

TEXAS REGISTER

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How to Use the Texas Register

Information Available: The 11 sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinion.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, section numbers, or TRD number.

Texas Administrative Code

The Texas Administrative Code (TAC) is the official compilation of all final state agency rules published in the Texas Register. Following its effective date, a rule is entered into the Texas Administrative Code. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC. West Publishing Company, the official publisher of the TAC, publishes on an annual basis.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The Official TAC also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the TAC or to inquire about WESTLAW access to the TAC call West: 1-800-328-9352.

The Titles of the TAC, and their respective Title numbers are:

- 1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

Update by FAX: An up-to-date Table of TAC Titles Affected is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

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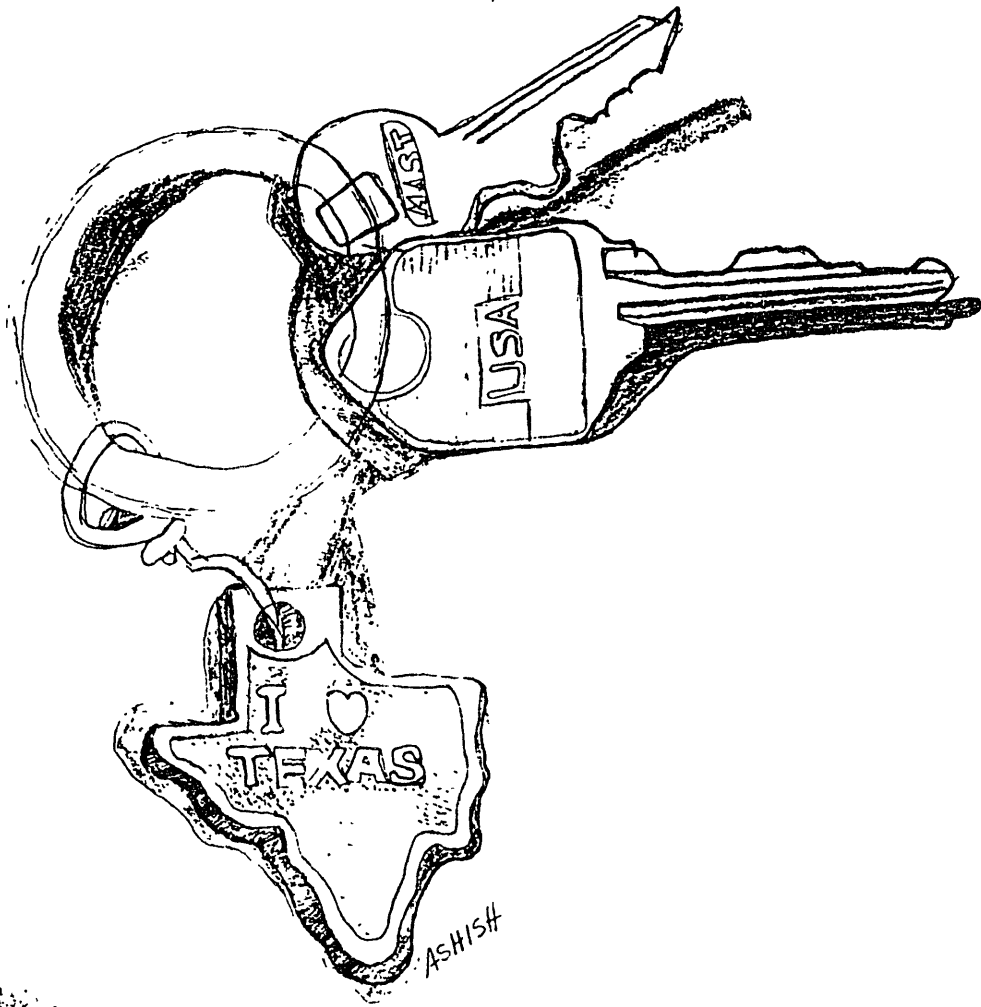
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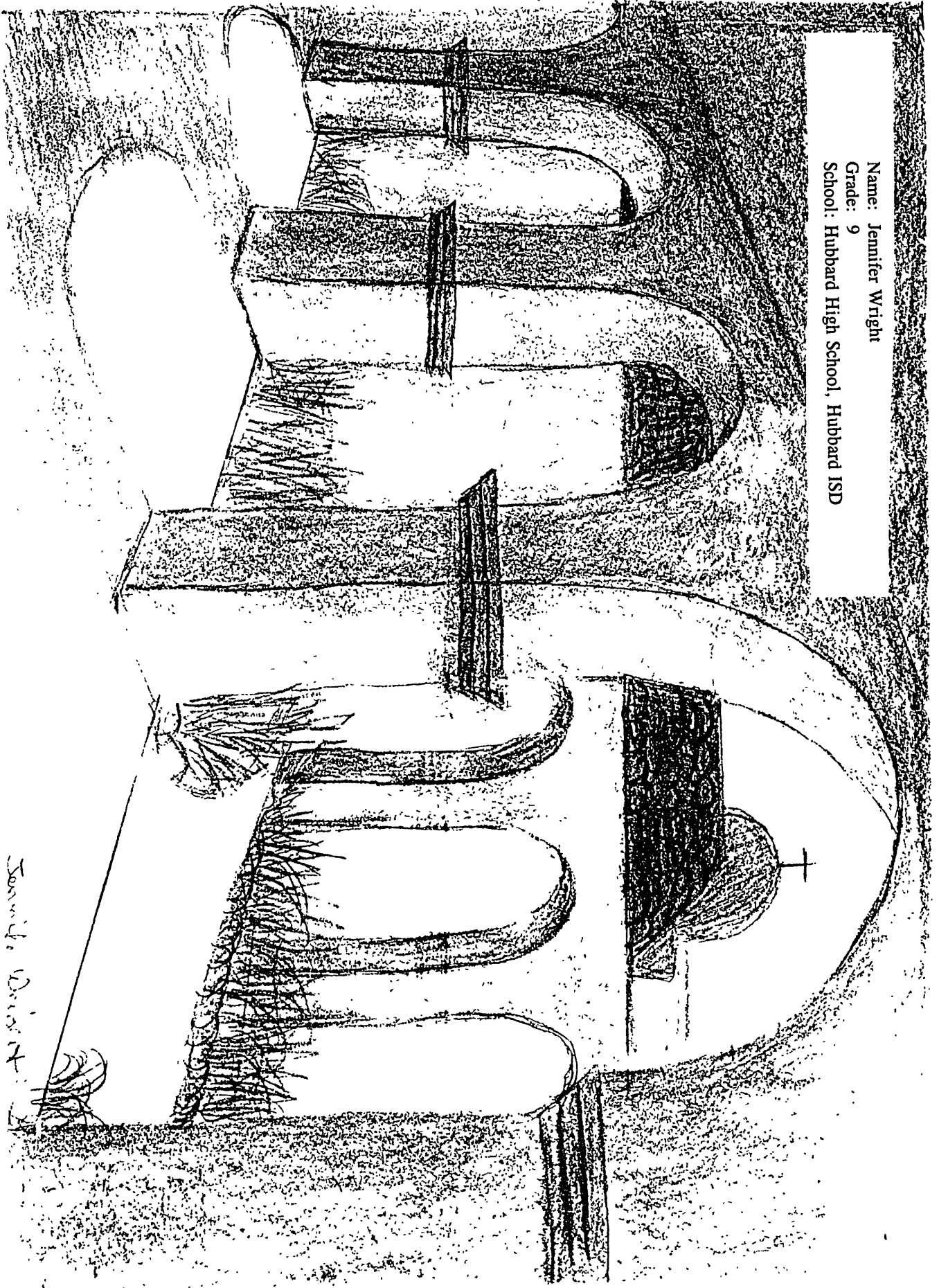
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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Texas Ethics Commission

Ethics Advisory Opinions

EAO-255 (AOR-286). Whether the revolving door provision in Government Code §572.054(b) applies to the employment of a former employee of the Texas Real Estate Commission as an instructor of real estate courses.

