

# TEXAS REGISTER

*Volume 22 Number 75 November 7, 1997*

*Pages 10829-11024*

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***Artist: Jerrod Henderson***

***7th Grade***

***City View ISD***

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***Texas Register*, ISSN 0362-4781**, is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$95, six month \$75. Costs for diskette and online versions vary by number of users (see back cover for rates). Single copies of most issues for the current year are available at \$7 per copy in printed or electronic format.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage is paid at Austin, Texas.

**POSTMASTER:** Please send form 3579 changes to the ***Texas Register***, P.O. Box 13824, Austin, TX 78711-3824.

a section of the  
Office of the Secretary of State  
P.O. Box 13824  
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# ATTORNEY GENERAL

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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 record 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.

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## Letter Opinions

**LO 97-087 (ID #39510).** The Honorable John Whitmire, Chair, Criminal Justice Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, regarding validity of policies of the Houston Independent School District pertaining to employee reports.

**SUMMARY.** Guidelines on employee whistleblowing reports recently adopted by the Houston Independent School District are not facially unconstitutional. However, given the possibility of liability for an unconstitutional application of them, care must be taken in the application of such guidelines as these that sanctions be administered only when workplace efficiency, morale, and discipline are genuinely affected by employee speech.

**LO 97-088 (RQ-617).** Dr. William R. Archer, III, Interim Commissioner, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, regarding whether a licensed nursing facility providing rehabilitation services under Medicaid must also be licensed as a hospital under chapter 241 of the Health and Safety Code.

**SUMMARY.** Subchapter F of chapter 241 of the Health and Safety Code, does not apply to a licensed nursing home that provides rehabilitation services under the laws and regulations governing the Medicaid program that are not more intensive than nursing facility care and minor treatment. The Department of Health is not required to license such nursing facilities as comprehensive medical rehabilitation hospitals pursuant to subchapter F. However, if a nursing home exceeds its authority to provide "nursing facility care and minor treatment" pursuant to a nursing facility license and if it is providing the level of care described in subchapter F of chapter 241 of the Health and Safety Code, it is required to hold a hospital license.

**LO 97-089 (RQ-681).** The Honorable Tom O'Connell, Criminal District Attorney, Collin County Courthouse, McKinney, Texas 75069, regarding whether the Commissioners Court of Collin County may enter into a contract with a private party for the collection of bond forfeiture judgments.

**SUMMARY.** The authority of the Collin County Criminal District Attorney in bail bond forfeiture matters may not be contracted away by the Collin County Commissioners Court.

**LO 97-090 (ID #39536).** The Honorable Michael J. Guarino, Criminal District Attorney, Galveston County Courthouse, 722 Moody,

Suite 300, Galveston, Texas 77550, regarding whether Government Code section 76.006 requires the Galveston County Community Supervision and Corrections Department to establish a voluntary exit incentive program for its employees.

**SUMMARY.** Government Code section 76.006 does not require the Galveston County Community Supervision and Corrections Department to establish a voluntary exit incentive program for its employees equal to the voluntary exit incentive program established by the Galveston County Commissioners Court for certain county employees.

**LO 97-091 (ID #39656).** The Honorable Michael A. Sheppard, District Attorney, 24th Judicial District, 307 North Gonzales, Cuero, Texas 77954, regarding whether Code of Criminal Procedure article 59.06 authorizes a district attorney and sheriff's department to agree to dispose of forfeited automobiles by sheriff's auction or whether such property must be disposed as surplus county property pursuant to Local Government Code section 263.152.

**SUMMARY.** Code of Criminal Procedure article 59.06 authorizes a district attorney and sheriff's department to agree to dispose of forfeited automobiles that have not been transferred to the sheriff's department for official use as provided by article 59.06(b) by sheriff's auction.

**LO 97-092 (ID# 39589).** The Honorable Tom Haywood, Chair, Agriculture Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding whether a county judge must resign his or her office in order to run for state representative.

**SUMMARY.** If a county judge announces his or her candidacy for the legislature or becomes a candidate when more than one year remains of the term of office, he or she will automatically resign as county judge pursuant to article XVI, section 65. Article III, section 19 of the Texas Constitution, as interpreted in *Wentworth v. Meyer*, 839 S.W.2d 766 (Tex. 1992), does not disqualify a county judge from running for the legislature even though the term as county judge overlaps the legislative term, if the county judge resigns from that office before filing for the legislature.

TRD-9714095

# EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

**Symbology in amended emergency sections.** New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

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**TITLE 16. ECONOMIC REGULATION**

**Part I. Railroad Commission of Texas**

**Chapter 7. Gas Utilities Division**

**Substantive Rules**

**16 TAC §7.74**

The Railroad Commission of Texas is renewing the effectiveness of the emergency adoption of new §7.74, for a 60-day period. The text of new §7.74 was originally published in the July 4, 1997, issue of the *Texas Register* (22 TexReg 6251).

Issued in Austin, Texas, on October 21, 1997.

9713983

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel  
Railroad Commission of Texas

Effective date: October 22, 1997

Expiration date: December 22, 1997

For further information, please call: (512) 463-7008



# 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 text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

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## TITLE 1. ADMINISTRATION

### Part I. Office of the Governor

#### Chapter 4. Automobile Theft Prevention Authority

##### 1 TAC §4.47

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

The Automobile Theft Prevention Authority (ATPA) proposes the repeal of §4.47, concerning the statutory fee assessment on insurance companies. The rule adopts, by reference, the Texas Automobile Theft Prevention Authority Assessment Report form and instructions for the computation of the ATPA assessment of the Comptroller of Public Accounts. This rule is being transferred this same date, by separate rulemaking, to 43 TAC §57.48, relating to statutory fee assessment on insurance companies. Chapter 57 of Title 43 TAC, is the appropriate location for ATPA rules.

Agustin De La Rosa, Acting Director, has determined that for each year of the first five year period that the proposed repeal will be in effect, there will be no additional fiscal implications for state or local governments as a result of the proposed repeal of §4.47.

Mr. De La Rosa also has determined that, for each year of the first five years the proposed repeal of §4.47 is in effect, the public benefit anticipated as a result of enforcing the proposed repeal will be notice to the regulated industry of the appropriate form and instructions to facilitate proper filing and payment by insurers required to report and pay the assessment to the Texas Comptroller of Public Accounts. There will be no fiscal implications on small businesses, or economic cost to persons being affected by the repeal of the rule as proposed.

Comments on the proposal may be submitted in writing to Agustin De La Rosa, Acting Director, Automobile Theft Prevention Authority, 200 East Riverside Drive, Austin, Texas 78704,

for a period of 30 days following publication in this issue of the *Texas Register*.

This repeal is proposed under Texas Civil Statutes, Article 4413(37), §§6(a), 6A, 10. Section 6(a) authorizes the agency to adopt rules implementing its statutory powers and duties, which includes administration of the assessment and collection of the statutory fee, provided for in §§6A and 10, in coordination with the state comptroller's office and the department of insurance.

Texas Civil Statutes, Article 4413(37) §§6a, 6A and 10 are affected by this rule.

§4.47. *Preparation of 1994 Assessment Form.*

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 October 22, 1997.

TRD-9714122

Agustin De La Rosa

Acting Director

Automobile Theft Prevention Authority

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 416-4606



### Part IV. Office of the Secretary of State

#### Chapter 79. Corporations

##### Subchapter A. General Provisions [~~Information and Correspondence~~]

##### 1 TAC §79.2

The Office of the Secretary of State proposes an amendment to §79.2, relating to the manner in which business is conducted with the Corporations Section of the secretary of state. The amendment is necessary to revise and clarify the language of the existing rule which presently requires, without exception, that all business with the secretary of state be conducted in writing. The amendment addresses changes brought about by

Senate Bill 555, Chapter 375, Acts, 75th Legislature, Regular Session (1997); specifically, the provisions authorizing the submission of documents to the Corporations Section of the secretary of state electronically or by other technological means.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed section as amended.

Ms. Flores also has determined that for each of the first five years that the section as amended is in effect the public benefits anticipated as a result of enforcing or administering the proposed action will be that the public will understand that the secretary of state anticipates that exceptions to the general rule may arise and that those exceptions will be addressed in other rules. There will be no fiscal implications for small businesses and no anticipated economic cost to any individual required to comply with the proposed section as amended.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas, 78711-3697.

The section as amended is proposed under the authority of Article 9.03, Texas Business Corporation Act, and Article 1396-9.05, Texas Non-Profit Corporation Act, which give the secretary of state the authority to efficiently administer the duties imposed on the secretary under the acts, and Section 2001.004, Government Code, which requires all state agencies, including the secretary of state, to adopt rules of practice which state the nature and requirements of formal and informal procedures.

The proposed amended section affects the following statutes, articles, or codes: Article 1302-7.07, Texas Miscellaneous Corporations Laws Act, section 13.04, Texas Revised Limited Partnership Act (article 6132a-1), and section 3.08, Texas Revised Partnership Act (Article 6132b-3.08).

*§79.2. Business to be Transacted in Writing.*

Except as otherwise provided by these rules, all [ All] business with the Corporations Section should be transacted in writing. The action of the Corporations Section will be based exclusively on the written record in the section.

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 November 3, 1997.

TRD-9714532

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



**1 TAC §§79.13–79.15, 79.17–79.19**

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

The Office of the Secretary of State proposes the repeal of §§79.13-79.15 and §§79.17-79.19, concerning the filing

requirements, procedures, and effect of certain business entity filings made with the Corporations Section of the secretary of state. The repeal of these sections is necessary to allow the adoption of new rules which incorporate many of the provisions of the existing rules, but which are reorganized into several new subchapters which are being concurrently proposed.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed action.

Ms. Flores also has determined that for each of the first five years that the repeal is in effect the public benefits anticipated as a result of the repeals will be that the public will more easily locate information regarding procedures pertaining to certain filings by a reorganization of Chapter 79 into more specific subchapters. There will be no fiscal implications for small businesses and no anticipated economic cost to any individual required to comply with the proposed action.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas, 78711-3697.

The proposed repeal is submitted under the authority of Article 9.03, Texas Business Corporation Act, and Article 1396-9.05, Texas Non-Profit Corporation Act, which give the secretary of state the authority to efficiently administer the duties imposed on the secretary under the acts, and Section 2001.004, Government Code, which requires all state agencies, including the secretary of state, to adopt rules of practice which state the nature and requirements of formal and informal procedures.

The proposed repeal affects the following statutes, articles, or codes: §§79.13, 79.14, and 79.18 affect Article 10.03, Texas Business Corporation Act; Article 1396-10.07, Texas Non-Profit Corporation Act; Article 9.03, Texas Limited Liability Company Act (article 1528n), and §2.12, Texas Revised Limited Partnership Act (Article 6132a-1). Section 79.15 affects Articles 2.06-2.08, Texas Business Corporation Act; Article 1396-2.04A, Texas Non-Profit Corporation Act; Article 2.04, Texas Limited Liability Company Act (Article 1528n), and §1.05 and §1.06, Texas Revised Limited Partnership Act. Section 79.17 affects Article 8.14, Texas Business Corporation Act; Article 1396-8.13, Texas Non-Profit Corporation Act, and Article 7.09, Texas Limited Liability Company Act (Article 1528n). Section 79.19 affects Article 5.03, Texas Business Corporation Act; Article 9.03, Texas Limited Liability Company Act (Article 1528n), and §2.12, Texas Revised Limited Partnership Act (Article 6132a-1).

*§79.13. Determining the Date of the 90th Day After the Date of Filing.*

*§79.14. Statement Regarding Delayed Effective Condition.*

*§ 79.15. Identification of Application for Name Reservations and Name Registration.*

*§79.17. Address on Certificate of Withdrawal.*

*§79.18. Documents With Delayed Effective Dates.*

*§79.19. Abandonment of Document.*

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 November 3, 1997.

TRD-9714531  
Clark Kent Ervin  
Assistant Secretary of State  
Office of the Secretary of State  
Earliest possible date of adoption: December 8, 1997  
For further information, please call: (512) 463-5586



## Subchapter B. Document Review

### 1 TAC §§79.21–79.28

The Office of the Secretary of State proposes new §§79.21-79.28, relating to filing procedures, review standards, and the processing of certain documents filed with the Corporations Section of the Office of the Secretary of State. Article 9.03, Texas Business Corporation Act and Article 1396-9.05, Texas Non-Profit Corporation Act grant the secretary of state the power and authority reasonably necessary to efficiently administer the duties imposed on the secretary of state under the acts. This action is necessary for the purpose of clarifying and codifying procedures established by the secretary of state in the review of documents filed in the Corporations Section.

Section 79.21 clarifies the ministerial role of the secretary of state by setting forth the level of administrative review of documents submitted on behalf of business organizations for filing with the Corporations Section of the secretary of state. Section 79.22 identifies the factors considered when prioritizing the processing of documents submitted for filing with the Corporations Section of the secretary of state. Section 79.23 clarifies the limits of the secretary of state's authority as it relates to fraudulent filings. Section 79.24 explains the types of corrections that may not be effected by the filing of articles or certificates of correction and clarifies that the secretary of state will not refund any portion of a fee based upon the submission and acceptance of articles of correction correcting the information upon which the fee for the document was based. Section 79.25 and §79.26 relate to the filing of name reservations, name registrations, and applications for certificate of withdrawal and incorporate the provisions of §79.15 and §79.17 that are proposed for repeal under separate submission for purposes of reorganization of Chapter 79 into subchapters. Section 79.27 explains the procedures relating to the filing of periodic reports by non-profit corporations. Section 79.28 sets forth the requirements for a registered office address for purposes of filing with the secretary of state.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the new subchapter is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections.

Ms. Flores also has determined that for each of the first five years the new subchapter and sections are in effect the public benefits anticipated as a result of enforcing or administering the new sections will be that the public will have a greater understanding of the ministerial role of the secretary of state and will have notice of specific filing procedures and standards of review relating to certain documents filed with the Corporations Section of the secretary of state. There will be no fiscal implications for small businesses and no anticipated economic cost to any individual required to comply with the proposed subchapter and sections.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas 78711-3697.

The new subchapter and sections are proposed under the authority of Article 9.03, Texas Business Corporation Act and Article 1396-9.05, Texas Non-Profit Corporation Act which grant the secretary of state the authority to efficiently administer the duties imposed on the secretary of state under the acts, and Section 2001.004, Government Code, which requires all state agencies, including the secretary of state, to adopt rules of practice which state the nature and requirements of formal and informal procedures.

The new sections affect the following statutes, articles or codes. Section 79.23 affects Article 10.02, Texas Business Corporation Act; article 1396-9.03a, Texas Non-Profit Corporation Act; Article 9.02, Texas Limited Liability Company Act, and §13.08(b)(13), Texas Revised Partnership Act. Section 79.24 affects Articles 1302-7.01-7.04, Texas Miscellaneous Corporation Laws Act. Section 79.25 affects Articles 2.06 and 2.07, Texas Business Corporation Act; article 1396-2.04A, Texas Non-Profit Corporation Act, and article 2.04, Texas Limited Liability Company Act (Article 1528n). Section 79.27 affects Article 8.14, Texas Business Corporation Act; Article 1396-8.13, Texas Non-Profit Corporation Act, and Article 7.10, Texas Limited Liability Company Act (1528n). Section 79.28 affects Articles 2.09-2.10-1, and Articles 8.08 and 8.09, Texas Business Corporation Act; Article 1396-2.05 - article 1396-2.06A, and Article 1396-8.07 and Article 1396-8.08, Texas Non-Profit Corporation Act, and Articles 2.05-2.07, Texas Limited Liability Company Act (Article 1528n).

#### §79.21. Administrative Review.

The secretary of state will determine whether a document authorized to be filed with the secretary of state meets the minimum statutory requirements for filing under the governing statutory provisions. The secretary of state will not determine or verify whether the entity has complied with its bylaws, regulations, or agreement in obtaining the necessary approval for the transaction; whether a material misrepresentation has been made in any document submitted on behalf of an entity; or whether the person or persons signing the document on behalf of the entity were in fact authorized to do so.

#### §79.22. Prioritization of Processing.

The order of review, processing and filing of documents, other than trademark documents, is based on the manner of delivery of the document, whether expeditious review of the document was requested pursuant to §71.10 of this title (titled Special Services); and its date of receipt in the Corporations section of the secretary of state. Consequently, a document may be rejected on the basis of the filing of a document with a later date of receipt when the subsequently received document was reviewed, processed and filed prior to the previously received document.

#### §79.23. Fraudulent Filings.

The secretary of state cannot revoke the filing of a document upon receipt of evidence that the document was fraudulently filed. A criminal proceeding may be brought for a violation of the provisions of Texas Business Corporation Act, Article 10.02; Texas Non-Profit Corporation Act, Article 1396-9.03a; Texas Limited Liability Company Act, Article 9.02; and Texas Revised Partnership Act, §13.08(b)(13), by the appropriate prosecuting authority. Criminal proceedings are not initiated by the secretary of state under these cited provisions.

#### §79.24. Correction of Filed Documents.

(a) Documents may be corrected to contain only those statements which lawfully could have been included in the original document. Articles of correction or a certificate of correction may not be used to revoke a previously filed document or to alter, include or delete a statement, which by its alteration, inclusion or deletion, would have caused the secretary of state to determine that the document did not conform to law at the time of the original filing.

(b) The secretary of state will not refund any portion of a fee calculated on the basis of information required to be set forth in a document by statute upon the subsequent submission and filing of articles of correction correcting the information upon which the fee was based.

§79.25. Identification of Applicant for Name Reservations and Name Registrations.

All applicants for name reservations or name registrations must identify the type of entity or the statute under which the reservation or registration is sought. This will enable the secretary of state to identify the appropriate filing fee for such name reservation or registration.

§79.26. Address on Certificate of Withdrawal.

The Texas Business Corporation Act, Article 8.14, the Texas Non-Profit Corporation Act, Article 1396-8.13, and the Texas Limited Liability Company Act, Article 7.09, require a foreign corporation or limited liability company to designate a post office address on a certificate of withdrawal to which the secretary of state may mail a copy of any process against the corporation that may be served on the secretary of state. After the filing of the certificate of withdrawal, a corporation or limited liability company may change this address by notifying the secretary of state of such change in writing.

§79.27. Non-Profit Corporation Periodic Reports.

(a) Notice. Notices relating to the filing of a periodic report of a non-profit corporation under Article 1396-9.01 of the Texas Non-Profit Corporation Act shall be sent to the registered office address of record with the secretary of state. Notices relating to the forfeiture of corporation's right to conduct its affairs shall be sent to the same address specified for the original report, notwithstanding receipt of evidence by the secretary of state that the address specified was an insufficient address or that the mailing of the notice was undeliverable. The failure of the corporation to receive these notices does not relieve the corporation of the requirement to file the periodic report or extend the time within which the required report must be filed.

(b) Changes to Report Information. Changes to the name of the registered agent and to the registered office address may be made by making changes to the information contained in the periodic report. A change to the name of the corporation cannot be effected through the filing of the periodic report. In order to change the name of the corporation, the corporation must file articles of amendment to the articles of incorporation.

(c) Failure to Comply. A non-profit corporation that fails to file the periodic report required within 30 days from the date that the report is sent by the secretary of state will forfeit its right to conduct its affairs in Texas. While forfeited, the non-profit corporation may not amend its articles of incorporation or certificate of authority until it has been relieved of its forfeiture by filing the report. However, the forfeiture of the corporation's right to conduct its affairs does not prevent the corporation from filing articles of dissolution, withdrawal or termination. The failure of a non-profit corporation to relieve itself of the forfeiture by filing the required report within 120 days of the mailing of the notice of the forfeiture by the secretary of state will result in the involuntary dissolution of the corporation or revocation of its certificate of authority.

(d) Voluntary Submission of a Periodic Report. A non-profit corporation may submit for filing by the secretary of state a report under the provisions of article 1396-9.01 of the Texas Non-Profit Corporation Act when not required to do so by the secretary of state. The voluntary submission of a report under this subsection does not relieve the corporation of the requirement to file the periodic report or extend the time within which the report must be filed when the report is specifically required from the corporation by the secretary of state.

§ 79.28. Registered Office Address.

The registered office address of a corporation or limited liability company must include a street or building address for purposes of providing the public with notice of the physical street location at which process may be served on the registered agent; a post office box alone is not a sufficient address for the registered office. The address of a commercial business which provides "private mail box" services is not sufficient as a registered office address, unless the commercial enterprise is the business of the designated registered agent. If the registered office address is in a city with a population of less than 5,000, the secretary of state will accept an address other than a street address for the registered office.

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 November 3, 1997.

TRD-9714538

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586

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Subchapter C. Entity Names [Entity Name Availability]

**1 TAC §§79.34, 79.43, 79.48, 79.50**

The Office of the Secretary of State proposes amendments to §§79.34, 79.43, 79.48, and 79.50, relating to factors and conditions relevant to the secretary of state's determinations regarding entity names. The amendments are necessary to revise and clarify the language of the existing rules and to conform the rules to present practice and procedure.

Section 79.34 is amended to delete language which created an ambiguity regarding use of the term "companies" as a basis for distinguishing between names. Section 79.43 is amended to include an additional example of a circumstance giving rise to the requirement that a letter of consent be obtained from a previously existing entity when the only difference in the names is the use of the term "companies." Section 79.50 is amended to include professional limited liability companies as a type of professional entity subject to the rule and to provide an exception to the letter of consent requirement when there is sufficient basis for distinguishing between professional entity names. Section 79.48 is amended to clarify that the timing of an applicant's submission of a document relating to an entity name at issue does not determine the secretary of state's final decision regarding the entity name.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the



sections as amended are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections as amended.

Ms. Flores also has determined that for each of the first five years that the section as amended is in effect the public benefits anticipated as a result of enforcing or administering the proposed action will be that the public will have a better understanding of the factors and criteria considered by the secretary of state when making entity name determinations. There will be no fiscal implications for small businesses and no anticipated economic cost to any individual required to comply with the proposed sections as amended.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas, 78711-3697.

The sections as amended are proposed under the authority of Article 9.03, Texas Business Corporation Act, and Article 1396-9.05, Texas Non-Profit Corporation Act, which give the secretary of state the authority to efficiently administer the duties imposed on the secretary under the acts, and Section 2001.004, Government Code, which requires all state agencies, including the secretary of state, to adopt rules of practice which state the nature and requirements of formal and informal procedures.

The proposed amended sections affects the following statutes, Articles, or codes: Articles 2.05, 6.05, 7.01, 8.03, 8.16, Texas Business Corporation Act; Articles 1396-2.04, Article 1396-7.01, Article 1396-8.03, Article 1396-8.15, and Article 1396-9.02, Texas Non-Profit Corporation Act; Articles 2.03, 7.03, and 7.11, Texas Limited Liability Company Act (Article 1528n); section 1.03 and section 13.09, Texas Revised Limited Partnership Act (Article 6132a-1); and section 171.315, Texas Tax Code.

§ 79.34. *Words of Incorporation or Organization.*

(a)-(d) (No change.)

(e) Neither the words nor the abbreviations of the words of incorporation or organization listed in subsections (a), (b), (c), or (d) of this section, or other variations of the permissible statutory terms, may be used as a sufficient basis to distinguish among [two] otherwise deceptively similar or same names. 79.43. Similarity of Names Requiring Letter of Consent. A proposed entity name is similar to an existing name and requires a [requiring] letter of consent if any of the following conditions exists [exist].

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

(6) The difference in the names consists in the use of the term "companies." Example: Satterwhite Companies, Ltd. would need a letter of consent from Satterwhite Corporation.

§79.50. *Professional Entities [Corporations and Associations.]*

(a) Names of professional entities; i.e., professional corporations, professional limited liability companies, and professional associations, are governed by these rules and by the laws or ethics regulating the practice of the professional service rendered through the professional entity [corporation or professional association].

(b) Names of professional entities will not be considered similar if there is sufficient basis for distinguishing the name from an existing professional entity name.

(1) Example: Oncology Associates of Houston, P.L.L.C. is not similar to Oncology Associates of Dallas, P.A.

(2) Example: Law Offices of Robert Sumners, P.C. is not similar to Law Offices of Janice Crow, P.C.

§79.48. *Matters Not Considered.*

Only the proposed entity name, the names of active (not dead, dissolved, or forfeited) entities, name reservations, and name registrations for entities on file are considered in determining the availability of the entity name [availability] for purposes of filing with the secretary of state. Among matters not considered are the following:

(1)-(10) (No change.)

(11) whether infringement or unfair trade practice has occurred or might occur; [or]

(12) whether an existing entity has fled for or intends to file for bankruptcy; or

(13) whether an applicant's submission of a document relating to the entity name at issue was prior to the submission of the document effecting the conflicting existing name.

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 November 3, 1997.

TRD-9714638

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Subchapter E. Delayed Effective Dates

### 1 TAC §§79.71-79.73

The Office of the Secretary of State proposes new subchapter E, Delayed Effective Dates, §§79.71-79.73 relating to filing procedures for documents having a delayed effective date, and the corresponding changes effected to the Corporations Section database upon the filing of such documents. The new sections renumber and replace sections, §§79.13, 79.14, and 79.18, and incorporate changes necessary to implement SB 555, Chapter 375, Acts, 75th Legislature, Regular Session (1997) relating to the filing of conversion transactions. The proposed new subchapter and sections are necessary for the purpose of providing a more clearly ordered structure to Chapter 79 and to incorporate changes relating to conversion transactions implemented by Senate Bill 555 which became effective September 1, 1997.

Section 79.71 concerns the calculation of the 90th day following the date of filing of a document for the purposes of filing documents which will become effective upon the occurrence of a future act or event. Section 79.72 sets forth the filing requirements for the filing of a statement regarding the satisfaction or waiver of a condition triggering the effectiveness of a document filing. Section 79.73 outlines the procedures followed by the secretary of state upon the filing of a document with a delayed effective date and specifies the changes made to the business entity information contained in the Corporations Section's database.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the new

subchapter is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections.

Ms. Flores also has determined that for each of the first five years the new subchapter and sections are in effect the public benefits anticipated as a result of enforcing or administering the new sections will be that the public will have a greater understanding of the procedures followed by the secretary of state when reviewing and filing a document with a delayed effective date. There will be no fiscal implications for small businesses and no anticipated economic cost to any individual required to comply with the proposed subchapter and sections.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas 78711-3697.

The new subchapter and sections are proposed under the authority of Article 9.03, Texas Business Corporation Act and article 1396-9.05, Texas Non-Profit Corporation Act which grant the secretary of state the authority to efficiently administer the duties imposed on the secretary of state under the acts, and Section 2001.004, Government Code, which requires all state agencies, including the secretary of state, to adopt rules of practice which state the nature and requirements of formal and informal procedures.

The new sections affect the following statutes, articles or codes. Sections 79.71-79.73—article 10.03, Texas Business Corporation Act; article 1396-10.07, Texas Non-Profit Corporation Act; article 9.03, Texas Limited Liability Company Act, section 2.12, Texas Revised Limited Partnership Act, and section 13.08(b)(13), Texas Revised Partnership Act.

§ 79.71. Determining the Date of the 90th Day after the Date of Filing.

(a) For purposes of filing documents which will become effective upon the occurrence of events or facts that may occur in the future pursuant to the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Section 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 1396-10.07, the date of the 90th day after the date of filing shall be deemed to be 90 days after the document is delivered in person or placed in the United States post office or in the hands of a common or contract carrier properly addressed to the Office of the Secretary of State. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the document may show by competent evidence that the actual date of posting was to the contrary.

(b) If a document submitted with a delayed effective condition pursuant to the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Section 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 10.07, does not conform to law, it will be returned to sender. When the document is corrected and resubmitted, the date of the 90th day after the date of filing may be recalculated and restated in the document to be 90 days after the document is resubmitted by delivery in person or placement in the United States post office or in the hands of a common or contract carrier properly addressed to the Office of the Secretary of State. The postmark or receipt mark generated in connection with the resubmission (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the document may

show by competent evidence that the actual date of posting of the resubmission was to the contrary. The secretary of state will refer to the contents of the document to determine the date of the 90th day from the date of filing or refiling.

(c) To calculate the date of the 90th day from the date of filing, refer to calendar days as set forth in §71.5 of this title (relating to Times for Taking Action).

§79.72. Statement Regarding Delayed Effective Condition.

(a) Contents. Pursuant to the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Section 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 1396-10.07, when a condition triggering the effectiveness of a document filing has been satisfied or waived, a statement regarding the delayed effective condition must be submitted to the secretary of state. Such statement must contain the following information:

- (1) the name of the business entity;
- (2) the charter or file number of the entity;
- (3) the document to which the statement applies;
- (4) the date of filing of the document to which the statement applies;
- (5) the date on which the condition was satisfied or waived; and
- (6) the signature required by the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Section 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 1396-10.07.

(b) Timeliness. Pursuant to the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Section 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 1396-10.07, the statement regarding the delayed effective condition should be filed in the Office of the Secretary of State by the date of the 90th day from the date of filing as defined in §79.71 of this title (relating to Determining the Date of the 90th Day after the Date of Filing). Statements regarding the delayed effective condition received after the date of the 90th day from the date of filing will be filed for record; however, the secretary of state will not determine substantial compliance with the provisions of the statutes referenced in this section.

§ 79.73. Documents with Delayed Effective Dates.

(a) Upon the filing of a document with a delayed effective date, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, the future date on which the document will be effective or a code indicating that the effectiveness is based on a future condition, and the name of the surviving entity or entities, if applicable. In addition, at the time of such filing:

- (1) the status of any domestic entity on file with the secretary of state that is converting, merging out of existence, or dissolving, will be changed from active to inactive, and the status of any foreign entity withdrawing its certificate will be changed from active to inactive;
- (2) the status of any entity to be created and filed with the secretary of state by the terms of a plan of merger, plan of conversion, articles of incorporation, articles of organization, a certificate of limited partnership, or a certificate authorizing a foreign entity to transact business in Texas shall appear in the active records of the secretary of state; and

(3) any filings making amendments to articles of incorporation, articles of organization, a certificate of limited partnership, or a certificate authorizing a foreign entity to transact business in Texas will be recorded in the records of the secretary of state.

(b) Upon filing of the document:

(1) the name of any entity on file with the secretary of state which is converting, merging out of existence, dissolving, or withdrawing will not appear in the active records and will not be a bar to reservation or registration of an entity name or creation of an entity under a name which is the same as, deceptively similar to, or similar to the name of the converting, merging, or dissolving domestic entity or the withdrawing foreign entity;

(2) the name of any entity to be created and filed with the secretary of state by the terms of a plan of merger, plan of conversion, articles of incorporation, articles of organization, a certificate of limited partnership, or a certificate authorizing a foreign entity to transact business in Texas will appear in the active records of the secretary of state and will be a bar to reservation or registration of any entity name or creation of an entity under a name which is the same as, deceptively similar to, or similar to the name of an entity to be created or authorized to transact business in Texas by one of the document filings listed in this section; and

(3) if a document filing provides for a change of name of an entity previously on file with the secretary of state, the new name of the entity will appear in the active records of the secretary of state and will be a bar to reservation or registration of any entity name or creation of an entity under a name which is the same as, deceptively similar to, or similar to any new name of the entity as provided in the document filing;

(4) if a document filing provides for an amendment to the articles of incorporation, articles of organization, a certificate of limited partnership, or a certificate authorizing a foreign entity to transact business in Texas, the secretary of state will change the computer records to reflect any amendments to information which may be obtained from the computer database (e.g., authorized stock, registered agent/registered office, the name of a general partner).

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 November 3, 1997.

TRD-9714539

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Subchapter F. Effect of Filings

### 1 TAC §79.81, §79.82

The Office of the Secretary of State proposes new §79.81 and §79.82, relating to the effect of certain filings on the business organization information maintained in the database of the Corporations Section of the secretary of state. The new subchapter and new rules are necessary for the purpose of implementing the changes effected by Senate Bill 555, Chapter 375, Acts, 75th Legislature, Regular Session (1997); specifically, conversion transactions which allow a domestic or

foreign business entity to change its organizational form without an interruption in the entity's existence. Additionally, the new subchapter and sections are proposed as part of the secretary of state's reorganization of Chapter 79 into subchapters.

Section 79.81 outlines the procedures followed by the secretary of state upon the filing of a conversion transaction and specifies the changes made to the business entity information contained in the Corporations Section's database. The section also informs the public of other statutory filings that may need to be filed with the secretary of state by a foreign business entity that has converted.

Section 79.82 replaces §79.19, which is being repealed under separate submission. Section 79.82 relates to the abandonment of a document previously filed with the secretary of state and incorporates changes necessary to include the conversion transaction in its procedures.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the new subchapter and sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections.

Ms. Flores also has determined that for each of the first five years that the new subchapter is in effect the public benefits anticipated as a result of enforcing or administering the new sections will be that the public will have a greater understanding of the changes implemented by the secretary of state to the business entity information maintained in the Corporations Section database upon the filing of a conversion or the filing of an abandonment. In addition, the public will have notice of other statutory filings that may need to be made by a foreign business entity that is either a converting or converted entity. There will be no fiscal implications for small businesses and no anticipated economic cost to any individual required to comply with the proposed subchapter and sections.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas, 78711-3697.

The new subchapter and sections are proposed under the authority of Article 9.03, Texas Business Corporation Act, and Article 1396-9.05, Texas Non-Profit Corporation Act, which give the secretary of state the authority to efficiently administer the duties imposed on the secretary under the acts, and Section 2001.004, Government Code, which requires all state agencies, including the secretary of state, to adopt rules of practice which state the nature and requirements of formal and informal procedures.

The new sections affect the following statutes, articles, or codes: Section 79.81 affects Articles 5.17-5.20, Texas Business Corporation Act; Articles 10.08-10.11, Texas Limited Liability Company Act (Article 1528n); §2.15, Texas Revised Limited Partnership Act (Article 6132a-1), and §9.05 and §9.06, Texas Revised Partnership Act (Article 6132b-9.01 et. seq.). Section 79.82 affects Articles 5.03 and 5.17, Texas Business Corporation Act; Article 9.03, Texas Limited Liability Company Act (Article 1528n); section 2.12, Texas Revised Limited Partnership Act (Article 6132a-1), and section 9.06, Texas Revised Partnership Act (Article 6132b-9.01 et. seq.).

#### §79.81. Conversion Filings.

(a) Upon filing of a conversion document where the converting entity is a domestic corporation, limited partnership, or limited

liability company (i.e., a domestic entity), the computer records of the secretary of state relating to the converting domestic entity will be changed to show the filing of the conversion document, the date of the filing, the future date on which the document will be effective or a code indicating that the effectiveness is based on a future condition, and the name of the converted entity. In addition, at the time of such filing:

(1) the status of the converting domestic entity will be changed from active to inactive; and

(2) the status of the converted domestic entity to which the converting entity has converted shall appear in the active records of the secretary of state indexed under a charter number and type code applicable to the type of entity to which it converted.

(b) Upon filing of a conversion document where the converting entity is a foreign corporation, limited partnership, or limited liability company with an active certificate of authority (i.e., a qualified entity) which is to be converted to a domestic entity, the computer records of the secretary of state relating to the converting qualified entity will be changed to show the filing of the conversion document, the date of the filing, the future date on which the document will be effective or a code indicating that the effectiveness is based on a future condition, and the name of the converted entity. In addition, at the time of such filing the status of the converted domestic entity to which the converting qualified entity has converted shall appear in the active records of the secretary of state indexed under a charter number and type code applicable to the type of entity to which it converted.

(c) A foreign corporation, limited partnership, or limited liability company with an active certificate of authority (i.e., a qualified entity) that is authorized under the laws of its jurisdiction of organization to convert and that converts effecting a change to its jurisdiction of organization without a change to its organizational form, shall file an application to amend its certificate of authority or certificate of registration to reflect the date of the conversion of the qualified entity and the jurisdiction of formation of the converted entity. A certificate from the secretary of state or other proper filing officer of the new jurisdiction of organization that evidences the conversion of the entity's jurisdiction of organization must accompany the application for amended certificate of authority.

(d) A foreign corporation, limited partnership, or limited liability company with an active certificate of authority (i.e., a qualified entity) that is authorized under the laws of its jurisdiction of organization to convert and that converts effecting a change to its organizational form shall file a termination of its certificate of authority pursuant to Article 8.14, Business Corporation Act, Article 7.09, Limited Liability Company Act, or §9.06, Revised Limited Partnership Act, as applicable. If the converted entity is to transact business in this state, the converted entity must obtain a certificate of authority under the laws applicable to the type of foreign entity to which the entity converted.

§79.82. Abandonment of Document.

If a document filing is abandoned in accordance with a statutory provision for abandonment, the secretary of state:

(1) will change the status of all the entities filed with the secretary of state which would have merged out of existence, dissolved, or withdrawn to active on the computer records of the agency and record the filing of the abandonment. If the names of these entities are not available, the entities must file articles of amendment or take other action to change the entity name or bring the name

into compliance with applicable statutory provisions as a condition of acceptance of the abandonment;

(2) will change the status of all entities that would have been created and filed or authorized to transact business in Texas with the secretary of state by the terms of the document filing to inactive on the computer records of the agency;

(3) will change the status of a converted entity that would have been created and filed in Texas with the secretary of state by the terms of the articles of conversion to inactive on the computer records of the agency; and

(4) will change the status of a converting domestic entity or a converting qualified entity that converted to a domestic entity filed with the secretary of state to active on the computer records of the secretary of state. If the name of the entity is not available, the entity must file articles of amendment or take other action to change the entity name or bring the entity name into compliance with applicable statutory provisions as a condition of acceptance of the abandonment.

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 November 3, 1997.

TRD-9714639

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Chapter 80. Unincorporated Business Entities

### Subchapter

#### 1 TAC §§80.1-80.4

*(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 Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Office of the Secretary of State proposes the repeal of §§80.1-80.4, relating to limited liability partnership filings with the secretary of state. The repeal of these sections is necessary to delete provisions which were codified in 1993 with the enactment by the 73rd Legislature of §3.08(b) of the Texas Revised Partnership Act (article 6132b-1).

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years the section is in effect there will be no fiscal implications for state or local government or small business as a result of the proposed action.

Ms. Flores has determined that the public benefits anticipated as a result of the repeal will be the elimination of much of the replication of the statutory provisions relative to the filing of limited liability partnership documents. The public benefits anticipated as a result of the proposed new rules will be a clearer understanding of the standards of review for limited liability partnership documents filed with the secretary of state. In addition, provision of a rule for the termination of a registration prior to its expiration, will enhance the accuracy of the public

information relative to limited liability partnerships filed with the secretary of state. The proposed actions will not impose any economic costs on individuals.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas 78711-3697.

The proposed repeal of §§80.1 - 80.4 is submitted under the authority of §3.08(b)(15) and §10.02(n) of the Texas Revised Partnership Act which give the secretary of state the authority to adopt procedural rules on filing domestic and foreign limited liability partnership documents. Section 2001.004, Government Code, requires all state agencies, including the secretary of state, to adopt rules of practice which state the nature and requirements of formal and informal procedures.

The following code is affected by this rule: §80.1 - §3.08(b), Texas Revised Partnership Act (article 6132b-1); §80.2 - §10.02, Texas Revised Partnership Act; §80.3 - §3.08(b) and §10.02, Texas Revised Partnership Act; §80.4 - §§3.08(b), 10.02, and 10.05(b), (c), (d), and (e), Texas Revised Partnership Act.

*§80.1. Application for Registration as a Registered Limited Liability Partnership*

*§80.2. Withdrawal of Registration*

*§80.3. Administrative Review*

*§80.4. Amendment or Correction*

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 November 3, 1997.

TRD-9714535

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Subchapter A. Limited Liability Partnership

### 1 TAC §§80.1-80.7

The Office of the Secretary of State proposes new §§80.1-80.7, concerning filing requirements and procedures for the registration of domestic limited liability partnerships and the qualification of out-of-state limited liability partnerships. The proposed repeal is necessary to allow for the adoption of the new subchapter that deals with the procedures for the registration of domestic limited liability partnerships and the qualification of out-of-state limited liability partnerships, and to delete redundant provisions that were codified in 1993 with the enactment of the Texas Revised Partnership Act (article 6132b-1), §3.08(b), by the 73rd Legislature. The proposed new subchapter and sections address certain filing issues and concerns not addressed by the existing rules. The proposed new sections are necessary to implement the provisions of Senate Bill 555, Chapter 375, Acts, 75th Legislature, R.S. (1997); specifically, the provisions requiring the qualification with the secretary of state of out-of-state limited liability partnerships transacting business in Texas.

Proposed new §80.1 addresses the filing requirements for registration as a domestic limited liability partnership and clarifies what must be done when the partnership has not obtained a fed-

eral identification number at the time of registration. Proposed new §80.2 sets forth the filing requirements for out-of-state limited liability partnerships qualifying to transact business in Texas and clarifies what must be done when the partnership has not obtained a federal identification number at the time of qualification with the secretary of state. Section 80.3 sets forth the standard of review for limited liability partnership registration and qualification documents. Section 80.4 clarifies the types of documents that may be amended, changed, or corrected and the fee structure for such filings, and explains the ways a qualified foreign limited liability partnership may effect a change to its registered agent or registered office address information. Section 80.5 provides for the termination of a registration when the partnership ceases to exist as a partnership by means of merger or conversion, and establishes the filing requirements for such termination. Section 80.6 explains the procedures followed when the secretary of state revokes the filing of a document when the filing fee for the document was paid by an instrument or credit card that was dishonored when presented for payment. Section 80.7 provides notice to the public that a foreign limited liability partnership that is registered as a foreign limited liability partnership also must comply with the registration and qualification provisions of the Texas Revised Limited Partnership Act.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the proposed new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed actions.

Ms. Flores also has determined that the public benefits anticipated for each of the first five years that the proposed new subchapter and sections are in effect will be that the public will gain a better understanding of the review standards and filing requirements governing the registration and qualification of domestic and out-of-state limited liability partnership and will have rules addressing issues and changes implemented by the 75th Legislature. There will be no fiscal implications for small businesses and no anticipated economic cost to any individual required to comply with the proposed new sections.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas, 78711-3697.

The new sections are proposed under the authority of article 6132b-3.08(b)(15) and article 6132b-10.02, Texas Revised Partnership Act, which give the secretary of state authority to adopt procedural rules on filing limited liability partnership documents under those sections, and §2001.004, Government Code, which requires all state agencies, including the secretary of state, to adopt rules of practice which state the nature and requirements of formal and informal procedures.

The proposed new sections affect the following statutes, articles, or codes: Section 3.08(b), Texas Revised Partnership Act (article 6132b-1) is affected by §§80.1, 80.3, 80.4., 80.5, and 80.6. Section 10.02, Texas Revised Partnership Act (article 6132b-1) is affected by §§80.2-80.7. Section 10.05, Texas Revised Partnership Act (article 6132b-1) is affected by §§80.2 and 80.4.

*§80.1 Application for Registration as a Registered Limited Liability Partnership.*

(a) Initial application. To become a registered limited liability partnership, a partnership must comply with the Texas Revised Partnership Act, Texas Civil Statutes, Article 6132b, §3.08.

The secretary of state has promulgated a form for this purpose; however, use of such form is not mandatory. Applications submitted for filing with the secretary of state must be executed by a majority in interest of the partners or by one or more partners authorized by a majority in interest of the partners and must contain the following information:

- (1) the name of the partnership;
- (2) the federal tax identification number of the partnership;
- (3) the street address of its principal office in this state and outside this state, as applicable;
- (4) the number of partners at the date of application;
- (5) a brief statement of the business in which the partnership engages.

(b) Name of the partnership. The name of the registered limited liability partnership shall contain the words "registered limited liability partnership" or the abbreviation "L.L.P." as the last words or letters of its name. The secretary of state does not review the name of the partnership, or a change of name, to determine whether the name conforms with the entity name availability rules of §§79.30-79.54 of this title (relating to Corporations).

(c) Federal tax identification number. A partnership which has applied for, but not obtained, a federal tax identification number at the time of submission may provide a statement to that effect in its application for registration. Once the partnership has obtained its federal tax identification number, the partnership shall amend its application for registration to provide the identification number required under §3.08(b).

#### §80.2. Statement of Foreign Qualification.

(a) Initial statement. To transact business in Texas, a foreign limited liability partnership must comply with the Texas Revised Partnership Act, Texas Civil Statutes, Article 6132b, §10.02. The secretary of state has promulgated a form for this purpose; however, use of such form is not mandatory. Applications submitted for filing with the secretary of state must be executed by a majority in interest of the partners or by one or more partners authorized by a majority in interest of the partners and must contain the following information:

- (1) the name of the partnership;
- (2) the federal tax identification number of the partnership;
- (3) the state of formation and the date of its initial registration as a limited liability partnership in that state;
- (4) a statement that the foreign limited liability partnership validly exists as a limited liability partnership under the laws of the state of its formation;
- (5) the street address of a partnership office in Texas and the street address of the partnership's chief executive office;
- (6) the street address of its proposed registered office in Texas and the name of its proposed registered agent in Texas at such address;
- (7) a statement that the partnership appoints the secretary of state as its agent for service of process under the circumstances set forth in §10.01(k), Texas Revised Partnership Act;
- (8) the number of partners in Texas at the date of application; and

(9) a brief statement of the business in which the partnership engages.

(b) Name of the partnership. The name of the registered limited liability partnership shall contain the words "registered limited liability partnership" or "limited liability partnership" or the abbreviations "R.L.L.P.," "L.L.P.," "RLLP," or "LLP" as the last words or letters of its name. The secretary of state does not review the name of the partnership, or a change of name, to determine whether the name conforms with the entity name availability rules of §§79.30-79.54 of this title (relating to Corporations).

(c) Federal tax identification number. A partnership which has applied for, but not obtained, a federal tax identification number at the time of submission may provide a statement to that effect in its application for registration. Once the partnership has obtained its federal tax identification number, the partnership shall amend its application for registration to provide the identification number required under §10.02.

(d) Registered Office. The registered office address of the limited liability partnership must include a street or building address for purposes of providing the public with notice of the physical location at which process may be served on the registered agent; a post office box or lock box alone is not a sufficient address for the registered office. The address of a commercial business which provides "private mail box" services is not sufficient as a registered office address, unless the commercial enterprise is the business of the designated registered agent. If the registered office is in a city with a population of less than 5,000, the secretary of state will accept an address other than a street address for the registered office.

(e) Fee. The fee for filing a statement of foreign qualification or a renewal of foreign qualification is \$200 per partner in Texas, but not less than \$200 and not more than \$750.

#### §80.3. Administrative Review.

(a) The secretary of state will file for record a completed, properly executed initial application for registration, statement of foreign qualification, renewal of registration or statement, withdrawal, or articles of amendment when the appropriate filing fee has been remitted and all required information is set forth in the document.

(b) The secretary of state will not determine substantial compliance with the provisions of the Texas Revised Partnership Act, nor will the secretary of state determine whether a domestic limited liability partnership meets the insurance requirements of such Act, §3.08(d).

(c) The date of filing of any limited liability partnership document that satisfies the minimal statutory requirements for filing and for which the filing fee has been paid will be the same date as the date of receipt. If a document does not conform to law, it will be returned to sender. When the document is corrected and resubmitted, the date of filing of the document will be the same date as the date of the last receipt. The date of filing may not be a date prior to the date on which the document is found to comply with the applicable statutory filing requirements.

#### §80.4. Amendment, Change, or Correction.

(a) An application for registration, statement of foreign qualification, renewal, amendment or withdrawal may be amended or corrected by filing articles of amendment in duplicate, executed in the manner of an initial application or qualification, and accompanied by the required filing fee. In the case of a domestic limited liability partnership, the filing fee for an amendment is \$10, plus, if the amendment increases the total number of partners, \$200 for each partner added by the amendment. In the case of a foreign limited

liability partnership, the filing fee for an amendment is \$10, plus, if the amendment increases the total number of partners in this state, \$200 for each partner added by the amendment, but not to exceed \$750.

(b) A foreign limited liability partnership may change its registered agent or registered office address by making an amendment to its statement of foreign qualification pursuant to §10.02(k), Texas Revised Partnership Act or by filing a statement pursuant to §10.05(b) of the Act. The secretary of state has promulgated a form for making an amendment to the statement of foreign qualification for this purpose; however, use of such form is not mandatory.

(c) The secretary of state will not refund any portion of a filing fee upon the subsequent submission and filing of articles of amendment correcting the information upon which the filing fee was based.

#### §80.5. Termination of Registration.

(a) A partnership which has converted to an entity other than a partnership may terminate its registration by providing notice to the secretary of state of its desire to terminate its registration, which should include a certificate from the appropriate filing official or authority evidencing the conversion. A partnership which has filed its articles of conversion with the Corporations Section of the secretary of state may provide an additional statement identifying the name of the converting and converted entity and the date of filing of the articles of conversion in lieu of an official certificate from the secretary of state.

(b) A partnership which is a non-surviving party to a merger may terminate its registration by providing notice to the secretary of state of its desire to terminate its registration, which should include a certificate from the appropriate filing official or authority evidencing the merger. A partnership which has filed the articles of merger with the Corporations Section of the secretary of state may provide an additional statement identifying the names of the parties to the merger and the date of filing of the articles of merger in lieu of an official certificate from the secretary of state.

(c) There is no fee for filing a termination of registration under subsections (a) and (b) of this section.

#### §80.6. Revocation of Document.

The secretary of state may revoke the filing of a document if the fee for the document was paid by an instrument or credit card payment that was dishonored when presented by the state for payment and the partnership fails to pay the fee, plus any additional processing charge authorized by law. The secretary of state will mail notice of the revocation of the document to the partnership's registered office address, or its principal office in this state or outside this state as applicable. A revocation is effective as of the date of filing of the document, but does not affect any prior registration of the partnership. Failure to give or receive notice does not invalidate the revocation.

#### §80.7. Foreign Limited Liability Limited Partnerships.

A foreign limited partnership that is subject to registration under the provisions of §9.02(a) of the Texas Revised Limited Partnership Act and that has the status of a registered limited partnership under the laws of a state other than Texas also must file a statement of foreign qualification under Section 10.02 of the Texas Revised Partnership Act before transacting business in Texas.

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 November 3, 1997.

TRD-9714579

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Subchapter B. Unincorporated Nonprofit Associations

### 1 TAC §80.29

The Office of the Secretary of State proposes an amendment to §80.29, relating to the revocation of the filing of a document when the fee for the document was paid by an instrument or credit card that was dishonored when presented by the secretary of state for payment. The amendment to §80.29 eliminates the need to provide the nonprofit association 30 days within which to pay the fee bringing the procedures in line with similar revocation provisions found in article 7.01C(2) of the Texas Business Corporation Act and article 1396-7.01C(2) of the Texas Non-Profit Corporation Act. In addition, the amended section clarifies where notice of the revocation will be sent. The proposed amendment is necessary to make the rule consistent with procedures followed in the revocation of documents filed by corporate entities.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed section as amended.

Ms. Flores also has determined that for each of the first five years that the section as amended is in effect the public benefits anticipated as a result of enforcing or administering the proposed action will be a more expedient procedure followed by the secretary of state when revoking the filing of nonprofit association documents and a greater uniformity in procedures followed by the secretary of state when revoking the filing of a document which was paid by an instrument or credit card that was dishonored when presented for payment. There will be no fiscal implications for small businesses and no anticipated economic cost to any individual required to comply with the proposed section as amended.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas, 78711-3697.

The section as amended is proposed under the authority of §12(g) of the Texas Uniform Unincorporated Nonprofit Association Act (article 1396-70.01 et. seq.) which gives the secretary of state the authority to adopt procedural rules on filing documents under section 12 of the act.

The proposed amended section affects the following statutes, articles, or codes: Section 12, Texas Uniform Unincorporated Nonprofit Association Act, (article 1396-70.01 et.seq.).

#### *§80.29. Revocation of Statement of Appointment, Amendment, or Cancellation.*

The secretary [Secretary] of state [State] may revoke the filing of a document if the fee for the document was paid by an instrument that was dishonored when presented by the state for payment and the nonprofit association fails to pay the fee [ within 30 days after the

Secretary of State mails notice of the dishonor of the instrument to the nonprofit association at its address in this state or outside this state, as applicable]. The secretary of state shall mail notice of the revocation of the document to the appointed agent of the nonprofit association or to the nonprofit association at its address in this state or outside this state, as applicable. A revocation is effective as of the date of the filing of the document. Failure to give or receive notice does not invalidate the revocation.

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 November 3, 1997.

TRD-9714555

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Chapter 83. Limited Partnership

### Subchapter

#### 1 TAC §§83.1-83.6

*(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 Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Office of the Secretary of State proposes the repeal §§83.1-83.6, relating to limited partnership documents filed with the secretary of state under the provisions of the Texas Uniform Partnership Act (article 6132a). The repeal of these rules is necessary to delete provisions made inapplicable to limited partnership filings with the repeal and expiration of the Texas Uniform Partnership Act on September 1, 1992. New rules are proposed under separate submission in this issue address policies and procedures for limited partnership documents filed pursuant to the Texas Revised Limited Partnership Act (article 6132a-1).

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the repeal is in effect there will be no fiscal implications for state or local government as a result of the proposed action.

Ms. Flores also has determined that for each of the first five years the repeal is in effect the public benefits anticipated as a result of the repeal will be the elimination of rules that are inconsistent with applicable law. There will be no fiscal implications for small businesses as a result of this proposal and no economic cost to an individual required to comply with the proposed action.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas 78711-3697.

The proposed repeal of §§83.1 - 83.6 is submitted under the authority of §2001.004, Government Code, which requires all state agencies, including the secretary of state, to adopt rules of practice which state the nature and requirements of formal and informal procedures.

The proposed repeal does not affect any statutes, articles, or codes.

§83.1. *Applicable Law.*

§83.2. *Requirements.*

§83.3. *Administrative Review.*

§83.4. *Partnership Agreement May Be Filed.*

§83.5. *Foreign Limited Partnerships.*

§83.6. *Fees.*

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 November 3, 1997.

TRD-9714534

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



### Subchapter A. General Provisions

#### 1 TAC §§83.1-83.5

The Office of the Secretary of State proposes new Subchapter A, §§83.1 - 83.5, relating to limited partnership documents filed with the secretary of state under the provisions of the Texas Revised Limited Partnership Act (article 6132a-1.01 et. seq.). The proposed new sections, §§83.1 - 83.5, are necessary to set forth the standards of review for limited partnership filings and to include information regarding specific filing procedures applicable to limited partnership documents filed with the secretary of state under the provisions of the Texas Revised Limited Partnership Act. The new subchapter and sections replace sections, §§83.1-83.5, which relate to filings under the Texas Uniform Limited Partnership Act (now repealed and expired) and that are being repealed under separate submission.

The proposed new §83.1 allows for the filing of the limited partnership agreement when it contains the information required of a certificate of limited partnership under the Texas Revised Limited Partnership Act; section 83.2 clarifies the requirements for a registered agent and registered office address; section 83.3 sets forth the standard of review of limited partnership documents; section 83.4 relates to the computation of the fee imposed for late registration by a foreign limited partnership and provides for a ten day grace period; and §83.5 describes the notice provided to a limited partnership when the secretary of state revokes the filing of a document when the fee for the document was paid by an instrument that was dishonored when presented for payment.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the new subchapter and sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections.

Ms. Flores also has determined that for each of the first five years the repeal is in effect the public benefits anticipated as a result enforcing or administering the new sections will be



that the public will have notice of the standards of review and filing procedures established by the secretary of state for limited partnership documents filed pursuant to the Texas Revised Limited Partnership Act (article 6132a-1). There will be no fiscal implications for small businesses as a result of this proposal and no anticipated economic cost to an individual required to comply with the proposed sections.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas 78711-3697.

The proposed subchapter and sections are proposed under the authority of §2001.004, Government Code, which requires all state agencies, including the secretary of state, to adopt rules of practice which state the nature and requirements of formal and informal procedures.

The proposed repeal affects the following statutes, articles, or codes. Section 83.1 affects §2.01, Texas Revised Limited Partnership Act (article 6132a-1). Section 83.2 affects §1.06, Texas Revised Limited Partnership Act (article 6132a-1). Section 83.4 affects §9.07, Texas Revised Limited Partnership Act (article 6132a-1).

#### §83.1. Partnership Agreement May Be Filed.

A partnership agreement may be filed as a certificate of limited partnership, if it meets the requirements for filing a certificate of limited partnership under section 2.01 of the Texas Revised Limited Partnership Act.

#### §83.2. Registered Agent and Registered Office.

(a) A domestic limited partnership or an out-of-state limited partnership authorized to transact business under the provisions of the Texas Revised Limited Partnership Act is required to have and to maintain a registered office address in Texas and a registered agent for service of process at the registered office address. A limited partnership may not serve as its own registered agent; however, the limited partnership may designate a partner that is an individual resident of Texas, or a Texas corporation, or foreign corporation that has a certificate of authority to transact business in Texas.

(b) The registered office address of the limited partnership must include a street or building address for purposes of providing the public with notice of the physical location at which process may be served on the registered agent; a post office box or lock box alone is not a sufficient address for the registered office. The address of a commercial business which provides "private mail box" services is not sufficient as a registered office address, unless the commercial enterprise is the business of the designated registered agent. If the registered office is in a city with a population of less than 5,000, the secretary of state will accept an address other than a street address for the registered office.

#### §83.3. Administrative Review.

(a) The secretary of state will file for record a limited partnership certificate, amendment, merger, conversion, or cancellation when the secretary of state determines that the document satisfies the minimum statutory requirements for filing with the secretary of state. The secretary of state will not determine whether the person or persons signing the document were in fact authorized to do so on behalf of the limited partnership.

(b) The secretary of state will not reject the filing of a certificate of limited partnership or a certificate of registration by a foreign limited partnership that identifies as one of its general partners an unqualified foreign corporation or limited liability company. Acceptance of the document does not constitute a determination by

the secretary of state that the foreign corporation or limited liability company identified as a general partner has substantially complied with the statutes governing that type of entity.

#### §83.4. Late Registration Fee.

(a) A foreign limited partnership must submit an application for a certificate of registration within 10 days from the date it begins to transact business in Texas. A limited partnership which fails to submit an application for a certificate of registration within 10 days of its beginning date of business shall pay, in addition to the statutory fee for filing the certificate, a fee of \$750 for each year or part of a year since 1987 during which the partnership transacted business without having registered.

(b) The secretary of state cannot waive the late registration fee or establish a maximum late registration fee.

(c) The secretary of state will not refund any portion of the filing fee upon the subsequent submission and filing of a certificate of correction correcting the information upon which the fee was based.

#### §83.5. Revocation of Document.

The secretary of state may revoke the filing of a document, if the fee for the document was paid by an instrument or credit card payment that was dishonored when presented by the state for payment and the partnership fails to pay the fee, plus any additional processing charge authorized by law. Notice of the revocation shall be sent to the partnership's registered office address in Texas. A revocation is effective as of the date of filing of the document. Failure to give or receive notice does not invalidate the revocation.

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 November 3, 1997.

TRD-9714533

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Subchapter B. Periodic Reports

### 1 TAC §§83.21-83.24

The Office of the Secretary of State proposes new Subchapter B, §§83.21 - 83.24, relating to the filing of periodic reports for limited partnerships under the provisions of the Texas Revised Limited Partnership Act (article 6132a-1). Under the provisions of §13.05, Texas Revised Limited Partnership Act, the secretary of state is authorized to require limited partnerships in this state to file a report no more than once every four years. The proposed new subchapter and sections are necessary to clarify and codify the established policies and procedures relating to the filing of the periodic report, and to clarify the consequences for the failure of the limited partnership to file the report when required to do so by the secretary of state.

The proposed new §83.21 specifies the content of the periodic report, explains how changes to the report information are to be made, and what changes can be effected by the filing of the periodic report. Section 83.22 specifies the address to which notices relating to the filing of the periodic report are sent and clarifies that the failure of the limited partnership to receive

notice does not relieve the partnership from the need to file the report. Section 83.23 provides that the secretary of state will not file an amendment submitted by a limited partnership which has forfeited its right to transact business for its failure to file the periodic report. Section 83.24 allows a limited partnership to file a periodic report when not required to do so by the secretary of state, but clarifies that the voluntary filing does not relieve the partnership from the requirement to file the report when directed to do so by the secretary of state.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the new subchapter and sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections.

Ms. Flores also has determined that for each of the first five years the repeal is in effect the public benefits anticipated as a result of enforcing or administering the new sections will be that the public will have notice of the standards of review and filing procedures established by the secretary of state for limited partnership periodic reports filed pursuant to the Texas Revised Limited Partnership Act (article 6132a-1). There will be no fiscal implications for small businesses as a result of this proposal and no anticipated economic cost to an individual required to comply with the proposed sections.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas 78711-3697.

The proposed subchapter and sections are proposed under the authority of §2001.004, Government Code, which requires all state agencies, including the secretary of state, to adopt rules of practice which state the nature and requirements of formal and informal procedures.

The proposed new sections affect the following statutes, articles, or codes. Sections 13.05, 13.06, 13.07, and 13.08, of the Texas Revised Limited Partnership Act (article 6132a-1).

§83.21. Content.

(a) The periodic report required under §13.05 of the Texas Revised Limited Partnership Act includes information on the registered agent and office, principal office, and the names and addresses of the general partners of the partnership. To the extent possible, the secretary of state will print the information previously recorded by the partnership and request the partnership to mark changes to the preprinted information. Changes to the name of the registered agent and changes to the registered office address, principal office address, and the address of a general partner will be recorded in the secretary of state's database.

(b) Changes to the name of the partnership or to the names of general partners cannot be effected through the filing of the periodic report. Although a periodic report which purports to change the name of the limited partnership or that makes changes, additions, and deletions to the names of general partners will be filed by the secretary of state, the secretary of state will not update the record of the limited partnership to evidence the change of name or change in partners. In order to change the name of the partnership or change, add, or delete the name of a general partner, the partnership must file a certificate of amendment to the certificate or registration of limited partnership pursuant to Section 2.02 and Section 9.05 of the Texas Revised Limited Partnership Act, as applicable.

§83.22. Notices.

(a) Notices relating to the filing of a periodic report of a limited partnership under §13.05 of the Texas Revised Limited Partnership Act shall be sent to the registered office address of record with the secretary of state, or in the case of a limited partnership which does not indicate a registered office address, to the last known address or place of business of the limited partnership as it appears on record with the secretary of state.

(b) Notices relating to the forfeiture of right to do business under §13.06 of the Texas Revised Limited Partnership Act shall be sent to the same address specified for the original report, notwithstanding receipt of evidence by the secretary of state that the address specified was an insufficient address or that the mailing of the notice was undeliverable.

(c) The failure of the limited partnership to receive the notices referenced in subsections (a) and (b) of this section does not relieve the limited partnership of the need to file the periodic report pursuant to §13.05 of the Texas Revised Limited Partnership Act or to extend the time within which the report must be filed.

§83.23. Forfeiture of Right to Transact Business.

A limited partnership that fails to file the periodic report required under §13.05 within 30 days from the date that the report is sent by the secretary of state will forfeit its right to transact business in Texas. While forfeited, the limited partnership may not amend its certificate of limited partnership or certificate of registration until it has been relieved of its forfeiture by filing the report. However, the forfeiture of the limited partnership's right to transact business does not prevent the entity from filing a cancellation of its registration.

§83.24. Voluntary Submission of a Periodic Report.

A limited partnership may submit for filing by the secretary of state a periodic report under §13.05 of the Texas Revised Limited Partnership Act when not required to do so by the secretary of state. The voluntary submission of a report under this section does not relieve the limited partnership of the need to file the periodic report or extend the time within which the report must be filed when the report is specifically required from the limited partnership by the secretary of state.

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 November 3, 1997.

TRD-9714536

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



Chapter 93. Trademarks [Trademark Section:  
Practice and Procedure]

Subchapter A. General Information and Correspondence

1 TAC §93.1, §93.2

The Office of the Secretary of State proposes amendments to Chapter 93 for the purpose of implementing the provisions of House Bill 2569 which was enacted by the 75th Legislature

and became effective on September 1, 1997, and for the purposes of redesignating the chapter and reorganizing the chapter into subchapters, clarifying information regarding certain procedures, and for replacing certain terminology used to identify the organizational section responsible for the processing, examination, and registration of trademarks. For these purposes it is necessary to amend Chapter 93, Trademarks, §§93.1-93.2; 93.41-93.43; 93.51-93.55; 93.61-93.62; 93.66-93.67; 93.91; 93.93; 93.101; 93.112-93.113; 93.114; 93.117; 93.118; 93.131-93.133; 93.153; 93.152; 93.163; and 93.181-93.183.

House Bill 2569, Chapter 248, Acts, 75th Legislature, Regular Session (1997), made various amendments to Chapter 16 of the Business & Commerce Code relating to examination, registration, and recordation of trademark applications and other related documents. Many of the amendments made to Subchapter B of Chapter 16 codified present examination and review procedures established by the administrative rules found in Chapter 93. House Bill 2569 also deleted the requirement that an application for registration or renewal be verified by the applicant or registrant. Chapter 16 also was amended by House Bill 2569 to allow for the recordation of instruments, other than assignments, that reflect a change of name of the registrant or transfer of ownership. In addition, Chapter 16 was amended take into account business entities, other than corporations, that may make an application to registered under the act.

Chapter 93 is amended to delete references to an organization section identified as the trademark section or trademark office and to replace the terminology with terms that more accurately describe the organizational structure within the context of the rules. Additionally, the undesignated head relating to Assignments of Marks is amended to include reference to the recordation of other instruments as provided by the passage of House Bill 2569. The secretary of state also proposes to amend the Chapter by organizing the undesignated heads as subchapters A through N, in conformity with the structure of other chapters within the Code.

Section 93.1 is amended to delete references to the phrase trademark office as there is no section of the secretary of state specifically identified as such. Section 93.2 is amended to delete references to the trademark office and to clarify the basis of the written record.

Section 93.41 is amended to clarify that an attorney may be used to represent an applicant in matters relating to an application for renewal of a trademark and assignment of a trademark registration, as well as an application to register a trademark. Section 93.42 and §93.43 are amended to delete references to the trademark office.

Section 93.51 and §93.53 are amended to conform the rule with the changes implemented by House Bill 2569; specifically, clarifying that the fee associated with the submission of an application is a processing fee and not a filing fee. Section 93.52 is amended to delete references to the trademark office.

Section 93.54 is amended to address changes in procedure and factors considered by the trademark examiners when establishing priority of examination of conflicting pending applications which have the same date of receipt. The proposed amendment to this section is made necessary by the passage of House Bill 2569 which eliminated the verification requirement for applications and which effectively removed a means by which the date of execution of the document could be determined.

Section 93.55 is amended to clarify that an application will receive a filing date once the mark is determined to meet the standards of registration under section 16.08 of the Texas Business & Commerce Code. Section 93.55 also is amended to conform the rule to changes implemented by House Bill 2569; specifically, clarifying that the fee associated with the submission of an application is a fee for processing the application and not a fee for the filing or registration of the application.

Section 93.61 and §93.62 are amended to reflect changes implemented by House Bill 2569 which amended the provisions regarding the information required in an application to register a trademark and deleted the requirement that an application be verified by the applicant.

Section 93.66 and §93.67 are amended to delete references to the trademark office and to make other conforming changes.

Section 93.91 is amended to clarify that a printer's proof or reproduction of a drawing of the mark or logo is insufficient as an example of the actual use of the mark on the goods or in the advertising of the services.

Section 93.93 is amended to incorporate information regarding acceptable specimens or examples of use in connection with computer programs or computer services.

Section 93.101 is amended to incorporate changes in classification made to the International Classification of Goods and Services utilized by the United States Patent and Trademark Office and to incorporate information regarding the classification of certain computer services.

Section 93.112 and §93.113 are amended to delete references to the trademark office and replace the use of the term with more appropriate terminology.

Section 93.117 is amended to clarify the time during which an application may be expressly abandoned and to delete references to the trademark office.

Section 93.131 and §93.132 are amended to implement House Bill 2569 which deleted the requirement that an application for registration be verified by the applicant. The sections were also amended to delete references to the trademark office. Section 93.133 is amended for purposes of clarifying the manner in which information in an application is to be amended.

Section 93.153 is amended to delete references to the trademark office.

Section 93.163 is amended to clarify the information to be provided by a registrant upon renewal when the mark is not in use at the time of renewal and to implement the changes enacted by the passage of House Bill 2569; specifically, the elimination of the verification requirement for an application to renew a trademark registration.

Section 93.181 which relates to the voluntary cancellation of a trademark registration by the registrant is amended to delete the requirement that the registrant provide an affidavit regarding the loss of the original certificate if the original cannot be returned as required by the rule. This amendment is in conformity with the changes implemented by House Bill 2569. Section 93.182 is amended to delete reference to a statutory provision that was repealed by the passage of House Bill 2569 and to include a reference to an administrative cancellation upon receipt of evidence of a judicial cancellation. Section 93.183 is amended to delete provisions that are redundant of the statute and to

clarify that the secretary of state is not a necessary party to a judicial cancellation of a registration.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections as amended.

Ms. Flores also has determined that for each of the first five years that the sections as amended are in effect the public benefits anticipated as a result of enforcing or administering the proposed actions will be that the public will gain a more thorough understanding of the examination process by the adoption of more informative rules that are in conformity with the changes implemented by House Bill 2569. There will be no fiscal implications for small businesses and no anticipated economic cost to any individual required to comply with the proposed actions.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas, 78711-3697.

The sections as amended are proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed amended sections: Section 16.09, Business & Commerce Code—§93.101. Section 16.10, Business & Commerce Code—§93.1; §93.2; §§93.41-93.43; §§93.51-93.55; §§93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.105, Business & Commerce Code—§§93.51-93.55; §§93.61-93.62; §§66-93.67; §93.91; §93.93; §93.101. Section 16.106, Business & Commerce Code—§§93.131-93.133. Section 16.108, Business & Commerce Code—§93.54. Section 16.109, Business & Commerce Code—§§93.112-93.113; §93.117; §§93.131-93.133. Section 16.11, Business & Commerce Code—§93.55.; §93.153. Section 16.14, Business & Commerce Code—§92.1; §93.2; §§93.41-93.43; §93.163. Section 16.16, Business & Commerce Code—§§93.181-93.183. Section 16.25, Business & Commerce Code—§§93.182-93.183. Section 16.31, Business & Commerce Code—§93.62; and §93.163.

#### § 93.1. Address.

All letters and other communications relating to trademark matters [the trademark office] should be addressed to: Secretary of State of Texas Corporations Section: Trademark Registry [Office] P.O. Box 13697 Austin, Texas 78711-3697. Correspondence is not received [in the trademark office] on Saturdays, Sundays, or legal holidays.

#### §93.2. Business To Be Transacted in Writing.

Unless otherwise specifically stated in the rules of this chapter, all [All] business [with the trademark office] should be transacted in writing. The action of the secretary of state [trademark office] will be based [exclusively] on the written record [in the office]; no consideration will be given to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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 November 3, 1997.

TRD-9714631

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586

## Subchapter B. Representation

### 1 TAC §§93.41–93.43

The sections as amended are proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed amended sections: Section 16.09, Business & Commerce Code—§93.101. Section 16.10, Business & Commerce Code—§93.1; §93.2; §§93.41-93.43; §§93.51-93.55; §§93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.105, Business & Commerce Code—§§93.51-93.55; §§93.61-93.62; §§66-93.67; §93.91; §93.93; §93.101. Section 16.106, Business & Commerce Code—§§93.131-93.133. Section 16.108, Business & Commerce Code—§93.54. Section 16.109, Business & Commerce Code—§§93.112-93.113; §93.117; §§93.131-93.133. Section 16.11, Business & Commerce Code—§93.55.; §93.153. Section 16.14, Business & Commerce Code—§92.1; §93.2; §§93.41-93.43; §93.163. Section 16.16, Business & Commerce Code—§§93.181-93.183. Section 16.25, Business & Commerce Code—§§93.182-93.183. Section 16.31, Business & Commerce Code—§93.62; and §93.163.

§ 93.41. *Representation [Applications May Be Represented] by an Attorney.*

The owner of a trademark may file the application for registration of the mark or assignment or renewal of registration, or an attorney may represent the owner. The secretary of state [Office of the Secretary of State] cannot aid in the selection of an attorney.

§93.42. *Recognition for Representation.*

When an attorney at law acting in a representative capacity appears in person or signs a paper in a trademark matter [practice before the trademark office] the personal appearance or signature shall constitute a representation to the secretary of state that the attorney is authorized and qualified to represent the particular party. Further proof of authority to act in a representative capacity may be required.

§93.43. *Correspondence with Attorney or Agent.*

The secretary of state [trademark office] will correspond with the attorney or other recognized person representing the applicant. The secretary of state [trademark office] will not undertake [dual] correspondence with more than one attorney or agent. If more than one attorney or agent appears, the secretary of state [trademark office] will correspond with the last one appearing, unless otherwise requested.

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 November 3, 1997.

TRD-9714632

Clark Kent Ervin  
Assistant Secretary of State  
Office of the Secretary of State  
Earliest possible date of adoption: December 8, 1997  
For further information, please call: (512) 463-5586



## Subchapter C. Application for Registration

### 1 TAC §§93.51–93.55

The sections as amended are proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed amended sections: Section 16.09, Business & Commerce Code—§93.101. Section 16.10, Business & Commerce Code—§93.1; §93.2; §§93.41-93.43; §§93.51-93.55; §§93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.105, Business & Commerce Code—§§93.51-93.55; §§93.61-93.62; §§66-93.67; §93.91; §93.93; §93.101. Section 16.106, Business & Commerce Code—§§93.131-93.133. Section 16.108, Business & Commerce Code—§93.54. Section 16.109, Business & Commerce Code—§§93.112-93.113; §93.117; §93.131-93.133. Section 16.11, Business & Commerce Code—§93.55.; §93.153. Section 16.14, Business & Commerce Code—§92.1; §93.2; §§93.41-93.43; §93.163. Section 16.16, Business & Commerce Code—§§93.181-93.183. Section 16.25, Business & Commerce Code—§§93.182-93.183. Section 16.31, Business & Commerce Code—§93.62; and §93.163.

#### §93.51. *Date of Receipt.*

(a) Applications accompanied by the appropriate [filing] fee will be given a date of receipt for purpose of processing as received by the secretary of state [Office of the Secretary of State]. The application will be held pending final determination of the mark's registrability by an examiner.

(b) Applications delivered without the appropriate [filing] fee will not be accorded a date of receipt for purposes of processing and will be returned to sender [the remitter].

#### §93.52. *Papers Not Returnable.*

After an application is filed the papers will not be returned for any purpose. The secretary of state [office] will furnish copies to the applicant upon request and payment of the copy cost.

#### §93.53. *[Filing] Fee Not Refundable*

The [filing] fee accompanying each trademark application, renewal, or assignment is not refundable, regardless of whether the application, renewal, or assignment is subsequently approved, rejected, or abandoned.

#### §93.54. *Conflicting Pending Applications.*

(a) Once an application is given a date of receipt, pursuant to §93.51 of this title (relating to Date of Receipt), the secretary of state [trademark office] will not file any subsequently received application which is likely to cause confusion or mistake, or to deceive because, when applied to the applicant's goods or services, it resembles a prior received unabandoned application. The subsequently received application will be given a date of receipt; it will be held pending until the secretary of state [trademark office] makes final determination of the registration of the prior received application.

(b) When applications have the same date of receipt, pursuant to §93.51 of this title (relating to Date of Receipt), the application with the later date of execution will be held pending a final determination of the application with the earlier date of execution. An application that does not specify a date of execution will be presumed to have been executed no earlier than its post mark date.  
(c) When applications have the same date of receipt and the same date of execution, the trademark examiner will give priority to the application stating the earliest date of first use in this state.

#### § 93.55. *Requirements for Receiving a Filing Date.*

(a) Materials submitted for registration of a mark registrable under §16.08 of the Texas Business & Commerce Code will receive a filing date only if each of the following items is received:

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

(4) the application [filing] fee for at least one class of goods or services.

(b) Compliance with one or more of the rules relating to the elements specified in subsection (a) of this section may be required before the application is filed [further processed].

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 November 3, 1997.

TRD-9714633

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Subchapter D. The Written Application

### 1 TAC §§93.61–93.62, 93.66, 93.67

The sections as amended are proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed amended sections: Section 16.09, Business & Commerce Code—§93.101. Section 16.10, Business & Commerce Code—§93.1; §93.2; §§93.41-93.43; §§93.51-93.55; §§93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.105, Business & Commerce Code—§§93.51-93.55; §§93.61-93.62; §§66-93.67; §93.91; §93.93; §93.101. Section 16.106, Business & Commerce Code—§§93.131-93.133. Section 16.108, Business & Commerce Code—§93.54. Section 16.109, Business & Commerce Code—§§93.112-93.113; §93.117; §93.131-93.133. Section 16.11, Business & Commerce Code—§93.55.; §93.153. Section 16.14, Business & Commerce Code—§92.1; §93.2; §§93.41-93.43; §93.163. Section 16.16, Business & Commerce Code—§§93.181-93.183. Section 16.25, Business & Commerce Code—§§93.182-93.183. Section 16.31, Business & Commerce Code—§93.62; and §93.163.

#### §93.61. *Application To Be Clear and Legible.*

The application must be in English. All documents must be clear and legible, written with black ink on white paper, so that clear microfilm

copies may be made. The application should be written on only one side of the paper. Use of the application form promulgated by the secretary of state is recommended, but not mandatory. [The trademark office prefers that applicants use the secretary of state's prescribed form].

§93.62. *Execution Requirements [ Application To Be Signed and Sworn to by Applicant].*

The applicant or applicant's [his] agent must sign and [verify (swear to the truth of)] indicate the date of execution of the application. A corporate officer should sign [ and verify] an application made by a corporate applicant. An authorized officer, manager, or member should sign an application made by a limited liability company. Only one general partner need sign an application by a partnership. An application made by a joint venture must be signed by each party to the venture, unless the record indicates that the person signing the application is duly authorized to act on behalf of the venture and is knowledgeable concerning the statements contained in the application.

§ 93.66. *Use by Predecessor or by Related Companies.*

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

(c) The trademark examiner [trademark office ] may inquire into the relationship and may require appropriate evidence showing that the use by related companies inures to the benefit of the applicant.

§ 93.67. *Proof of Distinctiveness.*

(a) An applicant may seek registration of a mark otherwise unregistrable by reason of the Texas Business & [and] Commerce Code, §16.08(a)(5)(A), (B), or (C) which the applicant believes has become distinctive as applied to the applicant's goods or services. To support the claim of distinctiveness the applicant may submit sworn affidavits, depositions, or other evidence showing duration, extent, and nature of use of the mark. The applicant also may submit evidence of advertising expenditures made in connection with the mark; the evidence should identify the types of media and should include typical advertisements. Additional evidence may include affidavits, letters, or statements from the trade or public.

(b) An applicant may seek registration of a mark otherwise unregistrable by reason of the Texas Business & [and] Commerce Code, §16.08(a)(5)(A), (B), or (C), which the applicant believes has become distinctive of the applicant's goods or services because of the applicant's substantially exclusive and continuous use for the five years preceding the date on which the applicant filed its application for registration. Sworn statements in the application may, in appropriate cases, be accepted as prima facie evidence of distinctiveness. The trademark examiner [office], however, may require further evidence.

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 November 3, 1997.

TRD-9714634

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



Subchapter

## The Written Application

### 1 TAC §93.63

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

The Office of the Secretary of State proposes the repeal of §§93.63; 93.114; and 93.154 relating to filing requirements and examination procedures for trademark documents submitted to the secretary of state. The repeal of these sections is necessary in order to delete provisions that are no longer necessary or are made inapplicable due to the passage of House Bill 2569 by the 75th Legislature, effective September 1, 1997.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the repeal is in effect there will be no fiscal implications for state or local government as a result of the proposed action.

Ms. Flores also has determined that for each of the first five years the repeal is in effect the public benefits anticipated as a result of the repeal will be the elimination of rules that are redundant of or inconsistent with applicable law. There will be no fiscal implications for small businesses as a result of this proposal and no economic cost to an individual required to comply with the proposed action.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas 78711-3697.

The proposed repeals are submitted under the authority of §16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The proposed repeals affect the following code provisions: Section 93.63–Section 16.10, Business & Commerce Code. Section 93.114–Section 16.09, Business & Commerce Code. Section 93.154–Section 16.19, Texas Business & Commerce Code.

§93.63. *Requirements for Application.*

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 November 3, 1997.

TRD-9714635

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Subchapter D. The Written Application

### 1 TAC §93.63

The Office of the Secretary of State proposes new §§93.63, 93.103, 93.114, 93.118, 93.154, 93.172 and 93.184, relating to trademarks, for the purpose of implementing the provisions of House Bill 2569, Chapter 248, Acts, 75th Legislature, Regular

Session (1997), effective September 1, 1997, and for the purposes of addressing certain issues and clarifying information regarding certain procedures not previously addressed by rule. For these purposes it is necessary to propose new §§93.63, 93.103, 93.114, 93.118, 93.154, 93.172, and 93.184 to Chapter 93.

House Bill 2569, Chapter 248, Acts, 75th Legislature, Regular Session (1997), made various amendments to Chapter 16 of the Business & Commerce Code relating to examination, registration, and recordation of trademark applications and other related documents. Among other changes, House Bill 2569 deleted the requirement that an application for registration or renewal be verified by the applicant or registrant and amended Chapter 16 to allow for the recordation of instruments, other than assignments, that reflect a change of name of the registrant or transfer of ownership.

New §§93.63, 93.114, and 93.154 replace sections concurrently proposed for repeal and are proposed to address issues raised by the passage of House Bill 2569 and to clarify existing policy relating to the examination of trademark applications by the secretary not previously addressed by rule. New §§93.103, 93.118, 93.172, and 93.184 are proposed new to implement the provisions of House Bill 2569 and to clarify existing policy relating to the examination of trademark applications by the secretary not previously addressed by rule.

Section 93.63 provides general criteria for drafting an acceptable description of goods or services in connection with which a mark is sought for registration. Common errors of the type described by the section give rise to technical objections to registration being raised by the trademark examiner. The direction provided by the new section may reduce the incidence of rejection of a trademark application on the basis of an unacceptable description of goods or services.

New §93.103 is proposed to provide information in relation to the appropriate classification of computer services. The increase in applications for trademarks for computer related goods and services makes it necessary to provide guidelines for the classification of such goods or services, and to require greater specificity in the descriptions for such goods or services for purposes of examination in determining likelihood of confusion with existing registrations.

Section 93.114 clarifies the circumstances under which factual information from third parties regarding the registrability of a mark undergoing examination by the secretary of state will be made part of the record by the secretary of state. The section also clarifies that third party objections to registration that are merely adversarial in nature are inappropriate and are to be resolved judicially in a suit between the parties.

Section 93.118 clarifies that a final action or final decision of the secretary of state that may be judicially reviewed pursuant to §16.24, Business & Commerce Code is limited to a suit by an applicant or registrant seeking judicial review of the refusal of the secretary of state to register or renew the registration of a trademark, and does not include the judicial review of a registration issued by the secretary of state.

New §93.154 and §93.172 implement the provisions of House Bill 2569; specifically the provisions providing for the recordation of instruments relating to the transfer of ownership or change of name of the registrant, other than an assignment and provides. Section 93.154 sets forth the requirements for requesting a new

certificate of registration in the new name of the registrant or in the name of the transferee. Section 93.172 establishes the filing requirements and procedures for recordation of an instrument relating to the transfer of ownership of a mark, other than an assignment.

New §93.184 describes the revocation of filing procedures followed by the secretary of state when the fee for the trademark document was paid with an instrument or credit card that was dishonored when presented by the secretary of state for payment. The procedures and notice of revocation provided conform with the revocation of the filing by the secretary of state of corporate documents under similar circumstances.

Carmen Flores, Legal Counsel, Statutory Filings Division, has determined that for each year of the first five years that the proposed new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections.

Ms. Flores also has determined that for each of the first five years that the new sections are in effect the public benefits anticipated as a result of enforcing or administering the proposed actions will be that the public will gain a more thorough understanding of the examination process by the adoption of more informative rules that are in conformity with the changes implemented by House Bill 2569. There will be no fiscal implications for small businesses and no anticipated economic cost to any individual required to comply with the proposed actions.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas, 78711-3697.

The new sections are proposed under the authority of §16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed new sections: Section 93.63–Section 16.10, Business & Commerce Code. Section 93.103–Sections 16.09 and 16.10, Business & Commerce Code. Section 93.118–Sections 16.109 and 16.24, Business & Commerce Code. Section 93.154–Section 16.20, Business & Commerce Code. Section 93.172–Sections 16.15 and 16.19, Business & Commerce Code. Section 93.184–Section 16.11, Business & Commerce Code.

§93.63. Description of Goods or Services.

(a) The application must clearly and concisely describe the goods or services sold or provided by the applicant at the time of submission of the application. The description of goods or services must be limited to those goods or services that are classified under the same class heading (§93.101 of this Title).

(b) The description of applicant's goods or services shall not include a reference to a federally or state registered trademark or service mark, but must use common or generic terms or phrases to describe applicant's goods or services.

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 November 3, 1997.

TRD-9714519

Clark Kent Ervin  
Assistant Secretary of State  
Office of the Secretary of State  
Earliest possible date of adoption: December 8, 1997  
For further information, please call: (512) 463-5586

## Subchapter F. Specimens

### 1 LTAC §93.91, §93.93

The sections as amended are proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed amended sections: Section 16.09, Business & Commerce Code—§93.101. Section 16.10, Business & Commerce Code—§93.1; §93.2; §§93.41-93.43; §§93.51-93.55; §§93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.105, Business & Commerce Code—§§93.51-93.55; §§93.61-93.62; §§66-93.67; §93.91; §93.93; §93.101. Section 16.106, Business & Commerce Code—§§93.131-93.133. Section 16.108, Business & Commerce Code—§93.54. Section 16.109, Business & Commerce Code—§§93.112-93.113; §93.117; §§93.131-93.133. Section 16.11, Business & Commerce Code—§93.55.; §93.153. Section 16.14, Business & Commerce Code—§92.1; §93.2; §§93.41-93.43; §93.163. Section 16.16, Business & Commerce Code—§§93.181-93.183. Section 16.25, Business & Commerce Code—§§93.182-93.183. Section 16.31, Business & Commerce Code—§93.62; and §93.163.

#### § 93.91. Inclusion in Application.

(a) The application must include two specimens or facsimiles of the trademark or service mark as it is used on or in connection with the goods or services in Texas.

(b) A specimen which is merely a printer's proof or reproduction of the drawing submitted to comply with §93.81 of this Title will not be considered to be a specimen of trademark or service mark use.

#### §93.93. Specimens in the Case of a Service Mark.

(a) (No change.)

(b) In the case of service marks not used in printed or written form, the secretary of state may accept as specimens conventional audio or video recordings, computer diskettes, or CD-ROM disks. The secretary of state may also accept print-outs of computer monitor screens that show use of service marks used in connection with computer-related services (including services provided on a global computer network).

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 November 3, 1997.

TRD-9714636

Clark Kent Ervin

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Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586

## Subchapter G. Classification

### 1 TAC §93.101

The sections as amended are proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed amended sections: Section 16.09, Business & Commerce Code—§93.101. Section 16.10, Business & Commerce Code—§93.1; §93.2; §§93.41-93.43; §§93.51-93.55; §§93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.105, Business & Commerce Code—§§93.51-93.55; §§93.61-93.62; §§66-93.67; §93.91; §93.93; §93.101. Section 16.106, Business & Commerce Code—§§93.131-93.133. Section 16.108, Business & Commerce Code—§93.54. Section 16.109, Business & Commerce Code—§§93.112-93.113; §93.117; §§93.131-93.133. Section 16.11, Business & Commerce Code—§93.55.; §93.153. Section 16.14, Business & Commerce Code—§92.1; §93.2; §§93.41-93.43; §93.163. Section 16.16, Business & Commerce Code—§§93.181-93.183. Section 16.25, Business & Commerce Code—§§93.182-93.183. Section 16.31, Business & Commerce Code—§93.62; and §93.163.

