approximately 15 miles northeast of Sherman, Grayson County, Texas, Red River Basin.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of

the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be cancelled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433; Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78731, Telephone (512) 239-3300.

Issued in Austin, Texas, on March 7, 1997.

TRD-9703198

Eugenia K. Brumm
Chief Clerk

Texas Natural Resource Conservation Commission
Filed: March 7, 1997

Texas Parks and Wildlife Department

Barton Springs Salamander Conservation Team Meeting

The Barton Springs Salamander Conservation Team (BSSCT) will hold a working group meeting on Thursday, April 3, 1997, 9:30 a.m. at the U.S. Fish and Wildlife Service, Ecological Services-Field Office (Hartland Bank Building), 10711 Burnet Road, Austin. The public is invited to observe this meeting. No opportunity for oral comments from the public is allotted for this meeting, but written comments will be accepted. For more information, contact Dr. David E. Bowles, BSSCT Chairman (512) 754-6844.

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

TRD-9703075

Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department
Filed: March 5, 1997

Battleship Texas Advisory Board Meeting

The Battleship Texas Advisory Board will meet Monday, April 17, 1997, at 10:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas, 78744. For further information concerning the meeting, please contact Steve Nelson, (218) 479-4414.

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

TRD-9703074

Bill Harvey

Regulatory Coordinator
Texas Parks and Wildlife Department
Filed: March 5, 1997

Texas A&M University System-Corpus Christi, Board of Regents

Request for Proposals

Texas A&M University-Corpus Christi intends to engage a consultant, pursuant to Texas Government Code, Chapter 2254, Subchapter A and 43 TAC 9.30-9.40 to provide the following services.

Contract 7-024: Texas A&M University-Corpus Christi wishes to solicit proposals for the services of an independent third party to develop and assist with the implementation of a comprehensive job evaluation and compensation plan for non-faculty positions. This includes, but is not limited to the following: evaluating current job information; writing/updating job descriptions; developing and implementing a job evaluation system and a pay plan(s); developing guidelines and processes for administering and maintaining a comprehensive non-faculty compensation program that is internally and externally equitable; and providing appropriate communications and training materials for internal compensation program administrators, employees and supervisors.

Deadline: Letter of interest notifying Texas A&M University-Corpus Christi of the provider's intent to submit a proposal will be accepted by fax at (512) 994-2772, mailed to Texas A&M University-Corpus Christi, Attention: Debra Cortinas, Director, Human Resources, 6300 Ocean Drive, Corpus Christi, Texas 78412. Letters of interest will be received until 5:00 p.m., March 28, 1997. The letter of interest must include the consultant name, address, telephone number, name of consultant contact person and refer to contract number. Upon receipt of the letter of interest a Request for Proposal packet will be issued. Texas A&M University-Corpus Christi will not issue a Request for Proposal packet without receipt of letter of interest.

Proposal Submittal Deadline: Request for 7-024 will be accepted until 2:00 p.m. on April 14, 1997, at the Texas A&M University-Corpus Christi mentioned address.

Agency Contact: Request for additional information regarding this notice of invitation should be addressed to Debra Cortinas (512) 994-2630 or fax (512) 512-2772.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703110

Vickie Burt
Executive Secretary to the Board
The Texas A&M University System, Board of Regents
Filed: March 5, 1997

Texas Department of Transportation

Requests for Proposals

Notice of Invitation: The Beaumont District of the Texas Department of Transportation (TxDOT) intends to engage an engineer, pursuant to Texas Government Code Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.40, to provide services for one PS&E project. The engineer

selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Contract Number 20-745P5006: To complete field data, evaluate and obtain environmental clearance, prepare schematic, prepare right of way map, plat and field notes, prepare plans, specifications and estimates for approximately 13.68 kilometers of new location Farm To Market Road. The scope of work to be performed under this contract shall consist of land planning/engineering, traffic noise analysis, air quality analysis, wetland delineation, United States Corps of Engineers permits, protected species determination, socio-economic and environmental justice analyses, hazardous materials assessment, environmental document preparation, cost estimates, utility adjustments, route studies and schematic design - major roads, minor bridge layouts, major roadway design, minor bridge design, traffic engineering studies, signing, pavement marking and channelization, hydrologic studies, basic hydraulic design, bridge scour evaluations and analysis, right of way surveys, design survey, mapping, horizontal and vertical control for mapping. The engineering services will include field surveys and collection of other data required.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (409) 898-5801, or hand-delivered to TxDOT, Beaumont District Office, Attention: Karen Davis, P.E., 8350 Eastex Freeway, Beaumont, Texas, or mailed to TxDOT, P.O. Box 3468, Beaumont, Texas 77704-3468. Letters of interest will be received until 5:00 p.m. on Wednesday, March 26, 1997. The letter of interest must include the provider's firm name, address, telephone number, name of provider's contact person and refer to Contract Number 20-745P5006. Proposals will not be mailed until after deadline for letters of interest. (NOTE: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet). TxDOT will not issue a Request for Proposal packet without receipt of letter of interest before the deadline.