Summary. The revolving door provision in §572.054(b) of the Government Code does not prevent a former employee of the Real Estate Commission who was involved in the administration of real estate examinations from teaching courses to prepare applicants to take the real estate licensing examination.

EAO-256 (AOR-287). Application of §572.058 of the Government Code to a state board member who is a shareholder in a law firm.

Summary. In a situation in which a member of the governing board of a state agency has a personal or private interest in a matter pending before the board, §572.058 of the Government Code requires that the board member disclose the interest and recuse himself from participation in the matter. Section 572.058 does not require the board member to divest himself of the interest.

Issued in Austin, Texas, on March 20, 1995.

TRD-9503542

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed March 22, 1995





Name: Maria Leyva
Grade: 12
School: Perryton High School, Perryton ISD

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 use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 102. Fees

• 22 TAC §102.1

The State Board of Dental Examiners, adopts on an emergency basis new §102.1, concerning fees

The State Board of Dental Examiners finds that state law requires an adoption of fees on an emergency basis. Recently enacted Senate Bill 18 re-created the State Board of Dental Examiners. The statute gives the Board authority to set a variety of fees. The statute requires fees for the processing of various applications. Due to the critical need to immediately begin processing applications, the Board adopts the fees on an emergency basis.

The new rule is adopted on an emergency basis under the Texas Government Code, §2001.034; Texas Civil Statutes, Article 4544, §1; Article 4545a, §1; Article 4545a, §2; Article 4550a, §1, Article 4550a, §2, Article 4551;

Article 4551e, §5; Article 4551f, §6(a); Texas Health and Safety Code, §467.004; §467.0041. The Board interprets these statutes to give it authority to adopt rules setting fees.

§102.1. Licensing and Examination Fees.

(a) Any person desiring to obtain a license to practice dentistry, dental hygiene and operate a dental laboratory in the State of Texas shall pay the following fees:

(1) tab dental examination fee-\$150;

(2) dental hygiene examination fee-\$70;

(3) dental laboratory application fee-\$100;

(4) dental licensure by credentials application fee-\$200;

(5) dental hygiene licensure by credentials application fee-\$150.

(b) Any person licensed to practice dentistry, dental hygiene and operate a dental laboratory in the State of Texas shall pay the following annual renewal fees:

(1) dentists-\$60;

(2) dental hygienist-\$36;

(3) dental laboratory-\$100.

(c) The peer assistance fee for dentists shall be \$5.00.

(d) The peer assistance fee for dental hygienist shall be \$2.00.

(e) A duplicate license fee shall be \$15.

(f) A duplicate renewal certificate fee shall be \$15.

(g) The administrative fee to reactivate a retired license shall be \$250.

Issued in Austin, Texas, on March 22, 1995.