#### §93.101. Classification of Goods and Services.

(a) In accordance with the Texas Business & ~~and~~ Commerce Code, §16.09(d), the secretary of state ~~[trademark office]~~ uses the international classification of goods and services used by the United States Patent and Trademark Office. That classification is set forth in this section. The classification shall not limit or extend ~~[extent]~~ an applicant's rights.

(b) The classes of goods and services are as follows:

(1)-(34) (No change.)

(35) advertising and business: retail store services; distributorship services; advertising agencies; accounting, employment agencies; mail, commercial, and newspaper advertising; printing; telephone answering; promotional activities; data processing;

(36)-(41) (No change.)

(42) miscellaneous: includes all services not otherwise classified. Computer ~~[Retail store services; computer]~~ services, programming, time-sharing, engineering of hardware, providing multiple-user access to a global computer information network for the transfer and dissemination of a wide range of information, or leasing or providing access time to computer databases/web sites/home pages of others; detective agencies; drafting; funeral establishments; hotels, motels, restaurants, catering; laboratory or psychological testing; professional research, planning, development, or consultation; beauticians; photography; charitable organizations; trade associations; utility suppliers. Services of renting or inspecting specific goods are classified according to where the goods are most likely to be in use, e.g., rental of vehicles (Class 39).

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 November 3, 1997.

TRD-9714637



Clark Kent Ervin  
Assistant Secretary of State  
Office of the Secretary of State  
Earliest possible date of adoption: December 8, 1997  
For further information, please call: (512) 463-5586

## 1 TAC §93.103

The new section is proposed under the authority of §16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed new sections: Section 93.63–Section 16.10, Business & Commerce Code. Section 93.103–Sections 16.09 and 16.10, Business & Commerce Code. Section 93.118–Sections 16.109 and 16.24, Business & Commerce Code. Section 93.154–Section 16.20, Business & Commerce Code. Section 93.172–Sections 16.15 and 16.19, Business & Commerce Code. Section 93.184–Section 16.11, Business & Commerce Code.

### §93.103. Classification of Computer Services.

(a) An activity that consists of a service that ordinarily falls within Classes 35, 36, 37, 39, 40, and 41, and that is provided by means of a global computer network, is classified in the class where the underlying service is classified. For example, on-line banking services is classified under the same class as banking services; i.e., Class 36.

(b) A publication that is down-loadable from a computer network is considered a service rather than a product, since no hard goods are received from the supplier. The service provided is the service of providing the publication on a global computer network. Such services are classified under Class 42. The function or subject matter of the publication must be specified in applicant's description of services.

(c) Computer software that is down-loadable from a computer network or a remote computer site is classified as a good in Class 9. The function of the program must be specified in the identification of the goods.

(d) An activity that consists of providing information by means of a global computer network is classified in the class of the information subject. The informational or substantive content of the web site or home page must be specified. If an entity provides information in a wide variety of fields, this must be reflected in the identification of the services and is classified in Class 42.

(e) The terms "Internet" and "World Wide Web" should be avoided in identifications of goods or services. Language such as "global computer information network" should be used in place of the term "Internet." Phrases such as "web sites," "web pages," "home pages," or "global computer information network sites" may be used in place of the phrase "World Wide Web."

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 November 3, 1997.

TRD-9714520

Clark Kent Ervin  
Assistant Secretary of State

Office of the Secretary of State  
Earliest possible date of adoption: December 8, 1997  
For further information, please call: (512) 463-5586

## Subchapter H. Examination of an Application and Action by Applicants

### 1 TAC §§93.112-93.113, 93.117

The sections as amended are proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed amended sections: Section 16.09, Business & Commerce Code–§93.101. Section 16.10, Business & Commerce Code–§93.1; §93.2; §§93.41-93.43; §§93.51-93.55; §§93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.105, Business & Commerce Code–§§93.51-93.55; §§93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.106, Business & Commerce Code–§§93.131-93.133. Section 16.108, Business & Commerce Code–§93.54. Section 16.109, Business & Commerce Code–§§93.112-93.113; §93.117; §§93.131-93.133. Section 16.11, Business & Commerce Code–§93.55.; §93.153. Section 16.14, Business & Commerce Code–§92.1; §93.2; §§93.41-93.43; §93.163. Section 16.16, Business & Commerce Code–§§93.181-93.183. Section 16.25, Business & Commerce Code–§§93.182-93.183. Section 16.31, Business & Commerce Code–§93.62; and §93.163.

### §93.112. Period for Response.

A written response must be received by the secretary of state [trademark office] within 60 days from the date of mailing of any action by an examiner. The response may be made with or without amendment and include proper action by the applicant as the nature of the action and the case may require.

### §93.113. Suspension of Action [by the Trademark Office]

(a) Upon written request of the applicant, the secretary of state [trademark office] may suspend action for a period of up to six months, if a proceeding is pending before the United States Patent and Trademark Office or a court which is relevant to the issue of registrability of the applicant's mark. An applicant's written request for a suspension of action under this section filed within the 60-day response period may be considered responsive to an examiner's action.

(b) The request should include the following information:

(1) (No change.)

(2) a statement that the applicant requests suspension of the trademark examination process [trademark office action ];

(3) (No change.)

(4) a brief statement of the relevance of the pending proceeding to the application before the trademark examiner [office].

(c) No later than upon request for suspension, the applicant should address all [trademark office] objections to registration other than that on which the suspension is based.

(d) The trademark examiner [trademark office ] shall send written notice of the acceptance or rejection of the request to the

applicant. If the examiner [office] accepts the request, the examiner [office] shall make appropriate notations on the application file.

(e) The applicant shall notify the secretary of state [trade-mark office] within 20 days of the resolution of any proceeding.

(f) If the proceeding remains pending at the end of the initial or any subsequent suspension period, the applicant shall provide written notice of this fact to the secretary of state [trademark office]. The secretary of state [trademark office] may suspend action for an additional period of up to six months. If the applicant does not provide notice by the end of the initial or any subsequent suspension period, the application will be deemed abandoned.

*§93.117. Express Abandonment.*

An applicant may expressly abandon an application during the course of the examination process by executing and filing a written abandonment with the secretary of state [trademark office].

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 November 3, 1997.

TRD-9714611

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Examination of an Application and Action by Applicants

### 1 TAC §93.114

*(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 Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The proposed repeal is submitted under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The proposed repeal affects the following code provisions: Section 93. Section 16.10, Business & Commerce Code. Section 93.114–Section 16.09, Business & Commerce Code. Section 93.154–Section 16.19, Texas Business & Commerce Code.

*§93.114. Reexamination.*

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 November 3, 1997.

TRD-9714612

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586

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## Subchapter H. Exemption of an Application and Action by Applicants

### 1 TAC §93.114, §93.118

The new sections are proposed under the authority of §16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed new sections: Section 93.63–Section 16.10, Business & Commerce Code. Section 93.103–Sections 16.09 and 16.10, Business & Commerce Code. Section 93.118–Sections 16.109 and 16.24, Business & Commerce Code. Section 93.154–Section 16.20, Business & Commerce Code. Section 93.172–Sections 16.15 and 16.19, Business & Commerce Code. Section 93.184–Section 16.11, Business & Commerce Code.

*§93.114. Ex parte Communications.*

(a) Except as otherwise provided in subsection (b) of this section, action of the trademark registry will be based upon the written record developed by the applicant and the trademark examiner. Communications from third parties in opposition to the registration of a pending application which are adversarial in nature are inappropriate and will not be considered part of the record by the trademark examiner. Objections to registration of this nature should be resolved judicially pursuant to §16.25, Business & Commerce Code.

(b) Communication from a third party which brings to the attention of the trademark registry facts or information bearing upon the registrability of the mark because of the generic or descriptive nature of the mark may be made part of the record for consideration along with all other facts available to the examiner. Before any of the factual information can be made part of the record, the communication must be in writing and contain proof and support of the information provided.

*§93.118. Judicial Review of Final Action of the Secretary of State.*

(a) An applicant or registrant may seek judicial review of the refusal of the secretary of state to register a trademark or renew the registration of a trademark by bringing suit in a district court of Travis County, pursuant to §16.24 of the Texas Business & Commerce Code.

(b) A final action or final decision of the secretary of state which may be judicially reviewed pursuant to §16.24 of the Texas Business & Commerce Code does not include the registration of a trademark by the secretary of state. A person seeking cancellation of a trademark registered by the secretary of state may bring suit to cancel the registration pursuant to §16.25 of the Texas Business & Commerce Code.

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 November 3, 1997.

TRD-9714521

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Subchapter I. Amendments

### 1 TAC §§93.131-93.133

The sections as amended are proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed amended sections: Section 16.09, Business & Commerce Code—§93.101. Section 16.10, Business & Commerce Code—§93.1; §93.2; §§93.41-93.43; §§93.51-93.55; §§93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.105, Business & Commerce Code—§§93.51-93.55; §§93.61-93.62; §§66-93.67; §93.91; §93.93; §93.101. Section 16.106, Business & Commerce Code—§§93.131-93.133. Section 16.108, Business & Commerce Code—§93.54. Section 16.109, Business & Commerce Code—§§93.112-93.113; §93.117; §§93.131-93.133. Section 16.11, Business & Commerce Code—§93.55.; §93.153. Section 16.14, Business & Commerce Code—§92.1; §93.2; §§93.41-93.43; §93.163. Section 16.16, Business & Commerce Code—§§93.181-93.183. Section 16.25, Business & Commerce Code—§§93.182-93.183. Section 16.31, Business & Commerce Code—§93.62; and §93.163.

#### §93.131. Amendments to Application.

(a) The application may be amended to correct informalities, or to avoid objections made by the trademark examiner [office], or for other reasons arising in the course of examination. Amendments to the dates of use [are made only by sworn affidavit; an examiner] may require additional evidence. An applicant cannot amend the dates of first use to indicate a date subsequent to the date of receipt of the application.

(b) Additions to the specified goods or services will not be permitted unless the mark was in actual use on all of the proposed additional goods or services at the time the application was filed. The examiner may require additional specimens (or facsimiles) and a supplemental statement [sworn affidavit] by the applicant.

(c) [An applicant may not amend a verification or declaration. A substitute or supplemental verification must be filed to correct a faulty or defective verification.]

[(d)] An examiner may require the submission of a new application and [filing] fee when proposed amendments substantially change the nature of the mark.

#### §93.132. Amendments to Description or Drawing.

The trademark examiner [office] will permit amendments to the description or drawing of the mark only if warranted by the specimens or facsimiles as originally filed. Amendments to the description or drawing supported by additional specimens may require an additional statement signed by the applicant [a sworn affidavit] alleging that the mark shown in the amended drawing was in actual use prior to the date of receipt [filing date] of the application.

#### §93.133. Form of Amendment.

(a) In every amendment the applicant must indicate the exact word or words to be stricken from [out] or inserted in the application. The applicant must indicate precisely where the insertion or deletion is to occur [it is inserting or deleting the words]. Additions

or insertions on the application must be made by the applicant, applicant's agent, or attorney.

(b) (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 November 3, 1997.

TRD-9714616

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Subchapter K. Certificate

### 1 TAC §93.152

*(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 Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The proposed action does not affect any statutes, articles, or codes.

#### §93.152. Correction of Mistake by Trademark Office.

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 November 3, 1997.

TRD-9714626

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



The new rule is proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The proposed action does not affect any statutes, articles, or codes.

#### §93.152. Correction of Record.

(a) If a registrant set forth incorrectly its name or state of organization in the original application for registration or application for renewal of registration, the registrant may provide evidence of such mistake or error in execution and request that the record regarding the registered trademark be corrected. If the trademark

registry determines that the proposed correction is not a change in the identity or organizational form of the registrant or a change of ownership, but is merely a correction of a drafting error by the registrant, the registry may file the request and update the computer records of the secretary of state accordingly.

(b) The trademark registry records may be corrected to change the identification of goods or services relating to an active trademark or service mark registration to delete from that identification the registered word mark of another party. The notice of correction must be signed by the registrant and must set forth the following information:

- (1) the name and address of the registrant;
- (2) an identification of the trademark and its certificate of registration number;
- (3) the term(s) to be deleted from the identification of goods or services; and
- (4) the generic term(s) or phrase to be used in place of the deleted term(s). Upon receipt of the notice of correction, the secretary of state will file the notice and place the notice on record, update the computer records of the secretary of state accordingly, and send a letter of acknowledgment to the registrant. A duplicate "file stamped" copy of the notice of correction will accompany the letter of acknowledgment, provided that a duplicate copy of the notice is provided for such purpose.

(c) If the records of the secretary of state clearly disclose a material mistake in a certificate of registration, the secretary of state may issue a corrected certificate of registration. The registrant shall submit its original certificate of registration in order to obtain a corrected certificate of registration, or provide a statement that the certificate of registration has been lost, misplaced, or destroyed. This subsection also applies to certificates issued upon renewal, transfer of ownership, change of name, or assignment.

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 November 3, 1997.

TRD-9714530  
Clark Kent Ervin  
Assistant Secretary of State  
Office of the Secretary of State  
Earliest possible date of adoption: December 8, 1997  
For further information, please call: (512) 463-5586



### 1 TAC §93.153

The section as amended is proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed amended sections: Section 16.09, Business & Commerce Code—§93.101. Section 16.10, Business & Commerce Code—§93.1; §93.2; §§93.41-93.43; §§93.51-93.55; §93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.105, Business & Commerce Code—§§93.51-93.55; §93.61-93.62; §§66-93.67; §93.91; §93.93; §93.101. Section 16.106,

Business & Commerce Code—§§93.131-93.133. Section 16.108, Business & Commerce Code—§93.54. Section 16.109, Business & Commerce Code—§§93.112-93.113; §93.117; §§93.131-93.133. Section 16.11, Business & Commerce Code—§93.55.; §93.153. Section 16.14, Business & Commerce Code—§92.1; §93.2; §§93.41-93.43; §93.163. Section 16.16, Business & Commerce Code—§§93.181-93.183. Section 16.25, Business & Commerce Code—§§93.182-93.183. Section 16.31, Business & Commerce Code—§93.62; and §93.163.

§93.153. *Change of Address.*

Upon written notification by the registrant, the Trademark Registry [trademark office] shall change a registrant's business address.

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 November 3, 1997.

TRD-9714623  
Clark Kent Ervin  
Assistant Secretary of State  
Office of the Secretary of State  
Earliest possible date of adoption: December 8, 1997  
For further information, please call: (512) 463-5586



### Certificate

#### 1 TAC §93.154

*(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 Office of the Secretary of State or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the authority of §16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed new sections: Section 93.63—Section 16.10, Business & Commerce Code. Section 93.103—Sections 16.09 and 16.10, Business & Commerce Code. Section 93.118—Sections 16.109 and 16.24, Business & Commerce Code. Section 93.154—Section 16.20, Business & Commerce Code. Section 93.172—Sections 16.15 and 16.19, Business & Commerce Code. Section 93.184—Section 16.11, Business & Commerce Code.

§93.154. *Transfer of Ownership or Change of Name.*

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 November 3, 1997.

TRD-9714610  
Clark Kent Ervin  
Assistant Secretary of State  
Office of the Secretary of State  
Earliest possible date of adoption: December 8, 1997  
For further information, please call: (512) 463-5586



#### 1 TAC §93.154

The new sections are proposed under the authority of §16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed new sections: Section 93.63–Section 16.10, Business & Commerce Code. Section 93.103–Sections 16.09 and 16.10, Business & Commerce Code. Section 93.118–Sections 16.109 and 16.24, Business & Commerce Code. Section 93.154–Section 16.20, Business & Commerce Code. Section 93.172–Sections 16.15 and 16.19, Business & Commerce Code. Section 93.184–Section 16.11, Business & Commerce Code.

§93.154. Transfer of Ownership or Change of Name.

(a) In the case of a transfer of ownership or a change of name of the registrant which does not constitute an assignment, a new certificate of registration for the remainder of the unexpired term of a mark's registration will be issued in the new name or in the name of the transferee, if the instrument evidencing the transfer of ownership or change of name has been recorded pursuant to §16.19, Business & Commerce Code.

(b) A request for a new certificate under this section must be signed by the registrant or transferee or an agent of the registrant or transferee and be accompanied by the fee established for an official certificate.

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 November 3, 1997.

TRD-9714522

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Subchapter L. Term and Renewal

### 1 TAC §93.163

The section as amended is proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed amended section: Section 16.09, Business & Commerce Code–§93.101. Section 16.10, Business & Commerce Code–§93.1; §93.2; §§93.41-93.43; §§93.51-93.55; §§93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.105, Business & Commerce Code–§§93.51-93.55; §§93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.106, Business & Commerce Code–§§93.131-93.133. Section 16.108, Business & Commerce Code–§93.54. Section 16.109, Business & Commerce Code–§§93.112-93.113; §93.117; §§93.131-93.133. Section 16.11, Business & Commerce Code–§93.55.; §93.153. Section 16.14, Business & Commerce Code–§92.1; §93.2; §§93.41-93.43; §93.163. Section 16.16,

Business & Commerce Code–§§93.181-93.183. Section 16.25, Business & Commerce Code–§§93.182-93.183. Section 16.31, Business & Commerce Code–§93.62; and §93.163.

§93.163. Requirements of Application for Renewal.

(a) An application for renewal of registration must be executed no more than six months before the expiration of the registration. It must include the following items:

(1) a statement [the registrant's sworn affidavit] setting forth the goods or services recited in the registration on or in connection with which the mark is still in use in Texas;

(2)-(3) (No change.)

(b) If the mark is not in use in Texas at the time of filing the application for renewal, the registrant must recite sufficient facts to show that nonuse is due to special circumstances which excuse the nonuse and is not due to any intention to abandon the mark. A statement that the registrant does not intend to abandon the mark is not sufficient to excuse nonuse. The recitation of facts must include the length of time the mark has not been in use, the steps being taken to put the mark back in use, when use of the mark is expected to resume, and any other additional information the registrant believes to be pertinent.

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 November 3, 1997.

TRD-9714609

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Subchapter M. Assignment of Marks and Recordation of Other Instruments

### 1 TAC §93.172

The new section is proposed under the authority of §16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed new section: Section 93.63–Section 16.10, Business & Commerce Code. Section 93.103–Sections 16.09 and 16.10, Business & Commerce Code. Section 93.118–Sections 16.109 and 16.24, Business & Commerce Code. Section 93.154–Section 16.20, Business & Commerce Code. Section 93.172–Sections 16.15 and 16.19, Business & Commerce Code. Section 93.184–Section 16.11, Business & Commerce Code.

§93.172. Requirements for Recordation of Other Instruments.

(a) An instrument relating to the transfer of ownership of a mark (such as articles of merger or conversion) or a document effecting a name change (other than a change of entity), may be recorded with the secretary of state. Each document may be recorded if it meets the following requirements:

(1) it is an instrument authorized by law to be recorded or filed and in fact is recorded or filed in a public office and the copy of the instrument is certified by the appropriate official or authority;

(2) if the instrument is not authorized by law to be recorded or filed, it is the type of instrument which would be recorded and filed in the records of the secretary of state if the business entity were a corporation;

(3) the certified copy of the instrument is in English or, if not in English, it is accompanied by a translation signed by the translator; and

(4) the certified copy is accompanied by a cover sheet, signed by the registrant or transferee or an agent of the registrant or transferee, which includes the following information:

(A) an identification of the mark, including the certificate of registration number and date of registration,

(B) the name of the registrant/transferee conveying the interest and the name and address of the transferee receiving the interest, and

(C) a concise description of the transaction being recorded.

(b) The certified copy of the instrument and accompanying cover sheet should be submitted with the filing fee to the secretary of state. A corporation or other business entity which has filed the instrument to be recorded with the Corporations Section of the secretary of state may provide an additional statement on the cover sheet identifying the instrument filed and the date of its filing with the secretary of state in lieu of a certified copy of the instrument.

(c) Upon compliance with the provisions of this section, the secretary of state shall file the instrument, and return a filed stamped copy if a duplicate copy was provided for such purpose.

(d) Upon written request of the registrant or transferee, or an agent of the registrant or transferee, the secretary of state will send the registrant or transferee a new certificate of registration issued in the registrant's new name or in the transferee's name for the remainder of the mark's term of registration, or the remainder of the mark's term of renewal. The request for the new certificate must be accompanied by the fee established for an official certificate issued by the secretary of state.

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 November 3, 1997.

TRD-9714607

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Subchapter N. Cancellation of Registration

### 1 TAC §§93.181-93.183

The amendments are proposed under the authority of section 16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and

other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed amended sections: Section 16.09, Business & Commerce Code—§93.101. Section 16.10, Business & Commerce Code—§93.1; §93.2; §§93.41-93.43; §§93.51-93.55; §§93.61-93.62; §§93.66-93.67; §93.91; §93.93; §93.101. Section 16.105, Business & Commerce Code—§§93.51-93.55; §§93.61-93.62; §§66-93.67; §93.91; §93.93; §93.101. Section 16.106, Business & Commerce Code—§§93.131-93.133. Section 16.108, Business & Commerce Code—§93.54. Section 16.109, Business & Commerce Code—§§93.112-93.113; §93.117; §§93.131-93.133. Section 16.11, Business & Commerce Code—§93.55.; §93.153. Section 16.14, Business & Commerce Code—§92.1; §93.2; §§93.41-93.43; §93.163. Section 16.16, Business & Commerce Code—§§93.181-93.183. Section 16.25, Business & Commerce Code—§§93.182-93.183. Section 16.31, Business & Commerce Code—§93.62; and §93.163.

#### §93.181. *Voluntary Cancellation.*

(a) (No change.)

(b) The request for cancellation should be accompanied by:

(1) (No change.)

(2) the registrant's statement ~~[affidavit]~~ that the certificate has been lost.

#### § 93.182. *Administrative Cancellation.*

The secretary of state shall cancel a registration upon:

(1) finding that the registration was in force before May 2, 1962, it is more than ten years old, and it has not been reregistered under the Texas Business & ~~[and]~~ Commerce Code~~;~~ §16.14(e)

(2) finding that the registration was granted under Chapter 16 and was not renewed under Texas Business & ~~[and]~~ Commerce Code, §16.14(a); or

(3) (no change) (4) upon receipt of a cancellation pursuant to §93.183 of this title (relating to Judicial Cancellation).

#### §93.183. *Judicial Cancellation.*

(a) The secretary of state is not a necessary party to any action or proceeding for the cancellation of a trademark registered by the secretary of state. The secretary of state will cancel a trademark registration upon receipt of a certified copy of a final judgment brought by a district or appellate court canceling the trademark or finding that: [A registration may be cancelled by a district or appellate court. The court must render a final judgment, which has become unappealable, cancelling the registration or finding that:]

(1) (No change.)

(2) the registrant under the Texas Business & ~~[and]~~ Commerce Code, Chapter 16, or under a prior act is not the owner of the mark;

(3) the registration was granted contrary to the provisions of the Texas Business & ~~[and]~~ Commerce Code, Chapter 16;

(4)-(5) (No change.)

(b) There is no fee for the filing of a judicial cancellation of a trademark registration. [A cancellation shall be filed in the trademark office upon receipt of a certified copy of the final judgment transmitted by the clerk of the court.]

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 November 3, 1997.

TRD-9714608

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



### 1 TAC §93.184

The new section is proposed under the authority of §16.21, Texas Business & Commerce Code which grants the secretary of state the authority to adopt rules relating to the filing of trademark applications, renewals and assignments, and other filings under Subchapter B of Chapter 16, Business & Commerce Code.

The following code provisions are affected by the proposed new section: Section 93.63–Section 16.10, Business & Commerce Code. Section 93.103–Sections 16.09 and 16.10, Business & Commerce Code. Section 93.118–Sections 16.109 and 16.24, Business & Commerce Code. Section 93.154–Section 16.20, Business & Commerce Code. Section 93.172–Sections 16.15 and 16.19, Business & Commerce Code. Section 93.184–Section 16.11, Business & Commerce Code.

#### §93.184. Revocation of Registration, Renewal, Assignment or Recordation.

The secretary of state may revoke the filing of an application for registration, renewal of registration, or an assignment or other instrument recorded in the trademark records of the secretary of state if the fee for the document was paid by an instrument or credit card that was dishonored when presented by the state for payment. The secretary of state will mail notice of the revocation of the filing to the business address of the registrant or the registrant's agent. A revocation is effective as of the date of the filing of the document. Failure to give or receive notice does not invalidate the revocation.

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 November 3, 1997.

TRD-9714523

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-5586



## Part X. Department of Information Resources

### Chapter 201. Planning and Management of Information Resources Technologies

#### 1 TAC §201.14

The Department of Information Resources proposes new §201.14, concerning digital signatures. The section: describes the electronic communications to which it will apply; provides definitions; requires digital signatures to be created by an acceptable technology; sets forth criteria for determining if a technology is acceptable; lists acceptable technologies; and provides a mechanism for adding new technologies to the list of acceptable technologies. The section is proposed in accordance with Texas Government Code, §2054.060(a), which authorizes the department to adopt rules regarding digital signatures used to authenticate electronic communications sent to state agencies.

Mr. Edward Serna, director of the Oversight Operations Division, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section. There will be no foreseeable fiscal implications for local government as a result of enforcing or administering the section.

Mr. Serna has also determined that for each year of the first five years the proposed section will be in effect, there will be a benefit to the public in that the public will be better able to communicate and engage in transactions with state agencies electronically, resulting in greater access to government.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to C. J. Brandt, Jr., General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, no later than 5:00 p.m., within 30 days after publication. Envelopes must be clearly marked "Formal Comment to Proposed Action Enclosed."

The new section is proposed under Texas Government Code, §2054.060(a), which authorizes the department to adopt rules regarding digital signatures used to authenticate electronic communications sent to state agencies.

Texas Government Code, §2054.060 is affected by the proposed new section.

#### §201.14. Digital Signatures.

##### (a) General.

(1) This section applies to all written electronic communications sent to a state agency over the Internet for which the state agency is required to authenticate the identity of the sender or the contents of the message, and for which no prior agreement between the sender and the receiving state agency regarding message authentication existed as of the effective date of this section. This section does not apply to or supersede existing systems for:

(A) the receipt of electronically filed documents pursuant to the Texas Business and Commerce Code or other applicable statutory law where the purpose of the written electronic communication is to comply with statutory filing requirements and the receiving state agency or local government is not a party to the underlying transaction which is the subject of the communication; and

(B) the electronic approval of payment vouchers by the comptroller of public accounts pursuant to applicable law.

(2) Prior to accepting a digital signature, a state agency shall ensure that the level of security used to identify the signer

of a message and to transmit the signature is sufficient for the transaction being conducted. A state agency may not effectively discourage the use of digital signatures by imposing unreasonable or burdensome requirements on persons wishing to use digital signatures to authenticate written electronic communications sent to the state agency.

(3) A state agency shall ensure that all written electronic communications received by the state agency and authenticated by means of a digital signature in accordance with this section, as well as any information resources necessary to permit access to the written electronic communications, are retained by the state agency as necessary to comply with applicable law pertaining to audit and records retention requirements.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context expressly indicates otherwise:

(1) Asymmetric cryptosystem - A computer-based system that employs two different but mathematically related keys with the following characteristics:

- (A) one key encrypts a given message;
- (B) one key decrypts a given message; and
- (C) the keys have the property that, knowing one key, it is computationally infeasible to discover the other key.

(2) Certificate - A message which:

- (A) identifies the certification authority issuing it;
- (B) names or identifies its subscriber;
- (C) contains the subscriber's public key;
- (D) identifies its operational period;
- (E) is digitally signed by the certification authority

issuing it, and

- (F) conforms to ISO X.509 Version 3 standards.

(3) Certification Authority - A person who issues a certificate.

(4) Certification practice statement - Documentation of the practices, procedures and controls employed by a Certification Authority.

(5) Digital signature - An electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature, and that complies with the requirements of this section.

(6) Digitally-signed communication - A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message.

(7) Escrow agent - A person who holds a copy of a private key at the request of the owner of the private key in a trustworthy manner.

(8) Expert - A person with demonstrable skill and knowledge based on training and experience who would qualify as an expert under Rule 702 of the Texas Rules of Civil Evidence.

(9) Handwriting measurements - The metrics of the shapes, speeds and/or other distinguishing features of a signature as the person writes it by hand with a pen or stylus on a flat surface.

(10) Key pair - A private key and its corresponding public key in an asymmetric cryptosystem. The keys have the property that the public key can verify a digital signature that the private key creates.

(11) Local government - A county, municipality, special district, or other political subdivision of this state or a state that borders this state, or a combination of two or more of those entities, but excluding an agency in the judicial branch of local government.

(12) Message - A digital representation of information.

(13) Person - An individual, state agency, local government, corporation, partnership, association, organization, or any other legal entity.

(14) Private key - The key of a key pair used to create a digital signature.

(15) Proof of Identification - The document or documents or other evidence presented to a Certification Authority to establish the identity of a subscriber.

(16) Public key - The key of a key pair used to verify a digital signature.

(17) Public Key Cryptography - A type of cryptographic technology that employs an asymmetric cryptosystem.

(18) Role-based key - A key pair issued to a person to use when acting in a particular business or organizational capacity.

(19) Signature Digest - The resulting bit-string produced when a signature is tied to a document using Signature Dynamics.

(20) Signature Dynamics - Measuring the way an individual writes his or her signature by hand on a flat surface and binding the measurements to a message through the use of cryptographic techniques.

(21) Signer - The person who signs a digitally signed communication with the use of an acceptable technology to uniquely link the message with the person sending it.

(22) State agency - A department, commission, board, office, council, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Education Code, §61.003.

(23) Subscriber - A person who:

(A) is the subject listed in a certificate;

(B) accepts the certificate; and

(C) holds a private key which corresponds to a public key listed in that certificate.

(24) Technology - The computer hardware and/or software-based method or process used to create digital signatures.

(c) Digital Signatures must be Created by an Acceptable Technology. For a digital signature to be valid for use by a state agency, it must be created by a technology that is accepted for use by the department pursuant to this section.

(d) Criteria for Determining if a Digital Signature Technology is Acceptable An acceptable technology must be capable of creating signatures that conform to requirements set forth in Government Code, §2054.060, and the requirements of this section.

(e) List of Acceptable Technologies.



(1) The technology known as Public Key Cryptography is an acceptable technology for use by state agencies, provided that the digital signature is created consistent with the following:

(A) A public key-based digital signature must be unique to the person using it. Such a signature may be considered unique to the person using it if:

(i) The private key used to create the signature on the message is known only to the signer or to the signer and an escrow agent acceptable to the state agency, and

(ii) the digital signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetric cryptosystem and the signer's private key, and

(iii) although not all digitally signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature, and

(iv) it is computationally infeasible to derive the private key from knowledge of the public key.

(B) A public-key based digital signature must be capable of independent verification. Such a signature may be considered capable of independent verification if:

(i) the acceptor of the digitally signed message can verify the message was digitally signed by using the signer's public key to decrypt the message; and

(ii) if a certificate is a required component of a transaction with a state agency, the issuing Certification Authority, either through a certification practice statement or through the content of the certificate itself, has identified what, if any, proof of identification it required of the signer prior to issuing the certificate.

(C) The private key of public-key based digital signature must remain under the sole control of the person using it, or that person and an escrow agent acceptable to the state agency. Whether a signature is accompanied by a certificate or not, the person who holds the key pair, or the subscriber identified in the certificate, assumes a duty to exercise reasonable care to retain control of the private key and prevent its disclosure to any person not authorized to create the subscriber's digital signature.

(D) The digital signature must be linked to the message of the document in such a way that it would be computationally infeasible to change the data in the message or the digital signature without invalidating the digital signature.

(E) Acceptable Certification Authorities

(i) The department shall maintain an "Approved List of Certificate Authorities" authorized to issue certificates for digitally signed communications sent to state agencies.

(ii) State agencies shall only accept certificates from Certification Authorities that appear on the "Approved List of Certification Authorities."

(iii) The department shall place a Certification Authority on the "Approved List of Certification Authorities" after the Certification Authority provides the Department with a copy of an unqualified performance audit performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70 (S.A.S. 70) to ensure that the Certification Authority's practices and policies are consistent with

the requirements of the Certification Authority's Certification Practices Statement and the requirements of this section.

(iv) In order to be placed on the "Approved List of Certification Authorities" a Certification Authority that has been in operation for one year or less shall undergo a SAS 70 Type One audit - A Report of Policies and Procedures Placed in Operation, receiving an unqualified opinion.

(v) In order to be placed on the "Approved List of Certification Authorities" a Certification Authority that has been in operation for longer than one year shall undergo a SAS 70 Type Two audit - A Report of Policies and Procedures Placed in Operation and Test of Operating Effectiveness, receiving an unqualified opinion.

(vi) In lieu of the audit requirements of (iv) and (v) of this subparagraph, a Certification Authority may be placed on the "Approved List of Certification Authorities" upon providing the Department with proof of accreditation by an accreditation body acceptable to the department whose requirements for accreditation are consistent with the requirements of this section.

(vii) To remain on the "Approved List of Certification Authorities" a Certification Authority must provide proof of compliance with the audit requirements or accreditation to the department every two years after initially being placed on the list.

(viii) If the department is informed that a Certification Authority has received a qualified or otherwise unacceptable opinion following a required audit or has had its accreditation revoked, the Certification Authority may be removed from the "Approved List of Certification Authorities" by the department.

(2) The technology known as "Signature Dynamics" is an acceptable technology for use by state agencies, provided that the signature is created consistent with the following provisions:

(A) A digital signature produced by Signature Dynamics technology must be unique to the person using it. A signature digest produced by Signature Dynamics technology may be considered unique to the person using it if:

(i) the signature digest records the handwriting measurements of the person signing the message using signature dynamics technology, and

(ii) the signature digest is cryptographically bound to the handwriting measurements, and

(iii) after the signature digest has been bound to the handwriting measurements, it is computationally infeasible to separate the handwriting measurements and bind them to a different signature digest.

(B) A digital signature produced by Signature Dynamics technology must be capable of independent verification. A signature digest produced by Signature Dynamics technology may be considered capable of independent verification if:

(i) the acceptor of the digitally signed message obtains the handwriting measurements for purposes of comparison, and

(ii) if signature verification is a required component of a transaction with a state agency, the handwriting measurements can allow an expert handwriting and document examiner to assess the authenticity of a signature.

(C) A digital signature produced by Signature Dynamics technology must remain under the sole control of the person using it. A signature digest produced by Signature Dynamics tech-

nology may be considered to be under the sole control of the person using it if:

(i) the signature digest captures the handwriting measurements and cryptographically binds them to the message directed by the signer and to no other message, and

(ii) the signature digest makes it computationally infeasible for the handwriting measurements to be bound to any other message.

(D) The signature digest produced by signature dynamics technology must be linked to the message in such a way that it would be computationally infeasible to change the data in the message or the digital signature without invalidating the digital signature.

(f) Provisions For Adding New Technologies to the List of Acceptable Technologies.

(1) Any person may, by providing a written request that includes a full explanation of a proposed technology which meets the requirements of subsection (c) of this section, petition the department to review the technology. If the department determines that the technology is acceptable for use by state agencies, the department shall draft proposed administrative rules which would add the proposed technology to the list of acceptable technologies in subsection (e) of this section.

(2) The department has 180 days from the date of the request to review the petition and either accept or reject it. If the Department does not approve the request within 180 days, the petitioner's request shall be considered denied.

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 October 17, 1997.

TRD-9714094

C.J. Brandt, Jr.

General Counsel

Department of Information Resources

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 475-2153



## 1 TAC §201.16

The Department of Information Resources proposes new §201.16, concerning minimum standards for meetings held by videoconference call. The new section requires governmental bodies to adhere to certain technical and operational standards when holding an open or closed meeting by videoconference call. The section is proposed in accordance with Texas Government Code, §551.126(h), which requires the department by rule to specify minimum standards for audio and videosignals at a meeting held by videoconference call.

Mr. Edward Serna, director of the Oversight Operations Division, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the proposed section. There will be no foreseeable fiscal implications for local government as a result of enforcing or administering the proposed section.

Mr. Serna has also determined that for each year of the first five years the proposed section will be in effect, there will be a benefit to the public in that meetings of governmental bodies

will become more accessible to the public to the extent governmental bodies elect to conduct meetings by videoconference call. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to C. J. Brandt, Jr., General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, no later than 5:00 p.m., within 30 days after publication. Envelopes must be clearly marked "Formal Comment to Proposed Action Enclosed."

The new section is proposed under Texas Government Code, §551.126(h), which requires the department to adopt rules specifying minimum standards for audio and video signals at a meeting held by videoconference call.

Texas Government Code, §551.126 is affected by the proposed new section.

### §201.16. Minimum Standards for Meetings Held by Videoconference Call.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

(1) Codec (Coder/Decoder) – A device for converting analog signals, in this case video and/or audiosignals, to a digital signal and compressing the digital data in the process.

(2) Compressed video – Video data that has been digitized and in the process, condensed by the use of one or more of the common video compression processes (lossy, lossless, interframe compression, etc.). A codec produces compressed video and uncompresses the video at the remote end.

(3) Governmental body – Shall have the meaning assigned to that term in Texas Government Code Annotated, §551.001.

(4) ITU-T – International Telecommunication Union-Telecommunications Standardization Sector.

(5) NTSC – National Television Standards Committee.

(6) Open or closed meetings – Shall have the meanings assigned to those terms in Texas Government Code Annotated, §551.001.

(7) Real-Time video – Less than one second latency delay in transmission.

(8) Videoconference call – Real-time video and audio communications between or among multiple sites.

(b) A governmental body holding an open or closed meeting by videoconference call using full motion real-time analog video transmissions shall meet existing NTSC standards.

(c) A governmental body holding an open or closed meeting by videoconference call using compressed video shall use equipment meeting the minimum technical standards listed below. Use of equipment meeting these standards does not preclude the use of proprietary vendor protocols as long as the governmental body has received a written certification from the vendor stating that the vendor's equipment and proprietary software protocol release version meets or exceeds each of the specified standards.

(1) ITU-T Recommendation H.221-1995 (Document Number RECMN H.221), Frame Structure for a 64 to 1920 kbit/s Channel in Audiovisual Teleservices.

(2) ITU-T Recommendation H.230-1995 (Document Number RECMN H.230), Frame synchronous Control and Indication Signals for Audiovisual Teleservices.

(3) ITU-T Recommendation H.231-1996 (Document Number RECMN H.231), Multipoint Control Units for Audiovisual Systems Using Digital Channels up to 2 Mbit/s.

(4) ITU-T Recommendation H.242-1996 (Document Number RECMN H.242), System for Establishing Communications Between Audiovisual Terminals Using Digital Channels up to 2 Mbit/s.

(5) ITU-T Recommendation H.243-1996 (Document Number RECMN H.242), Procedures for Establishing Communication Between Three or More Audiovisual Terminals Using Digital Channels up to 2 Mbit/s.

(6) ITU-T Recommendation H.261-1993 (Document Number RECMN H.261), Video Codec for Audiovisual Services at px64 kbit/s.

(7) ITU-T Recommendation H.320-1996 (Document Number RECMN H.320), Narrow-band Visual Telephone Systems and Terminal Equipment.

(d) A governmental body holding an open or closed meeting by videoconference call shall adhere to the following standards with respect to the perceptibility of audio and video signals:

(1) The audience and members of the governmental body shall have full view of at least one monitor at each meeting location.

(2) Audio signals perceptible from the remote videoconferencing sites shall be of similar quality and volume as the local audio at the originating site.

(3) All video transmissions shall be at least thirty frames per second (FPS) and use full common intermediate format (CIF) quality transmission.

(4) Videoconference calls held between or among sites utilizing different vendor equipment shall adhere to the ITU-T standards listed in subsection (c) of this section.

(5) Videoconference calls involving more than two sites shall be controlled such that thereceived video at all sites will switch to the speaking participant's site within two seconds of the participant's commencement of speaking.

(6) All videoconference calls shall be in color and monitors for the viewing public and for members of the governmental body shall present color video.

(e) State agencies conducting open or closed meetings by videoconference call shall review and consider any applicable recommendations promulgated by the department. Such recommendations may be obtained directly from the department or may be accessed via the world wide web at the following location: <http://www.state.tx.us/Standards>.

(f) This section shall automatically expire on August 31, 1999 without further action by the board.

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 October 17, 1997.

TRD-9714093  
C.J. Brandt, Jr.

General Counsel

Department of Information Resources

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 475-2153

◆ ◆ ◆  
**TITLE 10. COMMUNITY DEVELOPMENT**

**Part I. Texas Department of Housing and Community Affairs**

**Chapter 53. HOME Investment Partnerships Program**

**10 TAC §§53.50-53.57, 53.59-53.60, 53.62**

The Texas Department of Housing and Community Affairs (Department) HOME Investment Partnerships (HOME) Program is proposing amendments to HOME Program Rules 10 TAC, §§53.50-53.62, concerning the requirements for application and distribution of funds available under federal and state laws and regulations for the HOME Program. The amendments to §53.51 define new terms used in the program and redefine existing terms for consistency with U. S. Department of Housing and Urban Development regulations and Department policies. The amendments to §§53.50, 53.52 - 53.54, 53.56, 53.57, and 53.60 are for clarity of language and program requirements and for consistency throughout the rules. The amendment to §53.55 adds an additional prohibited activity, as specified in 24 CFR §92.214. The amendments to §53.59 creates a more complete process for awarding funds directly. The amendments to §53.62 make the processes for deobligation of funds and amending contracts more efficient. No amendments were made to §53.58 and §53.61.

Daisy Stiner, Director of Housing Programs, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Stiner 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 to enhance the Department's ability to provide affordable housing throughout the State of Texas. The Department is unable to determine whether the administration of these rules will have any fiscal implications on persons required to comply with the rules as proposed.

Comments on the proposal may be submitted to Joe B. Mann, HOME Program Manager, P. O. Box 13941, Austin, Texas, 78711-3941, within thirty (30) days of the date of submission of this proposal.

The amended sections are proposed under Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, (42 United States Code §§12701-12839) and 24 Code of Federal Regulations, Part 92.

The proposed rule amendments are pursuant to the authority at Texas Government Code, Chapter 2306; Acts of the 73rd Legislative Regular Session, SB 45, chapter 141, p. 292, effective May 16, 1993; and Act of the 73rd Legislative Regular Session, SB 1356, chapter 725, p. 2838, effective September 1, 1993.

§53.50. *Scope.*

The rules in this chapter apply to the use and distribution of HOME Investment Partnerships Program (HOME) funds. The United States Department of Housing and Urban Development (HUD) through the HOME Program provides funds to the State pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 United States Code §§12701-12839), as may be amended, and HUD regulations at 24 Code of Federal Regulations (CFR) Part 92, as may be amended. The State's HOME Program is designed to:

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

(4) provide low, and very low, and extremely low income Texans with affordable, decent, safe and sanitary housing.

§53.51. *Definitions.*

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

CFR-Code of Federal Regulations.

C/MIS- Cash Management Information System established by HUD.

Expenditure-Approved expense evidenced by documentation [has been] submitted by the Recipient to the Department for purposes of drawing funds from HUD's C/MIS for work completed, inspected and certified as complete, and as otherwise required by the Department.

Extremely Low Income Families -Families whose annual incomes do not exceed 30% of the median income of the area, as determined by HUD, with adjustments for family size.

Homebuyer Assistance-A form of assistance to non-profit organizations, for profit housing organizations, sole proprietors, CHDOs, units of general local government[,] and public housing agencies to provide funds to eligible homebuyers for the acquisition of affordable housing.

Interim Construction [Financing] Assistance-A form of assistance to make funds available to HOME eligible applicants including non-profit organizations, CHDOs, units of general local government, for-profit housing organizations, and sole proprietors[,] and public housing agencies for the purpose of constructing affordable housing units.

Lead Applicant-An eligible applicant designated in a HOME application to assume contractual liability and legal responsibility as the recipient executing the written agreement with the Department[ State].

Program Income-Gross income received by the Department or program administrators directly generated from the use of HOME funds or matching contributions as further described in 24 CFR Part 92.2.[ Funds received by the Department or Recipient as loan repayment in the form of interest or principal, funds received by Recipient(s) or the Department on behalf of Recipients who distribute their allocation in the form of a loan to owners, and funds recaptured from the sale of a HOME-assisted unit or Project. ]

Rental Housing Development[Project Assistance] -A form of assistance available to nonprofit organizations, CHDOs, units of general local government, for-profit housing development organizations and sole proprietors and public housing agencies for the acquisition, new construction, reconstruction or rehabilitation of multi-family or single family rental housing, or conversion of commercial property to rental housing.

Rural Area-A project located within an[rural ] area which[is]:

(A) is situated outside the boundaries of a PMSA or MSA; or[open country which is not part of or associated with an urban area;]

(B) is situated within the boundaries of a PMSA or MSA if it has a population of not more than 20,000 and does not share boundaries with an urbanized area; or[any town, village, city or place, including the immediately adjacent densely settled area which is not part of or associated with an urban area and which: ]

[(i) has a population not in excess of 10,000 if it is rural in character; or]

[(ii) has a population in excess of 10,000 but not more than 20,000, and is not contained within a Metropolitan Statistical Area (MSA) or a Primary Metropolitan Statistical Area (PMSA).]

(C) is located in an area that is eligible for funding by Texas Rural Development (TxRD).

Tenant-Based Rental Assistance (TBRA)-A form of rental assistance to nonprofit organizations, CHDOs, units of general local government, and public housing agencies in which the assisted tenant may move from a dwelling unit with a right to continued assistance.

§53.52. *Applicant Requirements.*

(a) Eligible Applicants. The following organizations or entities are eligible to apply for HOME eligible activities:

(1) nonprofit organizations [which have tax exemption ruling from the Internal Revenue Service under §501(c)(3) or (4) of the Internal Revenue Code of 1986];

(2)-(5) (No change.)

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

§53.53. *Application Limitations.*

Except as otherwise provided herein, an applicant may only submit one application per eligible activity per funding cycle; except that if an applicant's service area is multi regional, the applicant may submit one application per region per activity and the sum of requests for all applications may not exceed the funding limits established in this section[ year and eligible activity]. An eligible applicant may apply for several eligible activities provided that the total amount requested for all activities does not exceed the funding limits established in this section. [An eligible applicant submitting an application for Rental Project Assistance may not submit another application for any other eligible activity. Only CHDOs or non-profit organizations may submit more than one application per activity; however, they must apply as a Joint Venture as defined in §53.51 of this title (relating to Definitions), and the program/project must be located in a different area. Each new Joint Venture with a different eligible applicant is regarded as a separate applicant. Application limits are established below. ] The Department reserves the right to reduce the amount requested in an application based on program/project feasibility, [and/or] underwriting analysis, and/or availability of funds:[-]

(1) Application amount for Owner-Occupied Housing Assistance, Homebuyer Assistance, Tenant-Based Rental Assistance, and Interim Construction [Financing] Assistance shall not exceed \$500,000, except as otherwise allowed by the Board.

(2) Application amount for Rental Housing Development [Project Assistance] shall not exceed \$1,000,000, except as otherwise allowed by the Board.

(3) (No change.)

§53.54. *Program Restrictions.*

(a) Owner-Occupied Housing Assistance: Assisted homeowners must be low-income and must occupy the property as their principal residence. Housing assisted with HOME funds must meet all applicable local codes and standards, and, at a minimum, Section 8 Housing Quality Standards or Colonia Housing Quality Standards, as applicable, and Minimum Rehabilitations Standards as provided by the Department. In addition, housing that is reconstructed or ~~substantially~~ rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with 24 CFR 92.251(a), as may be amended.

(b) Homebuyer Assistance: HOME funds utilized for Homebuyer Assistance are subject to the Department's recapture restrictions as approved by HUD in the Consolidated Plan and as outlined in the application guidelines. The eligible uses for Homebuyer Assistance are down-payment assistance, closing cost assistance, ~~and~~ gap financing, and homebuyer counseling. The total assistance provided per eligible homebuyer may not exceed \$5,000, unless otherwise allowed by the Board.

(c) Rental Housing Development~~[Project Assistance ]~~: Owners of rental units assisted with HOME funds must comply with income and rent restrictions pursuant to HOME rules and guidelines and keep the units affordable for a period of time, depending upon the amount of HOME assistance provided. Housing assisted with HOME funds must meet all applicable local codes and standards, and, at a minimum, Section 8 Housing Quality Standards or Colonia Housing Quality Standards, as applicable, and Minimum Rehabilitation Standards as provided by the Department. In addition, housing that is newly constructed or ~~substantially~~ rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with 24 CFR 92.251(a), as may be amended.

(d) (No change.)

(e) Interim Construction ~~[Financing]~~ Assistance: Newly constructed housing must meet all applicable local codes, Section 8 Housing Quality Standards, ordinances, and zoning ordinances in accordance with 24 CFR 92.251(a), as may be amended. An eligible applicant that applies for Interim Construction ~~[Financing]~~ Assistance may also apply for Homebuyer Assistance.

(f) CHDO Pre-Development Loans: The Department may set-aside up to 10% of the CHDO 15% Set-Aside for pre-development loans in accordance with 24 CFR 92.301, as may be amended. Funds for pre-development loans are available only when provided in conjunction with a Rental Housing Development ~~[Assistance]~~ application and may only be used for activities such as project-specific technical assistance, site control loans, and project-specific seed money. Pre-development loans must be repaid from construction loan proceeds or other project income. In accordance with 24 CFR 92.301, as may be amended, the Department may elect to waive pre-development loan repayment, in whole or in part, if there are impediments to project development that the Department determines are reasonably beyond the control of the CHDO.

#### §53.55. *Prohibited Activities.*

In accordance with 24 CFR 92.214, as may be amended, HOME funds may not be used to:

(1)-(6) (No change.)

(7) provide assistance to a project previously assisted with HOME funds during the period of affordability; ~~and~~

(8) provide funds to reimburse an applicant for acquisition costs for a property already owned by the applicant; ~~and~~ [-]

(9) pay for any cost that is not eligible under 24 CFR §92.206 through §92.209.

#### §53.56. *Distribution of Funds.*

In accordance with 24 CFR 92.201(b)(1), as may be amended, the Department will make every effort to distribute HOME funds throughout the state according to the Department~~[state]~~'s assessment of the geographic distribution of housing needs, as identified in the Consolidated Plan. The Department will take into consideration the non-metropolitan share of the state's total population and objective measures of rural housing need, such as poverty and substandard housing when allocating funds by region. Applicants may submit applications for programs or projects located in a PJ, however, the Department will give priority for funding to non-participating jurisdictions. If funds remain in a region or activity after all non-PJ applications that meet or exceed threshold have been funded, then the funds may be transferred to another region or activity, or the Department may consider funding PJ applications that meet or exceed threshold. The Department may distribute HOME funds by direct award or through competition.

(1) CHDO Set-Aside: In accordance with 24 CFR 92.300, as may be amended, not less than 15% of the HUD-provided HOME allocation will ~~be~~~~[is]~~ set aside by the Department for CHDO eligible activities, specifically where the CHDO will perform the role of developer, owner, or sponsor. Funded CHDO applicants for set-aside activities are eligible for a proportionate amount of the available operating expenses. ~~[CHDO set-aside funds will be reserved within the HOME activity allocations eligible for the CHDO set-aside as sub-allocations for those activities.]~~ The sum of all sub-allocations must not be less than the 15% requirement. If an insufficient number of qualified applications are received by the deadline, the Department reserves the right to hold additional competitions in order to meet federal set-aside requirements.

(2) Special Needs Set-Aside: In accordance with the Consolidated Plan, funds will be available to eligible applicants, as defined in §53.52(a) of this title (relating to Applicant Requirements),~~[units of general local government, CHDOs, public housing authorities, and nonprofit organizations ]~~ with a documented history of working with special needs populations and with relevant housing related experience. ~~[Eligible]~~ A~~[a]~~ applicants may submit applications for: Owner-Occupied Housing Assistance, Homebuyer Assistance, Tenant-Based Rental Assistance, Interim Construction Assistance, and Rental Housing Development ~~[Project Assistance]~~. ~~[Special-Needs set-aside funds will be reserved within the HOME activity allocations eligible for the Special Needs set-aside as sub-allocations for those activity funds.]~~ If an insufficient number of qualified applications are received, the Department reserves the right to transfer funds remaining in the set-aside to another eligible activity.

(3)-(5) (No change.)

#### §53.57. *Allocation Plan.*

The ~~[funding]~~ allocation plan will be based on the funding recommendations in the Consolidated Plan~~], ratified by the Board prior to submission to HUD~~.~~[ Upon notification of HOME Program funding authorization by HUD and the HUD final approval of the consolidated plan, the allocation plan for the HOME Program will be published in the Texas Register. ]~~

#### §53.59. *Process for Direct Awards.*

(a) As funds become available, the Department may consider funding applications submitted outside of a funding cycle.

(b) Selection Procedures for Direct Awards.

(1) ~~[(a)]~~ The proposed program/project design in the application must comply with all applicable HOME requirements or regulations established in 24 CFR Part 92, as may be amended, and in these rules. Applicants with program/project designs that do not comply with such requirements will not be considered for funding.

(2) ~~[(b)]~~ Rental project applications must receive an underwriting analysis by the Department. A site visit may be conducted as part of the HOME Program feasibility and underwriting analysis.

(3) Applications that meet or exceed a minimum score of 60% of the total HOME Program score established for the respective activities are considered for funding.

(4) Applicants will be notified in writing at least 7 days prior to the date of the Board meeting, including its committees, of the status of their application.

(5) ~~[(e)]~~ Applications receiving a favorable staff recommendation are then presented to the Board for approval ~~[ pending the availability of HOME funds].~~

§53.60. *Process for Awards made by Competition.*

(a) (No change.)

(b) Selection Procedures for Owner Occupied Housing Assistance, Homebuyer Assistance, and Tenant-Based Rental Assistance.

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

(5) Applications receiving a favorable staff recommendation are then presented to the Board for approval, pending the availability of HOME funds for ~~each[such]~~ activity.

(6) (No change.)

(c) Selection Procedures for Rental Housing Development [Project Assistance] and Interim Construction ~~[Financing ]~~ Assistance:

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

(6) In event of a tie between two or more applicants, the Department, with Board approval, reserves the right to determine which application will receive funding based on housing need factors and feasibility of the proposed project identified in the application.

(7) Board approval for the award of HOME Rental Housing Development ~~[Project Assistance]~~ funds is conditional upon a completed loan closing.

§53.62. *Program Administration.*

(a) (No change.)

(b) Amendments. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to any HOME written agreement provided that any such modification and/or amendment does not increase the dollar amount by more than ~~[exceed]~~ 25 percent of the original award. Modifications and/or amendments that increase the funding amount in excess of [exceeding] 25 percent will be presented to the Board for approval.

(c) Deobligation.

(1) The Department reserves the right to deobligate funds in [upon the happening of one of ] the following situations ~~[events]:~~

(A) Recipient has any unresolved compliance issues on existing or prior ~~[HOME]~~ contracts with the Department;

(B) Recipient fails to set-up programs/projects or expend funds in a timely manner;

(C)-(G) (No change.)

(2) When the Department determines that funds are to be deobligated, the following procedures will apply:

(A)-(B) (No change.)

(C) If the Department does not receive a response from the Recipient within thirty days or if the Recipient does not appeal the deobligation decision, the Recipient is notified in writing that the funds are deobligated and procedures to close the contract will begin.

(D) If the Recipient responds within thirty days, and requests to appeal the decision, [T]he Department will take the following steps:

(i) The Department will review[ s] pertinent documentation[correspondence,] ; including the Recipient's response, investigation reports and findings[; prior to a final recommendation to the Board to deobligate funds].

(ii) If the Department determines, after the review, that the Recipient's funds should be deobligated, the Recipient is notified in writing of the Department's recommendations to deobligate funds.

(iii) The[A] Recipient is notified of the date, location, and time of the Board meeting [ of the Board ]at which time a determination will be made by the Board.

(iv) ~~[(E)]~~ The Department makes a recommendation to the Board for deobligating funds[; ] and the Recipient may make an appeal to the Board at this time. [ and the Recipient is notified of the Board's determination.]

(v) Upon approval by the Board, the Recipient is notified in writing that the funds are deobligated and procedures to close the contract will begin.

(3)-(4) (No change.)

(d)-(e) (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 October 27, 1997.

TRD-9714207

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 475-3726



## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 7. Gas Utilities Division

##### Substantive Rules

###### 16 TAC §7.74

The Railroad Commission of Texas proposes new §7.74, relating to school piping testing, to implement the requirements of

House Bill 1611 (H.B. 1611), enacted by the 75th Legislature, Regular Session, and effective June 20, 1997, which added Texas Civil Statutes, Article 6053-2a. The proposed new rule is identical to the version of §7.74 currently in effect, which the commission adopted on an emergency basis on June 24, 1997, and which the commission has extended for an additional 60 days. H.B. 1611 requires that at least every two years school districts pressure test the natural gas piping system in each school district facility. The testing may be performed on a two-year cycle under which each district pressure tests the natural gas piping system in approximately one-half of its facilities each year. If a school district operates one or more school district facilities on a year-round calendar, then the pressure test in each of those facilities must be conducted and reported not later than July 1 of the year in which the pressure test is performed. The testing must be a pressure test or shut-in test to determine if the school piping in each school building where students may be present will hold at least normal operating pressure over a time interval of no less than two hours. A test performed under a municipal code will satisfy the pressure testing requirement.

Operators are required to develop procedures for receiving notification from the school districts regarding location of facilities supplied with natural gas; for terminating service in the event that testing is not completed in the two-year time interval, or a hazardous leak is reported by the person conducting the testing or by the school board of trustees; for providing for special circumstances for receiving written notification from the school or school district that the school or school district is not able to perform tests before the beginning of the designated school year; and for receiving notification from the commission regarding non-interruption of service. All operators are required to maintain a listing of the schools that are supplied natural gas and the results of each test for at least two years.

Mary McDaniel, assistant director, Gas Services Division, Pipeline Safety Section, has determined that for each of the first five years the proposed new section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the section. There will be fiscal implications for local governments, in particular school districts which are required to perform the pressure tests. The cost for a pressure test is a minimum of \$200; the exact cost for a particular school district will depend on how many facilities a school district is required to test each year and whether any problems are found as a result of the test.

Ms. McDaniel also has determined that the public benefit anticipated as a result of enforcing the new section will be an increase in safety in Texas school districts which use natural gas. There will be an economic cost to small businesses or individuals that are operators as a result of the proposed new section because of the requirement to develop procedures for receiving notification from the school districts regarding location of facilities supplied with natural gas; for terminating service in the event that testing is not completed in the two-year time interval, or a hazardous leak is reported; for providing for special circumstances for receiving written notification from the school or school district that the school or school district is not able to perform tests before the beginning of the designated school year; and for receiving notification from the commission regarding non-interruption of service. In addition, all operators are required to maintain a listing of the schools that are supplied natural gas and the results of each test for at least two years. The cost of complying with these requirements, however, will

vary by type of operator and size of the school district, and it is not possible to calculate the anticipated cost.

Comments on the proposal may be submitted to Mary McDaniel, Assistant Director, Gas Services Division, Pipeline Safety Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 14 days after publication in the *Texas Register* and should refer to Gas Utilities Docket (GUD) Number 8813. For more information, contact Ms. McDaniel at (512) 463-7058.

The commission proposes the new section under Texas Utilities Code, §§121.201-121.205, which authorize the commission to adopt safety standards and practices applicable to the transportation of gas and to all gas pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 U.S.C. §60101, *et seq.* (West 1997), and under Texas Civil Statutes, Article 6053-2a, which directs the Railroad Commission of Texas to enforce the article.

Texas Utilities Code, §§121.201-121.210, and Texas Civil Statutes, Article 6053-2a, are affected by the proposed new section.

#### §7.74. School Piping Testing.

All operators that supply natural gas to school districts are required to receive notifications regarding pressure testing performed by these schools and take action as necessary.

(1) Testing. The testing shall be a pressure test or shut-in test to determine if the school piping in each school building where students may be present will hold at least normal operating pressure over a time interval of no less than two hours. If a municipal code is in effect regarding pressure testing, the testing performed under the municipal code will be accepted.

(2) Frequency. Operators are required to receive notice from the schools of their testing at two-year intervals. For year-round schools, notice is to be given by July 1 of the year the testing is performed.

(3) Procedures. Operators are required to develop procedures for:

(A) receiving notification from the school districts regarding location of facilities supplied with natural gas;

(B) terminating service in the event that:

(i) testing is not completed in the two-year time interval;

(ii) a hazardous leak is reported by the person conducting the testing; or

(iii) a hazardous leak is reported by the school board of trustees.

(C) providing for special circumstances for:

(i) receiving written notification from the school or school district that the school or school district is not able to perform tests before the beginning of the designated school year; and

(ii) receiving notification from the Commission regarding noninterruption of service.

(4) Records. All operators are required to maintain a listing of the schools that are supplied natural gas and the results of each test for at least two years.

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 October 22, 1997.

TRD-9714057

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: December 11, 1997

For further information, please call: (512) 463-7008



## Part II. Public Utility Commission of Texas

### Chapter 23. Substantive Rules

#### Rates

##### 16 TAC §23.25

The Public Utility Commission of Texas proposes new §23.25, relating to Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs). The proposed rule will establish expedited procedures for electing ILECs to introduce a new service or to modify the rates or tariff terms for an existing service.

Lynne LeMon, utility specialist, has determined that for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. LeMon also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to facilitate the rapid introduction of new and modified telecommunications services by electing ILECs under the Public Utility Regulatory Act (PURA). There will be no effect on small businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. LeMon also has determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographic area affected by implementing the requirements of the section.

Comments on the proposed rule (16 copies) may be submitted to Filing Clerk, Public Utility Commission of Texas, P.O. Box 13326, 1701 North Congress Avenue, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rule. The commission will consider the costs and benefits in deciding whether to adopt the new rule. Additionally, the commission invites specific comments regarding how the passage of the federal Telecommunications Act of 1996 impacts this rule. All comments should refer to Project Number 17472.

Commission staff will accept public comment at a hearing on this rulemaking conducted pursuant to Texas Government Code, §2001.029 at the commission offices on December 15th at 9:30 a.m.

This new rule is proposed under the Public Utility Regulatory Act, 75th Legislature, Regular Session, Chapter 166, §1, 1997 Texas Session Law Service 732, 733 (Vernon) (to be codified at Texas Utilities Code Annotated §14.002 and §14.052) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, PURA §58.051 and §58.152, relating to basic network services, discretionary services and competitive services.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 58.051- 58.152.

§23.25. Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).

(a) Purpose. The purpose of this section is to establish expedited procedures for an electing ILEC to introduce a new service or to modify the rates or tariff terms for an existing service.

(b) Application. This section applies to an incumbent local exchange company that is regulated pursuant to the Public Utility Regulatory Act (PURA) Chapter 58.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Basic network service-This term has the meaning assigned in PURA §58.

(2) Competitive service-This term has the meaning assigned in PURA §58.

(3) Electing ILEC-An electing ILEC is an ILEC that has filed the election referenced in PURA §58.

(4) Existing discretionary service-This term has the meaning assigned in PURA §58. An existing discretionary service had a commission-approved rate in existence on September 1, 1995.

(5) Incumbent local exchange company (ILEC)-An incumbent local exchange company is a local exchange company that had a certificate of convenience and necessity in existence on September 1, 1995.

(6) Long run incremental cost (LRIC)-This term has the meaning assigned in §23.91(c)(16) of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services).

(7) New service-This term has the meaning assigned in §23.26(b)(1) of this title (relating to New and Experimental Services). The term new service shall include a discretionary service for which no rate was in effect on September 1, 1995.

(d) General provisions.

(1) Tariffs and notices shall be written in plain language, shall contain sufficient detail to give customers and affected parties adequate notice of the filing, and shall conform to the requirements of §23.24(c), (d), (f), and (g) of this title (relating to Form and Filing of Tariffs). If an application contains material deficiencies, all time frames set forth in the rule shall be adjusted day-for-day until such deficiencies are cured.

(2) Rates and terms for a package of services that contains a basic network service shall be governed by the procedures found in subsection (k) or (l) of this section.



(3) Rates and terms for a package containing discretionary services and competitive services but no basic network service shall be governed by the procedures found in subsection (i) or (j) of this section.

(4) A local exchange company that does not elect to be regulated pursuant to PURA Chapter 58 may not exercise the pricing flexibility available to an electing ILEC even if the local exchange company concurs in a tariff of an electing ILEC or is an issuing carrier in a tariff of an electing ILEC.

(5) If commission staff recommends rejection of an application, an electing ILEC may request docketing.

(6) The commission may suspend the effective date of a tariff change proposed under this section for 120 days after the proposed effective date. If an application is docketed, the operation of the proposed tariff shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later.

(e) Notice. Once each calendar quarter, an electing ILEC shall notify affected persons, either by bill insert or direct mail, that proposed changes in the rates or terms of service are regularly published in the *Texas Register* through the Office of the Secretary of State. The notification shall identify the Internet address for the *Texas Register* ([www.sos.state.tx.us](http://www.sos.state.tx.us)) and shall provide a toll-free phone number for affected persons to request direct notice from an electing ILEC of proposed changes in the rates or terms of service. For purposes of notice, affected persons include the applicant's Texas customers, persons registered with the commission to offer long distance service, and persons certified by the commission to provide local exchange telephone service.

(f) Proprietary or confidential information. Information filed pursuant to this rule is presumed to be public information. An electing ILEC shall have the burden of establishing that information filed pursuant to this rule is proprietary or confidential. If the data necessary to establish that the proposed tariff meets the requirements of PURA and this section is not provided on the same date as the associated tariff sheets because the ILEC asserts that the data is proprietary or confidential, the procedural schedule shall be adjusted day-for-day to reflect the number of days the data is delayed.

(g) Establishment of a long run incremental cost floor. Establishment of a LRIC floor requires commission approval of a cost study prepared by an electing ILEC pursuant to the standards in §23.91 of this title. After commission approval of a LRIC floor for a particular service, an electing ILEC may change the rates of that service in accordance with the procedures in this section. The procedures in this section may not be available to an electing ILEC for a service that does not have a long run incremental cost floor. An electing ILEC that has 5.0% or fewer of the total access lines in this state may adopt the cost, if determined through a LRIC study based on §23.91 of this title, for the same or substantially similar services offered by a large ILEC without the requirement of presenting LRIC studies of its own.

(h) Price changes for competitive services.

(1) After commission approval of a LRIC floor, an electing ILEC may exercise pricing flexibility or may change the price of a competitive service. An electing ILEC may set the price for a competitive service at any level above the long run incremental cost of the service, except that the price of the service may not be increased by an electing ILEC in a geographic area in which the service or a

functionally equivalent service is not readily available from another provider.

(2) An electing ILEC may file one or more revised tariff sheets to introduce new or modified rates or terms for competitive services. The tariff sheets shall be accompanied by a commission-approved application. The tariff sheets shall be received and effective on an interim basis, subject to refund, the day following the filing or on a later date designated by the electing ILEC.

(3) The commission shall cause notice to be published in the *Texas Register*. The notice shall state the intervention deadline, which shall be no earlier than five days following publication.

(4) On or before the intervention deadline, commission staff may file a recommendation to suspend, docket, or reject the electing ILEC's application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative procedures in this subsection shall no longer apply. The tariff sheets shall remain effective, on an interim basis, unless an order is issued to change the status.

(5) If neither an intervention request nor a commission staff recommendation to suspend, docket, or reject is timely filed, the commission shall issue an order approving the tariff sheets.

(i) Price changes for existing discretionary services.

(1) After commission approval of a LRIC floor, an electing ILEC may exercise pricing flexibility or may change the price of an existing discretionary service within the range of the LRIC floor and the price in effect on September 1, 1995, by following the procedures in this subsection.

(2) An electing ILEC may file a notice of intent on a commission-approved application to introduce new or modified rates or terms for an existing discretionary service at least five days prior to the filing of an application and revised tariff sheets. Following the notice of intent, an electing ILEC shall file one or more tariff sheets to introduce new or modified rates or terms for services described in the notice of intent. A commission-approved application and all data necessary to support the application shall accompany the tariff sheets.

(3) The commission shall cause the notice of intent to be published in the *Texas Register*. The published notice shall state the intervention deadline, which shall be no earlier than five days following publication of notice. On or before the intervention deadline, commission staff may file a recommendation to suspend, docket, or reject the electing ILEC's application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative procedures in this subsection shall no longer apply. If neither an intervention request nor a staff recommendation to suspend, docket, or reject the application is filed, the tariff sheets shall be approved by the commission effective the day following the intervention deadline.

(j) Establishment of prices for new discretionary services. An application to establish a price for a new discretionary service shall be administered in the same manner as price changes for existing discretionary services, except that in addition to establishing the long run incremental cost of a new service, an electing ILEC shall file information which complies with the commission's requirements for establishment of a price ceiling. After commission approvals of both a LRIC floor and a price ceiling are obtained, an electing ILEC may flexibly price a new service within the range of the LRIC floor and the price ceiling by following the procedures in subsection (i).

(k) Price decreases for basic network services.

(1) After commission approval of a LRIC floor, an electing ILEC shall follow the procedures in this subsection to decrease a rate for a basic network service or to change the tariff terms of a basic network service, except that an electing ILEC may not seek pricing flexibility for a basic network service.

(2) An electing ILEC may file a notice of intent on a commission-approved application to decrease the rate for or change the tariff terms of a basic network service at least five days prior to the filing of an application and revised tariff sheets. Following the notice of intent, an electing ILEC shall file one or more tariff sheets to decrease a rate for or change the terms of a basic network service. A commission-approved application and all data necessary to support the application shall accompany the tariff sheets.

(3) The commission shall cause notice to be published in the *Texas Register*. The published notice shall state the intervention deadline, which may be no earlier than nine days following publication of notice. On or before the intervention deadline, commission staff may file a recommendation to suspend, docket, or reject the application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative procedures in this subsection shall no longer apply. If neither an intervention request nor a staff recommendation to suspend, docket, or reject the application is filed, the tariff sheets shall be approved by the commission effective the day following the intervention deadline.

(l) Price increases for basic network services.

(1) For a four-year period following chapter 58 election, an increase in the rate for a basic network service is permitted only after commission approval and only within the parameters set forth in PURA §§58.054 through 58.057 and this rule. Changes to tariff terms require commission approval as set forth in PURA §58.052(b).

(2) An electing ILEC may file a notice of intent on a commission-approved application to increase the rate for a basic network service. The notice of intent shall refer to this rule, shall be accompanied with sufficient documentary support to demonstrate that the rate adjustment meets the criteria prescribed in PURA Chapter 58, shall describe the increase, and shall identify, with specificity, the customers and competitors to be affected by the electing ILEC's application. The notice of intent shall include a copy of the text of any proposed notice to customers. The proposed notice to customers shall meet the criteria prescribed in PURA §58.059 and §53.103. The notice of intent shall also state the electing ILEC's preferred effective date, which shall be no earlier than 90 days after completion of notice.

(3) Following the notice of intent, an electing ILEC shall file one or more tariff sheets to increase the rate for a basic network service. A commission-approved application and all data necessary to support the application shall accompany the tariff sheets.

(4) The commission shall cause notice to be published in the *Texas Register*. The published notice shall state the intervention deadline, which shall be no earlier than 40 days following publication of notice.

(5) Within 15 days of filing of the application and revised tariff sheets, the presiding officer shall notify the applicant if material deficiencies exist in the application and if the proposed notice is inadequate.

(6) Within 50 days of filing of the application and revised tariff sheets, the applicant shall file an affidavit attesting to the fact that notice to customers was published in accordance with the requirements of PURA §§58.059 and 53.103. The affidavit shall contain a copy of all notice given.

(7) Following receipt of a request for intervention filed by an affected party or on the commission's own motion, the commission may suspend the effective date of the rate adjustment and may hold a hearing. After a review, the commission shall issue an order approving, modifying, or rejecting the rate adjustment if it is not in compliance with this rule and PURA §§58.056, 58.057 or 58.058. Any order modifying or rejecting the proposed rate adjustment shall specify why the proposed adjustment is not in compliance with the applicable provisions of PURA §§58.056, 58.057 or 58.058 and the means by which the proposed adjustment may be brought into compliance.

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 October 24, 1997.

TRD-9714133

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 936-7308

## TITLE 22. EXAMINING BOARDS

### Part XXV. Structural Pest Control Board

#### Chapter 599. Treatment Standards

##### 22 TAC §599.4

The Structural Pest Control Board proposes amendment to §599.4, concerning termite treatment disclosure document; the proposed amendments clarify that the concentration of termiticide to be applied must be disclosed, re-define partial and spot treatments and clarify when the additional disclosure text must be provided. The Board is proposing an effective date of September 1, 1998 for this change.

Benny M. Mathis, Executive Director has determined that there will not be fiscal implications as a result of enforcing or administering the rule.

There will be no estimated additional or estimated reduction in cost to state or local government for the first five-year period the rule will be in effect.

Roger B. Borgelt has determined that for each year of the first five-year period the rule is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be clearer information to consumers regarding the types of termite treatments.

There is no available anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Texas Structural Pest Control Board, 1106 Clayton Lane #100LW, Austin, Texas 78723.

The amendment is proposed under Article 135b-6 which provides the Structural Pest Control Board with the authority to license and regulate persons who perform structural pest control services.

The following is the (statutes, articles or code) that are affected by this rule:

Rule Number Statute, Article or Code, §599.4, Article 135b-6, §595.7 Article 135b-6, §599.6, Article 135b-6.

§599.4 Termite Treatment Disclosure Documents.

(a) (No change.)

(b) Each termite treatment disclosure document shall include, but is not limited to:

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

(5) the concentration of any liquid [rate of] termiticide application to be used on the treatment.

(6) for subterranean termite post construction treatments the following statements and definitions in at least 8-point type: A termite treatment may be a [full treatment], partial treatment or spot treatment, these types of treatments are defined as follows:

(A) Partial [Full Treatment Pier and Beam]– This technique allows a wide variety of treatment strategies but is more involved than a spot treatment (see definition below). Ex.: treatment of some or all of the perimeter, bath traps, expansion joints, stress cracks and bait locations . [Generally defined as the treatment of the outer perimeter including porches, patios and treatment of the attached garage. In the crawl space, treatment would include any soil to structure contacts as well as removal of any wood debris on the ground.]

(B) Pier and Beam [Slab Construction]– Generally defined as the treatment of the outer perimeter including porches, patios and treatment of the attached garage. In the crawl space, treatment would include any soil to structure contacts as well as removal of any wood debris on the ground. [Generally defined as treatment of the perimeter and all known slab penetrations as well as any known expansion joints or stress cracks.]

(C) Slab Construction [Partial Treatment]– Generally defined as treatment of the perimeter and all known slab penetrations as well as any known expansion joints or stress cracks. [Any treatment which is less than what is typically considered to be a full treatment. This technique allows a wide variety of treatment strategies but is more involved than a spot treatment (see definition below). Ex. treatment of the perimeter and bath traps.]

(D) Spot Treatments–Any treatment which concerns a limited, defined area less than ten (10) linear or square feet that is intended to protect a specific location or "spot". Often there are adjacent areas susceptible to termite infestation which are not treated.

(7) For all treatments there will be a graph showing exactly what will be treated. Treatment specifications and warranties for those treatments may vary widely. Review the pesticide label provided to you for minimum treatment specification. If you have any questions, contact the service provider or the Texas Structural Pest Control Board, 1106 Clayton Lane, Suite 100LW, Austin, Texas 78723. Telephone number (512) 451-7200.

~~(8)(7)~~ For pre-construction treatments, The Board-approved Termite Pretreatment Disclosure Document (SPCB/D-1) must be provided to, and signed by, the contractor or purchaser of the pretreatment service. A signed copy must be kept in the pest control use records of the licensee. Failure to provide this document will result in an administrative penalty of not less than \$3,000 per violation. The text and format of the termite pre-treatment disclosure document shall be as follows:

Figure 1: 22 TAC §599.4(b)~~(8)(7)~~

~~(9) (8)~~ Paragraph (5) of this subsection does[de] not apply to termiticide baits.

~~(10) (9)~~ For drywood termite and related insect treatments the following statements and definitions in at least eight (8) point type: A drywood termite or related insect treatment may be a full treatment or limited[spot] treatment. These types of treatments are defined as follows: Full Treatment Generally defined as a treatment to control 100 percent of the insect infestation by tarpaulin fumigation or appropriate sealing method. A full treatment by fumigation is designed to eliminate every insect colony, both accessible and inaccessible. It should include the infested structure and all attached structures. Tarpaulin fumigation reaches every part of a structure that may not be reached by other approved methods. Limited[Spot] Treatment Any treatment less than full treatment. A treatment which has a limited and defined area that is intended to protect a specific location [or "spot".] Often there are adjacent areas susceptible to drywood termite or related insect infestations which are not treated. Because of the nature of wood destroying insects, these untreated areas may continue to harbor drywood termites and unrelated insects throughout the structure without detection.

~~(11) (10)~~ A consumer information sheet as required by Section 595.7 of this title (relating to Consumer Information Sheet).

(c) (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 October 10, 1997.

TRD-9713485

Benny M. Mathis, Jr.

Executive Director

Structural Pest Control Board

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 451-7200

◆ ◆ ◆  
**TITLE 25. HEALTH SERVICES**

**Part I. Texas Department of Health**

**Chapter 98. HIV and STD Control**

**Subchapter C. Medication Program**

**Medication Pilot Project**

**25 TAC §§98.131–98.141**

The Texas Department of Health (department) proposes new §§98.131-98.141, concerning the Human Immunodeficiency Virus (HIV) Medication Program. Specifically, these sections describe a medication pilot project: the purpose and scope of the project; criteria for financial eligibility and specific benefits; medications covered; priority; application and appeal procedures; confidentiality; the types of payment for approved medication; participating pharmacies, and prescription fees. Rider 54 to the Texas Department of Health portion of the General Appropriation Act of the 75th Legislature encouraged the department to develop this pilot project to expend donated funds for HIV medications and coinsurance payments for HIV positive persons. The Texas Health and Safety Code, Chapter 85, Subchapter C, ("HIV Medication Program") requires the department

to assist health care providers and HIV-infected individuals in the purchase of medications approved by the Texas Board of Health (board) that have been shown to be effective in reducing hospitalizations due to HIV-related conditions. The new rules will implement the goals established by these laws.

Doug Wilson, Chief of Staff Services, Associateship for Disease Control and Prevention, Texas Department of Health, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Wilson also has determined that for each year of the first five years that the sections will be in effect, the public benefit anticipated as a result of enforcing the sections will be the increased provision of HIV medications, increased employment of HIV positive individuals, and a decrease in HIV-related hospitalization. There will be no additional cost to small businesses. There will be no additional cost to persons who may be required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Sheral Skinner, Director, HIV/STD Medication Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 490-2510. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The new sections are proposed under Texas Health and Safety Code §85.062 which requires the board to establish by rule, financial eligibility requirements for participation in the HIV medication program; §85.063 which requires the board to establish application and distribution procedures, eligibility guidelines, and appeals procedures for the HIV medication program; §85.016 which allows the board to adopt any rules necessary to implement the HIV Medication Program; and §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.

These new sections affect the Health and Safety Code Chapter 85.

§98.131. Purpose and Scope.

(a) Purpose. These sections will implement the provisions of the HIV H.O.P.E. (Health Options to Promote Employment) Project as outlined in Rider 54 to the Texas Department of Health portion of the General Appropriations Act of the 75th Legislature. The operation of this project is contingent upon the receipt of private donations for the expressed purpose of purchasing HIV medications and insurance assistance. The project shall assist HIV-infected individuals not eligible for the Texas HIV Medication Program in obtaining medications that have been shown to be effective in the treatment of HIV disease and HIV-related conditions. This assistance will be in the form of direct provision of the medications or insurance assistance benefits.

(b) These sections cover eligibility, criteria for financial eligibility, priority, application process, appeal procedures, confidentiality, procedures for obtaining the application materials, payment for approved medications, and participating pharmacies.

§98.132. Eligibility.

A Texas resident is eligible to participate in the HIV Health Options to Promote Employment Project (project) if he or she:

- (1) is diagnosed with HIV infection;

(2) is under the care of a licensed physician who prescribes the medication(s);

(3) is not covered for approved program medication(s) under the Texas Medicaid Program or the Texas HIV Medication Program;

(4) does not qualify for any other local, state or federal program available for financing the purchase of approved project medication(s); and

(5) meets the financial and specific eligibility criteria for the provision of medication benefits or the insurance assistance benefits of the project.

§98.133. Criteria for Financial Eligibility and Specific Benefits.

(a) A person is financially eligible for the direct provision of medication benefits of the HIV Health Options to Promote Employment Project (project) if he or she:

(1) is not covered for the medication(s) by any other third-party payer; and

(2) has a gross income, when combined with his or her spouse that is 201% and does not exceed 500% of the most recently published federal income poverty guidelines. For minors, the household's gross income is 201% and does not exceed 500% of the most recently published federal poverty income guidelines. The spouse or the parent must be living in the same household at the time of application. The department will determine if the person satisfies this criteria from information provided by the person on a form developed by the department.

(b) A person is financially eligible for the insurance co-payment and deductible assistance benefits of the project if he or she:

(1) is enrolled in a current health/medical insurance plan that requires co-payment and/or deductible expenses to be paid by the insured; and

(2) has a gross income, when combined with his or her spouse, that does not exceed 500% of the most recently published federal poverty income guidelines. For minors, the child's or parent's gross income does not exceed 500% of the most recently published federal poverty income guidelines. The spouse or the parent must be living in the same household at the time of application. The department will determine if the person satisfies this criteria from information provided by the person on a form developed by the department.

(c) A person is financially eligible for the insurance premium payment assistance benefits of the project if he or she:

(1) is not enrolled in a current health/medical insurance policy;

(2) is unable to obtain insurance due to a "pre-existing" condition;

(3) is eligible for a "High Risk" insurance pool with a yearly premium that does not exceed the limit set by the program guidelines; and

(4) has a gross income, when combined with his or her spouse, that is 301% and does not exceed 500% of the most recently published federal poverty income guidelines. For minors, the child's or parent's gross income is 301% and does not exceed 500% of the most recently published federal poverty income guidelines. The spouse or the parent must be living in the same household at the time of application. The department will determine if the person

satisfies this criteria from information provided by the person on a form developed by the department.

§98.134. Medication Coverage.

(a) The medications provided through the HIV Health Options to Promote Employment Project (project) insurance benefits are limited by the individual insurance plans.

(b) The medications provided through direct purchase by the project are limited to medications approved for the Texas HIV Medication Program formulary, and the specific medical eligibility criteria for them.

(c) A list of the approved medications and specific medical eligibility criteria for them may be obtained from the Texas Department of Health, Bureau of HIV & STD Prevention, HIV/STD Medication Program Director, 1100 West 49th Street, Austin, Texas 78756.

§98.135. Priority.

The project will design and implement guidelines that will encourage persons infected with HIV to enter and/or remain in the workforce. Benefits will be on a sliding scale, based upon the income of the project participants and the funding of the project. Current benefit guidelines may be obtained from the Texas Department of Health, Bureau of HIV & STD Prevention, HIV/STD Medication Program, 1100 West 49th Street, Austin, Texas 78756.

§ 98.136. Application Process.

An application is made by the person by submitting completed financial eligibility and medical certification forms. Application documents must be mailed to the Texas Department of Health, Bureau of HIV & STD Prevention, HIV/STD Medication Program, 1100 West 49th Street, Austin, Texas 78756. An application packet, containing instructions and all necessary forms, may be requested by writing to the HIV/STD Medication Program at the previously cited address in this section or by telephoning toll-free 1-800-255-1090.

§98.137. Appeal Procedures.

Appeals of the department's benefit decisions may be made under the board's informal hearing procedures defined in §§1.51-1.55 of this title (relating to the Informal Hearing Procedures).

§98.138. Confidentiality.

No information that could identify an individual applicant will be released except as authorized by law. Applicants should realize that, in addition to the department, their physicians, pharmacists, and insurance carrier will be aware of their diagnosis.

§98.139. Payment for Approved Medication(s).

Payment will be made using specifications developed by the department and the General Services Commission. If a person is withdrawn from the program for any reason, the department will cease payment of benefits as of that date.

§98.140. Participating Pharmacy.

The program will utilize the Texas HIV Medication Program approved pharmacies.

§98.141. Prescription Fees.

A \$5.00 copayment may be collected by a participating pharmacy for each prescription in accordance with the existing pharmacy agreements with the department.

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 October 27, 1997.

TRD-9714215

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: December 8, 1997

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



## Chapter 229. Food and Drug

### Seafood Safety

#### 25 TAC §§229.121–229.129

The Texas Department of Health (TDH) proposes new §§229.121 - 229.129, concerning state enforcement of new federal seafood safety regulations. Specifically, the sections define terms used in the industry's application of "Fish and Fishery Products Hazard Analysis Critical Control Point Principles (HACCP)", establish rules on current good manufacturing practices, specify the requirements of a HACCP plan, the corrective actions required, requirements for verification that a HACCP plan is adequate, and the specific requirements for record keeping, training, and sanitation control procedures. In addition, the sections specify requirements for processing smoked and smoke-flavored fishery products.

Federal Fish and Fishery Products HACCP regulations contained in Code of Federal Regulations, Title 21, §§123.3-123.16 take effect in December 1997. It is estimated that the rules will affect 150 seafood establishments in Texas. Adoption of HACCP in Texas will create uniformity and consistency of seafood safety throughout the entire seafood industry. It will also benefit Texas consumers by ensuring that all Texas seafood meets the same level of safety as seafood in interstate commerce.

R.D. Sowards, Jr., Director, Manufactured Foods Division, has determined that for the first five-year period the sections are in effect, there will be fiscal implications as a result of increased costs and time for enforcing or administering the sections as proposed. The effect on state government will be an estimated additional cost of \$7,203 for fiscal year 1998, and \$3,601 for each of the fiscal years 1999 through 2002. There will be no fiscal implications for local governments.

Mr. Sowards 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 section will be to further protect public health by requiring facilities used for seafood processing to conduct a hazard analysis and implement a plan, if necessary, to prevent, eliminate, or reduce seafood safety hazards to an acceptable level. In addition, state and local governments will benefit in that there will be less public health risks related to consumption of processed seafood. There will be an additional cost to small businesses with \$3,000-\$6,000 startup costs and \$2,000-\$4,000 per year thereafter. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Mr. R.D. Sowards, Jr., Director, Manufactured Foods Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0243. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The new sections are proposed under the Health and Safety Code, §431.241, which provides the department with the au-

thority to adopt necessary regulations pursuant to the enforcement of Chapter 431; and §12.001, which provides the Texas Board of Health (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.

The new sections affect the Health and Safety Code, Chapter 431.

§229.121. Definitions.

The following words and terms when used in these sections shall have the following meanings unless the context clearly indicates otherwise. The definitions and interpretations of terms in the Health and Safety Code, Chapter 431, §431.002, are applicable to such terms when used in this section, except where they are herein redefined. The following definitions shall also apply:

Certification number-A unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish processor.

Critical control point-A point, step, or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, eliminated, or reduced to acceptable levels.

Critical limit-The maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.

Fish-Fresh or saltwater finfish, crustaceans, other forms of aquatic animal life (including, but not limited to, alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, where such animal life is intended for human consumption.

Fishery product-Any human food product in which fish is a characterizing ingredient.

Food safety hazard-Any biological, chemical, or physical property that may cause a food to be unsafe for human consumption.

Importer-Either the United States (U.S.) owner or consignee at the time of entry into the U.S., or the U.S. agent or representative of the foreign owner or consignee at the time of entry into the U.S., who is responsible for ensuring that goods being offered for entry into the U.S. are in compliance with all laws affecting the importation. For the purposes of this definition, ordinarily the importer is not the custom house broker, the freight forwarder, the carrier, or the steamship representative.

Molluscan shellfish-Any edible species of fresh or frozen oysters, clams, mussels, or scallops, or edible portions of such species, except when the product consists entirely of the shucked adductor muscle.

Preventive measure-Physical, chemical, or other factors that can be used to control an identified food safety hazard.

Process-monitoring instrument-An instrument or device used to indicate conditions during processing at a critical control point.

Processing-For the purposes of the rules processing is defined as follows:

(A) With respect to fish or fishery products: Handling, storing, preparing, heading, eviscerating, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, or holding.

(B) Processing does not include:

(i) harvesting or transporting fish or fishery products, without otherwise engaging in processing.