Preproposal Meeting: A preproposal meeting has been scheduled for Tuesday, April 8, 1997, at 10:00 a.m., at the TxDOT, Beaumont District Office, 8350 Eastex Freeway, Beaumont, Texas. This meeting will be held to offer the opportunity to clarify items and answer questions concerning the Request for Proposal packet. Questions pertaining to this packet will not be answered after the preproposal meeting.

Proposal Submittal Deadline: Proposals for Contract Number 20-745P5006 will be accepted until 5:00 p.m. on Wednesday, April 23, 1997, at the TxDOT, Beaumont District Office at the above mentioned addresses.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Karen Davis, P.E., at (409) 898-5820 or fax (409) 898-5801.

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

TRD-9703089

Robert E. Shaddock

General Counsel

Texas Department of Transportation

Filed: March 5, 1997

to engage an engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.40, to provide the following services. To qualify for contract award a selected engineer must perform a minimum of 30% of the actual contract work.

Contract Number 50-745P5007: U.S. 83/Port Roads Study. This study will be a needs assessment and feasibility study for the following corridors: the Corpus Christi Northside Highway and Rail Corridor from the intersection of U.S. 77 and IH 37 to U.S. 181, FM 511 from U.S. 77/83 to the Port of Brownsville, and U.S. 83 from Brownsville to Laredo. The study objective is to investigate the current conditions in the corridor, forecast future traffic projections, evaluate required future transportation infrastructure, and determine the need for improvements based on these projections.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (512) 467-3952, by E-mail at pthurin@mailgw.dot.state.tx.us, or by hand delivery to TxDOT, Transportation Planning and Programming Division, Attention: Peggy Thurin, 40th and Jackson Avenue, Building 1, Austin, Texas, or by mail addressed to TxDOT, Transportation Planning and Programming Division, P.O. Box 5051, Austin, Texas, 78763-5051. Letters of interest will be received until 5:00 p.m. on Tuesday, April 1. The letter of interest must include the engineer's firm name, address, telephone number, fax number, E-mail address, name of engineer's contact person and refer to Contract Number 50-745P5007: U.S. 83/Port Roads Study. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: The letters of interest, either by mail/hand delivery, E-mail, or fax, will be required to receive the Request for Proposal packet and in order for a prime provider to submit a proposal.)

Preproposal Meeting: A preproposal meeting will be held on Wednesday, April 16, at the TxDOT Riverside Complex, 200 East Riverside, Building 200, Room 101, Austin, Texas, beginning at 2:00 p.m. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory preproposal meeting).

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Andrea Titus, at (512) 465-3625 at least two work days prior to the meeting so that appropriate arrangements can be made.

Proposal Submittal Deadline: Proposals for Contract Number 50-745P5007: U.S. 83/Port Roads Study, will be accepted until 5:00 p.m. on Wednesday, May 7, at the previously mentioned TxDOT, Transportation Planning and Programming Division addresses.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Alvin R. Luedecke, Jr., P.E. at (512) 465-7346 or fax (512) 467-3952.

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

TRD-9703090

Robert E. Shaddock

General Counsel

Texas Department of Transportation

Filed: March 5, 1997

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Notice of Invitation: The Transportation Planning and Programming Division of the Texas Department of Transportation (TxDOT) intends

Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Village of Surfside Beach, 1304 Monument, Surfside Beach, Texas, 77541, received January 31, 1997, application for financial assistance in the amount of \$555,000 from the Water Supply Account of the Texas Water Development Fund.

Sandy Land Underground Water Conservation District, P.O. Box 130, Plains, Texas, 79355-0130, received February 14, 1997, application for financial assistance in the amount of \$400,000 from the Agricultural Water Conservation Loan Program.

City of Pharr, P.O. Drawer B, Pharr, Texas, 78577-1202, received August 16, 1996, application for additional grant/loan assistance in the amount of \$12,411,239 from the State Water Pollution Control Revolving Fund, the Economically Distressed Areas Program and the Water Supply Account of the Texas Water Development Fund.

Rincon Water Supply Corporation, P.O. Drawer Number 7, Taft, Texas, 78390, received February 12, 1997, application for financial assistance in the amount of \$1,943,911 from the Economically Distressed Areas Program and the Water Supply Account of the Texas Water Development Fund.

Greater Texoma Utility Authority of Ector, 5100 Airport Drive, Denison, Texas, 75020, received January 31, 1997, application for financial assistance in the amount of \$300,000 from the State Water Pollution Control Revolving Fund.