TRD-9503559

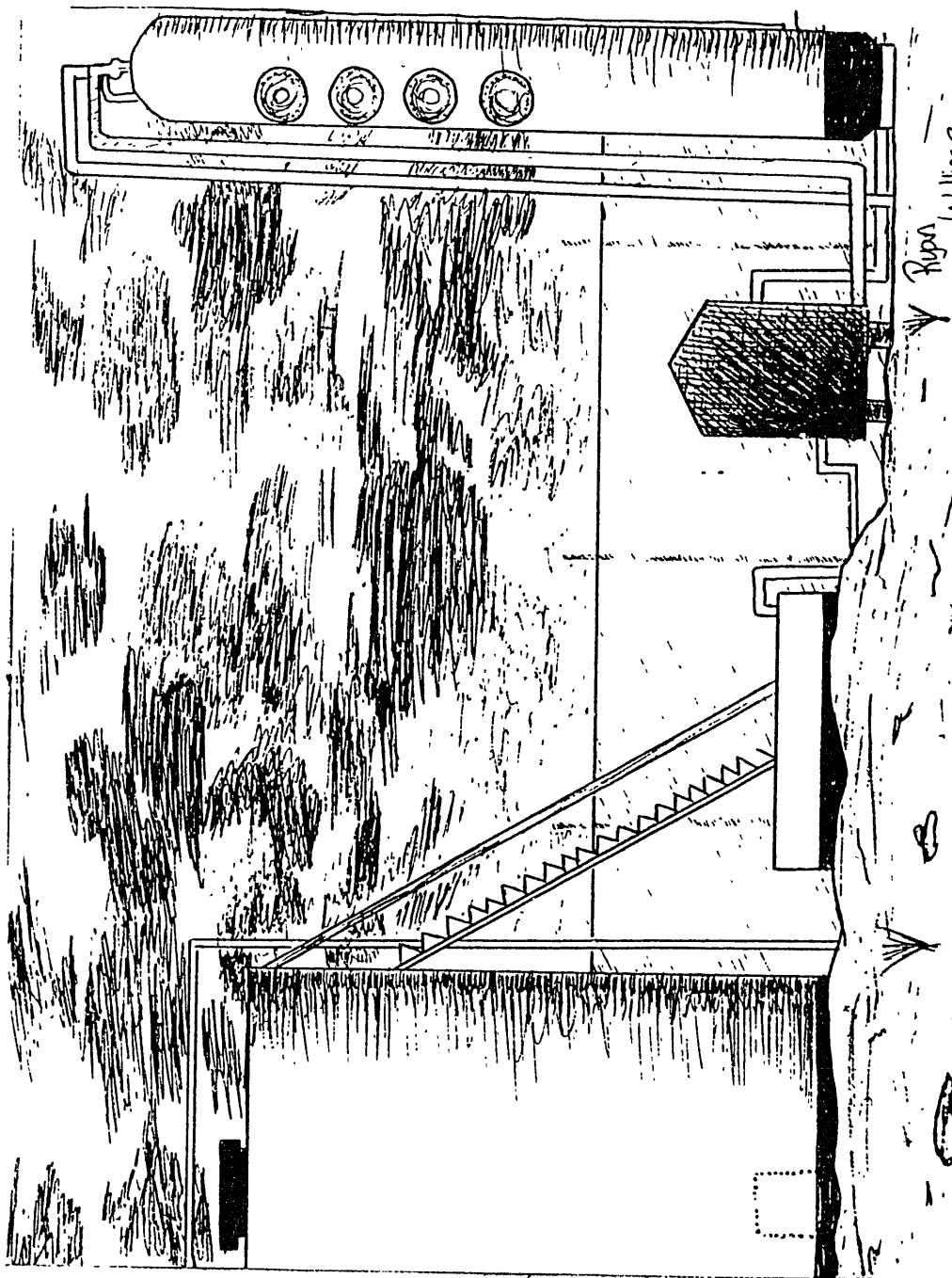
Jan Friese
Interim Executive Director
State Board of Dental
Examiners

Effective date: March 22, 1995

Expiration date: July 20, 1995

For further information, please call: (512) 463-6400

◆ ◆ ◆



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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

Chapter 252. Administration

• 1 TAC §252.3

The Advisory Commission on State Emergency Communications (ACSEC) proposes an amendment to §252.3, concerning 9-1-1 administrative budget document for councils of governments. The ACSEC recognizes the importance of administrative budgets to councils of governments to adequately administer the 9-1-1 Program activities in their regions, and is seen as part of the over-all component of the 9-1-1 regional plan process. ACSEC shall review and approve budget requests that justify monies requested.

Mary A. Boyd, executive director for ACSEC, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering the section. Ms Boyd also has determined that there will be no fiscal effect on local employment or the local economy.