(ii) practices such as heading, eviscerating, or freezing intended solely to prepare a fish for holding on board a harvest vessel.

(iii) the operation of a retail establishment.

Processor-Any person engaged in commercial, custom, or institutional processing of fish or fishery products, either in the U.S. or in a foreign country. A processor includes any person engaged in the production of foods that are to be used in market or consumer tests.

Scombroid toxin-forming species-Tuna, bluefish, mahi mahi, and other species, whether or not in the family Scombridae, in which significant levels of histamine may be produced in the fish flesh by decarboxylation of free histidine as a result of exposure of the fish after capture to temperatures that permit the growth of mesophilic bacteria.

Shellfish control authority-A federal, state, or foreign agency, or sovereign tribal government, legally responsible for the administration of a program that includes activities such as classification of molluscan shellfish growing areas, enforcement of molluscan shellfish harvesting controls, and certification of molluscan shellfish processors.

Shellstock-Raw, in-shell molluscan shellfish.

Shucked shellfish-Molluscan shellfish that have one or both shells removed.

Smoked or smoke-flavored fishery products-The finished food shall be prepared by:

(A) treating fish with salt (sodium chloride); and

(B) subjecting it to the direct action of smoke from burning wood, sawdust, or similar material and/or imparting to it the flavor of smoke by a means such as immersing it in a solution of wood smoke.

Tag-A record of harvesting information attached to a container of shellstock by the harvester or processor.

§229.122. Current Good Manufacturing Practice.

(a) Current good manufacturing practice in manufacturing, processing, packing, or holding human food. The Texas Department of Health adopts by reference the Code of Federal Regulations (CFR), Title 21, Part 110, §§110.3-110.110, Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food. Copies are indexed and filed in the office of the Division of Manufactured Foods, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3182, and are available for inspection during normal working hours.

(b) The purpose of this section is to set forth requirements specific to the processing of fish and fishery products.

(c) Imported products shall comply with federal requirements of 21 CFR, Part 123, §123.12 (relating to Fish and Fishery Products).

§229.123. Hazard Analysis and Hazard Analysis Critical Control Point (HACCP) Plan.

(a) Hazard analysis. Every processor shall conduct, or have conducted for it, a hazard analysis to determine whether there are food safety hazards that are reasonably likely to occur for each kind of fish and fishery product processed by that processor and to identify the preventive measures that the processor can apply to control those hazards. Such food safety hazards can be introduced both within and outside the processing plant environment, including food safety hazards that can occur before, during, and after harvest. A food safety

hazard that is reasonably likely to occur is one for which a prudent processor would establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that it will occur in the particular type of fish or fishery product being processed in the absence of those controls. Hazards for each kind of fish and fishery product may be found in the "Fish and Fishery Products Hazards and Controls Guide" which may be obtained from: U.S. Food and Drug Administration, Office of Seafood, 200 C Street, S.W., Washington, D.C. 20204, (202) 418-3133.

(b) The Hazard Analysis Critical Control Point (HACCP) plan. Every processor shall have and implement a written HACCP plan whenever a hazard analysis reveals one or more food safety hazards that are reasonably likely to occur, as described in subsection (a) of this section. A HACCP plan shall be specific to:

(1) each location where fish and fishery products are processed by that processor; and

(2) each kind of fish and fishery product processed by the processor. The plan may group kinds of fish and fishery products together, or group kinds of production methods together, if the food safety hazards, critical control points, critical limits, and procedures required to be identified and performed in subsection (c) of this section are identical for all fish and fishery products so grouped or for all production methods so grouped.

(c) The contents of the HACCP plan. The HACCP plan shall, at a minimum:

(1) list the food safety hazards that are reasonably likely to occur, as identified in accordance with subsection (a) of this section, and that must be controlled for each fish and fishery product. Consideration should be given to whether any food safety hazards are reasonably likely to occur as a result of the following:

(A) natural toxins;

(B) microbiological contamination;

(C) chemical contamination;

(D) pesticides;

(E) drug residues;

(F) decomposition in scombroid toxin-forming species or in any other species where a food safety hazard has been associated with decomposition;

(G) parasites, where the processor has knowledge or has reason to know that the parasite-containing fish or fishery product will be consumed without a process sufficient to kill the parasites, or where the processor represents, labels, or intends for the product to be so consumed;

(H) unapproved use of direct or indirect food or color additives; and

(I) physical hazards;

(2) list the critical control points for each of the identified food safety hazards, including as appropriate:

(A) critical control points designed to control food safety hazards that could be introduced in the processing plant environment; and

(B) critical control points designed to control food safety hazards introduced outside the processing plant environment,

including food safety hazards that occur before, during, and after harvest;

(3) list the critical limits that must be met at each of the critical control points;

(4) list the procedures, and frequency thereof, that will be used to monitor each of the critical control points to ensure compliance with the critical limits;

(5) include any corrective action plans that have been developed in accordance with §229.124(b) of this title (relating to Corrective Actions), to be followed in response to deviations from critical limits at critical control points;

(6) list the verification procedures, and frequency thereof, that the processor will use in accordance with §229.125(a) of this title (relating to Verification); and

(7) provide for a record keeping system that documents the monitoring of the critical control points. The records shall contain the actual values and observations obtained during monitoring.

(d) Signing and dating the HACCP plan.

(1) The HACCP plan shall be signed and dated, either by the most responsible individual onsite at the processing facility or by a higher level official of the processor. This signature shall signify that the HACCP plan has been accepted for implementation by the firm.

(2) The HACCP plan shall be dated and signed:

(A) upon initial acceptance;

(B) upon any modification; and

(C) upon verification of the plan in accordance with §229.125(a)(1).

(e) Product subject to other regulations. For fish and fishery products that are processed low acid foods or acidified foods the HACCP plan need not list the food safety hazard associated with the formation of *Clostridium botulinum* toxin in the finished, hermetically sealed container, nor list the controls to prevent that food safety hazard. A HACCP plan for such fish and fishery products shall address any other food safety hazards that are reasonably likely to occur.

(f) Sanitation. Sanitation controls may be included in the HACCP plan. However, to the extent that they are monitored in accordance with §229.128(b) of this title (relating to Sanitation Control Procedures) they need not be included in the HACCP plan, and vice versa.

(g) Legal basis. Failure of a processor to have and implement a HACCP plan that complies with this section whenever a HACCP plan is necessary, otherwise operate in accordance with the requirements of §229.128(b) of this title, shall render the fish or fishery products of that processor adulterated under Health and Safety Code, §431.081(a)(4). Whether a processor's actions are consistent with ensuring the safety of food will be determined through an evaluation by the department of the processors overall implementation of its HACCP plan, if one is required.

§ 229.124. Corrective Actions.

(a) Whenever a deviation from a critical limit occurs, a processor shall take corrective action either by:

(1) following a corrective action plan that is appropriate for the particular deviation; or

(2) following the procedures in subsection (c) of this section.

(b) Processors may develop written corrective action plans, which become part of their Hazard Analysis Critical Control Point in accordance with §229.123(c)(5) of this title (relating to Hazard Analysis and Hazard Analysis Critical Control Point (HACCP) Plan), by which they predetermine the corrective actions that they will take whenever there is a deviation from a critical limit. A corrective action plan that is appropriate for a particular deviation is one that describes the steps to be taken and assigns responsibility for taking those steps, to ensure that:

(1) no product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation; and

(2) the cause of the deviation is corrected.

(c) When a deviation from a critical limit occurs and the processor does not have a corrective action plan that is appropriate for that deviation, the processor shall:

(1) segregate and hold the affected product, at least until the requirements of subsections (c)(2) and (c)(3) of this section are met;

(2) perform or obtain a review to determine the acceptability of the affected product for distribution. The review shall be performed by an individual or individuals who have adequate training or experience to perform such a review. Adequate training may or may not include training in accordance with §229.127 of this title (relating to Training);

(3) take corrective action, when necessary, with respect to the affected product to ensure that no product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation;

(4) take corrective action, when necessary, to correct the cause of the deviation;

(5) perform or obtain timely reassessment by an individual or individuals who have been trained in accordance with §229.127 of this title, to determine whether the HACCP plan needs to be modified to reduce the risk of recurrence of the deviation, and modify the HACCP plan as necessary.

(d) All corrective actions taken in accordance with this section shall be fully documented in records that are subject to verification in accordance with §229.125(a)(3)(B) of this title (relating to Verification) and the record keeping requirements of §229.126 of this title (relating to Records).

#### §229.125. Verification.

(a) Overall verification. Every processor shall verify that the Hazard Analysis Critical Control Point (HACCP) plan is adequate to control food safety hazards that are reasonably likely to occur, and that the plan is being effectively implemented. Verification shall include, at a minimum:

(1) Reassessment of the HACCP plan. A reassessment of the adequacy of the HACCP plan whenever any changes occur that could affect the hazard analysis or alter the HACCP plan in any way or at least annually. Such changes may include changes in the following: raw materials or source of raw materials, product formulation, processing methods or systems, finished product distribution systems, or the intended use or consumers of the finished product. The reassessment shall be performed by an individual or individuals who have been trained in accordance with §229.127 of this title (relating to Training). The HACCP plan shall be modified immediately whenever

a reassessment reveals that the plan is no longer adequate to fully meet the requirements of §229.123(c) of this title (relating to Hazard Analysis and Hazard Analysis Critical Control Point (HACCP) Plan).

(2) Ongoing verification activities. Ongoing verification activities including:

(A) a review of any consumer complaints that have been received by the processor to determine whether they relate to the performance of critical control points or reveal the existence of unidentified critical control points;

(B) the calibration of process-monitoring instruments;  
and

(C) at the option of the processor, the performing of periodic end-product or in-process testing.

(3) Records review. A review, including signing and dating, by an individual who has been trained in accordance with §229.127 of this title, of the records that document:

(A) the monitoring of critical control points. The purpose of this review shall be, at a minimum, to ensure that the records are complete and to verify that they document values that are within the critical limits. This review shall occur within one week of the day that the records are made;

(B) the taking of corrective actions. The purpose of this review shall be, at a minimum, to ensure that the records are complete and to verify that appropriate corrective actions were taken in accordance with §229.124 of this title (relating to Corrective Actions). This review shall occur within one week of the day that the records are made; and

(C) the calibrating of any process control instruments used at critical control points and the performing of any periodic end-product or in-process testing that is part of the processor's verification activities. The purpose of these reviews shall be, at a minimum, to ensure that the records are complete, and that these activities occurred in accordance with the processor's written procedures. These reviews shall occur within a reasonable time after the records are made.

(b) Corrective actions. Processors shall immediately follow the procedures in §229.124 of this title whenever any verification procedure, including the review of a consumer complaint, reveals the need to take a corrective action.

(c) Reassessment of the hazard analysis. Whenever a processor does not have a HACCP plan because a hazard analysis has revealed no food safety hazards that are reasonably likely to occur, the processor shall reassess the adequacy of that hazard analysis whenever there are any changes that could reasonably affect whether a food safety hazard now exists. Such changes may include, but are not limited to changes in: raw materials or source of raw materials, product formulation, processing methods or systems, finished product distribution systems, or the intended use or consumers of the finished product. The reassessment shall be performed by an individual or individuals who have been trained in accordance with §229.127 of this title.

(d) Record keeping. The calibration of process-monitoring instruments, and the performing of any periodic end-product and in-process testing, in accordance with subsection (a)(2)(B)-(C) of this section shall be documented in records that are subject to the record keeping requirements of §229.126 of this title (relating to Records).

#### §229.126. Records.

(a) General requirements. All records required by this section shall include:



- (1) the name and location of the processor or importer;
- (2) the date and time of the activity that the record reflects;
- (3) the signature or initials of the person performing the operation; and

(4) where appropriate, the identity of the product and the production code, if any. Processing and other information shall be entered on records at the time that it is observed.

(b) Record retention.

(1) All records required by this section shall be retained at the processing facility or importer's place of business in the United States (U.S.) for at least one year after the date they were prepared in the case of refrigerated products and for at least two years after the date they were prepared in the case of frozen, preserved, or shelf-stable products.

(2) Records that relate to the general adequacy of equipment or processes being used by a processor, including the results of scientific studies and evaluations, shall be retained at the processing facility or the importer's place of business in the U.S. for at least two years after their applicability to the product being produced at the facility.

(3) If the processing facility is closed for a prolonged period between seasonal packs, or if record storage capacity is limited on a processing vessel or at a remote processing site, the records may be transferred to some other reasonably accessible location at the end of the seasonal pack but shall be immediately returned for official review upon demand.

(c) Official review. All records required by this section and all plans and procedures required by this section shall be available for official review and copying at reasonable times.

(d) Records maintained on computers. The maintenance of records on computers is acceptable, provided that appropriate controls are implemented to ensure the integrity of the electronic data and signatures.

§229.127. Training.

(a) Requirements. The trained individual need not be an employee of the processor. At a minimum, the functions listed in subsection (b) of this section shall be performed by an individual who meets the following requirements:

(1) he or she has successfully completed training in the application of Hazard Analysis Critical Control Point principles to fish and fishery product processing at least equivalent to that received under standardized curriculum recognized as adequate by the United States Food and Drug Administration; or

(2) he or she is otherwise qualified through job experience that has provided knowledge at least equivalent to the standardized curriculum recognized as adequate by the United States Food and Drug Administration.

(b) Functions. The following functions shall be performed by an individual who meets the requirements for training listed in subsection (a) of this section:

(1) develop a Hazard Analysis Critical Control Point (HACCP) plan, which could include adapting a model or generic-type HACCP plan, that is appropriate for a specific processor, in order to meet the requirements of §229.123(b) of this title (relating to Hazard Analysis and Hazard Analysis Critical Control Point (HACCP) Plan);

(2) reassess and modify the HACCP plan in accordance with the corrective action procedures specified in §229.124(c)(5) of this title (relating to Corrective Actions);

(3) reassess and modify the HACCP plan in accordance with the verification activities specified in §229.125(a)(1) of this title (relating to Verification);

(4) reassess and modify the hazard analysis in accordance with the verification activities specified in §229.125(c) of this title; and

(5) perform the record review required by §229.125(a)(3) of this title.

(c) Public Information. All plans and records required by these sections are public information unless excepted from disclosure pursuant to the Texas Public Information Act, Chapter 552 of the Government Code.

§229.128. Sanitation Control Procedures.

(a) Sanitation Standard Operating Procedure. Each processor should have and implement a written sanitation standard operating procedure (SSOP) or similar document that is specific to each location where fish and fishery products are produced. The SSOP should specify how the processor will meet those sanitation conditions and practices that are to be monitored in accordance with subsection (b) of this section.

(b) Sanitation monitoring. Each processor shall monitor the conditions and practices during processing with sufficient frequency to ensure, at a minimum, conformance with those conditions and practices specified in the Good Manufacturing Practices adopted by reference in §229.122 of this title (relating to Current Good Manufacturing Practice), that are both appropriate to the plant and the food being processed and relate to the following:

(1) safety of the water that comes into contact with food or food contact surfaces, or is used in the manufacture of ice;

(2) condition and cleanliness of food contact surfaces, including utensils, gloves, and outer garments;

(3) prevention of cross-contamination from insanitary objects to food, food packaging material, and other food contact surfaces, including utensils, gloves, and outer garments, and from raw product to cooked product;

(4) maintenance of hand washing, hand sanitizing, and toilet facilities;

(5) protection of food, food packaging material, and food contact surfaces from adulteration with lubricants, fuel, pesticides, cleaning compounds, sanitizing agents, condensate, and other chemical, physical, and biological contaminants;

(6) proper labeling, storage, and use of toxic compounds;

(7) control of employee health conditions that could result in the microbiological contamination of food, food packaging materials, and food contact surfaces; and

(8) exclusion of pests from the food plant. The processor shall correct in a timely manner, those conditions and practices that are not met.

(c) Sanitation control records. Each processor shall maintain sanitation control records that, at a minimum, document the monitoring and corrections prescribed by subsection (b) of this section. These records are subject to the requirements of §229.126 of this title (relating to Records).

(d) Relationship to HACCP plan. Sanitation control procedures may be included in the HACCP plan, required by §229.123(b) of this title (relating to Hazard Analysis and Hazard Analysis Critical Control Point (HACCP) Plan). However, to the extent that they are monitored in accordance with subsection (b) of this section they need not be included in the HACCP plan, and vice versa.

§229.129. Smoked and Smoked-Flavored Fishery Products.

(a) Processors of smoked and smoke-flavored fishery products shall include in their Hazard Analysis Critical Control Point (HACCP) plans how they are controlling the food safety hazard associated with the formation of toxin by *Clostridium botulinum* for at least as long as the shelf life of the product under normal and moderate abuse conditions.

(b) Processors shall include any person engaged in commercial, custom, or institutional processing of fish or fishery products, either in the United States or in a foreign country. A processor includes any person engaged in the production of foods that are to be used in market or consumer tests.

(c) This section does not apply to processors of smoked and smoked-flavored fishery products that are subject to the requirements of Code of Federal Regulations, Title 21, Part 113 (relating to Processing of Low Acid Foods), and Code of Federal Regulations, Title 21, Part 114 (relating to Processing of Acidified Foods).

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 October 27, 1997.

TRD-9714216

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: December 8, 1997

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



## Chapter 313. Athletic Trainers

### General Requirements and Guidelines

#### **25 TAC §§313.1, 313.3, 313.5, 313.7, 313.8, 313.9, 313.12, 313.13**

The Advisory Board of Athletic Trainers (board) proposes amendments to §§313.1, 313.3, 313.5, 313.7, 313.8, 313.9, 313.12, and 313.13, concerning the regulation of licensed athletic trainers. Specifically, the sections cover definitions, fees, qualifications, examination for licensure, determination of eligibility for licensure, temporary license, license renewal, and continuing education requirements. Section 313.1 is amended to add the definition of "associate executive secretary," a board officer position that has been in existence for several years and that assists the executive secretary and serves as a member of the Administrative Services Committee; and the definition of "executive secretary emeritus," a position that will allow for continuity should the executive secretary resign. Section 313.3 is amended to clearly define that the written examination fee is \$50 and the oral/practical examination fee is \$50. Section 313.5 is amended to further define the course work requirements for licensure; to add the requirement of a course in advanced athletic training or sports medicine for all applications filed after September 1, 2000; and to further define the duration, number

of hours, and settings for the athletic training apprenticeship. Section 313.7 is amended to further define when a student may make application for examination. Section 313.8 is amended to clarify the situations in which the board will deny an application for licensure and to clarify board actions when an applicant fails to request a hearing or withdraws a request for hearing. Section 313.9 is amended to clarify that, upon failure of an examination, a temporary license is voided and the applicant is not eligible for another temporary license. Section 313.12 is amended to clarify the status of a license when the license holder has requested an extension for completion of continuing education requirements. Section 313.13 is amended to allow a licensee who has requested an extension for completion of continuing education requirements to provide athletic training services during the extension period.

Kathy Craft, Program Administrator, has determined that for the first five-year period the sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Ms. Craft has also determined that for each of the first five years the sections are in effect, the public benefit as a result of enforcing or administering the sections will be to clarify the application and examination processes, the continuing education process, and the requirements for licensure and temporary licensure. The sections assure that the regulation of athletic trainers continues to identify competent providers. There will be no cost to small businesses. There will be no additional cost to persons who may be required to comply with the sections as proposed. There will be no effect on local employment.

Comments on the proposal may be submitted to Kathy Craft, Program Administrator, Advisory Board of Athletic Trainers, 1100 West 49th Street, Austin, Texas 78756-3183, Telephone (512) 834-6615. Comments will be accepted for 30 days from the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4512d, §5(a), which provide the board with the authority to adopt rules consistent with the Act which are necessary for the performance of its duties; under Texas Civil Statutes, Article 4512d, §5(c), which provide the board with the authority to establish requirements for continuing education for athletic trainers in Texas; under Texas Civil Statutes, Article 4512d, §5(d), which provide the board with the authority to employ an executive secretary and other persons necessary to carry out the provisions of the Act; and under Texas Civil Statutes, Article 4512d, §10(c), which provide the board with the authority to prescribe the time during which temporary licenses are valid.

The sections affect Texas Civil Statutes, Article 4512d.

#### *§313.1. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings[;] unless the context clearly indicates otherwise:

Associate executive secretary - A licensed athletic trainer employed by the board as the associate director of board licensing activities and who serves at the direction of the board.

Executive secretary emeritus - A licensed athletic trainer who has been previously employed by the board as the director of board licensing activities and who currently serves at the direction of the board and provides guidance to the Administrative Services Committee.

§313.3. Fees.

(a) The schedule of fees of the board is as follows:

- (1) written examination fee - \$50;
- (2) oral/practical examination fee - \$50; [initial licensure fee - \$50;]
- (3) initial licensure fee - \$50; [renewal fee - \$40;]
- (4) renewal fee - \$40; [temporary license fee - \$50;]
- (5) late renewal fee:

(A)-(B) (No change.)

(C) \$130 when renewed at least one year but less than two years after expiration plus \$10 if license certificate must be reissued; ~~[and]~~

(6) child support reinstatement fee - \$50 ; and [-]

(7) temporary license fee - \$50.

(b) - (f) (No change.)

§313.5. Qualifications.

(a) (No change.)

(b) Curriculum requirements. Each applicant must have a baccalaureate or post-baccalaureate degree from a college or university which held accreditation, at the time the degree was conferred, from an accepted regional educational accrediting association reported by the American Association of Collegiate Registrars and Admissions Officers.

(1) The curriculum requirements approved by the Advisory Board of Athletic Trainers (board) for applicants qualifying under Texas Civil Statutes, Article 4512d (Act), §9(1), are as follows.

(A) A person shall have a baccalaureate or post-baccalaureate degree which includes at least 24 hours of combined academic credit from each of the following course areas: ~~[with a major program which focuses its content on athletic training or sports medicine.]~~

(i) human anatomy;

(ii) health, disease, nutrition, fitness, wellness, or drug and alcohol education;

(iii) kinesiology or biomechanics;

(iv) human physiology or physiology of exercise;

(v) athletic training, sports medicine, or care and prevention of injuries;

(vi) advanced athletic training, advanced sports medicine, or assessment of injury; and

(vii) therapeutic exercise or rehabilitation or therapeutic modalities.

(B) In place of the requirements in subparagraph (A) of this paragraph, a person shall have:

(i) (No change.)

(ii) at least three hours of academic credit from each of the following course areas:

(I)-(III) (No change.)

(IV) human physiology or physiology of exercise; ~~[and ]~~

(V) athletic training, sports medicine, or care and prevention of injuries; ~~[and]~~

(VI) effective for all applications filed on or after September 1, 2000, three hours of academic credit in advanced athletic training, advanced sports medicine, or assessment of injury; and

(iii) an apprenticeship in athletic training meeting the following guidelines.

(I) (No change.)

(II) The apprenticeship must be a minimum of ~~[three years and]~~ 1800 clock hours. It must be based on the academic calendar and must be completed during at least five fall and/or spring semesters. ~~[Each year must be a minimum of 600 clock hours per any consecutive 12 months. Hours in excess of 600 per year are not cumulative.]~~ Hours in the classroom do not count toward apprenticeship hours.

(III) The hours must be completed in ~~[the]~~ college or university ~~[training room setting and on the field or in college or university sanctioned]~~ intercollegiate sports programs. ~~[except a]~~ A maximum of 300 ~~[400]~~ clock hours of the 1800 clock hours ~~[per year]~~ may be accepted from one or a combination of the following settings:

(-a-) (No change.)

(-b-) hours completed in a secondary school setting arranged by the college or university's athletic trainer. Such hours are limited to sports in grades 7 to 12. These hours must be under the direct supervision of a licensed athletic trainer; or [-]

(-c-) hours completed in a professional or semi-professional setting arranged by the college or university's athletic trainer. These hours must be approved by the supervising licensed athletic trainer.

(IV) 1500 clock hours of the ~~[The]~~ apprenticeship shall be fulfilled while enrolled as a student at the college or university where he or she is completing the apprenticeship ~~[for at least eight months during any consecutive 12 months counted under subclause (II) of this clause].~~

(V) (No change.)

(2) (No change.)

(c)-(d) (No change.)

§313.7. Examination for Licensure.

(a) - (c) (No change.)

(d) Applications for examination.

(1) An applicant must file an application in accordance with §313.4 of this title (relating to Application Requirements and Procedures).

(A) An applicant qualifying under the Act, §(9)(1), may make application for examination if he or she:

(i) (No change.)

(ii) has completed or is currently pre-registered or enrolled in the courses listed in §313.5(b)(1) of this title (relating to Education Requirements); and

(iii) has completed at least 1300 clock hours of the required 1800 clock hours [five semesters] and the [or is enrolled in the fifth semester of his or her] apprenticeship program is in progress

(B) (No change.)

(2)-(4) (No change.)

(e) - (j) (No change.)

§313.8. *Determination of Eligibility for Licensure.*

(a) - (c) (No change.)

(d) An application for licensure shall be disapproved if the person has:

(1) not completed the educational requirements as set out in §313.5 of this title (relating to Educational Requirements);

(2) not completed the apprenticeship requirements as set out in §313.5 [§313.6] of this title [~~(relating to Apprenticeship Requirements)~~];

[~~(3)~~ failed to pass the examination prescribed by the board as set out in §313.7 of this title (relating to Examination for Licensure);]

(3) [~~(4)~~] failed or refused to properly complete or submit any application form(s), endorsements, or fees, or deliberately presented false information on any form or document required by the board;

(4) [~~(5)~~] violated or conspired to violate the Act or any provision of this chapter; or

(5) [~~(6)~~] been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee as set out in §313.14 of this title (relating to Licensing of Persons with Criminal Backgrounds to be Athletic Trainers) or involves moral turpitude.

(e) (No change.)

(f) An applicant who does not request a hearing in a timely manner or who withdraws a request for a hearing shall have the application deemed denied without further action from the board.

(g) [~~(f)~~] An applicant whose application has been disapproved may not reapply for examination or licensure for six months.

§313.9. *Temporary License.*

(a)-(c) (No change.)

(d) The temporary license of an [An] applicant who failed an [any previous] examination administered by the board shall be voided and the applicant shall not be eligible for another [a] temporary license.

§313.12. *License Renewal.*

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

(c) License renewal procedures.

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

(3) A licensee has renewed the license when the licensee has mailed the renewal form and the required renewal fee to the department prior to the expiration date of the license. The postmark date shall be considered the date of mailing. The current license will be considered active until the renewal is issued or finally denied.

(4) (No change.)

(d) - (e) (No change.)

§313.13. *Continuing Education Requirements.*

(a) - (g) (No change.)

(h) A licensee who has failed to complete the requirements for continuing education may be granted a 90-day extension to the continuing education period.

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

[~~(4)~~ A person who fails to complete continuing education requirements for renewal holds an expired license and may not hold himself or herself out as an athletic trainer, imply he or she has the title of "licensed athletic trainer" or "athletic trainer", use "LAT" or "AT", or perform the duties of an athletic trainer during the extension period.]

(4) [~~(5)~~] A license may be renewed upon completion of the required continuing education within the given extension period, submission of the license renewal form, and payment of the applicable late renewal fee.

(i) - (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 October 24, 1997.

TRD-9714177

Michael Daniel Saly

Chair

Advisory Board of Athletic Trainers

Earliest possible date of adoption: December 8, 1997

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

◆ ◆ ◆  
**TITLE 28. INSURANCE**

**Part I. Texas Department of Insurance**

**Chapter 3. Life, Accident and Health Insurance and Annuities**

**Subchapter B. Individual Life Insurance Policy Form Checklist and Affirmative Requirements**

**28 TAC §3.129**

*(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 Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Insurance proposes the repeal of 28 Texas Administrative Code ("TAC") §3.129 in Chapter 3, Subchapter B, concerning Individual Life Insurance Policy Form Checklist and Affirmative Requirements. The repeal of §3.129, which relates to Acceleration of Life Insurance Benefits, is necessary because the Department is proposing that rules governing acceleration-of-life-insurance benefits be moved into their own subchapter in Chapter 3. That proposal, creating a new subchapter LL (§§3.12001-12017) and published elsewhere in this issue of the *Texas Register*, expands and revises the provisions now contained in section 3.129, based on the need to implement statutory changes enacted by the 75th Legislature and at the federal level by the Health Insurance Portability and Accountability Act of 1996, the need to clearly delineate acceleration-of-life-insurance standards for both individual and group life insurance policies, group certificates, and riders, and

the decision to propose allowance of a new method for financing acceleration-of-life-insurance benefits, as requested by industry. Because of these additions and revisions, the rules cannot all effectively be placed in one section, and do not belong in Subchapter B, which relates only to individual life insurance policies. The Department believes that this reorganization will enhance the clarity and readability of the rules.

Kim Stokes, deputy commissioner, life/health group, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no fiscal implications for state or local government, or small business, as a result of enforcing or administering the repeal. There will be no effect on local economy or local employment.

Ms. Stokes also has determined that for each year of the first five years the repeal is in effect, the anticipated public benefit will be to place rules governing acceleration-of-life-insurance benefits in a more clear and readable format. There are no anticipated economic costs to small or large businesses resulting from this repeal.

Comments on the proposal must be submitted within 30 days after publication of the proposed repeal in the *Texas Register* to Caroline Scott, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-1C, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Kim Stokes, Deputy Commissioner, Life/Health Group, Texas Department of Insurance, P.O. Box 149104, MC 107-2A, Austin, Texas 78714-9104. Any requests for public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The repeal is proposed pursuant to the Insurance Code, Articles 3.42, 3.50-6 and 1.03A. Article 3.42, relating to life insurance policy form approval, and Article 3.50-6, relating to payment of accelerated life insurance benefits, each authorize the commissioner to adopt reasonable rules to implement the articles. Article 1.03A provides that the commissioner may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute.

The following rule and statute are affected by this proposed repeal: Insurance Code, Articles 3.42, 3.50-6

§3.129. *Acceleration of Life Insurance Benefits.*

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 October 27, 1997.

TRD-9714210

Caroline Scott

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-6327



## Subchapter LL. Standards for Acceleration-of-Life-Insurance Benefits for Individual and Group Policies and Riders

**28 TAC §§3.12001-3.12017**

The Texas Department of Insurance proposes new Subchapter LL, §§3.12001-3.12017, of Chapter 3, Title 28 of the Texas Administrative Code ("TAC"). The proposed subchapter relates to acceleration-of-life-insurance benefits offered in relation to both individual and group life insurance contracts. Acceleration-of-life-insurance benefits allow an insured to obtain payment of all or a part of the death benefit of a life insurance policy, certificate or rider prior to death of the insured, in circumstances in which the insured has a "terminal illness" (life expectancy of two years or less), "long-term care illness" (resulting in the inability to perform activities of daily living without assistance, or in impairment of cognitive ability) or "specified disease" (a disease or condition likely to cause permanent disability or premature death, such as AIDS or a malignant tumor). Rules relating to acceleration-of-life-insurance benefits previously were contained in Subchapter B (relating to individual life insurance policy form checklist and affirmative requirements). See 28 TAC §3.129. However, based on the need to implement statutory changes enacted by the 75th Legislature and at the federal level by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the need to clearly delineate acceleration-of-life-insurance standards for both individual and group life insurance policies, group certificates, and riders, and requests from industry to allow a new method for financing acceleration-of-life-insurance benefits, the Department proposes to place these more comprehensive rules in their own subchapter, and to repeal §3.129 elsewhere in this issue of the *Texas Register*. The Department believes that this reorganization will enhance the clarity and readability of the rules.

The proposed sections are necessary to: (1) expand the circumstances under which insurers, may, at their option, offer acceleration-of-life-insurance benefits, thus enhancing financial choices for insureds facing terminal or life-threatening illnesses or conditions; (2) implement revised statutory requirements for group and individual life insurance policies passed by the 75th Legislature; (3) set uniform standards for offering acceleration-of-life-insurance benefits that will be applicable to all group and individual life insurance plans, creating a level playing field for insurers; (4) allow insurers, with proper disclosures, to offer benefits that will qualify for favorable tax treatment under federal law, as well as benefits that may not qualify for favorable tax treatment, but that are available to a broader class of insureds; and (5) ensure that acceleration-of-life-insurance benefit provisions that fund long-term care expenses conform basic definitions and eligibility triggers to those in rules setting minimum standards for long-term care insurance contracts. Many provisions of Subchapter LL are substantially similar to existing provisions in 28 TAC §3.129. Significant changes contained in these rules include expansion of the types of life insurance contracts covered by the rules; expansion of the illnesses or conditions that insurers may use to trigger acceleration-of-life-insurance benefits; expansion of and revisions to the methods that insurers may use to calculate acceleration-of-life-insurance benefits; designation of which rules relating to long-term care insurance contracts are applicable to life insurance contracts providing for payment of long-term care expenses through acceleration-of-life-insurance benefits; and requirements for acceleration-of-life-insurance benefits that are marketed as qualified for favorable tax treatment under federal law.

Section 3.12001 states the purpose of the rules and contains a severability provision. Section 3.12002 delineates the scope of acceleration-of-life insurance benefits that insurers may offer in Texas. Any group or individual life insurance contract may

contain acceleration-of-life-insurance benefits. An insurer may accelerate death benefits of life insurance contracts if the insured has an illness or physical condition that falls within the definition of a terminal illness, long-term care illness or specified disease. Section 3.12003 requires life insurance contracts to clearly define the illness, condition, care or confinement necessary to evidence a terminal illness, long-term care illness or specified disease. It also states that conditions which may trigger acceleration-of-life-insurance benefits under this subchapter constitute total and permanent disability for the purpose of meeting statutory standards for allowing acceleration of benefits. Section 3.12004 sets standards for requiring medical diagnoses and documenting care or confinement. Section 3.12005 states that a life insurance contract may terminate the acceleration-of-life-insurance benefit if the contract is continued under a nonforfeiture option.

Section 3.12006 delineates allowed methods for determining benefits and charges and fees. The section retains, with some changes, the two methods contained in previous provisions governing acceleration-of-life-insurance benefits (§3.129), which allow either payment for the benefits through an additional premium or charge, or through an actuarial discount and administrative charge which are deducted, along with the amount accelerated, from the death benefit. In addition, §3.12006 allows a third option called the "lien method." Under the lien method, in instances where no additional premium or cost of insurance charge is payable in advance by the policy or certificate holder, insurers may consider the acceleration-of-life-insurance benefit paid to the insured, any administrative expense charges, any due and unpaid premiums and any accrued interest as a lien against the death benefit of the policy, certificate or rider. At death, the benefit payable is the total remaining death benefit proceeds in excess of the lien. The lien cannot exceed the death benefit.

Section 3.12007 contains requirements for limits on reduction of cash values made in conjunction with payment of an acceleration-of-life-insurance benefit (except as otherwise authorized under the lien method allowed by §3.12006(3)) and for calculation of minimum cash values. Section 3.12008 allows an insurer to deduct a pro rata portion of any loan on the life insurance contract from the acceleration-of-life-insurance benefit paid to the insured. Section 3.12009 states that an acceleration-of-life-insurance benefit shall be disregarded in ascertaining nonforfeiture benefits under the Insurance Code. Section 3.12010 sets standards for calculating reserves on an acceleration-of-life-insurance benefit provision and the contract containing the provision. Section 3.12011 states that acceleration-of-life-insurance benefit provisions are subject to the Insurance Code provisions prohibiting unfair, discriminatory or deceptive practices. Section 3.12012 sets forth notice and disclosure requirements for life insurance contracts containing acceleration-of-life-insurance benefits. Under §3.12012, insurers must clearly label acceleration-of-life-insurance benefit provisions, disclose if death benefits, cash values or loan values will be reduced if acceleration-of-life-insurance benefits are paid and provide the insured with a statement regarding the amount of benefits paid, the effect of such payment on the death benefit, face amount, cash value and other features of the contract and the amount, if any, of benefits that remain available for acceleration. The insurer also must include appropriate tax-related disclosures substantially similar to those promulgated under §3.12016 of the subchapter. Section 3.12013 requires that marketing materials used in connection with a life insur-

ance contract offering an acceleration-of-life-insurance benefit disclose what illness, condition, care or confinement will trigger eligibility for the benefit and the effect the benefit will have on the death benefit and other values under the contract. The marketing materials also must make appropriate tax-related disclosures substantially similar to those promulgated under §3.12016 of this subchapter.

Section 3.12014 delineates requirements related to the offer of an acceleration-of-life-insurance benefit designed to fund long-term care expenses. The section makes certain rules applicable to long-term care insurance contracts and applications for such contracts (contained in Chapter 3, Subchapter Y) applicable to long-term care features in acceleration-of-life-insurance benefit provisions. For example, the section requires that terms be defined consistently with the definitions of terms in the long-term care rules and that conditions triggering eligibility for benefits comply with minimum requirements for eligibility triggers in the long-term care rules. Section 3.12015 contains requirements for acceleration-of-life-insurance benefits that are represented to be tax-qualified under federal law governing such benefits. For insurers to represent that such benefits are tax-qualified under HIPAA, subtitle D, the benefits must be offered to insureds with a "qualified terminal illness," as defined by §3.12015(b)(1), or a "qualified long-term care illness," as defined by §3.12015(b)(2). To be tax-qualified, benefits paid because of a qualified long-term care illness must be used for the payment of long-term care expenses. While §3.12015 is meant to include requirements for tax-qualification contained in HIPAA, Subtitle D, the section also makes clear that insurers must meet any additional requirements promulgated under federal law for offering tax-qualified acceleration-of-life-insurance benefits. The Internal Revenue Service, not the Department, determines tax qualification. However, through §3.12015, as well as the disclosure provisions of §3.12016, the Department seeks to make sure that insurers offering acceleration-of-life-insurance benefits in Texas do not make material misrepresentations to applicants or insureds regarding federal tax benefits. Section 3.12016 promulgates two disclosures related to federal tax-qualification. One disclosure relates to life insurance contracts intended to offer only federally tax-qualified acceleration-of-life-insurance benefits. The other disclosure relates to contracts that offer acceleration-of-life-insurance benefits that may not be federally tax-qualified. The appropriate disclosure must be included, in substantially similar form, in or attached to contracts and related marketing materials. Understanding that federal tax law relating to acceleration-of-life-insurance benefits could be modified in the future, the section allows insurers to make future modifications to disclosures promulgated pursuant to this section to accurately reflect any changes in federal law.

Section 3.12017 states that the subchapter applies to all life insurance contracts delivered, issued for delivery or renewed in Texas on or after February 15, 1998. The Department is proposing that the repeal of 28 TAC §3.129 also be effective on February 15, 1998 elsewhere in this issue of the *Texas Register*.

Kim Stokes, Deputy Commissioner, Life/Health Group, has determined that for each year of the first five years that this subchapter is in effect, there will be no fiscal impact on state or local government or this agency as a result of their enforcement or administration. There will be no measurable effect on local employment or local economy.

Kim Stokes has determined that for each year of the first five years that this subchapter is in effect, the public benefits

anticipated as a result of the proposal will be enhanced options for insureds under their life insurance contracts. The subchapter broadens the class of insureds that may be eligible for acceleration-of-life-insurance benefits.

The subchapter also creates an additional financing option for acceleration-of-life-insurance benefits under which the accelerated payment of benefits has no immediate impact on policy values. Under this option, insurers may consider the acceleration-of-life-insurance benefit paid to the insured, any administrative expense charges, any due and unpaid premiums and any accrued interest as a lien against the death benefit of the policy, certificate or rider. The full face amount, guaranteed cash value and reserve of the life insurance contract continue to apply. At death, the benefit payable is the total death proceeds in excess of the lien. The amount available for cash surrender or loan is the amount of the net cash value in excess of the lien. The lien cannot exceed the amount of the death benefit. The ultimate result of the proposed sections will be to provide more choice and flexibility, as well as necessary disclosures, and to enhance accessibility to alternative acceleration-of-life-insurance features for consumers with terminal and life-threatening illnesses and conditions, and with disabilities and long-term care expenses related to such illnesses or conditions.

Compliance with the rules will not result in any significant costs to most small or large businesses. Proposed Subchapter LL will not require that insurers offer any form of acceleration-of-life-insurance benefits. If an insurer chooses to offer acceleration-of-life benefits, Subchapter LL implements expansion of the number of insureds to whom the insurer can offer the benefits, elimination of any absolute life expectancy maximums and allowance of an additional method for determining benefits that was requested by representatives of the industry. Subchapter LL also allows insurers to offer acceleration-of-life-insurance benefits that are qualified for federal tax exemption, or offer benefits that do not qualify for such an exemption, but that can be offered to a broader class of insureds. For insurers who now offer acceleration-of-life-insurance benefits, the rules may require minor changes to forms. For all such insurers in Texas, Ms Stokes estimates that the costs associated with compliance with the rules will not exceed \$10,000, and may be considerably less than that.

Comments on the proposal must be submitted within 30 days after publication of the proposed amendments in the *Texas Register* to Caroline Scott, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Kim Stokes, Deputy Commissioner, Life/Health Group, Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

New Subchapter LL is proposed pursuant to the Insurance Code, Articles 3.28, §§3(g) and 11; 3.42(i) and (p); 3.44a; 3.45; 3.50-6 (as amended by H.B.1865 enacted by the 75th Legislature and effective September 1, 1997); 3.70-8; 21.21; and 1.03A. The subchapter is proposed, in part, to coordinate the rules governing acceleration-of-life-insurance benefits in Texas with the federal tax provisions applicable to such benefits under HIPAA, Subtitle D—Treatment of Accelerated Death Benefits. Article 3.28, §§3(g) and 11 provide that the Commissioner of Insurance may approve reserving tables for special benefits. Article 3.42(i) authorizes the Commissioner of Insurance to disapprove

any policy form which is unjust or which does not comply with the Insurance Code. Article 3.42(p) authorizes the Commissioner to adopt reasonable rules to implement and accomplish the purposes of Article 3.42 concerning review and approval of policy forms. Article 3.44a provides standards for nonforfeiture values. Article 3.45 prohibits insurers from implementing any mode of settlement at maturity of less value than the amounts insured on the face of the policy, plus dividend additions, if any, less any indebtedness to the company on the policy, and less any premium that may by the terms of the policy be deducted. The proposed subchapter indicates that acceleration-of-life-insurance benefits paid, any related charges, interest, discounts or liens allowed under the subchapter, and the balance of the death benefit of the life insurance contract shall constitute full settlement on maturity of the face amount of the contract. This interpretation of Article 3.45 is supported by Articles 3.50-6 and 3.70-8, both passed subsequently to Article 3.45 and both of which provide for the offer of acceleration-of-life-insurance benefits. Article 3.50-6 allows certain individual and group life insurance policies, certificates or riders to include provisions for paying acceleration-of-life-insurance benefits to persons with terminal or life-threatening illnesses or conditions, or with illnesses or conditions requiring long-term care services. Article 3.70-8 provides an exception from the application of the provisions of the Insurance Code regarding accident and health insurance for life insurance contracts which contain only such provisions relating to accident and sickness insurance as to give a special benefit in the event the insured shall become totally and permanently disabled, as defined in the contract. Article 21.21, relating to unfair competition and unfair practices, authorizes the Department to establish fair and reasonable rules, regulations, or limitations for the augmentation and implementation of the article. The Insurance Code, Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

HIPAA, Subtitle D—Treatment of Accelerated Death Benefits, makes tax deductible acceleration-of-death benefits paid to persons certified by a physician to have a life expectancy of two years or less, or, under certain delineated circumstances, to persons who require long-term care services because of their illness or condition and use the acceleration-of-life-insurance benefits to pay for such services.

The following articles are affected by this proposal: Insurance Code, Articles 3.28, §§3(g) and 11, 3.42(i) and (p), 3.44a, 3.45, 3.50-6 and 3.70-8.

§3.12001. Purpose; Severability.

(a) The commissioner enacts this subchapter to:

(1) Expand the circumstances under which insurers can offer acceleration-of-life-insurance benefits, thus enhancing financial choices for insureds facing terminal or life-threatening illnesses or conditions;

(2) Implement revised statutory requirements for certain group and individual life insurance contracts

(3) Set uniform standards for offering acceleration-of-life-insurance benefits that will be applicable to all group and individual life insurance plans, creating a level playing field for insurers and key protections for consumers;

(4) Allow insurers, with proper disclosures, to offer benefits that will qualify for favorable tax treatment under federal law,

as well as benefits that may not qualify for favorable tax treatment, but that are available to a broader class of insureds; and

(5) Ensure that acceleration-of-life-insurance benefit provisions that fund long-term care expenses conform basic definitions and eligibility triggers to those in rules setting minimum standards for long-term care insurance contracts.

(b) If a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statutes of this state, is unconstitutional or for any other reason is invalid, the remaining provisions shall remain in full effect. If a court of competent jurisdiction holds that the application of any provision of this subchapter to particular persons, or in particular circumstances, is inconsistent with any statutes of this state, is unconstitutional or for any other reason is invalid, the provision shall remain in full effect as to other persons or circumstances.

§3.12002. Acceleration-of-Life-Insurance: Scope of Benefits.

(a) An acceleration-of-life-insurance benefit provision provides a special benefit under a life insurance contract, which prepays all or a portion of the death benefit, based either on a long-term care illness, specified disease, or terminal illness.

(b) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Life insurance contract—An individual life insurance policy, a group life insurance policy or certificate of insurance, or a rider to an individual or group life insurance policy or group certificate of insurance.

(2) Long-term care illness—An illness or physical condition that results in the inability to perform the activities of daily living or the substantial and material duties of any occupation. Evidence of a long-term care illness includes, but is not limited to, illnesses or conditions which require

(A) confinement in a convalescent nursing home, residential care or intermediate nursing facility, defined consistently with the provisions of §3.3812 of this title (relating to Policy Definition of Provider); or

(B) adult day care services, as defined and provided consistently with §3.3804(b)(3) and (4) of this title (relating to Definitions), and home health care services, as defined and provided consistently with §3.3804(b)(13) and (14) of this title.

(3) Specified disease—An illness or physical condition that is likely to cause permanent disability or premature death, including, but not limited to, the following:

(A) AIDS;

(B) a malignant tumor;

(C) a condition requiring organ transplantation;

(D) a coronary artery disease resulting in acute infarction or requiring surgery;

(E) a permanent neurological deficit resulting from cerebral vascular accident; or

(F) a condition of similar severity as specified in the life insurance contract, which would be expected to impair the insured's quality or length of life in the absence of appropriate medical attention.

(4) Terminal illness—An illness or physical condition, including a physical injury, that can reasonably be expected to result in death in two years or less.

(c) Any portion of the death benefit remaining after reduction of the death benefit due to payment of any acceleration-of-life-insurance benefit referred to in this section and related charges, interest or liens, as allowed by §3.12006(3) of this subchapter (relating to Methods for Determining Benefits and Allowable Charges and Fees) shall be paid upon the death of the insured.

(d) Prepayment of acceleration-of-life-insurance benefits may be in a single sum or in installments.

(e) The acceleration-of-life-insurance benefits, related charges, interest, discounts or liens allowed under this subchapter, and the balance of the death benefit of the life insurance contract shall constitute full settlement on maturity of the face amount of the contract.

(f) Specific additional requirements for life insurance contracts that pay for long-term care expenses through acceleration-of-life-insurance benefit provisions are contained in §3.12014 of this subchapter (relating to Requirements for Acceleration-of-life-insurance Benefits that Fund Long-Term Care Expenses).

§3.12003. Required Policy Definitions; Evidence of Total and Permanent Disability.

(a) Acceleration-of-life-insurance benefits, and the illness, condition, care or confinement necessary to evidence that the insured has either a long-term care illness, specified disease or terminal illness, shall be clearly defined in the life insurance contract consistently with this subchapter.

(b) Such illness, condition, care, or confinement is evidence of total and permanent disability for purposes of meeting the standards for providing acceleration-of-life-insurance benefits set forth in Insurance Code, Articles 3.50-6 and 3.70-8, and §3.12002 of this title (relating to Acceleration of Life Insurance; Scope of Benefits).

§3.12004. Standards for Medical Diagnoses.

The acceleration-of-life-insurance benefit provision may require a medical diagnosis of conditions and/or documentation of care or confinement as defined in the life insurance contract to establish eligibility for acceleration-of-life-insurance benefits. This may include a written medical opinion, satisfactory to the company, that the insured has a terminal illness, a long-term care illness, or a specified disease. If additional diagnoses by a physician selected by the company are required, the acceleration-of-life-insurance benefit provision, or a disclosure statement attached to the front of the policy or rider, must specify that the additional diagnoses are at the expense of the company and how conflicting diagnoses will be reconciled. The specific standards sufficient to meet such eligibility requirements shall be defined in the life insurance contract, and any acceleration-of-life-insurance benefit shall be conditioned only upon such requirement or requirements as defined.

§3.12005. Termination of Benefit Upon Exercise of Nonforfeiture Option.

The life insurance contract may contain a provision terminating the acceleration-of-life-insurance benefit if the contract is continued under a nonforfeiture option.

§3.12006. Methods for Determining Benefits and Allowable Charges and Fees.



The acceptable methods for determining an acceleration-of-life-insurance benefit, and allowable charges and fees associated with the benefit, are as specified in this section.

(1) Additional Premium or Cost of Insurance Charge Method. The acceleration-of-life-insurance benefit provision must specify and define any separately identifiable additional premium or cost-of-insurance charge, if applicable to the life insurance contract, for any acceleration-of-life-insurance benefit, and, upon payment of such benefit, reduce the death benefit of the contract in an amount equal to the acceleration-of-life-insurance benefit paid.

(2) Actuarial Discount Methods. The acceleration-of-life-insurance benefit provision must specify or define any administrative fee, not to exceed \$150.00, and any sound and reasonable actuarial discount, calculated in accordance with either subparagraph (A) or (B) of this paragraph, as applicable, which may reduce the amount of the acceleration-of-life-insurance benefit in instances where no additional premium or cost-of-insurance charge is payable in advance by the policy or certificate holder. Upon payment of such benefit, the death benefit of the life insurance contract will be reduced by no more than an amount equal to the acceleration-of-life-insurance benefit paid, plus the actuarial discount and any administrative fee deducted to provide the benefit. Each subsequently approved acceleration-of-life-insurance benefit request may provide for an administrative fee and discount, subject to the limits defined in this paragraph. The acceleration-of-life-insurance benefit may be calculated based on either the present value actuarial discount as described in subparagraph (A) of this paragraph, or, in regards to an insured with a terminal illness, on the interest-only actuarial discount as described in subparagraph (B) of this paragraph.

(A) Present Value Actuarial Discount. The acceleration-of-life-insurance benefit may be based upon the present value of future benefits provided under the life insurance contract, less the present value of future premiums, plus the present value of future dividends, if applicable. The actuarial discount used to reach this present value calculation must be appropriate to the life insurance contract design and based on sound actuarial principles. For an insured with a terminal illness, the present value actuarial discount shall not reduce the amount of benefits accelerated by more than 15% of the face amount of such benefits. For other insureds eligible for acceleration-of-life-insurance benefits, the interest rate used to derive the present value actuarial discount applied to the face amount of the benefits accelerated shall not exceed the greater of:

- (i) the current yield on 90 day treasury bills;
- (ii) the current maximum adjustable policy loan interest rate based on Moody's Corporate Bond Yield Averages, or any successor thereto;
- (iii) the life insurance contract's guaranteed cash value interest rate plus one percent per annum; or
- (iv) an alternate rate approved by the Commissioner.

(B) Interest-only Actuarial Discount. This discount may be applied only in regards to the death benefit of an insured with a terminal illness. The interest-only actuarial discount shall not reduce the amount of the acceleration-of-life-insurance benefit by more than 10% per annum.

(3) Lien Method. In instances where no additional premium or cost of insurance charge is payable in advance by the policy or certificate holder, and the acceleration-of-life-insurance benefit is not reduced by a present value or interest-only actuarial

discount, the insurer may consider the acceleration-of-life-insurance benefit, any administrative expense charges, any due and unpaid premiums and any accrued interest as a lien against the death benefit of the life insurance contract, in accordance with the following:

(A) The acceleration-of-life-insurance provision must specify or define any administrative fee, not to exceed \$150.00, and any interest charge on the amount of the acceleration-of-life-insurance benefit.

(B) Access to cash value, if any, may be restricted to any excess of the cash value over the sum of the lien and any outstanding loans. Future access to additional policy loans and any partial withdrawals may also be limited to any excess of the cash values over the sum of the lien and any other outstanding policy loans.

(C) The lien cannot exceed the value of the death benefit of the life insurance contract. The contract shall state that coverage will terminate at such time as the lien equals the value of the death benefit.

(D) The interest rate and interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract and actuarial memorandum. The interest rate accrued on the portion of the lien equal to the cash value of the life insurance contract at the time of the benefit acceleration shall be no more than the policy loan interest rate stated in the contract. Each subsequently approved acceleration-of-life-insurance benefit request may provide for an administrative fee and lien, subject to the limits set forth in this paragraph. The maximum interest rate used shall not exceed the greater of:

- (i) the current yield on 90 day treasury bills;
- (ii) the current maximum adjustable policy loan interest rate based on Moody's Corporate Bond Yield Averages, or any successor thereto;
- (iii) the policy's guaranteed cash value interest rate plus one percent per annum; or
- (iv) an alternate rate approved by the Commissioner.

#### §3.12007. Limitations on Reduction of Cash Values.

Except as otherwise authorized under the Lien Method for determining benefits under §3.12006(3) of this title (relating to Methods for Determining Benefits and Allowable Charges and Fees), if the cash values are reduced by the acceleration-of-life-insurance benefit, related charges and interest, the reduction shall not be unjust and shall not exceed an amount equal to the pro rata portion of the cash value associated with the death benefit used in providing the acceleration-of-life-insurance benefit. Future cash values shall not be less than the minimum cash values required by the Insurance Code, Article 3.44a, for the reduced future guaranteed death benefits. These minimum cash values are equal to the present value of the reduced future guaranteed benefits less the present value of future adjusted premiums, decreased by the amount of any indebtedness, including liens, under the life insurance contract. The mortality and interest used in calculating the minimum cash values will be as provided in the Insurance Code, Article 3.44a, for life insurance coverage, disregarding any acceleration-of-life-insurance benefits.

#### §3.12008. Pro Rata Reduction of Loan Upon Acceleration of Benefits.

Unless the insurer is using the Lien Method for determining benefits under §3.12006(3) of this title (relating to Methods for Determining Benefits), if there is a loan on the life insurance contract, the insurer

may deduct up to a pro rata portion of the loan from the amount of the acceleration-of-life-insurance benefit.

§3.12009. Effect of Acceleration of Benefits on Nonforfeiture Calculations.

An acceleration-of-life-insurance benefit provision or rider shall be disregarded in ascertaining nonforfeiture benefits under the Insurance Code, Article 3.44a.

§3.12010. Calculation of Reserves.

(a) Reserves for an acceleration-of-life-insurance benefit shall be based on tables of disablement, morbidity, or mortality appropriate for determining liability for the benefits provided. Such disablement or morbidity tables shall be certified as appropriate by a member of the American Academy of Actuaries and approved by the Texas Department of Insurance under the Insurance Code, Article 3.28, §§(3)(g) and 11. Reserves for the death benefits or other supplementary benefits provided by a life insurance contract which includes an acceleration-of-life-insurance benefit shall be calculated disregarding such benefit, using mortality and interest rates as provided in the Insurance Code, Article 3.28. The basis of reserves for any life insurance contract which contains an acceleration-of-life-insurance benefit provision shall accompany the filing of the contract with the Texas Department of Insurance.

(b) Reserves for an acceleration-of-life-insurance benefit under the Lien Method for determining benefits under §3.12006(3) of this title (relating to Methods for Determining Benefits and Allowable Charges and Fees), including accrued interest, represent assets of the company for statutory reporting purposes. For any life insurance contract on which the lien exceeds the policy's statutory reserve liability, such excess must be held as a non-admitted asset.

§3.12011. Unfair, Discriminatory or Deceptive Practices Prohibited.

(a) Acceleration-of-life-insurance benefit provisions are subject to the Insurance Code, Article 21.21 and rules promulgated under Article 21.21.

(b) Insurers offering acceleration-of-life-insurance benefits shall not engage in unfair, discriminatory or deceptive practices in relation to the offer, sale or administration of acceleration-of-life-insurance benefits, including, but not limited to, the following practices:

(1) reclassification of the insured as a result of payment of the benefit specified in an acceleration-of-life-insurance benefit provision to a class of risk less favorable than the class of risk to which the insured originally belonged;

(2) unfair discrimination among insureds with differing qualifying events; or

(3) unfair discrimination among insureds with similar qualifying events.

§3.12012. Notice and Disclosure Requirements for Life Insurance Contracts Containing Acceleration-of-life-insurance Benefits.

Except as otherwise stated in this section, every life insurance contract containing an acceleration-of-life-insurance benefit provision shall be subject to the notice and disclosure requirements in paragraphs (1)-(5) of this section.

(1) Except as otherwise provided in this paragraph, the face of every such life insurance contract shall contain a prominent notice printed, over-printed or stamped, as appropriate, substantially as follows: "Death benefits, cash values, and loan values will be reduced if an acceleration-of-life-insurance benefit is paid." This

statement shall be appropriately modified for contracts which have no cash or loan values, or in which the cash value is not reduced.

(2) The title of any acceleration-of-life-insurance benefit shall be descriptive of the coverage provided and shall use such terms as "acceleration-of-life-insurance benefit," "accelerated benefit" or words of similar import.

(3) At the time of the payment of a lump sum acceleration-of-life-insurance benefit, or, if periodic payments are being made, no less frequently than every 12 months, the insurer shall send a statement to the owner of the life insurance contract, specifying:

(A) the amount of benefits paid (or the amount of benefits paid since the last report);

(B) the effect of the acceleration-of-life-insurance benefit payment on the death benefit, face amount, specified amount, accumulation values, cash values, loan amounts, future charges, and future premiums; and

(C) The amount of benefits remaining available for acceleration.

(4) Notice that the owner of the life insurance contract will receive the statement described in paragraph (3) of this subsection shall be included in the acceleration-of-life-insurance benefit provisions of the life insurance contract.

(5) As appropriate, the tax-related disclosures contained in either subsection (a) or (b) of §3.12016 of this subchapter (relating to Disclosures Related to Tax Qualification of Benefits), or disclosures substantially similar to these disclosures, must be included on or attached to the front page of each life insurance contract issued after the effective date of this section.

§3.12013. Notice and Disclosure Requirements for Marketing Materials.

(a) Any solicitation used in the marketing of a life insurance contract containing an acceleration-of-life-insurance benefit shall clearly and concisely disclose the following:

(1) the illness, condition, care, or confinement necessary to trigger eligibility for any acceleration-of-life-insurance benefit;

(2) the effect that an acceleration-of-life-insurance benefit provision will have on the death benefit and other values available under the life insurance contract;

(3) The tax-related disclosures contained in either subsection (a) or (b) of §3.12016 of this subchapter (relating to Disclosures Related to Tax Qualification of Benefits), as appropriate, or disclosures substantially similar to these disclosures.

(b) No insurer or agent, in marketing a life insurance contract which provides acceleration-of-life-insurance benefits, may mention, illustrate, or refer to the contract as an alternative or substitute for catastrophic major medical health insurance.

§3.12014. Requirements for Acceleration-of-life-insurance Benefits that Fund Long-Term Care Expenses.

When a life insurance contract provides for payment of long-term care expenses funded through an acceleration-of-life-insurance benefit provision, the long-term care provisions of the contract must meet the following requirements of Chapter 3, Subchapter Y of this title (relating to standards for long-term care insurance coverage under individual and group policies):

(1) Terms must be defined consistently with §3.3804 of this title (relating to Definitions);

(2) Definitions and descriptions of providers must be consistent with the requirements of §3.3812 of this title (relating to Policy Standards for Provider);

(3) To the extent that the acceleration-of-life-insurance provisions provide for payment of home health or adult day care expenses, such provisions must meet applicable standards contained in §3.3815 of this title (relating to Standards for Home Health and Adult Day Care Benefits);

(4) Conditions triggering eligibility for benefits must comply with §3.3818 of this title (relating to Standards for Eligibility for Benefits); and

(5) To the extent that the acceleration-of-life-insurance benefit is intended to fund long-term care expenses that will qualify for favorable tax treatment under federal law, the long-term care provisions of the contract must further comply with the provisions of §3.12015 of this subchapter (relating to Requirements for Benefits Represented to be Qualified for Favorable Federal Tax Treatment) that are applicable to expenses paid for a "qualified long-term care illness," as defined in §3.12015, and any additional federal requirements for favorable tax treatment.

§3.12015. Requirements for Benefits Represented to be Qualified for Favorable Federal Tax Treatment.

(a) On or after the effective date of this subchapter, no life insurance contract providing for acceleration-of-life-insurance benefits may be represented to be tax-qualified under federal law governing taxation of such benefits unless such benefits meet the requirements set forth in subsections (b)-(d) of this section.

(b) Acceleration-of-life-insurance benefits described as tax-qualified must be limited to insureds who have a "qualified terminal illness" or a "qualified long-term care illness," as those terms are defined (and terms used within the definitions are defined) in paragraphs (1)-(3) of this subsection.

(1) An insured has a "qualified terminal illness" if a physician certifies that, as of the date of the certification, the insured has a terminal illness, as defined in §3.12002(b) of this subchapter (relating to Acceleration of Life Insurance: Scope of Benefits).

(2) An insured has a "qualified long-term care illness" if the insured has a "long-term care illness" as defined in §3.12002(b) of this subchapter, and a licensed health care practitioner, acting within the scope of his or her license, certifies, within twelve months prior to the approval of the insured's request to exercise the acceleration-of-life-insurance provision, that the insured's illness or physical condition has caused the insured to:

(A) be unable to perform, without substantial assistance from another individual, at least 2 activities of daily living for a period of at least 90 days due to functional incapacity;

(B) be disabled at a level similar to the level described in subparagraph (A), as determined by rules promulgated by the United States Secretary of the Treasury, in consultation with the United States Secretary of Health and Human Services, under section 7702B of the Internal Revenue Code of 1986, as amended by section 321, Title C, Subtitle C, Part I of the Health Insurance Portability and Accountability Act of 1996; or

(C) require substantial supervision to protect the insured from threats to the insured's health and safety due to the impairment of cognitive ability.

(3) The following words and terms when used in this section shall have the following meanings, unless the context clearly indicates otherwise:

(A) Activities of daily living—Bathing, continence, dressing, eating, toileting and transferring, as those terms are defined in §3.3804(b) of this title (relating to Definitions).

(B) Impairment of cognitive ability—The deterioration or loss in intellectual capacity requiring substantial supervision for protection of self and others, as established by the clinical diagnosis of any licensed practitioner in this state authorized to make such a diagnosis. Such diagnosis shall include the patient's history and physical, neurological, psychological and/or psychiatric evaluations, and laboratory findings.

(C) Substantial supervision—Continual supervision (which may include cueing by verbal prompting, gestures, or other demonstrations) by another person that is necessary to protect a cognitively impaired individual from threats to the individual's health or safety.

(c) Any acceleration-of-life-insurance benefit paid to an insured with a qualified long-term care illness is limited in use to payment for instances in which the individual has incurred expenses for qualified long term care services, as defined in section 7702B of the Internal Revenue Code of 1986, as amended by section 321, Title C, Subtitle C, Part I of the Health Insurance Portability and Accountability Act of 1996. Such payments will not fail to meet this test solely because they are made on a per diem or periodic basis without regard to expenses incurred during the period.

(d) Any acceleration-of-life-insurance benefit provision providing for payment of expenses incurred for qualified long-term care services by an insured with a qualified long-term care illness:

(1) shall not pay or reimburse expenses incurred under Medicare or that would be reimbursable under Medicare but for the application of a deductible or coinsurance amount, except expenses which are reimbursable under Medicare only as a secondary payor;

(2) may coordinate benefits with Medicare benefits; and

(3) must meet all requirements of §3.12014 of this subchapter (relating to Requirements for Acceleration-of-life-insurance Benefits that Fund Long-Term Care Expenses).

§3.12016. Disclosures Related to Tax Qualification of Benefits.

(a) On or after the effective date of this subchapter, if an insurer markets, delivers, issues for delivery or renews a life insurance contract in Texas that provides only acceleration-of-life-insurance benefits that are intended to qualify for favorable tax treatment under federal law, the contract, and any materials used to market the contract, must include a disclosure substantially similar to the disclosure set forth in this subsection. When a series of words are separated by back-slashes (e.g. policy/certificate/rider) the insurer should choose the most appropriate word or words under the circumstances. DISCLOSURE: "The acceleration-of-life-insurance benefits offered under this policy/certificate/rider are intended to qualify for favorable tax treatment under the Internal Revenue Code of 1986. If the acceleration-of-life-insurance benefits are tax-qualified under the Internal Revenue Code of 1986, the benefits will not be taxable. The applicant/insured/policyholders/ certificate holder is advised to consult with a qualified tax advisor about the tax consequences of obtaining acceleration-of-life-insurance benefits."

(b) On or after the effective date of this subchapter, if an insurer markets, delivers or issues for delivery in Texas a life insurance contract that contains an acceleration-of-life-insurance

benefits provision that meets the requirements of this subchapter, but that allows benefits to be accelerated in circumstances in which such benefits would not qualify for favorable tax treatment under federal law, the contract, and any materials used to market the contract, must include a disclosure substantially similar to the disclosure set forth in this subsection. When a series of words are separated by back-slashes (e.g. policy/certificate/rider) the insurer should choose the most appropriate word or words under the circumstances. **DISCLOSURE:** "Pursuant to the acceleration-of-life-insurance benefits provision offered under this policy/certificate/rider, you may receive benefits that do not qualify for favorable tax treatment under the Internal Revenue Code of 1986. Generally, a recipient of acceleration-of-life-insurance benefits qualifies for favorable tax treatment of those benefits only if the recipient has been certified by a physician as having a life expectancy of two years or less, or the recipient has been certified by a licensed health care practitioner as being sufficiently disabled to require long-term care services, such as nursing home care or home health care, the benefits are used to pay for such services and the contract provisions providing for payment of the benefits meets certain other state and federal requirements. The acceleration-of-life-insurance benefits offered under this policy/certificate/rider are not intended to be limited to such circumstances. Accordingly, proceeds received pursuant to this acceleration-of-life-insurance benefits provision may be taxable under federal law. The applicant/insured/policyholder/certificate holder is advised to consult with a qualified tax advisor about the consequences of obtaining acceleration-of-life-insurance benefits."

§3.12017. Effective Date; Grace Period.

(a) Except as otherwise provided in subsection (b) of this section, this subchapter, as adopted by the Commissioner, shall apply to all life insurance contracts delivered, issued for delivery or renewed in Texas on or after the effective date of the subchapter, which shall be 20 days after the date the adopted subchapter is filed with the Office of the Secretary of State.

(b) A life insurance contract meeting the requirements of 28 TAC §3.129, as effective until the effective date of this subchapter, and article 3.50-6, as amended effective September 1, 1997, may continue to be delivered, issued for delivery or renewed in this state during a grace period lasting 90 days after the effective date of this subchapter. An insurer delivering, issuing for delivery or renewing such a life insurance contract during the grace period shall, at the option of the insured, replace the contract with a contract meeting the requirements of this subchapter at the next renewal date of the contract, without regard to the health status or medical history of the insured and without raising the insured's premium based solely on the replacement.

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 October 27, 1997.

TRD-9714209

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-6327



## Chapter 19. Agent's Licensing

### Subchapter R. Utilization Review Agents

## 28 TAC §19.1722

The Texas Department of Insurance proposes new §19.1722 (concerning Utilization Review Advisory Committee). This proposed new section implements Insurance Code, Article 21.58A, §13, and establishes a committee to advise the commissioner in developing rules and regulations for utilization review, as well as the duration of the committee. The statute requires that such committee include one representative for each of the following: the Office of Public Insurance Counsel, an insurance company, a health maintenance organization, a group hospital service corporation, a utilization review agent, a consumer group, an employer, a physician, a dentist, a hospital, a registered nurse, and other health care providers.

Rose Ann Reeser, Associate Commissioner of Regulation and Safety, has determined that for each year of the first five years the proposed section is in effect, any fiscal impact on state government will be the result of the legislative enactment of Insurance Code, Article 21.58A, §13, and not the result of the adoption and implementation of the section. There will be no fiscal impact on local government as a result of enforcing or administering the proposed subsection. There will be no measurable effect on local employment or local economy.

Ms. Reeser has determined that for each year of the first five years the proposed section is in effect, the public benefits anticipated as a result of the section will be the development of utilization rules with the benefit of diverse perspective and input.

Although participation of the advisory committee is voluntary, there will be some costs to advisory committee members who must travel to attend meetings. These costs will vary depending upon how far the member must travel to attend meetings, what type of transportation is used, and whether lodging will be needed. These costs will not be reimbursed by the department. The costs associated with the advisory committee are the result of the legislative enactment of Insurance Code, Article 21.58A, §13, and not the result of the adoption and implementation of the section.

Comments on the proposal must be submitted within 30 days after publication of the proposed section in the Texas Register to Caroline Scott, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of comments must be submitted to Leah Rummel, Deputy Commissioner, HMO/UR Group, Mail Code 106-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for public hearing on the proposal should be submitted separately to the Office of the Chief Clerk.

The new section is proposed pursuant to Insurance Code, Articles 21.58A, §13, and 1.03A. The Insurance Code, Article 21.58A, §13 directs the commissioner to appoint an advisory committee to assist and advise the commissioner in developing rules and regulations for utilization review. The Insurance Code, Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute. The Government Code, Chapter 2001, §§2001.004 et. seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

The following articles are affected by this proposal: Article 21.58A, §13

§19.1722. Utilization Review Advisory Committee.

(a) Purpose and Scope. The purpose of this section is to set out the responsibilities of the Utilization Review Advisory Committee; define its tasks and the manner in which it will report to the department; specify its membership; and set its duration. The advisory committee is established pursuant to Insurance Code, Article 21.58A, §13.

(b) Purpose of the Advisory Committee. The purpose of the advisory committee is to advise the commissioner in developing rules and regulations for utilization review.

(c) Tasks. The tasks of the advisory committee include those tasks specified in the following paragraphs:

(1) The advisory committee shall review and evaluate changes to the current utilization review statutes to determine and develop any necessary changes to the current utilization review regulations, and make recommendations to the commissioner regarding such changes;

(2) The advisory committee shall advise and consult with the commissioner or the commissioner's representative during its review and evaluation of current utilization review statutes;

(3) The advisory committee may advise the commissioner on the need for subcommittees or workgroups to fulfill its tasks;

(4) The advisory committee shall perform other tasks as requested by the commissioner pursuant to Insurance Code, Article 21.58A.

(d) Membership. Pursuant to Insurance Code, Article 21.58A, §13, the membership of the advisory committee shall consist of:

(1) One representative for each of the following: the Office of Public Insurance Counsel, an insurance company, a health maintenance organization, a group hospital service corporation, a utilization review agent, a consumer group, an employer, a physician, a dentist, a hospital, a registered nurse, and other health care providers; and

(2) The commissioner or the commissioner's representative, who shall be an ex-officio member and must be present at every advisory committee meeting. Any member who resigns from the advisory committee shall be replaced by the commissioner with another member representing the same interest as the member who resigned.

(e) Duration. The advisory committee shall automatically terminate on December 31, 1998 unless, before its termination, the commissioner extends its duration.

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 October 23, 1997.

TRD-9714084

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-6327



## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 220. Regional Assessments of Water Quality

The Texas Natural Resource Conservation Commission (commission) proposes new §§220.1 - 220.7 and §§220.21- 220.22, concerning the monitoring and assessment of water quality (Clean Rivers Program).

#### EXPLANATION OF PROPOSED RULE

Proposed new §§220.1- 220.7 represent changes made to the program through legislation passed by the 75th Texas Legislature in 1997. Proposed new §§220.21- 220.22 represents a move of these sections from Chapter 320 to proposed new Chapter 220 and the updating of references to be consistent with the new proposed rulemaking, and contain no program changes. The proposed new Chapter 220 will achieve consistency in the renumbering system for all water related rules to be contained in the 200 series under Title 30 of the Texas Administrative Code.

Legislation passed in 1991 by the 72nd Texas Legislature established the State of Texas Clean Rivers Program as authorized in the Texas Water Code, §26.0135. The Texas Clean Rivers Program is administered by the commission and is implemented through contracts and cooperative agreements with river authorities and designated local governments. Changes to the fee schedule were developed in 1994 to reflect changes adopted by the 73rd Texas Legislature in 1993. This proposal addresses changes in legislation adopted by the 75th Texas Legislature in 1997. Adjustments to the program were developed by a diverse stakeholder group.

A stakeholder's group representing a diversity of interests affected by the Texas Clean Rivers Program was organized in 1996 and was requested to provide information to the commission regarding problems with the Clean Rivers Program and to make recommendations for changes to address those problems. Two subcommittees were established, one to work on the development of program changes and the other to investigate alternative funding mechanisms for the program. The legislation adopted by the 75th Texas Legislature was developed by consensus of this ad hoc stakeholder group. The proposed rule establishes the responsibilities of the commission, river authorities, designated local governments, and watershed and river basin steering committees for implementation of the program.

Proposed new §220.1, Purpose and Scope, describes or addresses the purpose and scope of the rule and its relationship to the implementation of the Clean Rivers Program. It generally describes the fees authorized to recover costs of implementation and the allocation of this revenue to the contracting planning agencies.

Proposed §220.2, Definitions and Abbreviations, includes definitions and abbreviations that apply to this chapter and are not included in 30 TAC, Chapter 3.

responsibilities of the commission to administer the program, including oversight, fee assessment, use of water quality data in development of agency policies and procedures, and reporting requirements.

Proposed §220.4, Responsibilities of River Authorities and Designated Local Governments, outlines the responsibilities of river authorities and designated local governments, including organization of steering committees, water quality monitoring and assessment, and reporting requirements.

Proposed §220.5, Responsibilities of Steering Committees, addresses responsibilities of the steering committees in the development and implementation of the program.

Proposed §220.6, Reporting Requirements, establishes the reporting requirements of the contracting planning agencies and the TNRCC.

Proposed §220.7, Leveraging of Funds To Support Federal and State Grant, encourages the use of funds authorized under this program to be used to leverage other state and federal program funds.

Proposed §220.21, Water Quality Assessment Fees, explains the methodology for assessing the Water Quality Fees.

Proposed §220.22, Allocation of Water Quality Assessment Fee Revenue, addresses the allocation of the Water Quality Assessment Fee revenue.

#### FISCAL NOTE

Steve Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these proposed sections are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be a reauthorization of an existing program and will require no additional staff. The costs to affected Wastewater permit holders and Water Use permit holders, including local governments, will remain at the current level as a result of the reauthorization of the existing program. Fees will range from \$300 to as much as \$40,000 depending on the volume of discharge and/or use by the permit holder.

#### PUBLIC BENEFIT

Mr. Minick also has determined that for the first five years these proposed sections are in effect, the public benefit anticipated as a result of enforcement of and compliance with these sections will be improvements in the regulation of permitted wastewater discharges and the quality of surface water resources of the state, and increased protection of public drinking water supplies and aquatic life resources.

#### REGULATORY IMPACT ANALYSIS

Mr. Minick has determined that a regulatory impact analysis is not required because the rule is not a major environmental rule and will not have an adverse affect in a material way the economy, environment or public health and safety of any sector of the state.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to provide regulatory guidelines for the administration and implementation of the State of Texas Clean Rivers Program authorized in the Texas Water Code, §26.0135. The rules will substantially advance this specific purpose by establishing responsibilities of the TNRCC, participating river authorities and designated local governments, and basin steering committees. Promulgation and enforcement

of these rules will not burden private real property which is the subject of the rules.

#### COASTAL MANAGEMENT PROGRAM (CMP)

The executive director has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

#### PUBLIC HEARING

A public hearing on the proposal will be held Monday, November 17, 1997 at 10:00 a.m. in Room 3201A of the commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements, when called upon, in the order of registration. Open discussion within the audience will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments on the proposal should refer to Rule Log No. 97137-320-WT and may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they are faxed. Written comments must be received by 5:00 p.m., December 8, 1997. Such comments will not receive individual responses, but will be addressed in the preamble of the adopted rules and published in the *Texas Register*. For further information, please contact Chuck Dvorsky, Water Quality Division, (512) 239-4594.

#### Program for Monitoring and Assessment of Water Quality by Watershed and River Basin

#### 30 TAC §§220.1-220.7

#### STATUTORY AUTHORITY

The new sections are proposed under the Texas Water Code, §5.103 and §26.011 which provides the commission authority to adopt rules necessary to carry out its powers and duties and under the provisions of the Texas Water Code and §26.0135 which provides the TNRCC with authority to establish the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state.

There are no other codes or statutes that are affected by this proposal.

#### §220.1. Purpose and Scope.

(a) The purpose of this chapter is to establish procedures for the implementation of the Texas Clean Rivers Program pursuant to Texas Water Code, §26.0135, which monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources (as defined in Texas Water Code, §26.001(5)). The commission has the responsibility of ensuring that regional monitoring and assessments of water quality by watershed and river

basin shall be conducted by the river authorities and designated local governments that have entered into cooperative agreements with the commission, or by the commission where a river authority does not exist or is unwilling to participate. Whenever feasible the monitoring and assessment will be the result of a cooperative partnership between river authorities, designated local governments, other political subdivisions, other state agencies and the commission to provide the commission and other state agencies, river authorities and local governments with sufficient information to take appropriate corrective action necessary to meet the goals of the act. The regional water quality monitoring and assessment program shall be designed to allow citizens and private organizations opportunities for involvement in protecting the state's water resources. The monitoring program shall provide data to identify significant, long-term water quality trends, characterize water quality conditions, support the wastewater discharge permitting process including support for the total maximum daily load process as necessary, and classify unclassified streams. The assessments must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed.

(b) Fees collected under this chapter are intended to recover no more than \$5,000,000 annually and shall be used only to accomplish the purposes of the Clean Rivers Program. Program funds shall be equitably apportioned among basins and shall only be used to recover actual costs for administering this program. The commission may not apply more than 10 percent of the costs recovered annually toward the commission's overhead costs for administration of this program. The commission shall ensure that water users and wastewater dischargers do not pay excessive amounts; and that no municipality shall be assessed fees for any efforts that duplicate water quality management activities carried out pursuant to Texas Water Code, §26.177 or rules implementing that section.

(c) A river authority or designated local government shall be eligible for reimbursement of the actual costs of administration of the Clean Rivers Program and implementation of the provisions of this chapter. The schedule and amount of any reimbursement shall be based on an equitable apportionment among basins. The allocation procedure shall be reviewed periodically and may be adjusted to reflect results of contractor evaluations, to address emerging issues or to focus on problem areas identified in the water quality assessments.

#### §220.2. *Definitions and Abbreviations.*

(a) Definitions. The following words and terms, when used in this chapter, shall have the following meanings. Unless specifically defined for this chapter, definitions for other words and terms may be found in Chapter 3 of this title (relating to Definitions).

(1) Assessment report - A comprehensive record of historical, existing and projected water quality conditions of a watershed.

(2) Designated local government - A local government that has been designated through cooperative agreement or contract with the commission to perform a regional assessment pursuant to this chapter.

(3) Nonpoint source pollution - Generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification. Any source of pollution that is not subject to regulation as a "point source".

(4) Pollution - The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious

to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(5) Quality Assurance Project Plan - The formal document which describes in comprehensive detail the necessary quality assurance/quality control activities that must be implemented to ensure that results of work performed will satisfy stated performance criteria.

(6) River authority (for purposes of this chapter only) - Any district or authority created by the legislature under Texas Water Code, §30.003, which contains an area within its boundaries of ten or more counties and any other river authority or special district created under Article III, Section 52, Subsection (b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution that is designated by rule of the commission to comply with this chapter.

(7) River basins and coastal basins - The river basins and coastal basins now defined and designated by the Texas Water Development Board as separate units for the purposes of water development and inter-watershed transfers, and as they are made certain by contour maps on file in the offices of the Texas Water Development Board, including but not limited to the rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes and portions of them, as well as the lands drained by them.

(8) Total Maximum Daily Load - Water quality-based process used to establish pollution control limits for waters not meeting water quality standards. The process is established under the federal Clean Water Act to establish control limits where technology-based controls are not adequate and should include determination of loading capacity, allocations of wasteload and loading from other pollutant sources, and an appropriate margin of safety.

(9) Wastewater permit - A permit issued by the commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26 and other statutory provisions (such as the Health and Safety Code, Chapter 361). For the purpose of this section, a permit shall include any authorization under Texas Water Code, Chapter 26 to treat or discharge wastewater, including a registration or permit by rule.

(10) Unclassified waters - Those waters for which no classification has been assigned and which have not been identified in Appendix A of 30 TAC, §307.10.

(11) Work plan - A document outlining the proposed scope of work, including a time schedule and cost expenditures, from a river authority or designated local government to perform a service and/or provide a comprehensive regional assessment of the watershed.

(b) Abbreviations. The following abbreviations apply to this chapter:

(1) Code - Texas Water Code.  
(2) Commission - Texas Natural Resource Conservation Commission.

- (3) CWA - Clean Water Act.
- (4) EPA - Environmental Protection Agency.
- (5) MGD - Million gallons per day.
- (6) QAPP - Quality Assurance Project Plan.
- (7) TAC - Texas Administrative Code.
- (8) TMDL - Total Maximum Daily Load.

§220.3. Responsibilities of the Commission.

(a) The commission shall establish a program to provide oversight and evaluation of the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state.

(b) Subject to available funding described in §220.21 of this title (relating to Water Quality Assessment Fees), the commission shall develop cooperative agreements and contracts with river authorities and designated local governments to implement the Clean Rivers Program. These contracts and cooperative agreements will be administered by the commission staff in accordance with the most recent State of Texas Uniform Grants and Contract Management Standards for State Agencies (Texas Government Code, Chapter 783) and any specific requirements of the applicable State General Appropriation Act.

(c) As part of the administration of this program the commission will develop Quality Control/Quality Assurance procedures to insure that water quality data collected under this chapter will maintain statewide consistency and will become part of the statewide data-base to be used in establishing water quality management permitting decisions.

(1) The commission will establish a schedule for review and approval of quality assurance plans and updates which describe procedures to be implemented by contracting agencies. The quality assurance plans will assure that water quality monitoring data are collected consistent with state-wide objectives.

(2) The commission program staff will conduct periodic program audits of contractors and subcontractors using a risk-based procedure to insure adherence to the quality assurance procedures.

(d) The commission has primary responsibility for implementation of water quality management functions and will implement these functions on a watershed basis in consideration of priorities established by river authorities and basin steering committees. Data collected in accordance with an approved quality assurance plan will be added to the state-wide water quality data base and used for the development and implementation of water quality management functions of the commission including review and revision of surface water quality standards and wastewater discharge permits.

(e) The commission will utilize water quality assessments developed in this program, along with other water quality assessments and studies in determining the need for cities with populations of 10,000 or more to develop water pollution control and abatement programs to reduce water pollution from non-permitted sources.

(f) The commission will assess and collect fees from wastewater and water use permit holders as described in §220.21 of this title and will apportion these funds equitably among the basins.

(1) The commission may consolidate fees assessed to wastewater permit holders under this chapter with assessment of the wastewater inspection fee authorized under Texas Water Code, §26.0291.

(2) Revenues collected from wastewater permit holders under this chapter shall be allocated to meet the purposes of this chapter and fees collected under Chapter 305 of this title (relating to Consolidated Permits) shall be allocated to meet purposes of that chapter.

(g) The commission, with information provided by each river authority and designated local government, shall file a written report accounting for the costs expended for this program with the governor,

lieutenant governor, and the speaker of the house of representatives on or before December 1 of each even-numbered year.

§220.4. Responsibilities of River Authorities and Designated Local Governments.

(a) Each river authority and designated local government that has entered into an agreement with the commission to perform duties under this chapter shall:

(1) Organize and lead a basin-wide steering committee to assist with the development of water quality objectives and priorities for the basin and to fulfill responsibilities described in §220.5 of this title (relating Responsibilities of Steering Committees). Membership of the committee will reflect a diversity of interests in the basin and will include persons paying fees described under §220.21 of this title (relating Water Quality Assessment Fees), the Texas State Soil and Water Conservation Board and other appropriate state agencies (for example, Texas Parks and Wildlife Department, Texas Water Development Board, Texas General Land Office, Texas Department of Health, Texas Department of Agriculture, Texas Railroad Commission, Texas Department of Transportation) private citizens, representatives from political subdivisions, and other persons with an interest in water quality matters in the watershed or river basin.

(2) Develop and maintain a basin-wide water quality monitoring program that eliminates duplicative monitoring, facilitates the assessment process to identify problem areas and support long-term trend analyses, and targets monitoring to support the wastewater discharge permitting and standards process.

(A) A Quality Assurance Project Plan must be developed and approved to support all data collection activities. Data collected by subcontractors and others under this program must conform to the approved quality assurance project plans.

(B) The water quality monitoring program shall address collection of baseline water quality data to support trend analyses and development of the statewide water quality inventory required under the Federal Clean Water Act, §305(b).

(C) The water quality monitoring program shall include site specific data collection to support the wastewater discharge permitting process for fee payers in the basin. Data collection efforts for this aspect of the program should be coordinated with the permitting cycle developed in accordance with Texas Water Code, §26.0285 related to permitting by basin.

(D) The water quality monitoring program shall include watershed specific data collection to address priority water quality problem areas identified by river authority trends analyses or steering committee input.

(3) Establish and maintain a watershed and river basin water quality database and/or clearinghouse composed of quality assured data, river authority programs, wastewater discharge permit holders, state and federal agencies, and other relevant data sources. This data shall be submitted to the commission for inclusion in the State of Texas Surface Water Quality Monitoring database and shall be made available to any interested person.

(A) Each river authority and designated local government shall establish and maintain the technology to aid in the electronic dissemination of water quality data and information for their basin. Water quality data for the basin shall be submitted to the commission at a minimum of once every six months in an agreed format for inclusion in the statewide water quality database.



(B) River authorities and designated local governments shall participate in task force meetings to establish, review and update data management procedures to reflect changes in information management technology.

(4) Identify water quality problems and known pollution sources and set priorities for taking appropriate actions to eliminate those problems and sources.

(A) Each river authority shall utilize the commission's procedures for data evaluation and analyses to the maximum extent possible. If alternative evaluation processes are necessary, the procedure must be presented in writing to the commission for approval by the executive director prior to its application.

(B) In order to assure inclusion in the development of the statewide water quality inventory, the analytical procedures shall be comparable to those used by the commission.

(C) Steering committees shall be provided the opportunity to actively participate in the identification of priority problem areas and the development of appropriate actions to address the problems and pollutant sources. Steering committees shall have the opportunity to determine the priority of maintaining or protecting watersheds with existing good quality water.

(5) Develop a process for public participation that includes the basin steering committee and that provides for meaningful review and comments by private citizens and organizations in the local watersheds.

(6) Recommend water quality management strategies for correcting identified water quality problems and pollution sources.

(7) Develop work plans which include priorities of the state and regional water quality management program. Upon agreement between the commission, the river authority, and/or designated local government the provisions of the work plan become the scope of work of the program contract or cooperative agreement.

(b) Each local government or other agency that collects water quality data within the watershed shall cooperate with the river authority or designated local government in developing the basin monitoring plan and assessment by providing to the river authority all of the information available to that organization about water quality within its jurisdiction, including the extraterritorial jurisdiction of a municipality. Data collected by local governments must be consistent with an approved quality assurance plan to be included for wastewater discharge permitting and standards decisions.

(c) Monitoring and assessment is a continuing duty and shall be revised periodically with appropriate amendments and updates to the quality assurance plans to reflect changes in procedures and factors subject to the assessment.

#### §220.5. Responsibilities of Steering Committees.

(a) The steering committee's role is advisory in nature and will involve assistance with the review of local issues and creation of priorities by watershed for the basin. Committee members should also assist with the review and development of work plans, reports, basin monitoring plans and basin action plans for the basin.

(b) A steering committee established by the commission and contractor to implement this program in areas without a river authority or other designated local government willing to carry out the program is not subject to Article 6252-33 Revised Statutes related to agency advisory committees.