City of Littlefield, P.O. Box 1267, Littlefield, Texas, 79339-1267, received January 31, 1997, application for financial assistance in the amount of \$2,565,000 from the State Water Pollution Control Revolving Fund.

Catarina Water Supply Corporation, P.O. Box 60, Catarina, Texas, 78836, received January 30, 1997, application for additional financial assistance in the amount of \$71,946 from the Economically Distressed Areas Program of the Texas Water Development Fund.

North Alamo Water Supply Corporation, 420 South Doolittle, Edinburg, Texas, 78539, received December 23, 1996, application for grant/loan assistance in the amount of \$3,364,406 from the Economically Distressed Areas Program and the Water Supply Account of the Texas Water Development Fund.

County of Webb, P.O. Box 29, Laredo, Texas, 78042, received January 30, 1997, application for additional Colonia Assistance and Management Support Program assistance in an amount not to exceed \$7,000 from the Research and Planning Fund.

Additional information concerning this matter may be obtained from Craig D. Pedersen, Executive Administrator, P.O. Box 13231, Austin, Texas, 78711.

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

TRD-9703076

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Filed: March 5, 1997



March - December 1997 Publication Schedule

The following is the March-December 1997 Publication Schedule for the *Texas Register*. Listed below are the deadline dates for these issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. No issues will be published on May 30, November 14, December 2, and December 30. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
21 Tuesday, March 18	Monday, March 10	Wednesday, March 12	Wednesday, March 12
22 Friday, March 21	Wednesday, March 12	Monday, March 17	Monday, March 17
23 Tuesday, March 25	Monday, March 17	Wednesday, March 19	Wednesday, March 19
24 Friday, March 28	Wednesday, March 19	Monday, March 24	Monday, March 24
25 Tuesday, April 1	Monday, March 24	Wednesday, March 26	Wednesday, March 26
26 Friday, April 4	Wednesday, March 26	Monday, March 31	Monday, March 31
Tuesday, April 8	<i>First Quarterly Index</i>		
27 Friday, April 11	Wednesday, April 2	Monday, April 7	Monday, April 7
28 Tuesday, April 15	Monday, April 7	Wednesday, April 9	Wednesday, April 9
29 Friday, April 18	Wednesday, April 9	Monday, April 14	Monday, April 14
30 Tuesday, April 22	Monday, April 14	Wednesday, April 16	Wednesday, April 16
31 Friday, April 25	Wednesday, April 16	Monday, April 21	Monday, April 21
32 Tuesday, April 29	Monday, April 21	Wednesday, April 23	Wednesday, April 23
33 Friday, May 2	Wednesday, April 23	Monday, April 28	Monday, April 28
34 Tuesday, May 6	Monday, April 28	Wednesday, April 30	Wednesday, April 30
35 Friday, May 9	Wednesday, April 30	Monday, May 5	Monday, May 5

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
36 Tuesday, May 13	Monday, May 5	Wednesday, May 7	Wednesday, May 7
37 Friday, May 16	Wednesday, May 7	Monday, May 12	Monday, May 12
38 Tuesday, May 20	Monday, May 12	Wednesday, May 14	Wednesday, May 14
39 Friday, May 23	Wednesday, May 14	Monday, May 19	Monday, May 19
40 Tuesday, May 27	Monday, May 19	Wednesday, May 21	Wednesday, May 21
Friday, May 30	<i>No Issue Published</i>		
41 Tuesday, June 3	*Friday, May 23	Wednesday, May 28	Wednesday, May 28
42 Friday, June 6	Wednesday, May 28	Monday, June 2	Monday, June 2
43 Tuesday, June 10	Monday, June 2	Wednesday, June 4	Wednesday, June 4
44 Friday, June 13	Wednesday, June 4	Monday, June 9	Monday, June 9
45 Tuesday, June 17	Monday, June 9	Wednesday, June 11	Wednesday, June 11
46 Friday, June 20	Wednesday, June 11	Monday, June 16	Monday, June 16
47 Tuesday, June 24	Monday, June 16	Wednesday, June 18	Wednesday, June 18
48 Friday, June 27	Wednesday, June 18	Monday, June 23	Monday, June 23
49 Tuesday, July 1	Monday, June 23	Wednesday, June 25	Wednesday, June 25
50 Friday, July 4	Wednesday, June 25	Monday, June 30	Monday, June 30
51 Tuesday, July 8	Monday, June 30	Wednesday, July 2	Wednesday, July 2
Friday, July 11	<i>Second Quarterly Index</i>		
52 Tuesday, July 15	Monday, July 7	Wednesday, July 9	Wednesday, July 9
53 Friday, July 18	Wednesday, July 9	Monday, July 14	Monday, July 14
54 Tuesday, July 22	Monday, July 14	Wednesday, July 16	Wednesday, July 16
55 Friday, July 25	Wednesday, July 16	Monday, July 21	Monday, July 21
56 Tuesday, July 29	Monday, July 21	Wednesday, July 23	Wednesday, July 23
57 Friday, August 1	Wednesday, July 23	Monday, July 28	Monday, July 28