Ms Boyd also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be more efficient.

Comments on the proposed section may be submitted to Mary Boyd, Executive Director, ACSEC, 333 Guadalupe, Suite 2-212, Austin, Texas 78701-3942

The amendment is proposed under the Health and Safety Code, Chapter 771, §771.056 and §771.057, which authorizes the ACSEC with the authority to provide financial assistance that the Advisory Commission on State Emergency Communications considers appropriate to operate 9-1-1 activities in the regions according to their regional plans.

No other statute, code or article is affected by this amendment.

§252.3. 9-1-1 Administrative Budget Document for Councils of Governments.

(a) The Advisory Commission on State Emergency Communications (ACSEC), through its legislative authority of the Health and Safety Code, Chapter 771, recognizes the importance of the councils of governments' (COGs) administration of the 9-1-1 regional plans in their jurisdictions. As a component of the ACSEC Strategic Plan and COG [overall] regional plan, an [a COG] administrative budget is necessary to administer the provisions of this Act.

(b) The budget cycle for [1993 will be a nine month period, effective January 1 through September 30 Effective October 1, 1993.] COG Administrative Budget [Budgets] approvals will be [will be approved] for a fiscal year period of September [October] 1 through August 31 [September 30]

(c) (No change)

(d) The administrative budget document is adopted by reference, and can be obtained from the Advisory Commission on State Emergency Communications 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, (512) 305-6911 [1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746, (512) 327-1911].

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

Issued in Austin, Texas, on March 22, 1995.

TRD-9503518

Mary A Boyd
Executive Director
Advisory Commission on
State Emergency
Communications

Earliest possible date of adoption: April 28, 1995

For further information, please call. (512) 305-6911

◆ ◆ ◆

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Certification

• 16 TAC §23.31

The Public Utility Commission of Texas proposes an amendment to §23.31, concerning certification criteria. The section requires that any certificate of convenience and necessity issued for facilities located within the coastal boundary be consistent with the goals and policies of the Coastal Coordination Council. The amendment also establishes thresholds for review of such certificates by the Coastal Coordination Council. Lastly, the amendment establishes a register of certificates subject to the Coastal Management Plan. The proposed amendment is consistent with the policy of the Coastal Coordination Council that thresholds for review be established. The amendment is also necessary to comply with Coastal Coordination Council's rules which require certificates subject to the Coastal Management Plan to be consistent with the goals and policies of the Coastal Coordination Council. 31 TAC §505.626, and §505.30.

Russell Trifvesti, assistant general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Trifvesti also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more effective and efficient management of coastal natural resource areas and a more effective and efficient use of public funds. 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.

Mr. Trifvesti 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 geographical area affected by implementing the requirements of the section.

Comments on the proposed amendment (13 copies) may be submitted to John M. Renfrow, Secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. All comments should refer to Project Number 13919

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and by §54(c), which requires that the commission grant certificates of convenience and necessity on a non-discriminatory basis after considering a variety of factors including environmental integrity

Cross Index to Statutes: Texas Civil Statutes, Article 1446c, Texas Natural Resources Code, §32 205

§23.31. Certification Criteria

(a)-(h) (No change)

(i) Coastal Management Program.

(1) Consistency requirement. If a utility's request for a certificate of convenience and necessity includes transmission or generation facilities located, either in whole or in part, within the coastal boundary as defined in 31 TAC §503.1, the utility shall state in its initial application that: "This application includes facilities located within the coastal boundary as defined in 31 TAC §503.1." The commission may grant a certificate for the construction of transmission or generating facilities within the coastal boundary as defined in 31 TAC §503.1 only when it finds that the proposed facilities are consistent with the goals and policies of the Coastal Coordination Council as defined in 31 TAC §501.14(a) related to such facilities, or that the proposed facilities will not adversely affect any coastal natural resource area identified in 31 TAC §501.14(a). For actions that exceed the thresholds for review established in paragraph (2) of this subsection, the commission shall make underlying findings which support its finding of consistency with the goals and policies of the Coastal Coordination Council as defined in 31 TAC §501.14(a), or no adverse effect on coastal natural resource areas identified in 31 TAC §501.14(a). Such underlying findings shall include the basis for the commission's determination, a description of the proposed facilities and the probable impact on coastal natural resources identified 31 TAC §501.14(a), the goals and policies applied, and an explanation as to how the proposed facilities are consistent with the goals and policies applied or why the action does not adversely affect any coastal natural resource identified in 31 TAC §501.14(a).