(c) Steering committees should serve as the focus of public input to assist the river authorities and other agencies to develop water

quality objectives and priorities by watershed and by basin that are achievable considering available technology and economic impact.

#### §220.6. Reporting Requirements.

(a) Summary Reports. In the appropriate year of the permitting cycle developed in accordance with Texas Water Code, §26.0285 (30 TAC, §305.71) relating to Basin Permitting, each river authority will submit a written summary report to the commission, the State Soil and Water Conservation Board, and Parks and Wildlife Department on the water quality of the watershed or river basin.

(1) The summary report must identify concerns relating to the watershed or bodies of water, including an identification of bodies of water with impaired or potentially impaired uses, the cause and possible source or use impairment, and recommended actions that may be taken to address those concerns.

(2) The summary report must discuss the public benefits from the water quality monitoring and assessment program, including efforts to increase public input in activities related to water quality and the effectiveness of targeted monitoring in assisting the permitting process.

(3) Prior to submittal to the agencies listed in subsection (a) of this section, the river authority will present the report to the basin steering committee for approval and will also make the report available to water use and wastewater permit holders for review and comment.

(4) All comments regarding satisfaction with or suggestions for modification of the report for the watershed, the operation and/or effectiveness of the monitoring and assessment program, and the use of funds shall be considered, summarized and submitted, along with the approved summary report, to the governor, the lieutenant governor, and the speaker of the house of representatives not later than 90 days after submission to the commission and other agencies listed in paragraphs (1)-(3) of this subsection.

(b) Basin highlight reports. Each river authority and designated local government will develop a Basin Highlight Report annually to be provided to each member of the basin steering committee and all fee payers within the basin. This report should summarize Clean Rivers Program activities conducted in the basin. Procedures for electronic distribution should be developed to ensure most efficient availability to the public.

(c) Financial report. The commission shall file a written report on or before December 1 of each even numbered year accounting for the costs recovered under this section with the governor, the lieutenant governor, and the speaker of the house of representatives. Each river authority and designated local government shall have input and assist with the development of this report.

#### §220.7. Leveraging of funds to support federal and state grant programs.

The commission, river authorities and designated local governments may use funding from this chapter to leverage other state and federal program funds to support the overall water quality monitoring and assessment goals of this chapter.

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 October 27, 1997.

TRD-9714183

Kevin McCalla

Director

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**Program for Water Quality Assessment Fees**

**30 TAC §220.21, §220.22**

**STATUTORY AUTHORITY**

The new sections are proposed under the Texas Water Code, §5.103 and §26.011 which provides the commission authority to adopt rules necessary to carry out its powers and duties and under the provisions of the Texas Water Code and §26.0135 which provides the TNRC with authority to establish the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state.

There are no other codes or statutes that are affected by this proposal.

§220.21. Water Quality Assessment Fees.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) BOD - Five-day biochemical oxygen demand.
- (2) COD - Chemical oxygen demand.
- (3) Consumptive use - The use of water for domestic and municipal, industrial, irrigation or mining purposes, consistent with the meaning of these uses for which water may be appropriated under the Texas Water Code, §11.023 and §11.024.
- (4) Final flow limit - The maximum amount of wastewater discharge authorized by a permit issued in accordance with the Texas Water Code, Chapter 26 expressed as a daily average flow, a daily maximum flow, an annual average or an annual maximum. For the purpose of this section, a final flow limit is expressed in millions of gallons per day of discharge (MGD).
- (5) Flow - The total by volume of all wastewater discharges authorized under a permit issued in accordance with the Texas Water Code, Chapter 26, expressed as an average flow per day, a maximum flow per day, an annual average or an annual maximum, exclusive of variable or occasional stormwater discharges. Generally, the flow amount used to calculate fees is the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow amount used to calculate fees is the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.
- (6) Flow type.
  - (A) Contaminated - These wastewaters include sanitary wastewater, process wastewater flows or any mixed wastewaters containing more than 10% process wastewaters;
  - (B) Uncontaminated - These wastewaters include non-contact cooling water or mixed flows which contain at least 90% non-contact cooling water and not more than one million gallons per day of process wastewater.
- (7) Hydropower use - The use of water for hydroelectric and hydromechanical power and for other mechanical devices of like nature.

(8) Inactive permit - A permit which authorizes a waste treatment facility, where the facility itself is not yet operational or where operation has been suspended.

(9) Industrial use - The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric.

(10) Irrigation use - The use of water for the irrigation of crops, trees, and pasture land, including but not limited to golf courses and parks which do not receive water through a municipal distribution system.

(11) MGD - Million gallons per day.

(12) Mining use - The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

(13) Municipal use - The use of treated water within or without a municipality and its environs whether supplied by a person, privately-owned utility, political subdivision, or other entity as well as the use of municipal sewage effluent for certain purposes specified as follows. It includes the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes including public and private swimming pools, the use of treated water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens. Municipal use also includes the application of municipal sewage effluent upon land sites, pursuant to a Texas Water Code, Chapter 26, permit, where:

(A) the primary purpose of the application is the treatment and/or necessary disposal of such effluent; or

(B) the application site is a park, parkway, golf course, or other landscaped area owned by the owner of the permitted sewerage system; or

(C) the effluent applied to such site is generated within an area for which the commission has adopted a no-discharge to surface water rule.

(14) Navigation use - A recognized use that is not currently included in any water rights.

(15) Non-consumptive use - The use of water for those purposes not otherwise designated as consumptive uses under this section, including hydroelectric power, navigation, non-consumptive recreation and other beneficial uses, consistent with the meaning of these uses and for which water may be appropriated under the Water Code, §11.023 and §11.024.

(16) Other use - Any beneficial use not otherwise defined herein.

(17) Recreational use - The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aesthetic land enhancement of a subdivision, golf course or similar development.

(18) Recharge use - The use of surface water to either increase the amount of natural recharge to an underground aquifer or the injection of water into an aquifer.

(19) TOC - Total organic carbon.

(20) Traditional pollutants - the wastewater parameters typically found in wastewater permits, specifically oxygen demand (BOD/COD/TOC), total suspended solids (TSS) and ammonia. For the purpose of this section, COD and TOC are converted to BOD values, and the higher value is used in fee calculations. COD and TOC are expressed in terms of BOD at the rate of three pounds of TOC equal to one pound of BOD (3:1) or eight pounds of COD equal to one pound of BOD (8:1).

(21) TSS - Total suspended solids.

(22) Wastewater permit - A permit issued by the commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26 and other statutory provisions (such as the Health and Safety Code, Chapter 361). For the purpose of this section, a permit shall include any authorization under Water Code Chapter 26 to treat or discharge wastewater, including a registration or permit by rule.

(23) Water right - A right acquired under the laws of the state and the rules of the commission to impound, divert, or use state water.

(24) Aquaculture - The commercial propagation of aquatic species utilizing ponds, lakes, fabricated tanks and raceways, or other similar structures.

(b) For the purpose of recovery of the costs of development of regional water quality assessments and administration of the provisions of this chapter, a fee is assessed against water right holders and wastewater permit holders in each watershed of the state in proportion to their right to use water from, or to discharge wastewater into, the watershed. The fee calculation is based on the authorized limits contained in wastewater permits and water rights as of September 1 each year. All fee calculations are to be based on the parameters specified in the permit or water right without regard to the actual amount or quality of effluent discharged or the actual amount of water used. Fees do not apply to those domestic and livestock water use applications which are exempt from the need for authorization from the commission.

(c) Wastewater permit holders shall be assessed a fee based on the authority of a permittee to dispose of or discharge wastewater under a permit or other authorization issued pursuant to the Texas Water Code, Chapter 26. The fee shall be assessed on the basis of permitted flow and traditional pollutant limits and determined as the sum of factors in paragraphs (1) - (3) of this subsection. When calculating the charge based on flow, this amount shall be calculated based on the daily average flow limit in the permit. For permits that do not have a daily average flow limit, the charge shall be based on 50% of the daily maximum flow limit:

- (1) for contaminated discharges, \$375 per MGD;
- (2) for uncontaminated discharges, \$1.75 per MGD;
- (3) for each traditional pollutant, \$3.00 per pound per day.

(d) The annual fee assessed for each wastewater discharge permit shall be a minimum of \$300 and shall not exceed \$40,000. The fee for a permit which does not authorize the discharge of wastewater, including evaporation and land disposal permits, shall be \$200. The fee for an inactive permit shall be \$150. No fee will be assessed for aquaculture wastewater permits.

(e) For municipal or industrial water rights, or portions thereof, not directly associated with a facility or operation which is

assessed a fee under subsection (c) or (d) of this section, and for all other types of water rights except irrigation, each water right holder shall pay a fee based on the authorization to impound, divert or use state water. The fee for each water right authorizing diversion of more than 250 acre-feet per year for consumptive use, other than for irrigation, shall be \$.22 per acre-foot up to 20,000 acre-feet, and \$.08 per acre-foot thereafter. An authorization to impound water will be assessed a fee only when there is no associated consumptive use authorized, and then the fee will be calculated at the nonconsumptive rate described below. Except for water rights for use for hydroelectric generation, the fee shall be \$.021 per acre-foot for water rights for non-consumptive use above 2500 acre-feet per year up to 50,000 acre-feet, and \$.0007 per acre-foot thereafter. The fee for water rights for use for hydroelectric generation shall be \$.04 per acre-foot per year up to 100,000 acre-feet and \$.004 per acre-foot thereafter.

(f) Water which is authorized in a water right for consumptive use, but which is designated by a provision in the water right as unavailable for use may be exempted from the assessment of a fee under subsection (e) of this section.

(g) A retail public utility as defined by Texas Water Code, §13.002, which is subject to a water quality assessment fee under this chapter may collect from each customer a charge to recover the amount of the fee assessed. The total amount recovered by a retail public utility shall not exceed the amount assessed under this chapter plus any reasonable costs of collection. Any pass-through mechanism for the fees shall be fair and equitable for all customers and may be subject to review by the commission.

(h) The portion of a water quality assessment fee recovered from a customer of a retail public utility may be listed on the customer's bill as a separate item and may be collected in addition to other regulatory assessments or charges for utility services.

(i) The portion of a water quality assessment fee recovered from a customer by a retail public utility is not part of the rates of that utility. This provision shall apply to a retail public utility providing water and/or wastewater service.

(j) Water quality assessment fees are due within 30 days of the billing date each year. Fees shall be paid by check, either personal or certified, or by money order payable to the commission. A person failing to make payment of the fees imposed under this section when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

(k) New wastewater permits and water rights granted after September 1 will be billed at the next regular billing date. Any change in authorization will not affect any fee already billed for the year in which the authorization change is made. Cancellation or revocation, whether by voluntary action on the part of the permittee or water right holder or as a result of proceedings initiated by the commission, will not constitute grounds for a refund of any water quality assessment fee previously paid.

(l) The commission shall monitor both the collection of fees under this section and the allocation of fee revenues under §220.22 of this title (relating to Allocation of Water Quality Assessment Fee Revenue) for the river basins of the state. The commission shall adjust the fee rates established under this section to the extent necessary to ensure the adequate support of the programs undertaken to implement this chapter and the equitable assessment of fees within each watershed and region of the state. If the fees collected for this program in any fiscal year should exceed \$5 million by more than one percent, the commission shall make a proportional downward

adjustment of the fee rates for the next fiscal year to attempt to limit the collection to \$5 million per year.

§220.22. Allocation of Water Quality Assessment Fee Revenue.

(a) A river authority or designated local government shall be eligible for reimbursement of the costs of development of water quality assessments and implementation of the provisions of this chapter.

(b) The schedule and amount of any reimbursement shall be determined by mutual agreement of the commission and the appropriate river authority or local government based on an approved water quality assessment report or work plan as required under §220.4 of this title (relating to Responsibilities of River Authorities and Designated Local Governments).

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 October 27, 1997.

TRD-9714184

Kevin McCalla

Director

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 239-4640



## Chapter 320. Regional Assessments of Water Quality

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §§320.1- 320.9 and §§320.21-320.22, concerning Regional Assessments of Water Quality (Clean Rivers Program).

### EXPLANATION OF PROPOSED RULE

The proposed repeal of Chapter 320 enables a numbering change that implements a reorganization of commission rules by moving this chapter to the area of the Texas Administrative Code that is being reserved for rules related to water programs in Chapters 200-299.

### FISCAL NOTE

Steve Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these proposed repeals are in effect, there will be fiscal implications as a result of enforcement and administration of the sections since these sections will be re-adopted under a new chapter. The effect on state government will be a reauthorization of an existing program and will require no additional staff. The costs to affected Wastewater permit holders and Water Use permit holders, including local governments, will remain at the current level as a result of the reauthorization of the existing program. Fees will range from \$300 to as much as \$40,000 depending on the volume of discharge and/or use by the permit holder.

### PUBLIC BENEFIT

Mr. Minick also has determined that for the first five years these proposed repeals are in effect, the public benefit anticipated as a result of enforcement of and compliance with these sections will be improvements in the regulation of permitted wastewater discharges and the quality of surface water resources of the

state, and increased protection of public drinking water supplies and aquatic life resources.

### REGULATORY IMPACT ANALYSIS

Mr. Minick has determined that a regulatory impact analysis is not required because the repeals are not a major environmental rule and will not have an adverse affect in a material way the economy, environment or public health and safety of any sector of the state.

### TAKINGS IMPACT STATEMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas. Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to provide regulatory guidelines for the administration and implementation of the State of Texas Clean Rivers Program authorized in the Texas Water Code, §26.0135. The rules will substantially advance this specific purpose by establishing responsibilities of the TNRCC, participating river authorities and designated local governments, and basin steering committees. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules.

### COASTAL MANAGEMENT PROGRAM (CMP)

The executive director has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

### PUBLIC HEARING

A public hearing on the proposal will be held Monday, November 17, 1997 at 10:00 a.m. in Room 3201A of the commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements, when called upon, in the order of registration. Open discussion within the audience will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have a 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.

### SUBMITTAL OF COMMENTS

Written comments on the proposal should refer to Rule Log No. 97137-320-WT and may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they are faxed. Written comments must be received by 5:00 p.m., December 8, 1997. Such comments will not receive individual responses, but will be addressed in the preamble of the adopted rules and published in the *Texas Register*. For further information, please contact Chuck Dvorsky, Water Quality Division, (512) 239-4594.

## Program for Assessment of Water Quality by Watershed and River Basin

### 30 TAC §§320.1–320.9

*(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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### STATUTORY AUTHORITY

The repeals are proposed under the Texas Water Code, §5.103 which provides the commission authority to adopt rules necessary to carry out its powers and duties under the provisions of the Texas Water Code.

There are no other codes or statutes that will be affected by this proposal.

§320.1. *Purpose.*

§320.2. *Applicability.*

§320.3. *Definitions and Abbreviations.*

§320.4. *Overview.*

§320.5. *Assessment Reports and Work Plans.*

§320.6. *Elements of Assessment Reports.*

§320.7. *Responsibilities of River Authorities and Designated Local Governments.*

§320.8. *Local Government Responsibilities.*

§320.9. *Basin-wide Steering Committee Members Responsibilities.*

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 October 27, 1997.

TRD-9714185

Kevin McCalla

Director

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 239-4640



## Program for Water Quality Assessment by Watershed

### 30 TAC §320.21, §320.22

*(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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### STATUTORY AUTHORITY

The repeals are proposed under the Texas Water Code, §5.103 which provides the commission authority to adopt rules necessary to carry out its powers and duties under the provisions of the Texas Water Code.

There are no other codes or statutes that will be affected by this proposal.

§320.21. *Water Quality Assessment Fees.*

§320.22. *Allocation of Water Quality Assessment Fee Revenue.*

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 October 27, 1997.

TRD-9714186

Kevin McCalla

Director

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 239-4640



## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

##### Subchapter O. State Sales and Use Tax

#### 34 TAC §3.322

The Comptroller of Public Accounts proposes an amendment to §3.322, concerning exempt organizations. The Tax Code, §151.310, was amended in Senate Bill 862, 75th Legislature, 1997, to require exempt organizations selling taxable items at a tax-free sale or auction with a sales price in excess of \$5,000 to collect tax on those items, effective October 1, 1997. All taxable items sold at a tax-free sale or auction with a sales price not greater than \$5,000 remain exempt.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig 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 enforcing the amendment will be in making the rule easier to read and interpret. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §151.310.

§3.322. *Exempt Organizations.*

(a)-(f) (No change.)

(g) Sales by an exempt organization.

(1) (No change.)

(2) A religious, educational, charitable, eleemosynary organization, or an organization exempt under Internal Revenue Code, §501(c)(3), (4), (8), (10), or (19) that has qualified for exemption under this section, and each bona fide chapter of a qualifying organization, may hold two one-day tax-free sales or auctions each

calendar year. The organization is not required to collect sales tax on a taxable item sold at a designated tax-free sale or auction provided the sales price of the taxable item does not exceed \$5,000. If the organization sells a taxable item during a tax-free sale or auction with the sales price exceeding \$5,000, the organization is responsible for collecting tax on the item. [is not required to collect sales tax on the sales price of taxable items sold at a sale or auction held by the organization or chapter only twice a calendar year and each sale or auction lasting only one day.]

(A)-(C)

(3) (No change.)

(h)-(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 October 23, 1997.

TRD-9714090

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-4062



## Chapter 9. Property Tax Administration

### Subchapter C. Appraisal District Administration

#### 34 TAC §9.415

The Comptroller of Public Accounts proposes an amendment to §9.415, concerning applications for property tax exemptions. This amendment makes the rule conform to current agency practice and is easier to use. In addition, the rule is being amended to add a new model form for community housing development organizations improving property for low-income and moderate-income housing from House Bill 137, 75th Legislature, 1997, effective January 1, 1998; to amend the model forms for additional explanatory language from House Bill 137, House Bill 1145, House Bill 1773, House Bill 2383, Senate Bill 95, Senate Bill 344, Senate Bill 841, and Senate Bill 1437, 75th Legislature, 1997; and to change the form numbers to conform with the comptroller form numbering system.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect, the amendment would have no fiscal impact on the state or on local government units, beyond the effects specified in the fiscal notes for the aforementioned legislation.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect, this amendment would benefit the public by clarifying the kinds of information that persons eligible for certain exemptions would have to provide in order to obtain the exemptions. There is no anticipated significant economic cost to the public. This rule amendment will have no significant fiscal impact on small businesses.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under the Tax Code, §11.43(f), which requires the comptroller to prescribe the contents and form for each kind of property tax exemption.

The amendment implements the Tax Code, §§11.111, 11.13, 11.17, 11.18, 11.181, 11.19, 11.20, 11.21, 11.22, 11.23(a)-(k), 11.24, 11.251, 11.27, 11.271, 11.28, 11.28, 11.29, 11.30, 11.31, 11.437, and 11.182.

#### §9.415. Applications for Property Tax Exemptions.

[(a) Each appraisal office shall prepare applications for the exemptions provided by the Tax Code, §§11.111, 11.13, 11.17, 11.18, 11.181, 11.19, 11.20, 11.21, 11.22, 11.23(a)-(k), 11.24, 11.251, 11.27, 11.271, 11.28, 11.29, 11.30, 11.31 and 11.437, and make copies of each form available to the public.]

[(b) Each application must require the applicant to provide all information required by the comptroller's model form. Each application must substantially conform in form to the appropriate model form. The application may require information in addition to that required by the model form.]

[(c) Where the application contains or requires other information, the information required by this section shall be printed on the front of the form.]

[(d) If the chief appraiser routinely requires supporting documentation for the exemption, the appraisal office shall note on the application the types of documentation required.]

[(e) Each application shall require the applicant to sign and date the application.]

[(f) All applications shall include in boldface type beneath the space for the signature and date, a notice of the penalties prescribed under the Penal Code, §37.10, for making or filing an application containing a false statement.]

[(g) An application for the exemption, as provided by the Tax Code, §11.13, for residence homesteads; §11.17, for cemeteries; §11.18, for charitable organizations; §11.19, for youth spiritual, mental, and physical development associations; §11.20, for religious organizations; §11.21, for privately owned schools; §11.22, for disabled veterans and their survivors; §11.23(j), for a medical center development; §11.29, for dredge disposal site; §11.30, for a nonprofit water supply or wastewater services corporation; and §11.31, for pollution control property shall state that:]

[(1) the exemption need not be applied for annually;]

[(2) that the applicant has a duty to notify the chief appraiser in writing before the next May 1 following the date the applicant's entitlement to an exemption ends; that the applicant no longer qualifies for the exemption; and]

[(3) that the chief appraiser may require an applicant to reapply by delivering written notice to the applicant with a new application.]

(a) [(h)] With the application for exemption for residence homesteads (Form 50-114), [(Tax Code, §11.13), ] the appraisal office shall provide a list of taxing units served by the appraisal district, together with all residential homestead exemptions each offers.

(b) [(i)] If the chief appraiser learns of the death of a person qualified for over-65 homestead exemptions (Tax Code, §11.13) and it appears that the person's spouse has acquired ownership of the homestead, the chief appraiser should require the surviving spouse to file a new homestead exemption application. Based on the information provided in the new application, the chief appraiser

shall determine whether the surviving spouse qualifies for homestead exemptions, including over-65 exemptions, and whether the surviving spouse may retain the tax ceiling for school tax purposes established on the homestead by the decedent.

(c) [(j)] The amended model forms in subsections (c)(1)-(c)(20) of this section and the new model forms in subsection (c)(21) of this section are adopted by reference by the Comptroller of Public Accounts. Copies of these forms are available for inspection at the office of the Texas Register or can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621. [The following model forms are adopted by reference:]

- (1) Application for Transitional Housing Property Tax Exemption (Form 50-140);
- (2) Application for Residence Homesteads (Form 50-114);
- (3) Application for Cemetery Exemption (Form 50-120);
- (4) Application for Charitable Organizations (Form 50-115);
- (5) Application(s) for Charitable Organization Providing Low-Income Housing (Form ~~50-242~~[50-242-I] and Form 50-243);
- (6) Application for Youth Spiritual, Mental, and Physical Development Organizations (Form 50-118);
- (7) Application for Religious Organizations (Form 50-117);
- (8) Application for Privately Owned Schools (Form 50-119);
- (9) Application for Disabled Veteran's or Survivor's Exemption (Form 50-135);
- (10) Application for Miscellaneous Property Tax Exemptions (Form 50-128);
- (11) Application for Theater School Property Tax Exemption (Form 50-125);
- (12) Application for Historic Sites Property Tax Exemption (Form 50-122);
- (13) Application for Goods Exported from Texas (freepoint exemption) (Form 50-113);
- (14) Application for Solar and Wind-Powered Energy Device Exemption (Form 50-123);
- (15) Application for Property Tax Abatement Exemption (Form 50-116);
- (16) Application for Stored Offshore Drilling Rig Exemption (Form 50-124);
- (17) Application for Dredge Disposal Site Exemption (Form 50-121);
- (18) Application for Nonprofit Water Supply or Wastewater Services Corporation (Form 50-214);
- (19) Application for Pollution Control Property (Form 50-248); [and]

(20) Application for Cotton Stored in a Warehouse (Form 50-245); and[-]

(21) Application(s) for Community Housing Development Organizations Improving Property for Low-Income and Moderate-Income Housing (Form 50-263 and Form 50-264).

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 October 23, 1997.

TRD-9714050

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 463-4062



## Part IV. Employees Retirement System

### Chapter 81. Insurance

#### 34 TAC §§81.1, 81.3, 81.5, 81.7, 81.9, 81.11

The Employees Retirement System of Texas (ERS), proposes amendments to §§81.1, 81.3, 81.5, 81.7, 81.9, and 81.11, concerning the Uniform Group Insurance Program. Section 81.1 is amended to add and clarify definitions; §81.3 is amended to update and clarify existing rules and to bring the rules into compliance with recent legislation; §81.5 is amended to bring the rules into compliance with recent legislation; §81.7 is amended to update and clarify existing rules and bring the rules into compliance with recent legislation; §81.9 is amended to update existing rules; and §81.11 is amended to update existing rules and to bring the rules into compliance with recent legislation.

William S. Nail, General Counsel, ERS, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Nail 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 clarification of confusing terminology. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to William S. Nail, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207.

The amendments are proposed under Insurance Code, Article 3.50-2, §4A, which provides the ERS with the authority to promulgate all rules and regulations necessary to implement and to administer the Uniform Group Insurance Program and the Flexible Benefits (Cafeteria Plan) Program.

The Insurance Code, Article 3.50-2 is affected by these proposed amendments.

#### §81.1. Definitions.

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

Accelerated Life Benefit- An amount of Term Life Insurance requested by the insured employee and approved by the carrier to be paid in advance of the employee's or covered dependent's actual death in accordance with the terms of the Group Term Life Plan. Accelerated Life Benefit payment can be requested only upon diagnosis of a terminal illness and only once during the lifetime of the employee or covered dependent.

Dependent - The spouse of an employee or retiree and unmarried children under 25 years of age, including:

(A)-(B) (No change.)

(C) a stepchild [~~or foster child~~] whose primary place of residence is the employee/retiree's household;

(D) a foster child whose primary place of residence is the employee/retiree's household and who is not covered by another governmental health program;

(E) [~~(D)~~] a child whose primary place of residence is the household of which the employee/retiree is head and to whom the employee/retiree is legal guardian of the person;

(F) [~~(E)~~] a child who is in a parent-child relationship to the employee/retiree, provided the child's primary place of residence is the household of the employee/retiree, the employee/retiree provides the necessary care and support for the child, and if the natural parent of the child is 21 years of age or older, the natural parent does not reside in the same household;

(G) [~~(F)~~] a child who is considered a dependent of the employee/retiree for federal income tax purposes and who is a child of the employee/retiree's child;

(H) [~~(G)~~] an eligible child, as defined in this subsection, for whom the employee/retiree must provide medical support pursuant to a valid order from a court of competent jurisdiction; or

(I) [~~(H)~~] any such child, regardless of age, who lives with or whose care is provided by an employee or retiree on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retiree for care or support, as the trustee shall determine. Mentally retarded or physically incapacitated means any medically determinable physical or mental condition which prevents the child from engaging in self-sustaining employment, provided that the condition commences prior to such child's attainment of age 25, the child was eligible and covered under the plan immediately prior to reaching age 25, and that satisfactory proof of such condition and dependency is submitted by the employee/retiree within 31 days following such child's attainment of age 25. As a condition to the continued coverage of a child as a mentally retarded or physically incapacitated dependent beyond the age of 25, the carrier or health maintenance organization shall have the right to require periodic certification of the child's physical or mental condition but not more frequently than annually following the child's attainment of age 25.

Evidence of insurability - Such evidence required by a qualified carrier for approval of coverage or changes in coverage pursuant to the rules of §81.7(h) [(f)] of this title (relating to Enrollment and Participation).

Former COBRA unmarried child - a child of an employee or retiree who is unmarried; whose UGIP coverage as a dependent has ceased; and who upon expiration of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) reinstates UGIP coverage.

Insurance premium expenses- Any out-of-pocket premium incurred by a participant, or by a spouse or dependent of such participant, as payment for coverage provided under the Program that exceeds the state's or institution's contributions offered as an employee benefit by the employer. The types of premium expense covered by the plan include out-of-pocket premium for group term life, health (including HMO premiums), accidental death and dismemberment, dental, and long and short term disability, but does not include out-of-pocket premium for dependent term life.

Preexisting condition - Any injury or sickness [~~physical or mental condition, including pregnancy~~], for which the employee [~~participant~~] received medical treatment, or services, or took prescribed drugs or medicines during the three-month period immediately prior to the effective date of such coverage, [~~advice or was treated by a practitioner during the six-month period immediately preceding the effective date of the participants coverage, excluding treatment of a medical condition resulting from congenital or birth defects~~]. However, if the evidence of insurability requirements set forth in §81.7 (h) [(f)] of this title must first be satisfied, the three-month [~~six-month~~] period for purposes of determining the preexisting conditions exclusion will be the three-month [~~six-month~~] period immediately preceding the date of the employee's completed application for coverage.

Premium conversion plan - A separate plan, under the Internal Revenue Code, §79 and §106, adopted by the board of trustees and designed to provide premium conversion as described in §81.7(f) of this title.

### §81.3. Administration .

(a) Group Benefits Advisory Committee (GBAC).

(1) The GBAC is established by the Act, §18, as amended. Its membership shall be composed as defined in the Act. The Executive Director [~~executive director~~] of the Employees Retirement System of Texas shall establish procedures for the determination of the committee's membership, terms of office, and representation of the applicable state agencies and institutions of higher education, in accordance with the Act.

(2) - (6) (No change.)

(7) The Executive Director [~~executive director~~] of the Employees Retirement System of Texas shall file a notice of the GBAC's meetings with the secretary of state for publication in the Texas Register.

(8) The Executive Director [~~executive director~~] shall be the custodian of the minutes of the GBAC's meetings and will have those minutes available for public inspection at the offices of the Employees Retirement System of Texas during normal working hours.

(b) (No change.)

(c) Health maintenance organizations.

(1) The board may approve a [A] health maintenance organization (HMO) [must obtain board approval] to offer a health benefits plan [programs] to participants in the Program [program]. The board may:

(A) utilize a bidding process to approve one or more HMOs in areas of the state determined by the board to be regional bidding areas (RBAs);

(B) utilize an application process to approve one or more HMOs in areas of the state determined by the board to be non-bidding areas;



(C) determine the criteria to be used to approve the HMOs for the RBAs and non-bidding areas;

(D) determine the number of HMOs to approve in each RBA and non-bidding area; and

(E) determine the length of the contracts with the approved HMOs.

(2) In order to seek approval, an HMO must:

(A) submit an application to provide health benefits in the areas within the State of Texas determined by the board to be non-bidding areas;

(B) submit a proposal, in response to a request for bid, in the format determined by the system for one or more of the designated RBAs; or

(C) submit application(s) and bid(s).

(3) [(2)] An HMO seeking board approval in response to a request for bid in one or more of the RBAs, must satisfy the following conditions: [-]

(A) The HMO must be licensed by the Texas Department of Insurance to operate in the State of Texas [certified by the State of Texas and federally approved].

(B) [(C)] The HMO must have been providing services in the RBA [area for which application is made] for at least 12 months prior to the date the bid [application ] is filed with the system and must demonstrate the capacity to provide adequate services, as determined by the system, to the program participants. [For a request for an expansion of a contiguous service area, the HMO must be providing services in the expanded area on the date the application is filed with the system and must demonstrate the capacity to provide adequate services, as determined by the system, to the program participants in the expanded area.]

[(B) The HMO must:]

[(i) be currently approved by the trustees and participating in the program; or]

[(ii) have all or a large portion of its service area not common to one of the currently approved and participating HMOs of similar type and have at least 25 state employees reside in the common area.]

(C) [(E)] The HMO must submit the bid [an annual application], with rates, to the board at the time and [by February 1 of each year to the board ] in the format prescribed by the system. Once adopted by the board, [submitted] the rates may not be modified without the approval of the board. A request for expansion of a non-contiguous service area, as described in this section, shall require a separate application.

(D) [(F)] The HMO agrees [must agree] to the provisions contained in the contract [letter of agreement] between the system and the HMO as adopted for the entire time specified in the contract [contract year for which the application is made].

[(D) At least 25 state employees must reside in the approved HMO service area.]

(E) [(G)] The HMO must provide standardized benefits as described [in the document entitled Summary of HMO Benefits contained] in the contract [letter of agreement] between the system and the HMO [-which is adopted by reference in this section]. This document, which is to be considered a part of this section for all

purposes, may be obtained from the Executive Director [ executive director] of the system.

[(3) Approval by the board may be limited to one group type HMO and one independent practice type HMO within a given service area.]

(F) [(4)] If an HMO, [previously ] approved by the board, fails to maintain compliance with the contract [letter of agreement], the board has the right to cancel the existing contract with that HMO upon proper notice as specified in the contract [letter of agreement].

(G) [(5)] An HMO that loses its state license [or federal certification] will automatically become ineligible to offer its health benefits plan [program] to participants in the Program [insurance program on the date determined by the board of trustees].

(4) An HMO, seeking board approval in response to an application in one or more of the non-bidding areas, must satisfy the following conditions:

(A) The HMO must be licensed by the Texas Department of Insurance to operate in the State of Texas.

(B) The HMO must have been providing health services in the area for which the application is made for at least 12 months prior to the date the application is filed with the system and must demonstrate the capacity to provide adequate services, as determined by the system, to the program participants.

(C) The HMO must submit the application, with rates, to the board at the time and in the format prescribed by the system. Once adopted by the board, the rates may not be modified without the approval of the board.

(D) The HMO agrees to the provisions contained in the contract between the system and the HMO as adopted for the entire time specified in the contract.

(E) The HMO must provide standardized benefits as described in the contract between the system and the HMO. This document, which is to be considered a part of this section for all purposes, may be obtained from the Executive Director of the system.

(F) If an HMO, approved by the board, fails to maintain compliance with the contract, the board has the right to cancel the existing contract with that HMO upon proper notice as specified in the contract.

(G) An HMO that loses its state license will automatically become ineligible to offer its health benefits plan to participants in the insurance program.

(d) Funding.

(1) (No change.)

(2) Payment of premiums. Deductions from monthly compensation or annuities and direct payment of premiums are two methods of payments used for the employee's, retiree's, or other participant's share of premiums.

(A) Employee deductions. An employee or retiree who applies for coverage for which the monthly premium exceeds the state or employing department and the system contributions must authorize in writing on a form prescribed by the system a deduction from his or her monthly compensation or annuity to pay the difference. If an employee's monthly compensation or retiree's annuity is insufficient to provide for the appropriate deduction, the employee or retiree must pay premiums directly as explained in

subparagraph (B)(i) of this paragraph. Failure to make the required payment of premiums by the due date will result in the cancellation of all coverages not fully funded by the state contribution. A person entitled to the state contribution will retain member only health and basic life coverage provided the state contribution is sufficient to cover the premium for such coverage. If the state contribution is not sufficient for member only coverage in the health plan selected by the employee or retiree, the employee or retiree will be enrolled in the basic plan except as provided for in §81.7(l)(4)(2)(B) of this title (relating to Enrollment and Participation).

(B) Direct payment of premiums. Persons who are eligible participants in the program and who are not on a payroll or who are not receiving an annuity from a state retirement system from which the appropriate premiums may be deducted or whose salary or annuity are insufficient to allow for a full required deduction must pay premiums directly as indicated in the following.

(i) A person who is eligible to receive but is not actually receiving a TRS annuity, a retiree who is eligible to receive an annuity whose benefit is assigned to an alternate payee, a person whose retirement annuity is temporarily suspended, a person whose annuity is insufficient, a person who is receiving or eligible to receive an annuity under the ORP, a former elected official, a former employee of the legislature, ~~and~~ a surviving spouse and/or dependent child/children of a deceased employee or retiree, and a former COBRA unmarried child must pay monthly premiums in advance directly to the system. A person in a leave without pay status, a person whose salary is insufficient, and a non-salaried board member must pay monthly premiums in advance through the employee's employing department. Premium payments are due on the first day of the month covered and must be postmarked or received by the system or the employing department, whichever is appropriate, within 30 days of the due date to avoid cancellation of coverage. Failure to make the required premium payment by the due date will result in cancellation of all coverages not fully funded by the state contribution, if applicable. A person entitled to the state contribution will retain member only health and basic life coverage provided the state contribution is sufficient to cover the premium for such coverage. If the state contribution is not sufficient for member only coverage in the health plan selected by the employee or retiree, the employee or retiree will be enrolled in the basic plan except as provided for in §81.7(l)(4)(2)(B) of this title.

(ii) A person who continues group health and dental benefits as provided in §81.5(k)(4) of this title (relating to Eligibility) must pay premiums in advance on a monthly basis. Premiums for such a person will be 102% of the rates charged for other participants in the same coverage category and with the same plan. All premiums due for the election/enrollment period must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation of coverage enrollment form. Subsequent premiums are due on the first day of the month covered and must be postmarked or received by the Employees Retirement System within 30 days of the due date to avoid cancellation of coverage.

(iii) A person who continues group health and dental benefits as provided in §81.5(k)(4)(3) of this title (relating to Eligibility) must pay premiums in advance on a monthly basis. Premiums for such a person for each month of coverage after the 18th month of coverage will be 150% of the rates charged for other participants in the same coverage category and with the same plan. All premiums are due on the first day of the coverage month and must be postmarked or received by the Employees Retirement System of Texas within 30 days of the due date to avoid cancellation of coverage.

#### §81.5. Eligibility.

(a) Full-time employees. A full-time employee, elected officer, or appointed officer of the State of Texas is eligible for coverage and premium conversion on the first day he or she begins active duty with the state. For an elected or appointed officer, the first day of active duty shall be the day he or she takes the oath of office.

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

(d) Dependents of employees and retirees. The dependents of an employee or retiree are eligible for coverage on the same day that the employee or retiree becomes eligible. A newly acquired dependent is eligible for coverage on the date the individual becomes a dependent of a covered employee or retiree. The employee or retiree must be enrolled for a particular coverage before the employee's or retiree's dependents are eligible for that type of coverage. An eligible child for whom a covered employee or retiree is court ordered to provide medical support becomes eligible for health coverage upon receipt by the department of a valid court order. A newborn natural child ~~[or eligible newborn grandchild]~~ is covered automatically on date of birth. A retiree's dependents are eligible for dependent life insurance coverage only if that coverage was in effect the day before the retiree became eligible for retiree life insurance; however, where the retiree was precluded from adding dependent life coverage because eligible dependents were either active employees or covered as dependents of an active employee, the retiree may add dependent life coverage upon an eligible dependent's termination of employment other than by retirement. The request to add this coverage must be submitted within 30 days following the date the dependent terminates employment other than by retirement. A dependent may not be simultaneously covered for basic term life and dependent term life. A family member who is covered as an employee or retiree is not eligible to be covered as a dependent in the program. A dependent may not be covered by more than one employee or retiree for the same coverage. Double coverage is not permitted for any participant in the program.

(e) Former COBRA unmarried children. A former COBRA unmarried child is eligible for the health and dental coverages in which they were enrolled upon expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), Public law 99-272.

(f) ~~(e)~~ Surviving dependents.

(1) The surviving spouse of a retiree or the surviving spouse of an active employee is eligible to continue coverage in the health and dental benefits plans in which the surviving spouse was enrolled on the day of death of the employee/retiree provided, however, the deceased active employee must have had at least ten years of service credit, including three years of service as an eligible employee with a Program participating department, at the time of death. A surviving spouse who is also a state retiree or state employee shall not be eligible for surviving spouse benefits as long as he or she is eligible for coverage as an employee or retiree. Participants continuing coverage as surviving spouses are not eligible for life insurance coverages.

(2) Dependent children of a deceased employee or retiree are eligible to continue coverage in the health and dental benefits plans in which the dependent children were enrolled on the day of death of the employee/retiree provided, however, the deceased active employee must have had, at the time of death, at least ten years of service credit, including three years of service as an eligible employee with a Program participating department [at the time of death], as long as the surviving spouse is eligible and continues to participate in the

program. Dependent children of deceased employees or retirees will be considered as dependents of the deceased employee's or retiree's surviving spouse for purposes of the program. Participants continuing coverage as surviving dependents are not eligible for life insurance coverage.

(3) Dependent children of a deceased employee/retiree are eligible to continue coverage in the health and dental benefits plans in which the dependent children were enrolled on the day of death of the employee/retiree provided, however, the deceased active employee must have had at least ten years of service credit, including three years of service as an eligible employee with a Program participating department, at the time of death. A surviving dependent child may continue such coverage until the dependent child becomes ineligible as defined in §81.1 of this title (relating to Definitions). Participants continuing coverage as surviving dependents are not eligible for life insurance coverage.

(4) A surviving spouse of a dependent child of a paid law enforcement officer employed by the state or a custodial employee of the institutional division of the Texas Department of Criminal Justice who suffers a violent death in the course of performance of duty is eligible to continue or enroll in health and dental coverages. A surviving spouse or natural or adopted children eligible under this section may enroll within 90 days from the date of death. Other eligible dependent children may continue health and dental coverages in effect on the date of death.

(g) ~~[(f)]~~ Retiree under ORP. A retiring member of the ORP is eligible to remain in the insurance program if he or she becomes an annuitant of the ORP and the member's age and amount of service on which the annuity is based is such that the retiree meets the age and length-of-service requirements used by the Teacher Retirement System for regular service retirements. A retiring member will remain eligible for coverage in the program as long as he or she would have been eligible to receive an annuity had his or her membership been in the Teacher Retirement System rather than the ORP.

(h) ~~[(g)]~~ Disability retirement. An applicant who is approved for disability retirement is entitled to retiree insurance coverages as provided in §81.7(c) of this title (relating to Enrollment and Participation). An ORP participant granted ORP disabled retiree status in the program, as established by the disability test used by the system, is eligible to remain in the program for the amount of time the person would be eligible for benefits had retirement coverages been under the Teacher Retirement System of Texas. Initial or continued eligibility for insurance coverage for an ORP disabled retiree will be determined by the system under the following provisions.

(1) An ORP participant is eligible for ORP disabled retiree status in the program if the ORP participant is not otherwise eligible to participate in the program as an employee or retiree and is certified by a licensed physician designated by the system as disabled as provided in paragraph (2) of this subsection ~~[section]~~. An ORP participant may apply for disabled retiree status in the program by filing a written application for ORP disabled retiree status in the program or having an application filed with the system by the ORP participant's spouse, employer, or legal representative. In addition to an application for ORP disabled retiree status in the program, an ORP participant must file with the system the results of a medical examination of the ORP participant. After an ORP participant applies for ORP disabled retiree status in the program, the system may require the ORP participant to submit additional information about the disability. The system will prescribe forms for the information required by this section.

(2) If a licensed physician designated by the system finds that the ORP participant is mentally or physically disabled from the further performance of duty and that the disability is probably permanent, the physician will certify disability. The Executive Director ~~[ executive director]~~ is authorized to approve ORP disabled retiree status in the program after a certification of disability is made. Once each year during the first five years after an ORP participant enrolls in the program as an ORP disabled retiree, and once in each three-year period after that, the system may require an ORP disabled retiree to undergo a medical examination by a physician the system designates. If an ORP disabled retiree refuses to submit to a medical examination as provided by this section, the system will suspend the ORP disabled retiree's enrollment in the program until the ORP disabled retiree submits to an examination. The system will terminate the ORP disabled retiree's coverage in the program and notify the ORP participant in writing if:

(A) the system concurs with a certification issued by the designated physician which finds that an ORP disabled retiree is no longer mentally or physically disabled from the further performance of duty; or

(B) an ORP disabled retiree refuses for more than one year to submit to a required medical examination.

(3) The effective date of coverage for an ORP disabled retiree in the program is the first of the month following the date the application for ORP disabled retiree status in the program is received by the system, or the first of the month following the date employment is terminated, whichever is later.

(i) ~~[(h)]~~ Former members of the legislature. On application to the trustee and on arrangement for the payment of contributions, a person who has at least eight years of creditable legislative service, as defined in the Government Code, §812.002, on ending his or her service in the legislature, continues to be eligible for participation in the program under the Act. Except as provided in this section, former members of the legislature will be subject to the same eligibility rules and effective dates that apply to active members of the legislature.

(j) ~~[(i)]~~ Former employees of the legislature. On application to the trustee and on arrangement for the payment of contributions, a person who has at least ten years of creditable service in the system, as defined in the Government Code, §812.003, as an employee of the legislature, on ending his or her service for the legislature, continues to be eligible for participation in the program under the Act. Except as provided in this section, a former legislative employee will be subject to the same eligibility rules and effective dates that apply to an active employee of the State of Texas.

(k) ~~[(j)]~~ Continuation of health and dental coverages only for certain spouses and dependent children of employees/retirees, and for certain terminating employees, their spouses, and dependent children (as provided by the Consolidated Omnibus Budget Reconciliation Act, Public Law 99-272).

(1) The surviving spouse and/or dependent child/children of a deceased employee or retiree who are not eligible to continue coverage under the provisions of the Act or subsection ~~(f)~~ ~~[(e)]~~ of this section, who are not entitled to benefits under the Social Security Act, Title XVIII, and who are not covered under any other group health plan, or who were covered by a plan that subjects them to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 Health Insurance Portability and Accountability Act (HIPAA), may continue for up to 36 months the health and dental coverages only that were in effect immediately prior to the date of death of the employee/retiree. A

formal election must be made to continue coverage by the surviving spouse and/or the dependent child/children. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage terminated, whichever is later.

(2) An employee whose employment has been terminated voluntarily or involuntarily (other than for gross misconduct), whose work hours have been reduced such that the employee is no longer eligible for the program as an employee, or whose coverage has ended following the maximum period of leave without pay as provided for in §81.7(1)[ ~~(4)~~](2)(A) of this title, except for those persons not eligible pursuant to §81.11(c) of this title (relating to Termination of Coverage), and/or his or her spouse and/or dependent child/children who are not eligible to continue coverage under the provisions of the Act or subsection (h) or (i) [~~(g) or (h)~~] of this section, who are not entitled to benefits under the Social Security Act, Title XVIII, who are not covered under any other group health plan, or who were covered by a plan that subjects them to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), may continue for up to 18 months the health and dental coverages only without the basic term life that were in effect immediately prior to the date of the loss of coverage. A formal election must be made to continue coverage by the employee and/or his or her spouse and/or dependent child/children. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage terminated, whichever is later.

(3) If an [An] employee, spouse, or dependent child is determined by the Social Security Administration to have been disabled before or during the first 60 days of continuation coverage, all covered individuals may continue [on the date the employee's employment terminated may have continuation] health and dental coverages extended up to an additional 11 months, for a total of 29 months. Notification of the Social Security Administration's determination must be received by the system before the end of the original 18 months of continuation coverage. Continuation coverage will be canceled the month that begins more than 30 days after the date the Social Security Administration determines that the participant is no longer disabled.

(4) A spouse who is divorced from an employee/retiree and/or the spouse's dependent child/children who are not otherwise eligible to continue coverage under the provisions of the Act or subsection (d) of this section, who are not entitled to benefits under the Social Security Act, Title XVIII, who are not covered under any other group health plan, or who are covered by a plan that subjects them to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-912 (HIPAA), may continue for up to 36 months the health and dental coverages only that were in effect immediately prior to the date the divorce decree is signed. The employee/retiree or the divorced spouse or the divorced spouse's dependent child/children must notify the system through the employing department or retiree benefits coordinator of the divorce within 60 days from the date the divorce decree is signed. A formal election must be made to continue coverage by the divorced spouse and/or the dependent child/children. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage is terminated, whichever is later.

(5) A dependent child under 25 years of age who marries, who is not entitled to benefits under the Social Security Act, Title XVIII, who is not covered under any other group health plan, or who

are covered by a plan that subjects the child to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), may continue for up to 36 months the health and dental coverages only that were in effect immediately prior to the date of the marriage. The married child or the employee/retiree must notify the system through the employing department or retiree benefits coordinator of the marriage within 60 days from the date of the marriage. A formal election must be made by the married child to continue coverage. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage is terminated, whichever is later.

(6) A dependent child who has attained 25 years of age, who is not otherwise eligible to continue coverage indefinitely under the provisions of the Act or subsection (d) of this section, who is not entitled to benefits under the Social Security Act, Title XVIII, who is not covered under any other group health plan, or who is covered by a plan that subjects the child to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), may continue for up to 36 months the health and dental coverages only that were in effect immediately prior to the date of the child's 25th birthday. The child or employee/retiree must notify the system through the employing department or retiree benefits coordinator within 60 days of the child's 25th birthday. A formal election must be made by the 25-year-old child to continue coverage. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage is terminated, whichever is later.

(7) Extension of continuation of coverage for certain spouses and/or dependent child/children of former employees who are continuing coverage under the provisions of paragraph (2) of this subsection is governed by the following provisions.

(A) The surviving spouse and/or dependent child/children of a deceased former employee whose death occurred during the period of continuation coverage, who satisfy the provisions of paragraph (1) of this subsection and who notify the Employees Retirement System within 60 days of the date of death of the former employee are entitled to a total of 36 months of continuation coverage.

(B) A spouse who is divorced from a former employee during the period of continuation coverage and/or the divorced spouse's dependent child/children who satisfy the provisions of paragraph (4) of this subsection are entitled to a total of 36 months of continuation coverage.

(C) A dependent child under 25 years of age who marries during the period of continuation coverage and who satisfies the provisions of paragraph (5) of this subsection is entitled to a total of 36 months of continuation coverage.

(D) A dependent child who attains the age of 25 years during the period of continuation coverage and who satisfies the provisions of paragraph (6) of this subsection is entitled to a total of 36 months of continuation coverage.

(E) An employee, spouse, or dependent child determined by the Social Security Administration to be disabled at the time of termination of the employee's employment and who satisfies the provisions of paragraph (3) of this subsection is entitled to a total of 29 months of continuation coverage.

(F) No person shall be allowed to continue health and dental coverages under the provisions of this subsection for more than 36 months.

(8) A person who continues benefits under the provisions of paragraphs (1)-(7) of this subsection may change coverage levels or plans during the continuation period on the same basis as an employee/retiree participant, provided, however, that health and dental coverages which are canceled during the continuation period may not be reestablished.

(9) In all situations deemed applicable by the Employees Retirement System where state or federal laws or regulations mandate specific terms or provisions which are omitted or conflict with specific terms or provisions of the group contracts or trustees' rules, the appropriate contracts and rules shall be interpreted and administered to comply with such laws or regulations.

#### §81.7. Enrollment and Participation.

(a) Full-time employees and their dependents.

(1) A new employee, other than a part-time state agency employee, will automatically be enrolled in the basic plan of health and life insurance, effective on his or her first day of active duty. Any employee, who is eligible and enrolled in the program, is eligible to participate in premium conversion and shall be enrolled automatically in the premium conversion plan. To enroll eligible dependents, elect to enroll in an approved HMO or in HealthSelect Plus, ~~and/or~~ elect optional coverages, and/or elect not to participate in premium conversion, the employee must complete an enrollment form on the first day of active duty or within 30 days from that date. The employee may decline any and all coverages in the program or participation in premium conversion by completing an enrollment form on or before the first day of active duty.

(2) An enrollment form for coverages or premium conversion election to be effective on the day the employee begins active duty must be completed and signed on or before that day. Coverages or premium conversion elections for which the enrollment form is completed and signed after the first day of active duty and within 30 days after that day will be effective on the first day of the month following the signature date on the enrollment form. Enrollment forms completed and signed after the first 31 days will be governed by subsection (h) ~~(f)~~ of this section.

(3) An employee's election to or not to participate in the premium conversion plan shall be irrevocable for the plan year, unless there is a change in family status as defined in subsection (h)(1) of this section and the change is consistent with the event.

(4) An employee who continues to remain eligible to participate in premium conversion shall be enrolled automatically for subsequent plan years unless the employee specifically declines participation in writing during the annual enrollment period or under the change in family status rules.

(5) An employee who is ineligible to participate, or who is eligible and elects not to participate, in premium conversion and who becomes or remains eligible to participate in a subsequent plan year will continue to not participate in premium conversion unless the employee completes a new enrollment form during the annual enrollment period or under the change in family status rules and elects to participate.

(6) ~~(3)~~ Coverages for dependents of an employee will be effective on the same day the employee's coverage becomes effective if an enrollment form is completed and signed on or before the effective date of the employee's coverage. If the enrollment form is completed and signed within 30 days after the employee's effective date, the dependent's coverage will be effective on the first day of the month following the signature date on the enrollment form. Coverage for a newly eligible dependent, other than a dependent referred to

in paragraphs (7) and (9) ~~paragraph (4)~~ of this subsection, will be effective on the date the person becomes a dependent if an enrollment form is completed and signed on or within 30 days after the date the dependent first becomes eligible. If the enrollment form is completed and signed more than 30 days after the employee's effective date or the date the dependent is first eligible, as the case may be, the enrollment form will be governed by the rules in subsection (h) ~~(f)~~ of this section. The requirement that an enrollment form must be completed and signed within 30 days after a dependent first becomes eligible is waived if the level of health, dental, and/or life coverages were in effect prior to the acquisition of the newly eligible dependent; however, an enrollment form must be completed before verification of coverage will be provided to the carrier(s).

(7) ~~(4)~~ A newborn natural child ~~or eligible newborn grandchild~~ will be covered immediately and automatically from the date of birth in the health plan in effect for the employee or retiree.

(A) If there are no other dependents covered at the time of birth, the newborn natural child ~~or eligible newborn grandchild~~ will be automatically covered in the same health plan in which the employee or retiree is then covered. Unless not in compliance with subsection (h) of this section ~~[Chapter 85 of this title (relating to Flexible Benefits)]~~, to continue coverage for more than 30 days after the date of birth, an enrollment form for health coverage must be submitted within 30 days after the date of birth.

(B) If health, dental, and/or life coverages for dependent children were already in effect, an application to add a subsequent newborn natural child ~~or eligible newborn grandchild~~ must be completed before verification of coverage for the newborn dependent will be provided to the carrier.

(8) ~~(5)~~ The effective date of a newborn natural child's ~~or eligible newborn grandchild's~~ life and AD&D ~~[ADD]~~ insurance will be the 14th day after the date of birth, unless the newborn natural child ~~or eligible newborn grandchild~~ is then confined to a hospital or other institution for medical care; in which case, the newborn natural child ~~or eligible newborn grandchild's~~ life and AD&D ~~[ADD]~~ insurance coverage will become effective on the day after the day the newborn natural child ~~or eligible newborn grandchild~~ is released from the hospital or institution. The effective date of all other eligible dependents' life and AD&D ~~[ADD]~~ insurance coverages will become effective as stated in paragraph (6) ~~(3)~~ of this subsection, unless the dependent is confined in a hospital or other institution for medical care at the date of eligibility; in which case, the life and AD&D ~~[ADD]~~ insurance coverage will become effective on the day after the day the dependent is released from the hospital or institution.

(9) An eligible child for whom a covered employee or retiree is court ordered to provide medical support becomes eligible for health coverage upon receipt by the department of a valid court order.

(10) ~~(6)~~ The effective date of HealthSelect of Texas coverage for an employee's or retiree's dependent, other than a newborn natural child ~~or eligible newborn grandchild~~, will be as stated in paragraph (6) ~~(3)~~ of this subsection, unless the dependent is confined in a hospital or other institution for medical care at the date of eligibility; in which case, HealthSelect of Texas coverage will be effective on the day after the day the dependent is released from the hospital or institution.

(b) Part-time employees. A part-time employee is not automatically covered but must complete an application form provided by the Employees Retirement System, authorizing necessary deductions

for premium payments for elected coverage and electing to participate or not to participate in premium conversion. This form must be submitted to the Employees Retirement System through his or her employing agency on or before the employee's first day of active duty in order for coverage to be effective on that day. If not submitted on the first day of active duty, but within 30 days thereafter, coverage will be effective on the first day of the month following the date of application. All rules for enrollment stated in subsection (a) of this section, other than the rule as to automatic coverage, apply to a part-time employee.

(c) Retirees and their dependents.

(1) Provided the required premiums are paid or are deducted, an employee's health, dental and term life insurance coverages (including eligible dependent coverages) may be continued upon retirement provided the employee was insured in the program for such benefits immediately preceding the first day he or she becomes an annuitant. The life insurance will be reduced to the maximum amount which the retiree is permitted to retain under the insurance contract as a retiree. All other coverages in force for the active employee, but not available to the retiree, will automatically be discontinued concurrently with the commencement of retirement status.

(2) If a retiree was not covered as an active employee immediately prior to becoming an annuitant, the retiree will be automatically enrolled in the basic retiree plan. Coverage for an eligible dependent of a retiree will be effective on the same day the retiree's coverage becomes effective if an application is received on or before the retiree's effective date of coverage. Applications received after the first 31 days will be governed by subsection (h) [(f)] of this section.

(3) An application to delete optional life coverages or to change health coverage will be effective on the day the member becomes an annuitant if the application is postmarked or received by the Employees Retirement System on or before the effective date of retirement, unless other coverages are in effect at that time. If other coverages are in effect at that time, the deletion or change in coverage will become effective on the first day of the month following the date of approval of retirement by the Employees Retirement System of Texas; or, if cancellation of the other coverages preceded the date of approval of retirement, the first day of the month following the date the other coverages were canceled. If the application is received after the date the member becomes an annuitant, but within 30 days after the date the member becomes an annuitant, the deletion or change of coverage will become effective the first day of the month following the date the application for deletion or change is received, unless other coverages are in effect at that time. If other coverages are in effect at that time, the deletion or change in coverage will become effective on the first day of the month following the date of approval of retirement by the Employees Retirement System of Texas; or, if cancellation of the other coverages preceded the date of approval of retirement, the first day of the month following the date the other coverages were canceled. All other enrollment rules stated in subsections (a), (g) [(e)-(g)], and (l) [(i)] of this section apply to retirees.

(d) Surviving dependents. A surviving spouse and dependents of a deceased employee who, at the time of death, had at least ten years of service credit, including three years of service as an eligible employee with a Uniform Group Insurance Program participating department, and who met the program eligibility requirements in accordance with the Act may continue coverage as provided in §81.5(f) [(e)] of this title (relating to Eligibility). A surviving spouse and dependents of a deceased retiree may continue coverage as pro-

vided in §81.5 (f) [(e)] of this title. A surviving spouse who is receiving an annuity shall make premium payments by deductions from the annuity as provided in §81.3(d)(2)(A) of this title (relating to Administration). A surviving spouse who is not receiving an annuity may make payments as provided in §81.3(d)(2)(B) of this title. The surviving spouse or eligible dependents must apply to continue coverage for himself or herself and dependents within 30 days after notification in writing of eligibility to make application.

(e) Former COBRA unmarried children. A former COBRA unmarried child must provide an application for coverage within 30 days from the date the notice of eligibility was mailed by the system. Coverage will begin the first of the month following the month in which continuation coverage ends. Premium payments may be made as provided in §81.3(d)(2)(B) (relating to Administration).

(f) Premium conversion plans.

(1) Pursuant to the premium conversion plan, a participant may elect to pay certain insurance premium expenses for health, disability, accidental death and dismemberment, dental, and group term life with pre-tax dollars. The plan is intended to be qualified under the Internal Revenue Code, §79 and §106.

(2) Maximum benefit available. Subject to the limitations set forth in these rules and in the plan, to avoid discrimination, the maximum amount of flexible benefit dollars which a participant may receive in any plan year for insurance premium expenses under this section shall be the amount required to pay the participant's portion of the premiums for coverage under each type of insurance included in the plan.

(g) [(e)] Special rules for additional or alternative coverages.

(1) An employee/retiree must be enrolled in health coverage provided by the program to apply for any optional coverages. Only an employee or retiree or a former officer or employee specifically authorized to join the program may apply for optional coverages.

(2) An eligible participant in the Program [employee/retiree] and eligible dependents may participate in an approved HMO if they reside in the approved service area of the HMO and are otherwise eligible under the terms of the letter of agreement with the HMO.

(3) An eligible participant in the Program [employee/retiree] and eligible dependents may participate in HealthSelect Plus if they reside in the approved service area of HealthSelect Plus.

(4) An eligible [A] participant in the Program electing optional additional coverage and/or HMO or HealthSelect Plus coverage in lieu of the basic plan of insurance is obligated for the full payment of premiums. If the premiums are not paid, all coverages not fully funded by the state contribution will be canceled. A person entitled to the state contribution will retain member only health coverage provided the state contribution is sufficient to cover the premium for such coverage. If the state contribution is not sufficient for member only coverage in the health plan selected by the employee or retiree, the employee or retiree will be enrolled in the basic plan except as provided for in subsection (1), (2)(B) of this section [(i)(2)(B) of this section].

(5) An [employee, retiree, or other] eligible participant in the [Uniform Group Insurance] Program enrolled in an HMO whose contract is not renewed for the next fiscal year will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible or to HealthSelect Plus (if the participant

is eligible) by completing an enrollment form during the annual enrollment period. The effective date of the change in coverage will be September 1;

(B) enroll in HealthSelect of Texas without evidence of insurability by completing an enrollment form during the annual enrollment period, if the participant is eligible to enroll in another approved HMO. [~~The preexisting conditions exclusion will apply, as defined in subsection (g) of this section.~~] The effective date of the change in coverage for the eligible participant [~~employee/retiree~~] shall be September 1. Eligible dependents shall be subject to evidence of insurability requirements. [~~The preexisting conditions exclusion will apply as defined in subsection (g) of this section.~~] The effective date of coverage for dependents may be either September 1 or the first day of the month following the date approval is received by the department;

(C) enroll in HealthSelect of Texas without evidence of insurability by completing an enrollment form during the annual enrollment period, if the participant is not eligible to enroll in another approved HMO (an approved HMO is not available to the participant). Eligible dependents shall not be subject to evidence of insurability requirements. [~~The preexisting conditions exclusion will not apply except that, if the participant's or dependent's enrollment in HealthSelect of Texas occurs within 12 months of the initial date of coverage under the current term of employment or retirement, the exclusion will apply for the remainder of such 12 month period.~~] The effective date of the change in coverage will be September 1; or

(D) if the participant does not make one of the elections, as defined in subparagraphs (A)-(C) of this paragraph, the participant will automatically be enrolled in the basic plan. Evidence of insurability [~~and preexisting conditions exclusion~~] for the participant and the participant's dependents will apply as referenced in subparagraph (B) of this paragraph.

(6) An employee, retiree, or other eligible program participant enrolled in an HMO whose contract is terminated during the fiscal year or which fails to maintain compliance with the letter of agreement will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible. The effective date of the change in coverage will be determined by the board;

(B) enroll in HealthSelect of Texas without evidence of insurability or in HealthSelect Plus if the participant is eligible, provided the participant is not eligible to enroll in another approved HMO. [~~Application of the preexisting conditions exclusion (for HealthSelect of Texas) and the~~] The effective date of the change in coverage will be determined by the board; or

(C) if a participant is eligible to enroll in another HMO, the board may allow the participant to enroll in HealthSelect of Texas without evidence of insurability [~~and the preexisting conditions exclusion;~~] or in HealthSelect Plus, if the participant is eligible. The effective date of the change in coverage will be determined by the board.

(7) An employee who, during the annual enrollment period prior to the beginning of a plan year or within 30 days from their first active duty date, makes an application to increase insurance coverage under the Program (the premium for which will exceed the State of Texas' and the institution's total contributions for premium costs) may elect not to participate in premium conversion by completing and submitting an enrollment form during the annual enrollment period or within 30 days from the first active duty date.

(h) [~~(f)~~] Changes in coverages beyond the first 31 days of eligibility.

(1) The premium conversion plan's affect on ability to change insurance coverage. An employee participating in the premium conversion plan may not change coverages during the plan year, unless there is a change in family status and the change is consistent with the event. A change in family status includes marriage, divorce, death of a dependent; birth or adoption; termination or gaining employment by a dependent; change from full-time to part-time or part-time to full-time employment status by employee or dependent; significant change in health insurance coverage attributable to dependent gaining employment; employee's dependent regains Program eligibility; employee acquires a Program eligible dependent; employee is court ordered to provide medical support for dependent child; dependent goes on or returns from leave without pay; dependent involuntarily loses health coverage or dependent child loses dependent eligibility for other health coverage; dependent gains or loses Medicaid eligibility; Program covered dependent loses Program eligibility; Program covered dependent becomes eligible for Program as a retiree; or, a dependent gains or loses eligibility for Medicare.

(2) Effects of change in cost of benefits to the premium conversion plan. There shall be an automatic adjustment in the amount of premium conversion plan dollars used to purchase optional benefits in the event of a change, for whatever reason, during an applicable period of coverage, of the cost of providing such optional benefit to the extent permitted by applicable law and regulation. The automatic adjustment shall be equal to the increase or decrease in such cost. A participant shall be deemed by virtue of participation in the plan to have consented to the automatic adjustment.

(3) [(4)] An eligible participant [employee or retiree] who wishes to add or increase coverage, add eligible dependents to HealthSelect of Texas, or change coverage from an HMO or HealthSelect Plus to HealthSelect of Texas more than 30 days after the initial date of eligibility must make application for approval by providing evidence of insurability acceptable to the system. Unless not in compliance with paragraph (1) of this subsection [Chapter 85 of this title (relating to Flexible Benefits)], coverage will become effective on the first day of the month following the date approval is received by the employee's benefits coordinator or by the system, if the applicant is a retiree or an individual in a direct pay status. If the applicant is an employee in a leave without pay status, the approved change in coverage will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void; and a new application shall be required. An employee or retiree may withdraw the application at any time prior to the effective date of coverage by submitting a written notice of withdrawal.

(4) [(2)] The evidence of insurability provision applies only to:

(A) employees who wish to enroll in Elections III or IV Optional Term Life insurance;

(B) employees who wish to enroll in or increase Optional Term Life insurance, Short Term Disability, or Long Term Disability more than 30 days after the initial date of eligibility;

(C) employees, retirees, or eligible dependents who wish to enroll in HealthSelect of Texas more than 30 days after the

initial date of eligibility, except as provided in subsections (a), (g) [(e)](5)-(6), and (h)(7)(11) [(f)(4)-(8)] of this section; or

(D) employees enrolled in the program whose coverage was dropped or canceled, except as provided in subsection (k)(3), (4), and (6) [(h)(2), (3), and (5)] of this section.

(5) [(3)] An employee or retiree who wishes to add eligible dependents to the employee's or retiree's HMO or HealthSelect Plus coverage may do so:

(A) during the annual enrollment period (coverage will become effective on September 1); or

(B) when a dependent terminates employment, when a dependent loses health coverage for reasons other than voluntary cancellation, when a dependent changes employment status, when an employee or retiree divorces, or when a spouse dies, and as provided in paragraph (13) [(40)] of this subsection, unless not in compliance with paragraph (1) of this subsection [Chapter 85 of this title (relating to Flexible Benefits)]. The effective date of coverage will be the first day of the month following the event date if an enrollment form is completed and signed on or within 30 days following the date the dependent becomes eligible under this rule.

(6) An employee, who is otherwise eligible to participate in the Program but who did not decline participation in premium conversion prior to the beginning of a plan year or who elected to participate and who has a change in family status as defined in paragraph (1) of this subsection after the beginning of the plan year, may elect not to participate in premium conversion, if the change is consistent with the change in family status, by completing and submitting an enrollment form within 30 days from the date the family status change occurs.

(7) [(4)] An eligible [employee, retiree, or other] participant, who is enrolled in an approved HMO and permanently moves his or her place of residence out of that HMO's service area to a location where the participant is no longer eligible to be enrolled in any approved HMO, will be allowed to enroll in HealthSelect of Texas or HealthSelect Plus, if the participant is eligible. Coverage in the HMO will be canceled on the last day of the month in which the previously described employee, retiree, or other participant moved from the service area, and the coverages in HealthSelect of Texas or HealthSelect Plus will become effective on the day following the day HMO coverage is canceled. The evidence of insurability provision shall not apply in these cases. [The preexisting conditions exclusion shall apply if enrollment in HealthSelect of Texas occurs within 12 months of the initial date of coverage under the current term of employment, as defined in subsection (g)(3) of this section.]

(8) [(5)] An eligible [employee, retiree, or other] participant, who is enrolled in HealthSelect Plus and permanently moves his or her place of residence out of the HealthSelect Plus service area will be enrolled in HealthSelect of Texas, whether or not an HMO is available. Coverage in HealthSelect Plus will be canceled on the last day of the month in which the previously described employee, retiree, or other participant moved from the service area, and coverage in HealthSelect of Texas will become effective on the day following the day HealthSelect Plus coverage is canceled. The evidence of insurability provision shall not apply. [The preexisting conditions exclusion shall apply if enrollment in HealthSelect of Texas occurs within 12 months of the initial date of coverage under the current term of employment, as defined in subsection (g)(3) of this section.]

(9) [(6)] When a covered dependent of an eligible participant [employee/retiree] permanently moves out of the participant's [employee/retiree's] HMO service area, the participant [employee/re-

tiree] must make one of the following elections, to become effective on the first day of the month following the date the dependent moved out of the participant's [employee/retiree's] HMO service area:

(A) drop the ineligible dependent, unless not in compliance with paragraph (1) of this subsection, or §81.11(a)(2) (relating to Termination of Coverage) [Chapter 85 of this title (relating to Flexible Benefits)]; or

(B) [change coverage to an HMO for which the employee/retiree and covered dependents are eligible. If there is no HMO for which all are eligible, then the employee/retiree and covered dependents may] enroll in HealthSelect of Texas or HealthSelect Plus, if the participant and all covered dependents [all] are eligible. The evidence of insurability provision shall not apply. [The preexisting conditions exclusion shall apply if enrollment in HealthSelect of Texas occurs within 12 months of the initial date of coverage under the current term of employment, as defined in subsection (g)(3) of this section.]

(10) [(7)] When a covered dependent of an eligible participant [employee/retiree] permanently moves out of the HealthSelect Plus service area, the participant [employee/retiree] must make one of the following elections to become effective on the first day of the month following the date the dependent moved out of the HealthSelect Plus service area:

(A) drop the ineligible dependent, unless not in compliance with paragraph (1) of this subsection, and §81.11(a)(2) (relating to Termination of Coverage) [Chapter 85 of this title (relating to Flexible Benefits)]; or

(B) change coverage to HealthSelect of Texas. The evidence of insurability provision shall not apply. [The preexisting conditions exclusion shall apply if enrollment in HealthSelect of Texas occurs within 12 months of the initial date of coverage under the current term of employment, as defined in subsection (g)(3) of the section.]

(11) [(8)] An eligible participant [Employees and retirees] will be allowed an annual opportunity to make changes to their coverages [in the Uniform Group Insurance Program] and premium conversion election, if applicable.

(A) Persons will be allowed to:

- (i) change from one HMO to another HMO;
- (ii) change from an HMO to HealthSelect Plus;
- (iii) change from HealthSelect Plus to an HMO;
- (iv) change from HealthSelect of Texas to HealthSelect Plus;
- (v) change from HealthSelect of Texas to an HMO;
- (vi) change from HealthSelect Plus to HealthSelect of Texas;
- (vii) select in-area or out-of-area coverage in HealthSelect of Texas based on an out-of-area residential zip code and an in-area work zip code;
- (viii) enroll in a dental plan;
- (ix) change dental plans;
- (x) enroll eligible dependents in an HMO, HealthSelect Plus, or dental coverage;
- (xi) enroll eligible dependents in HealthSelect of Texas, without evidence of insurability, if the participant is enrolled



in HealthSelect of Texas and does not reside in any HMO service area; ~~[- The preexisting conditions exclusion, as defined in subsection (g) of this title (relating to Enrollment and Participation), will apply; or]~~

~~(xii) enroll themselves and their eligible dependents in an eligible HMO, in HealthSelect Plus (if they are eligible), and in a dental plan from a declined or canceled status or [-]~~

~~(xiii) enroll or cancel enrollment in the premium conversion plan.~~

~~(B) Surviving dependents and former COBRA unmarried children are not eligible for the provisions in subparagraph (A)(vii), (viii), (x), or (xi) of this paragraph.~~

~~(C) [(B)] Such opportunity will be scheduled prior to September 1 of each year at times announced by the system. Coverage selected during the annual enrollment period will be effective September 1. An employee who re-enrolled after the close of the annual opportunity but prior to September 1 of the same calendar year shall have until August 31 of that calendar year to make changes as allowed above to be effective September 1. The evidence of insurability provision [and the preexisting conditions exclusion] shall not apply to persons changing from HealthSelect Plus to HealthSelect of Texas; except that, if the participant's or dependent's enrollment in HealthSelect of Texas occurs within 12 months of the initial date of coverage under the current term of employment or retirement, the preexisting conditions exclusion will apply for the remainder of such 12 month period .]~~

~~(D) Employees on approved leave of absence or extended sick leave without pay on the first day of a new plan year will be provided an opportunity to change their enrollment in the premium conversion plan and apply through evidence of insurability for coverage within the first 30 days after return to active duty.~~

~~(12) [(9)] Unless not in compliance with paragraph (1) of this subsection and §81.11(a)(2) (relating to Termination of Coverage), an eligible participant [Chapter 85 of this title (relating to Flexible Benefits), an employee or retiree] who wishes to decrease or cancel coverage may do so at any time. Coverage will continue through the last day of the month following the signature date of the enrollment form.~~

~~(13) [(10)] An eligible dependent spouse or child who has health coverage as an employee under the program becomes eligible for coverage as a dependent on the day following termination of employment. Eligible dependent children who have health coverage in the program as dependents of an employee who terminates employment also become eligible for coverage on the day following termination of employment. In order to be eligible for coverage, dependents must meet the definition of dependent contained in §81.1 of this title (relating to Definitions) and be enrolled for coverage by the employee of whom they are the eligible dependent and who is enrolled for health coverage under the program. The effective date of coverage will be the first day of the month following termination of employment if an enrollment form is completed and signed on or within 30 days following the date the dependent(s) become eligible under this rule.~~

~~(14) [(11)] Notwithstanding the effective dates of coverages, as defined in paragraphs (3)-(12) [(1)-(9)] of this subsection, an [employee, retiree or other ] eligible participant in the program may complete an enrollment form or enrollment forms during the annual enrollment period to make coverage changes, as determined by the trustee, to be effective September 1.~~

~~(i) [(g)] Preexisting conditions exclusion. The preexisting conditions exclusion shall apply to employees, retirees, and eligible dependents who enroll in Disability coverage [HealthSelect of Texas]. The exclusion for benefit payments shall apply during the first six consecutive months after the employee has been actively at work or after the employee's disability coverage has been continuously in force for 12 months [for a full 12 months from the effective date of coverage] for a preexisting condition, as defined in §81.1 of this title (relating to Definitions). The preexisting conditions exclusion will not apply to:~~

~~(1) [(2)] a medical condition resulting from congenital or birth defects or;~~

~~[(1) an eligible newborn natural child or eligible newborn grandchild;]~~

~~[(3) an individual allowed to enroll in HealthSelect of Texas because the individual moves permanently out of an HMO service area except that, if enrollment in HealthSelect of Texas occurs within 12 months of the initial date of coverage under the current term of employment, the exclusion will apply for the remainder of the 12-month period for any condition for which the participant received medical advice or was treated by a physician during the six-month period immediately prior to the initial date of coverage under the current term of employment;]~~

~~[(4) an individual who enrolls in an HMO or in HealthSelect Plus; or]~~

~~[(5) an individual (including previously covered dependents) transferring employment with no break in service from the University of Texas System or the Texas A&M University System to a department in the program;]~~

~~(2) [(6)] an individual returning to state employment in accordance with the conditions described in subsection (k)(3) [(h)(2)] of this section. [- or]~~

~~[(7) an individual enrolling, during the annual enrollment period or upon enrollment as an annuitant, in HealthSelect of Texas from HealthSelect Plus. If enrollment in the HealthSelect of Texas occurs within less than 12 months of continuous coverage in the program, the preexisting conditions exclusion shall apply for the balance of the 12 month period.]~~

~~(j) Special provisions relating to term life benefits~~

~~(1) An employee who is enrolled in the Group Term Life Plan may file a claim for an accelerated life benefit for themselves or their covered dependents in accordance with the terms of the group term life insurance plan in effect at that time. A retiree who is enrolled in the Plan is not eligible to file a claim for an accelerated life benefit for themselves or their covered dependents.~~

~~(2) An employee or retiree who is enrolled in the Group Term Life Plan may make an irrevocable beneficiary designation and enter into a viatical settlement in accordance with the terms of the group term life insurance plan in effect at that time.~~

~~(k) [(h)] Reinstatement in the program.~~

~~(1) Unless specifically prohibited by these sections, paragraph (2) of this subsection [Chapter 85 of this title (relating to Flexible Benefits)], or contractual provisions, an employee who terminates employment and returns to active duty within the same contract year may reinstate health coverage for himself and his dependents identical to, and optional coverages no greater than, those that were in effect when the employee terminated by submitting an enrollment form for the coverages. The enrollment form must~~

be submitted on the first day the employee returns to active duty, and, unless the employee completes the enrollment form indicating coverages are to be effective on the first day of the month following the date the employee returns to active duty, the coverages will be effective on the day the employee returns to active duty. Dependents acquired during the break in employment may be added on the enrollment form. A returning employee who has selected coverages less than those for which the employee is eligible may reinstate any waived coverages by submitting the appropriate enrollment form during the 30 days following the date the employee returns to active duty. The change in coverage will become effective on the first day of the month following the date of signature on the enrollment form. If the coverage of an employee returning to active duty within the same plan year is affected by paragraph (2) of this subsection [Chapter 85 of this title relating to Flexible Benefits], the employee must reinstate all coverages that were in effect on the termination date, and the effective date of reinstated coverage must be the date the employee returns to active duty.

(2) A terminated employee who returns to state or institution of higher education employment, or an employee who returns to active duty from an approved leave of absence without pay, or transfers from one state agency to another or between an agency and an institution of higher education as defined in these rules, within the same plan year, must retain for the remainder of the plan year the premium conversion election in existence on the employee's last active duty date, unless an eligible change in family status occurred in accordance with subsection (h) of this section.

(3) [(2)] An employee who is a member of the Texas National Guard or any of the reserve components of the United States Armed Forces and who is in a military leave without pay status or who must terminate employment as the result of an assignment to active military duty may, upon return to active employment, reinstate all program coverages that were in effect immediately prior to the commencement of active military duty, as long as the return to active employment occurs within 90 days of the release from active military duty. An employee may also reinstate the coverage of the employee's dependent, who is a member of the Texas National Guard or any of the reserve components of the United States Armed Forces and whose coverage is terminated as the result of an assignment to active military duty. To reinstate canceled coverages, submission of evidence of insurability acceptable to the carrier will not apply. Provided all applicable preexisting conditions exclusions were satisfied at the time coverages were canceled, no additional preexisting conditions exclusions will apply upon reinstatement of coverages. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement. The enrollment form to reinstate such coverages must be completed and signed during the 30 days following the day the employee returns to active employment. In the case of the dependents, the enrollment form to reinstate such coverages must be completed and signed within 30 days following the release from active duty. Enrollment forms for coverages to be effective on the day the employee returns to active employment must be completed and signed on or before the first day of the return to active employment. Coverages for which the enrollment form is completed and signed after the first day of the return to active state employment and within 30 days after that day will be effective on the first day of the month following the date of signature on the enrollment form. However, if the coverage of an employee returning to active duty within the same plan year is affected by paragraph (2) of this subsection [Chapter 85 of this title (relating to Flexible Benefits)], the employee must reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, and the effective date

of reinstated coverage must be the date the employee returns to active duty.

(4) [(3)] Employees whose coverages were canceled during a period of leave without pay due to a certified work-related disability may, upon return to active duty status, reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, except as provided in §81.11(c)(4) of this title (relating to Termination of Coverage), and provided an enrollment form to reinstate such coverages is completed and signed within 30 days of the return to active duty. Evidence of insurability will not apply. Provided all applicable preexisting conditions exclusions were satisfied at the time coverages were canceled, no additional preexisting conditions exclusions will apply upon reinstatement of coverages. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement. Coverages applied for on the first day of return to active duty will be effective on that day unless the employee completes and signs the enrollment form indicating coverages are to be effective on the first day of the month following the date the employee returns to active duty. Coverages applied for after the first day of return to active duty and within 30 days after that day will be effective on the first day of the month following the date of signature on the enrollment form. However, if the coverage of an employee returning to active duty within the same plan year is affected by paragraph (2) of this subsection [Chapter 85 of this title (relating to Flexible Benefits)], the employee must reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, and the effective date of reinstated coverage must be the date the employee returns to active duty.

(5) [(4)] Employees whose coverages were cancelled during a period of leave without pay as a result of the Family and Medical Leave Act of 1993 may, upon return to active duty, reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, provided an enrollment form to reinstate such coverages is completed and signed within 30 days of the return to active duty. However, if the coverage of an employee returning to active duty within the same plan year is affected by paragraph (2) of this subsection [Chapter 85 of this title (relating to Flexible Benefits)], the employee must reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, and the effective date of reinstated coverage must be the date the employee returns to active duty. To reinstate cancelled coverages, submission of evidence of insurability acceptable to the carrier will not apply. Provided all applicable preexisting conditions exclusions were satisfied at the time coverages were cancelled, no additional preexisting conditions exclusions will apply upon reinstatement of coverages. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement.

(6) [(5)] Employees whose coverages were canceled on or after January 31, 1995, during a period of leave without pay, except as provided in paragraphs (3)-(5) [(2)-(4)] of this section, shall upon return to active duty be enrolled in the basic plan, provided the employee is eligible for the full state contribution. Reinstatement of canceled coverages must be in compliance with subsection (h) [paragraph (f)] of this section [and Chapter 85 of this title (relating to Flexible Benefits)].

(1) [(f)] Continuing coverage in special circumstances.

(1) Continuation of health, dental, and optional coverages for terminating employees. A terminating employee is eligible to

continue all coverages through the last day of the month in which employment is terminated.

(2) Continuation of health, dental, and life coverages for employees in a leave without pay status.

(A) An employee in a leave without pay status may continue the types and amounts of health, life, and dental coverages in effect on the date the employee entered that status for a maximum period of up to 12 months. The maximum period may be extended for up to 12 additional months for a total of 24 continuous months, provided the extension is certified by the department to be for educational purposes. The employee must pay premiums directly as defined in §81.3(d)(2)(B)(i) of this title (relating to Administration). Disability income coverage for an employee in a leave without pay status will be suspended beginning on the first day of the month in which the employee enters the leave without pay status and continuing for those months in which the employee remains in that status. Suspended disability income coverage for an employee returning to active duty from a leave without pay status will be reactivated effective on the first day the employee returns to active duty if the entire period of unpaid leave was certified by the department as approved leave without pay.

(B) An employee whose leave without pay is a result of the Family and Medical Leave Act of 1993 will continue to receive the state contribution during such period of leave without pay. The employee must pay premiums directly as defined in §81.3(d)(2)(B)(i) of this title. Failure to make the required payment of premiums by the due date will result in the cancellation of all coverages except for member only health and basic life coverage. The employee will continue in the health plan in which he or she was enrolled immediately prior to the cancellation of all other coverages. If a premium beyond the state contribution for member only health and basic life coverage is owed, the employee must make the required payment of premiums directly to the employing department upon return to active duty.

(3) Continuation of health, dental, and life coverages for a former member or employee of the legislature. A former member or employee of the legislature, who is eligible to continue to participate in the program, must notify the system within 30 days after leaving office or employment of the employee's intent to continue the coverage in effect. Coverage will be canceled if a premium is not received within 30 days of the due date. A former member or employee of the legislature is not eligible to continue disability insurance coverage.

(4) Continuation of health, dental, and life coverages for a former judge. A former State of Texas judge, who is eligible for judicial assignments and who does not serve on judicial assignments during a period of one calendar month or longer, may continue the types and amounts of coverages, other than disability income, that were in effect during the calendar month immediately prior to the month in which the former judge did not serve on judicial assignments. These coverages may continue for no more than 12 continuous months during which the former judge does not serve on judicial assignments as long as, during the period, the former judge continues to be eligible for assignment. Disability income coverage during the period will be canceled on the first day of the month during which the former judge does not serve on a judicial assignment. To reinstate canceled disability income coverage once service on judicial assignments is resumed, a former judge must submit evidence of insurability acceptable to the system. If approved, disability income coverage will become effective on the first day of the month following the date approval is received by the employing department.

(5) Continuation of health and dental coverage for a surviving spouse and/or dependent child/children of a deceased employee or retiree. The surviving spouse and/or dependent child/children of a deceased employee/retiree, who, in accordance with §81.5(k)(4)(1) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee/retiree dies, provided all group insurance premiums due for the month in which the employee/retiree died and for the election/enrollment period have been paid in full.

(6) Continuation of health and dental coverage for a covered employee whose employment has been terminated, voluntarily or involuntarily (other than for gross misconduct), whose work hours have been reduced such that the employee is no longer eligible for the program as an employee, or whose coverage has ended following the maximum period of leave without pay as provided in paragraph (2)(A) of this section [~~§81.7(i)(2)(A) of this title~~]. An employee, his or her spouse and/or dependent child/children, who, in accordance with §81.5(k)(4)(2) of this title, elects to continue health and dental coverages may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee's coverage ends, provided all group insurance premiums due for the month in which the coverage ends and for the election/enrollment period have been paid in full.

(7) Continuation of health and dental coverage for a spouse who is divorced from an employee/retiree and/or the spouse's dependent child/children. The divorced spouse and/or the spouse's dependent child/children (not provided for by §81.5(a) of this title) of an employee/retiree who, in accordance with §81.5(k)(4) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the divorce decree is signed, provided all group insurance premiums due for the month in which the divorce decree is signed and for the election/enrollment period have been paid in full.

(8) Continuation of health and dental coverage for a dependent child under 25 years of age who marries. A dependent child under 25 years of age who marries and who, in accordance with §81.5(k)(5) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the dependent child's marriage occurred, provided all group insurance premiums due for the month in which the dependent child's marriage occurred and for the election/enrollment period have been paid in full.

(9) Continuation of health and dental coverage for a dependent child who has attained 25 years of age. A 25-year-

old dependent child (not provided for by §81.5(d) of this title) of an employee/retiree who, in accordance with §81.5(k)(j)(6) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the dependent child of the employee/retiree attains 25 years of age, provided all group insurance premiums due for the month in which the dependent child attained age 25 and for the election/enrollment period have been paid in full.

(10) Extension of continuation of health and dental coverages for certain spouses and/or dependent child/children of former employees who are continuing coverage under the provisions of paragraph (6) of this subsection.

(A) The surviving spouse and/or dependent child/children of a deceased former employee, who, in accordance with §81.5(k)(j)(7)(A) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the former employee died.

(B) A spouse who is divorced from a former employee and/or the divorced spouse's dependent child/children, who, in accordance with §81.5(k)(j)(7)(B) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the divorce decree was signed.

(C) A dependent child under 25 years of age who marries, who, in accordance with §81.5(k)(j)(7)(C) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the dependent child marries.

(D) A dependent child who has attained 25 years of age, who, in accordance with §81.5(k)(j)(7)(D) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the dependent child attained age 25.

(11) Continuation coverage defined. Continuation coverage as provided for in paragraphs (5)-(10) of this subsection means

the continuation of only health and dental coverage benefits which meet the following requirements.

(A) Type of benefit coverage. The coverage shall consist of only the health and dental coverages, which, as of the time the coverage is being provided, are identical to the health and dental coverages provided for a similarly situated person for whom a cessation of coverage event has not occurred.

(B) Period of coverage. The coverage shall extend for at least the period beginning on the first day of the month following the date of the cessation of coverage event and ending not earlier than the earliest of the following:

(i) in the case of loss of coverage due to termination of an employee's employment, reduction in work hours, or end of maximum period of leave without pay, the last day of the 18th calendar month of the continuation period;

(ii) in the case of loss of coverage due to termination of an employee's employment, reduction in work hours, or end of maximum period of leave without pay, if the employee, spouse, or dependent child has been certified by the Social Security Administration as being disabled as provided in §81.5(k)(j)(3) of this title, the last day of the 29th calendar month of the continuation period;

(iii) in any case other than loss of coverage due to termination of an employee's employment, reduction in work hours, or end of maximum period of leave without pay, the last day of the 36th calendar month of the continuation period;

(iv) the date on which the employer ceases to provide any group health plan to any employee/retiree;

(v) the date on which coverage ceases under the plan due to failure to make timely payment of any premium required as provided in §81.3(d)(2)(B)(i) and (iii) of this title (relating to Administration);

(vi) the date on which the participant, after the date of election, becomes covered under any other group health plan under which the participant is not subject to a preexisting conditions limitation or exclusion;

(vii) the date on which the participant, covered under any other group health plan that subjects him or her to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), is no longer subject to the preexisting conditions limitation or exclusion in the other plan;

(viii) the date on which the participant, after the date of election, becomes entitled to benefits under the Social Security Act, Title XVIII.

(C) Premium requirements. The premium for a participant during the continuation coverage period will be 102% of the employee's/retiree's health and dental coverages only rate and is payable as provided in §81.3(d)(2)(B)(ii) of this title (relating to Administration).

(i) The premium for a participant eligible for 36 months of coverage will be 102% of the employee's/retiree's health and dental coverages only rate for the 19th through 36th months of coverage and is payable as provided in §81.3(d)(2)(B)(ii) of this title (relating to Administration).