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
58 Tuesday, August 5	Monday, July 28	Wednesday, July 30	Wednesday, July 30
59 Friday, August 8	Wednesday, July 30	Monday, August 4	Monday, August 4
60 Tuesday, August 12	Monday, August 4	Wednesday, August 6	Wednesday, August 6
61 Friday, August 15	Wednesday, August 6	Monday, August 11	Monday, August 11
62 Tuesday, August 19	Monday, August 11	Wednesday, August 13	Wednesday, August 13
63 Friday, August 22	Wednesday, August 13	Monday, August 18	Monday, August 18
64 Tuesday, August 26	Monday, August 18	Wednesday, August 20	Wednesday, August 20
65 Friday, August 29	Wednesday, August 20	Monday, August 25	Monday, August 25
66 Tuesday, September 2	Monday, August 25	Wednesday, August 27	Wednesday, August 27
67 Friday, September 5	Wednesday, August 27	*Friday, August 29	*Friday, August 29
68 Tuesday, September 9	*Friday, August 29	Wednesday, September 3	Wednesday, September 3
69 Friday, September 12	Wednesday, September 3	Monday, September 8	Monday, September 8
70 Tuesday, September 16	Monday, September 8	Wednesday, September 10	Wednesday, September 10
71 Friday, September 19	Wednesday, September 10	Monday, September 15	Monday, September 15
72 Tuesday, September 23	Monday, September 15	Wednesday, September 17	Wednesday, September 17
73 Friday, September 26	Wednesday, September 17	Monday, September 22	Monday, September 22
74 Tuesday, September 30	Monday, September 22	Wednesday, September 24	Wednesday, September 24
75 Friday, October 3	Wednesday, September 24	Monday, September 29	Monday, September 29
Tuesday, October 7	<i>Third Quarterly Index</i>		
76 Friday, October 10	Wednesday, October 1	Monday, October 6	Monday, October 6
77 Tuesday, October 14	Monday, October 6	Wednesday, October 8	Wednesday, October 8
78 Friday, October 17	Wednesday, October 8	Monday, October 13	Monday, October 13
79 Tuesday, October 21	Monday, October 13	Wednesday, October 15	Wednesday, October 15
80 Friday, October 24	Wednesday, October 15	Monday, October 20	Monday, October 20

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
81 Tuesday, October 28	Monday, October 20	Wednesday, October 22	Wednesday, October 22
82 Friday, October 31	Wednesday, October 22	Monday, October 27	Monday, October 27
83 Tuesday, November 4	Monday, October 27	Wednesday, October 29	Wednesday, October 29
84 Friday, November 7	Wednesday, October 29	Monday, November 3	Monday, November 3
85 Tuesday, November 11	Monday, November 3	Wednesday, November 5	Wednesday, November 5
Friday, November 14	<i>No Issue Published</i>		
86 Tuesday, November 18	Monday, November 10	Wednesday, November 12	Wednesday, November 12
87 Friday, November 21	Wednesday, November 12	Monday, November 17	Monday, November 17
88 Tuesday, November 25	Monday, November 17	Wednesday, November 19	Wednesday, November 19
89 Friday, November 28	Wednesday, November 19	Monday, November 24	Monday, November 24
Tuesday, December 2	<i>No Issue Published</i>		
90 Friday, December 5	Wednesday, November 26	Monday, December 1	Monday, December 1
91 Tuesday, December 9	Monday, December 1	Wednesday, December 3	Wednesday, December 3
92 Friday, December 12	Wednesday, December 3	Monday, December 8	Monday, December 8
93 Tuesday, December 16	Monday, December 8	Wednesday, December 10	Wednesday, December 10
94 Friday, December 19	Wednesday, December 10	Monday, December 15	Monday, December 15
95 Tuesday, December 23	Monday, December 15	Wednesday, December 17	Wednesday, December 17
96 Friday, December 26	Wednesday, December 17	Monday, December 22	Monday, December 22
Tuesday, December 30	<i>No Issue Published</i>		



How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 22 (1997) is cited as follows: 22 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "22 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 22 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in a plain text version as well as a .pdf (portable document format) version through the Internet. In addition to the Internet version, the *Texas Register* is available online through a dialup bulletin board and as ASCII files on diskette. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the official

compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*. West Publishing Company, the official publisher of the *TAC*, publishes on an annual basis.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

To purchase printed volumes of the *TAC* or to inquire about WESTLAW access to the *TAC* call West: 1-800-328-9352.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
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7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

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1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue cover quarterly indexes to the *Texas Register* (January 28, April 8, July 11, and October 7, 1997). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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