(2) Thresholds for review. In accordance with 31 TAC §505.26, certificates subject to paragraph (1) of this subsection may be referred to the Coastal Coordination Council for review pursuant to 31 TAC §505.32 if any of the facilities certificated are located seaward of the Coastal Facility Designation Line as defined in 31 TAC §19.2(a)(5)(D) and within:

(A) coastal historic areas as defined in 31 TAC §501.3(b)(2);

(B) coastal parks, wildlife management areas, and preserves as defined in 31 TAC §501.3(b)(3);

(C) coastal shore areas as defined in 31 TAC §501.3(b)(4);

(D) coastal wetlands as defined in 31 TAC §501.3(b)(5);

(E) critical dune areas as defined in 31 TAC §501.3(b)(6);

(F) critical erosion areas as defined in 31 TAC §501.3(b)(7);

(G) Gulf beaches as defined in 31 TAC §501.3(b)(8);

(H) hard substrate reefs as defined in 31 TAC §501.3(b)(9);

(I) oyster reefs as defined in 31 TAC §501.3(b)(10);

(J) private submerged lands as defined in 31 TAC §501.3(b)(11);

(K) State submerged lands as defined in 31 TAC §501.3(b)(13); or

(L) tidal sand and mud flats as defined in 31 TAC §501.3(b)(15).

(3) Register of certificates subject to the Coastal Management Program. The executive director of the commission shall maintain a record of all certificates subject to the Coastal Management Program and provide a copy of the record to the Coastal Coordination Council on a quarterly basis.

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

Issued in Austin, Texas, on March 24, 1995.

☎-9503602

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: May 1, 1995

For further information, please call: (512) 458-0100

TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 102. Fees

• 22 TAC §102.1

(Editor's Note: The State Board of Dental Examiners proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The State Board of Dental Examiners proposes new §102.1, concerning fees. The new rule is being proposed to establish fees by rule pursuant to the newly enacted Dental Practice Act.

Jan Friese, interim executive director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be the following fiscal implications for state government as a result of enforcing or administering the rule: Fiscal Year 1995, \$211,508; Fiscal Year 1996, \$1,164,684; Fiscal Year 1997, \$1,208,364; Fiscal Year 1998, \$1,208,364; Fiscal Year 1999, \$1,208,364.

Ms. Friese also has determined that for each year of the first five years the rule is in effect the anticipated result of enforcing the rule will be to define the licensing, examination and renewal fees required by any person desiring to practice dentistry and dental hygiene and operate a laboratory in Texas. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed because the fees are the same amount as had been in effect as of August 31, 1994.

Comments on the proposal may be submitted to Mei Ling Clendennen, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78711, (512) 463-6400.

The new rule is proposed under the Texas Civil Statutes, Article 4544, §1; Article 4545a, §1; Article 4545a, §2; Article 4550a, §1, Article 4550a, §2; Article 4551; Article 4551e, §5, Article 4551f, §6(a); Texas Health and Safety Code, §467.004; §467.0041. The Board interprets these statutes to give it authority to adopt rules setting fees

The proposed new rule does not affect other statutes, articles, or codes.

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

Issued in Austin, Texas, on March 22, 1995.