(ii) The premium for a participant eligible for 29 months of coverage will be 150% of the employee's/retiree's health and dental coverages only rate for the 19th through 29th months of

coverage and is payable as provided in §81.3(d)(2)(B)(iii) of this title (relating to Administration).

(D) No requirement of insurability. No evidence of insurability is required for a participant who elects to continue coverage under the provisions of §81.5(k)(4)(1)-(6) of this title (relating to Eligibility).

(E) Conversion option. An option to enroll under the conversion plan available to employees/retirees is also available to a participant who continues health and dental coverages for the maximum period as provided in subparagraph (B)(i)-(iii) of this section. The conversion notice will be provided to a participant during the 180-day period immediately preceding the end of the continuation period.

#### §81.9. *Grievance Procedure.*

(a) Except for persons enrolled in an HMO, any ~~Any~~ person participating in the insurance program, who is denied payment of insurance benefits, may request the health carrier ~~[ insurance company]~~ to reconsider the claim. Any additional documentation in support of the claim may be submitted with the request for reconsideration. If the claim is again denied, the claim, accompanied by all related documents and copies of correspondence with the insurance company, may be submitted by the person to the Executive Director of the Employees Retirement System of Texas for review. A request for review must be filed by the person in writing within 90 days from the date the insurance company formally denies the claim and mails notice of this denial and right of appeal to the person.

(b) Any person with a grievance regarding eligibility or other matters involving the program, including eligibility for participation in the premium conversion plan, may submit a written request to the Executive Director ~~[executive director]~~ to make a determination on the matter in dispute.

(c) When the Executive Director ~~[executive director]~~ reviews any matter arising under this section, all of the available information will be considered. When the Executive Director ~~[executive director]~~ completes the review and makes a decision, all parties involved will be notified in writing of the decision.

(d) Any person or insurance company that does not accept the Executive Director's ~~[executive director's]~~ decision may appeal the decision to the board. A notice of appeal to the board must be filed in writing 30 days from the date the Executive Director's ~~[executive director's]~~ decision is mailed by certified mail.

(e) Appeals to the board will be processed under the provisions of Chapter 67 of this title (relating to Hearings and Disputed Claims), or the rules of the State Office of Administrative Hearings, when applicable, and Chapter 2001, Government Code [and the Administrative Procedures and Texas Register Act, Texas Civil Statutes, Article 6252-13a].

(f) (No change.)

(g) In computing time under this section, the day after any mailing by the carrier ~~[insurance company]~~ or the Executive Director ~~[executive director]~~ shall be counted as the first day of the time period. A document is considered to be filed with the Executive Director ~~[executive director]~~ when it is received by the executive director or when it is postmarked, whichever is earlier.

#### §81.11. *Termination of Coverage.*

(a) Cancellation of coverage.

(1) Except as prohibited by §81.7(h)(1) of this title (relating to Enrollment and Participation) and paragraph (2) of this

subsection [Chapter 85 of this title (relating to Flexible Benefits) ], an employee, retiree, or surviving spouse may cancel any coverage in effect. Coverage will continue through the last day of the month in which the coverage is cancelled. Coverage canceled by a surviving spouse or dependent of a deceased retiree may never be reinstated.

(2) Court ordered health coverage for a dependent cannot be canceled unless the dependent is no longer eligible as a dependent as defined in §81.1 of this title, the court order is no longer valid, or comparable coverage has been obtained.

(3) ~~[(2)]~~ Coverage for a dependent, who marries or attains age 25, shall be canceled as of the last day of the month following the date of marriage or attainment of age 25, as the case may be.

(4) ~~[(3)]~~ Surviving spouse coverage for a person who becomes a state employee shall be canceled as of the effective date of coverage as an active employee. Surviving spouse coverage may be reinstated when the spouse terminates employment with the state.

(5) ~~[(4)]~~ Coverage shall be canceled for non-payment of premium if a premium is not paid within 30 days of the date payment is due. Coverage will be canceled effective the last day of the month for which timely payment was made.

(b) (No change.)

(c) Expulsion from the Uniform Group Insurance Program.

(1) The board of trustees may expel any person participating in the Uniform Group Insurance Program who submits a fraudulent claim or otherwise defrauds or attempts to defraud any plan of benefits offered under the program, within the terms of the Insurance Code, Article 3.50-2, §13A.

(2) Any person with a grievance regarding eligibility or other matters involving the program may submit a written request to the Executive Director to make a determination on the matter in dispute.

(3) ~~[(2)]~~ The Executive Director ~~[executive director]~~ is authorized to call a hearing on behalf of the Board when he has reason to believe that a person may be subject to expulsion under this section and the Insurance Code, Article 3.50-2, §13A.

(4) ~~[(3)]~~ Any hearing called pursuant to this section shall be a contested case under Government Code, Chapter 2001 ~~[Texas Civil Statutes, Article 6252-13a]~~, and conducted in the manner prescribed by law and by Chapter 67 of this title (relating to Hearings and Disputed Claims) or the rules of the State Office of Administrative Hearings, when applicable. During such hearing, the standard of proof requiring a finding against the participant shall be the preponderance of evidence. At the time a case is assigned to a hearings examiner, no further claims will be paid until a finding has been made. When a finding has been made, all eligible claims will be processed subject to any offsets for overpayments made by the carrier.

(5) ~~[(4)]~~ Any person expelled from the Uniform Group Insurance Program may not be insured under any health benefits plan offered by the program for a period of five years from the effective date of the expulsion.

(d) Coverage rescinded.

(1) The Executive Director ~~[executive director]~~ may rescind any insurance coverage of a participant in the program, if the Executive Director ~~[executive director]~~ determines that the coverage was obtained by a fraudulent act or by making a material misrepresentation or by supplying false information on any enrollment form

or application for coverage or related documentation or in any communication.

(2) (No change.)

(3) The Executive Director [~~executive director~~] also may deny any claim filed to obtain benefits from the fraudulently induced coverage.

(4) The Executive Director's [~~executive director's~~] decision to rescind insurance coverage or to deny a claim may be appealed to the board in accordance with §81.9 of this title (relating to Grievance Procedure).

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 October 24, 1997.

TRD-9714163

Sheila W. Beckett

Executive Director

Employees Retirement System

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 867-3336



## Chapter 85. Flexible Benefits

### 34 TAC §§85.1, 85.3, 85.5, 85.7, 85.13

The Employees Retirement System of Texas (ERS), proposes amendments to §§85.1, 85.3, 85.5, 85.7, and 85.13, concerning the Flexible Benefits (Cafeteria Plan) Program. These amendments contain deletions which reflect the inclusion of premium conversion into the Uniform Group Insurance Program rules.

William S. Nail, General Counsel, ERS, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Nail 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 clarification of confusing terminology. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to William S. Nail, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207.

The amendments are proposed under Insurance Code, Article 3.50-2, §4A, which provides the ERS with the authority to promulgate all rules and regulations necessary to implement and to administer the Uniform Group Insurance Program and the Flexible Benefits (Cafeteria Plan) Program.

The Insurance Code, Article 3.50-2 is affected by these proposed amendments.

#### §85.1. Introduction and Definitions.

(a) Summary. The purpose of these rules is to govern the flexible benefits program. The flexible benefits plan (the plan) includes reimbursement account arrangements with optional benefits available for selection by participants [~~and an optional premium conversion plan~~] as described in the plan and these rules. The plan is intended to be qualified under the Internal Revenue Code, (the Code)

§125, as amended from time to time, and is intended to continue as long as it qualifies under §125 and is advantageous to the state and state and institutions of higher education employees. Optional benefits offered under the plan for individual selection consist only of a choice between cash and certain statutory nontaxable fringe benefits as defined in the Code, §125, and regulations promulgated under the Code, §125.

(b) Applicability of rules.

(1) These rules are applicable only to employees of the State of Texas, institutions of higher education as defined in these rules, and terminated employees, as described in §85.3(b)(1)(B) and (C) of this title (relating to Eligibility and Participation).

(2) An employee who retired or separated from employment prior to September 1, 1988, shall not be entitled to benefits under the provisions of the plan and these rules, unless the employee is rehired and then becomes eligible for benefits.

(c) Definitions. The following words and terms when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise, and wherever appropriate, the singular includes the plural, the plural includes the singular, and the use of any gender includes the other gender.

(1)-(8) (No change.)

(9) Dependent care reimbursement plan - A separate plan under the Code, §129, adopted by the board of trustees, and designed to provide payment or reimbursement for dependent care expenses as described in §85.5(c) [~~(d)~~] of this title (relating to Benefits).

(10)-(12) (No change.)

(13) Eligible employee - An employee of the State of Texas or institution of higher education who has satisfied the conditions for eligibility to participate in the plan in accordance with the plan and §85.3(a)(1), and (b)(1) [~~and (e)(1)~~] of this title (relating to Eligibility and Participation), and, to the extent necessary, a retired or terminated employee who is entitled to benefit payments under the plan.

(14)-(21) (No change.)

(22) Health care reimbursement plan - A separate plan, under the Code, §105, adopted by the board of trustees, and designed to provide health care expense reimbursement as described in §85.5 (b) [~~(e)~~] of this title (relating to Benefits).

(23) Institution of higher education - All public community/junior colleges, senior colleges or universities, or any other agency of higher education within the meaning and jurisdiction of the Education Code, Chapter 61, except the University of Texas System and the Texas A&M University System. [~~The term does not include Texas Tech University and the University of Houston Systems, unless either of these entities elects to participate in the Uniform Group Insurance Program.~~]

[(24) Insurance premium expenses - Any expenses incurred by a participant, or by a spouse or dependent of such participant, as payment for the amount of insurance premium expense that exceeds the state's or institution's contributions offered as an employee benefit by the employer. The types of insurance expense covered by the plan includes out-of-pocket expense for group term life, health (including HMO premiums); accidental death and dismemberment, dental, and long and short term disability but does not include out-of-pocket expense for dependent term life. ]

~~(24)~~ ~~[(25)]~~ Leave of absence without pay - The status of an employee who is certified monthly by an agency or institution of higher education administrator to be absent from duty and who has not received a refund of retirement contributions based upon the most recent term of employment.

~~(25)~~ ~~[(26)]~~ Option - Any specific benefit offering under the plan.

~~(26)~~ ~~[(27)]~~ Participant - An eligible employee who has elected to participate in the plan for a period of coverage.

~~(27)~~ ~~[(28)]~~ Period of coverage - The plan year during which coverage of benefits under the plan is available to and elected by a participant; however, an employee who becomes eligible to participate during the plan year may elect to participate for a period lasting until the end of the current plan year. In such case, the interval commencing on such employee's entry date and ending as of the last day of the current period of coverage shall be deemed to be such participant's period of coverage.

~~(28)~~ ~~[(29)]~~ Plan - The flexible benefits plan established and adopted by the board of trustees pursuant to the laws of the State of Texas and any amendments which may be made to the plan from time to time. The plan is sometimes referred to herein as TexFlex.

~~(29)~~ ~~[(30)]~~ Plan administrator - The board of trustees of the Employees Retirement System of Texas or its designee.

~~(30)~~ ~~[(31)]~~ Plan year - A 12-month period beginning September 1 and ending August 31.

~~[(32)~~ Premium conversion account - The bookkeeping account maintained by the Employees Retirement System of Texas used for crediting contributions to the account and accounting for benefit payments from the account.]

~~[(33)~~ Premium conversion plan - A separate plan, under the Code, §79 and §106, adopted by the board of trustees and designed to provide premium conversion as described in §85.5(b) of this title (relating to Benefits).]

~~(31)~~ ~~[(34)]~~ Statutory nontaxable benefit - A benefit provided to a participant under the plan, which is not includable in the participant's gross income by reason of a specific provision in the Code and is permissible under the plan in accordance with the Code, §125.

~~(32)~~ ~~[(35)]~~ Spouse - The person to whom the participant is married. Spouse does not include a person separated from the participant under a decree of divorce.

~~(33)~~ ~~[(36)]~~ TexFlex - The flexible benefits plan adopted by the board of trustees.

~~(34)~~ ~~[(37)]~~ TexFlex election form - A form provided by the Employees Retirement System of Texas that is a written agreement by and between the employer and the participant, entered into prior to an applicable period of coverage, in which the participant agrees to a reduction in compensation for purposes of purchasing benefits under the plan.

~~(35)~~ ~~[(38)]~~ Uniform Group Insurance Program - The employee insurance benefits program administered by the Employees Retirement System of Texas, pursuant to the Texas Insurance Code, Article 3.50-2. The program consists of health, voluntary accidental death and dismemberment, optional term life, dependent term life, short and long term disability, and dental insurance coverages.

### §85.3. Eligibility and Participation.

~~[(a)~~ Premium conversion.]

~~[(1)~~ Eligibility. Any employee initially participating in the Texas Employees Uniform Group Insurance Program under the Insurance Code, Article 3.50-2, who has insurance premium expenses, which exceed the state's and institution's contribution for insurance, is eligible to participate in premium conversion and shall be automatically enrolled in the premium conversion plan, unless the employee elects not to participate.]

~~[(2)~~ Participation.]

~~[(A)~~ An employee who is eligible under paragraph (1) of this subsection may elect not to participate in premium conversion by completing and submitting a TexFlex election form during the annual enrollment period or within 30 days from the first active duty date.]

~~[(B)~~ An employee who, prior to the beginning of a plan year or within 30 days from the first active duty date, makes an application to increase insurance coverage under the Uniform Group Insurance Program, the premium for which will exceed the State of Texas' and the institution's total contributions for premium costs, may elect not to participate in premium conversion by completing and submitting a TexFlex election form during the annual enrollment period or within 30 days from the first active duty date. ]

~~[(C)~~ An employee who is otherwise eligible to participate in the Uniform Group Insurance Program but who did not decline participation in premium conversion prior to the beginning of a plan year or who elected to participate and who has a change in family status as defined in §85.7(c)(1)(A) of this title (relating to Enrollment) after the beginning of the plan year, may elect not to participate in premium conversion, if the change is consistent with the change in family status, by completing and submitting a TexFlex election form within 30 days from the date the family status change occurs.]

~~[(D)~~ Annual enrollment period.]

~~[(i)~~ Eligible active employees will have an opportunity to decline enrollment or change benefit options during the annual enrollment period. The annual enrollment period will be prior to the beginning of a new plan year.]

~~[(ii)~~ Employees on approved leave of absence or extended sick leave without pay on the first day of a new plan year will be provided an opportunity to decline enrollment or to change benefit options within the first 30 days after return to active duty.]

~~[(3)~~ Duration of participation.]

~~[(A)~~ An employee's election to or not to participate in the premium conversion plan shall be irrevocable for the plan year, unless there is a change in family status as defined in §85.7(c)(1)(A) of this title (relating to Enrollment) and the change is consistent with the event.]

~~[(B)~~ A terminated employee returning to state or institution of higher education employment or an employee returning to active duty from an approved leave of absence without pay, or transferring from one state agency or institution to another or between a state agency and institution of higher education as defined in these rules, within the same plan year, may not change and shall retain for the remainder of the plan year, the elections in existence on the participant's last active duty date.]

~~[(C)~~ An employee who continues to remain eligible to participate in premium conversion shall be automatically enrolled for subsequent plan years unless the employee specifically declines

participation in writing during the annual enrollment period or under the change in family status rules.}]

~~[(D) An employee who is ineligible to participate or who is eligible and elects not to participate in premium conversion and who becomes or remains eligible to participate in a subsequent plan year will continue to not participate in premium conversion unless the employee executes a new TexFlex election form during the annual enrollment period or under the change in family status rules and elects to participate.]~~

~~[(4) Effects on ability to change insurance coverage. An employee participating in the premium conversion plan may not change uniform group insurance coverages during the plan year, unless there is a change in family status and the change is consistent with the event.]~~

~~(a) [(b)] Dependent care reimbursement plans.~~

~~(1) Eligibility. Any employee eligible to participate in the Uniform Group Insurance Program, except seasonal and temporary employees and graduate students, may elect to participate in the dependent care reimbursement plan. For plan year 1993 only, beginning September 1, 1992, those graduate students in institutions of higher education who have a dependent care account on August 31, 1992, are exempt from this rule.~~

~~(2) Participation.~~

~~(A) An employee who is eligible under paragraph (1) of this subsection may elect to participate by completing and submitting a TexFlex election form within the first 30 days of employment. The effective date will be the first day of the following month, unless the employee makes an election on the first day of the month and designates that day to be the effective date.~~

~~(B) An employee who was otherwise eligible to participate in the Uniform Group Insurance Program but who declined participation in the dependent care reimbursement account prior to the beginning of a plan year, but who after the beginning of a plan year has a change in family status, as defined in §85.7(c)(1)(B) [(C)] of this title (relating to Enrollment), may elect to participate in the dependent care reimbursement account if the change is consistent with the change in family status, by completing and submitting a TexFlex election form within 30 days from the date the change in family status event occurs. The effective date will be the first day of the following month, unless the employee makes an election on the first day of the month and designates that day to be the effective date.~~

~~(C) A change in family status, as defined in §85.7(c)(1)(B) [(C)] of this title (relating to Enrollment) will permit a change or revocation of participation during the plan year. A TexFlex election form must be submitted within 30 days from the date the change in family status event occurs. The effective date will be the first day of the following month, unless the employee makes an election on the first day of the month and designates that to be the effective date.~~

~~(D) Annual enrollment period.~~

~~(i) Eligible active employees will have an opportunity to enroll or change benefit options during the annual enrollment period. The annual enrollment period will be prior to the beginning of a new plan year.~~

~~(ii) Employees on approved leave of absence or extended sick leave without pay on the first day of a new plan year will be provided an opportunity to enroll or to change benefit options within the first 30 days after return to active duty.~~

(3) Duration of participation.

(A) An employee's election to participate or to waive participation in the dependent care reimbursement plan shall be irrevocable for the plan year unless there is a change in family status as defined in §85.7(c)(1)(B) [(C)] of this title (relating to Enrollment).

(B) A terminated employee returning to state or institution of higher education employment or an employee returning to active duty from an approved leave of absence without pay, or transferring from one state agency or institution to another or between an agency and an institution of higher education as defined in these rules, within the same plan year, may not change and shall retain for the remainder of the plan year, the election in existence on the participant's last active duty date.

(b) [(c)] Health care reimbursement plan.

(1) Eligibility.

(A) Any employee eligible to participate in the Uniform Group Insurance Program, except seasonal and temporary employees and graduate students, who has completed six continuous months of full-time State of Texas or an institution of higher education, as defined in these rules, employment and who is classified as a full-time regular employee on September 1 of a new plan year or after the start of a plan year, may elect to participate in a health care reimbursement account. For plan year 1993 only, beginning September 1, 1992, those employees and graduate students in institutions of higher education who have a health care account on August 31, 1992, are exempt from this rule.

(B) An employee whose employment has been terminated, voluntarily or involuntarily, and who had a health care reimbursement account at the time of termination, must retain the health care reimbursement account for the applicable period of coverage. In addition, such a terminated employee may elect to enroll in a health care reimbursement account continuation coverage for the period as provided in the Public Health Service Act. A formal continuation coverage notification on a TexFlex election form provided by the Employees Retirement System of Texas must be completed and returned to the Employees Retirement System of Texas within 60 days from the date coverage is lost. Eligibility to participate is contingent upon pre-payment, on a monthly or annual basis, of the elected amount, plus a 2% service charge on the elected amount, and the administrative fee for the plan year. Payments are due on the first day of each month and must be received no later than the 30th day of the month. Failure to pay will automatically cancel enrollment and future eligibility.

(C) An employee whose employment has been terminated, voluntarily or involuntarily except for those persons not eligible pursuant to subparagraph (A) of this paragraph, and who has health insurance continuation coverage under the Public Health Services Act on September 1, may elect to participate in a health care reimbursement account during annual enrollment. A formal election must be made on a TexFlex election form prior to the beginning of a new plan year. Eligibility to participate is contingent upon pre-payment, on a monthly or annual basis, of the elected amount, plus a 2.0% service charge on the elected amount, plus the administrative fee for the plan year. Payments are due on the first day of each month and must be received no later than the 30th day of the month. Failure to pay will automatically cancel enrollment and future eligibility.

(2) Participation.

(A) An employee who is eligible under paragraph (1)(A) and (C) of this subsection may elect to participate by



completing and submitting a TexFlex election form during the annual enrollment period or within 30 days after becoming eligible in the new plan year. The effective date of the election will be September 1 of the plan year or the first day of the month following the date of signature on the TexFlex election form, unless the employee makes an election on the first day of the month and designates that day to be the effective date.

(B) An employee who was eligible but who declined participation in the health care reimbursement account prior to the beginning of a plan year, but who after the beginning of a plan year has an eligible change in family status, as defined in §85.7(c)(1)(A) [(B)] of this title (relating to Enrollment), may elect to participate in a health care reimbursement account if the change is consistent with the change in family status by completing and submitting an TexFlex election form within 30 days from the date the change in family status event occurs. The effective date will be the first day of the following month, unless the employee makes an election on the first day of the month and designates that day to be the effective date.

(C) A new hire after the start of a new plan year, who meets the eligibility requirements under paragraph (1)(A) of this subsection, may elect to participate in a health care reimbursement account prospectively for the remainder of the plan year.

(D) A change in family status, as defined in §85.7(c)(1)(A) [(B)] of this title (relating to Enrollment) will permit an increase in the election amount during the plan year. A TexFlex election form must be completed and submitted within 30 days from the date the change in family status event occurs. The effective date of change will be the first day of the following month, unless the employee makes an election on the first day of the month and designates that to be the effective date.

(E) Eligible active employees and terminated employees with continuation health coverage under the Public Health Service Act on September 1, and terminated employees with a health care reimbursement account on August 31 will be eligible to enroll or to change benefit options during the annual enrollment period. The annual enrollment period will be prior to the beginning of a new plan year. Employees on approved leave of absence without pay during the annual enrollment period who return to work after the start of a new plan year, and who meet the eligibility requirement under paragraph (1)(A) of this subsection will have 30 days from the eligibility date to enroll.

(3) Duration of participation.

(A) An active or terminated employee's election to or not to participate in a health care reimbursement account shall be irrevocable for the plan year.

(B) An employee returning to active duty from an approved leave of absence without pay or transferring from one state agency or institution to another or between an agency and an institution of higher education as defined in these rules, within the same plan year, must retain the election in existence on the last active duty date or the date of transfer for the remainder of the plan year.

(C) An employee who is enrolled in a health care reimbursement account who terminates employment during the plan year must retain the health care account for the remainder of the plan year and prepay premiums or make monthly premium payments due for the remainder of the plan year, as described in paragraph (1)(B) of this subsection.

§85.5. Benefits.

(a) Benefits available for selection by participants. A participant may elect, in accordance with the procedures set forth in this section, one or both [more] of the following benefits, subject to all the requirements and conditions contained in these rules:

[(1) premium conversion plan;]

(1) [(2)] health care reimbursement plan;

(2) [(3)] dependent care reimbursement plan.

[(b) Premium conversion plan.]

[(1) Pursuant to the premium conversion plan, a participant may elect not to pay certain insurance premium expenses for health, disability, accidental death and dismemberment, dental, and group term life with pre-tax dollars. The plan is intended to be qualified under the Code, §79 and §106, and is an optional benefit under the flexible benefits plan.]

[(2) Maximum benefit available. Subject to the limitations set forth in these rules and in the plan, to avoid discrimination, the maximum amount of flexible benefit dollars which a participant may receive in any plan year for insurance premium expenses under this section shall be the amount required to pay the participant's portion of the premiums for coverage under each type of insurance included in the plan.]

(b) [(e)] Health care reimbursement plan.

(1) Pursuant to the health care reimbursement plan, a participant may elect to receive reimbursements of certain health care expenses which are excludable from gross income. The health care reimbursement plan is intended to be qualified under the Code, §105, is an optional benefit under the flexible benefits plan, and constitutes a separate written employee benefit plan as contemplated by the Code, §105, and Treasury Regulation 1.105-11.

(2) Maximum benefit available. Subject to the limitations set forth in these rules and in the plan, to avoid discrimination, the maximum amount of flexible benefit dollars which a participant may receive in any plan year for health care expenses under the health care reimbursement plan is \$3,000. In no event shall the monthly maximum salary reduction amount, exclusive of administrative fees, exceed \$250 per month, except an employee may prepay the health care election amounts for the remainder of the plan year by accelerating payroll deductions prior to or in anticipation of going on leave without pay or terminating (including retirement) employment or an employee who is classified as a nine-month faculty and who elects to receive annual compensation in nine months must redirect the annual election amount in nine equal monthly amounts.

(c) [(d)] Dependent care reimbursement plan.

(1) Pursuant to the dependent care reimbursement plan, a participant may elect to have payments made or receive reimbursement for dependent care expenses. The dependent care reimbursement plan is intended to be qualified under the Code, §129, is an optional benefit under the flexible benefits plan, and constitutes a separate written employee benefit plan as contemplated by the Code, §129.

(2) Maximum benefit Available.

(A) Subject to any limitations imposed by these rules and the plan, to avoid discrimination, the maximum amount which a participant may receive in any plan year in the form of payment of or reimbursement for dependent care expenses under the dependent care reimbursement plan, is the lesser of:

(i) the participant's earned income for the plan year (after all reductions in compensation including the reduction related to dependent care expenses);

(ii) the earned income of the participant's spouse for the plan year; or

(iii) \$5,000. (\$2,500 in the case of a married employee who files a separate federal income tax return). In no event shall the monthly maximum salary reduction amount, exclusive of administrative fees, exceed \$416 or \$208 in the case of a married participant who files a separate federal income tax return, except an employee who is classified as a nine-month faculty who elects to receive annual compensation in nine months may redirect the annual election amount in nine equal monthly amounts.

(B) In the case of a participant's spouse who is a full-time student at an educational institution or who is physically or mentally incapable of caring for himself, such spouse shall be deemed to have earned income of not less than \$200 per month if the participant has one dependent and \$400 per month if the participant has two or more dependents in accordance with the Code, §21.

#### §85.7. Enrollment.

(a) (No change.)

(b) Effects of failure to elect.

(1) If the Employees Retirement System of Texas does not receive a TexFlex election form from an eligible employee to participate in the reimbursement accounts by the due date, it shall be deemed an express election and informed consent by the eligible employee to receive cash compensation as a benefit by reason of failure to purchase optional benefits in lieu of cash compensation. [If the Employees Retirement System of Texas does not receive a TexFlex election form from an eligible employee electing not to participate in premium conversion by the due date, it shall be deemed an express election and informed consent by the eligible employee to purchase optional benefits in lieu of cash compensation.]

(2) (No change.)

(c) Benefit election irrevocable except for change in family status.

(1) An election to participate shall be irrevocable for the plan year unless an eligible change in family status occurs. The allowable change in election must be consistent with the change in family status event. Documentation, as prescribed by the plan administrator, must be submitted in support of the change in family status event.

[(A) Premium conversion plan. A change in family status includes marriage; divorce; death of a dependent; birth or adoption; termination or gaining employment by a dependent; change from full-time to part-time or part-time to full-time employment status by employee or dependent; significant change in health insurance coverage attributable to dependent gaining employment; employee's dependent regains UGIP eligibility; employee acquires a UGIP eligible dependent; employee is court ordered to provide medical support for dependent child; dependent goes on or returns from leave without pay; dependent involuntarily loses health coverage or dependent child loses dependent eligibility for other health coverage; dependent gains or loses Medicaid eligibility; UGIP covered dependent loses UGIP eligibility; UGIP covered dependent becomes eligible for UGIP as retiree; and under age 65 dependent with certified disability gains or loses eligibility for Medicare. A change in family status permits a participant to change Uniform

Group Insurance Program coverages or to change TexFlex premium conversion election consistent with the change in family status event.]

(A) [(B)] Health care reimbursement plan. A change in family status includes marriage, birth, adoption, acquisition of UGIP eligible dependent or gaining legal custody of a child. An eligible change in family status permits a participant to elect to participate or increase election amounts consistent with the change in family status event.

(B) [(C)] Dependent care reimbursement plan. A change in family status includes marriage; divorce; death of spouse, dependent, dependent loses eligibility for UGIP or loss of legal custody of child; birth, adoption, acquisition of UGIP eligible dependent or gaining legal custody of a child; termination or gaining of employment by a spouse; change from full-time to part-time or part-time to full-time employment status by employee or spouse; and spouse goes on or returns from leave without pay. An eligible change in family status permits a participant to change the election or to increase or decrease the election amount consistent with the change in family status event.

(2)-(4) (No change.)

(d) Payment of flexible benefit dollars.

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

(3) Flexible benefit dollars recovered by the State of Texas, institution of higher education or from participants and received by the Employees Retirement System of Texas shall be credited to the participant's dependent care reimbursement account, and/or health care reimbursement account, [and/or premium conversion account.] as appropriate.

[(e) Effects of change in cost of benefits. There shall be an automatic adjustment in the amount of premium conversion plan dollars used to purchase optional benefits in the event of change, for whatever reason, during an applicable period of coverage of the cost of providing such optional benefits to the extent permitted by applicable law and regulation. The automatic adjustment shall be equal to the increase or decrease in such cost. A participant shall be deemed by virtue of participation in the plan to have consented to the automatic adjustment.]

(e) [(f)] Forfeiture of account balances.

(1) The amount credited to a participant's reimbursement account for each benefit election for any plan year will be used to reimburse or pay qualified expenses incurred during the eligible employee's period of coverage in such plan year, if the participant files a correctly completed claim for reimbursement on or before December 31 following the close of the plan year.

(2) Any balances remaining after payment of all timely and correctly filed claims postmarked no later than December 31 following the close of the plan year shall be forfeited by the participant and be available to pay administrative expenses of the flexible benefits program.

(f) [(g)] Reimbursement report to participant. The plan administrator or its agent shall provide to the participant periodic reports on each reimbursement account, showing the account transactions (disbursements and balances) during the plan year.

#### §85.13. Funding.

(a) (No change.)

(b) Contributions.

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

(3) The minimum amount a participant may redirect monthly for each reimbursement account is \$15. The maximum amount a participant may redirect monthly for each reimbursement account is limited to the amount stipulated in §85.5 (b) and (c) [(e) and (d)] of this title (relating to Benefits). The administrative fee for each reimbursement account is in addition to these minimum and maximum amounts.

(4) (No change.)

(5) In situations where there are insufficient salary dollars to fund the amount of the salary redirections and fees, no salary redirection will be made, except as indicated in paragraph (6) of this subsection, for that pay period and no catch-up redirection will subsequently be permitted, except as described in §85.9(d)(2) of this title (relating to Payment of Claims from Reimbursement Accounts) for health care reimbursement account participants. [~~The after-tax payment by the employee for insurance premiums may be permitted in accordance with Uniform Group Insurance Program rules.~~ ]

(6) In the event an employee has elected to participate in more than one flexible benefits plan optional benefit and the employee's pay is sufficient to pay for one or more, but not all of the flexible benefits plan contributions, then payment of the flexible benefits plan contributions shall be made in the following order: [~~premium conversion,~~] health care reimbursement and dependent care reimbursement.

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 October 24, 1997.

TRD-9714164

Sheila W. Beckett

Executive Director

Employees Retirement System

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 867-3336



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part I. Texas Department of Public Safety

#### Chapter 23. Vehicle Inspection

##### Commercial Motor Vehicle Compulsory Inspection Program

###### 37 TAC §§23.101, 23.102

The Texas Department of Public Safety proposes an amendment to §23.101 concerning Commercial Motor Vehicle Compulsory Inspection Program and new §23.102 concerning the Acceptance Of Out-Of-State Commercial Vehicle Inspection Certificates. The amendment to §23.101 subsection (f) is necessary in order to implement the changes to the definition of commercial motor vehicles resulting from the passage of Senate Bill 1486 passed during the 75th Texas Legislative Session. New §23.102 is necessary in order to establish procedures that would provide an owner or operator of a Texas-registered commercial vehicle an opportunity to comply with the provisions of the commercial vehicle inspection requirements in Texas.

The authority section for the amendment of §23.101 and the establishment of new §23.102 is codified in Texas Transportation Code, Chapter 548, Subchapter D, which requires the Commission to establish an inspection program for commercial motor vehicles that meets the requirements of the Federal Motor Carrier Safety Regulations and also requires a commercial motor vehicle registered in this state to pass an annual inspection. The Commission established 37 TAC §23.101 (relating to Commercial Vehicle Compulsory Inspection Program), which implemented an inspection program that has been certified by the Federal Highway Administrator as meeting the federal requirements of Title 49, CFR, Part 396. Senate Bill 1486 amended the definition of a commercial motor vehicle to clarify the definition of a farm vehicle and extended the inspection requirements to include commercial vehicles operating in interstate commerce with a gross weight rating in excess of 10,000 pounds.

In proposed new §23.102, the Commission is establishing procedures that would provide an owner or operator of a Texas-registered commercial vehicle an opportunity to comply with the provisions of §548 of the Texas Transportation Code by obtaining a commercial vehicle inspection certificate from another jurisdiction that has been certified by the Federal Highway Administrator as meeting the federal requirements.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Haas 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 greater compliance by motor carriers with the state inspection requirements. There will be no impact on small or large businesses. The anticipated cost for complying with the rules as proposed is the \$50 inspection certificate fee.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment and new section are proposed pursuant to Texas Transportation Code, §548 and Texas Government Code, §411.006(4), which provide the Public Safety Commission of the Texas Department of Public Safety with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety, and which authorizes the Commission to adopt rules establishing an inspection program for commercial motor vehicles that meet the requirements of the Federal Motor Carrier Safety Regulations and which requires a commercial motor vehicle registered in this state to pass an annual inspection.

The proposal affects Texas Transportation Code, §548, Subchapter D.

§23.101. *Commercial Motor Vehicle Compulsory Inspection Program.*

(a)-(e) (No change).

(f) For purposes of the Commercial Motor Vehicle Compulsory Inspection Program, the term "commercial motor vehicle" means a[ ~~any~~] self-propelled or towed vehicle[, ~~except a farm vehicle with a gross weight, registered weight, or gross weight rating of less than 48,000 pounds,~~] used on a public highway to transport passengers or property ~~if~~when:

(1) the vehicle or combination of vehicles has a gross weight, registered weight, or gross weight rating of more than~~in excess of~~ 26,000 pounds;

(2) the vehicle is a farm vehicle with a gross weight, a registered weight, or a gross weight rating of more than 48,000 pounds;

(3) ~~[(2)]~~ the vehicle is designed to transport more than 15 passengers, including the driver; ~~[and]~~

(4) ~~[(3)]~~ the vehicle is used in the transportation of hazardous materials in a quantity requiring placarding as required under the federal Hazardous Materials Transportation Act (49 U.S.C., §§1801-1813); or~~[-]~~

(5) the vehicle or combination of vehicles has a gross weight rating of more than 10,000 pounds and is operated in interstate commerce and registered in this state.

(g) (No change).

§23.102. Acceptance of Out-of-State Commercial Vehicle Inspection Certificates.

(a) Texas-registered commercial vehicles. Acceptance of commercial vehicle inspection certificates issued outside of Texas. A valid commercial vehicle inspection certificate issued in a jurisdiction having an inspection program that has been certified by the Federal Highway Administrator under the provisions of Title 49, Code of Federal Regulations, §396.23(b)(1) as meeting the requirements of §396.17 is acceptable on a Texas-registered commercial vehicle.

(b) Out-of-state registered commercial vehicles. Commercial vehicles required to be registered in Texas will be required to be inspected at an official commercial vehicle inspection station and obtain a vehicle identification certificate, Form VI-30-A, before the registration process can be completed. Valid out-of-state inspection certificates will not be honored on commercial vehicles required to be registered.

(c) Jurisdictions certified under the provisions of Title 49, Code of Federal Regulations, §396.23(b)(1). The following jurisdictions have been certified by the Federal Highway Administrator as meeting the requirements of Title 49, Code of Federal Regulations, §396.23(b)(1): Alabama (LPG Board), Arkansas, California, Connecticut, District of Columbia, Hawaii, Illinois, Louisiana, Maine, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, or any of the ten Canadian Provinces and the Yukon Territory.

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 October 8, 1997.

TRD-9713975

Dudley M. Thomas  
Director

Texas Department of Public Safety

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 424-2890

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

## Part I. Texas Department of Human Services

### Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

The Texas Department of Human Services (DHS) proposes the repeal of §19.2147, concerning informal dispute resolution; amendments to §19.1, concerning basis and scope; §19.101, concerning definitions; §19.201, concerning criteria for licensure; §19.204, concerning application requirements; §19.210, concerning change of ownership; §19.212, concerning time periods for processing license applications; §19.214, concerning criteria for denying a license or renewal of a license; §19.216, concerning license fees; §19.326, concerning safety operations; §19.401, concerning introduction; §19.403, concerning notices of rights and services; §19.408, concerning grievances; §19.415, concerning postmortem procedures; §19.502, concerning transfer and discharge in Medicaid-certified facilities; §19.503, concerning notice of bed-hold policy and readmission in Medicaid-certified facilities; §19.601, concerning resident behavior and facility practice; §19.602, concerning incidents of abuse and neglect reportable to the Texas Department of Human Services (DHS) by facilities; §19.801, concerning resident assessment; §19.1001, concerning nursing services; §19.1010, concerning nursing practices; §19.1101, concerning dietary service; §19.1104, concerning dietary consultant requirements; §19.1912, concerning additional clinical record service requirements; §19.1918, concerning disclosure of ownership; §19.1920, concerning operating policies and procedures; §19.1921, concerning general requirements for a nursing facility; §19.2002, concerning procedural requirements - licensure inspections and surveys; §19.2004, concerning determinations and actions pursuant to inspections; §19.2008, concerning investigations of incidents and complaints; §19.2102, concerning enforcement generally; §19.2104, concerning suspension of a license; §19.2106, concerning revocation of a license; §19.2110, concerning referral to the attorney general; §19.2112, concerning administrative penalties; §19.2146, concerning termination of provider agreement on the basis of the imposition of enforcement actions three times within an accountability period; §19.2308, concerning change of ownership; §19.2320, concerning medical transportation; and new §19.205, concerning supplemental licensure information; §19.209, concerning exclusion from licensure; §19.2111, concerning suspension of admissions; §19.2114, concerning right to correct; §19.2115, concerning amelioration of violation; §19.2147, concerning informal dispute resolution; §19.2148, concerning arbitration; in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendments and new sections is to implement the changes to the Health and Safety Code mandated by major parts of Senate Bill 190 and Senate Bill 118 passed during the 75th legislative session and to make other minor changes.

Eric M. Bost, commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost 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 the department is implementing new legislation which gives DHS additional

authority to deny, suspend, or revoke the licenses of providers of poor quality care and also provides greater enforcement remedies for providers who violate licensure rules. Texas nursing facility residents will be better protected through these amendments. 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 this proposal may be directed to Susan Syler at (512) 438-3111 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-053, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

## Subchapter A. Basis and Scope

### 40 TAC §19.1

The amendment is proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Health and Safety Code, §§242.001-242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

#### §19.1. Basis and scope.

(a) Basis in legislation. The Nursing Facility Requirements for Licensure and Medicaid Certification specify requirements of federal and state laws and regulations governing licensed nursing facilities and the Title XIX Nursing Facilities vendor program administered by the Texas Department of Human Services (DHS) in cooperation with other federal and state agencies. If there is a conflict between material in these requirements and the laws or regulations governing the program, the latter are controlling. It is the intent of the Texas Legislature that rules adopted under §242 of the Health and Safety Code may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program. The rules and standards may not be less stringent than the Medicaid certification standards imposed under the Omnibus Budget Reconciliation Act of 1987.

(b) (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 October 27, 1997.

TRD-9714187

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



## Subchapter B. Definitions

### 40 TAC §19.101

The amendment is proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Health and Safety Code, §§242.001-242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

#### §19.101. Definitions.

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

Abuse - The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. [Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action which causes or could cause mental or physical injury or harm or death to a resident. This includes verbal, sexual, mental/psychological, or physical abuse, including corporal punishment, involuntary seclusion, or any other actions within this definition.]

[(A) "Involuntary seclusion" - Separation of a resident from others or from his room against the resident's will or the will of the resident's legal representative. Temporary monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used as a therapeutic intervention as determined by professional staff and consistent with the resident's plan of care.]

[(B) "Mental/psychological abuse" - Mistreatment within the definition of "abuse" not resulting in physical harm, including, but not limited to, humiliation, harassment, threats of punishment, deprivation, or intimidation.]

[(C) "Physical abuse" - Physical action within the definition of "abuse," including, but not limited to, hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment.]

[(D) "Sexual abuse" - Any touching or exposure of the anus, breast, or any part of the genitals of a resident without the voluntary, informed consent of the resident and with the intent to arouse or gratify the sexual desire of any person and includes but is not limited to sexual harassment, sexual coercion, or sexual assault.]

[(E) "Verbal abuse" - The use of any oral, written, or gestured language that includes disparaging or derogatory terms to a resident or within the resident's hearing distance, regardless of the resident's age, ability to comprehend, or disability.]

Controlling person - A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility; and

(C) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

~~[Misappropriation of funds - The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident. ]~~

~~Misappropriation of resident property - The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.~~

~~Neglect - Failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. [A deprivation of life's necessities of food, water, or shelter, or a failure of an individual to provide services, treatment, or care to a resident which causes or could cause mental or physical injury, or harm or death to the resident.]~~

~~Person - An individual, firm, partnership, corporation, association, [ø] joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.~~

~~Threatened violation - A situation which, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.~~

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 October 27, 1997.

TRD-9714188

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



## Subchapter C. Nursing Facility Licensure Application Process

**40 TAC §§19.201, 19.204, 19.205, 19.209, 19.210, 19.212, 19.214, 19.216**

The amendments and new sections are proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities.

The amendments and new sections implement the Health and Safety Code, §§242.001-242.804.

### §19.201. Criteria for Licensing.

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

(c) No person may apply for a license, change of ownership, increase in capacity, or renewal of a nursing facility license without making a disclosure of information as required in this section.

(d) [(e)] An applicant for a license must affirmatively show that:

(1) the applicant and all persons required to submit background information[; person with a disclosable interest, affiliate, and manager] have not been convicted of a felony or crime involving moral turpitude in this state or any other state;

(2) the applicant or license holder has the ability to comply with:

(A) minimum standards of medical care, nursing care and financial condition; and

(B) any other applicable state or federal standard;

(3) [(2)] the facility meets the standards of the Life Safety Code;

(4) [(3)] the facility meets the construction standards in Subchapter D of this chapter (relating to Facility Construction); and

(5) [(4)] the facility meets the standards for operation based upon an on-site survey.

~~[(d) The applicant must provide all information requested on the application form and submit the appropriate fees as prerequisites for DHS to conduct a feasibility inspection or plan review, as requested or required.]~~

(e) DHS considers the background and qualifications of:

(1) the applicant or license holder;

(2) a partner, officer, director, or managing employee of the applicant or license holder;

(3) a person who owns or who controls the owner of the physical plant of a facility in which the nursing facility operates or is to operate; and

(4) a controlling person with respect to the nursing facility for which a license or license renewal is requested.

~~[(e) A license is issued to a facility which meets all requirements of this chapter and is valid for two years. Each license must specify the maximum allowable number of residents to be cared for at any one time. No greater number of residents may be kept at any one time than is authorized by the license.]~~

(f) In making the evaluation required by subsection (e) of this section, DHS requires the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by DHS to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant or license holder and other person described in subsection (e) of this section operated a long term care facility during the five-year period preceding the date on which the application is made. For purposes of the sworn affidavit of a satisfactory compliance history, the applicant will be considered to have complied with the filing requirement (but not necessarily be entitled to a license) if the applicant swears or affirms that all the information disclosed in the application concerning previous state and federal nursing facility sanctions and penalties and related information are true and correct.

The affidavit of compliance history is contained in DHS's application form.

(g) A license is issued if, after inspection and investigation, DHS finds that the applicant or license holder, and any other person described in subsection (d) of this section, meets all requirements of this chapter. The license is valid for two years. Each license specifies the maximum allowable number of residents. The number of residents authorized by the license must not be exceeded.

(h) In making a determination whether to grant a nursing facility license, DHS reviews:

- (1) the information contained in the application; and
- (2) other documents DHS deems relevant, including survey and complaint investigation findings in each facility the applicant or any other person named in subsection (e) of this section has been affiliated with during the last five years.

§19.204. *Application [Applicant Disclosure] Requirements.*

~~(a) Scope of section. No person may apply for a license, change of ownership, increase in capacity, or renewal of a license to operate or maintain a facility without making a disclosure of information as required in this section.~~

~~(a) [(b)] Applications. [ Disclosure form.] All applications must be made on forms prescribed by and available from the Texas Department of Human Services (DHS). Each application must be completed in accordance with DHS instructions, and it must be signed and notarized.~~

~~(b) [(c)] General information required. An applicant must file with DHS an application which contains:~~

- ~~[(1) the name of the applicant and, if an individual, whether the applicant has attained the age of 18 years;]~~
- ~~[(2) the type of facility;]~~
- ~~[(3) the location of the facility;]~~
- ~~[(4) the name of the administrator;]~~

~~(1) [(5)] for initial applications and change of ownership only, evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds, must be disclosed to DHS;~~

~~(2) [(6)] a certificate of good standing issued by the Comptroller of Public Accounts; and~~

~~(3) [(7)] for initial applications and change of ownership only, the certificate of incorporation issued by the secretary of state for a corporation or a copy of the partnership agreement for a partnership.~~

~~(4) [(8)] for a facility which advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement, using the departmental form, describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, as required by the Texas Health and Safety Code, §242.202.~~

(A) Failure to submit the required disclosure statement will result in an administrative penalty in accordance with §19.2112 of this title (relating to Administrative Penalties).

(B) The disclosure statement must contain the following information:

- (i) the facility's philosophy of care for residents with Alzheimer's disease and related disorders;
- (ii) the preadmission, admission, and discharge process;
- (iii) resident assessment, care planning, and implementation of the care plan;
- (iv) staffing patterns, such as resident to staff ratios, and staff training;
- (v) the physical environment of the facility;
- (vi) resident activities;
- (vii) program charges;
- (viii) systems for evaluation of the facility's program;
- (ix) family involvement in resident care; and
- (x) the telephone number for DHS's toll-free complaint line.

(C) The disclosure statement must be updated and submitted to DHS as needed to reflect changes in special services for residents with Alzheimer's disease or a related condition.

~~[(d) Disclosure requirements. Applicants must disclose the following information for the two-year period preceding the application date, concerning the applicant, persons with a disclosable interest, officers, affiliates, and manager, without regard to whether the data required relates to current or previous events:]~~

~~[(1) denial or revocation of a license to operate a nursing facility, facility serving persons with mental retardation or related conditions, personal care facility, or similar facility in any state;]~~

~~[(2) federal or state nursing facility sanctions or penalties, including, but not limited to, monetary penalties, downgrading the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions, but excluding compliance letters;]~~

~~[(3) state or federal criminal convictions for any offense that provides a penalty of incarceration;]~~

~~[(4) unsatisfied final judgements;]~~

~~[(5) operation of a facility that has been decertified in any state under Medicare or Medicaid;]~~

~~[(6) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;]~~

~~[(7) eviction involving any property or space used as a facility in any state;]~~

~~[(8) orders from any court restraining or enjoining the applicant, manager, or any person with a controlling interest from operating a facility in any state; and]~~

~~[(9) any of the adverse actions referenced in this subsection taken against the applicant by all relevant licensing and certification agencies in all other states in which the applicant owns, operates, or manages nursing facilities, facilities serving persons with mental retardation or related conditions, personal care facilities, or similar facilities in any state. The applicant must obtain letters or other documentation from those agencies attesting to the adverse actions or the absence of any adverse actions.]~~

~~[(e) Required ownership and management information for the past two years.]~~

~~[(1) Each applicant for a license to operate a facility must disclose to DHS the name and business address of:]~~

~~[(A) each limited partner and general partner if the applicant is a partnership:]~~

~~[(B) each director and officer if the applicant is a corporation; and]~~

~~[(C) each person having a beneficial ownership interest of 5.0% or more in the applicant corporation, partnership, or other business entity.]~~

~~[(2) If any person described in this section has served or currently serves as an administrator, general partner, limited partner, trustee or trust applicant, sole proprietor, or any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of or has held a beneficial ownership interest of 5.0% or more in any other long-term care facility, the applicant must disclose the relationship to DHS, including the name and current or last address of the facility and the date the relationship commenced, and, if applicable, the date it was terminated.]~~

~~[(3) If the applicant or licensee is a subsidiary of another organization, the information must include the names and addresses of the parent organization and the names and addresses of the officers and directors of the parent organization.]~~

~~[(4) If the facility is operated by, or proposed to be operated under, a management contract, the names and addresses of any person or organization, or both, having an ownership interest of 5.0% or more in the management company must be disclosed to DHS.]~~

~~[(5) The information required by this section must be provided to DHS upon initial application for licensure, and changes in the information must be provided to DHS upon renewal, except that a licensee must notify DHS within 30 days of any change of the facility's administrator or management services.]~~

~~[(c) Additional background information. At the request of DHS, an applicant or license holder must provide to the department any additional background information within 30 days of the request.]~~

~~[(d) [(f)] Exemptions. The provisions of this section do not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity [except for provisions that require disclosure relating to the manager of the facility].~~

#### §19.205. Supplemental Licensure Information.

All facilities licensed on the effective date of this rule must:

(1) complete the supplemental licensure application information form; and

(2) submit the form to the Licensing Section, Long Term Care-Regulatory within 90 days.

#### §19.209. Exclusion from Licensure.

(a) The Texas Department of Human Services, after providing notice and opportunity for a hearing, may exclude a person from eligibility for a license if the person or any person described in §19.201(e) of this title (relating to Criteria for Licensing) has substantially failed to comply with the rules in this chapter.

(b) Exclusion of a person must extend for at least two years, but not more than ten years.

#### §19.210. Change of Ownership.

(a) During the license term, a license holder may not transfer the license as a part of the sale or other transfer of ownership of the facility. Prior to the sale or other transfer of ownership of the facility, the license holder must notify the Texas Department of Human Services (DHS) that a change of ownership is about to take place. A change of ownership is a change:

(1) of 50% or more in the ownership of the business organization or sole proprietorship that is licensed to operate the facility; or

(2) in the federal tax payer identification number.

(b) If a license holder changes its name, but does not undergo a change of ownership, the license holder must notify DHS and submit a copy of a certificate of amendment from the Secretary of State's office. On receipt of the certificate of amendment, the current license will be re-issued in the license holder's new name.

(c) [(b)] To avoid a gap in the license because of a change in ownership of the facility, the prospective new owner must submit to DHS a complete application for a license under §19.201 of this title (relating to Criteria for Licensing) at least 30 days before the anticipated date of sale or other transfer of ownership. The applicant must meet all requirements for a license. If the applicant has filed a timely and sufficient application for a license and otherwise meets all requirements for a license, DHS will issue the applicant a license effective on the date of transfer of ownership. DHS considers an individual has filed a timely and sufficient application for a license if the individual submits:

(1) a complete application to DHS, and DHS receives the complete application at least 30 days before the anticipated date of sale or other transfer of ownership;

(2) an incomplete application to DHS with a letter explaining the circumstances which prevented the inclusion of the missing information, and DHS receives the incomplete application and letter at least 30 days before the anticipated date of sale or other transfer of ownership;

(3) a complete application to DHS, DHS receives the application during the 30-day period ending on the anticipated date of sale or other transfer of ownership, and the individual pays an administrative penalty [ a fine under the administrative penalties described under Offense P in §19.2112 of this title (relating to Administrative Penalties)]; or

(4) an application to DHS, DHS receives the application by the date of sale or other transfer of ownership, and the individual proves to DHS's satisfaction that the health and safety of the facility residents required an emergency change of ownership.

(d) [(e)] If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in the Licensing Section of the state office of Long-Term Care-Regulatory, Texas Department of Human Services, within 15 days of the postmark.

#### §19.212. Time Periods for Processing License Applications.

(a)-(d) (No change.)

(e) Except as provided in the following sentence, a [A] license will be issued or denied within 30 days of the receipt of a complete application or within 30 days prior to the expiration date of the license. However, DHS may pend action on an application for renewal of a license for up to six months if the facility is subject to a proposed or pending licensure termination action on or within 30



days prior to the expiration date of the license. The issuance of the license constitutes DHS's official written notice to the facility of the acceptance and filing of the application.

(f) (No change.)

*§19.214. Criteria for Denying a License or Renewal of a License.*

(a) The Texas Department of Human Services (DHS) may deny an initial license or refuse to renew a license if an applicant, or any person required to submit background and qualification information [ ~~manager, or affiliate~~]:

(1) does not have a satisfactory history of compliance with state and federal nursing home regulations, in determining whether there is a history of satisfactory compliance with federal or state regulations, DHS at a minimum may consider:

(A) whether any violation resulted in significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(B) whether the person promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(C) the history of surveys and complaint investigation findings and any resulting enforcement actions;

(D) repeated failure to comply with regulation;

(E) inability to attain compliance with cited deficiencies within a reasonable period of time;

(F) the number of violations relative to the number of facilities the applicant or any other person named in §19.201(e) of this title (relating to Criteria for Licensing) has been affiliated with during the last five years; and

(G) any exculpatory information deemed relevant by DHS;

[(1) ~~substantially fails to comply with the requirements of this chapter, including, but not limited to:~~

[(A) ~~noncompliance that poses a serious threat to health and safety, or;~~

[(B) ~~a failure to maintain compliance on a continuous basis;~~

(2) has committed any act described in §19.2112(a)(2)-(6) of this title (relating to Administrative Penalties);

(3) violated Chapter 242 of the Texas Health and Safety Code in either a repeated or substantial manner;

(4) [(2)] aids, abets, or permits a substantial violation described in paragraph (3) [(1)] of this subsection about which the applicant, manager, or affiliate had or should have had knowledge;

(5) [(3)] fails to provide the required information and facts and/or references;

[(4) ~~provides the following false or fraudulent information:~~

[(A) ~~knowingly submits to DHS false or intentionally misleading statements;~~

[(B) ~~uses subterfuge or other evasive means of filing;~~

[(C) ~~engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;~~

[(D) ~~knowingly conceals a material fact; or;~~

[(E) ~~is responsible for fraud;]~~

(6) [(5)] fails to pay the following fees, taxes, and assessments when due:

(A) licensing fees as described in §19.216 of this title (relating to License Fees);

(B) reimbursement of emergency assistance funds within one year from the date on which the funds were received by the trustee in accordance with the provisions of §19.2116(e) and (f) of this title (relating to Involuntary Appointment of a Trustee); or

[(C) ~~administrative penalties within 60 days of the order assessing the penalties in accordance with §19.2112 of this title (relating to Administrative Penalties); or]~~

(C) [(D)] franchise taxes;

(7) [(6)] discloses any of the following actions within the five-year period preceding the application:

(A) operation of a facility that has been decertified and/or had its contract canceled under the Medicare or Medicaid program in any state;

(B) federal or state nursing facility sanctions or penalties, including, but not limited to, monetary penalties, downgrading the status of a facility license, proposals to decertify, directed plans of correction or the denial of payment for new Medicaid admissions;

(C) state or federal criminal convictions for any offense that provides a penalty of incarceration;

(D) unsatisfied final judgments;

(E) eviction involving any property or space used as a facility in any state; or

(F) suspension of a license to operate a health care facility, long-term care facility, personal care facility, or a similar facility in any state.

[(b) ~~Concerning subsection (a)(6) of this section, DHS may consider exculpatory information provided by the applicant, manager, or affiliate and grant a license under subsection (a)(6) of this section if DHS finds the applicant, license holder, manager, or affiliate able to comply with the rules in this chapter.]~~

(b) [(e)] DHS will not issue a license to an applicant to operate a new facility if the applicant discloses any of the following actions during the five-year [two-year] period preceding the application:

(1) revocation of a license to operate a health care facility, long-term care facility, personal care facility, or similar facility in any state;

(2) debarment or exclusion from the Medicare or Medicaid programs by the federal government or a state; or

(3) a court injunction prohibiting the applicant or manager from operating a facility.

(c) [(d)] Only final actions are considered for purposes of subsections (a)(7) [(a)(6)] and (b) [(e)] of this section. An action is final when routine administrative and judicial remedies are exhausted. All actions, whether pending or final, must be disclosed.

(d) [(e)] If an applicant for a new license owns multiple facilities, the overall record of compliance in all of the facilities will be examined. Denial of an application for a new license will not

preclude the renewal of licenses of other of the applicant's facilities with satisfactory records.

(e) [(f)] If DHS denies a license or refuses to issue a renewal of a license, the applicant or licensee may request an administrative hearing. Administrative hearings are held under the provisions of the Administrative Procedures Act (APA), Title 10 of the Texas Government Code, §§2001.051 et seq, and DHS's formal hearing rules in §§79.1601 - 79.1614 of this title (relating to Formal Hearings).

§19.216. *License Fees.*

(a) Basic fees.

(1) Initial and renewal license. The license fee is \$250 [~~\$150~~] plus \$10.00 [~~\$5~~] for each unit of capacity or bed space for which a license is sought. The fee must be paid with each initial and renewal of license application.

(2) Increase in bed space. An approved increase in bed space is subject to an additional fee of \$10.00 [~~\$5~~] for each unit of capacity or bed space.

(3) (No change.)

(4) Background information fee. The background information fee is \$50.

(b) Trust fund fee.

(1) (No change.)

(2) DHS charges and collects an annual fee from each facility licensed under the Texas Health and Safety Code, Chapters 242, ~~and~~ 247, and 252 each calendar year if the amount of the nursing and convalescent trust fund is less than \$500,000 [~~\$100,000~~]. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space and is in an amount sufficient to provide \$500,000 [~~\$100,000~~] in the trust fund. In calculating the fee, the amount will be rounded to the next whole cent.

(c) (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 October 27, 1997.

TRD-9714189

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



## Subchapter D. Facility Construction

### 40 TAC §19.326

The amendment is proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Health and Safety Code, §§242.001-242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.326. *Safety Operations.*

(a)-(j) (No change.)

(k) Smoking policies must be ~~[formulated and]~~ adopted and enforced by the facility. The policies must comply with all applicable codes, regulations, and standards, including local ordinances. The facility is responsible for informing residents, staff, visitors, and other affected parties of smoking policies through distribution and/or posting. The facility is responsible for enforcement of smoking policies. [which must include at least the following provisions:]

~~[(1) Smoking tobacco, matches, lighters, or other smoking paraphernalia are not permitted to be kept or stored in a resident's room or in their possession without supervision.]~~

~~[(2) Smoking by residents on the premises is permitted only when supervised by staff of the facility or visitors. The type of supervision (individual versus group supervision) will be determined by the resident's medical condition. The resident must be within direct view of the smoking supervisor, in reasonably close proximity of the supervisor, and the supervisor must be able to quickly respond in the event of an emergency. Additionally, the supervisor, whether staff or visitor, must be aware of these responsibilities. A facility may establish a no-smoking policy for any public areas of the facility.]~~

~~[(3)] Smoking must be [is] prohibited in any room, ward, or compartment where flammable liquids, combustible gas, or oxygen are used or stored and in any other hazardous locations. These areas must be posted with "No Smoking" signs.~~

(l)-(p) (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 October 27, 1997.

TRD-9714190

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



## Subchapter E. Resident Rights

### 40 TAC §§19.401, 19.403, 19.408, 19.415

The amendments and new section are proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new section implement the Health and Safety Code, §§242.001-242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.401. *Introduction.*

(a) The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident.

(b) The Texas Department of Human Services has developed the following statement of the rights of a resident.  
Figure 1: §19.401(b)

(c) The facility must give a copy of the Statement of Resident Rights to each resident, next of kin or guardian, and facility staff member. The facility must maintain a copy of the statement, signed by the resident or the resident's next of kin or guardian, in the facility records.

(d) The Statement of Resident Rights must be posted in accordance with §19.1921 of this title (relating to General Requirements for a Nursing Facility).

*§19.403. Notice of Rights and Services.*

(a) The facility must inform the resident, the resident's next of kin or guardian, both orally and in writing, in a language that the resident understands, of his rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. This notification must be made prior to or upon admission and during the resident's stay if changed.

(b) (No change.)

(c) Receipt of information in subsections (a)-(b) of this section, and any amendments to it, must be acknowledged in writing by all parties receiving the information.

(d)-(1) (No change.)

*§19.408. Grievances.*

(a) A resident has the right to:

(1) voice grievances without discrimination or reprisal. These grievances include those with respect to treatment which has been furnished as well as that which has not been furnished;

(2) prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents; and

(3) notify state agencies of complaints against a facility. Complaints will be acknowledged by the staff of the agency that receives the complaint. All complaints will be investigated, whether oral or written.

(b) A nursing facility may not retaliate or discriminate against a resident if the resident, the resident's guardian or any other person makes a complaint or files a grievance concerning the facility.

*§19.415. Postmortem Procedures.*

The facility must have policies regarding postmortem procedures, including soliciting and meeting the resident's or families' requests regarding notification of a death, disposition of possessions or personal property, and choice of funeral homes.

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 October 27, 1997.

TRD-9714191

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



## Subchapter F. Admission, Transfer, and Discharge Rights in Medicaid-Certified Facilities

### 40 TAC §19.502, §19.503

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

*§19.502. Transfer and Discharge in Medicaid-certified Facilities.*

(a)-(d) (No change.)

(e) Timing of the notice.

(1) (No change.)

(2) The requirements described in paragraph (1) of this subsection and subsection (g) of this section do not have to be met if the resident, responsible party, or family or legal representative requests the transfer or discharge. ~~[It is always in the facility's best interest, however, to obtain written permission from the resident, responsible party, or family or legal representative in lieu of meeting these requirements. When the facility initiates the move, whether transfer or discharge, with or without the approval of the resident, responsible party, or family or legal representative, the facility must adhere to the requirements described in paragraph (1) of this subsection.]~~

(3) (No change.)

~~[(4) When an immediate involuntary transfer or discharge as specified in subsection (b)(3) or (4) of this section, is contemplated, unless the discharge is to a hospital, the facility must:]~~

~~[(A) immediately call the staff of the Quality Assurance Review and Investigations Section of the Texas Department of Human Services' (DHS's) state office to report their intention to discharge; and]~~

~~[(B) submit the required physician documentation regarding the discharge.]~~

(f)-(g) (No change.)

(h) Notice of relocation to another room. Except in an emergency, ~~[or as provided by subsection (e)(2) of this section,]~~ the facility must notify the resident and either the responsible party or the family or legal representative at least five days before relocation of the resident to another room within the facility. The facility must prepare a written notice which contains:

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

~~[(i) Fair hearings - preadmission screening and annual resident review (PASARR). Any individual discharged as a result of a PASARR determination by TXMHMR must be informed of his right to request a fair hearing and to be represented by an authorized representative. Fair hearings must be conducted according to the provisions of Chapter 79, Subchapters L, M, and N of this title (relating to Fair Hearings, Appeals Process, and Hearing Procedure). Individuals requesting admission to Medicaid contracted nursing facilities have 90 days to appeal. Individuals currently~~

residing in a Medicaid contracted nursing facility have 10 days to appeal. Payments for Medicaid residents to the facility continue until the hearing officer makes a final determination. When decisions are upheld, overpayments to the nursing facility are immediately recouped.]

(i) [(†)] Fair hearings [- All other discharges].

(1) Individuals who receive a discharge notice from a facility have 10 days to appeal. If the recipient appeals, he may remain in the facility, except in the circumstances described in subsections (b)(5) and (e)(3) of this section, until the hearing officer makes a final determination. Vendor payments and eligibility will continue until the hearing officer makes a final determination. If the recipient has left the facility, Medicaid eligibility will remain in effect until the hearing officer makes a final determination.

(2) When the hearing officer determines that the discharge was inappropriate, the facility, upon written notification by the hearing officer, must readmit the resident immediately, or to the next available bed. If the discharge has not yet taken place, and the hearing officer finds that the discharge will be inappropriate, the facility, upon written notification by the hearing officer, must allow the resident to remain in the facility. The hearing officer will also report the findings to Long Term Care-Regulatory for investigation of possible noncompliance.

(3) When the hearing officer determines that the discharge is appropriate, the resident is notified in writing of this decision. Any payments made on behalf of the recipient past the date of discharge or decision, whichever is later, must be recouped.

(j) [(†)] Discharge of married residents. If two residents in a facility are married and the facility proposes to discharge one spouse to another facility, the facility must give the other spouse notice of his right to be discharged to the same facility. If the spouse notifies a facility, in writing, that he wishes to be discharged to another facility, the facility must discharge both spouses on the same day, pending availability of accommodations.

§19.503. *Notice of Bed-Hold Policy and Readmission in Medicaid-Certified Facilities.*

(a)-(c) (No change.)

(d) Bed-hold charges. The facility may enter into a written agreement with the recipient or responsible party to reserve a bed.

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

[(3)] The facility may charge a bed-hold fee only if the recipient has left the physical premises of the building structure. A bed-hold fee may not be charged if the recipient is in another part of the same facility.]

(3) [(4)] The facility may not charge a bed-hold fee if the Texas Department of Human Services (DHS) is paying for the same period of time, as in a three-day therapeutic home visit.

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 October 27, 1997.

TRD-9714192

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765

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## Subchapter G. Resident Behavior and Facility Practice

### 40 TAC §19.601, §19.602

The amendments are proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Health and Safety Code, §§242.001-242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.601. *Resident Behavior and Facility Practice.*

(a) Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms. [ See also §19.1010(e) of this title (relating to Nursing Practices).]

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

(b) (No change.)

(c) Staff treatment of residents. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents, and misappropriation of residents' property.

(1) The facility must:

(A) (No change.)

(B) not employ individuals who have:

(i) (No change.)

(ii) had a finding entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents, or misappropriation of their property; or [and]

(iii) been convicted of any crime contained in §250.006, Health and Safety Code; and

(C) (No change.)

(2)-(4) (No change.)

§19.602. *Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services (DHS) by Facilities.*

(a) Any facility staff member who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person must report the abuse or neglect [and the facility will conduct an investigation]. Facility staff must also report conduct or conditions resulting in:

(1) exploitation of residents;

(2) serious accidental injury to residents; or

(3) hospitalization of residents.

(b) Each employee of a facility must sign a statement which states: [that the employee realizes that the employee may be criminally liable for failure to report abuses, and that the employee

has a cause of action against a facility, its owner(s) or employee(s) if he is suspended, terminated, disciplined, or discriminated against as a result of reporting abuse or neglect, as provided in the Health and Safety Code, Title 4, §242.133. These statements must be available for inspection by DHS. ]

(1) the employee may be criminally liable for failure to report abuses; and

(2) under the Health and Safety Code, Title 4, §242.133, the employee has a cause of action against a facility, its owner(s) or employee(s) if he is suspended, terminated, disciplined, or discriminated or retaliated against as a result of:

(A) reporting any action described in subsection (a) of this section to DHS or a law enforcement agency;

(B) reporting the abuse or neglect or other complaint to the persons supervisors; or

(C) for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the nursing facility.

(c) The statements described in subsection (b) of this section must be available for inspection by DHS.

(d) [~~(e)~~] Reports described in subsection (a) of this section [of abuse or neglect] are to be made to the DHS state office, Austin, Texas, at (512) 834-6778. The person reporting must make an oral report immediately on learning of the alleged abuse or neglect. [A written report of the investigation must be sent no later than the fifth calendar day after the oral report.]

(e) The facility must conduct an investigation of the reported acts in subsection (a) of this section. A written report of the investigation must be sent no later than the fifth calendar day after the oral report.

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 October 27, 1997.

TRD-9714193

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



## Subchapter I. Resident Assessment

### 40 TAC §19.801

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.801. *Resident Assessment.*

The facility must conduct initially and periodically a comprehensive accurate, standardized, reproducible assessment of each resident's functional capacity. By January 1, 1997, in Medicaid nursing

facilities, annual and quarterly assessments must be transmitted electronically to the Texas Department of Human Services.

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

(4) Pediatric resident assessment.

(A)-(F) (No change.)

(G) Not later than the third day after a child with a developmental disability is placed in a facility, the facility must notify:

(i) the local community resource coordination group (CRCG); and

(ii) the regional DHS office, which will notify the CRCG in the county of residence of the parent or guardian.

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 October 27, 1997.

TRD-9714194

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



## Subchapter K. Nursing Services

### 40 TAC §19.1001, §19.1010

The amendments are proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Health and Safety Code, §§242.001-242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.1001. *Nursing Services.*

The facility must have sufficient staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. Nursing services to children must be provided by staff who have been instructed and have demonstrated competence in the care of children. Care and services are to be provided as specified in §19.901 of this title (relating to Quality of Care).

(1) (No change.)

(2) Registered nurse.

(A) (No change.)

(B) Except when waived under paragraph [paragraphs (3) or] (4) of this section, the facility must designate a registered nurse to serve as the director of nursing on a full-time basis, 40 hours per week.

(C) (No change.)

(3)-(9) (No change.)

§19.1010. *Nursing Practices.*

(a)-(e) (No change.)

(f) If permitted by written policies of the nursing facility, an RN or a physician's assistant may determine and pronounce a person dead in situations other than when an individual is being supported by artificial means which preclude determination that the person's spontaneous respiratory and circulatory functions have ceased. The facility's nursing staff and the medical staff or consultant must have jointly developed and approved these policies. The policy must include the following points:

(1)-(3) (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 October 27, 1997.

TRD-9714195

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



Subchapter L. *Dietary Services*

40 TAC §19.1101, §19.1104

The amendments are proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Health and Safety Code, §§242.001-242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.1101. *Dietary Service.*

The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets daily nutritional and special dietary needs of each resident. [See information about kitchens in §19.1719(j) of this title (relating to Other Rooms and Areas); §19.901(1)(A)(iv), (3)(B), (7), (9), and (10) of this title (relating to Quality of Care) for information concerning nutrition and hydration; §19.403(k)(1)(C) of this title (relating to Notice of Rights and Services); §19.801(3)(A)(i) of this title (relating to Resident Assessment); and §19.802(b)(2) of this title (relating to Comprehensive Care Plans).]

§19.1104. *Dietary Consultant Requirements.*

(a) The facility must ensure a qualified dietitian is sufficiently available to meet the needs of the residents. The facility must ensure that dietary consultant hours are provided, at a minimum, as follows:

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

(b)-(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 October 27, 1997.

TRD-9714196

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



Subchapter T. *Administration*

40 TAC §§19.1912, 19.1918, 19.1920, 19.1921

The amendments are proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Health and Safety Code, §§242.001-242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.1912. *Additional Clinical Record Service Requirements.*

(a)-(d) (No change.)

(e) Readmissions.

(1) If a resident is discharged for 30 days or less and readmitted to the same facility, upon readmission, to update the clinical record, staff must:

(A)-(B) (No change.)

~~(C)~~ start a new medication sheet to document medications ordered by the physician;

~~(C)~~ ~~(D)~~ include any changes in diagnoses, etc.;

~~(D)~~ ~~(E)~~ obtain signed copies of the hospital or transferring facility history and physical and discharge summary. A transfer summary, containing this information is acceptable; and

~~(E)~~ ~~(F)~~ complete a new RAI and update the comprehensive care plan if evaluation of the resident indicates a significant change which appears to be permanent. If no such change has occurred, then update only the resident comprehensive care plan.

(2) (No change.)

(f)-(h) (No change.)

§19.1918. *Disclosure of Ownership.*

(a) (No change.)

(b) The facility must provide written notice to the Licensing Section of the state office of Long Term Care-Regulatory, Texas Department of Human Services (DHS) at the time of change if a change occurs in:

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

(3) the corporation, association, or other company responsible for the management of the facility; ~~(a)~~

- (4) the facility's administrator or director of nursing or [-]
- (5) the controlling person.
- (c) (No change.)

§19.1920. *Operating Policies and Procedures.*

(a) The facility must have an administrative policy and procedure manual that outlines the general operating policies and procedures of the facility. The manual must include policies and procedures related to admission and admission agreements, resident care services, refunds, transfers and discharges, receiving and responding to complaints and recommendations, and protection of residents' personal property and civil rights. A copy of this manual must be made available for review upon request to each physician, staff member, resident, and resident's next of kin or guardian and to the public.

(b)-(d) (No change.)

§19.1921. *General Requirements for a Nursing Facility.*

(a) The facility must admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(1) In any circumstance in which a facility refuses to admit a resident being transferred due to the emergency closure of another facility, the facility must provide the regional unit manager with a written statement of the reasons for the refusal within 10 working days.

(2) Failure to submit the written statement timely or including false or misleading information in the statement will result in an administrative penalty.

(b)-(d) (No change.)

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs (1)-(10) [~~(4)-(6)~~] of this subsection in an area of the facility that is readily and customarily available to the public. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading thereto. Any exceptions must be approved by the Texas Department of Human Services (DHS). The following items must be posted:

(1) (No change.)

(2) a complaint sign provided by DHS giving the toll-free telephone number [~~and noting that the number is available for both registering complaints and obtaining information concerning the facility;~~]

(3) a notice in a form prescribed by DHS that inspection and related reports are available at the facility for public inspection. The reports must be maintained in a well-lighted accessible location and must include: [~~and providing the department's toll-free telephone number to obtain information concerning the facility;~~]

(A) a statement of the facility's compliance record that is updated at least bi-monthly and reflects at least one year's compliance record, in a form required by the department; and

(B) if a facility has been cited for a violation of residents' rights, a copy of the citation, which must remain in the reports until any regulatory action with respect to the violation is complete, and DHS has determined that the facility is in full compliance with the applicable requirement;

(4) a concise summary in non-technical language prepared by DHS of the most recent inspection report; [~~and~~]

(5) notice of DHS's toll-free telephone number to obtain summary reports relating to the quality of care, recent investigations, litigation and other aspects of the operation of the institution;

(6) notice that DHS can provide information about the nursing facility administrator at (512) 834-6787;

(7) if a facility has been ordered to suspend admissions, a notice of the suspension, which must be posted also on all doors providing public ingress to and egress from the facility;

(8) a statement of resident rights in the form adopted by DHS;

(9) [~~(5)~~] a notice in a form prescribed by DHS stating that:

(A) a person has a cause of action against a facility, or the owner or employee of the facility, that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a facility resident to the person's supervisors, to DHS, or to a law enforcement agency, in accordance with the Health and Safety Code, Chapter 242; and

(B) a person making a bad faith, malicious, or reckless report of abuse or neglect is subject to a criminal penalty, in accordance with the Health and Safety Code, Chapter 242; and

(C) the facility has available for public inspection a copy of the Health and Safety Code, Chapter 242 (E), pertaining to abuse and neglect.

(10) [~~(6)~~] for a facility which advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §19.204(c)(8) of this title (relating to Applicant Disclosure Requirements).

(f)-(l) (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 October 27, 1997.

TRD-9714197

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



Subchapter U. Inspections, Surveys, and Visits

40 TAC §§19.2002, 19.2004, 19.2008

The amendments are proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The amendments implement the Health and Safety Code, §§242.001-242.804, and the Human Resources Code, §§22.001-22.030.

§19.2002. *Procedural Requirements - Licensure Inspections and Surveys.*

(a)-(c) (No change.)

(d) Generally, all inspections, surveys, complaint investigations and other visits, whether routine or non-routine, made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility will be unannounced; any exceptions must be justified. Releasing advance information of an unannounced inspection is a third degree felony, as provided in §242.045 of the Health and Safety Code.

(e)-(i) (No change.)

§19.2004. *Determinations and Actions Pursuant to Inspections.*

(a)-(d) (No change.)

(e) Upon receipt of the final statement of violations, the facility will have 10 days to submit an acceptable plan of correction to the regional director, except plans of correction under 9.2112(i) of this title (relating to Administrative Penalties). An acceptable plan of correction must address the following areas:

(1) how corrective action will be accomplished for those residents affected by the violation(s);

(2) how the facility will identify other residents with the potential to be affected by the same violation(s);

(3) what measures will be put into place or systemic changes made to ensure the violation(s) will not recur; and

(4) how the facility will monitor its corrective actions to ensure that the violation(s) are being corrected and will not recur.

(f) [(e)] A clear and concise summary in nontechnical language of each licensure inspection or complaint investigation will be provided by DHS at the time the report of contact or similar document is provided.

§19.2008. *Investigations of Incidents and Complaints.*

(a)-(c) (No change.)

(d) DHS will begin the investigation:

(1) within 24 hours of receipt of the report or other allegation if the report of abuse or neglect or other complaint alleges:

(A) a resident's health or safety is in imminent danger;

(B) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint; or

(C) a resident has been hospitalized or been treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint; or

(2) before the end of the next working day after the date of receipt of the report of abuse or neglect or other complaint if the report or complaint alleges the existence of circumstances that could result in abuse or neglect and that could place a resident's health or safety in imminent danger.

[(d)] Complaint investigations may include a visit to the resident's facility and an interview with the resident, if DHS determines these actions are appropriate. If the facility fails to admit department staff for such investigations, DHS will seek a probate or county court order for admission.]

(e) In investigating the report of abuse or neglect or other complaint, the DHS investigator will:

(1) make an unannounced visit to the nursing facility to determine the nature and cause of the alleged abuse or neglect of the resident;

(2) interview each available witness identified by any source as having personal knowledge relevant to the report of abuse or neglect or other complaint;

(3) personally inspect any physical circumstance that is relevant and material to the report of abuse or neglect or other complaint and that may be objectively observed; and

(4) not later than the 30th day after the date the investigation is complete, write an investigation report that includes:

(A) the investigator's personal observations;

(B) a review of relevant documents and records;

(C) a summary of each witness' statement; and

(D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation.

(f) Upon receipt of a complaint, other than those described under subsections (b) - (e) of this section, DHS will make a preliminary review of the complaint. Within a reasonable time after receipt of the complaint, DHS will make an on-site inspection or otherwise respond to the complaint, unless DHS determines that:

(1) the person made the complaint to harass the facility;

(2) the complaint is without reasonable basis; or

(3) sufficient information in the possession of DHS indicates that corrective action has been taken.

(g) [(e)] Investigations of reports do not preclude actions under the provisions of Subchapter H of this chapter (relating to Enforcement).

(h) [(f)] If the initial phase of an incident or complaint investigation concludes that no abuse or neglect adversely affecting the physical or mental health or welfare of a resident has occurred, no further investigation will be undertaken.

(i) [(g)] In cases concluded to be abuse, neglect, or exploitation, the written report of the investigation by DHS, along with its recommendations, will be submitted to the appropriate district attorney and, if a law enforcement agency has not investigated the report of abuse or neglect or other complaint, to the appropriate law enforcement agency, as well as to the appropriate state agencies, upon request. The investigation report will include:

(1) the nature, extent and cause of such abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of other residents who are affected or likely to be affected by the alleged abuse or neglect;

(4) the evaluation of the persons responsible for the care of residents including the adequacy of the persons in numbers and the competence of persons to deliver the care intended, including specific evaluation individually of those persons directly involved in causing abuse or neglect; and

(5) the adequacy of the environment which may include general operation, competence of staff, attitude of staff, physical environment, and other considerations.



(j) ~~(h)~~ The individual reporting the alleged abuse or neglect and the facility will be notified of the results of DHS's investigation of a reported case of abuse or neglect.

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 October 27, 1997.

TRD-9714198

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



## Subchapter V. Enforcement

### Enforcement Generally

#### 40 TAC §19.2102

The amendment is proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Health and Safety Code, §§242.001-242.804, and the Human Resources Code, §§22.001-22.030 and §32.001-32.042.

#### §19.2102. *Enforcement Generally.*

The Texas Department of Human Services (DHS), as the state licensing agency and the survey and certification agency for the Medicaid program, may impose concurrently licensing remedies and Medicaid remedies on Medicaid-certified facilities. ~~[However, when the imposition of more than one monetary penalty is possible in a given situation, DHS will impose only one monetary penalty for each violation of standards.]~~

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 October 27, 1997.

TRD-9714199

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



## Licensing Remedies

### 40 TAC §§19.2104, 19.2106, 19.2110-19.2112, 19.2114, 19.2115

The amendments and new sections are proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; and under the Human Resources Code, Title 2, Chapter 22, which

authorizes the department to administer public assistance programs.

The amendments and new sections implement the Health and Safety Code, §§242.001-242.804, and the Human Resources Code, §§22.001-22.030.

#### §19.2104. *Suspension of a License.*

(a) The Texas Department of Human Services (DHS) may suspend a facility's license when the license holder, or any other person described in §19.201(e) of this title (relating to Criteria for Licensing), has: ~~[facility's violation of the licensure rules threatens to jeopardize the health and safety of residents.]~~

(1) violated the requirements in either a repeated or substantial manner; or

(2) committed any act described in §19.214(a)(2)-(6) of this title (relating to Criteria for Denying a License or Renewal of License).

(b)-(e) (No change.)

#### §19.2106. *Revocation of a License.*

(a) The Texas Department of Human Services (DHS) may revoke a facility's license when the license holder, or any other person described in §19.201(e) of this title (relating to Criteria for Licensing), has: ~~[substantially fails to comply with the requirements of this chapter, including, but not limited to:]~~

(1) violated the requirements of the Health and Safety Code, Chapter 242, or the rules adopted under that chapter, in either a repeated or substantial manner; or

(2) committed any act described in §19.214(a)(2)-(6) of this title (relating to Criteria for Denying a License or Renewal of License).

~~[(1) noncompliance that poses a serious threat to health and safety; or]~~

~~[(2) a failure to maintain compliance on a continuous basis.]~~

~~[(b) In addition, DHS may revoke a license if the license holder:]~~

~~[(1) submitted false or misleading statements in the application for a license or any accompanying attachments;]~~

~~[(2) used subterfuge or other evasive means to obtain the license; or]~~

~~[(3) concealed a material fact in the application for a license or failed to disclose information required in §19.204 of this title (relating to Applicant Disclosure Requirements) that would have been the basis to deny the license under §19.214 of this title (relating to Criteria for Denying a License or Renewal of a License).]~~

(b) ~~[(e)]~~ Revocation of a license may occur simultaneously with any other enforcement provision available to DHS.

(c) ~~[(d)]~~ The facility will be notified by certified mail of DHS's intent to revoke the license, including the facts or conduct alleged to warrant the revocation. The facility has an opportunity to show compliance with all requirements of law for the retention of the license as provided in §19.215 of this title (relating to Informal Reconsideration). If the facility requests an informal reconsideration, DHS will give the license holder a written affirmation or reversal of the proposed action.

(d) ~~(e)~~ The facility will be notified by certified mail of DHS's revocation of the facility's license. The facility has 15 days from receipt of the certified mail notice to request a hearing in accordance with §§79.1601-79.1614 of this title (relating to Formal Hearings). The revocation will take effect when the deadline for appeal of the revocation passes, unless the facility appeals the revocation. If the facility appeals the revocation, the status of the license holder is preserved until final disposition of the contested matter. Upon revocation, the license must be returned to DHS.

§19.2110. Referral to the Attorney General.

In this section, "threatened violation" means a situation which, unless immediate steps are taken to correct, it may cause injury or harm to a resident's health and safety. The Texas Department of Human Services (DHS) may refer a facility to the attorney general who may petition a district court for: ~~[for the assessment of civil penalties under the Texas Health and Safety Code, §242.065, for a violation that threatens the health and safety of a resident.]~~

(1) a temporary restraining order to restrain a person from a violation or threatened violation of the requirements or any other law affecting residents if DHS reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of a resident;

(2) an injunction to restrain a person from a violation or threatened violation of the requirements or any other law affecting residents if DHS reasonably believes that the violation or threatened violation creates a threat to the health and safety of a resident; or

(3) the assessment of civil penalties under the Texas Health and Safety Code, §242.065, for a violation that threatens the health and safety of a resident. DHS recognizes the limited immunity from civil liability granted to volunteers serving as officers, directors, or trustees of charitable organizations, under the Charitable Immunity and Liability Act of 1987 (Texas Civil Practice and Remedies Code, Chapter 84).

§19.2111. Suspension of Admissions.

(a) If the commissioner finds that a nursing facility has committed an act for which a civil penalty may be imposed under §242.065, Health and Safety Code, the commissioner may order the nursing facility to immediately suspend admissions.

(b) A suspension of admissions is effective on the date a nursing facility receives notice of the order and of the manner in which the order may be appealed. The Texas Department of Human Services provides an opportunity for a hearing on the appeal of the order within 14 days of the date the suspension becomes effective.

(c) During the time admissions are suspended, a nursing facility must post a notice of the suspension on all entrance and exit doors. The notice must contain the dates of the suspension.

(d) A person commits a Class C misdemeanor if the person does not post the required notice or removes a notice while the suspension of admissions is in effect.

§19.2112. Administrative Penalties.

(a) The Texas Department of Human Services (DHS) may assess an administrative penalty against a person who:

(1) violates Chapter 242, Health and Safety Code or a rule, standard or order adopted or license issued under Chapter 242;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by DHS;

(3) refuses to allow a representative of DHS to inspect:

(A) a book, record, or file required to be maintained by a facility; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of a representative of DHS or the enforcement of this chapter;

(5) willfully interferes with a representative of DHS preserving evidence of a violation of a rule, standard, or order adopted or license issued under Chapter 242, Health and Safety Code.

(6) fails to pay a penalty assessed by DHS under chapter 242, Health and Safety Code by the 10th day after the date the assessment of the penalty becomes final.

~~{(a) The Texas Department of Human Services (DHS) may recommend assessment of administrative penalties against a person who violates the Health and Safety Code, Chapter 242, as provided in this section.}~~

(b) The persons against whom DHS may impose an administrative penalty include:

(1) an applicant for a license;

(2) a license holder;

(3) a partner, officer, director, or managing employee of an applicant or a license holder; and

(4) a person who controls a nursing facility.

(c) DHS recognizes the limited immunity from civil liability granted to volunteers serving as officers, directors or trustees of charitable organizations, under the Charitable Immunity and Liability Act of 1987 (Texas Civil Practice and Remedies Code, Chapter 84).

(d) ~~[(b)] [When a violation cited by DHS is determined to be within the scope and description of the penalty as stated in subsection (h) of this section, the violation is cause for assessment of a penalty as described in this section and as listed in subsection (h) of this section.] In determining whether a violation warrants an administrative penalty, DHS considers the facility's history of compliance and whether [limits the facility's ability to comply with the law; a violation must be:]~~

(1) a pattern or trend of violations exists [ of a number of existing simultaneous occurrences such that a pattern or trend is established;] or

(2) the violation is recurrent in nature and type; or

(3) the violation [one which] presents danger to the health and safety of at least one resident; or

(4) the violation is of a magnitude or nature that constitutes a health and safety hazard having a direct or imminent adverse effect on resident health, safety, or security, or which presents even more serious danger or harm; or

(5) the violation is of a type established elsewhere in DHS's rules concerning licensing standards for long term care facilities.

(e) In determining the amount of the penalty, DHS considers at a minimum:

(1) the gradations of penalties;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or potential hazard to the health and safety of the residents;

(3) the history of previous violations;

(4) deterrence of future violations; and

(5) efforts to correct the violation.

(f) Administrative penalties may be levied for each violation found in a single survey. The following table contains the gradations of penalties in accordance with the relative seriousness of the violation. The penalties for a violation of the requirement to post notice of the suspension of admissions, additional reporting requirements found at §19.601(a) of this title (relating to Resident Behavior and Facility Practice), or residents' rights cannot exceed \$1,000 a day for each violation, unless the violation of a resident's right also violates a rule in Subchapter H, Quality of Life, or Subchapter J, Quality of Care.

Figure 1: 40 TAC 19.2112(f)

(g) ~~[(e)]~~ No facility will be penalized because of a physician's or consultant's nonperformance beyond the facility's control or if documentation clearly indicates the violation is beyond the facility's control.

~~[(d)]~~ An offense is defined as the sum of all deficiencies cited during a particular survey. The first offense carries the penalty shown in the "first offense" column under subsection (h) of this section. The second offense carries the penalty shown in the "second offense" column. The third offense carries the penalty shown in the "third offense" column. For purposes of determining a "first offense," this provision does not apply to Offense Q under subsection (h) of this section.

~~[(e)]~~ The progression of offenses described in subsection (e) of this section applies to facilities regardless of license renewals; however, when a facility has not had an offense for a period of two years, the facility's next offense will be in the "first offense" column. A suspension of a license and subsequent reinstatement does not interrupt the progression.

(h) DHS may issue a preliminary report regarding an administrative penalty. Within 10 days of the issuance of the preliminary report, DHS will give the facility written notice of the recommendation for an administrative penalty. The notice will include:

(1) a brief summary of the violations;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under §19.2114 of this title (relating Right to Correct) and if the violation is subject to correction, a statement of:

(A) the date on which the facility must file a plan of correction (POC) to be approved by DHS; and

(B) the date on which the POC must be completed to avoid assessment of the penalty; and

(4) a statement that the facility has a right to a hearing on the violation, the amount of the penalty, or both.

(i) ~~[(f)]~~ Within 20 days after the date on which written notice of recommended assessment of a penalty is sent to a facility, the facility must give DHS written consent to the penalty or make a written request for a hearing, or if the violation is subject to correction, submit a plan of correction in accordance with §19.2114

of this title. If the facility does not make a response within the 20-day period, DHS will assess the penalty.

(j) ~~[(g)]~~ The procedures for notification of recommended assessment, opportunity for hearing, actual assessment, payment of penalty, judicial review, and remittance will be in accordance with Health and Safety Code, §§242.067 - 242.069. Hearings will be held in accordance with DHS's formal hearing procedures in Chapter 79 of this title (relating to Legal Services). Interest on penalties is governed by Health and Safety Code §242.069(g).

~~[(h)]~~ Conditions and assessments for violations warranting administrative penalties for licensed facilities are as follows:

~~[(Figure 2: 40 TAC §19.2112(h))]~~

§19.2114. Right to Correct.

(a) The Texas Department of Human Services (DHS) may not collect an administrative penalty if, not later than the 45th day after the date the facility receives notice, the facility corrects the violation.

(b) If the facility reports to DHS that the violation has been corrected, DHS will inspect the correction or take any other steps necessary to confirm that the violation has been corrected and notify the facility that:

(1) the correction is satisfactory and a penalty is not assessed; or

(2) the correction is not satisfactory and a penalty is recommended.

(c) The facility must request a hearing on the violation no later than the 20th day after the date on which the notice is sent.

(d) Subsection (a) of this section does not apply:

(1) to a violation that DHS determines:

(A) results in serious harm to or death of a resident;

(B) constitutes a serious threat to the health or safety of a resident; or

(C) substantially limits the facility's capacity to provide care;

(2) to the violations listed in §19.214(a)(2)-(6) of this title (relating to Criteria for Denying a License or Renewal of a License); or

(3) to the violation of a resident right.

(e) A facility that corrects a violation under subsection (a) of this section must maintain the correction. If the facility fails to maintain the correction until the first anniversary of the date the correction was made, DHS may assess an administrative penalty equal to three times the amount of the original penalty assessed, but not collected. DHS does not provide a facility an opportunity to correct the subsequent violation.

§19.2115. Amelioration of Violation.

In lieu of ordering payment of an administrative penalty, the commissioner may require the person to use, under supervision of the Texas Department of Human Services (DHS), a portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the nursing facility.

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 October 27, 1997.

TRD-9714200  
Glenn Scott  
General Counsel, Legal Services  
Texas Department of Human Services  
Proposed date of adoption: January 1, 1998  
For further information, please call: (512) 438-3765

◆ ◆ ◆  
**Remedies in Medicaid-Certified Facilities**

**40 TAC §§19.2146-19.2148**

The amendment and new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

*§19.2146. Termination of Provider Agreement on the Basis of the Imposition of Enforcement Actions Three Times Within an Accountability Period.*

(a) When the Provider Enrollment Section of the Texas Department of Human Services (DHS) determines that DHS or the Health Care Financing Administration has imposed required Category II or III remedies (as designated on the chart in 59 Federal Register, 56183) on a facility three times within an accountability period, a recommendation is made to terminate the facility's provider agreement, unless DHS makes an affirmative finding that good cause exists to waive this requirement to facilitate a change in ownership to protect residents of a facility.

(b)-(d) (No change.)

*§19.2147. Informal Dispute Resolution.*

The Texas Department of Human Services (DHS) provides an informal dispute resolution process (IDR) in the central office, as follows:

(1) A written request and all supporting documentation must be submitted to Long Term Care-Regulatory, Texas Department of Human Services (DHS), P.O. Box 149030 (MC-Y-976), Austin, TX 78714- 9030, no later than the 10th calendar day after receipt of the official statement of deficiencies.

(2) DHS will complete the IDR process no later than the 30th calendar day after receipt of a request from a facility.

(3) Any individual representing a facility in an IDR must register with DHS and disclose the following:

(A) the individual's employment history during the preceding five years, including employment in regulatory agencies of this state and other states;

(B) ownership, including the identity of the controlling person or persons, of the facility the person is representing before DHS; and

(C) the identity of other entities the person represents or has represented before the agency during the previous 24 months.

*§19.2148. Arbitration.*

A facility may elect arbitration as provided in 1 TAC Chapter 163 (Arbitration Procedures for Certain Enforcement Actions of the Department of Human Resources).

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 October 27, 1997.

TRD-9714202  
Glenn Scott  
General Counsel, Legal Services  
Texas Department of Human Services  
Proposed date of adoption: January 1, 1998  
For further information, please call: (512) 438-3765

◆ ◆ ◆  
**40 TAC §19.2147**

*(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 Human 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, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

*§19.2147. Informal Dispute Resolution.*

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 October 27, 1997.

TRD-9714201  
Glenn Scott  
General Counsel, Legal Services  
Texas Department of Human Services  
Proposed date of adoption: January 1, 1998  
For further information, please call: (512) 438-3765

◆ ◆ ◆  
**Subchapter X. Requirements for Medicaid-Certified Facilities**

**40 TAC §19.2308, §19.2320**

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

*§19.2308. Change of Ownership.*

An ownership change is any change in the business organization that changes the identity of the legal entity licensed to operate the facility. For purposes of this section, prior owner is defined as the legal entity licensed to operate the facility before the change of ownership. The new owner is the legal entity licensed to operate the facility after

the change. The Texas Department of Human Services (DHS) will recognize ownership changes effective as of the date of the legally effective transfer of ownership subject to the following conditions:

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

(6) The prior owner of the facility may remove the financial records pertaining to his period of ownership from the facility, but must maintain them for the time period prescribed by law or until such time as all audit exceptions are reconciled, whichever period is the longer. The original copies of the trust fund records, including ledger cards, may be removed by the prior owner if an exact duplicate of the trust fund records, including ledger cards, remain with the new owner. [The trust fund records, including ledger cards, must remain with the new owner.]

§19.2320. *Medical Transportation.*

(a)-(d) (No change.)

(e) Charges for the following medically necessary ambulance services, when provided by a Medicaid-enrolled provider, are not the responsibility of the nursing facility, but are payable by the state's Medicaid health insuring agent as a Medicaid benefit:

(1) (No change.)

(2) nonemergency transport, under the following conditions: [which is ambulance service for a Medicaid recipient, who requires treatment in another location and who is so severely disabled that an ambulance is the only appropriate means of transfer. Severely disabled is defined as a condition which severely limits mobility, requires confinement to bed at all times, and prevents sitting unassisted, or requires continuous life support systems, including oxygen or intravenous infusion.]

(A) the recipient is severely disabled, which is defined as a condition which limits mobility and requires confinement to bed at all times, prevents sitting unassisted at all times, or requires the monitoring of life support systems, including oxygen or intravenous infusion;

(B) the severely disabled recipient cannot be transported by any means other than an ambulance without endangering the health or safety of the recipient; and

(C) the nonemergency ambulance transportation of the severely disabled recipient is to or from a scheduled medical appointment and authorization has been received from the Texas Department of Health or its designee.

(f)-(g) (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 October 27, 1997.

TRD-9714203

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



Chapter 79. Legal Services

Subchapter E. Advisory Committees

#### 40 TAC §§79.402-79.404

The Texas Department of Human Services (DHS) proposes amendments to §§79.402-79.404, concerning the establishment of advisory committees, mandated advisory committees, and committees established by the Texas Board of Human Services in its Legal Services chapter. The purpose of the amendments is to comply with state legislation by creating the Nursing Facility Administrators Advisory Committee and the Alzheimer's Advisory Committee, and by deleting the Sanctions and Penalties Advisory Committee. The amendments also change policy regarding numbers of members serving on the various committees, and an increase in the scope of the subjects upon which the Child and Adult Care Food Program is authorized to advise the department. In addition, the amendments delete the Religious Community Advisory Committee, and change the abolishment dates of the Child and Adult Care Food Program Advisory Committee, the Client Self-Support Services Advisory Council, the Aged and Disabled Advisory Committee, and the Advisory Committee for Personal Care Facilities.

Eric M. Bost, commissioner, 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 governments as a result of enforcing or administering the sections.

Mr. Bost 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 there will be responsible and consistent operation of the Nursing Facility Administrators Advisory Committee, thereby ensuring the protection of the health and safety of nursing facility residents, and that there will be more comprehensive planning for and treatment of Alzheimer's patients. There will be no effect on small businesses as a result of enforcing or administering the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to James Tennison at (512) 438-3151 in DHS's Long Term Care Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-002, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Human Resources Code §32.0246, which requires the appointment of an Alzheimer's Advisory Committee; the Health and Safety Code, §242.303, which established the Nursing Facility Administrators Advisory Committee; and Texas Civil Statute, Article 6252-33, which governs operations of advisory committees.

The amendments implement the Human Resources Code, §§22.001-22.030 and 32.0246; the Health and Safety Code, §242.303; and Texas Civil Statute, Article 6252-33.

§79.402. *Advisory Committees.*

(a) (No change.)

(b) General structure.

(1) (No change.)

(2) Members are appointed by the Texas Board of Human Services, at the recommendation of the commissioner of the Texas

Department of Human Services, except in cases where the governor exercises appointment authority.

(3)-(7) (No change.)

§79.403. *Mandated Advisory Committees.*

(a) (No change.)

~~[(b) Sanctions and Penalties Advisory Committee.]~~

~~[(1) Legal base. The committee's legal base is the HRC, §32.021.]~~

~~[(2) Responsibilities. The committee advises the Board and department about developing and monitoring a system for assessing penalties against nursing facilities for contract violations.]~~

~~[(3) Structure.]~~

~~[(A) The committee has 10 members representing consumer advocates and providers.]~~

~~[(B) Committee members serve four-year rotating terms, with approximately one-fourth of the membership rotating off service each year.]~~

~~[(4) Abolishment date. The abolishment date is September 1, 1997.]~~

(b) ~~[(e)]~~ Advisory Committee on Personal Care Facilities.

(1) Legal base. The committee's legal base is the Health and Safety Code, §247.051.

(2) Responsibilities. The committee advises the department on standards for licensing personal care facilities.

(3) Structure.

(A) The committee has nine members representing consumers, providers, and others, with at least one member with expertise in life safety code regulations, one representative of a nonprofit facility, and one family member of a resident in a facility.

(B) The commissioner of human services appoints one staff member from the department to serve as a non-voting member.

(C) Committee members serve four-year rotating terms, with approximately one-fourth of the membership rotating off service each year.

(4) Abolishment date. The abolishment date is August 31, 2001 ~~[September 1, 1997].~~

(c) ~~[(d)]~~ Advisory Committee on Fire Safety Standards.

(1) Legal base. The committee's legal base is the Health and Safety Code, §242.039.

(2) Responsibilities. The committee advises the department on development of rules regarding the applicability of municipal ordinances and regulations to the remodeling and renovation of existing structures to be used as health care facilities licensed under the Health and Safety Code, Chapter 242.

(3) Structure.

(A) The committee has 12 members as follows: two municipal fire marshals; four individuals representing the nursing home industry; the commissioner of human services or designee; one building official from a municipality that has adopted the Uniform Building Code; one building official from a municipality that has adopted the Standard Building Code; one architect licensed under state law; one member of the Texas Board of Human Services; and one state Medicaid director or designee.

(B) Committee members serve four-year rotating terms, with three members rotating off service each year.

(4) Abolishment date. The abolishment date is September 1, 1996.

(5) Reimbursement. Members of the committee are not entitled to receive reimbursement for travel, meals, lodging, and any other expenses.

(d) Nursing Facility Administrators Advisory Committee.

(1) Legal base. The committee's legal base is the Health and Safety Code, §242.303.

(2) Responsibilities. The committee:

(A) advises the board on the licensing of nursing facility administrators, including the content of applications for licensure and of the examination administered to license applicants;

(B) reviews and recommends rules and minimum standards of conduct for the practice of nursing facility administration; and

(C) reviews all complaints against administrators and makes recommendations to the department regarding disciplinary actions.

(3) Structure.

(A) The committee has nine members appointed by the governor consisting of:

(i) three licensed nursing facility administrators, at least one of whom must represent a not-for-profit nursing facility;

(ii) one physician with experience in geriatrics who is not employed by a nursing facility;

(iii) one registered nurse with experience in geriatrics who is not employed by a nursing facility;

(iv) one social worker with experience in geriatrics who is not employed by a nursing facility; and

(v) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.

(B) Committee members serve for staggered terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.

(C) Vacancies on the committee will be filled in the same manner in which the position was originally filled and will be filled by a person who meets the qualifications of the vacated position.

(4) Abolishment date. The abolishment date is August 31, 2001.

(5) Reimbursement. Members of the committee receive no compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their duties.

(e) Alzheimer's Advisory Committee.

(1) Legal base. The committee's legal base is the Human Resources Code (HRC), §32.0246.

(2) Responsibilities. The committee:

(A) assists the department in developing and implementing a pilot program for the treatment of persons with Alzheimer's Disease; and

(B) reports its progress and recommendations to the Board by the conclusion of the pilot on January 15, 1999.

(3) Structure.

(A) The committee has four members representing groups advocating for Alzheimer's patients. One member represents an institution of higher learning; one member is a clinician; one member represents the Texas Department on Aging (TDoA); one member represents the Texas Department of Mental Health and Mental Retardation (MHMR); and one member represents the Texas Department of Human Services (TDHS).

(B) Members serve until January 15, 1999, or until such time as the report on the pilot program is presented to the Legislature.

(C) The committee will be called into session on an as-needed basis to advise and consult with the department regarding the pilot.

(4) Abolishment date. The abolishment date is January 15, 1999.

(5) Reimbursement. Members of the committee are not entitled to receive reimbursement for travel, meals, lodging, and any other expenses.

*§79.404. Committees Established by the Board.*

[(a) Religious Community Advisory Committee.]

[(1) Legal base. The committee's legal base is Human Resources Code (HRC), §22.009.]

[(2) Responsibilities. The committee:]

[(A) advises the Board and department about issues related to the religious community and clients of religious human services providers,]

[(B) reviews department operations and programs to find ways to strengthen and promote partnerships between the religious community and the department; and]

[(C) disseminates information to the religious community about the department's programs and services.]

[(3) Structure.]

[(A) The committee has 11 members, with representation reflecting geographic, denominational, and ethnic diversity.]

[(B) Committee members serve four-year, rotating terms, with approximately one-fourth of the membership rotating off service each year.]

[(4) Abolishment date. The abolishment date is September 1, 1997.]

[(a) [(b)] Aged and Disabled Services Advisory Committee.

(1) Legal base. The committee's legal base is the Human Resources Code, §22.009.

(2) Responsibilities. The committee advises the Board and the department about developing policy, programs, and budget for the purpose of affecting immediate and long-range plans for services to the aged and persons with disabilities who are in institutional or community-based care.

(3) Structure.

(A) The committee has [12] members[,] consisting of advocates for the aged and people with disabilities, providers, and others with knowledge or interest in the program.

(B) Committee members serve four-year rotating terms, with one-fourth of the membership rotating off service each year.

(4) Abolishment date. The abolishment date is August 31, 2001 [September 1, 1997].

(b) [(c)] Client Self-Support Services Advisory Council.

(1) Legal base. The council's legal base is the Human Resources Code, §22.009.

(2) Responsibilities. The council advises the Board and the department about programs administered under client self-support, including Aid to Families with Dependent Children, Food Stamps, Medicaid, employment services, nutrition services, and teen pregnancy prevention, but is not required to review proposals previously reviewed and recommended by another advisory committee.

(3) Structure.

(A) The council membership [committee] has [4] regular members, with] a representative balance of service providers, consumer advocates, and others with knowledge or interest in client self-support services.

(B) Representatives of state agencies with an interest or role in the council's field of work serve as ex-officio members. Ex-officio members serve until they are replaced by the agency they represent.

(C) Council [Committee] members serve staggered four-year rotating terms. Membership may be reduced through attrition, to not less than six members[,] with one-fourth of the membership rotating off service each year].

(4) Abolishment date. The abolishment date is August 31, 2001 [September 1, 1997].

(c) [(d)] Family Violence Advisory Committee.

(1) Legal base. The committee's legal base is the HRC, §22.009.

(2) Responsibilities. The committee advises the Board and the department about family violence program services, issues, and policy.

(3) Structure.

(A) The committee has 11 regular members representing family violence providers, the legal system, law enforcement, other health and human services advocates for elderly citizens and children, and formerly battered women.

(B) Committee members serve four-year, rotating terms, with approximately one-fourth of the membership rotating off service each year.

(4) Abolishment date. The abolishment date is September 1, 1996.

(d) [(e)] Child and Adult Care Food Program (CACFP) Advisory Committee.

(1) Legal basis. The committee's legal base is the HRC, §22.009.

(2) Responsibilities. The committee advises the Board and DHS on policies, procedures, and management issues of all

child and nutrition programs, including the child and adult care food program.

(3) Structure.

(A) The committee membership has [~~11 regular members, with~~] a representative balance of family day home sponsors and providers, directors of adult day care centers and child day care centers, concerned citizens, and parents and relatives who participate in the CACFP.

(B) Representatives of state agencies and federal agencies with an interest or role in the committee's field of work serve as ex-officio members. Ex-officio members serve until they are replaced by the agency they represent.

(C) Committee members serve four-year rotating terms, with approximately one-fourth of the membership rotating off service each year.

(D) The committee will meet at least four times per year.

(4) Abolishment date. The abolishment date is August 31 [~~September 1~~], 2000.

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 October 27, 1997.

TRD-9714085

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1998

For further information, please call: (512) 438-3765



## TITLE 43. TRANSPORTATION

### Part III. Automobile Theft Prevention Authority

#### Chapter 57. Automobile Theft Prevention Authority

##### 43 TAC §57.48

The Automobile Theft Prevention Authority proposes an amendment to §57.48, concerning the statutory fee assessment on insurance companies. The amendment adds a new subsection (b) to §57.48. Subsection (b) adopts by reference the Texas Automobile Theft Prevention Authority Assessment Report form and instructions for the computation of the ATPA assessment of the Comptroller of Public Accounts. This rule was previously found at 1 TAC §4.47, which is being repealed simultaneously with this amendment. The amendment changes the previous rule by deleting the reference to the 1994 form, replacing it with simply a reference to the form and instructions without reference to a particular year. The amendment is necessary to provide insurers with a form and instructions for the most recent assessment period. Timely and accurate payment of the assessment is necessary for funding the operations of the Authority. The purpose of this amendment is to update this rule and to transfer it to chapter 57 of Title 43 TAC, which is the appropriate location of the Authority's rules. The Authority has

filed copies of these forms and instructions with the Secretary of State's Office, Texas Register Section. Persons desiring copies of the form and instructions can obtain copies from Comptroller of Public Accounts, Tax Administration, 111 West Sixth Street, Austin, Texas 78701.

Agustin De La Rosa, Acting Director, has determined that for each year of the first five year period that the proposed amendment will be in effect, there will be no additional fiscal implications for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. De La Rosa also has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment will be notice to the regulated industry of the appropriate form and instructions to facilitate proper filing and payment by insurers required to report and pay the assessment to the Texas Comptroller of Public Accounts. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted in writing to Agustin De La Rosa, Acting Director, Automobile Theft Prevention Authority, 200 East Riverside Drive, Austin, Texas 78704, for a period of 30 days following publication in this issue of the *Texas Register*.

This amendment is proposed under Texas Civil Statutes, Article 4413(37), §§6(a), 6A, 10. Section 6(a) authorizes the agency to adopt rules implementing its statutory powers and duties, which includes administration of the assessment and collection of the statutory fee, provided for in §§6A and 10, in coordination with the state comptroller's office and the department of insurance.

Texas Civil Statutes, Article 4413(37) §§6(a) and 10 are affected by this rule.

§57.48. *Motor Vehicle Years of Insurance Calculations.*

(a) Each insurer, in calculating the fees established by Texas Civil Statutes, Article 4413(37), §10, shall comply with the following guidelines:

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

(b) The Texas Automobile Theft Prevention Authority Assessment Report form and Instructions for the Computation of the Automobile Theft Prevention Authority Assessment of the Comptroller of Public Accounts are adopted by reference. The form and instructions are available from the Comptroller of Public Accounts, Tax Administration, 111 West Sixth Street, Austin, Texas, 78701. Each insurer shall use this form and follow these instructions when reporting assessment information to the Comptroller.

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 October 22, 1997.

TRD-9714121

Agustin De La Rosa

Acting Director

Automobile Theft Prevention Authority

Earliest possible date of adoption: December 8, 1997

For further information, please call: (512) 416-4606





# ADOPTED RULES

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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.

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## TITLE 7. BANKING AND SECURITIES

### Part I. State Finance Commission

#### Chapter 3. Banking Section

The Finance Commission of Texas (the commission) adopts amendments to §3.21, concerning bank call reports, §3.92, concerning user safety at unmanned teller machines, and §3.111, concerning confidential information. The amendments are adopted without changes to the text as proposed in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8807), and the text will not be republished.

The amendments revise the manner in which statutory source law is cited to conform with the recent codification of the source law into the Finance Code. No substantive changes result from the amendments.

The agency received no comments on the proposal.

#### Subchapter B. General

##### 7 TAC §3.21

The amendment is adopted pursuant to the Finance Code, §31.003(a), which authorizes the commission to adopt rules "to accomplish the purposes of this subtitle and Chapters 11, 12, and 13, including rules necessary or reasonable to ... implement and clarify this subtitle and Chapters 11, 12, and 13 ...."

As required by the Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

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 October 24, 1997.

TRD-9714145

Everette D. Jobe

General Counsel

State Finance Commission

Effective date: November 13, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 475-1300

#### Subchapter E. Banking House and Other Facilities

##### 7 TAC §3.92

The amendment is adopted under the authority of Finance Code, §59.310, which requires the commission to adopt rules regarding enforcement and implementation of the Finance Code, Chapter 59, Subchapter D.

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 October 24, 1997.

TRD-9714146

Everette D. Jobe

General Counsel

State Finance Commission

Effective date: November 13, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 475-1300

#### Subchapter F. Access to Information

##### 7 TAC §3.111

The amendment is adopted pursuant to various rulemaking authority under the Finance Code. The Finance Code, §31.304(a), provides that a financial institution, affiliate or service provider that receives confidential information from the department may not disclose that information to anyone who is not officially connected to the recipient, "except as authorized by rules adopted under this subtitle." The Finance Code, §31.305, provides that discovery of confidential information pursuant to subpoena from a person subject to the Finance Code, Chapter 31, Subchapter D, "must comply with rules adopted under this subtitle." The Finance Code, §31.305, also provides that the rules may restrict release to confidential information that is directly relevant to the legal dispute at issue and that the rules may require a court-issued protective order, in form and under circumstances the rules specify, prior to release. The Finance Code, §31.003(a), provides that the commission may adopt rules "to accomplish the purposes of this subtitle," including rules that "implement and clarify" it or "preserve or protect the safety and soundness of banks."

Pursuant to the new Texas Trust Company Act, Texas Civil Statutes, Articles 342a-1.001 et seq, enacted by Acts 1997, 75th Legislature, chapter 769, effective September 1, 1997, the finance commission will in time enact similar rules applicable to trust companies under the authority of Texas Civil Statutes, Articles 342a-1.003, 342a-2.104, and 342a-2.105. Until new regulations are proposed and adopted, trust companies are required to comply with all regulations applicable to banks to the extent compatible with the Texas Trust Company Act, including §3.111.

As required by the Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

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 October 24, 1997.

TRD-9714147

Everette D. Jobe

General Counsel

State Finance Commission

Effective date: November 13, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 475-1300



## Chapter 4. Currency Exchange

### 7 TAC §4.3

The Finance Commission of Texas (the commission) adopts an amendment to §4.3, concerning reporting and recordkeeping, without changes to the text as proposed in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8811).

The amendment to §4.3(i) clarifies the original intent of the section that only currency transmission licensees may keep records based on a transaction threshold of \$3,000 under federal law rather than the more strict threshold of \$1,000 under state law. Currency exchange licensees must continue to comply with the requirements of §4.3(e)(1). In addition, the amendment revises the manner in which statutory source law is cited to conform with the recent codification of the source law into the Finance Code.

The agency received a letter from the Non-Bank Funds Transmitters Group, Washington, D.C., indicating no opposition to adoption of the proposal. No other comments were received regarding the proposal.

The amendment is proposed pursuant to the Finance Code, §153.002(1), which authorizes the commission to adopt rules "necessary to implement this chapter, including ... recordkeeping and reporting requirements of a license holder."

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 October 24, 1997.

TRD-9714148

Everette D. Jobe

General Counsel

State Finance Commission

Effective date: November 13, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 475-1300



### 7 TAC §4.8

The Finance Commission of Texas (the commission) adopts the repeal of §4.8, concerning custody of criminal history information, without changes to the proposal as published in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8812).

The repeal is necessary because the source law was repealed in connection with its codification into the Penal Code by Acts 1993, 73rd Legislature, Chapter 790, and the requirement for rules was deleted in the process.

The agency received no comments on the proposal.

The repeal is adopted pursuant to rulemaking authority under the Finance Code, §153.002, which authorizes the commission to adopt rules necessary to implement the Finance Code, Chapter 153. §4.8. Custody of Criminal History Information.

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 October 24, 1997.

TRD-9714149

Everette D. Jobe

General Counsel

State Finance Commission

Effective date: November 13, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 475-1300



## Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

The Finance Commission of Texas, the Texas Department of Banking, the Savings and Loan Commissioner, and the Consumer Credit Commissioner (the agencies) adopt the repeal of §§9.1-9.5 (all of Subchapter A), 9.11-9.12 and 9.14-9.31 (all of Subchapter B except §9.13), and 9.53 (in Subchapter C), concerning practice and procedure before the agencies. The repeal is adopted without change to the proposal as published in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9197).

The repealed sections would conflict with adoption of new sections governing practice and procedure before the agencies and thus must be repealed simultaneously with such adoption. The new sections are adopted in this issue of the *Texas Register*.

The agencies received no comments regarding the repeal. Discussion of comments received regarding the new sections in Chapter 9 appear with the adoption preamble for those sections.

### Subchapter A. General

## 7 TAC §§9.1–9.5

The repeal is adopted under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 October 24, 1997.

TRD-9714150

Everette D. Jobe

General Counsel

State Finance Commission

Effective date: November 13, 1997

Proposal publication date: September 12, 1997

For further information, please call: (512) 475–1300



## Subchapter B. Contested Case Hearings

### 7 TAC §§9.11, 9.12, 9.14–9.31

The repeal is adopted under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 October 24, 1997.

TRD-9714151

Everette D. Jobe

General Counsel

State Finance Commission

Effective date: November 13, 1997

Proposal publication date: September 12, 1997

For further information, please call: (512) 475–1300



## Subchapter C. Appeals to Finance Commission

### 7 TAC §9.53

The repeal is adopted under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 October 24, 1997.

TRD-9714152

Everette D. Jobe

General Counsel

State Finance Commission

Effective date: November 13, 1997

Proposal publication date: September 12, 1997

For further information, please call: (512) 475–1300



## Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

The Finance Commission of Texas, the Texas Department of Banking, the Savings and Loan Commissioner, and the Consumer Credit Commissioner (the agencies) adopt new §§9.1-9.3, 9.11-9.12, 9.14-9.23, and 9.25-9.38, relating to rules of procedure for contested case hearings. Sections 9.3, 9.15, 9.17, 9.22, 9.25, and 9.32 are adopted with nonsubstantive changes to the text as proposed in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9197). Sections 9.1, 9.2, 9.11, 9.12, 9.14, 9.16, 9.18-9.21, 9.23, 9.26-9.31, and 9.33-9.38 are adopted without changes and the text will not be republished.

Adopted §§9.1-9.3 will comprise Subchapter A, and §§9.11-9.12, 9.14-9.23, and 9.25-9.38 will appear in Subchapter B. Existing §9.13 in Subchapter B was left in its current form. The number for §9.24 was inadvertently skipped in the proposal and no rule will bear that number. All existing sections in Subchapters A and B other than §9.13, and §9.53 in Subchapter C, are repealed in this issue of the *Texas Register*. Subchapters D and E of Chapter 9 are unaffected by this action.

Effective November 25, 1995, the agencies adopted uniform rules of practice and procedure for contested case hearings, appeals, and rulemakings, see the November 14, 1995, issue of the *Texas Register* (20 TexReg 9407). The adoption of uniform procedural rules helped expedite the fair hearing of contested cases before all of the agencies and simplify the duties of the administrative law judge employed by the finance commission to hear cases on behalf of the agencies. At the time of adoption, these rules were among the most modern and flexible in the state. Experience has demonstrated that, while the administrative process has worked smoothly as anticipated, more modernization is appropriate.

In general, the adopted sections eliminate some detail contained in the former rules that have not been used in practice and more fully embrace the use of the Texas Rules of Civil Procedure (TRCP). Many reported cases, texts, treatises, and other educational materials discuss what these rules mean and can readily be cited by the administrative law judge in support of procedural decisions. Adopting the TRCP by reference also has the advantage of avoiding the occasional gaps that arise in agency-specific procedural rules that were unanticipated. Another advantage is that agency procedural rules will automatically update to incorporate future changes in the TRCP as such may occur. Finally, the TRCP will be "user friendly" to any appellate courts that might review agency cases and to lawyers who do not regularly practice before the agencies.

Among other new features, the new sections expressly include the possibility of summary judgment (§9.23) and mediation (§9.33). Federal and Texas courts have used summary judgments for years and they are being used by a few Texas agencies in administrative proceedings and by out-of-state and federal administrative agencies. Mediation is now being widely used in the state district courts. Several state agencies are experimenting with mediation and the administrative law section of the bar is encouraging other state agencies to experiment with it.

Several of the adopted sections differ from the TRCP by design. New §9.11 follows case law holding that agencies may serve

their licensees informally by mailing a notice to the address furnished the agency in lieu of the formal service provided under the TRCP. However, the section still requires the agency to make formal service on unlicensed parties who violate the law by acting without a license or permit since there is no case law excusing formal service of initial pleadings on such parties. Also, the new sections require very minimal pleading as compared with the TRCP. Pleading is only one of many ways of providing opportunity to prepare. Deficiencies in a pleading may be cured by informal communication, by formal amendment, by pre-hearing conferences, or by ample continuances at the hearing. The question for a reviewing court is not the adequacy of the original notice or pleading but rather the fairness of the whole procedure.

Finally, with regard to §9.37, the new sanctions section, a continuing debate exists in both state and federal case law, law review articles, treatises, and other scholarly materials regarding what sanctions an administrative law judge can impose for violations of agency subpoenas, discovery orders, and other procedural orders and rulings. Some authorities opine that the only method of enforcement is by bringing a separate law suit in state district court for a court order directing compliance with the agency order, a time consuming exercise that would disrupt and delay administrative proceedings. Other authorities opine that an administrative law judge has inherent authority to impose sanctions for violations similar to the sanctions that a court might impose and/or authority to impose any sanctions that the agency itself might impose. New §9.37 is modeled after the authority of the State Office of Administrative Hearings in Government Code, §2003.0421.

The agency received advice from two commentors, both generally in support of adoption of the rules but requesting clarification of minor perceived ambiguities.

The first commenter suggested a minor revision to the first sentence of §9.3 to better conform to Government Code, §2001.061, the addition of a phrase to the end of §9.15(b) to recognize party status of persons specially recognized as such by governing law, a minor revision to the second sentence of 9.17(a) to more clearly address situations in which a party is not represented by counsel, substitution of the phrase "make a motion" for "file a motion" in the second sentence of §9.22 to include oral motions in a hearing, and substitution of the phrase "be delivered" for "be mailed" in §9.32(b) to ensure that documents are in the hands of the parties prior to a telephone hearing. All suggestions have been accepted by the agency and textual changes made accordingly.

The second commenter noted that §9.25(a) should not but could be construed to mean that interlocutory appeals to the agency head were permitted. The agency accepts the comment and clarifies the ambiguous language.

## Subchapter A. General

### 7 TAC §§9.1–9.3

The new sections are adopted under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The new sections are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies.

The legislature has enacted the Finance Code effective September 1, 1997, Acts 1997, 75th Legislature, Chapter 1008, §1 (the

Finance Code). Certain authority citations are to the Finance Code.

Finance Code, §31.003(a)(5), authorizes the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission.

Finance Code, §153.002, authorizes the finance commission to adopt rules necessary to implement the Finance Code, Chapter 153.

Finance Code, §152.102, authorizes the finance commission to adopt rules necessary for the enforcement and orderly administration of the Finance Code, Chapter 152.

Finance Code, §154.051(b), authorizes the department of banking to adopt rules concerning matters incidental to the enforcement and orderly administration of the Finance Code, Chapter 154.

Finance Code, §11.302, authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. The Finance Code, §66.002 and §96.002(a)(2), also authorizes the savings and loan commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and loan commissioner or the savings and loan department.

Finance Code, §11.304, authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with the Finance Code, Chapter 14 and Title 4, plus amendments to the source law made by Acts 1997, 75th Legislature, Chapter 1396. Texas Civil Statutes, Article 5069-3A.901 (added by Acts 1997, 75th Legislature, Chapter 1396), also authorize the finance commission to adopt rules necessary for the enforcement of Articles 5069-3A.001 et seq. Finance Code, §371.006, further authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of the Finance Code, Chapter 371.

### §9.3. *Ex Parte Communications.*

A person may not conduct oral or written communications with the administrative law judge regarding an issue of law or fact in a contested case other than on notice to all parties with an opportunity to participate or as otherwise authorized by law. Letters to the administrative law judge must show that copies have been sent to all parties (through counsel if a party is represented by counsel).

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 October 24, 1997.

TRD-9714153

Everette D. Jobe

General Counsel

State Finance Commission

Effective date: November 13, 1997

Proposal publication date: September 12, 1997

For further information, please call: (512) 475-1300



## Subchapter B. Contested Case Hearings

### 7 TAC §§9.11, 9.12, 9.14–9.23, 9.25–9.38

The new sections are adopted under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The new sections are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies.

Finance Code, §31.003(a)(5), authorizes the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission.

Finance Code, §153.002, authorizes the finance commission to adopt rules necessary to implement the Finance Code, Chapter 153.

Finance Code, §152.102, authorizes the finance commission to adopt rules necessary for the enforcement and orderly administration of the Finance Code, Chapter 152.

Finance Code, §154.051(b), authorizes the department of banking to adopt rules concerning matters incidental to the enforcement and orderly administration of the Finance Code, Chapter 154.

Finance Code, §11.302, authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. The Finance Code, §66.002 and §96.002(a)(2), also authorizes the savings and loan commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and loan commissioner or the savings and loan department.

Finance Code, §11.304, authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with the Finance Code, Chapter 14 and Title 4, plus amendments to the source law made by Acts 1997, 75th Legislature, Chapter 1396. Texas Civil Statutes, Article 5069-3A.901 (added by Acts 1997, 75th Legislature, Chapter 1396), also authorize the finance commission to adopt rules necessary for the enforcement of Articles 5069-3A.001 et seq. Finance Code, §371.006, further authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of the Finance Code, Chapter 371.

*§9.15. Party Status; Participation by General Public.*

(a) Every person or entity named or admitted as a party to a contested case has an equal right to participate fully in all stages of the proceeding.

(b) Party status is limited to persons or entities with a legal right, duty, privilege, power, or economic interest that may be directly affected by the outcome of the proceeding or who are entitled to be parties pursuant to a statute or regulation governing the particular proceeding.

(c) Party status will not be conferred on persons or entities that (1) only have an interest in the outcome of the proceeding that is common to members of the general public; (2) seek to litigate issues that are not by statute or regulation made part of the administrative proceeding in which party status is sought; or (3) are not among the persons or entities described by statute or regulation as eligible to participate in the particular type of administrative proceeding in which party status is sought.

(d) The administrative law judge has discretion to allow a member of the general public who has not been admitted as a party to testify under oath or affirmation in a contested case. The

administrative law judge may set fair and reasonable conditions on such an appearance, and the testimony shall be subject to cross-examination, challenge and rebuttal. After affording all parties a reasonable opportunity to be heard on this issue, the administrative law judge shall determine the extent, if any, to which a member of the general public who is not a party will be allowed to participate in a contested case.

*§9.17. Motions, Pleas and Other Written Requests for an Order or Ruling.*

(a) A party applying to the administrative law judge for an order or ruling shall do so by written motion, plea, or other form of written request unless an oral motion, plea, or request is made during a hearing, conference, or telephone conference call of which all parties had advance notice with a reasonable opportunity to participate. The parties shall send copies of all pleadings and responses subject to this section to one another (through their attorneys if represented by counsel), and shall include a certificate of service on such documents attesting they have done so. Each pleading subject to this section shall specify the grounds on which the relief or order is sought and the legal basis for the relief or order.

(b) The administrative law judge shall allow all parties a reasonable amount of time to be heard before ruling on a pleading subject to this section unless the pleading is for:

(1) a continuance or an extension of time due to an emergency and reasonable attempts to reach opposing counsel have been unsuccessful;

(2) an order to which all parties have agreed; or

(3) a temporary emergency order until a hearing can be held.

(c) The administrative law judge has discretion to order oral or written argument or an evidentiary hearing on a pleading subject to this section as needed to clarify the issues and decide them properly.

(d) An application for a subpoena may be requested and issued ex parte and is not subject to this section.

*§9.22. Protective Orders; Motions to Compel.*

All exemptions and privileges recognized under Texas law are recognized in agency hearings to the same extent as they are recognized in civil cases in the courts of this state. If a party or witness is asked to reveal privileged material or conversations, the party may make a motion with the administrative law judge for such protective orders as are reasonable and necessary or may refuse to provide the information and assert the privilege in response to a motion to compel. The administrative law judge shall hold such hearings and issue such orders on motions to compel or requests for protective orders as are required by the law applicable to the facts and circumstances of the case.

*§9.25. The Hearing.*

(a) The administrative law judge has authority analogous to that of a district judge sitting without a jury in a civil case and may make such rulings and issue such orders as may be required to provide a fair, just, expeditious, orderly, and proper hearing. Hearings are open to the public, except that matters made confidential by law must be considered in executive session if requested. If an executive session is not requested before confidential evidence is introduced, the confidentiality of such evidence is considered to have been waived.

(b) At the time and place set for hearing, the administrative law judge shall proceed with the hearing as nearly as may be according to the rules of procedure governing the trial of civil cases

in the courts of this state. The party with the burden of proof shall present such party's case, followed by other parties in the sequence assigned by the administrative law judge. Each party shall have the opportunity to present such party's case, by calling and examining witnesses, offering documentary evidence, and making legal arguments. Each party shall have the opportunity to contest the admissibility of evidence and cross-examine opposing witnesses on any matter relevant to the issues even if the matter was not covered in direct examination. A party must make an objection to testimony or an evidentiary offer in a timely manner, stating the basis for the objection, or the objection is waived.

(c) The burden of proof is on the applicant in a case involving an application and on the agency in a case involving an order to cease and desist or to impose penalties or collect restitution for violations of law.

(d) In a hearing on an application, the applicant must prove each of the statutory requirements for approval of the application by a preponderance of the evidence.

(e) In a hearing on an action by the agency to enjoin or to impose penalties or collect restitution for violations of law, the agency must prove the violations alleged in the notice of hearing by a preponderance of the evidence. Failure of a respondent to file an answer or to appear at the hearing is not considered to admit the truth of the facts alleged to constitute grounds for a cease and desist or penalty or restitution order so as to excuse the need for other evidence. The hearing will proceed to permit the attorney for the agency to present the evidence in support of the agency case. Failure of the respondent to answer or to appear and contest the agency case may be considered as some evidence supporting an adverse inference that respondent could not defend or rebut the agency case.

#### §9.32 Telephone Hearings.

(a) Sua sponte or on motion of any party and a showing of good cause, after reasonable notice to all parties to allow them to object and argue against the procedure, the administrative law judge may conduct all or part of a hearing by telephone or other electronic means. In determining whether to allow testimony by telephone or other electronic means, the administrative law judge shall consider all relevant factors including whether the motion is opposed, the cost and feasibility of the witness being present at the hearing instead of appearing by telephone or other electronic means, the nature and duration of the expected testimony, the nature of any exhibits expected to be introduced through the witness, whether there is a good reason that the witness is unavailable to testify in person, and the extent to which the demeanor and credibility of the witness are likely to be significant factors in weighing the witness' testimony. In deciding a motion under this section, the administrative law judge shall insure that substantive and procedural rights of all parties are respected.

(b) Documentary evidence to be offered during a telephone hearing must be delivered by the proponent to all parties and to the administrative law judge prior to hearing.

(c) In a telephone hearing, the administrative law judge may consider the following as a failure to appear if the conditions exist for more than 20 minutes after the scheduled time for hearing:

- (1) failure to answer the telephone;
- (2) failure to free the telephone for a hearing; or
- (3) failure to be ready to proceed with the hearing as scheduled.

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 October 24, 1997.

TRD-9714154

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State Finance Commission

Effective date: November 13, 1997

Proposal publication date: September 12, 1997

For further information, please call: (512) 475-1300



## Part II. Texas Department of Banking

### Chapter 12. Loans and Investments

The Finance Commission of Texas (the commission) adopts amendments to §§12.2, 12.32, and 12.91, concerning loans and investments. The amendments are adopted without changes to the text as proposed in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8813), and the text will not be republished.

The amendments revise the manner in which statutory source law is cited to conform with the recent codification of the source law into the Finance Code. No substantive changes result from the amendments.

The agency received no comments on the proposal.

#### Subchapter A. Lending Limits

##### 7 TAC §12.2

The amendment to §12.2 is adopted pursuant to the Finance Code, §31.003(a), which authorizes the commission to adopt rules "to accomplish the purposes of this subtitle and Chapters 11, 12, and 13, including rules necessary or reasonable to ... implement and clarify this subtitle and Chapters 11, 12, and 13 ...."

As required by the Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

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 October 24, 1997.

TRD-9714144

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: November 13, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 475-1300



## Subchapter B. Loans

### 7 TAC §12.32

Amendments to §12.32 are adopted pursuant to the Finance Code, §31.003(a), which authorizes the commission to adopt rules "to accomplish the purposes of this subtitle and Chapters 11, 12, and 13, including rules necessary or reasonable to ... implement and clarify this subtitle and Chapters 11, 12, and 13 ...."

As required by the Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

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 October 24, 1997.

TRD-9714143

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: November 13, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 475-1300



## Subchapter D. Investments

### 7 TAC §12.91

The amendment to §12.91 is adopted pursuant to the Finance Code, §31.003(a), which authorizes the commission to adopt rules "to accomplish the purposes of this subtitle and Chapters 11, 12, and 13, including rules necessary or reasonable to ... implement and clarify this subtitle and Chapters 11, 12, and 13 ...."

As required by the Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

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 October 24, 1997.

TRD-9714142

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: November 13, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 475-1300

## Chapter 15. Corporate Activities

### Subchapter A. Fees and Other Provisions of General Applicability

#### 7 TAC §§15.2, 15.3, 15.6

The Finance Commission of Texas (the commission) adopts amendments to §§15.2, 15.3, 15.6, 15.61, 15.62, 15.81, and 15.122, concerning corporate applications filed with the Texas Department of Banking. Amendments to §§15.2, 15.3, 15.61, and §15.62 are being adopted with nonsubstantive changes to the text as proposed in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9206). Amendments to §§15.6, 15.81, and 15.122 are being adopted without changes and the text will not be republished.

The primary purpose of the amendments is to revise the manner in which statutory source law is cited to conform with the recent codification of the source law into the Finance Code, effective September 1, 1997. The amendment to §15.3 also clarifies that banks that are well capitalized under 12 Code of Federal Regulations, §325.103, may file expedited filings for certain branch relocations under §15.42 (relating to establishing and closing of a branch office), and that banks and trust companies that are well capitalized under the same definition may file expedited filings for certain home office relocations under §15.41 (relating to written notice or application for change of home office).

The amendments to §§15.3, 15.61, and 15.62 reflect the enactment of Texas Civil Statutes, Articles 342a-1.001 et seq (Acts 1997, 75th Legislature, Chapter 769, §1), effective September 1, 1997 (the Texas Trust Company Act). The amendment to §15.61 requires trust companies to comply with formerly applicable banking rules until such time as the commission can propose and adopt unique rules for trust companies. The amendment to §15.62 conforms the prior treatment of exempt trust companies with the new Texas Trust Company Act. References to trust companies are deleted in other sections in light of the Texas Trust Company Act. The text of §§15.3(b), 15.61, and 15.62 is modified by this adoption to correctly cite to the Texas Trust Company Act as it will eventually be set forth in the Texas Civil Statutes, citation forms that were unavailable at the time the amendments were proposed.

In addition, an error in formatting in proposed §15.2 is corrected in the adoption. The listed fees in subsection (b) should number (1) through (21) but the last fee was misnumbered as (20) and included in the previous paragraph (correctly numbered (20)) as a run-on sentence.

The agency received no comments regarding the proposal.

The amendments are adopted pursuant to the Finance Code, §31.003(a), which authorizes the commission to adopt rules "to accomplish the purposes of this subtitle and Chapters 11, 12, and 13, including rules necessary or reasonable to ... implement and clarify this subtitle and Chapters 11, 12, and 13 ...." With respect to trust companies, the amendments are proposed pursuant to Texas Civil Statutes, Article 342a-1.003, which authorizes the commission to adopt rules as necessary or reasonable to implement and clarify the Texas Trust Company Act.



As required by the Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

§15.2. *Filing Fees and Cost Deposits*

(a) (No change.)

(b) Filing Fees. Simultaneously with any submitted filing, an applicant shall pay to the department the filing fee established in the following schedule of fees:

(1) \$5,000 for an application for bank charter or conversion pursuant to the Finance Code, §32.003 or §32.502;

(2) \$4,000 for an application to authorize a merger, a similar business combination, or a purchase of assets pursuant to the Finance Code, §32.301 or §32.401;

(3) \$2,500 for each request to authorize each additional merger if more than one affiliated merger is to occur simultaneously;

(4) \$1,500 for a standard application to establish a branch office pursuant to the Finance Code, §32.203, and §15.42 of this title (relating to Establishment and Closing of a Branch Office);

(5) \$1,500 for a standard application to relocate a branch office pursuant to §15.42(k) of this title;

(6) \$500 for a subsidiary notice letter pursuant to the Finance Code, §34.103, unless paragraph (7) of this subsection applies;

(7) \$4,000 for a subsidiary notice letter pursuant to the Finance Code, §34.103, if the banking commissioner notifies the applicant that additional information and analysis is required;

(8) \$5,000 for an application regarding acquisition of control pursuant to the Finance Code, §33.002, and §15.81 of this title (relating to Application for Acquisition or Change of Control of State Bank);

(9) \$200 for a notice to change the home office to an existing branch office with no abandonment of community pursuant to the Finance Code, §32.202, and §15.41(a) of this title (relating to Written Notice or Application for Change of Home Office);

(10) \$1,500 for an application to relocate the home office or a branch office pursuant to Finance Code, §32.202, and §15.41(b) of this title;

(11) \$500 for an application to relocate the home office or a branch office a short distance of one mile or less with no abandonment of the community pursuant to Finance Code, §32.202, and §15.41(b) of this title;

(12) \$500 for a filing for which an expedited application is permissible pursuant to §15.3 of this title (relating to Expedited Filing);

(13) \$3,000 for an application for a foreign bank agency license pursuant to the Finance Code, §39.103, and §3.41(a) of this title (relating to Applications, Notices, and Reports of a Foreign Bank Corporation);

(14) \$500 for the statement of registration of a foreign bank representative office pursuant to the Finance Code, §39.203, and

§3.44(b) of this title (relating to Statement of Registration, Notices and Filings by a Representative Office);

(15) \$200 for an application to amend a bank charter (articles of association) pursuant to the Finance Code, §32.101;

(16) \$500 for filing a copy of an application pursuant to the Finance Code, §38.001, to acquire a bank or bank holding company;

(17) \$500 for filing a copy of an application pursuant to the Finance Code, §38.004, to acquire a nonbank entity;

(18) \$100 for a request for a "no objection" letter to use a name containing a term listed in the Finance Code, §31.004 or §31.005, by an entity other than a depository institution or trust company;

(19) \$500 for an application to authorize acquisition of treasury stock pursuant to the Finance Code, §34.102, and §15.121 of this title (relating to Acquisition and Retention of Shares as Treasury Stock);

(20) \$500 for a request to authorize an increase or reduction in capital and surplus pursuant to the Finance Code, §32.103; and

(21) \$500 for an application for trust company exemption as not doing business with the public.

(c) Fee for Protest Filing. A person or entity filing a protest to the application of another person or entity shall pay a fee of \$2,500 simultaneously with such protest filing. The purpose of the fee required under this subsection is to partially offset the department's increased cost of processing and reduce the costs incurred by the applicant resulting solely from the protest.

(d)-(f) (No change.)

§15.3. *Expedited Filings*

(a) Eligible banks may file an expedited filing according to forms and instructions provided by the department solely for the following matters:

(1) (No change.)

(2) branch relocations less than one mile with no abandonment of the community pursuant to the Finance Code, §32.203(b), and §15.42 of this title (relating to Establishing and Closing of a Branch Office); and

(3) home office relocations less than one mile with no abandonment of the community pursuant to the Finance Code, §32.202(c), and §15.41 of this title (relating to Written Notice or Application for Change of Home Office).

(b) Eligible trust companies may file an expedited filing according to forms and instructions provided by the department solely for home office relocations where there is no abandonment of the community pursuant to Texas Civil Statutes, Article 342a-3.202(c) and (d), and §15.41 of this title.

(c) Notwithstanding another provision of this section, the banking commissioner may deny expedited filing treatment to an eligible bank or eligible trust company, in the exercise of discretion, if the banking commissioner finds that the filing involves one or more of the following:

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

(3) the proposed transaction will result in a fixed asset investment in excess of the limitation contained in the Finance Code, §34.002(a);

(4) the proposed transaction requires the approval of the banking commissioner under the Finance Code, §33.109(b);

(5) the proposed transaction involves an issue of parity between state and national banks pursuant to the Finance Code, §32.009;

(6) (No change.)

(7) the proposed transaction will result in a decrease in capital below the levels required to meet the definition of "well capitalized" in 12 Code of Federal Regulations, §325.103, or, in the case of a trust company, would cause capital and surplus to fall below current minimum statutory or regulatory requirements;

(8) the proposed transaction will result in an abandonment of the community pursuant to the Finance Code, §32.202(d);

(9)-(10) (No change.)

(d)-(f) (No change.)

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 October 24, 1997.

TRD-9714141

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: November 13, 1997

Proposal publication date: September 12, 1997

For further information, please call: (512) 475-1300



## Subchapter D. Trust Company Applications

### 7 TAC §§15.61, 15.62

The amendments are adopted pursuant to the Finance Code, §31.003(a), which authorizes the commission to adopt rules "to accomplish the purposes of this subtitle and Chapters 11, 12, and 13, including rules necessary or reasonable to ... implement and clarify this subtitle and Chapters 11, 12, and 13 ...." With respect to trust companies, the amendments are proposed pursuant to Texas Civil Statutes, Article 342a-1.003, enacted by Acts 1997, 75th Legislature, Chapter 796, §1 (the Texas Trust Company Act), which authorizes the commission to adopt rules as necessary or reasonable to implement and clarify that Act.

As required by the Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

#### §15.61. *Applicability of Banking Rules.*

Because of the enactment of the Texas Trust Company Act, Texas Civil Statutes, Articles 342a-1.001 et seq (Acts 1997, 75th Legislature, Chapter 769, §1), effective September 1, 1997, the finance commission will in time enact new regulations for trust companies

under the authority of Texas Civil Statutes, Article 342a-1.003. Until new regulations are proposed and adopted, a trust company shall comply with all regulations applicable to banks to the extent compatible with the Texas Trust Company Act, including §15.2 of this title (relating to Filing Fees and Cost Deposits).

#### §15.62. *Exempt Trust Companies*

(a) To obtain an exemption from the application of identified provisions of the Texas Trust Company Act, Texas Civil Statutes, Articles 342a-1.001 et seq, a trust company must file an application fulfilling the requirements of Texas Civil Statutes, Article 342a-3.012, accompanied by the filing fee required by §15.2 of this title (relating to Filing Fees and Cost Deposits). A trust company that was exempt under repealed Texas Civil Statutes, Articles 342-1101 et seq, is considered exempt under the Texas Trust Company Act so long as compliance with exemption requirements under the Texas Trust Company Act is maintained.

(b) An approval granted to an exempt trust company for a change of home office without proof that abandonment is consistent with the original determination of public convenience and advantage for the establishment of a state trust company at that location, as required by Texas Civil Statutes, Article 342a-3.202(d), is conditioned upon the trust company maintaining its exempt status. An exempt trust company that is granted such a conditional change of home office may not transact business with the general public from its new home office, regardless of a change in its exempt status, until and unless the banking commissioner affirmatively makes the findings listed in Texas Civil Statutes, Article 342a-3.003(b).

(c) No approval will be granted to an exempt trust company for a change to nonexempt trust company status, until and unless the banking commissioner affirmatively makes the findings listed in Texas Civil Statutes, Article 342a-3.003.

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 October 24, 1997.

TRD-9714140

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: November 13, 1997

Proposal publication date: September 12, 1997

For further information, please call: (512) 475-1300



## Subchapter E. Change of Control Applications

### 7 TAC §15.81

The amendments are adopted pursuant to the Finance Code, §31.003(a), which authorizes the commission to adopt rules "to accomplish the purposes of this subtitle and Chapters 11, 12, and 13, including rules necessary or reasonable to ... implement and clarify this subtitle and Chapters 11, 12, and 13 ...." With respect to trust companies, the amendments are proposed pursuant to Texas Civil Statutes, Article 342a-1.003, enacted by Acts 1997, 75th Legislature, Chapter 796, §1 (the Texas Trust Company Act), which authorizes the commission to adopt rules as necessary or reasonable to implement and clarify that Act.

As required by the Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment,

provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

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 October 24, 1997.

TRD-9714139

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: November 13, 1997

Proposal publication date: September 12, 1997

For further information, please call: (512) 475-1300



## Subchapter G. Charter Amendments and Certain Changes in Outstanding Stock

### 7 TAC §15.122

The amendments are adopted pursuant to the Finance Code, §31.003(a), which authorizes the commission to adopt rules "to accomplish the purposes of this subtitle and Chapters 11, 12, and 13, including rules necessary or reasonable to ... implement and clarify this subtitle and Chapters 11, 12, and 13 ...." With respect to trust companies, the amendments are proposed pursuant to Texas Civil Statutes, Article 342a-1.003, enacted by Acts 1997, 75th Legislature, Chapter 796, §1, which authorizes the commission to adopt rules as necessary or reasonable to implement and clarify that Act.

As required by the Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

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 October 24, 1997.

TRD-9714138

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: November 13, 1997

Proposal publication date: September 12, 1997

For further information, please call: (512) 475-1300



## Chapter 25. Prepaid Funeral Contracts

The Texas Department of Banking (the department) adopts amendments to §25.23, concerning application fees, and

§25.51 and §25.54, concerning investment of trust funds. The amendments are adopted without changes to the text as proposed in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9585), and the text will not be republished.

The amendment revises the manner in which statutory source law is cited to conform with the recent codification of the source law into the Finance Code, effective September 1, 1997, and eliminate certain definitions that duplicate terms already defined in the Finance Code. The amendment to §25.54 also implements a change in law made by Acts 1997, 75th Legislature, Chapter 1389, §2, by creating an opportunity for a discretionary exemption, upon application, from the investment limits of §25.54 and Finance Code, §154.258(b), (c), and (d).

The department received no comments regarding the proposal.

## Subchapter B. Regulation of Licenses

### 7 TAC §25.23

The amendment is adopted pursuant to rulemaking authority under Finance Code, §154.051, which authorizes the department to prescribe reasonable rules and regulations concerning all matters relating to the enforcement and administration of Chapter 154.

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 October 27, 1997.

TRD-9714204

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: November 17, 1997

Proposal publication date: September 26, 1997

For further information, please call: (512) 475-1300



## Subchapter C. Investment of Trust Funds

### 7 TAC §§25.51, 25.54

The amendment is adopted pursuant to rulemaking authority under Finance Code, §154.051, which authorizes the department to prescribe reasonable rules and regulations concerning all matters relating to the enforcement and administration of Chapter 154.

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 October 27, 1997.

TRD-9714205

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: November 17, 1997

Proposal publication date: September 26, 1997

For further information, please call: (512) 475-1300



## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules

#### Customer Service and Protection

##### 16 TAC §23.54

The Public Utility Commission of Texas (PUC) adopts amendments to §23.54, relating to Pay Telephone Service with changes to the proposed text as published in the August 19, 1997, issue of the *Texas Register* (22 TexReg 7970).

The amendments eliminate the terms coin-sent-paid and dominant certificated telecommunication utility (DCTU). The amendments also eliminate the \$.25 cap on local calls and set use fees because these caps have been prohibited by the federal Telecommunications Act of 1996 (FTA96); the provision requiring DCTUs to file tariffs; the reference to rates published in eight largest newspapers; and the provision related to average schedule DCTUs.

The amendments clarify that mandatory extended area service and extended local calling fall within the definition of local calls; that per call telephone service provided to inmates is pay telephone service (PTS); when telephone service is not PTS; and that PTS providers must provide access to local operators.

The amendments require that PTS providers bill in increments of one minute or less for operator-assisted intrastate toll calls; return fees for calls that do not result in a completed call; post fees for local calls and that no greater amount be charged; and, regardless of call technology, PTS providers are required to post the name of the operator service provider (OSP), along with instructions explaining how to access the operator of the incumbent local exchange carrier (ILEC).

The amendments delete the presumption that subscribers to PTS are not OSPs; move the provision requiring the initial filing of PTS tariffs to the section related to special assemblies; and modify the reporting requirements so that CTUs must report the number of in-service access lines on a semi-annual basis.

The public benefit anticipated as a result of enforcing the section will be to ensure that state rules are in compliance with federal rules, including the removal of the \$.25 cap on local pay telephone calls and set use fees for 1-800-type calls, and simplification of Texas' pay telephone rules. However, this rule will impose costs as well as benefits. Because the Federal Communications Commission (FCC) has determined and a federal court has affirmed that states may no longer set rates for local pay telephone use, but must leave this task to competitive local markets, this rule will remove the long-standing cap on the price of local pay phone calls. The cost of pay phone calls may increase as a result. The commission recognizes that this is likely to impose real and potentially significant costs on frequent pay phone users.

A public hearing was held on September 8, 1997. The Texas Pay Telephone Association offered oral comments that were consistent with their written comments and will be discussed below.

Written comments concerning the proposed amendments were submitted by the following eight organizations: the Texas Pay-

phone Association, Inc. (TPA), Office of Public Utility Counsel (OPC), Texas Association of Long Distance Companies (TEX-ALTEL), Consumers Union, Texas Telephone Association (TTA), Southwestern Bell Telephone Company (SWBT), GTE Southwest, Inc. (GTE), and AT&T Communications of the Southwest, Inc. (AT&T).

The commission invited interested parties to provide responses to the following six questions. First, can pay telephone service providers now charge for local directory assistance (DA)? AT&T, GTE, SWBT, TPA, and TTA state that local DA calls are subject to charge. Each commentor cites to specific language in the FCC's Order which authorizes such charges. Accordingly, the rule has been modified to comply with federal law.

Second, is "End User Choice" the same as "Billed Party Preference"? Should the revised rule retain the "End User Choice" provision? AT&T, SWBT, TPA, and TTA believe that the terms are essentially the same. However, GTE indicates that the terms are not identical. All parties agree that "End User Choice" should be deleted from the rule. In addition, AT&T states that the FCC is currently considering alternatives to "End User Choice." AT&T, GTE, SWBT, TPA, and TTA all agree that "End User Choice" is operationally and technologically unfeasible. The commission agrees with each of the comments and has deleted the "End User Choice" provision from the rule.

Third, is it possible to create a limited definition or distinction between wholesale versus retail pay telephone service that does not impose on PTS the legal obligations and meanings that those terms carry for other telecommunications services covered under the FTA96? If not, what other terminology can be used to clearly and unambiguously refer to these services? AT&T is unsure of the underlying intent of the question, but states that "the proposed rule seems to make an appropriate distinction between PTS service supplied by PTS providers and wholesale PTS (previously customer owned pay telephone service) supplied by certificated telecommunications utilities." TPA believes that it might be possible to create a limited definition, but concludes that is it not necessary. SWBT believes that it is not possible to create a limited definition. SWBT and TTA state that the FCC's Order treats payphone access lines as retail service. TTA goes on to suggest that the service be referred to as PTS "exchange access service." Based on the comments, the commission agrees that it may not be necessary to distinguish between wholesale and retail payphone service. Nonetheless, the commission believes that the phrase "customer owned pay telephone service" (COPTS) is inappropriate. Therefore, the rule has been amended to refer to COPTS as "pay telephone access service" (PTAS).

Fourth, whether the phrase coin-sent-paid should be used to define a local call and if not, how should a local call be defined? TPA, AT&T, SWBT, GTE, and TTA opine that the phrase should not be used to define a local call. TPA indicates that a local call should be defined as "a local coin call." AT&T states that coin-sent-paid is a method of payment, not a type of call. SWBT suggests that the phrase "local coin-sent-paid" be used to define a call where the end user deposits coins and dials a local number. SWBT also suggests that a local call be defined as "a call within the CTU's toll-free calling area including calls which are made toll-free through a mandatory Extended Area Service." GTE indicates that the FCC Order refers to local calls as "local coin call." TTA believes that a public payphone transaction should identify that the consumer is purchasing a prepaid public access service from a public payphone provider.

TTA also states that there may need to be a distinction for those pay telephones that do not accept coinage for purposes of making a local call.

The commission agrees with SWBT. Therefore, the commission clarifies the definition of local calls by restricting its application to mandatory extended area service. The rule as adopted eliminates the need to distinguish those pay telephones calls that do not accept coinage for purposes of making a local call.

Fifth, whether other changes to §23.54 are necessary in order to comply with the Public Utility Regulatory Act of 1995 as amended, federal Telecommunications Act of 1996, CC Docket Number 96-128, Report and Order, FCC 966-388 (released September 20, 1996), CC Docket Number 96-128, Order on Reconsideration, FCC 96-439 (released November 8, 1996), and the recently issued opinion in *Illinois Public Telecommunications Association v. Federal Communications Commission and United States of America*, Number 96-1394, (D.C. Cir. July 1, 1997)? SWBT and TTA state that the rate caps in subsection (f)(1)(E) and (F) for intrastate long distance and operator-assisted calls at Texas payphones should be eliminated. They reason that intrastate long distance calls originate from public payphones, and are therefore subject to deregulation. SWBT argues that rate caps are barriers to entry into the payphone market because they send artificial pricing signals. The commission disagrees with SWBT's comments. As indicated in SWBT's comments, the FCC's Order is intended to ensure that payphone providers receive "fair compensation" for calls originating at pay telephones. The Order makes specific reference to rates for local calls and those calls to "800-type" numbers. Because the FCC's Order make reference to two specific types of pay telephone calls, the commission interprets the Order to be restricted to local calls and "800-type" calls for which providers may have been under-compensated or did not receive compensation. SWBT and TTA fail to point to explicit language in the FCC's Order that would justify removal of the rate caps for intrastate long distance and operator-assisted calls.

GTE states that the commission should address issues related to defining "public interest" payphones. The commission agrees with GTE and will address those issues in a separate proceeding.

TTA, AT&T, GTE, SWBT, and TPA suggest that clause (v) of subsection (e)(4)(A) which prohibits the placing of "a time limit on local calls" be deleted. TTA reasons that under a system where local calls will be subject to market pricing, it is appropriate to remove time restraints from local calls. TTA states that removal of time restraints would introduce time sensitivity as an element in setting the price for pay telephone service. AT&T adds that the move to market-based rates should allow PTS providers to impose usage-based rates for local calls. SWBT comments that the restriction against time limits creates a barrier to entry and is contrary to local call rate deregulation. While the commission agrees that removal of time restraints would introduce time sensitivity, time sensitivity is not a necessary attribute of market-based pricing. SWBT's concerns about barriers to entry are not compelling because there is no clear link between the length of a payphone call and the ability of the provider to offer payphone service at a particular location, particularly since the payphone provider can set whatever rate the market will bear for the phone once in place. There is nothing in the FCC's Order specifically authorizing the introduction of a time-

sensitive pricing methodology. On the other hand, the FCC's Order specifically authorizes state commissions to make rules and regulations providing for consumer protections. Under that authority, the commission believes that a consumer's right to know in advance the total price of a local call from a pay telephone outweighs a particular pricing methodology.

TPA comments that the other provisions relating to cost-based rates, non-discriminatory provision of service and inmate services should be added to the rule. The commission does not believe that provisions related to cost-based rates are within the scope of this rulemaking. TPA's other concerns are discussed in other parts of the rule.

AT&T comments that this rulemaking is limited to addressing the issues raised by the FCC's Order, and suggests that a more expansive review be performed at a future date. The commission agrees.

Sixth, should access to the operator of a local exchange company be provided by dialing a code or number such as "00" or "611"? AT&T and TPA believe that there should be access to the local operator; however, AT&T states that the rules should not specify the method by which such access is accomplished, but should allow the PTS providers to implement this requirement in accordance with their own equipment and needs. TPA states that the access code should be "00" for consistency in view of the use of such code in other areas. SWBT and TTA argue that access to the operator of a local exchange company should be available via "0-". SWBT and TTA reason that additional calling configurations to reach a local operator would work to add to consumer confusion. GTE states that the code "00" provides access to the presubscribed interexchange carrier operator of the payphone and should be continued. GTE also indicates that the LEC repair is generally reached by dialing "611" and with the scarcity of the three-digit codes available the use of a three-digit code to reach an operator is not recommended.

The commission agrees with SWBT and TTA that additional dialing codes to reach the operator of a local exchange company will contribute to customer confusion. Therefore, access to the ILEC operator will be restricted to the use of "0" or "00."

In addition to responding to the specific questions, the parties made the following comments.

SWBT recommended changes to the definition of operator service. SWBT states that alternately billed local calls should also be included in this definition because an alternatively billed local call, such as local collect or credit card, could be served by an OSP. The commission agrees with the comments of SWBT and the necessary change has been made.

TPA recommends that inmate pay telephone service not be included in the definition of pay telephone service. TPA states pay telephone service is distinctly different from pay telephone service provided to inmates. These differences have been addressed in the rule and, where appropriate, provisions of the rule have been labeled as not applicable to inmates of confinement facilities. The commission is not persuaded by these comments to exclude inmate pay telephone service from the definition of pay telephone service.

TPA and SWBT provided comments concerning the definition of provider of pay telephone service and wholesale PTS and the use of "retail" and "wholesale" in those definitions. Both commentors stated that there is no FCC requirement to

distinguish or label the services as wholesale or retail. TPA goes further to recommend that the term "business access line" also be deleted because it refers to a different classification of access line.

The commission agrees in part and disagrees in part. The term wholesale and retail carry inherent definitions that are not applicable in the context of this rule; therefore, the commission agrees that these terms offer no clarification of the service and the changes have been made to delete these terms from the definitions. The commission disagrees that the term "business access line" should be deleted. Telephone services are classified as residential or business offerings, and some services are intended to be utilized by both. However, business lines provide additional features that are used in the provision of pay telephone service that are intended to provide protections not available through residential lines. Therefore, there are no changes to the rule in response to this comment.

AT&T and TPA provided comments on the current registration procedures. AT&T recommends that the current requirement that location reports be filed quarterly be changed to require an annual report. TPA comments on two of the requirements contained in the registrations process: 1) that the physical location of the pay telephone shall be included in the registration process; and 2) submission of the location report of the provider's payphones should be a semi-annual report, not quarterly as currently required. TPA states that the confidentiality of the physical location of each pay telephone could be breached by an open records request.

The commission is persuaded that the requirement to file updated location reports on a quarterly basis is burdensome. These reports provide the commission with information that is not available from another source and is necessary to the enforcement of this substantive rule; however, the commission understands the necessity of balancing the needs of the commission with the concerns of the industry. Therefore, the rule has been changed to require the filing of this report on a semi-annual basis. This report shall be filed for each period ending December 31, 1997 and June 30, 1998, and continuing thereafter. This report shall be filed within 45 days after the end of the reporting period. The commission is not persuaded by TPA's comments requesting that the physical location requirement be omitted from the registration form. However, TPA's concern about the confidentiality of payphone location information registered with the commission seems valid, and is supported by the Attorney General's letter opinion that this information could be protected as proprietary information from an open records request.

TEXALTEL submitted comments requesting clarification of the registration procedure. TEXALTEL believes that each location is registered and will receive proof of registration. The commission clarifies that under current procedures it is the provider of pay telephone service that is registered with the commission, not the location of the pay telephone.

AT&T and TPA provided comments regarding the requirement that CTUs file tariffs with the commission before offering PTS. AT&T states the language is too broad and could be read to require a non-dominant CTU to offer PTS service. TPA states that this rule "should contain express language prohibiting any interconnection inhibition or prohibition relating to PTS resale".

PUC Substantive Rule §23.61(j)(3) currently requires non-dominant telecommunications carriers, including those holding

a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA), to register with the commission. As part of that registration process, the carrier must provide a tariff, schedule, or list showing all recurring and nonrecurring rate(s) for each service provided. It is not the intent of the commission to require that a CTU offer a service; however, if the CTU offers the service, then a tariff should be filed with the commission. The commission does not believe that this rulemaking should include any language relating to PTS and the terms of an interconnection agreement. Therefore, the commission declines to adopt the proposed changes by AT&T and TPA.

TEXALTEL states that the requirement that access must be provided to the incumbent local exchange carrier is inappropriate. This comment repeats the comments of AT&T concerning subsection (f)(2)(D). These commentors state that in some cases this requirement could require a CTU to transfer calls to its competitor, the ILEC. The commission declines to make the changes requested by TEXALTEL and AT&T. The requirement to provide this information is not burdensome or anti-competitive and the user of the pay telephones should be given the instructions to reach the ILEC.

AT&T and TPA provided comments that they cannot "ensure" that carriers and OSPs will bill calls or provide other service in conformance with the commission's rules. The commission is not persuaded by these comments. To the contrary, it is the provider's responsibility to ensure this through two measures. The provider should make an effort to choose business partners which have demonstrated through their past performance that they are willing and able to perform in a manner which respects all relevant commission rules and state laws. Furthermore, the provider's contract with the OSP should specify that the OSP shall comply with all PUC rules and lay out particular performance standards and requirements (including, if desired, billing in increments of less than a minute) as desired. With respect to billing calls in increments of one minute or less, the rule allows the provider to continue billing in full-minute increments, but gives the provider the option of billing in smaller increments if it chooses to so distinguish itself in the competitive marketplace. Since the rule makes it optional rather than mandatory, there is no need to delete the new language.

TPA comments that the language in §23.54(k) is unconstitutionally vague in failing to provide standards under which the commission may invoke such power for "repeat violations." The commission clarifies that "repeat violations" means more than one violation. The commission also notes that it will use prosecutorial discretion in exercising this enforcement power as needed to curb abuses by pay telephone providers.

AT&T provided comments on the requirement that the informational placard attached to the pay phone reflect the rate(s) that are actually charged for the call. AT&T recommended that this restriction be applicable only to local calls as outlined in subsection (e)(1)(E). AT&T concludes that subsections (e)(1)(E) and (d)(4)(A)(ix) refer to the same information and, therefore, the requirements of the two subsections should contain the same information.

The commission agrees with AT&T and the appropriate changes have been made.

TPA provided comments requesting that the requirement that each call be validated be deleted. TPA states that inmate calls from confinement facilities are repetitive in that the inmates call

the same numbers. TPA requests that pay telephone service from confinement facilities should be separately addressed.

The commission disagrees with TPA on the issue. Calls from confinement facilities should continue to be validated in the same manner as any other alternatively billed call.

AT&T states that §23.54(e)(2)(D) and (E), regarding operator access, creates a barrier to competition. First, AT&T believes that the PTS provider could be served by a CTU and the rule in effect would refer the pay phone user to the CTU's competitor. Second, AT&T states that each time the PTS provider changes carriers a new informational placard would be required for each pay phone instrument. The commission declines to adopt the positions offered by AT&T. Nothing in the rule prohibits a pay telephone provider from including information on how to reach operators of both the ILEC and the CTU. The requirement to provide this information is not burdensome and the end user of the pay telephone should be given these instructions. The commission disagrees with AT&T because when consumers are provided with a choice, competition is enhanced.

SWBT requests that the PUC delete the requirement that pay telephone numbers not be displayed on those phones not allowing incoming calls. These phone numbers are used for record-keeping purposes by the PTS provider.

The commission is not persuaded by this comment. End users of pay telephones would assume that the pay telephone could receive incoming calls if the phone number is displayed; therefore there were no changes as a result of this comment.

TEXALTEL commented that subsection (f)(1)(B) is in violation of the FCC's pay phone order. TEXALTEL states that the FCC prohibits the PTS providers from requiring deposit of coins for any "800" or "888" call.

The commission agrees with TEXALTEL that the FCC order prohibits the PTS provider from charging the end-user for any type of subscriber "800" or "888" call, or from charging for dial-around calls to the carrier of choice.

GTE submitted comments recommending that subsection (i)(6) be deleted. GTE reasons that the FCC has determined that PTS providers may charge for DA. This subsection requires that incumbent local exchange carriers not charge the PTS provider for DA services. GTE states that this subsection will require the ILEC to provide DA services, but not charge the PTS provider. This expense will be absorbed by the general body of ratepayers.

The commission is persuaded by this comment. To allow the PTS provider to charge the end user of the pay telephone for directory assistance, but not allow the ILEC to charge for the service, will force the ratepayers of the ILEC to absorb the cost. The appropriate changes have been made to the rule.

TPA, SWBT, and TEXALTEL submitted comments concerning subsection (l), relating to the rate structure for PTS. TPA recommends that the commission delete the requirement that the rate structure contain a usage-sensitive rate element. TEXALTEL recommends that the commission retain the DCTU distinction in this subsection. TEXALTEL reminds the commission that it has limited regulatory authority over CTUs. SWBT states that the CTU should determine the rate design elements of a service.

The commission agrees that the rate design for this service could be on either a flat rate and/or usage-sensitive basis. How-

ever, the commission disagrees with TEXALTEL concerning its jurisdiction over CTUs. PUC Substantive Rule §23.61(j)(3) currently requires non-dominant telecommunications carriers, including those holding a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA), to register with the commission. As part of that registration process, the carrier must provide a tariff, schedule, or list showing all recurring and nonrecurring rate(s) for each service provided. It is not the intent of the commission to require that a CTU offer a service; however, if the CTU offers the service then a tariff should be filed with the commission.

TEXALTEL provided comments concerning the tracking reports requirement. TEXALTEL states that it is unclear who is required to file these reports. Currently the commission requires the CTU providing PTS access lines to file this report to the commission. This report provides the commission with a source of information that is not available from another source. The commission declines to make changes in response to these comments.

Consumers Union submitted comments reminding the commission that consumers will require more information concerning the rates for calls from pay telephones and instructions concerning how to reach the carrier of choice. OPC's comments agree with the comments of Consumers Union. Consumers Union also recommended that the commission establish procedures to monitor the price-competitiveness of the payphone market and the funding of public interest pay telephones.

The commission agrees with the comments of Consumers Union and OPC. The public interest pay telephones and price competitiveness will be addressed in separate rulemakings.

Effective September 1, 1997, the Public Utility Regulatory Act of 1995 was codified into the Texas Utilities Code. The citation in subsection (k) to Subtitle I of the Public Utility Regulatory Act of 1995 has been amended to reflect the correct cite in the Texas Utilities Code.

These amendments are adopted under the Public Utility Regulatory Act, 75th Legislature, Regular Session, chapter 166, §1, 1997 Texas Session Law Service 732 (Vernon) (to be codified at TEXAS UTILITIES CODE ANNOTATED §14.002) (PURA), which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Index to Statutes: Public Utility Regulatory Act §14.002.

§23.54. *Pay Telephone Service.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

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

(5) Certificated telecommunications utility (CTU) — As defined in §23.3 of this title (relating to Definitions).

(6) Completed call — a call that is answered by the called party.

(7) Incumbent local exchange company — As defined in §23.3 of this title.

(8) Local call — A call within the CTU's toll-free calling area including calls which are made toll-free through a mandatory extended area service (EAS) or expanded local calling (ELC) proceeding.

(9) Operator service — Any service using live operator or automated operator functions for the handling of telephone service, such as local collect, toll calling via collect, third number billing, credit card, and calling card services. The transmission of "1-800" and "1-888" numbers, where the called party has arranged to be billed, is not operator service.

(10) Operator service provider (OSP) — Any person or entity that provides operator services by using either live or automated operator functions. When more than one entity is involved in processing an operator service call, the party setting the rates shall be considered to be the OSP.

(11) Originating line screening (OLS) — A two digit code passed by the local switching system with the ANI at the beginning of a call that provides information about the originating line.

(12) Pay telephone access service (PTAS) — A service offered by a certificated telecommunications utility which provides a two-way, or optionally, a one-way originating-only business access line composed of the serving central office line equipment, all outside plant facilities needed to connect the serving central office with the customer premises, and the network interface; this service is sold to PTS providers.

(13) Pay telephone service (PTS) — A telecommunications service utilizing any coin, coinless, credit card reader, or cordless instrument that can be used by members of the general public, or business patrons, employees, and/or visitors of the premise's owner, provided that the end user pays for local or toll calls from such instrument on a per call basis. Pay per call telephone service provided to inmates of confinement facilities is PTS. For purposes of this section, coinless telephones provided in guest rooms by a hotel/motel are not pay telephones. A telephone that is primarily used by business patrons, employees, and/or visitors of the premise's owner is not a pay telephone if all local calls and "1-800" and "1-888" type calls from such telephone are free to the end user.

(14) Provider of pay telephone service — The entity that purchases PTAS from a CTU and registers with the Public Utility Commission as a provider of PTS to end users.

(15) Rate information — All charges ultimately charged by the PTS provider, including any surcharges, fees, and any other form of compensation charged by the PTS provider on behalf of the call aggregator.

(b) Registration.

(1) All PTS providers must register with the commission, using commission-prescribed forms, in order to do business in the state of Texas. Registration requires disclosure of the physical location of each of the registrant's pay telephones; the registrant must update this information for any phone with a change in status. Information related to the physical location of pay telephones shall be confidential unless the Attorney General issues a letter opinion, or a court of competent jurisdiction rules otherwise. Updated filings shall be made with the commission within 45 days after the periods ending December 31 and June 30 of each calendar year. The commission shall provide each registrant with proof of registration within 30 days of filing.

(2) Certificated telecommunications utilities shall not provide PTAS to a person required to be registered under this subsection, unless that person provides a commission-supplied proof of registration.

(c) Available upon request. Upon formal request for service by any prospective provider of PTS, a CTU is required to file a tariff

providing for interconnection of customer-owned pay telephones, except as otherwise provided in subsection (n) of this section.

(d) PTS requirements.

(1) Requirements before call is completed. If the PTS provider uses automated call completion technology to complete operator service calls, the provider of PTS must:

(A) audibly and distinctly identify itself to the caller upon answering;

(B) audibly and distinctly identify itself to the billed party, if the billed party is different from the caller;

(C) provide a mechanism for the caller to obtain rate information, without charge, 24 hours a day, seven days a week; and

(D) permit the caller or billed party to terminate the call at no charge prior to completion of the call by the PTS provider.

(2) E911 or 911 calls, and "0-" calls. The PTS provider must allow E911 or 911 calls to be outpulsed directly to the Public Service Answering Point at no charge and without requiring a coin or credit card. This requirement does not apply to pay telephones accessible to inmates of confinement facilities.

(3) Access.

(A) The PTS provider must:

(i) provide access to operator services, 24 hours a day, seven days a week, at no charge and without requiring a coin or credit card;

(ii) provide access to directory assistance, 24 hours a day, seven days a week;

(iii) provide access that includes the local exchange calling scope of the CTU furnishing the PTAS including mandatory EAS and ELC, except that ELC rate additives are not applicable to PTS access lines; and

(iv) provide access to the operator of a local exchange company that meets the requirements enumerated in §23.55(k)(3) and that serves the area from which the call is made, at no charge and without requiring a coin or credit card, either:

(I) by directly routing all local operator calls to such local exchange company operator, without charge to the caller; or

(II) by transfer or redirection of the call by an OSP in accordance with the provisions of §23.55(i)(1)(A)(ii)(I)-(III).

(B) The PTS provider must also allow access to other telecommunications utilities unless otherwise provided in clause (iii) of this subparagraph.

(i) Access to interexchange carriers by "950-XXXX" and "1-800" or "1-888" numbers must not be blocked.

(ii) Access to interexchange carriers by "10XXX+0" (whether "10XXX+0+" or "10XXX+0-") dialing must not be blocked if the end office serving the originating line has OLS capability.

(iii) To prevent fraudulent use of the pay telephone, the access requirement is explicitly waived under the following conditions without prior application to the commission:

(I) Access to interexchange carriers by "10XXX+0" (whether "10XXX+0+" or "10XXX+0-") dialing may



be blocked, if the end office serving the originating line does not have OLS screening capability.

(II) Access to interexchange carriers by "10XXX+1" dialing may be blocked.

(C) The requirements of this paragraph do not apply to pay telephones accessible to inmates of confinement facilities.

(4) Other.

(A) The PTS provider must:

(i) ensure that end users can place all local and toll calls, except direct-dialed international calls, from the pay telephone, including, but not limited to, operator-assisted international calls, collect calls, third number billed calls, and calling card calls;

(ii) be responsible for the payment of charges for all local and toll messages, including, but not limited to, non-local directory assistance charges, except as provided in subsection (h) of this section;

(iii) comply with all applicable federal, state and local laws and regulations including those concerning the use of pay telephones by disabled and/or hearing- or speech-impaired persons;

(iv) not attach extension telephones to pay telephones, unless the pay telephone displays a notice that legibly and conspicuously states in capital letters, "YOUR CONVERSATION MAY BE OVERHEARD BECAUSE AN EXTENSION TELEPHONE IS ATTACHED TO THIS PHONE LINE.";

(v) not impose a time limit on local calls;

(vi) ensure operator-assisted intrastate long distance usage sensitive rates are billed in increments of one minute or less, provided that the total per minute fee does not exceed the rate authorized in subsection (f);

(vii) return to the end-user any pre-paid fee for a direct dialed intrastate long distance and/or local call that does not result in a completed call;

(viii) not charge the caller for any uncompleted call in accordance with the provisions of §23.55(f)(1)-(4) of this title;

(ix) not charge a fee for a local call greater than that posted on the informational placard attached to each pay phone;

(x) provide access to ILEC operators by dialing either "0" or "00" access codes; and

(xi) the requirements of subparagraph (A)(i) and (v) of this paragraph do not apply to pay telephones accessible to inmates of confinement facilities.

(B) If the PTS provider uses automated call completion technology to complete operator service calls, and if validation information is available for calls that the PTS provider (or a third-party billing and collection agent operating on behalf of the PTS provider) will bill through a certificated telecommunications utility, the PTS provider is required to validate the call and is allowed to submit the call for billing only if the call was validated.

(C) PTS may be connected to, from, or through a customer-provided telecommunications switching system, or local exchange carrier-provided central office switching system, provided that the PTS provider meets all requirements of this rule. The PTS provider must ensure that access to E- 911, 911 and/or 0- is not blocked and must comply with all legislative and rule requirements regarding the operation of E-911 and 911. This access configuration

is not allowed if it prevents usage measurement, by the local exchange carrier, of a local exchange carrier-provided PTAS line. For purposes of this paragraph, local exchange carrier is defined as any entity holding either a Certificate of Convenience and Necessity, Certificate of Operating Authority, or Service Provider Certificate of Operating Authority.

(e) Posting requirements for pay telephones.

(1) The PTS provider must attach to each instrument a card that provides:

(A) instructions in English and Spanish for accessing emergency service subject to the conditions contained in clauses (i) and (ii) of this subparagraph:

(i) where E-911 or 911 emergency service is available, the caller must be instructed to dial 911 and the PTS provider must allow E-911 or 911 calls to be outpulsed directly to the Public Service Answering Point at no charge and without requiring a coin or credit card; or

(ii) where E-911 or 911 is not available, the caller must be instructed to dial "0" and dialing "0" must, at no charge and without requiring a coin or credit card, directly connect the caller with an OSP that is in compliance with the technical standards set forth in §23.55(g)(2)(A)-(F);

(B) instructions for use, including specifically instructions for completion of local and toll calls, access to operator services, access to directory assistance, obtaining refunds, obtaining repair service, registering complaints at a designated toll-free telephone number, reporting out-of- service conditions, and using one-way calling (if the instrument is so equipped); and

(C) notice stating the name, address, and 10 digit telephone number for the pay telephone owner or agent providing the set, and providing the name and toll-free telephone number of the owner or agent responsible for refunds and repairs; and

(D) if an extension has been attached, a notice that legibly and conspicuously states in capital letters: "YOUR CONVERSATION MAY BE OVERHEARD BECAUSE AN EXTENSION TELEPHONE IS ATTACHED TO THIS PHONE LINE."; and

(E) a placard that clearly states the fee for completing a local call from that telephone.

(2) PTS providers must also attach to each instrument a card that says : "The long distance carrier serving this phone is {insert name of the pre-subscribed OSP}. You can learn what its rates are by calling {insert OSP's toll-free rate information phone number} at any hour at no cost to you. If you would rather use another long distance carrier, you can either use {insert name of incumbent local exchange provider}'s operator by calling {insert dialing directions here}, or use your own long distance carrier by following its dialing instructions or asking the operator for assistance."

(3) If the PTS provider subscribes to the services of an OSP that is required to comply with §23.55, the PTS provider remains liable for compliance with this paragraph, but may coordinate with the OSP so that information to be provided at the pay telephone set is not duplicated. If the PTS provider uses automated call completion technology to complete some operator service calls and subscribes to the services of an OSP that is required to comply with §23.55, the PTS provider must ensure that the information provided at the pay telephone set clearly informs the caller about which information applies to which operator service calls.

(4) If a pay telephone cannot receive incoming calls, the PTS provider shall place in a conspicuous location on the pay telephone a notice, in letters one-quarter inch high, stating, "THIS TELEPHONE CANNOT RECEIVE TELEPHONE CALLS." Furthermore, the PTS provider shall not display the number of the pay telephone on any such telephone that does not receive incoming calls.

(5) The requirements of this subsection do not apply to pay telephones accessible to inmates of confinement facilities.

(f) Charges.

(1) A PTS provider must:

(A) not impose on pay phone end users any charge for calls made under Chapter 771 or 772 of the Texas Health and Safety Code;

(B) not impose a charge for "950-XXXX" calls, "10XXX+0", or "1-800" or "1-888"-type calls to nonpresubscribed interexchange carriers (for example "1-800-COLLECT" , "1-800-CALLATT", or "1-800-877-8000");

(C) not impose a charge for local calls from pay telephones to the Telecommunications Relay Service (TRS);

(D) for local calls which are collect, operator-assisted or paid by credit card or calling card, not impose a charge which exceeds the highest applicable rate for such calls of any of the four largest interexchange carriers operating in this state; and

(E) for credit card, calling card, or live or automated operator-handled toll calls, not charge a rate or total charge that exceeds the authorized rates and charges listed in subparagraph (F) of this paragraph.

(F) Rate Caps For Intrastate Long Distance And Operator- Assisted Calls At Texas Pay Phones:  
Figure: 16 TAC §23.54(f)(1)(F)

(2) The requirements of paragraph (1)(A) through (C) of this subsection do not apply to pay telephones accessible to inmates of confinement facilities.

(g) Applications for modification of information to be provided at the pay telephone set and for waivers of the requirement for access.

(1) The commission may approve applications for modification of the requirements contained in subsection (e)(2) and (3) of this section upon showing of good cause by the PTS provider. The commission shall process applications for modification using the criteria and procedures set forth in §23.55(d)(4).

(2) The commission may approve waivers to the access requirements of subsection (d)(3)(B) of this section to prevent fraudulent use of telephone services or for other good cause. Applications for waiver may be filed by the provider of pay telephone service. The commission shall process such applications for waiver using the criteria and procedures set forth in §23.55(i)(3)(B).

(h) Fraud protection.

(1) Notwithstanding the provision of §23.55(i)(1)(C)(ii) that would otherwise require notice to interexchange carriers, an OSP must not bill the PTS provider for charges for any call billed to a pay telephone line where the call originated at that pay telephone by use of "10XXX+0", "10XXX+01", "950-XXXX", or "1-800" or "1-888" access codes, or where the call(s) originated at that pay telephone and otherwise reached an operator position, if the originating telephone

line was subscribed to outgoing call screening and the call was placed after the effective due date of the outgoing call screening service order.

(2) An OSP or PTS provider that uses automated call completion technology to complete operator service calls must not bill charges for any collect or third number billed call to a PTS provider if the pay telephone line to which the call was billed was subscribed to incoming call screening and the call was placed after the effective due date of the incoming call screening service order.

(3) Any calls billed through a certificated telecommunications utility in violation of paragraphs (1) and (2) of this subsection must be removed from the PTS providers bill by the certificated telecommunications utility upon identification and verification that the violation occurred. If it is determined that, at the time of the violation, the appropriate incoming or outgoing call screening was available to the OSP or PTS provider that uses automated call completion technology to complete operator service calls at the time of the call, the certificated telecommunications utility may return the charges for said call to the OSP or PTS provider as unbillable.

(4) Any calls billed directly by an OSP or PTS provider that uses automated call completion technology to complete operator service calls in violation of paragraph

(1) or (2) of this subsection must be removed from the PTS provider's bill by the OSP or PTS provider upon identification. The OSP or PTS provider using automated call completion technology to complete operator service calls may request an investigation of such a call by the certificated telecommunications utility serving the pay telephone to which the call was billed. If the CTU determines that the appropriate incoming or outgoing call screening was not available to the OSP or PTS provider using automated call completion technology to complete operator service calls at the time of the call, the OSP or PTS provider may bill the charges for said call to the relevant certificated telecommunications utility.

(i) Responsibilities of CTUs Holding a CCN.

(1) A listing in the local telephone directory, for each pay telephone, must be provided to any provider of pay telephone service on request.

(2) PTAS must be available in all exchanges.

(3) Incoming and outgoing call screening on pay phone calls must be provided where facilities are available.

(4) Regardless of whether call screening is available, the CTU will not bill any call, including, but not limited to, third number billed, collect, "0+" or "0-" calls, to a number which has been clearly identified to the certificated telecommunications utility operator at the time of the call attempt as a pay telephone. The certificated telecommunications utility will not be responsible for refunds or adjustments of charges for calls placed through non-certificated telecommunications utilities carrier operators, except as provided in subsection (h) of this section.

(5) The certificated telecommunications utility shall not initiate a maintenance service call or take any other action in response to a trouble report on a customer-owned pay telephone until such time as requested by the pay telephone owner or its agent. The pay telephone owner must keep the certificated telecommunications utility advised of the identity of the pay telephone owner or agent authorized to request a maintenance service call.

(6) The CTU must provide to a PTS provider using automated call completion technology to complete operator service

calls the same services and information that the CTU provides to interexchange carriers in §23.55(j)(1) and (2), on the same prices, terms, and conditions that any interexchange carrier receives from the CTU.

(7) CTUs must file tariffs to offer direct dialed international call blocking ("011+" and "10XXX+011+") as facilities become available.

(j) Enforcement of tariff requirements. If a PTS provider is in violation of a tariff provision, the CTU must notify the PTS provider of the violation in writing. Such notice must refer to the specific tariff provisions being violated. The notice must state that the PTS provider is subject to disconnection by the CTU of the instrument(s) in violation of the tariff unless the PTS provider corrects the violation and notifies the CTU in writing, within 20 days of receipt of the notice of the violation, that the violation has been corrected. The CTU may disconnect the instrument(s) that are in violation of the tariff on or after the 20th day after receipt of the notice by the PTS provider, if the PTS provider did not notify the CTU in writing within 20 days of receipt of the notice that the violation was corrected. However, if the PTS provider has filed a complaint with the commission regarding the disconnection and has provided the CTU with a copy of the complaint that indicates that the complaint has been filed with the commission within 20 days of receipt of the notice of a violation from the CTU, the CTU may not disconnect the instrument(s) pending resolution of the complaint by the commission.

(k) Violation of regulations. The commission may order disconnection of service for up to one year for repeat violations of commission rules. A PTS provider who violates commission rules is also subject to administrative penalties, civil penalties, and injunctive relief under Chapter 15, Subchapter B of the Public Utility Regulatory Act.

(l) Rate structure. CTU rates for wholesale service must be designed on a flat access line and/or a local message usage rate basis. Multi-element measured rates are prohibited. In areas without measuring capabilities, the CTU may use a flat rate usage surrogate instead of a per call message rate. Measurement capabilities are defined as the capability in place to measure and bill pay telephone usage without incurring unreasonable expense.

(m) Tracking Reports. A CTU shall report the number of PTS access lines in service by filing a tracking report with the commission on December 31 and June 30 of each year, with the first report due on December 31, 1997. This report must be filed in the Central Records Office of the commission, and a copy of the report must be delivered to the commission's directors of Industry Analysis and Office of Customer Protection.

(n) Special assembly tariffs. A CTU with less than 50 pay telephone lines may provide PTAS pursuant to existing special assembly tariffs; however, in no event may a CTU provide to more than 10 special assembly arrangements. Special assembly rates must be computed in accordance with this section. CTUs that provide PTAS pursuant to special assembly tariffs must enter into a written agreement with the PTS provider that requires the provider to perform all functions and obligations specified in subsection (d) of this section. When a CTU that holds a certificate of convenience and necessity (CCN) makes its initial filing to offer PTAS, the application must include the proposed tariff, cost studies or a commission approved rate for similar services offered by a larger CTU holding a CCN.

(o) Compliance. All CTUs must file revised tariffs in compliance with this section within 45 days of the effective date of this section, or of any amendments thereto.

(p) Severability. If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application. It is the intent of the commission that the provisions of this section are severable.

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 October 24, 1997.

TRD-9714125

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Effective date: November 13, 1997

Proposal publication date: August 19, 1997

For further information, please call: (512) 936-7308

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 217. Milk and Dairy

##### 25 TAC §217.81

The Texas Department of Health (department) adopts an amendment to §217.81, concerning milk and milk product fees, without changes to the proposed text as published in the August 8, 1997, issue of the *Texas Register* (22 TexReg 7332), and therefore the section will not be republished.

The section provides for imposition of fees assessed milk and dairy products. House Bill 1875, 75th Legislature, 1997, amended Health and Safety Code, Chapter 435, §435.009(b)(5), effective September 1, 1997, to increase the inspection fee from \$.01 to \$.02 per hundredweight for milk and milk products offered for sale in the State of Texas, whether produced in Texas or imported into Texas. This revenue will be used by the department to fund increased costs of laboratory services for the milk and milk products regulatory program, and will contribute to a higher quality and safer supply of milk and milk products for consumers.

No comments were received on the proposal of these rules during the comment period.

The amendment is adopted under Health and Safety Code, §435.009(c), which provides the Texas Board of Health (board) with the authority to adopt rules to assess and collect fees; and under the 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.

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 October 27, 1997.

TRD-9714214

Susan K. Steeg

General Counsel

Texas Department of Health  
Effective date: November 17, 1997  
Proposal publication date: August 8, 1997  
For further information, please call: (512) 458-7236

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**TITLE 28. INSURANCE**

**Part I. Texas Department of Insurance**

**Chapter 19. Agent's Licensing**

**Subchapter C. Written Examination for Applicants for License to Write Insurance Upon any One Life in Excess of \$10,000 Under the Insurance Code Article 21.07, §4A**

**28 TAC §19.201**

The Commissioner of Insurance adopts an amendment to §19.201, which sets out the purpose of Subchapter C concerning establishing parameters for the written examination for licensure of individuals who desire to write life insurance upon any one life in excess of \$10,000 under the provisions of the Insurance Code, Article 21.07, §4A. The amendment is adopted without changes to the proposed text as published in the August 15, 1997 issue of the *Texas Register* (22 TexReg 7543) and will not be republished.

The amendment to §19.201 is necessary to implement changes made to the provisions of the Insurance Code, Article 21.07 during the 75th Legislative session, relating to increasing the amount of life insurance written on any one life from \$7,500 to \$10,000.

The title of the subchapter has been changed to more accurately reflect the content of the subchapter. The amendment to §19.201 changes the application of the subchapter to individuals who desire to write life insurance upon any one life in excess of \$10,000 under the provisions of the Insurance Code, Article 21.07, §4A.

A commenter supports the proposed amendment to §19.201 increasing the amount of life insurance written on any one life from \$7,500 to \$10,000. AGENCY RESPONSE: The agency agrees.

FOR: Texas Association of Insurance Officials AGAINST: None

The amendment is adopted under the Insurance Code, Articles 21.07 and 1.03A. The Insurance Code, Article 21.07, §4A requires written examination of applicants who desire to write life insurance in excess of \$10,000 upon any one life, and authorizes the department to establish reasonable rules with regard to the written examination. The Insurance Code, Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute. The Government Code, Chapter 2001, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

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 October 27, 1997.

TRD-9714211  
Caroline Scott  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Effective date: November 17, 1997  
Proposal publication date: August 15, 1997  
For further information, please call: (512) 463-6327

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**Subchapter T. Interim Study of Agents' License Statutes**

**28 TAC §19.1901**

The Commissioner of Insurance adopts new Subchapter T concerning the interim study of agents and agents' licenses statutes. New §19.1901 is adopted without changes to the proposed text as published in the August 15, 1997 issue of the *Texas Register* (22 TexReg 7544), and will not be republished.

New Subchapter T is necessary to implement Insurance Code, Article 21.15-7, enacted by the 75th Legislature in 1997. The new subchapter sets out the requirements of the Advisory Committee for the Interim Study of Agents and Agents' Licenses Statutes. New §19.1901 is required by Texas Civil Statutes, Article 6252-33, which governs state agency advisory committees and which requires a state agency that is advised by an advisory committee to specify by rule the advisory committee's purpose and task, its reporting requirements, and its duration. Article 6252-33 also outlines the required composition of members on an advisory committee.

New §19.1901 sets out the purpose of the advisory committee, defines its tasks and the manner in which it will report to the department, specifies its membership, and sets its duration. The purpose of the advisory committee is to assist the commissioner in performing the review and evaluation of agents and agents' licenses statutes so that the commissioner may make a report to the legislature on any changes needed to address new insurance marketing methods and new technologies, to reduce the number and types of agents' licenses, to determine which statutory provisions should apply to all agents' licenses, and to address other problems which may exist with agents' licensing requirements. The tasks of the advisory committee are outlined as well as the reporting requirements. The advisory committee is composed of twelve members and a balance between the industries and occupations regulated and consumers. The commissioner or his representative is an ex-officio member of the committee. The advisory committee will terminate on December 31, 1998 unless the commissioner extends the duration prior to that date.

Comment: Some commenters believe membership on the advisory committee should include a Certified Financial Planner ("CFP") licensee with experience in risk management to complete the cross-section of industry and professional interests. The commenters feel financial planners have a vested interest in any public policy recommendations made to the Commissioner due to the fact that 64.7% of CFP licensees hold insurance licenses and are restricted in their dual capacity by current Texas

law. Due to the experience, examination, ethical and continuing educational requirements requisite of CFP licensees, the commenters believe the public would be better served with a representative of the financial planning profession on the advisory committee. Some commenters urge that stipulated premium companies and Group II agents have vital interests in the advisory committee and its studies and are entitled to have representation on the committee. A commenter refers to the rapidly expanding area of insurance of small life policies used to cover funeral expenses or to pay the insured's debts. The commenter also notes that Article 21.15-7 refers to the "types" of agents in the plural, suggesting that more than one person of the same type of advisory member may be appointed. Another commenter feels the interests of agents licensed under other articles are not the same as those of agents whose sole license is a Group II license, and is concerned that the Group II agent category would not be adequately represented by the agent slot in the proposed rule. Response: The agency disagrees that the rule should specify a specific member to be a Certified Financial Planner licensee, Group II agent, or representative of a stipulated premium company. The purpose of this rule is to comply with Article 6252-33, Texas Civil Statutes, which requires a state agency that is advised by an advisory committee to adopt rules stating the committee's purpose and tasks, the manner in which the committee will report to the agency, and the duration of the committee. The composition of the committee is also prescribed by Article 6252-33 requiring a balance between the industries or occupations regulated and consumers of services. The agency believes that the membership outlined in §19.1901(e) complies with the requirements of Article 6252-33. Due to the large number of different license types and the desire to keep the number of members on the committee at a workable level, the agency anticipates the committee will create working groups to assist in completing its tasks, and some of these working groups may include representation as suggested by the commenters. These working groups will allow the committee to benefit from the experience and perspective of a number of different persons or groups. Comment: Several commenters are concerned with the composition and size of the proposed advisory committee. The commenters believe a 12 member committee with 6 consumer members entails too much risk of dilution of the value of votes of non-consumer members. The non-consumer membership is seen as too widely dispersed and internally conflicted to achieve cohesion comparable to consumer members, particularly since only 5 of the non-consumer members are from the insurance industry and one is a banker. The commenters recommend an increase in the number of non-consumer members, including a representative from the life-health industry of Texas domestic small life, stipulated premium, mutual, burial, and fraternal companies, and a representative from Texas domestic county mutual-farm sector on the property-casualty side. The commenters further stated concerns over the committee's ability to address new marketing methods and technologies such as the Internet and electronic commerce. Response: The agency disagrees that the rule should increase the number of non-consumer members to include a representative from the life-health industry of Texas domestic small life, stipulated premium, mutual, burial, and fraternal companies, and a representative from Texas domestic county mutual-farm sector on the property-casualty side. The composition of the committee is prescribed by Article 6252-33 which requires a balance between the industries or occupations regulated and consumers of services. In addition, Article 1.35C of the Texas Insurance Code requires at least one-half of the

membership of an advisory body represent the general public. The agency believes that the size and composition of membership outlined in §19.1901(e) complies with the requirements of Article 6252-33, Texas Civil Statutes, and Articles 1.35C and 21.15-7, Texas Insurance Code. Due to the large number of different license types and the desire to keep the number of members on the committee at a workable level, the agency anticipates the committee will create working groups to assist in completing its tasks, and some of these working groups may include representation as suggested by the commenters. These working groups will allow the committee to benefit from the experience and perspective of a number of different persons or groups. The agency appreciates the commenters' concerns regarding new marketing methods and technologies, but believes the tasks outlined in the section are required by Article 21.15-7, Insurance Code.

FOR WITH CHANGES: The Institute of Certified Financial Planners, Houston Society of the Institute of Certified Financial Planners, Texas Association of Insurance Officials, Texas Automobile Dealers Association, Texas Directors Life Insurance Company and Funeral Directors Life Insurance Company, and Southeast Surplus Underwriters General Agency.

The new section is adopted pursuant to Texas Civil Statutes, Article 6252-33 and Insurance Code, Articles 21.15-7 and 1.03A. Texas Civil Statutes, Article 6252-33, §5 requires a state agency that is advised by an advisory committee to adopt rules that state the purpose of the committee, and describe the committee's task and the manner in which the committee will report to the agency. Section 8 of Article 6252-33 requires a state agency that is advised by an advisory committee to establish by rule a date on which the committee will automatically be abolished. Insurance Code, Article 21.15-7 directs the commissioner to appoint an advisory committee to assist in the evaluation and review of agents and agents' licenses statutes. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and to prescribe the procedures for adoption of rules by a state agency.

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 October 27, 1997.

TRD-9714212

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 17, 1997

Proposal publication date: August 15, 1997

For further information, please call: (512) 463-6327

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part III. Texas Youth Commission

## Chapter 85. Admission and Placement

### Subchapter B. Placement Planning

#### 37 TAC §85.23

The Texas Youth Commission (TYC) adopts an amendment to §85.23, concerning classification, without changes to the proposed text as published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9444).

The justification for amending the section is greater protection for the public.

The amendment will add arson to the list of offenses that will allow classification of a youth sentenced to commitment in TYC for that offense. The definitions of classifying offenses for Type A and Type B offenders is broadened. This revision complies with laws passed by the 75th Legislature.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.071, which provides the Texas Youth Commission with the

authority to examine and make a study of each child committed to it as soon as possible after commitment.

The adopted rule implements the Human Resource Code, §61.034.

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 October 20, 1997.

TRD-9713966

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: November 10, 1997

Proposal publication date: September 19, 1997

For further information, please call: (512) 424-6244



# TABLES & GRAPHICS

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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.

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Public Utility Commission of Texas

Figure: 16 TAC §23.54(f)(1)(F).

Mileage	1st Min.	Add'l Min.
0 - 10	.2975	.2625
11 - 22	.3150	.2975
23 - 55	.3325	.3150
56 - 124	.3675	.3500
125 - 292	.4025	.3850
293 - Over	.4200	.4025

Operator Service Charges:

Customer-Dialed Calling Card Station	\$2.50
Operator-Dialed Station	\$3.75
Person To Person	\$4.50
Long Distance Access Fee	\$1.00



## PROPER PRE-CONSTRUCTION TERMITE TREATMENTS

### A Guide for Builders and Commercial Customers

Texas Structural Pest Control Board  
1106 Clayton Lane #100LW  
Austin, Texas 78723  
Telephone No. (512) 451-7200

#### I. Definitions

The Texas Structural Pest Control Board licenses pest control operators and regulates the application of pesticides for the prevention or control of subterranean termites. Because of the importance of treatments made to buildings under construction (commonly called pre-treats), this publication has been prepared for businesses which hire pest control operators for these preventative termite treatments.

A pre-construction treatment may be a full treatment or a partial treatment, defined in the following manner:

##### A. FULL TREATMENT

Effective preconstruction treatment for subterranean termite prevention requires the establishment of complete vertical and/or horizontal chemical barriers between wood in the structure and the termite colonies in the soil.

**For Horizontal Barriers,** applications shall be made using a low pressure spray after grading is completed and prior to the pouring of the slab or footing to provide thorough and continuous coverage of the area being treated.

**For Vertical Barriers,** establish vertical barriers in areas such as around the base of foundations, plumbing lines,

backfilled soil against foundation walls and other areas which may warrant more than just a horizontal barrier.

##### B. PARTIAL TREATMENT

A partial treatment is anything less than a full treatment as described above. A partial treatment only protects the areas treated from wood destroying insects. The areas treated must be treated using at least the minimum labeled rate.

#### II. APPLICATION RATES

Pesticides used to treat for termites (termiticides) are purchased in concentrate form and diluted for application. To evaluate the treatment process, it is necessary to know:

- 1) the proper dilution ratio and
- 2) the correct volume of that solution to apply in or around various structural elements.

Dilution ratios are specified on each termiticide label, and they must be followed. If more than one allowable rate for soil application is given, the pest control operator must use at least the minimum rate shown and may not exceed the maximum rate.

Most termiticides require 1-2 gallons of concentrate to make up 100

gallons of solution. However, there are some exceptions; it is important to review the label to know the correct rate.

The volume of diluted solution used to treat various structural elements is the same on all termiticide labels:

1) Fill material to be covered by a slab is treated at a rate of 1 gallon per 10 square feet (soil fill). For coarse fill, use 1.5 gallons per 10 square feet or as specified on the product label.

2) Soil backfill areas next to walls, piers, pipes and under "critical areas" like slab expansion joints are treated with 4 gallons per 10 linear feet per foot of depth. (This includes fill areas inside chimneys and earth-filled porches).

3) Hollow masonry units receive 2 gallons per 10 linear feet. Though a concrete block wall may have multiple chambers (2 or 3 hole blocks), it is counted as one hollow void when calculating the amount of termiticide needed for treatment.

Review specific label requirements for proper mixture rates and application procedures.

#### III. CONTACTING THE STRUCTURAL PEST CONTROL BOARD

The Texas Structural Pest Control Board does not regulate pricing of treatments. However, we are interested in situations where the price is only a fraction of the cost of materials needed to do the job correctly. Remember, comparing the bid price to the size of the structure and the cost of termiticide does not include costs such as insurance, travel, labor and other costs associated with overhead. **FURTHER, A CONTRACTOR MAY HAVE CIVIL OR CRIMINAL LIABILITY IF THEY CONSPIRE TO VIOLATE STRUCTURAL PEST CONTROL BOARD REGULATIONS.**

Termiticide labels have specific directions about the product's use. Pest Control Companies must follow these directions and Structural Pest Control Board regulations including 599.3 (a) and (b):

(a) All pesticide applications must be made by using the application rate and methods and by following the precautionary statements on the labeling of the pesticide being used. Treatments using less than label recommended concentrations at higher volume applications are prohibited for preconstruction treatments,

(b) for a full treatment the entire structure shall be treated to provide a continuous horizontal and vertical barrier as described on the pesticide label including the posting of a treatment sticker and the final treatment to be performed within 30 days of notification of completion of landscaping or one year from the date of completion of construction, whichever comes first. Except, when construction has proceeded

to the point that all areas cannot be treated before the company providing the treatment is called to perform the job, a partial treatment will be permitted if the owner of the structure or the person in charge of the construction and the certified applicator for the pest control company sign a statement attesting to the conditions, and attach it to the contract with an amended graph showing the exact areas treated and send copies to the owner and to the Structural Pest Control Board.

Termiticides must be used at the prescribed rate, to protect the structure from termites and to comply with state regulations.

The Structural Pest Control Board will inspect specific treatments in response to consumer complaints or information that indicates a possible improper treatment. **THE PEST CONTROL COMPANY IS REQUIRED TO INFORM THE STRUCTURAL PEST CONTROL BOARD 4-24 HOURS PRIOR TO PERFORMING THE TREATMENT.** The Board will also inspect treatments during compliance inspections of pest control company operations and will randomly make inspections of job sites where treatments are in progress. Such on-site inspections typically involve collecting samples of the tank mix and soil samples of treatment sites following application.

Questions about termite treatment procedures should be directed to the Structural Pest Control Board office.

#### IV. TREATMENT

#### REQUIREMENTS

This information, furnished to the Structural Pest Control Board, will allow us to inspect treatments in progress to ensure that proper procedures are being used. Keep in mind that an inspection by the Structural Pest Control Board is not required for the treatment or construction to proceed. Inspections at pretreatment sites will be made on a case-by-case basis.

It is the philosophy of this agency to combine firm but fair enforcement actions with an educational approach to obtain regulatory compliance.

#### TREATMENT IS:

- A. FULL
- B. PARTIAL

I have received a copy of the Guide for Builders and Commercial Customers.

\_\_\_\_\_  
Signature of  
Customer or Contractor

\_\_\_\_\_  
Date  
spcb/d-1

Figure 1: §19.401(b)

### Statement of Resident Rights

You, the resident, do not give up any rights when you enter a nursing facility. The facility must encourage and assist you to fully exercise your rights. Any violation of these rights is against the law. It is against the law for any nursing facility employee to threaten, coerce, intimidate or retaliate against you for exercising your rights.

If anyone hurts you, threatens to hurt you, neglects your care, takes your property, or violates your dignity, you have the right to file a complaint with the facility administrator or with the Texas Department of Human Services by calling 1-800-458-9858.

You have a right:

- (1) to all care necessary for you to have the highest possible level of health;
- (2) to safe, decent and clean conditions;
- (3) to be free from abuse and exploitation;
- (4) to be treated with courtesy, consideration, and respect;
- (5) to be free from discrimination based on age, race, religion, sex, nationality, or disability and to practice your own religious beliefs;
- (6) to privacy, including privacy during visits and telephone calls;
- (7) to complain about the facility and to organize or participate in any program that presents residents' concerns to the administrator of the facility;
- (8) to have facility information about you maintained as confidential;
- (9) to retain the services of a physician of your choice, at your own expense or through a health care plan, and to have a physician explain to you, in language you understand, your complete medical condition, the recommended treatment, and the expected results of the treatment;
- (10) to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;
- (11) to a written statement or admission agreement describing the services provided by the facility and the related charges;
- (12) to manage your own finances or to delegate that responsibility to another person;
- (13) to access money and property you have deposited with the facility and to an accounting of your money and property that are deposited with the facility and of all financial transactions made with or on behalf of you;
- (14) to keep and use personal property, secure from theft or loss;
- (15) to not be relocated within the facility, except in accordance with nursing facility regulations;
- (16) to receive visitors;
- (17) to receive unopened mail and to receive assistance in reading or writing correspondence;
- (18) to participate in activities inside and outside the facility;
- (19) to wear your own clothes;
- (20) to discharge yourself from the facility unless you have been adjudicated mentally incompetent;
- (21) to not be discharged from the facility, except as provided in the nursing facility regulations; and
- (22) to be free from any physical or chemical restraints imposed for the purposes of

discipline or convenience and not required to treat your medical symptoms.

Your rights may be restricted only to the extent necessary to protect you or another person from danger or harm or to protect a right of another resident, particularly those relating to privacy and confidentiality.

Figure 1: 40 TAC 19.2112(f)

NURSING FACILITY REQUIREMENTS	Maximum Amount of Penalties			
	\$1000	\$2500	\$5000	\$10,000
§19.201, Licensure Application		X		
§19.301, Construction			X	
§19.401, Resident Rights	X			
§19.401, Resident Rights with Violation of Quality of Life or Care				X
§19.601, Resident Behavior				X
§19.701, Quality of Life				X
§19.801, Resident Assessment			X	
§19.901, Quality of Care				X
§19.1001, Nursing				X
§19.1101, Dietary				X
§19.1201, Physician			X	
§19.1301, Rehabilitation			X	
§19.1401, Dental Services		X		
§19.1501, Pharmacy Services				X
§19.1601, Infection Control				X
§19.1701, Physical Plant			X	
§19.1901, Administration			X	
§19.2006, Reporting Incidents		X		

Figure 2: 40 TAC 19.2112(h)

**[SCHEDULE A: PENALTIES FOR NURSING FACILITIES]**

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	FIRST OFFENSE (1)	SECOND OFFENSE (2)	THIRD OR SUBSEQUENT OFFENSE (3)
A. Failure to employ administrative personnel and give notice to licensing agency.			
1. The licensed nursing home administrator is not hired within 30 days of vacancy occurrence, as required by §19.1902(c)(8) of this title (relating to Governing Body).	500	1,000	1,500
2. The facility fails to file notification of a change in the nursing home administrator, the director of nurses, or medical director within 30 days of hire, as required by §19.1918(b)(4) of this title (relating to Disclosure of Ownership).	500	1,000	2,000
B. Failure of direct care personnel to meet the needs of the residents.			
1. The facility does not meet licensed staffing ratio, as required by §19.1002(a) of this title (relating to Additional Nursing Services Staffing Requirements).	500	1,000	1,500
2. The facility does not provide licensed charge nurse coverage for required shifts, as required by §19.1001(1)(B) of this title (relating to Nursing Services).	500	1,000	1,500
3. Residents are not being kept clean or well-groomed, as required by §19.901(1) of this title (relating to Quality of Care).	500	1,000	1,500
C. Failure to observe, recognize, record or report to the physician sudden and/or severe changes in resident clinical signs or symptoms and/or conditions, as required by §19.403(k)(1)(A), (B), or (C).	500	1,000	1,500

D.	Failure to obtain emergency medical care as required by §19.1204 of this title (relating to Availability of Physician for Emergency Care).	500	2,000	3,000
E.	Failure to administer drugs or biologicals in accordance with the physician's orders and/or established drug administration procedures.			
	1. Medications are not administered by personnel licensed to administer medications; medication aides; student nurses, student medication aides, or graduate nurses who are directly supervised by a licensed nurse, as required by §19.1501(1) of this title (relating to Pharmacy Services).	500	1,000	1,500
	2. Medications are administered without physician's order, as required by §19.1506(a) of this title (relating to Drug Orders).	500	2,000	3,000
	3. Residents are not free of significant medication errors, as required by §19.901(13) of this title (relating to Quality of Care).	500	1,000	1,500
F.	Failure to provide tube feeding/syringe feedings in accordance with physician's orders and/or established feeding administration procedures, as required by §19.901(7)(B) of this title (relating to Quality of Care).	500	1,000	1,500
G.	Failure to provide proper incontinent care, as required by §19.901(4)(B) of this title (relating to Quality of Care).	500	1,000	1,500
H.	Failure to give proper care to prevent or treat pressure sores, as required by §19.901(3) of this title (relating to Quality of Care).	500	1,000	1,500
I.	Failure to use restraints properly, as required by §19.601(a) of this title (relating to Resident Behavior and Facility Practice).	500	1,000	1,500
J.	Failure to utilize infection control; including, but not limited to, universal precautions in the care of all residents, as required by §19.1601 of this title (relating to Infection Control).	500	1,000	1,500
K.	Failure to organize and execute pharmacy services in accordance with standards or established pharmacy practices.			

1.	The facility does not retain a pharmacist who serves as a consultant to the facility, as required by §19.1501(3) of this title (relating to Pharmacy Services).	500	1,000	1,500
2.	The licensed consultant pharmacist does not review the drug regimen of each resident at least monthly and/or report any irregularities to the attending physician and the director of nursing, as required by §19.1501(4) of this title (relating to Pharmacy Services).	500	1,000	1,500
3.	Medications are not maintained at all times in properly labeled containers and/or stored in locked compartments, as required by §19.1501(5) and (6) of this title (relating to Pharmacy Services).	500	1,000	1,500
4.	Resident's replacement (reordered) medications are not available in the facility prior to administering the last dose from the previous container, as required by §19.1506(c) of this title (relating to Pharmacy Services).	500	1,000	1,500
5.	Drug administration errors or adverse drug reactions are not reported in a timely manner to the resident's physician, as required by §19.1508(b) of this title (relating to Drug Administration).	500	1,000	1,500
L.	Failure to provide dietary services in accordance with standards or established dietary practices.			
1.	The facility does not retain a qualified dietitian or receive regularly scheduled consultation from a professional dietitian, as required by §19.1102 of this title (relating to Staffing).	500	1,000	1,500
2.	The facility fails to provide therapeutic diets, mechanically altered diets, or special meals in accordance with physician's orders, as required by §19.1101 of this title (relating to Dietary Service).	500	1,000	1,500
3.	The facility fails to provide a safe and/or sanitary environment through the practice of storage, preparation, or distribution of foods, as required by §19.1111 of this title (relating to Sanitary Conditions).	500	1,000	1,500



M.	Failure to provide services to meet the psychosocial or activity needs of the residents, as required by §19.702 of this title (relating to Activities) or §19.703 of this title (relating to Social Services General Requirements).	500	1,000	1,500
N.	Failure to maintain the physical plant in accordance with the requirements found at §§19.1701-19.1727 of this title (relating to Physical Plant and Environment).	500	1,000	1,500
O.	Failure to verify the criminal conviction record of an employee/applicant as required by Human Resources Code, Chapter 106, and/or failure to deny or terminate the permanent employment of a person identified in the criminal conviction report as unemployable or otherwise known by management to be unemployable, as required by §19.1921(m) of this title (relating to General Requirements for a Nursing Facility).	500	1,000	1,500
P.	Failure to submit a renewal or change of ownership license application as required in accordance with §§19.208 or 19.210 of this title (relating to Renewal Procedures and Qualifications and Change of Ownership).	500	1,000	1,500
	1. The facility does not submit a license renewal application at least 45 days before the current license expiration date.	500	1,000	1,500
	2. During a change of ownership process, the prospective purchaser does not submit a license application to the licensing program at least 30 days before the anticipated sale date.	500		

Q. Failure to submit a report of a resident death in accordance with the requirements of the Health and Safety Code, §242.134. Facilities failing to submit a resident death report more than once during a 12-month period are subject to an administrative penalty based on the number of previous offenses.	500	1,000	1,500
R. For a facility which advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a violation of the Texas Health and Safety Code, §242.201.			
1. Failure to submit to DHS a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders.	500	1,000	1,500
2. Failure to display a copy of the disclosure statement with the facility license.	500	1,000	1,500]

# OPEN MEETINGS

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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 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 an 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).

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## State Office of Administrative Hearings

Thursday, November 13, 1997, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, 11th Floor  
Austin

Utility Division

AGENDA:

A Pre-Hearing Conference will be held at the above date and time in SOAH Docket Number 473-97-1568- Application of SOUTHWESTERN ELECTRIC POWER COMPANY For Reconciliation of Fuel Costs, Surcharge of Fuel Cost Under-Recoveries, and Related Relief (PUC Docket Number 17460).

Contact: William G. Newchurch, 300 West 15th Street, P.O. Box 13025, Austin, Texas 78711-3025, (512) 936-0728.  
Filed: October 29, 1997, 11:43 a.m.

TRD-9714333



Friday, November 14, 1997, 9:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

SOAH Docket Number 473-97-1937 — Complaint of STRAUS FRANK COMPANY, INC. Against SOUTHWESTERN BELL TELEPHONE COMPANY (PUC Docket Number 17390).

Contact: William G. Newchurch, 300 West 15th Street, P.O. Box 13025, Austin, Texas 78711-3025, (512) 936-0728.  
Filed: October 28, 1997, 2:57 p.m.

TRD-9714301



Monday, February 9, 1998, 9:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

A Hearing on the Merits is scheduled for the above date and time in: SOAH Docket Number 473-97-1561- Application of Texas New-Mexico Power Company for Approval of Transition Plan and Statement of Intent to Decrease Rates (PUC Docket Number 17751).

Contact: William G. Newchurch, 300 West 15th Street, P.O. Box 13025, Austin, Texas 78711-3025, (512) 936-0728.  
Filed: October 22, 1997, 4:18 p.m.

TRD-9714069



## Texas Agricultural Finance Authority

Thursday-Friday, November 6-7, 1997, 1:30 p.m. and 9:00 a.m. respectively

1700 North Congress Avenue, Room 911

Austin

AGENDA:

Discussion and action on: minutes of previous meeting; waiver of credit policy and procedures on loan guaranty application for Dishman International Company, Inc.; loan guaranty application for Dishman International Company, Inc.; loan guaranty application for Du Morr Feeds, Inc.; loan guaranty for Burleson Enterprise; loan guaranty for Tyler Rose Nursery; loan guaranty for Sesaco; request for deficiency grant from the Governor's Office for the Young Farmer Loan Guarantee Program interest buy down program; procedures for applications with waivers to the credit policy and procedures; Loan Guaranty Portfolio; sale contract for the Plainview facility; Young Farmer Loan Guarantee Portfolio; Farm and Ranch Finance Program Portfolio; budget for September 98 of the Authority; financial information for Fiscal Year 97 Annual Report. Public Comment. Discussion and action on future meeting date.

Contact: Robert Kennedy, P.O. Box 12847, Austin Texas 78711, (512) 463-7639.

Filed: October 29, 1997, 8:28 a.m.

TRD-9714314

◆        ◆        ◆

**Texas Department of Agriculture**

Thursday, November 6, 1997, 1:00 p.m.

Gold Key Inn, 515 East Commerce

Brownwood

Texas Mohair Producers Board

AGENDA:

Roll Call

Opening Remarks and Welcome

Approval of Minutes — August 13, 1997

Discussion and Action: On remarks from Katie Dickie Stavinoha, TDA Representative; Fiscal Affairs — Cash Flow and Budget Report — Check Off Assessments and Refunds; Scheduling of Next meeting.

Discussion: Use of Funds; Other Business

Adjourn

Contact: Mr. Zane Willard, 233 West Twohig, San Angelo, Texas 76902, (915) 655-3161.

Filed: October 29, 1997, 11:11 a.m.

TRD-9714329

◆        ◆        ◆

Thursday, November 13, 1997, 10:00 a.m.

1700 North Congress, Room 924A

Austin

AGENDA:

Alleged violation of Texas Agriculture Code Annotated §§103.001-015 (Vernon Supplement 1997) by Produce International, Inc. as petitioned by Cargil Produce Company.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: October 27, 1997, 2:32 p.m.

TRD-9714223

◆        ◆        ◆

Tuesday, November 18, 1997, 1:30 p.m.

1700 North Congress, Suite 1100

Austin

AGENDA:

Administrative hearing before the State Office of Administrative Hearings regarding SOAH Docket Number 551-97-1848 in the Matter of Texas Department of Agriculture vs. John Jimenez, d/ b/a Casa Jimenez, concerning alleged violation of Texas Agriculture Code Annotated §71.043(a) and Texas Administrative Code, Title 4, §22.2(a) (1997), as amended.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: October 28, 1997, 11:14 a.m.

TRD-9714280

◆        ◆        ◆

Tuesday, November 18, 1997, 1:30 p.m.

1700 North Congress, Suite 1100

Austin

AGENDA:

Administrative hearing before the State Office of Administrative Hearings regarding SOAH Docket Number 551-97-1847 in the Matter of Texas Department of Agriculture vs. William H. Green d/b/a Third Day Creations, concerning alleged violation of Texas Agriculture Code Annotated §71.043(a) and Texas Administrative Code, Title 4, §22.2(a) (1997), as amended.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: October 28, 1997, 11:04 a.m.

TRD-9714281

◆        ◆        ◆

Tuesday, November 18, 1997, 1:30 p.m.

1700 North Congress, Suite 1100

Austin

AGENDA:

Administrative hearing before the State Office of Administrative Hearings regarding SOAH Docket Number 551-97-1844 in the Matter of Texas Department of Agriculture vs. Shirley Jalufka d/ b/a The Blossom Cottage, concerning alleged violation of Texas Agriculture Code Annotated §71.043(a) and Texas Administrative Code, Title 4, §22.2(a)(1997), as amended.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: October 28, 1997, 11:04 a.m.

TRD-9714282

◆        ◆        ◆

Tuesday, November 18, 1997, 1:30 p.m.

1700 North Congress, Suite 1100

Austin

AGENDA:

Administrative hearing before the State Office of Administrative Hearings regarding SOAH Docket Number 551-97-1846 in the Matter of Texas Department of Agriculture vs. Willie Ray Erwin, concerning alleged violation of Texas Agriculture Code Annotated §71.043(a) and Texas Administrative Code, Title 4, §22.2(a)(1997), as amended.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: October 28, 1997, 11:05 a.m.

TRD-9714283

◆        ◆        ◆

Tuesday, November 18, 1997, 1:30 p.m.

1700 North Congress, Suite 1100

Austin

AGENDA:

Administrative hearing before the State Office of Administrative Hearings regarding SOAH Docket Number 551-97-1848 in the Matter of Texas Department of Agriculture vs. Edward Townsend, d/b/

a E&W Florist Wedding and Catering, concerning alleged violation of Texas Agriculture Code Annotated §71.043(a) and Texas Administrative Code, Title 4, §22.2(a)(1997), as amended.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: October 28, 1997, 11:58 a.m.

TRD-9714284



## **Texas Commission on Alcohol and Drug Abuse**

Tuesday, November 4, 1997, 9:00 a.m.

9001 North IH35, Suite 105, Whitney Jordan Plaza at North IH35 and Rundberg

Austin

Board of Commissioners

AGENDA:

Call to order; approval of September 16, 1997 minutes; chairman's report; executive director's report; public comment; information item: presentation by Dr. Carlton Erickson, The University of Texas at Austin, regarding neurochemistry of addiction; information items: Strategic and Statewide Service Delivery Plan update, internal audit annual report, services improvement projects; Amarillo, El Paso and Dallas, and prevention update; action item: proposal for decision and final order in the matter of Riverside General Hospital; information/action items: biennial operating plan for the computer systems, unexpended balances management plan, Region 6 revised service plan including possible change to request for proposal (RFP) treatment criteria, and criteria for primary prevention service RFP; action items: agreed final orders in the matters of Lorenzo Benitez, Mary Ann McCain, J. Corey Kirkland, and Solide Washington House and proposal for decision for final order in the matter of We Care House, Inc.; action items; adoption of repeal of §§146.1-146.9 and 146.25-146.36, adoption of amendments to §§148.2, adoption of new §§145.11 and 145.21-145.25, withdrawal of proposed amendments to §§148.61, 150.10, 150.33, and 150.52, proposed repeal of §§141.1-141.6, 141.8-141.14, 141.31, 141.33, 141.34, 141.41, 141.51, and 141.61, proposed amendments to §§148.3, 148.26, 148.41, 148.61, 148.119, 148.163, 148.202, 141.234, 150.3-150.8, 150.10, 150.31-150.33, 150.36-150.39, 150.52, 150.53, and 150.61, and proposed new §§141.11, 141.21, 141.31, 150.71-150.73; and adjournment.

Contact: Terry F. Bleier, 9001 North IH35, Suite 105, Austin, Texas 78753-5233, (512) 349-6602.

Filed: October 24, 1997, 3:42 p.m.

TRD-9714176



## **State Board of Barber Examiners**

Tuesday, November 4, 1997, 9:00 a.m.

William P. Hobby State Office Building, 333 Guadalupe Boulevard, Tower 2, Room 400-A

Austin

Board of Directors

AGENDA:

Opening of meeting: Roll Call. Read and possibly approve minutes of August 5, 1997 and August 17, 1997 Board meetings. OPEN SESSION: Executive Director's report on agency operations. Discussion

and possible action regarding reciprocal licensing. Discussion and possible action regarding a joint board meeting of the State Board of Barber Examiners and Cosmetology Commission. Discussion and possible action regarding the 1988 examinations schedule. Discussion and possible action regarding modification of barber exams. Discussion and possible action regarding publication of proposed amendment to 22 Texas Administrative Code, §51.57, concerning Applying for Examination.

Executive Session: Executive Session under Texas Government Code, §551.71(1) (B) for the discussion of a prelitigation settlement offer made by the Board's former Executive Director.

Open Session: Discussion and possible action concerning a prelitigation settlement offer made by the Board's former Executive Director. ADJOURNMENT.

Contact: Charles Clay Mills, 333 Guadalupe, Suite 2-110, (512) 305-8475.

Filed: October 28, 1997, 1:31 p.m.

TRD-9714294



## **Texas Boll Weevil Eradication Foundation**

Monday, November 3, 1997, 8:30 a.m.

TBWEF Headquarters, 3103 Oldham Lane

Abilene

AGENDA:

Call to Order

Opening Remarks and Introductions

Discussion and Action: Review minutes from prior meeting; South Texas/Winter Garden Referendum Results; Financial Report, Board Resolutions- Signature Cards, New FCB Loan Agreement, New FSA Loan Authority, Adjourn for Executive Session

Executive Session: To consult with attorney in accordance with Texas Government Code, Annotated §551.071; Adjourn Executive Session; Reconvene Board Meeting

Discussion and Action: Executive Session: Management Committee Report, Management Agreements, Review Salary and Wage Schedule; Executive Director's Report, FY 1998 APHIS Contributions, FY 1998 FSA Loan; UDSA/APHIS Report; TDA Report; Chairman's Report; Setting Next Meeting Time and Place

Discussion: Other Business

Adjourn

Contact: Katie Dickie Stavinoha, P.O. Box 12847, Austin, Texas 78711, (512) 463-7593.

Filed: October 24, 1997, 3:33 p.m.

TRD-9714175



## **Texas Cancer Council**

Thursday, November 13, 1997, 8:30 a.m.

Texas Medical Association, 401 West 15th Street, 7A Conference Room

Austin

Board of Directors-Planning an Program Development Committee

AGENDA:

The Committee will discuss and possibly take action on: minutes of the March 21, 1997 meeting; the Stephen F. Austin State University funding application; the status report on the Texas Cancer Plan revisions with a review of the core components; the FY 1998 initiative plans; strategic planning activities, including a staff report on legislative requirements and agency needs and the agenda for the Council's strategic planning retreat. The committee will then adjourn.

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 Lisa Nelson at (512) 463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Emily Untermeyer, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Filed: October 29, 1997, 11:43 a.m.

TRD-9714334



Thursday, November 13, 1997, 8:30 a.m.

Texas Medical Association, 401 West 15th Street, Durham Conference Room

Austin

Contract Management Committee

AGENDA:

The Committee will discuss and possibly take action on: minutes of the August 5, 1997 meeting; FY 1997 contractual performance summary; procedures for contractor non-performance; delays in Tarrant County project activities; project director's meeting; historical record of agency initiatives; and recognition of exemplary project performance; and future meeting date. The Committee will then adjourn.

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 Lisa Nelson at (512) 463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Emily Untermeyer, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Filed: October 29, 1997, 11:43 a.m.

TRD-9714336



Thursday, November 13, 1997, 10:00 a.m.

Texas Medical Association, Thompson Auditorium, First Floor, 401 West 15th Street

Austin

Board of Directors

REVISED AGENDA:

The Council will discuss and possibly take action on: minutes of the August 6, 1997 meeting; a recap of FY 1997 activities along with the FY 1997 performance measure data; equipment requests from Gateway Community Health Center and the San Antonio Metropolitan Health District; administrative issues such as agency staff changes, Governor's conference, an update on the Sunset Advisory Commission review, and consideration of the agency's

Affirmative Action Plan; reports from the Planning and Program Development Committee, and the Contract Management Committee; planning activities, with consideration of legislative requirements, rule revisions, and the development of an agenda for the Strategic Planning retreat; and an update on Senate Bill 55, interim legislative studies, and managed care legislation. The Council will then adjourn.

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 Lisa Nelson at (512) 463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Emily Untermeyer, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Filed: October 29, 1997, 11:43 a.m.

TRD-9714335



**Texas Board of Chiropractic Examiners**

Thursday, November 6, 1997, 10:00 a.m.

333 Guadalupe Street, Tower III, Suite 825

Austin

Enforcement Committee

AGENDA:

The Enforcement Committee of the Texas Board of Chiropractic Examiners will meet to consider, discuss, take any appropriate action and/or approve: #92-34, 94-26, 95-275, 96-01, 96-161, 96-206, 96-215, 96-238, 97-01, 97-12, 97-53, 97-54, 97-62, 97-67, 97-70, 97-75, 97-80, 97-85, 97-87, 97-91, 97-95, 97-97, 97-100, 97-101, 97-115, 97-116, 97-120, 97-121, 97-122, 97-126, 97-128, 97-35, 97-136, 97-141, 97-143, 97-146, 97-147, 97-150, 97-159, 97-160, 97-161, 97-163, 97-170 thru 97-228 and 98-01 thru 98-20.

Contact: John F. Zavala, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6708.

Filed: October 27, 1997, 3:15 p.m.

TRD-9714238



**Coastal Coordination Council (CCC)**

Wednesday, November 12, 1997, 1:30 p.m.

Cameron County Courthouse, 964 East Harrison

Brownsville

AGENDA:

I. Call to Order/Opening Remarks

II. Public Comment: The public is invited to present any coastal issue of local concern. Texas Parks and Wildlife will be providing a report on this year's Red Tide Event; III. ACTION ITEM: Approval of the minutes of the August 13, 1997 meeting; IV. ACTION ITEM: Adoption of amendments to Chapter 501 and Chapter 503 of the Council rules, removing Liberty County from the CMP boundary; V. ACTION ITEM: Approval of subgrant recipients for grant cycle #3; VI. ACTION ITEM: Proposed amendment of 31 TAC §506.11 to include federal restoration plans in list of federal activities affecting the coastal zone; VII. ACTION ITEM: Approval of requests for rule certification by Texas Department of Transportation and General Land Office; VIII. ACTION ITEM: Program enhancement

funding under §309 of the Federal Coastal Zone Management Act of 1972; IX. ACTION ITEM: Proposed changes to consistency review schedule for maintenance dredging projects; X. ACTION ITEM: Approval of supplemental project funding plan; XI. ACTION ITEM: Approval of meeting schedule for 1998; XII. ACTION ITEM: Approval of preliminary consistency review form; XIII. ACTION ITEM: Discussion of administration budget; XIV. ACTION ITEM: Coastal Management Program Updates; (a) Small Business and Individual Permitting Assistance Program; (b) Coastal nonpoint-source pollution control program; (c) NOAA cooperative agreement/CMP grants program; (d) Consistency review report.

XV. Adjourn

Contact: Janet Fatheree, 1700 North Congress Avenue, Room 617, Austin, Texas, 78701, (512) 463-5385.

Filed: October 28, 1997, 2:10 p.m.

TRD-9714295



### **Texas Association of Counties**

Thursday, November 13, 1997, 9:00 a.m.

1204 San Antonio Street

Austin

Insurance Trust Fund

AGENDA:

Call to Order 9:00 a.m. — Hon. Jerry Lewis

(Employee Benefits Pool will be in attendance to assist in deliberation)

Approval of July 17, 1997 Minutes

Finance Report — Ms. Nancy Williams

Investment Report — Mr. Ron Schultz/Paul Williams

Report on HIPAA/Tx HB 1212— Ms. Betty Delargy

Program Administration Report

Program Status- All Funds — Mr. Jim Jean

Annual Accounting from Prudential — Mr. Jim Jean

Demand Management Committee Report — Hon. Yvonne Odom/  
Ms. Jenn. Hoff

Report on Third and Fourth Quarter Renewals — Ms. Lauren Henry

Report on First Quarter 1998 Renewals — Mr. Bill Norwood

Discuss Personnel Matter (Closed Session) — Mr. Jim Jean

Approve Proposed 1998 Budget — Mr. Terry Wyatt

Adjourn — Hon. Jerry Lewis

Contact: Jim Jean, 1204 San Antonio Street, Austin, Texas 78701,  
(512) 478-8753.

Filed: October 28, 1997, 2:48 p.m.

TRD-9714300



Thursday, November 13, 1997, 9:00 a.m.

1204 San Antonio Street

Austin

Employee Benefits Pool

AGENDA:

Call to Order 9:00 a.m. — Hon. Helen Walker

(Insurance Trust Fund will be in attendance to assist in deliberation)

Approval of Minutes

Finance Report — Ms. Nancy Williams

Investment Report — Mr. Ron Schultz/Paul Williams

Report on HIPAA/Tx HB 1212— Ms. Betty Delargy

Program Administration Report

Program Status- All Funds — Mr. Jim Jean

Demand Management Committee Report — Hon. Yvonne Odom/  
Ms. Jenn. Hoff

Report on Third and Fourth Quarter Renewals — Ms. Lauren Henry

Discuss Personnel Matter (Closed Session) — Mr. Jim Jean

Approve Proposed 1998 Budget — Mr. Terry Wyatt

Adjourn — Hon. Jerry Lewis

Contact: Jim Jean, 1204 San Antonio Street, Austin, Texas 78701,  
(512) 478-8753.

Filed: October 28, 1997, 2:47 p.m.

TRD-9714299



### **Office of Court Administration**

Thursday, November 13, 1997, 9:30 a.m.

State Capitol Extension Room E1.012

Austin

Judicial Committee on Information Technology

AGENDA:

9:30 a.m. — Call Meeting to Order

1. Approval of minutes of meeting September 17, 1997

2. Discussion of subcommittees, charges and members

3. OCA presentation on use of kiosks by courts

4. Review of survey results:

a. Time-sensitive projects

b. Effectiveness of audio and video hearings

5. OCA presentation of resources available from the National Center for State Courts

6. Discussion of pilot project(s) to be started by OCA

7. New business

8. Public comment

12:30 Adjourn

Contact: Doug Rybacki, P.O. Box 12066, Austin, Texas 78711-2066,  
(512) 463-1625.

Filed: October 24, 1997, 11:40 a.m.

TRD-9714131





## Texas Department of Criminal Justice

Monday, November 3, 1997, 4:00 p.m.

Reagan State Office Building, 105 West 15th Street, Room 104

Austin

Subcommittee on Health Care

AGENDA:

I. Call to Order

II. Introductions

A. Opening Remarks

B. Scope of Review

III. Overview of National Trends and Practices Relating to the Management of HIV/AIDS in Correctional Facilities

IV. Staff Policy Reviews

A. Current State of Texas and TDCJ Policies and Practices relating to the management of HIV/AIDS

B. Update on Correctional Managed Health Care Advisory Committee Review of HIV/AIDS

C. Security and Classification Issues Related to the Management of HIV/AIDS

D. Overview of HIV/AIDS Education Programs

E. Legal Issues Related to the Management of HIV/AIDS

F. Continuity of Care and Special Needs Offenders

V. Conclusion

VI. Public Comment

Adjournment

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: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: October 24, 1997, 1:57 p.m.

TRD-9714161



Monday, November 3, 1997, 1:00 p.m. (Rescheduled from 4:00 p.m.)

Reagan State Office Building, 105 West 15th Street, Room 104

Austin

Subcommittee on Health Care

EMERGENCY MEETING AGENDA

I. Call to Order

II. Introductions

A. Opening Remarks

B. Scope of Review

III. Overview of National Trends and Practices Relating to the Management of HIV/AIDS in Correctional Facilities

IV. Staff Policy Reviews

A. Current State of Texas and TDCJ Policies and Practices relating to the management of HIV/AIDS

B. Update on Correctional Managed Health Care Advisory Committee Review of HIV/AIDS

C. Security and Classification Issues Related to the Management of HIV/AIDS

D. Overview of HIV/AIDS Education Programs

E. Legal Issues Related to the Management of HIV/AIDS

F. Continuity of Care and Special Needs Offenders

V. Conclusion

VI. Public Comment

Adjournment

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.

REASON FOR EMERGENCY: Meeting was inadvertently filed for 4:00 p.m. instead of 1:00 p.m., quorum has already been established, therefore meeting cannot be rescheduled.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: October 28, 1997, 4:21 p.m.

TRD-9714309



Friday, November 7, 1997, 8:30 a.m.

Stephen F. Austin Building, 1700 North Congress, Room 118

Austin

Judicial Advisory Council

AGENDA:

Field Services Committee

I. Gun Standards

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: Lois A. Warncke, P.O. Box 12427, Austin, Texas 78711, (512) 305-9323.

Filed: October 27, 1997, 4:43 p.m.

TRD-9714254



Friday, November 7, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Room 118

Austin

Judicial Advisory Council

AGENDA:

Training and Staff Development Committee

- I. Training Options for Judiciary
- II. Training for CSOs on Testifying in Court
- III. Annual Legal Training for CSOs

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: Lois Warncke, P.O. Box 12427, Austin, Texas 78711, (512) 305-9323.  
 Filed: October 27, 1997, 4:43 p.m.  
 TRD-9714253



Friday, November 7, 1997, 9:45 a.m.  
 Stephen F. Austin Building, 1700 North Congress, Room 118  
 Austin

Judicial Advisory Council

AGENDA:

- Council Meeting
- I. Greeting
- II. Introduction of Staff/Guests
- III. Approval of Minutes
- IV. Board Liaison
- V. State Jail Division Report
- VI. Program Services Division Report
- VII. Probation Advisory Committee Report
- VIII. Committee Reports
  - A. Field Services
  - B. Training and Staff Development
- IX. Division Director's Update
- X. Council Members' Issues
- XI. Next Meeting
- XII. Adjournment

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: Lois Warncke, P.O. Box 12427, Austin, Texas 78711, (512) 305-9323.  
 Filed: October 27, 1997, 4:43 p.m.  
 TRD-9714252



### State Board of Dental Examiners

Friday, November 7, 1997, 3:00 p.m.  
 SBDE Offices, 333 Guadalupe, Tower 3, Suite 800, Conference Room  
 Austin

Anesthesia Rules Review Committee

AGENDA:

- I. Call to order
- II. Roll call
- III. Discuss and consider overall committee objectives and procedures
- IV. Discuss, review, and consider proposing amendments to anesthesia rules 109.171, 109.172, 109.173, 109.174, 109.175.
- V. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400.  
 Filed: October 29, 1997, 11:28 a.m.

TRD-9714331



### Texas Education Agency (TEA)

Thursday, November 13, 1997, 8:30 a.m.  
 Norris Conference Center, 1016 La Posada Drive, Suite 280, Live Oak Room  
 Austin

Continuing Advisory Committee (CAC) for Special Education

AGENDA:

Thursday, November 13, 1997, beginning at 8:30 a.m., the CAC will hear welcoming remarks and approve the minutes from the October 3, 1997 meeting. The CAC will hear presentations on the Individuals with Disabilities Education Act Amendments 1997 and state implementation plan. Beginning at 12:45 p.m., the CAC will hear presentations on the complaints management system; the division of Special Education Web site and access to hearing officer decisions; the status of Office of Special Education Programs corrective action plan; and TEA organizational structure and review of decentralized activities. The CAC will determine priorities and unmet needs, set future meeting and meeting agendas, and adjourn.

Contact: Shirley Stanford, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9414.  
 Filed: October 29, 1997, 9:04 a.m.

TRD-9714315



### State Board for Educator Certification

Friday, October 31, 1997, 9:00 a.m.  
 7745 Chevy Chase Drive, Building One, Room 1.100, Texas Higher Education Coordinating Board  
 Austin

AGENDA:

1. Call to Order.
2. Approve October Third Minutes.
3. Executive Director's Update.
  - a. Budget Report.
  - b. Advisory Committee Update.
  - c. Planning Update.
  - d. Update on Investigations.
  - e. Other.
4. Discuss the Recommendations of the Advisory Committee on the Principal Certificate.
5. Update on Input Received on the Framework for Educator Preparation and Certification.
6. Propose New 19 TAC, Chapter 232, Subchapter M, Types and Classes of Certificates Issued and Subchapter R, Certificate Renewal and Continuing Professional Education Requirements, and Propose

the Repeal of 19 TAC Chapter 230, Subchapter V, Continuing Education. 7. Discuss Report on the Regional Collaborative Center for Professional Development and Technology at Texas A&M International University. 8. Discuss Performance Levels for the Accountability System for Educator Preparation (ASEP). 9. Propose the Repeal of 19 TAC, Chapter 230, Subchapter Z, General Provisions Relating to the Transition of Authority to the State Board for Educator Certification. 10. Approve the Framework for the Examination for the Certification of Educators in Texas (ExCET), Visually Impaired Test. 11. Propose Adoption of the Examination for the Certification of Educators in Texas (ExCET), Secondary Health Education Test. 12. Approve Proposed Equal Employment Opportunity and American with Disabilities Act Workplace Policies. 13. Approve the Biennial Operating Plan for Information Resources. 14. Request for Approval of Continued funding of Center for Professional Development of Teachers Initiatives.

Contact: Denise Jones, 1001 Trinity, Austin, Texas 78701-2603, (512) 469-3005.

Filed: October 22, 1997, 4:35 p.m.

TRD-9714071



Monday, November 3, 1997, 9:00 a.m.

William B. Travis Building, 1-104, 1701 North Congress Avenue

Austin

Advisory Committee for Educator Certificates

AGENDA:

1. Discussion of child development research and its implication. 2. Plan of action for work/set benchmarks.

Contact: Dulci Arredondo, 1001 Trinity Street, Austin, Texas 78701, (512) 469-3012.

Filed: October 27, 1997, 3:30 p.m.

TRD-9714242



## Texas Food and Fibers Commission

Wednesday, November 12, 1997, 8:30 a.m.

7887 North Highway 87

San Angelo

Industry Advisory Committee

AGENDA:

1. Review of current research projects presented by research staff.
2. Advisory Committee members will elect new officers for biennium.

Contact: Jean L. Vandelune, 17360 Coit Road, Dallas, Texas 75252, (972) 231-0852.

Filed: October 28, 1997, 10:54 a.m.

TRD-9714279



## General Land Office

Tuesday, November 4, 1997, 11:00 a.m.

Amarillo Club, Bank One Building, 31st Floor, Sixth and Tyler Streets

Amarillo

School Land Board- Special Meeting

AGENDA:

Special Meeting: approval of previous board meeting minutes; pooling applications, Loma Novia, E. (House) field, Duval Co.; Maverick Bayou (Cib Haz) Field, Matagorda Co.; White Point, E (6050), Nueces Co.; consideration of bids on oil and condensate, State Tract 845-S, Matagorda Island, State Tracts 818-S, 829-S, 830-S, 833-S, 834-S, 840-S and 844-S (Clearfield) and State Tracts 9, 12 and 13, Mesquite Bay, Aransas Co.; State Tracts 629-L & 659-L, State Tract 216, Grass Island Field and State Tract 563-L, Calhoun Co.; State Tracts 256 and 294 Unit, Galveston Bay, Chambers Co.; North McElroy Unit, Crane and Upton Cos.; East Cowden (Grayburg) Unit, Ector Co.; Sabine River Tract 8, Gregg Co.; State Tract 30-L (High Island), State Tracts 51-S, 52-S, 59-S and 60-S, High Island, Jefferson Co; State Tract 322 (Stedman Island Field, Nueces Co; Yates Field Unit, Pecos and Crockett Cos.; consideration and approval of exchange of submerged lands with Matagorda County Navigation District Number One, located in Tres Palacios Bay, Matagorda County, Texas; Executive Session — pending or contemplated litigation, or settlement offers; The Board will recess and reconvene to attend the oral argument before the 7th District Court of Appeals, Amarillo, Texas in the pending appeal of the District Court's decision in Brainard, et al vs. State of Texas.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: October 27, 1997, 3:15 p.m.

TRD-9714239



Wednesday, November 5, 1997, 3:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

Veterans Land Board

AGENDA:

Approval of previous board meeting minutes; Resolution of the Veterans' Land Board of the State of Texas authorizing the issuance and sale of State of Texas Veterans' Housing Assistance Program, Fund II Series 1997A bonds in an aggregate principal amount not to exceed \$100,000,000 and providing for other matters related to the subject; Resolution of the Veterans' Land Board of the State of Texas authorizing the issuance and sale of State of Texas Veterans' Housing Assistance Program, Fund II Series 1997B-1 Taxable bonds in an aggregate principal amount not to exceed \$25,000,000 and providing for other matters related to the subject; Resolution of the Veterans' Land Board of the State of Texas authorizing preliminary matters in connection with the proposed issuance and sale of State of Texas Veterans' Land Refunding Bonds, Taxable Series 1998A and authorizing Authorized Representatives to enter into a swap agreement or swaption agreement with respect to the State of Texas Veterans' Land Refunding bonds, Series 1985 and other matters in connection therewith; Resolution of the Veterans' Land Board of the State of Texas authorizing the issuance and sale of State of Texas Veterans' Land Board Refunding Bonds, Taxable Series 1998A in an aggregate principal amount not to exceed \$28,495,000 and providing for other matters related to the subject; Resolution of the Veterans' Land Board of the State of Texas authorizing preliminary matters in connection with the proposed issuance and sale of State of Texas Veterans' Land Refunding Bonds, Taxable Series 1998B

and authorizing Authorized Representatives to enter into a swap agreement or swaption agreement with respect to the State of Texas Veterans' Land Refunding bonds, Series 1986 and other matters in connection therewith; Resolution of the Veterans' Land Board of the State of Texas authorizing the issuance and sale of State of Texas Veterans' Land Refunding Bonds, Taxable Series 1998B in an aggregate principal amount not to exceed \$249,625,000 and providing for other matters related to the subject; discussion and consideration of state Veterans Home Request for Proposal(s) for design-to-build and operator contract(s); staff reports.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.  
Filed: October 28, 1997, 11:58 a.m.

TRD-9714288

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## Texas Department of Health

Tuesday, November 4, 1997 at 2:45 p.m.

Tower Building, Room T-707, Texas Department of Health, 1100 West 49th Street

Austin

Scientific Advisory Committee on Birth Defects

AGENDA:

Telephone Conference Call Meeting: Bridge Number (512) 463-1928, Code 1501-264#

Following a welcome and introductions, the committee will discuss and possibly act on: review of the minutes of the previous committee meeting; officer elections; updates on (Texas Birth Defects Registry; Texas Birth Defects Research Center; and referrals); other business requiring no committee action; and public comments.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD (512) 458-7708 at least four days prior to the meeting.

Contact: Sandy Wicker, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7232.

Filed: October 23, 1997, 3:44 p.m.

TRD-9714108

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Monday, December 8, 1997 at 10:00 a.m.

Texas Department of Human Services, Public Hearing Room, 701 West 51st Street

Austin

Health Care Financing Division

AGENDA:

Representatives of the Texas Department of Health (department) will meet to request public comment concerning two legislative mandates which must be implemented by the department (Senate Bill 3 §2.08, requiring the department to develop a process for selecting providers of durable medical equipment and supplies that encourages competition; and Rider 59 to Article II of House bill One (The General Appropriations Act), which requires the department to implement a state Medicaid Plan amendment permitting the use of a prime vendor in the purchase of durable medical equipment and

supplies for Medicaid recipients). Comments may be presented orally during the meeting or submitted in writing no later than January 1, 1998.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD (512) 458-7708 at least four days prior to the meeting.

Contact: Brenda Salisbery, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6521.

Filed: October 28, 1997, 9:04 a.m.

TRD-9714265

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## Texas Health Care Information Council

Tuesday, November 4, 1997 at 1:00 p.m.

Joe C. Thompson Center, 26th and Red River Streets, Room 3.120

Austin

Quality Methods and Consumer Education Technical Advisory Committee

AGENDA:

The Texas Health Care Information Council's Quality Methods and Consumer Education Technical Advisory Committee (QM and CE TAC) will convene in open session, deliberate, and possibly take formal action on the following items:

Minutes of August 28, 1997 meeting; Council's response concerning recommendations from QM and CE TAC members relating to risk and severity adjustment methodology, including recommendations concerning use of the risk and severity adjustment methodology; consumer education activities; presentations by Dwayne Harper (Cleveland Health Quality Choice) and Russ Martin (State of Florida); development of recommendations to THCIC concerning consumer education activities; set next meeting date; and public comments.

Contact: Jim Loyd, 4900 North Lamar Boulevard, Room 3407, Austin, Texas 78751, (512) 424-6490, fax: (512) 424-6491.

Filed: October 23, 1997, 4:17 p.m.

TRD-9714098

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## Texas Health Insurance Risk Pool

Tuesday, November 4, 1997- Board 1:00 p.m.; Actuarial/Rating, Benefits — 8:30 a.m.; Staffing— 10:30 a.m.

333 Guadalupe; Board, Actuarial/Rating, Benefits — Lobby, Room 102; Staff, Hobby 1, Room 1350G.

Austin

Board of Directors and Actuarial Rating, Benefits and Staffing Subcommittees

AGENDA:

I. Executive Session: subcommittees or the Board may meet in Executive Sessions in accordance with the Texas Open Meetings Act to discuss personnel matters.

II. Subcommittees: 1. Actuarial/Rating: Deliberation regarding benefit plans/contract language, coverage eligibility conditions, rates/prices: assessments and data call; possible actuarial report; possible

recommendations to Board on these matters; other administrative matters. May meet jointly with Benefits subcommittee.

2. Benefits: Deliberation regarding benefit plans and contract language, eligibility conditions that automatically qualify an individual for coverage, rates/prices, assessments and data call; possible report from actuary; possible recommendations to Board regarding these matters; other administrative matters. May meet jointly with Actuarial/Rating subcommittee.

3. Staffing: Deliberation and possible recommendations regarding persons responding to the invitation for bid ("IFB") for Executive Director of Health Pool; deliberation and possible recommendations regarding IFB for Management Services Agreement for Health Pool; possible discussion of responses to IFB for Management Services, if any have been received; other related staffing matters; other administrative matters.

III. Board: Briefing from Texas Healthy Kids Corporation regarding functions and purpose of the Corporation; reports from subcommittees, deliberation regarding Management Services Agreement and/or Executive Director, October 28 Commissioner's Hearing on Plan of Operation, benefit plans and contract language, eligibility conditions that automatically qualify an individual for coverage, rates/prices, assessments and data call, IFB or other acceptable request for bids or proposals for outside legal counsel and officer/director liability coverage; future meetings and timelines; other administrative matters.

Contact: Rhonda Myron, Kim Stokes, 333 Guadalupe Street, Austin, Texas 78701, (512) 463-6651.

Filed: October 27, 1997, 4:33 p.m.

TRD-9714250



## Health and Human Services Commission

Friday, November 13, 1997- 9:15 a.m.

701 West 51st Street, Public Hearing Room.

Austin

Medical Care Advisory Committee

AGENDA:

Opening Comments; State Medicaid Director's Comments; Approval of Minutes; Federal Legislative Update; Provider Compliance with Durable Medical Equipment (DME) Certification Requirements; Repeal of §29.504, Physician Certification Requirements; Disproportionate Share Hospital Trauma System Development Rules; Proposed Rules Relating to Durable Medical Equipment Providers, Independently Practicing Licensed Vocation Nurses, Outpatient Rehabilitation Facilities, and Private Duty Nursing Services Covered by the Early Periodic Screening, Diagnosis and Comprehensive Care Program (EPSDT-CCP); Revision of Rules Related to Supported Employment Provided through the home and community-Based Services Program; (EPSDT-CCP); Revision of Rules Related to Supported Employment Provided through the home and Community-Based Services Program; Deletion of the Requirement for Inspections of Care (IOCs), Reimbursement for Services in Institutions for Mental Diseases (IMDs), and Intermediate Care Facilities for Persons with Mental Retardation (ICF-MR) Programs; Eligibility and Review; Allowable Deductions for Incurred Medical Expenses (IME); Children Denied SSI; Payments from Susan Walker vs. Bayer Corporation Lawsuit; Deeming from Spouse/Parent on Active Military Duty; Primary Home Care Miscellaneous Items; Amendments to the Licensure Rules for Nursing Facility Bed Moratorium rules; Amendments to the Li-

censure Rules for Nursing Facilities; amendment to Reimbursement Methodology rules for the Community Living Assistance and Support Services (CLASS) and Community Based Alternatives (CBA) Programs; Community Care for Aged and Disabled Community Based Alternative Emergency Response Services; Community Based Alternatives (DBA) Rules for Home and Community Support Services (HCSS); Medicaid Managed Care Report; Open Discussion by Members; Next Meeting/Adjournment.

Contact: Sharon Dobbs, 4900 North Lamar Boulevard, Austin, Texas 78701, (512) 424-6569.

Filed: October 29, 1997, 9:14 a.m.

TRD-9714316



## Texas Higher Education Coordinating Board

Wednesday, November 5, 1997, 9:30 a.m.

Chevy Chase Office Complex, Building Five, Room 5.209, 7745 Chevy Chase Drive

Austin

Family Practice Residency Advisory Committee

AGENDA:

Overview of Physician Education Loan Repayment Program — Statutory Law; Coordinating Board rules; Application Procedures; and Informational Materials.

Presentation of Options by Student Services Division — Options for Changes to Rules and Criterion; and Options for statutory Changes Recommendation.

Discussion; and Recommendation from Subcommittee to Family Practice Residency Advisory Committee

Contact: Kathy Celestino, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483-6212.

Filed: October 28, 1997, 9:04 a.m.

TRD-9714266



## Texas Historical Commission

Friday, November 7, 1997, 10:30 a.m.

William P. Clements Building, 300 West 15th Street, Committee Room Five, Fifth Floor

Austin

Quarterly Board Meeting/State Board of Review

AGENDA:

I. Role and Responsibilities of State Board of Review Members

II. Discussion of Evaluations

III. Questions and Issues of Concern

IV. Adjourn

Contact: Judy George, P.O. Box 12276, Austin, Texas 78711, (512) 463-8452.

Filed: October 28, 1997, 9:51 a.m.

TRD-9714275



Friday, November 7, 1997, 1:30 p.m.

William P. Clements Building, 300 West 15th Street, Committee Room Five, Fifth Floor

Austin

Quarterly Board Meeting/State Board of Review

AGENDA:

- I. Call to order
- II. Announcements
- III. Election of State Board of Review Officers
- IV. Approval of Minutes of the June 14, 1997, Meeting
- V. Review of Nominations for the National Register of Historic Places
- VI. Adjournment

Contact: Judy George, P.O. Box 12276, Austin, Texas 78711, (512) 463-8452.

Filed: October 28, 1997, 9:51 a.m.

TRD-9714276



Saturday, November 8, 1997, 8:30 a.m.

William P. Clements Building, 300 West 15th Street, Committee Room Five, Fifth Floor

Austin

Quarterly Board Meeting/State Board of Review

AGENDA:

- I. Review of Nominations for the National Register of Historic Places
- II. New Business
- III. Adjournment

Contact: Judy George, P.O. Box 12276, Austin, Texas 78711, (512) 463-8452.

Filed: October 28, 1997, 10:40 a.m.

TRD-9714277



## Texas Department of Human Services (TDHS)

Friday, October 31, 1997, 10:00 a.m.

701 West 51st Street, Public Hearing Room, East Tower

Austin

Texas Board of Human Services

AGENDA:

1. Approval of the Minutes of August 22, 1997 and September 16, 1997.
2. Requirement to Attend a Workforce Orientation as a Condition of Eligibility in the Temporary Assistance for Needy Families (TNAF) Program.
3. Deletion of the Religious Exemption from Finger Imaging Requirements.
4. Rules Allowing the Department to Determine Food Stamp Eligibility and Benefits for Residents of Faith-based Chemical Dependency Treatment Programs.
5. Status Report on Senate Bill 84 Implementation.
6. Payment Rate for the Family Care Program.
7. Payment Rates for the Residential Care Program.
8. Amendments to the Licensure Rules for Intermediate Care Facilities for Persons with Mental Retardation

or Related Conditions (ICFMR/RC) 9. Amendments to policies and procedures. 10. Advisory Committee Appointments. 11. Commissioner's Report: a. Announcements and Comments b. Tracking of Board Action.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-3048.

Filed: October 23, 1997, 2:43 p.m.

TRD-9714101



Wednesday, November 5, 1997, 11:00 a.m. CST/10:00 MST

2520 South "I" Street, TDHS Regional Headquarters

Edinburg

Advisory Subcommittee on Services to Persons with Disabilities

AGENDA:

1. Welcome/Introductions.
2. Subcommittee Business: Bylaws; Structure; Expectations; Responsibilities.
3. ADAC Agenda Review/Discussion.
4. DHS/Regional Updates.
5. Announcements from SSPD Members.
6. Public Comment/Consumer Input.
7. Adjournment.

Contact: Beverly Young, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-3765.

Filed: October 23, 1997, 1:56 p.m.

TRD-9714100



Friday, November 7, 1997, 10:00 a.m.

701 West 51st Street, 560W Conference Room

Austin

Aged and Disabled Advisory Committee

AGENDA:

1. Opening Comments.
2. Deputy Commissioner's Comments.
3. Approval of Minutes.
- ACTION ITEMS: 4. Community Based Alternatives (CBA) Rules for Home and Community Support Services (HCSS) Providers.
5. Amendments to the Licensure Rules for Nursing Facility Bed Moratorium Rules.
6. Amendments to the Licensure Rules for Nursing Facilities.
7. Amendments to the Licensure Rules for Personal Care Facilities.
- INFORMATION/TECHNICAL RULES: 8. Primary Home Care Miscellaneous Technical Items.
9. Payments from Susan Walker v. Bayer Corporation Lawsuit.
10. Deeming from Spouse/Parent on Active Military Duty.
11. Allowable Deductions from Incurred Medical Duty.
11. Allowable Deductions from Incurred Medical Expenses (IME).
12. Children Denied SSI.
- REPORTS: In-Home and Family Support Program (IHFSP) Proceedings of the Subcommittee on Services to Persons with Disabilities; Proceedings of the Nursing Facility Subcommittee.
13. Open Discussion by Members.
14. Next Meeting/Adjournment.

Contact: Anthony Venza, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4943.

Filed: October 28, 1997, 1:41 p.m.

TRD-9714292



## Texas Department of Insurance

Tuesday, November 18, 1997, 9:00 a.m.

333 Guadalupe Street, Room 100

Austin

**AGENDA:**

Under Docket Number 2279, hearing for consideration of the setting of title premium rates and other matters with rate implications. Evidence on all relevant and necessary points relating to title insurance premiums shall be considered. The Commissioner has jurisdiction over the promulgation of premium rates, and over other matters as set out in notice dated December 31, 1996 and notices in the January 10, 1997 issue of the Texas Register (22 TexReg 404), pursuant to Texas Insurance Code, Articles 1.02, 1.04, 9.01, 9.02, 9.07, and 9.21 and the Texas Administrative Code §9.1. Procedure of the hearing will be governed by the Rules of Practice and Procedure before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, subchapter A) and the Administrative Procedure Act (Texas Government Code Chapter 2001.)

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 24, 1997, 2:44 p.m.

TRD-9714165



Tuesday, November 18, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

**AGENDA:**

Docket Number 454-97-1822.C. In the Matter of CHARLOTTE T. WALKER.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 28, 1997, 4:00 p.m.

TRD-9714306



Wednesday, November 19, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

**AGENDA:**

Docket Number 454-97-1823.C. To consider whether disciplinary action should be taken against ROY C. MILLIRON, Amarillo, Texas, who holds a Group I Legal Reserve Life Insurance 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: October 28, 1997, 3:58 p.m.

TRD-9714305



Wednesday, November 19, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

**AGENDA:**

Docket Number 454-97-1900.C. In the matter of STEVEN M. RAKOFSKY.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 28, 1997, 3:58 p.m.

TRD-9714304



**Boards for Lease of State-owned lands**

Thursday, November 6, 1997, 3:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 833

Austin

Board for Lease of Texas Parks and Wildlife Department

**AGENDA:**

Approval of previous board meeting minutes; pooling application, Hitts Lake, North (Paluxy) Field, Smith County; easement application, fiber optic conduit easement, Lake Houston and Village Creek State Parks, Harris and Hardin Counties.

Contact: Linda K. Fisher, Stephen F. Austin Building, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: October 27, 1997, 3:15 p.m.

TRD-9714240



Thursday, November 6, 1997, 3:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 833

Austin

Board for Lease of Texas Parks and Wildlife Department

**REVISED AGENDA:**

Renewal easement, Gene Howe Wildlife Management Area, Hemphill County.

Contact: Linda K. Fisher, Stephen F. Austin Building, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: October 28, 1997, 4:18 p.m.

TRD-9714307



**Texas Department of Licensing and Regulation**

Wednesday, November 5, 1997, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor Conference Room 420

Austin

Enforcement Division, Boilers

**AGENDA:**

According to the complete agenda, the Department will hold Administrative hearings to consider the possible assessment of administrative penalties and inspection fees against the following Respondents: Luby's Restaurants, LTD; Mackenzie Village Cleaners; Manor Health Care Corporation; The Man's Shop; and McAllen Cleaners for failing to pay boiler inspection/certification fees to obtain certificates of operation for Respondents' boiler(s), a violation of Texas Health and Safety Code Annotated (the Code) Chapter 755 and 16 Texas Administration Code (TAC), Chapter 65, pursuant to the Code and Texas Revised Civil Statutes Annotated Article 9100; Texas Government Code, Chapter 2001; and 16 TAC Chapter 65.

Contact: Allyson Lednick, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: October 23, 1997, 4:38 p.m.

TRD-9714118



Wednesday, November 5, 1997, 1:00 p.m.

920 Colorado, E.O. Thompson Building, Fourth Floor Conference Room 420

Austin

Enforcement Division, Boilers

AGENDA:

According to the complete agenda, the Department will hold Administrative hearings to consider the possible assessment of administrative penalties and inspection fees against the following Respondents: Meadow Crossing Apartments; Melrose Manor Apartments; Memorial Medical; and Moody's Car Wash for failure to pay boiler inspection/certification fee(s) to obtain certificates of operation for the above Respondents' boiler(s), a violation of Texas Health and Safety Code Annotated (the Code) Chapter 755 and 16 Texas Administration Code (TAC), Chapter 65, pursuant to the Code and Texas Revised Civil Statutes Annotated Article 9100; Texas Government Code, Chapter 2001; and 16 TAC Chapter 65.

Contact: Allyson Lednick, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: October 23, 1997, 4:39 p.m.

TRD-9714119



### **Texas Low-Level Radioactive Waste Disposal Authority**

Thursday, November 13, 1997, 10:00 a.m.

Sierra Blanca Public Library, FM 1111

Sierra Blanca

Board of Directors

AGENDA:

The board will conduct its annual meeting with officials of local political subdivisions in Hudspeth County. Upon completion of that meeting an executive session will be held to receive advice of the Authority's attorneys concerning litigation related to the Authority's license application pending before the Texas Natural Resource Conservation Commission (TNRCC). The board will open the meeting to the public to approve minutes of their previous meeting; hear the general manager's reports on the year-to-date financial status, hear a report on planning and implementation fee use by Hudspeth County; discuss the status of the license hearings before SOAH, discuss the status of the Texas and other federal low-level waste compacts; be given a status report on the demonstration cap project at the Faskin Ranch disposal site, and review quarterly contract reports; hear a report on the community development and working groups, public information program, and the quality assurance program. The board will consider: approval of a contract with TNRCC for hearing costs; discuss the purchase of director's and officer's liability insurance; consider the repeal of rules regarding copying charges; and consider the ratification of amendments to the

Rogers and Associates Engineering contract. The board will hear public comments before adjourning.

Contact: Lawrence R. Jacobi, Jr., 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292.

Filed: October 27, 1997, 1:11 p.m.

TRD-9714219



Thursday, November 13, 1997, 10:00 a.m.

Sierra Blanca Public Library, FM 1111

Sierra Blanca

Board of Directors

REVISED AGENDA:

IX.C. Consideration and possible approval of amendments to the Hudspeth County Master Plan.

Contact: Lawrence R. Jacobi, Jr., 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292.

Filed: October 29, 1997, 11:41 a.m.

TRD-9714332



### **Texas State Board of Medical Examiners**

Friday, October 31, 1997, 9:00 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Hearings Division

AGENDA:

Probation Appearance, 9:00 a.m. — David Michael Bartlett, Fremont, Texas

Modification Request, 9:00 a.m. — Willie Keith Royster, Rising Star, Texas

Probation Appearance, 9:00 a.m. — John Stephen Ricci, Goldthwaite, 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(l), Texas Revised Civil Statutes, Regarding Pending or Contemplated Litigation.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016.

Filed: October 22, 1997, 3:24 p.m.

TRD-9714065



### **Texas Mental Health and Mental Retardation Board**

Tuesday, November 4, 1997, 10:30 a.m.

Lufkin State School, Highway 69 North (Chapel)

Lufkin

Audit and Financial Oversight Committee

AGENDA:



1. Citizens Comments
2. Audit Activity Update
3. Fourth Quarter Community Services Performance Report

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice of RELAY TEXAS), Ellen Hurst 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: October 27, 1997, 3:01 p.m.

TRD-9714232



Tuesday, November 4, 1997, 11:00 a.m.

Lufkin State School, Highway 69 North (Chapel)

Lufkin

Medicaid Committee

AGENDA:

1. Citizens Comments
2. Update on Implementation of the New Rate Setting Methodology
- 3-6. Review and Approval of Medicaid Reimbursement Rates for: State-Operated Campus-based Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) Effective September 1, 1997, through December 31, 1997; State-Operated Small Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) Effective September 1, 1997, through December 31, 1997; Non-State Operated Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) Effective January 1, 1998 through December 31, 1998; and rate for Lone Shadow, a State-Operated Small Intermediate Care Facility for the Mentally Retarded (ICF/MR), Effective September 25, 1997 through December 31, 1997.
- 7-8. Consideration of Approval of Adoption of Amendments to: §§409.101, 409.103, 409.109, 409.114, 409.115, and 409.119 of Chapter 409, Subchapter D, Concerning Home and Community-based Services (HCS) and §§409.153, 409.154, 409.158, 409.167, 409.169, 409.170, 409.172, and 409.173 of Chapter 409, Subchapter E, Concerning Home and Community-based Services —OBRA
9. Executive Session under Texas Government Code §551.071 to Discuss Potential and Pending Litigation, Institute of Cognitive Development, Develo-cepts, Inc. and Carroll Stroman, d/b/a Bitter Creek Farm v. Texas Department of Mental Health and Mental Retardation.
10. Consideration and Possible Action Concerning the Emergency Adoption of New TAC §§406.151, 406.155, and 406.156 of Chapter 406, Subchapter D, Governing ICF/MR Programs: Reimbursement Methodology, and the Contemporaneous Repeal of Existing 25 TAC §§406.151, 406.155, and 406.156 of Chapter 406, Subchapter D, Governing ICF/MR Programs; Reimbursement Methodology, Including a Possible Finding that Imminent Peril to Public Health, Safety or Welfare Requires Adoption on an Emergency Basis.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice of RELAY TEXAS), Ellen Hurst 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: October 27, 1997, 3:01 p.m.

TRD-9714233



Tuesday, November 4, 1997, 11:30 a.m.

Lufkin State School, Highway 69 North (Chapel)

Lufkin

Planning and Policy Development Committee

AGENDA:

1. Citizens Comments
2. Legislative Update
3. Update on the Implementation of the Recommendations Contained in the TPR-Special Delivery — New Models of Care and the FY 1997 Operating Plan (Final Reports)
4. Update on the Implementation of the Recommendations Contained in the Ad Hoc Committee on Mental Retardation and Managed Care Final Report
5. Consideration of Approval of Adoption of New §401.8 (Inpatient Mental Health Services Advisory Committee) of Chapter 401, Subchapter A, Governing Advisory Committees, with the Contemporaneous Repeal of §401.9 (Treatment Methods Advisory Committee) of the Same Subchapter.
6. Consideration of Approval of Adoption of Amendments to §407.103 of Chapter 410, Governing Capital Improvements by Citizen Groups
7. Consideration of Approval of Adoption of Amendments to §407.120 of Chapter 407, Governing Lease of TDMHMR Property
8. Consideration of Approval of Changes to the Board Policy and Procedures Manual
- A. Advisory Committee on Inpatient Mental Health Services
- B. Citizens' Planning Advisory Committee
- C. Medical Advisory Committee

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice of RELAY TEXAS), Ellen Hurst 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: October 27, 1997, 3:02 p.m.

TRD-9714234



Tuesday, November 4, 1997, 2:30 p.m.

Lufkin State School, Highway 69 North (Chapel)

Lufkin

Business and Asset Management Committee

AGENDA:

1. Citizens Comments
2. Update on Real Property Transactions Previously Approved by the Board: lease of Bond-Funded Community Facilities; Lease at Kerrville State Hospital to the Alamo Junior College District; Lease at Kerrville State Hospital to the YMCA of San Antonio; Sale of Real Property at the Big Spring State Hospital for the Purpose of

Constructing a Veterans' Home; and Implementation of the Asset Management Policy

3. Consideration of Acceptance of a Donation in Excess of \$500 from the Denton State School Volunteer Services Council

4. Consideration of Approval of a Capital Improvement Project at the Denton State School (Respite Home)

5. Consideration of Approval to Submit a Proposal to the General Services Commission to Name the New Patient Activity Building for the Adolescent Forensic Program at Vernon State Hospital the William, the William S. Heatly Building

6. Consideration of Approval of FY 1998 Operating Budget Adjustments

7. Consideration of Items Related to Triangle Square in Austin, Texas  
A. Third Amendment to the Master Lease Agreement with Triangle Retail, Ltd.

B. Summary of Sublease Terms with Barnes and Noble Booksellers, Inc.

C. Revisions to the Preliminary Master Plan

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice of RELAY TEXAS), Ellen Hurst 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: October 27, 1997, 3:02 p.m.

TRD-9714235



Wednesday, November 5, 1997, 9:00 a.m.

Lufkin State School, Highway 69 North (Chapel)

Lufkin

AGENDA:

I. Call to Order; Roll Call

II. Citizens Comments

III. Approval of the Minutes of the September 25, 1997 meeting

IV. Issues to be Considered

1. Chairman's Report — Announcement of the Appointments of Members to the Following Board-Appointed Advisory Committees: Advisory Committee on Inpatient Mental Health Services, Citizen's Planning Advisory Committee, and Medical Advisory Committee

Consideration of Resolutions Honoring Terrell State Hospital and Wichita Falls State Hospitals

Commissioner's Report

Medical Director's Report — Presentation on the Status of the Texas Medication Algorithms Project (TMAP).

Additional Items to be considered per the agenda, filed with the office of the Secretary of State.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice of RELAY TEXAS), Ellen Hurst 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: October 27, 1997, 3:02 p.m.

TRD-9714236



## Texas Natural Resource Conservation Commission

Tuesday, November 4, 1997, 9:30 a.m.

12100 Park 35, Building A, Room 202, Second Floor

Austin

Irrigators Advisory Council

AGENDA:

Meeting called to order; Discussion of reorganization of Occupational Certification Section; Discussion of Commission Resolution on continuance of Council; Discussion of proposed rules for implementation of House Bill 328; Committee reports and appts., Discussion of license on job-site when water tap is made; various items of interest from attendees will be discussed.

Contact: Gene Reagan or Bettye Jean Urban, P.O. Box 13087, MC-178, Austin, Texas 78711-3087, (512) 239-6719 or 239-6658, or 6659.

Filed: October 24, 1997, 3:12 p.m.

TRD-9714170



Wednesday, November 5, 1997, 9:30 a.m.

12100 Park 35, Building E, Room 201S

Austin

AGENDA:

The Commission will consider approving the following matters on the attached agenda; Class 3 Modification; Hearing Request; Petition; Contract; budget; District Matters; Petroleum Storage Tank Enforcement Agreed Orders; Petroleum Storage Tank Enforcement Default Orders; Municipal Solid Waste Enforcement Agreed Order; Industrial Waste Discharge Enforcement Agreed Order; Public Water Supply Enforcement Agreed Order; Public Water Supply Enforcement Default Order; Air Enforcement Agreed Order; Air Enforcement Default Order; On-Site Default Order; Temporary Variances and Permit Amendments; Report; Rules; Executive Session; the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration for 9:30 agenda Starts 8:45 until 9:25). The Commission will consider the following items on the 1:00 p.m. agenda; Administrative Law Judge's Proposal for Decision; Motion for Reconsideration; Request for Review. (The Registration for 1:00 p.m. agenda starts at 12:30 p.m.).

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317

Filed: October 27, 1997, 4:16 p.m.

TRD-9714246



Wednesday, November 5, 1997, 9:30 a.m.

12100 Park 35, Building E, Room 201S

Austin

REVISED AGENDA:

The Commission will consider the following item on the attached addendum to the Texas Natural Resource Conservation Agenda: Air Enforcement Default Order.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317

Filed: October 28, 1997, 11:49 a.m.

TRD-9714287



Thursday, November 6, 1997, 1:30 p.m.

12100 Park 35, Building E, Room 201S

Austin

AGENDA:

This meeting is a work session for discussion between commissioners and staff. No public testimony or comment will be accepted except by invitation of the commission.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317

Filed: October 27, 1997, 4:26 p.m.

TRD-9714247



Wednesday, January 21, 1998, 9:30 a.m.

TNRCC Park 35 Office Complex, 12118 North IH35

Austin

AGENDA:

Docket Number 97-0864-DIS; TRAVIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 19; request for authorization to convert from a water control and improvement district (WCID) operating under Chapters 49 and 51 of the Texas Water Code to a municipal utility district (MUD) operating under Chapters 49 and 54 of the Texas Water Code. The District has requested that they be allowed to retain the name Travis county Water Control and Improvement District Number 19. The District is not requesting authorization to retain any powers as provided under Chapter 51 of the Texas Water Code. The District presently consists of four non-contiguous tracts, totaling 305.297 acres, located in Travis County approximately 8 miles west of downtown Austin. The entire District is within the City of Austin's five mile extraterritorial jurisdiction. The requested conversion would provide the District with the additional authority to: a) Provide municipal solid waste collection and disposal, including recycling; b) Develop and maintain parks and recreational facilities; c) Have the ability to petition the Texas Transportation Commission for powers granted to road utility districts operating under Texas Transportation Code, Chapter 441, as a means to finance construction of roads with taxes; d) Accept, operate and maintain street and/or security lighting within public utility easements or rights-of-way; and e) Have the ability to enforce deed restrictions.

Contact: Water Utilities District Administration Section, Mail Code 152, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: October 23, 1997, 11:10 a.m.

TRD-9714088



**Board of Nurse Examiners**

Thursday, Friday, November 13-14, 1997, 8:30 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

AGENDA:

The Board of Nurse Examiners will discuss and possibly act on: approval of the minutes from the August Retreat; September board meeting; consider education matters. The Board will discuss and possibly act on the adoption of rule 215.15 regarding Students; consider proposed repeal and new 213, Practice and Procedure; proposed repeal and new 215.14, Distance Education Initiatives and guidelines to implement that section; consider proposed amendments to 221, Advanced Practice Nurses, 222, Limited Prescriptive Authority and 217.5, Temporary License and Endorsement. The Board will consider Agreed Orders for Lloyd Donald Carroll, #562057; Ralph Gregory Grantham, #549740; Paula Christine Mitchell, #451301; Janet K. Noles, #235763; Anthony L. Pascarella, #4411975; Mary E. Wilson Watson, #211162; Brenda L. Ziboh-Jackson #570787;

The Board will take action on proposed ALJ Decisions for John C. Adams, #539571; Deborah L. Austin, #532587; Coulter David Gaddy, #600934; Joan Mary Juarez, #595390; Roger Craig Streit, #237757; and Mary Kathryn Wampole, #512175. An Open Forum will be held from 1:30 — 2:00 p.m. on November 13, 1997 to allow interested parties an opportunity to address the board. On November 14, 1997, a work session regarding Ethics Training will be conducted.

Contact: Erlene Fisher, Box 430, Austin, 78767, (512) 305-6811.

Filed: October 22, 1997, 2:15 p.m.

TRD-9714059



**Texas Board of Occupational Therapy Examiners**

Wednesday, November 5, 1997, 1:00 p.m.

Principal's Office, Highland Park Elementary School, 635 Rigsby Avenue

San Antonio

Application Review Committee

AGENDA:

I. Call to Order

II. Discussion and possible action on the following applicants: Kimberly Wright; Lene Kiersted; Marliisa Gibbs; Barbara Boucher; Anna Ostropoff; Melissa Gallup

III. Adjournment

Contact: Alicia Dimmick Essary, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942, (512) 305-6900.

Filed: October 28, 1997, 1:41 p.m.

TRD-9714291



**Texas Parks and Wildlife Department**

Wednesday — Friday, November 12 through 14, 1997, (Noon Wednesday through Noon Friday).

Deer Meadow Ranch, off Highway 59 (Anderson County)

Athens

Parks and Wildlife Commission

AGENDA:

Members of the Texas Parks and Wildlife Commission plan to meet from 12 Noon on Wednesday, November 12 through 12 Noon on Friday, November 14. This function is primarily a social event and no formal action is planned.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 29, 1997, 11:57 a.m.

TRD-9714338



**Public Utility Commission of Texas**

Friday, October 31, 1997, 1:30 p.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session; Discussion and possible action on agency structure, priorities and budgets for the coming biennium; and Discussion and possible action on project assignments, correspondence, staff reports, audit, agency administrative procedures, budget, fiscal matters and personnel policy.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: October 23, 1997, 3:08 p.m.

TRD-9714104



Tuesday, November 4, 1997, 9:30 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Docket Numbers 17768, 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, 17781, Project Number 14929-Universal Service Issues: Docket Numbers 16890, 16905, 16906, 16938, 16939, 16940, 16941, 16942, 16943, 16944, 16945, 16946, 16947, 16948, 16984, 16986, 16987, 16988, 17015, 17054, 17128, 17142, 17143, 17144, 17170, 17175, 17176, 17177, 17181, 17182, 17191, 17195, 17196, 17197, 17203, 17204, 17238, 17753, 17854, 17923, 17698, 17350, 17782, 17791, 17792, 17796, 17820, 17836, 17845, 17852, Project Numbers 16727- Financial Audit of Texas Universal Service Fund; 16726-Financial Audit of Relay Texas; Federal Telecommunications Act of 1996, including but not limited to FCC Docket Number CC-97-137 and other actions taken by the Federal Communications Commission; local telephone markets, including but not limited to correspondence and implementation of interconnection agreements approved by the Commission pursuant to PURA and FTA; Project Number 18000- Informal Dispute Resolution; docket Numbers 16705, 17899, 17751, 17370, 16801; Project Number 17555 — Investigation into the Competitiveness of the Wholesale Power Market; electric industry restructuring, electric utility reliability and customer service;

Texas MesoNet weather monitoring network; Staff's Evaluation of the Earnings Reports submitted by utilities for the 12 months ending December 31, 1996; Project Number 17295- Amendment to Subst. R. 23.11, EEO Reports; customer service issues, including but not limited to correspondence and complaint issues; project assignments, correspondence, staff reports, audit, agency structure and administrative procedures, budget business plan, fiscal matters and personnel policy; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: October 27, 1997, 4:26 p.m.

TRD-9714249



Wednesday, November 5, 1997, 10:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

A Prehearing conference is scheduled for the above date and time in Docket Number 18077: Petition of METRO ONE TELECOMMUNICATIONS, INC. for arbitration to establish an Interconnection Agreement with Southwestern Bell Telephone Company.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: October 22, 1997, 2:15 p.m.

TRD-9714058



Thursday, November 20, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

An Arbitration Hearing is scheduled for the above date and time in Docket Numbers 17922 and 18082:

D-17922: Petition of WALLER CREEK COMMUNICATIONS, INC. for Arbitration with SOUTHWESTERN BELL TELEPHONE COMPANY.

d-18082: Complaint and Request for Expedited Ruling of TIME WARNER COMMUNICATIONS

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: October 28, 1997, 10:49 a.m.

TRD-9714278



**Railroad Commission of Texas**

Tuesday, November 4, 1997, 9:30 a.m.

1701 North Congress, 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: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas (512) 463-7033.

Filed: October 24, 1997, 4:13 p.m.

TRD-9714179



Tuesday, November 4, 1997, 9:30 a.m.

1701 North Congress, First Floor Conference Room 1-111

Austin

REVISED AGENDA:

The Railroad Commission of Texas will consider and may act on the following items: Marshall v. ARCO Oil and Gas Company, Cause Number 3,217 in 49th Judicial District Court of Zapata County, Texas.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas (512) 463-7033.

Filed: October 27, 1997, 3:30 p.m.

TRD-9714241



Friday, November 14, 1997, 1:00 p.m.

Concourse Clarion Hotel, 6789 Boeing, Oxford A and B Rooms

El Paso

AGENDA:

The Commission will hear public comment regarding safety and service of rail providers in Texas.

1:00 p.m. — Call to order by Chairman Charles R. Matthews; opening remarks by Chairman Matthews, Commissioner Barry Williamson, and Commissioner Carole Keeton Rylander.

1:15 p.m. — Speakers' comments to the Commission.

3:45-4:00 p.m. — Closing remarks by Chairman Matthews, Commissioner Williamson, and Commissioner Rylander.

Adjournment by Chairman Matthews) time will depend on number of speakers.

The Commission may also take a break for lunch, but the time and length will be determined by the number of speakers.

Contact: Jerry Martin, P.O. Box 12967, Austin, Texas (512) 463-7001.  
Filed: October 24, 1997, 4:13 p.m.

TRD-9714178



**Texas Real Estate Commission**

Monday, November 3, 1997, 8:15 a.m.

Conference Room 234, TREC Headquarters Office, 1101 Camino La Costa

Austin

EMERGENCY MEETING AGENDA:

Call to order; executive session to discuss applications and possibly to interview applicants for the administrator position pursuant to §551.074, Government Code; discussion of applications and possible interviews with applicants for administrator position. Adjourn.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

REASON FOR EMERGENCY: Applicants for the administrator position whose interviews were scheduled on October 27, 1997, were unable to attend the committee's posted meeting on that day, and the committee must meet and complete its interviews of applicants prior to the commission meeting already scheduled for November 3, 1997.

Contact: Mark A. Mosely, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: October 27, 1997, 12:29 p.m.

TRD-9714217



Monday, November 3, 1997, 9:30 a.m.

Conference Room 235, TREC Headquarters Office, 1101 Camino La Costa

Austin

AGENDA:

Call to order; Minutes of September 22, 1997 Commission meeting; Staff reports; committee reports; General comments from visitors; Discussion and possible action to adopt: (a) new 22 TAC §535.400-535.402, concerning registration of easement or right-of-way agents, (b) amendment to 22 TAC §535.63, concerning broker education and experience, (c) amendment to 22 TAC §535.64, concerning salesperson education, (d) amendment to 22 TAC §535.132, concerning nonresidents' eligibility for licensure, (e) amendment to 22 TAC §535.212, concerning education and experience requirements for inspectors; Executive session to discuss pending litigation pursuant to §551.071, Texas Government Code; to review applications and possibly to interview applicants for administrator position and to discuss duties and responsibilities of enforcement personnel pursuant to §551.074, Government Code; Discussion and possible action to authorize payments from recovery funds; Discussion and possible action to select an administrator; Discussion and possible action to propose amendments to 22 TAC Chapters 531 and 541 to replace existing terms with new statutory language; Discussion and possible action on commissioner travel; Discussion and possible action to approve operating budget for FY 1998; Annual review of fees and estimated revenues; Discussion and possible action to approve questions and answers on use of standard inspection report forms; Discussion and possible action to approve questions and answers on registration of easement or right-of-way agents; Discussion and possible action to authorize employees to file complaints under Texas Civil Statutes, Article 6573a, §15B(e); Discussion and possible action to approve: (a) Courses to be offered by: Alamo Real Estate Institute, Austin Institute of Real Estate, San Antonio Board of Realtors, Stewart Real Estate School; (b) MCE courses to be offered by: San Antonio Board of Realtors, Spencer School of Real Estate, Capital Real Estate Training Center, Real Estate Education Services; Consideration of complaint information concerning Phillip Lee Shinault, Tammy Lynne Duffer, Kimberly Jean Kubecka, Rebecca Ann

Livingston and Gaspar E. Pedrosa; Entry of orders in contested cases; Scheduling of future meetings.

Contact: Mark A. Mosely, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: October 23, 1997, 11:27 a.m.

TRD-9714089



### **Texas Residential Property Insurance Market Assistance Program**

Wednesday, November 5, 1997, 9:30 a.m.

333 Guadalupe, H-1, Rooms 1264, and 1250A

Austin

Executive Committee and Subcommittees

AGENDA:

1. Executive Committee (Room 1264, 9:30 a.m.)

Antitrust Statement

Opportunity for public input

Staff update on educational initiatives, including public relations and promotional activities

Staff update on status of implementation of MAP operations, MAP activity and Voluntary Inspection Program

Consideration of proposed amendments to the Plan of Operation and MAP application

2. Subcommittee Meetings

Subcommittee for Monitoring MAP Operations (Room 1264)

Subcommittee on Data Collection (Room 1250A)

3. Executive Committee (Room 1264)

Subcommittee Reports

General administrative matters

Contact: Lyndon Anderson, 333 Guadalupe Street, Austin, Texas, 78714, (512) 463-6328.

Filed: October 24, 1997, 2:44 p.m.

TRD-9714166



### **Texas Savings and Loan Department**

Monday, November 24, 1997, 9:00 a.m.

Finance Commission Building, 2601 North Lamar, Third Floor

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application from Beal Bank, SSB, Dallas, Texas, to sell its branch office at 874 Green Bay Road, Winnetka, Illinois, to Guaranty Bank, SSB, Milwaukee, Wisconsin, from which record the Commission will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar, suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: October 23, 1997, 2:48 p.m.

TRD-9714102



### **Texas Senate**

Thursday, November 13, 1997, 8:30 a.m.

Camino Real Hotel, 101 South El Paso Street

El Paso

Senate Interim Committee on NAFTA

AGENDA:

I. Call to Order

II. Roll Call

III. Committee Business

A. Overview of Economic and Social Indicators for NAFTA High-Impact Regions

B. Invited Testimony on State Policies and Their Effect on NAFTA High-Impact Regions

C. Invited Testimony on the Effect of Texas Tax System on NAFTA High-Impact Regions

D. Panel Discussions, NAFTA's Impact on the Infrastructure on NAFTA High-Impact Regions

E. Public Testimony

IV. Adjournment

Purpose: The committee is meeting to take testimony on Committee Charge #1; Evaluate the impact on NAFTA on the Texas economy and determine how different segments of the economy are affected; Committee Charge #2: Determine how NAFTA has affected employment and identify any employment losses or gains. Assess how the state's workforce program have responded to any employment changes and make any necessary recommendations to improve that response; and Committee charge #3: Assess the impact NAFTA is having on the state's infrastructure, including but not limited to transportation, education, housing, the environment and health and human services.

Contact: Carla Buckner, P.O. Box 12068, Austin, Texas 78711, (512) 463-0989.

Filed: October 22, 1997, 4:19 p.m.

TRD-9714070



### **Texas Guaranteed Student Loan Corporation**

Thursday, November 6, 1997, 8:30 a.m.

Austin Technology Incubator, 3925 West Braker Lane

Austin

Planning Committee

AGENDA:

1. Call to Order

2. Approval of June 27, 1997 Minutes

3. Presentation of Information Concerning the Planning Process and TG

4. Presentation Regarding the Interactive Computer Tool that Committee Members and Senior Management Will Use to Identify and Reach Consensus on Issues

5. Use the Interactive Computer tool

6. Discussion of the Results from the Use of the Interactive Computer Tool

7. Action by Committee on Three to Five Strategic Priorities to Best Position TG to Maximize Progress Toward Its Vision for the Next Three Years

Adjourn

Contact: Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, (512) 219-4550.

Filed: October 28, 1997 at 2:49 p.m.

TRD-9714297

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## Texas Southern University

Thursday, November 6, 1997, 10:00 a.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Academic Affairs Committee

AGENDA:

Meeting to Consider: Progress report of academic activities and programs. Executive Session.

Contact: Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: October 27, 1997, 3:00 p.m.

TRD-9714227

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Thursday, November 6, 1997, 11:15 a.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Finance and Buildings and Grounds Committee

AGENDA:

Meeting to Consider: Matters relating to financial reporting systems, and budgets; fiscal reports from the Administration; investments, contracts, awards; and informational items. Executive Session.

Contact: Dr. Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: October 27, 1997, 3:00 p.m.

TRD-9714228

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Thursday, November 6, 1997, 12:30 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Development Committee

AGENDA:

Meeting to Consider: Reports from the Administration on University Fund-Raising efforts.

Contact: Dr. Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: October 27, 1997, 3:00 p.m.

TRD-9714229

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Thursday, November 6, 1997, 1:15 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Student Services Committee

AGENDA:

Meeting to Consider: Progress reports to receive informational items. Executive Session

Contact: Dr. Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: October 27, 1997, 3:01 p.m.

TRD-9714230

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Thursday, November 6, 1997, 2:15 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Personnel Committee

AGENDA:

Meeting to Consider: Ratification of appointments of instructional personnel, academic personnel changes. Executive Session.

Contact: Dr. Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: October 27, 1997, 3:01 p.m.

TRD-9714231

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Friday, November 7, 1997, 8:30 a.m.

3100 Cleburne, Robert J. Terry Library, Fifth Floor

Houston

Board of Regents

AGENDA:

Meeting to Consider: Minutes; Report of the President; Report from standing committees; Executive Session.

Contact: Dr. Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: October 27, 1997, 3:00 p.m.

TRD-9714226

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## Texas Department of Transportation

Thursday, October 30, 1997, 9:00 a.m.

125 East 11th Street, First Floor, Dewitt C. Greer Building

Austin

Texas Transportation Commission

AGENDA:

Approve Minutes. Awards/Recognitions/Resolutions. Reports: Grand Parkway Association; San Antonio Transportation Alliance. Corridor Report for Lubbock to IH10/Amarillo North Route Study. Appointment of Director of Texas Turnpike Authority Division. Selection of Acting Executive Director of TxDOT. Approval of reorganization of certain TxDOT Divisions and Special Offices. Rulemaking: 43 TAC Chapter 22, 25, 28 and 29. Multimodal Transportation. Programs. Contract Awards/ Rejections/ Defaults/ Assignments/ Claims. Routine Minute Orders. Executive Session for legal counsel consultation, land acquisition matters, and management personnel evaluations, desingation, assignments and duties. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: October 22, 1997, 2:56 p.m.

TRD-9714062



### **University Interscholastic League**

Friday, October 24, 1997, 9:30 a.m.

Northside ISD, 7001 Culebra

San Antonio

State Executive Committee

EMERGENCY MEETING AGENDA:

AA. United High School, Laredo, Appeal of the District 30-AAAAA Executive Committee's Ruling Finding Student Athletes Ineligible for Varsity Athletic Competition.

REASON FOR EMERGENCY: Eligibility of players must be determined prior to next scheduled game on October 24, 1997.

Contact: C. Ray Daniel, 3001 Lake Austin Boulevard, (512) 471-5883. Filed: October 22, 1997, 2:57 p.m.

TRD-9714063



### **University of North Texas/University of North Texas Health Science Center**

Saturday, November 1, 1997, 8:30 a.m.

Glad Oaks Ranch

Athens

Board of Regents Retreat

AGENDA:

[Executive Session: UNTHSC: Internal Audit Report on Human Resources Office; UNT/UNTHSC: Future Administration Staff Changes]; The Role of a Board and Its Members; Campus Master Plan

Contact: Jana Dean, P.O. Box 311220, Denton, Texas 76203, (940) 369-8515.

Filed: October 28, 1997, 2:48 p.m.

TRD-9714296



### **University of Texas System**

Friday, October 31, 1997, 1:00 p.m.

Regents' Conference Room, Ninth Floor, Ashbel Smith Hall, 201 West 7th Street

Austin

Board of Regents' Committee on Telecommunications and Minorities and Women

AGENDA:

The Committee on Telecommunications and Minorities and Women will meet to consider the Annual Report on Human Resources as compiled by each component of the U.T. System and to hear an update on plans and programs for enhanced telecommunications and information technology for the U.T. System.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701-2981, (512) 499-4402.

Filed: October 28, 1997, 9:09 a.m.

TRD-9714271



Friday, October 31, 1997, 5:30 p.m.

University Teaching Center, 105 West 21st Street, Auditorium 2.112A

Austin

Board of Regents' Academic Affairs Committee and Committee on Telecommunications and Minorities and Women

AGENDA:

The Academic Affairs Committee and the Committee on Telecommunications and Minorities and Women will convene in joint session to hear from representatives of Students for Access and Opportunity and other students regarding diversity on the U.T. Austin campus.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701-2981, (512) 499-4402.

Filed: October 28, 1997, 9:09 a.m.

TRD-9714272



### **Texas Workers' Compensation Commission**

Monday, October 27, 1997, 11:30 a.m.

4000 South IH35, Room 910-911, Southfield Building

Austin

Public Meeting

AGENDA:

1. Call to Order
2. Report on meeting and action of Texas Certified Self-Insurer Guaranty Association
3. discussion, and Possible Action to Determine and Certify whether Montgomery Ward, a Certified Self-Insurer, is an Impaired Employer.
4. Discussion, and Possible Action relating to and regarding a Determination of how payment of benefits and administration of claims of Montgomery Ward as an Impaired Employer is to be made, including whether such should be made through the Texas Certified Self-Insure Guaranty Association.

5. Discussion, and Possible Action relating to and regarding the duties and responsibilities of Self-Insurance Regulation, including any appropriate delegation of authority to Director of Self-Insurance



Regulation for matters relating to Montgomery Ward as an Impaired Employer and/or Certified Self-Insurer and/or Former Certified Self-Insurer.

6. Discussion and Possible Action related to and regarding the duties and responsibilities of Texas Certified Self-Insurer Guaranty Association for Matters relating to Montgomery Ward as an Impaired Employer and/or Certified Self-Insurer and/or Certified Self-Insurer and/or Former Certified Self-Insurer.

7. Discussion, and Possible Action to Consider Montgomery Ward's request to withdraw from self-insurance and related matters.

8. Executive Session.

9. Action on Matters considered in Executive Session.

10. Discussion, and Possible Action regarding duties, responsibilities and/or actions of TWCC and/or TCSIGA and/or Director of Self-Insurance Regulation relating to Montgomery Ward.

11. Adjournment

Contact: Bob Marquette, 4000 South IH35, Austin, Texas 78704, (512) 440-3552.

Filed: October 23, 1997, 4:58 p.m.

TRD-9714120



## Texas Workforce Commission

Tuesday, November 4, 1997, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street

Austin

### AGENDA:

Discussion, consideration and possible action relating to: (1) integration of eligibility determination and service delivery relative to House Bill 2777; (2) publication in the *Texas Register* of proposed incentive and sanction rule for local workforce boards; (3) potential and pending applications for certification of local workforce development boards; (4) recommendations to TCWEC of operational plans of local workforce development boards; (5) approval of local workforce board or private industry council nominees; (6) agency budget for Fiscal Year 1998. Discussion regarding: Revision of rules related to the TANF employment program and rules related to Full Employment Pilot Project and on allowing local workforce development boards to determine what programs they will administer and whether or not to set deadlines on the boards' plan submissions. EXECUTIVE SESSION: pursuant to Government Code §551.074 to discuss the duties and responsibilities of the Executive Staff and other personnel; §551.071(1) concerning the pending litigation of the Texas AFL-CIO v. TWC; and §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of its attorney as privileged communication under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to Discuss the Open Meetings Act and Administrative Procedures Act; Actions, if any, resulting from Executive session; Consideration and action on continuing jurisdiction and reconsideration of unemployment compensation cases; consideration and action on higher level appeals in unemployment compensation cases on Docket 45 and on motion for attorney's fees for Appeal Tribunal Number 97-058402-1-0997 and Commission Appeal Number 97-007075-10-062597; Consideration and adoption on hearing notices in drug cases, of policies on the adoption of precedent cases and revision of precedent manual; Discussion

regarding standards of proof in unemployment cases involving drug testing; and set date of next meeting.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463-7833.

Filed: October 27, 1997, 3:03 p.m.

TRD-9714237



## Regional Meetings

Meetings filed October 22, 1997

Cash Water Supply Corporation, Board of Directors, met at Corporation Office, FM 1564 at Highway 34, Greenville, October 27, 1997, at 7:00 p.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. TRD-9714074.

Coastal Bend Council of Governments, Executive Board, met at 2910 Leopard Street, Corpus Christi, October 31, 1997 at Noon. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9714072.

Coastal Bend Council of Governments, Membership, met at 2910 Leopard Street, Corpus Christi, October 31, 1997 at 2:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9714073.

Education Service Center, Region II, Board of Directors, (Special Called Meeting), met at 209 North Water, Board Room 102, Corpus Christi, October 28, 1997 at 6:30 p.m. Information may be obtained from Dr. Ernest Zamora, 209 North Water, Corpus Christi, Texas 78401, (512) 883-9288, ext. 2200. TRD-9714064.

Northeast Texas Municipal Water District, Board of Directors, met at Highway 250 South, Hughes Springs, October 27, 1997 at 10:00 a.m. Information may be obtained from Roy A. Nail, P.O. Box 955, Hughes Springs, Texas 75656. TRD-9714066.

Meetings filed October 23, 1997

Barton Springs/Edwards Aquifer Conservation District, Board of Directors, Called Meeting, met at 2510 Onion Creek Parkway, Austin, October 28, 1997 at 8:30 a.m. Information may be obtained from Bill E. Couch, 1124 A Regal Row, Austin, Texas 78748, (512) 282-8441, fax: (512) 282-7016. TRD-9714114.

Central Counties Center for MHMR Services, Board of Trustees, met at 100 East Avenue A, Killeen, November 1, 1997 at 9:00 a.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (254) 298-7010. TRD-9714086.

Central Texas Opportunities, Inc., Board of Directors, met at 1200 South Frio, Coleman, October 28, 1997 at 7:00 p.m. Information may be obtained from Barbara E. Metcalf, P.O. Box 820, Coleman, Texas 76834, (915) 625-4167. TRD-9714107.

Central Texas Water Supply Corporation, Negotiating Committee, met at 4020 Lake Cliff Drive, Harker Heights, October 28, 1997 at 6:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, (254) 698-2779. TRD-9714116.

Community Action Committee of Victoria, Texas, Board of Directors, met at 1501 North DeLeon, Suite A, Victoria, October 30, 1997 at 7:00 p.m. Information may be obtained from Vicki Smith, 1501 North DeLeon, Suite A, Victoria, Texas 77902-2142, (512) 578-2989. TRD-9714087.

Dallas Area Rapid Transit, Property Acquisition Corporation, (DART-PAC) met at 1401 Pacific Avenue, Conference Room A, Second Floor, Dallas, October 27, 1997 at 9:00 a.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9714110.

Dallas Area Rapid Transit, Planning Ad Hoc Committee, met at 1401 Pacific Avenue, Conference Room C, First Floor, Dallas, October 27, 1997 at 2:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3651. TRD-9714111.

Education Service Center, Region VI, Board of Directors, met at 801 University Drive East, College Station, October 29, 1997, at 5:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9714112.

Edwards Aquifer Authority, Research and Technology Committee, met at 1615 North St. Mary's Street, San Antonio, October 29, 1997 at 10:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9714075.

Edwards Aquifer Authority, Finance Committee, met at 1615 North St. Mary's Street, San Antonio, October 29, 1997 at 12:30 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9714076.

Edwards Aquifer Authority, Aquifer Management Planning Committee, met at 1615 North St. Mary's Street, San Antonio, October 29, 1997 at 3:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9714077.

Edwards Aquifer Authority, Permits Committee, met at 1615 North St. Mary's Street, San Antonio, October 29, 1997 at 5:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9714078.

Edwards Aquifer Authority, Special Board Meeting, met at City of San Antonio Council Chambers, Municipal Plaza Building, 103 Main Plaza, San Antonio, October 30, 1997 at 6:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9714080.

Edwards Aquifer Authority, Legal Committee, met at 1615 North St. Mary's Street, San Antonio, October 31, 1997 at 9:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9714081.

Grayson Appraisal District, Board of Directors, met at 205 North Travis, Sherman, October 29, 1997, 5:30 p.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9714099.

Lamar County Appraisal District, Board of Directors, met at 521 Bonham Street, Paris, October 27, 1997 at 4:00 p.m. Information may be obtained from Cathy Jackson, 521 Bonham Street, Paris, Texas 75461, (903) 785-7822. TRD-9714082.

Leon County Central Appraisal District, Board of Directors, met at 103 North Commerce, October 27, 1997 at 7:00 p.m. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas 75833-0536, (903) 536-2252. TRD-9714115.

North Central Texas Workforce Board, School-to-Work Partnership Committee, met at 616 Six Flags Drive, Arlington, November 5,

1997 at 10:00 a.m. Information may be obtained from Casandra J. Vines, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9176. TRD-9714096.

North Central Texas Workforce Board, Quality Assurance Committee, met at 616 Six Flags Drive, Arlington, October 28, 1997 at 1:00 p.m. Information may be obtained from Casandra J. Vines, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9176. TRD-9714097.

Panhandle Information Network, Board of Directors, met at 1314 South Polk Street, Amarillo, October 29, 1997 at 1:00 p.m. Information may be obtained from Linda Pitner, Box 215, Canyon, Texas 79016-0001, (806) 656-2983. TRD-9714106.

Panhandle Regional Planning Commission, Board of Directors, met at 415 West Eighth Avenue, Amarillo, October 30, 1997 at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105; (806) 372-3381. TRD-9714109.

Meetings filed October 24, 1997

Alamo Area Council of Governments, Area Judges, met at 118 Broadway, Suite 400, San Antonio, October 29, 1997 at 1:00 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9714134.

Alamo Area Council of Governments, Board of Directors, met at 118 Broadway, Suite 400, San Antonio, October 29, 1997 at 1:30 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9714135.

Andrews Center, Board of Trustees, met at 2323 West Front Street, Room 208, Tyler, October 30, 1997 at 3:00 p.m. Information may be obtained from Richard J. DeSanto, CEO, P.O. Box 4730, Tyler, Texas 75712, (903) 535-7338. TRD-9714180.

Austin-Travis County MHMR Center, Finance and Control Committee, met at 1430 Collier Street, Board Room, Austin, October 28, 1997 at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440-4031. TRD-9714127.

Cash Water Supply Corporation, Board of Directors, met at Corporation Office, FM 1564 at Highway 34, Greenville, October 30, 1997 at 7:00 a.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. TRD-9714132.

Central Texas Opportunities, Inc. Board of Directors, met with revised agenda, at 1200 South Frio, Coleman, October 28, 1997 at 7:00 p.m. Information may be obtained from Barbara A. Metcalf, 1200 South Frio, P.O. Box 820, Coleman, Texas 76834, (915) 625-4167. TRD-9714167.

Central Texas Water Supply Corporation, Monthly Meeting, met at 4020 Lake Cliff Drive, Harker Heights, October 28, 1997, 7:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, (254) 698-2779. TRD-9714162.

Dallas Area Rapid Transit, Audit Committee, met at 1401 Pacific Avenue, Conference Room "B", First Floor, October 28, 1997 at 11:00 a.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9714158.

Dallas Area Rapid Transit, Committee of the Whole, met at 1401 Pacific Avenue, Conference Room "C", First Floor, October 28, 1997 at 1:00 p.m. Information may be obtained from Paula Bailey, DART,

P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9714159.

Dallas Area Rapid Transit, Committee of the Whole, met with revised agenda, at 1401 Pacific Avenue, Conference Room "C", First Floor, October 28, 1997 at 1:00 p.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9714173.

Dallas Area Rapid Transit, Board of Directors, met, at 1401 Pacific Avenue, Board Room, First Floor, October 28, 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-9714157.

Dallas Area Rapid Transit, Board of Directors, met with revised agenda, at 1401 Pacific Avenue, Board Room, First Floor, October 28, 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-9714174.

Dallas Area Rapid Transit, Legislative Ad Hoc Committee, met, at 1401 Pacific Avenue, Conference Room "C", First Floor, October 30, 1997 at 11:00 a.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9714160.

East Texas Council of Governments, Workforce Development Board, Governance Task Force, met at 3800 Stone Road, Kilgore, November 4, 1997 at 3:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9714172.

Ellis County Appraisal District, Board of Directors, met after filing a revised agenda, at 400 Ferris Avenue, Waxahachie, October 30, 1997 at 7:00 p.m. Information may be obtained from Kathy Rodriguez, P.O. Box 878, Waxahachie, Texas 75168, (972) 937-3552. TRD-9714156.

Ellis County Appraisal District, Board of Directors, met with revised agenda, at 400 Ferris Avenue, Waxahachie, October 30, 1997 at 7:00 p.m. Information may be obtained from Kathy Rodriguez, P.O. Box 878, Waxahachie, Texas 75168, (972) 937-3552. TRD-9714171.

Fisher County Appraisal District, Board of Directors, will meet at 100 West Concho, Fisher, County Courthouse, Courtroom, Roby, November 13, 1997 at 8:00 a.m. Information may be obtained from Betty Mize, P.O. Box 516, Roby, Texas 79543, (915) 776-2733. TRD-9714181.

Heart of Texas Region MHMR Center, Board of Trustees, met at 312 South Fourth Street, Waco, October 29, 1997 at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451, ext. 290. TRD-9714126.

Hickory Underground Water Conservation District Number One, Board and Advisors, met at 2005 South Bridge, Brady, October 28, 1997 at 7:00 p.m. Information may be obtained from Stan Reinhard, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9714124.

Nueces River Authority, Board of Directors, met at Omni Marina Hotel, 707 North Shoreline Boulevard, Corpus Christi, October 29, 1997 at 10:00 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, (830) 278-6810. TRD-9714130.

Sabine Valley Center, Personnel Committee, met at Administration Building, 107 Woodbine Place, Longview, October 31, 1997 at 9:45 a.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9714123.

Texas Panhandle Mental Health Authority, Board of Trustees, met at 1501 South Polk Street, Second Floor, Amarillo, October 30, 1997 at 10:00 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116-3250; (806) 349-5680 or fax: (805) 337-1035. TRD-9714117.

Upper Leon River Municipal Water District, Board of Directors, met at General Office, located off FM 2861, Lake Proctor Dam, Comanche, October 27, 1997 at 6:30 p.m. Information may be obtained from Upper Leon River MWD, P.O. Box 67, Comanche, Texas 76442, (254) 879-2258. TRD-9714155.

Uvalde County Appraisal District, Appraisal Review Board, met at 209 North High Street, Uvalde, October 30, 1997 at 9:00 a.m. Information may be obtained from Alida Lopez, 209 North High Street, Uvalde, Texas, 78801, (830) 278-1106. TRD-9714129.

Meetings filed October 27, 1997

Austin-Travis County MHMR Center, Board of Trustees, met after filing a revised agenda, at 1430 Collier Street, Board Room, Austin, October 30, 1997, at 5:00 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440-4031. TRD-9714221.

Austin-Travis County MHMR Center, Board of Trustees, met with revised agenda at 1430 Collier Street, Board Room, Austin, October 30, 1997, at 5:00 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440-4031. TRD-9714248.

Bexar-Medina-Atascosa Counties Water Control and Improvement District One, Board of Directors, met at 226 Highway 132, Natalia, November 5, 1997, 7:00 p.m. Information may be obtained from John W. Ward, III, P.O. Box 170, Natalia, Texas, 78059, (830) 665-2132. TRD-9714208.

Central Texas Economic Development District, Executive Committee, met at Heitmiller's Steak House, IH35 and FM 309, Elm Mott, November 6, 1997 at 11:00 a.m. Information may be obtained from Bruce Gaines, P.O. Box 154118, Waco, Texas 76715, (254) 799-0258. TRD-9714182.

Education Service Center, Region XVI, Board of Directors, met at Amarillo Club, Sixth and Tyler, Amarillo, October 31, 1997 at Noon. Information may be obtained from Darrell L. Garrison, P.O. Box 30600, Amarillo, Texas 79120, (806) 376-5521, ext. 272. TRD-9714218.

Lavaca County Central Appraisal District, Board of Directors, will meet at 113 North Main Street, Hallettsville, November 10, 1997, 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9714251.

Millersview-Doole Water Supply Corporation, Board of Directors, met at Corporation Office, 1 Block West of FM 765 and FM 2134, Millersview, November 3, 1997 at 8:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box 130, Millersview, Texas 76862-0139, (915) 483-5438. TRD-9714222.

Rockwall County Central Appraisal District, Board of Directors, met at 106 North San Jacinto, Rockwall, October 30, 1997, at 7:00 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (972) 771-2034. TRD-9714206.

Rusk County Appraisal District, Board of Directors, met at 107 North Van Buren, Henderson, November 4, 1997, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-9697. TRD-9714213.

South Plains Regional Workforce Development Board, met at 1301 Broadway, Downstairs Conference Room, Lubbock, October 30, 1997, at 3:00 p.m. Information may be obtained from Linda Chamales, P.O. Box 2000, Lubbock, Texas 79457, (806) 775-2215. TRD-9714220.

Meetings filed October 28, 1997

Angelina and Neches River Authority, Board of Directors, met at 210 Lufkin Avenue, Board Meeting Room, Lufkin, November 4, 1997 at 10:00 a.m. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75901, (409) 632-7795, fax: (409) 632-2564. TRD-9714273.

Cash Water Supply Corporation, Board of Directors, met at Corporation Office, FM 1564 at Highway 34, Greenville, November 4, 1997 at 7:00 p.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. TRD-9714286.

Uvalde County Appraisal District, Board of Directors, met at 209 North High Street, Uvalde, November 3, 1997 at 7:00 p.m. Information may be obtained from Alida E. Lopez, 205 North High Street, Uvalde, Texas 78801, (830) 278-1106, extension 16. TRD-9714293.

Meetings filed October 29, 1997

Brazos Valley Council of Governments, Regional Advisory Committee on Aging, met at 1706 East 29th Street, Bryan, November 4, 1997

at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9714330.

Edwards Aquifer Authority, Executive Committee, met at 1615 North St. Mary's Street, San Antonio, November 3, 1997 at Noon. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9714339.

Fort Bend Parkway Association, Board, will meet at 1522 Texas Parkway (City Hall Complex), Missouri City, November 10, 1997, at 2:00 p.m. Information may be obtained from Robert R. Randolph, 2701 First City Tower, 1001 Fannin, Houston, Texas 77002-6760, (713) 758-2380. TRD-9714313.

Houston-Galveston Area Council, Gulf Coast Workforce Development Board, will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, November 11, 1997 at 10:00 a.m. Information may be obtained from Carol Kimmick, H-GAC, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, (713) 627-3200. TRD-9714323.

Leon County Central Appraisal District, Appraisal Review Board, met at 103 North Commerce, Corner of Highway 7 and 75, Gresham Building, November 3, 1997 at 9:00 a.m. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas 75833-0536, (903) 536-2252. TRD-9714326.

# IN ADDITION

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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.

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## Central Texas Workforce Development Board

### Request for Bids

The Central Texas Workforce Development Board, Inc. (Board) is soliciting bids for lease space, either new construction or existing facility, for a Workforce Central Killeen, Estimated size of the Workforce Center is 32,000 sq. ft. Bid specifications may be obtained from the office of the Workforce Development Board after October 31, 1997 by contacting Linda Angel at (254) 939-3771, Ext. 224 or at 200 North Main, P.O. Box 729, Belton, Texas 76513.

The deadline for receipt of proposals is 5:00 p.m., CDT, January 2, 1998. Proposals received after this deadline will not be considered. Proposals should be sent to: Central Texas Workforce Development Board, 200 North Main Street, P.O. Box 450, Belton, Texas 76513 (Attention RFP Staff).

A Bidders' Conference will be held at the current Killeen Workforce Center, Career Central, 218B East Avenue D, at 10:00 a.m. on November 21, 1997.

If it is in the best interest of the Board, the Board reserves the right to accept or reject any or all proposals received as a result of this request, or to negotiate with all qualified bidders, or to cancel in part or in its entirety the Request for Proposals.

The Board encourages female and minority owned businesses to request and respond to all Request for Proposals.

Issued in Austin, Texas, on October 27, 1997.

TRD-9714303

Susan Kamas

Executive Director

Central Texas Workforce Development Board

Filed: October 28, 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 October 23, 1997, through October 28, 1997:

### FEDERAL AGENCY ACTIONS:

Applicant: Shell Offshore, Inc.; Location: Galveston Anchorage Area and Fairway, in High Island Area, Block 154, offshore Texas, Gulf of Mexico; Project Number: 97-0367-F1; Description of Proposed Action: The applicant proposes to install and maintain an 8/10-inch pipeline from their platform "JA", in Block 154, to an existing Transco pipeline in High Island Block 178. The line will be installed by jetting and will be placed in a minimum of 16.5 feet below the mudline in the anchorage area and 10 feet below the mudline in the fairway; Type of Application: U.S.C.O.E. permit application #21125 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

### FEDERAL AGENCY ACTIVITIES:

Applicant: Minerals Management Service; Location: Central Gulf of Mexico Project Number: 97-0369-F2; Description of Proposed Activity: The applicant requests a consistency determination for the proposed Central Gulf of Mexico Lease Sale 169, scheduled for March 1998.

Applicant: U.S. Army Corps of Engineers; Project Number: 97-0375-F2; Description of Proposed Activity: The applicant proposes to relocate two spillway structures in Placement Area No. 11 at Sabine Lake pursuant to 15 Code of Federal Regulations 930.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.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 Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

Issued in Austin, Texas, on October 30, 1997.

TRD-9714356  
Garry Mauro  
Chairman  
Coastal Coordination Council  
Filed: October 30, 1997

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003, 1D.005 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.005, and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 11/03/97 - 11/09/97 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial <sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 11/03/97 - 11/09/97 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by Art. 1D.005 and 1D.009<sup>3</sup> for the period of 11/01/97 - 11/30/97 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by Art. 1D.005 and 1D.009 for the period of 11/01/97 - 11/30/97 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

Issued in Austin, Texas, on October 28, 1997.

TRD-9714298  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: October 28, 1997

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## East Texas Council of Governments

### Request for Proposals

The East Texas Council of Governments (ETCOG) is seeking proposals from qualified organizations to conduct air quality study activities in the Tyler-Longview-Marshall area during FY 1998-1999. ETCOG has approximately \$218,750 available for these activities. These study activities will build on work that has already been completed during FY 1996-1997 and will be made available to proposers. Specifically, additional work is needed to assist in identifying the causes of high ozone in the East Texas Area and for planning activities and actions that can be taken by local governments and industries to maintain compliance with National Ambient Air Quality Standards for Ozone.

Potential subcontractors may propose to perform one or more of the following components: (1) Air Emissions Inventory and Modeling Preparation; (2) Monitoring; and/or (3) Base Case Ozone Modeling. Therefore, ETCOG may choose to contract with one subcontractor to conduct all of the components (if such a proposal is submitted) or choose multiple subcontractors for one or more components, depending on the merits of the proposal. Also, note

that a subcontractor may propose subcontracting one or more of the components.

Sixteen (16) copies of the Proposal should be mailed or delivered to: East Texas Council of Governments; Attention Mark Sweeney, Director of Regional Development and Services; 3800 Stone Road; Kilgore, Texas 75662. Proposals will be accepted for consideration only if received no later 5:00 p.m. on December 1, 1997.

Proposers will be required to make a presentation to the NETAC Technical Advisory Committee. The NETAC Technical Advisory Committee will review proposals based on the evaluation criteria. The committee will determine which subcontractor for each of the Scope of Work Categories to recommend to the NETAC Policy Committee. The Policy Committee's recommendation(s) will then be forwarded to the ETCOG Executive Committee for final approval. The ETCOG Executive Committee will approve entering into contracts with the subcontractor(s). The East Texas Council of Governments reserves the right to reject any or all subcontract(s). The East Texas Council of Governments reserves the right to reject any or all proposal and is under no obligation to execute a contract with any applicant based on this RFP.

For further information or to acquire an RFP, please call Mark Sweeney at (903) 984-8641.

Issued in Kilgore, Texas, on October 28, 1997.

TRD-9714302  
Glynn Knight  
Executive Director  
East Texas Council of Governments  
Filed: October 28, 1997

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## Texas Education Agency

### Corrections of Error

The Texas Education Agency submitted five open meeting notices for the State Board of Education meetings held on September 11-12, 1997. The notices appeared in the September 12, 1997, issue of the *Texas Register*, (22 TexReg 9289).

On page 9289, the following error appeared in the Thursday, September 11, 1997, open meeting notice for the State Board of Education (SBOE) Committee on Planning. The room number "1-104" should read "1-111."

On page 9289, the following error appeared in the Thursday, September 11, 1997, open meeting notice for the State Board of Education (SBOE) Committee on School Finance/Permanent School Fund. The room number "1-104" should read "1-100."

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## Employees Retirement System of Texas

### Contract Awards

The Employees Retirement System of Texas (ERS) published a Request for Offer (RFO) in the May 20, 1997 issue of the *Texas Register* (22 TexReg 4384) to provide financial audit services for the ERS. Firms that responded were evaluated according to the mandatory elements, technical qualifications, and professional fees as outlined in the RFO.

The proposal selected was that of Deloitte & Touch, LLP (D&T), 333 Clay Street, Suite 2300, Houston, Texas 77002-4196. The term of the contract begins on August 25, 1997 and will end on August

31, 1998. The ERS agrees to pay D&T \$57,400 for the audit to be performed under this contract.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714317

Sheila W. Beckett

Executive Director

Employees Retirement System of Texas

Filed: October 29, 1997



The Employees Retirement System of Texas (ERS) published a Request for Proposals in the May 6, 1997 issue of the *Texas Register* (22 TexReg 4021) to provide general consultant services for the deferred compensation and flexible benefits ("Cafeteria") plan. Firms that responded were required to have demonstrated prior work experience in the areas for which it proposed to provide deferred compensation and flexible benefits consultative services. In addition, firms were to have a working knowledge of the State of Texas policies and procedures which may affect the delivery of a deferred compensation and flexible benefits program.

The proposal selected was that of William M. Mercer, Incorporated (MERCER), 301 Commerce Street, Suite 1300, Fort Worth, Texas 76102. The term of the contract begins on September 10, 1997 and will end on August 31, 1998. The ERS agrees to pay an amount not to exceed \$72,921 (which includes out-of-pocket expenses) to MERCER for the services to be performed pursuant to this contract.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714318

Sheila W. Beckett

Executive Director

Employees Retirement System of Texas

Filed: October 29, 1997



## Office of the Governor

### Notification of Consultant Award-Budget and Planning Division

The Governor's Office of Budget and Planning furnishes this notice of a consulting services contract award to prepare and negotiate with the federal government, under the provisions of OMB Circular A-87, the State of Texas' consolidated statewide cost allocation plan for the fiscal year ending August 31, 1998 and to prepare a full cost recovery plan under the provisions of state law. The notice for request for proposals was published in the October 22, 1996 *Texas Register* (21 TexReg 10463)

**Description of Services.** The contractor will develop a cost allocation plan that enables eligible state agencies to recover the maximum indirect costs possible from federal programs and ascertain indirect costs from state funds to provide state services.

**Effective Date and Value of Contract.** The contract will be effective from the date of execution until August 31, 1997. The total cost of the contract is \$38,000.

**Name of Contractor.** The contract has awarded to David M. Griffith and Associates, 13601 Preston Road, Suite 400, Dallas, Texas 75240. Persons who have questions concerning this award may contact Tom Adams, Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711, (512) 463-1771.

Issued in Austin, Texas, on October 28, 1997.

TRD-9714285

Pete Wassdorf

Deputy General Counsel, Office of the Governor

Governor's Office of Budget and Planning

Filed: October 28, 1997



### Invitation for Applications for local and regional grants under the Governor's 1999 Criminal Justice Plan for Texas-Criminal Justice Division

The Criminal Justice Division of the Office of the Governor, announces the availability of grant funds for local and regional projects under the Fiscal Year 1999 Governor's Criminal Justice Plan for Texas (Plan). Funding is available under the Criminal Justice Planning (421) Fund, the Juvenile Justice and Delinquency Prevention (JJDP) Fund, the Title V Delinquency Prevention Fund, The Crime Stoppers Assistance Fund, the Texas Narcotics Control Program (Edward Byrne Memorial Fund), the Victims of Crime Act Fund, Violence Against Women Act Fund, and the Safe and Drug-Free Schools and Communities Act Fund. Interested applicants should call or write to the regional councils of governments for their county for information on application deadlines and submission requirements. Applicants must attend at least one application workshop sponsored by CJD or their regional council of government prior to submitting their application for funding. The applicant must contact the criminal justice planner at the regional council of governments for workshop information. Detailed specifications are in the Plan. The Application Kit, including the Plan and application forms, is available from the Criminal Justice Division, Office of the Governor, or the criminal justice planners at the regional councils of governments.

**Contract person:** If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at your regional council of governments.

**Closing Date for Receipt of Applications:** Application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional council of governments for relevant deadlines.

**Selection Process:** All applications will be prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on need for the program. Priority listings will be approved by the executive commissions of the regional councils. CJD will review the applications for eligibility and the Governor or his designee will make all final funding decisions.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714351

Pete Wassdorf

Deputy General

Office of the Governor

Filed: October 29, 1997



### Invitation for Applications for statewide grants under the Governor's 1999 Criminal Justice Plan for Texas

The Criminal Justice Division of the Office of the Governor, announces the availability of grant funds for statewide projects under the Fiscal Year 1999 Governor's Criminal Justice Plan for Texas (Plan). Funding is available under the Criminal Justice Planning (421) Fund, the Juvenile Justice and Delinquency Prevention (JJDP)



Fund, the Title V Delinquency Prevention Fund, The Crime Stoppers Assistance Fund, the Texas Narcotics Control Program (Edward Byrne Memorial Fund), the Victims of Crime Act Fund, Violence Against Women Act Fund, and the Safe and Drug-Free Schools and Communities Act Fund. Interested applicants should call or write CJD for information on application deadlines and submission requirements. Applicants must attend at least one application workshop sponsored by CJD prior to submitting their application for funding. The applicant must contact CJD for workshop information. Detailed specifications are in the Plan. The Application Kit, including the Plan and application forms, is available from the Criminal Justice Division, Office of the Governor.

Contact person: If additional information is needed contact CJD at (512)463-1919.

Closing Date for Receipt of Applications: The original and five copies of the application for statewide projects must be received at or hand delivered to CJD by March 2, 1998. Applications may be delivered to 1100 San Jacinto, Suite 210, Austin, Texas, 78701, or mailed to Post Office Box 12428, Austin, Texas, 78711, Attention: Pam Brown.

Selection Process: All applications will be reviewed for eligibility and rated competitively according to funding source by a group of staff members at CJD selected by the executive director of CJD. The Governor or his designee will make all final funding decisions.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714352  
Pete Wassdorf  
Deputy General  
Office of the Governor  
Filed: October 29, 1997

## Texas Department of Health

### Corrections of Error

The Texas Department of Health proposed repeal to 25 TAC §97.122, amendments to §§97.121, 97.123, 97.124, and new §97.125. The rules appeared in the October 10, 1997, issue of the *Texas Register*, (22 TexReg 10104).

On page 10105, §97.124(1) is new language and should be in bold text as follows: "Options for reimbursement will be in accordance with policies set by the Immunization Division, Texas Department of Health, and are as follows:"

The Texas Department of Health adopted amendment to 25 TAC §601.2. The rule appeared in the October 17, 1997, issue of the *Texas Register*, (22 TexReg 10318).

On page 10319, the rule was published with the wrong certifying official, agency, and phone number. The correct certifying official for the Texas Medical Disclosure Panel is Melba W. G. Swafford, M.D., Chairperson, and telephone number (512) 834-6646 for information.

### Designation of Site Serving Medically Underserved Populations

The Department of Health (department) is required under Texas Civil Statutes, Article 4495b §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: William P. Clements, Jr. Prison, 9601 Spur 591, Amarillo, Texas 79107. Designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Dora A. McDonald, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; Telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714344  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: October 29, 1997

### Notice of Intent to Revoke a Radioactive Material License

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: Construction Services, San Angelo, L04752.

The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive material; order the licensee to divest himself of the radioactive material; and order the licensee to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, or if the fee is not paid, the radioactive material license will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, Texas Department of Health, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on October 22, 1997.

TRD-9714067  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: October 22, 1997

### Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Michael E. Eeds, D.D.S., Inc., Irving, R05208; Deborah H. Sprott, D.D.S., Houston,

R14029; Robert L. Beck, D.M.D., M.D., San Antonio, R14951; Michael Anthony Charles, D.D.S., Houston, R18740; Gregory E. Richards, D.D.S., Houston, R21031; Lester Chiropractic Clinic, Lumberston, R21730; Michelle Cordero, D.C., Fort Stockton, R21043; Montoya Chiropractic Center, Richmond, R20991; United Chiropractic, Katy, R17387; DTM Corporation, Austin, Z00694; Hartmann Research, Inc., Dallas, Z00864; Crystal Veterinary Medical Center, Crystal City, R01493; Robert W. Moers, M.D., P.A., Deer Park, R14827; Precision Diagnostic and Therapy X-Ray Equipment Company, Inc., Tulsa, Oklahoma, R19891.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, Texas Department of Health, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on October 22, 1997.

TRD-9714068  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: October 22, 1997



## Notice of Request for Proposals for Put Prevention Into Practice

**INTRODUCTION:** The Texas Department of Health issues a request for proposals (RFP) for a nine-month consultation grant for Put Prevention Into Practice (PPIP). The main objective of the PPIP grant is to provide consultation, training, and quality assurance monitoring in the area of clinical prevention services to primary care clinical settings in the El Paso metropolitan area and surrounding counties, to facilitate a systems change so that preventive care becomes routine and barriers to receiving preventive care are reduced.

A maximum budget of \$45,000 will be awarded to one applicant.

**PROJECT DATES:** Funds are available for the period beginning December 1, 1997, through August 31, 1998.

**ELIGIBLE APPLICANTS :** Eligible entities are local health departments and not-for-profit organizations having established relationships with primary health care clinics located in the El Paso metropolitan area and surrounding counties. The primary care clinics may include community health centers, primary care residency training programs (e.g., family practice, internal medicine), local health departments, and not-for-profit organizations that currently provide primary health care services on-site.

A presentation for potential applicants regarding project goals will be provided by staff of the Adult Health Program on November 10, 1997, from 10:00 a.m.-12:00 p.m. at the Texas Department of Health Public Health Region 9/10 office, 6070 Gateway East, El Paso, Texas. Attendance at this presentation is optional.

**SUBMISSION REQUIREMENTS:** The original and three copies must be received by the RFP Evaluation Committee, Adult Health Program/PPIP, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 on or before 5:00 p.m., C.S.T., November 21, 1997.

**REVIEW AND AWARD CRITERIA:** Each application will be screened for minimum eligibility and completeness, as well as satisfactory fiscal and administrative history. Applications deemed ineligible or incomplete, or that arrive after the deadline will not be reviewed.

Eligible, complete applications will be reviewed and scored independently by evaluators, according to the quality and thoroughness of the application and the illustrated potential of the applicant to provide quality consultation to targeted clinical sites to implement the PPIP system.

Staff of the Adult Health Program will then conduct conference call assessments with as many as three of the sites scoring highest on the written portion of the evaluation. If the results of these are not satisfactory, the staff of the Adult Health Program will conduct conference call assessments with the applicant(s) scoring next highest on the written portion of the evaluation. This process will continue until one appropriate site has been selected.

**FOR INFORMATION:** For information regarding the presentation or for a copy of the RFP, please contact the Adult Health Program/PPIP, 512-458-7534.

Issued in Austin, Texas, on October 28, 1997.

TRD-9714274  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: October 28, 1997



## Texas Department of Housing and Community Affairs

### Announcement of Public Comment Period for 1998 State of Texas Consolidated Plan-One Year Action Plan Draft for Public

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of public comment period concerning the 1998 State of Texas Consolidated Plan One Year Action Plan *Draft for Public Comment* (the Plan). This thirty-one (31) day comment period will begin November 5, 1997, and end on December 5, 1997. The Plan is submitted in compliance with 24 CFR 91.320 Consolidated Plan submissions for Community Planning and Development Programs made effective on January 5, 1995.

The Plan serves in the following capacities: Describes the federal resources expected to be available for use by TDHCA; indicates resources from private and non-federal public sources expected to be made available to address the needs identified in the Plan; a description of the State's method for distributing funds to local governments and non-profit organizations, and how those funds will address the priority needs and specific objectives described in

the 1996 State of Texas Consolidated Plan; a description of the geographic areas of the State in which it will direct assistance during the ensuing program year; activities planned to address the needs of the homeless including emergency shelter and transitional housing; actions planned for the next year to address obstacles to meeting underserved needs, to foster and maintain affordable housing, to remove barriers to affordable housing, to evaluate and reduce lead-based paint hazards, to reduce the number of poverty level families, to develop institutional structure, and to enhance coordination between public and private housing and social service agencies and to foster public housing residents initiatives.

In addition, the Plan must include the following specific information: Regarding CDBG, the Plan must include "urgent needs" activity and the method of distribution and description of all selection criteria. Concerning the HOME program, the Plan shall describe other forms of investment that are not described in section 92.205(b). In addition the HOME program must state the guidelines for resale or recapture if the State intends to use HOME funds for homebuyers. Concerning ESG, the Plan must state the process for awarding grants and describe how the State intends to make allocations available to unit of local government and nonprofit organizations. Lastly, concerning HOPWA, the Plan must state the method of selecting project sponsors.

Copies of the 1998 State of Texas Consolidated Plan One-Year Action Plan *Draft for Public Comment* will be available to the public on November 5, 1997, by contacting the TDHCA Housing Resource Center at P.O. Box 13941, Austin, Texas 78711-3941 or at 512-475-4595. Copies of the Plan will also be available at all State of Texas Depository Libraries. Call the number above for a referral to the State Depository Library nearest you.

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs Housing Resource Center at the address above.

Individuals who require auxiliary aids should contact Margaret Donaldson, ADA Responsible Employee, at (512) 475-3100 and appropriate arrangements will be made.

Public Hearing schedules will be announced in upcoming Texas Register publications.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714340

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 29, 1997



Notice of Administrative Hearing (MHD1996001881D)

Manufactured Housing Division

Wednesday, November 19, 1997, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building,  
1700 North Congress, 11th Floor, Suite 1100

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. Wilford Dean Tannehill dba Casa Mar to hear alleged violations of the Act, §7(b) and §13(e) regarding selling of two or more manufactured homes

within a consecutive 12-month period without obtaining, maintaining or possessing a valid retailer's certificate of registration. SOAH 332-97-1972. Department MHD1996001881D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714319

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 29, 1997



Notice of Administrative Hearings (MHD1996001234D,  
MHD1997000281D, MHD1997000785D and  
MHD1997001329D)

Manufactured Housing Division

Thursday, November 13, 1997, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building,  
1700 North Congress, 11th Floor, Suite 1100

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. George Castillo aka Jose Castillo aka Jorge Castillo dba George Castillo House Movers aka Castillo Brother House Movers to hear alleged violations of the Act, §7(d) and §17(b) and Rules §80.125(e)(1) regarding obtaining, maintaining or possessing a valid certificate of registration. SOAH 332-97-1970. Department MHD1996001234D, MHD1997000281D, MHD1997000785D and MHD1997001329D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714320

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 29, 1997



Notice of Administrative Hearings (MHD1997000532D,  
MHD1997001920D, MHD1997001971D and  
MHD1997002439D)

Manufactured Housing Division

Thursday, November 13, 1997, 3:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building,  
1700 North Congress, 11th Floor, Suite 1100

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. Victor Vargas to hear alleged violations of the Act, §7(d) and §17(b) and Rules §80.125(e)(1)

regarding obtaining, maintaining or possessing a valid certificate of registration. SOAH 332-97-1971. Department MHD1997000532D, MHD1997001920D, MHD1997001971D and MHD1997002439D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714321

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 29, 1997



#### Notice of Administrative Hearing (MHD1996001106D)

Manufactured Housing Division

Wednesday, November 19, 1997, 2:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building,  
1700 North Congress, 11th Floor, Suite 1100

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. Marvin Dewain Davis aka Wayne Davis to hear alleged violations of the Act, §7(d) and §17(b) and Rules §80.125(e)(1) regarding obtaining, maintaining or possessing a valid certificate of registration. SOAH 332-97-1984. Department MHD1996001106D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714322

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 29, 1997



#### Notice of Public Hearing

10 TAC §§51.1-51.14, and 51.16-51.18 Housing Trust Fund Rules; and

10 TAC §§53.50-53.57, 53.59-53.60, and 53.62 Home Investment Partnership Program Rules

Notice is hereby given of public hearings to be held by the Texas Department of Housing and Community Affairs with respect to the proposed new and amended rules of the Housing Trust Fund; and proposed amended rules of the Home Investment Partnership Program. Public Hearings will be held at the following locations:

November 17, 1997

#### El Paso

El Paso Public Library,

501 North Oregon Street,

El Paso, Texas 79901,

4:00-7:00 p.m.

November 19, 1997

#### Edinburg

Edinburg Auditorium,

416 West. McIntyre,

Edinburg, Texas 78539,

4:00-7:00 p.m.

November 19, 1997

#### Lubbock

Main Library/Community Room,

1309 9th Street,

Lubbock, Texas 79457,

4:00-7:00 p.m.

November 20, 1997

#### Temple

Temple Public Library,

Board Room by Elevator,

100 West Adams,

Temple, Texas 76501,

4:00-7:00 p.m.

November 20, 1997

#### Lufkin

Kurth Memorial Library,

101 North Cotton Square,

Lufkin, Texas 75904,

4:00-7:00 p.m.

All interested parties are invited to attend such public hearing to express their comments with respect to the proposed new and amended rules.

Questions, requests for additional information, or written comments regarding the **Housing Trust Fund** are encouraged, and should be addressed to Keith Hoffpauir at the Texas Department of Housing and Community Affairs, Housing Trust Fund, P.O. Box 13941, Austin Texas 78711-3941; (512) 475-1458; or via e-mail to jderk-its@genesis.tdhca.state.tx.us.

Questions, requests for additional information, or written comments regarding the **Home Investment Partnership Program** are encouraged, and should be addressed to Joe Mann at the Texas Department of Housing and Community Affairs, Home Investment Partnership Program, P.O. Box 13941, Austin Texas 78711-3941; (512) 475-3109; or via e-mail to crichards@genesis.tdhca.state.tx.us.

Individuals who require auxiliary aids in order to attend this meeting should contact Margaret Donaldson, ADA Responsible Employee, at (512) 475-3100, or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714327

Larry Paul Manley

Executive Director  
Texas Department of Housing and Community Affairs  
Filed: October 29, 1997

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**Texas Department of Human Services**

**Notice of Public Hearing-Amendments to the Nursing Facility Requirements for Licensure and Medicaid Certification Pursuant to Senate Bill 190**

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's amendments to the Nursing Facility Requirements for Licensure and Medicaid Certification pursuant to Senate Bill 190. The public hearing will be held on December 3, 1997, at 9:00 a.m. in Room 460W of the John H. Winters Center (710 West 51st Street, Austin, Texas).

Contact Person: Please contact Susan Syler, MC W-519, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-3111.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Julie Mayton (512) 438-3161 by November 24, 1997, so that appropriate arrangements can be made.

Issued in Austin, Texas, on October 23, 1997.

TRD-9714092  
Glenn Scott  
General Counsel  
Texas Department of Human Services  
Filed: October 23, 1997

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**Texas Department of Insurance**

**Insurer Services**

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for a name change in Texas for Acacia Mutual Life Insurance Company, Washington, D.C., a foreign life insurance company. The proposed new name is Acacia Life Insurance Company. The home office is in Washington, D.C.

Application for name change in Texas for Zurich Reinsurance Centre, Inc., Stamford, Connecticut, a foreign fire and casualty insurance company. The proposed new name is Zurich Reinsurance (North America), Inc. The home office is in Stamford, Connecticut.

Application for name change in Texas for Sirius Reinsurance Corporation, Dover, Delaware, a foreign fire and casualty insurance company. The proposed new name is Sirius America Insurance Company. The home office is in Dover, Delaware.

Application for name change in Texas for ITT Hartford Life and Annuity Insurance Company, Hartford, Connecticut, a foreign life insurance company. The proposed new name is Hartford Life and Annuity Insurance Company. The home office is in Hartford, Connecticut.

Application for name change in Texas for Sierra Casualty Insurance Company of Texas, Dallas, Texas, a domestic fire and casualty insurance company. The proposed new name is Sierra Insurance Company of Texas. The home office is in Dallas, Texas.

Application for name reservation in Texas for Value Behavioral Health of Texas, Inc., a domestic health maintenance organization. The home office is in Irving, Texas.

Application for admission in Texas for Citizens Security Life Insurance Company, Louisville, Kentucky, a foreign life insurance company. The home office is in Louisville, Kentucky.

Application for admission in Texas for Reliance Reinsurance Company, Philadelphia, Pennsylvania, a foreign fire and casualty insurance company. The home office is in Philadelphia, Pennsylvania.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on October 24, 1997.

TRD-9714168  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: October 24, 1997

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**Notice**

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Republic Insurance Company proposing rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated Article 5.101, §3(g). They are proposing various percentages of rates to include 65% above the benchmark for bodily injury liability; 20% above for property damage liability; 6% below the benchmark for uninsured motorists coverage; 52% above for personal injury protection/medical payments; 85% above for collision coverage and 40% above for comprehensive coverage for private passenger automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Art. 5.101, §3(h), is made with the Chief Actuary, P&C, Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on October 22, 1997.

TRD-9714060  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: October 22, 1997

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**Request for Proposals**

The Texas Health Insurance Risk Pool requests proposals from law firms interested in representing and advising the Pool in certain state and federal health care and insurance-related matters and other issues related to the Pool's operations under article 3.77 of the Texas Insurance Code. The Pool expects to select counsel from proposals received and to enter into negotiations that result in a contract that is effective November 15, 1997 through August 31, 1998.

Attorney General Approval of Contract; Conflict of Interest Provisions. After signature on behalf of the Pool and the selected law firm, the Office of the Attorney General must approve the contract. Prior to submitting a proposal response, interested firms should request and carefully review the standard contract required by the Office of the Attorney General. Copies of the required contract may be requested by submitting a request to Gifford Ensey, Texas Department of Insurance, facsimile number 512-475-1772. Interested firms should particularly note the required conflict of interest provisions in the contract and address these requirements in their responses.

Description. Article 3.77 of the Insurance Code, as revised by the 75th Legislature, establishes the Pool as a political subdivision of the state. The Pool is authorized to exercise the authority that an insurance company authorized to write health insurance in Texas may exercise under Texas law. For example, the Pool may provide health benefits coverage to persons who are eligible for coverage under article 3.77. The Pool must be operational by January 1, 1998. The selected law firm must have experience in complex state and federal health care and insurance-related matters. The selected law firm must be able to represent and advise the Pool in the complex issues related to the Pool's operations under article 3.77.

Responses. Responses to this RFP should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, names and experience of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and others assigned to the project, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services; (2) the submission of fee information, including hourly rates for each attorney or other staff member who will provide services under the contract, and billable expenses; (3) a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Pool or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials) and statement addressing standard Office of the Attorney General contract conflict of interest provisions; and (5) confirmation of willingness to comply with policies, directives and guidelines of the Pool.

Format and Person to Contact. Proposals should be sent by mail or delivered in person, marked "Response to Request for Proposal - Texas Health Insurance Risk Pool," and addressed to Ed Baxter, Chair, Texas Health Insurance Risk Pool, c/o Mary Keller, Senior Associate Commissioner for Legal and Compliance, Texas Department of Insurance, Tower 1, 10th Floor, P. O. Box 149102, Austin, TX 78714-9104 [mailing address] or 333 Guadalupe, Austin, TX 78701 [delivery].

Deadline for Submission of Response. All proposals must be received by the Pool, c/o Mary Keller, TDI's Legal and Compliance Division at the address set forth above no later than 4:00 p.m., Tuesday, November 11, 1997.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714324  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: October 29, 1997

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### 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 incorporation in Texas of Institution Solutions, Inc., a domestic third party administrator. The home office is Richardson, Texas.

Application for incorporation in Texas of Electronic Transmission Corporation, (using the assumed name of ETC Administrative Services), a domestic third party administrator. The home office is Dallas, Texas.

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 October 24, 1997.

TRD-9714169  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: October 24, 1997

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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 The EyePA, Inc., a foreign third party administrator. The home office is Memphis, Tennessee.

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 October 28, 1997.

TRD-9714308  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: October 28, 1997

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### Third Party Administrators 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 Alliance-One Services, Inc., 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 October 23, 1997.

TRD-9714091  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: October 23, 1997

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## Texas Natural Resource Conservation Commission

### Notice of Applications for Waste Disposal/Discharge Permits

Attached are Notices of Applications for waste disposal/discharge permits issued during the period of October 10 through October 17, 1997 and June 20, 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 the 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, type of application—new permit, amendment, or renewal and permit number.

CITY OF ABILENE, P.O. Box 60, Abilene, Texas 79604-0060; the Hamby Wastewater Treatment Plant; the plant is located approximately 1.5 miles north of the intersection of State Highway 351 and County Road 309, and 5.0 miles northeast of the intersection of Interstate Highway 20 and State Highway 351 in Jones County, Texas; renewal; Permit No. 10334-004.

ANTHONY FOREST PRODUCTS COMPANY, P.O. Box 550, Atlanta, Texas 75551; the plant site is located east of the intersection of State Highway 77 and 43, adjacent to the Texas Pacific Railroad track in the City of Atlanta, Cass County, Texas; renewal; Permit No. 03811.

BETZ DEARBORN, INC., 3901 Williams Drive, West Orange, Texas 77630; an organic blending chemicals company; the plant site is located at 3901 Williams Drive in the City of West Orange, Orange County, Texas; renewal; Permit No. 02792.

ELKHORN COMPANY, INC., P.O. Box 4495, Boerne, Texas 78006; the wastewater treatment facilities and disposal site are located on the northern border of Bexar County, west of Ralph Fair Road and south of Cibolo Creek at the extreme east side of Ralph Fair Ranch in Bexar County, Texas; renewal; Permit No. 11867-01.

EXPLORER PIPELINE COMPANY, P.O. Box 2650, Tulsa Oklahoma 74101; a refined petroleum products pipeline tankage station; the plant site is located approximately one mile north of Interstate Highway 30 and 1/4 mile east of Farm-to-Market Road 36 near the City of Caddo Mills, Hunt County, Texas; renewal; Permit No. 02395.

GALENA PARK CITY OF, P.O. Box 46, Galena Park, Texas 77547; the Plant No. 1 Wastewater Treatment Facilities; the facilities are located at 1107 Fifth Street in the City of Galena Park in Harris County, Texas; renewal; Permit No. 10831-001.

GALVESTON CITY OF, P.O. Box 779, Galveston, Texas 77553; the Main Wastewater Treatment Facilities are located at 5200 Industrial Boulevard in Galveston County, Texas; renewal; Permit No. 10688-01.

GRIMES COUNTY MUNICIPAL UTILITY DISTRICT NO. 1, c/o Johnson, Radcliffe, & Petrov, L.L.P., 450 Gears Road, Suite 700, Houston, Texas 77067-4513; the wastewater treatment facilities are located approximately 0.2 mile north of Farm-to-Market Road 2445, 2.5 miles west of the intersection of Farm-to-Market Road 2445 and Farm-to-Market Road 1774, 11 miles east-northeast of the City of Navasota in Grimes County, Texas; renewal; Permit No. 11437-001.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 86, c/o Cole & Dougherty, 5300 Memorial Drive, Suite 1070, Houston, Texas 77007; the wastewater treatment facilities are located approximately 0.40 mile south of the intersection of Farm-to-Market Road 1960 and Ella Road (formerly Medberry Road) in Harris County, Texas; renewal; Permit No. 12065-001.

HOUSTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, P.O. Box 1246, Crockett, Texas 75835; the Surface Water Treatment Facilities; the facilities are located approximately one mile southwest of Latexo, approximately 1 and 3/4 miles north of the intersection of U.S. Highway 287 and Farm-to-Market Road 2160 in Houston County, Texas; renewal; Permit No. 10871-001.

HOUSTON INDUSTRIES INCORPORATED, P.O. Box 1700, Houston, Texas 77251; the Greens Bayou Electric Generating Station is located adjacent to and south of U.S. Highway 90 and east of Greens Bayou, northeast of the City of Houston, Harris County, Texas; amendment without renewal; Permit No. 01031.

HUNT COUNTY OIL COMPANY, P.O. Box 1298, Greenville, Texas 75403-1298; the wastewater treatment facilities are located approximately 500 feet southeast of the intersection of Interstate Highway 30 and Farm-to-Market Road 1903 and 5 miles southwest of the City of Greenville in Hunt County, Texas; renewal; Permit No. 11721-01.

CITY OF KERMIT; P.O. Drawer P, Kermit, Texas 79745; the wastewater treatment facilities and disposal site are located approximately 1.5 miles south of the intersection of State Highway 18 and State Highway 302 in Winkler County, Texas; renewal; Permit No. 10200-01.

CITY OF KOSSE, P.O. Box 116, Kosse, Texas 76653; the wastewater treatment facilities are located approximately 150 feet southeast of the intersection of Jackson and Tulip Streets in the City of Kosse in Limestone County, Texas; renewal; Permit No. 11405-001.

CITY OF LEVELLAND, P.O. Box 1010, Levelland, Texas 79336; the wastewater treatment facilities and disposal site are located approximately 2 miles southeast of the intersection of U.S. Highway 385 and State Highway 114, southeast of Levelland and 2.5 miles southwest of the intersection of State Highway 114 and Farm-to-Market Road 3261 in Hockley County, Texas; renewal; Permit No. 10965-001.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 39, 1300 Post Oak Boulevard, Suite 1400, Houston, Texas 77056; the wastewater treatment facilities are located approximately 2000 feet east of the Interstate Highway 45, approximately 1 « mile south of Farm-to-Market Road 1488, adjacent to the Missouri Pacific

Railroad Tracks and an unnamed tributary in Montgomery County, Texas; renewal; Permit No. 11658-001.

NORTH GREEN MUNICIPAL UTILITY DISTRICT, c/o Fulbright & Jaworski, 1301 McKinney, 47th Floor, Houston, Texas 77010-3095; the wastewater treatment facilities are located on the west side of Hardy Road, approximately < mile south of the intersection of Hardy Road and Rankin Road in Harris County, Texas; renewal; Permit No. 12206-001.

CITY OF TEXARKANA, P.O. Box 2008, Texarkana, Texas 75504; the Rollingwood Wastewater Treatment Facilities are located approximately 1000 feet west of U.S. Highway 59 and approximately 9500 feet north of Interstate Highway 30 in Bowie County, Texas; the renewal; Permit No. 10374-008.

UA HOLDINGS 1994-5, 2211 Congress Street, Portland, Maine, the Corum West Montgomery Wastewater Treatment Facilities are located approximately 1000 feet southeast of the intersection of Farm-to-Market Road 149 (West Montgomery Road) and Old Spring Cypress Road in Harris County, Texas; renewal; Permit No. 12248-001.

VALLEY MUNICIPAL UTILITY DISTRICT NO. 2, 100 Adkins, Rancho Viejo, Texas 78575; the reverse osmosis process water treatment plant is on the west side of Highway 83, approximately 1.25 miles north of the intersection of Highway 83 and FM 511 and approximately 3.5 miles south of the intersection of Highway 83 and Highway 100, Cameron County, Texas; new; Permit No. 03936.

Issued in Austin, Texas, on October 28, 1997.

TRD-9714290

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: October 28, 1997



#### Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued during the period of October 28, 1997.

Application No. TA-7887 by Houston Fuel Oil Terminal Co. for diversion of 10 acre-feet in a 1-year period for industrial (hydro-testing) use. Water may be diverted from Buffalo Bayou, San Jacinto River Basin, approximately 16 miles southeast of Houston, Harris County, Texas at the southeast end of Jacintoport Boulevard and Buffalo Bayou.

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 Section 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 78711, Telephone (512) 239-3300.

Issued in Austin, Texas, on October 28, 1997.

TRD-9714289

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: October 28, 1997



#### Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Government Code, Subchapter B, Chapter 2001, and the Texas Health and Safety Code, §382.017, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning the repeal of existing 30 TAC Chapter 320 and a proposed new Chapter 220, relating to the monitoring and assessment of water quality (Clean Rivers Program).

The proposed new §§220.1-220.7 represent changes made to the program through legislation passed by the 75th Texas Legislature in 1997. Proposed new §§220.21-220.22 represents a move of these sections from Chapter 320 to proposed new Chapter 220 and the updating of references to be consistent with the new proposed rulemaking, and contain no program changes. The proposed new Chapter 220 will achieve consistency in the renumbering system for all water related rules to be contained in the 200 series under Title 30 of the Texas Administrative Code.

A public hearing on the proposal will be held in Austin on Monday, November 17, 1997 at 10:00 a.m. at the TNRCC Office Complex, Building F, Room 3201A, 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. There will be no open discussion among members of the audience during the hearing; however, a commission 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 on the proposal should refer to Rule Log No. 97137-320-WT and may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they are faxed. Written comments must be received by 5:00 p.m. 31 days after the date of publication of this proposal in the *Texas Register*. Such comments will not receive individual responses, but will be addressed in the preamble of the adopted rules and published in the *Texas Register*. For further information, please contact Chuck Dvorsky, Water Quality Division, (512) 239-4594.

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 October 28, 1997.

TRD-9714328



Eugenia K. Brumm, Ph.D.  
Chief Clerk  
Texas Natural Resource Conservation Commission  
Filed: October 29, 1997

◆ ◆ ◆  
**Texas Parks and Wildlife Department**

**Request for Proposal for Parks, and Recreation and Natural Resource Study**

**Notice of Invitation for Proposals:**

The Texas Parks and Wildlife Department issued on November 7, 1997 a Request for Proposal for the Parks, Recreation, and Natural Resource Study.

**Preproposal Conference:**

A preproposal conference will be held on November 17, 1997 in Austin, Texas. The conference is scheduled from 2:00 p.m. to 4:00 p.m. at the following address: Texas Parks & Wildlife Headquarters Building, Commissioner's Hearing Room, 4200 Smith School Road. The purpose of the conference will be to review the content of the Parks, Recreation, and Natural Resource Study Request for Proposal and to answer attendees' questions. ATTENDANCE AT THE PREPOSAL CONFERENCE IS VOLUNTARY AND IS NOT A PREREQUISITE FOR SUBMISSION OF A PROPOSAL.

**Copies of the RFP:**

To obtain a copy of the Parks, Recreation, and Natural Resource Study Request for Proposal contact Ralph Rayburn, Director of Intergovernmental Affairs, Texas Parks and Wildlife Department at voice phone 512/389-4530, Fax 512/389-4814, or e-mail ralph.rayburn@tpwd.state.tx.us.

**Closing Date for Receipt of Proposals:**

The deadline for submission of the proposals is at 5:00 p.m. CST on December 10, 1997, to the Senior Director for Land Policy, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744.

**Basis of Award:**

Evaluation of proposals will be based on the criteria listed in the Request for Proposal. A selection committee composed of persons designated by the Executive Director, Texas Parks and Wildlife Department will perform evaluation. Proposer(s) may be requested to provide a presentation and interview by the selection committee. The selection team will make a recommendation to the Executive Director who shall select the proposer(s) for the contract award. Multiple contracts may be issued. Proposer(s) to whom contracts are awarded will be notified by mail.

Issued in Austin, Texas, on October 28, 1997.

TRD-9714310  
Bill Harvey  
Regulatory Coordinator  
Texas Parks and Wildlife Department  
Filed: October 29, 1997

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**Public Utility Commission of Texas**

**Notice of Application for Amendment to Service Provider Certificate of Operating Authority**

On October 27, 1997, Masters Financial Services filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate No. 60040. Applicant intends to change its corporate name only.

The Application: Application of Masters Financial Services for an amendment to its Service Provider Certificate of Operating Authority, Docket Number 18167.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than November 13, 1997. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18167.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714312  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 29, 1997

◆ ◆ ◆  
**Notices of Application to Amend Certificate of Convenience and Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 16, 1997, to amend a certificate of convenience and necessity pursuant to §§14.001, 52.002, 54.001, 54.005, 54.052 - 54.054, and 54.258 of the Public Utility Regulatory Act. A summary of the application follows.

Docket Title and Number: Application of Southwestern Bell Telephone Company to Amend Certificate of Convenience and Necessity within Tarrant County, Docket Number 18118 before the Public Utility Commission of Texas.

The Application: In Docket Number 18118, Southwestern Bell Telephone Company requests approval to amend the boundary between the Eagle Mountain Lake zone and the Lake Worth zone in Southwestern Bell Telephone Company's Fort Worth Metropolitan exchange to extend facilities to an entire new subdivision from the Lake Worth zone.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 on or before November 24, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 24, 1997.

TRD-9714136  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 24, 1997

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 20, 1997, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, 37.058 of the Public Utility Regulatory Act, (PURA) 75th Legislature, Regular Session, Chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at TEXAS UTILITIES CODE ANNOTATED §§11.001 - 63.063). A summary of the application follows.

Docket Title and Number: Application of Bandera Electric Cooperative, Inc. to Amend Certificated Service Area Boundaries within Kendall County, Docket Number 18129 before the Public Utility Commission of Texas.

The Application: In Docket Number 18129, Bandera Electric Cooperative, Inc. requests an amendment to its certificated service area boundary with City Public Service of San Antonio in order to provide single-phase electric service to four residences off of Dodge Road, southwest of Boerne, Texas in Kendall County.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 24, 1997.

TRD-9714137

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: October 24, 1997

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#### Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas of an application pursuant to Public Utility Commission Substantive Rule §23.27 for a 400 station addition to the existing PLEXAR-Custom service for Technology Resources, Inc. in Austin, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for a 400 Station Addition to the Existing PLEXAR-Custom Service for Technology Resources, Inc. in Austin, Texas, Pursuant to Public Utility Commission Substantive Rule §23.27. Tariff Control Number 18161.

The Application: Southwestern Bell Telephone Company is requesting approval for a 400 station addition to the existing PLEXAR-Custom service for Technology Resources, Inc. in Austin, Texas. The geographic service market for this specific service is the Austin local access and transport area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714311

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: October 29, 1997

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#### Notice of Joint Agreement for Extended Area Calling Service From the Frisco Exchange, et. al., to the Dallas Metropolitan Area

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint agreement on October 3, 1997, seeking approval of two-way, mandatory, extended area service (EAS) from the Frisco Exchange et. al., to the Dallas Metropolitan Area pursuant to P.U.C. SUBSTANTIVE RULE 23.49(b)(8).

Project Title and Number: Joint Agreement for Extended Area Calling Service from the Frisco Exchange et. al., to the Dallas Metropolitan Area, Pursuant to P.U.C. SUBSTANTIVE RULE 23.49(b)(8); Project Number 18071.

The Joint Petition and Agreement: The representatives of the political subdivisions coextensive with the Frisco exchange, Southwestern Bell Telephone Company (SWBT), and GTE Southwest, Inc. request approval to offer two-way, mandatory, EAS service to which SWBT residence and business local exchange customers within the Frisco exchange will be able to call all other telephone customers within the calling area for a monthly flat rate. The proposed EAS will replace the extended metropolitan service plan currently offered. Basic local exchange customers residing in the SWBT Frisco exchange will pay flat-rate, monthly additives in addition to their tariffed basic local exchange charges.

Customers placing orders for local exchange service will not be billed a separate EAS connection charge; however, all other appropriate tariffed service connection charges will be applicable.

The joint applicants have requested that the joint agreement filing be processed administratively pursuant to P.U.C. SUBSTANTIVE RULE 23.49(b)(8)(C). Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by January 6, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 23, 1997.

TRD-9714105

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: October 23, 1997

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#### Public Notices of Interconnection Agreements

On October 16, 1997, United Telephone Company of Texas, Inc. d/b/a Sprint and Central Telephone Company of Texas d/b/a Sprint (Sprint) and Diamond Communications, Intl., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, 75th Legislature, R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated §§11.001-63.063) (PURA). The joint application has been designated Docket Number 18116. The joint ap-

plication and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18116. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 4, 1997, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18116.

Issued in Austin, Texas, on October 27, 1997.

TRD-9714243  
Rhonda Dempsey  
Rules Coordinator

Public Utility Commission of Texas  
Filed: October 27, 1997



On October 17, 1997, Southwestern Bell Telephone Company (SWBT) and QTEL, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, 75th Legislature, R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated §§11.001-63.063) (PURA). The joint application has been designated Docket Number 18125. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18125. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 4, 1997, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. In-

interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18125.

Issued in Austin, Texas, on October 27, 1997.

TRD-9714245

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: October 27, 1997



On October 16, 1997, Southwestern Bell Telephone Company (SWBT) and NHS Communications Group, Inc. d/b/a MaxTel, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, 75th Legislature, R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated §§11.001-63.063) (PURA). The joint application has been designated Docket Number 18120. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18120. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by November 24, 1997, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:

- a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18120.

Issued in Austin, Texas, on October 27, 1997.

TRD-9714244

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: October 27, 1997



On October 27, 1997, Southwestern Bell Telephone Company (SWBT) and CoServ, L.L.C., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, 75th Legislature, R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated §§11.001-63.063) (PURA). The joint application has been designated Docket Number 18171. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or

rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18171. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 8, 1997, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at

(512) 936-7136. All correspondence should refer to Docket Number 18171.

Issued in Austin, Texas, on October 28, 1997.

TRD-9714342  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 29, 1997



## University of Texas System

### Request for Proposals

Benefit Consulting to Advise, The University of Texas System, Employee Group Insurance

The University of Texas is soliciting proposals for benefit consulting services to advise on the medical and dental plans offered to employees and retirees of The University of Texas System. The University of Texas System is comprised of nine academic components and six medical components. The University's health plan covers over 62,000 employees and 8,000 retirees. Organizations who are interested in receiving a Request for Proposal should respond to: Mr. Robert E. Molly, Employee Group Insurance, The University of Texas System, 702 Colorado Street, Suite 6.600, Austin, Texas 78701, (512) 499-4616, (512) 499-4620 Fax.

Request for proposals will be issued on November 7, 1997. Responses will be due by 2:00 p.m. on December 8, 1997.

Issued in Austin, Texas, on October 29, 1997.

TRD-9714337  
Arthur H. Dilly  
Executive Secretary to the Board of Regents  
University of Texas System  
Filed: October 29, 1997



# *Texas Register*

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