TRD-9503560

Jan Friese
Interim Executive Director
State Board of Dental
Examiners

Earliest possible date of adoption: May 1, 1995

For further information, please call: (512) 463-6400

Part XVI. Texas Board of Physical Therapy Examiners

Chapter 329. Licensing Procedure

• 22 TAC §329.6

The Texas Board of Physical Therapy Examiners proposes an amendment to §329.6, concerning Licensure of Persons Currently Licensed in Other States, the District of Columbia, or Territories of the United States. The amendment requires provisional applicants to provide documentation that their education in physical therapy is equivalent to a Commission on Accreditation of Physical Therapy Education accredited program.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Maline also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be verification that potential licensees are properly trained to practice physical therapy. 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 Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provide the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amendment

§329.6. *Licensure of Persons Currently Licensed in Other States, the District of Columbia, or Territories of the United States.*

(a) Qualifications for provisional licensure.

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

(4) Determination of substantially equivalent. Determination by the board as to whether a state, the District of Columbia or a territory of the United States maintains professional standards substantially equivalent to those set forth by the Act, will be based on whether at the time the applicant was licensed in the state:

(A) (No change.)

(B) An applicant for a license as a physical therapist must present evidence satisfactory to the board that the applicant has completed an accredited program or equivalent program in physical therapy education. "Equivalent program" means that the applicant shall provide official documentation from a board-approved educational credentials review agency certifying completion of a program equivalent to a Commission on Accreditation of Physical Therapy Education accredited program and completion of a minimum of 60 academic semester credits or the equivalent from an accredited institution of higher learning. An applicant for a physical therapist assistant license must present evidence satisfactory to the board that the applicant has completed an accredited physical therapist assistant program or an accredited physical therapy program.

(5)-(9) (No change.)

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

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

Issued in Austin, Texas, on March 24, 1995.

TRD-9503603

John Maline
Executive Director
Texas Board of Physical
Therapy Examiners

Earliest possible date of adoption: May 1, 1995

For further information, please call: (512) 443-8202

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 157. Emergency Medical Care

Emergency Medical Services Personnel Certification

• 25 TAC §157.45

The Texas Department of Health (department) proposes an amendment to §157.45, concerning the recertification of emergency medical services personnel.

The amendment is needed to facilitate the processing of application and examination results, in order to comply with processing timelines established by the Health and Safety Code, Chapter 773, §773.055; as well as those defined in 25 Texas Administrative Code, §157.3, regarding processing EMS provider licenses and applications for EMS personnel certification.

Gene Weatherall, chief, Bureau of Emergency Management, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Weatherall also has determined that for each year of the first five years the section is in effect the public will benefit from decreased processing times resulting in faster turnaround times for recertification candidates. 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. There will be no impact on local employment.

Comments on the proposal may be submitted to Gene Weatherall, Chief, Bureau of Emergency Management, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700. Comments will be accepted for 90 days after publication of this rule in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, Chapter 773, which provides the Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; 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 of Health, the department, and the Commissioner of Health.

The codes and/or articles affected by this amendment is the Health and Safety Code, Chapter 773, §773.055; and Health and Safety Code, §12.001.

§157.45. *Recertification.*

(a) General.

(1) [At least 180 days prior] Prior to the expiration of a certificate, the Texas Department of Health's (department) Bureau of Emergency Management (bureau) shall mail a notice of expiration by United States mail to the certificate at the address shown in the bureau's records. It is the responsibility of emergency medical services (EMS) personnel to notify the bureau of any change of address.

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

(4) If the application approval process is prolonged due to a felony/misdemeanor conviction investigation, the 90-day time period in subsection (c)(1) [(d)(1) and (2)] of this section may be extended to accommodate the candidate who is deemed eligible for recertification.

(5) An application for a lower level of certification may be submitted with the applicable fee as described in

subsection (b)(1)(B) of this section if the certificant meets the requirements for the level of certification requested as described in subsection (b)(1)(A) and (C) of this section.

(b) Timely recertification.

(1) A certificant shall meet the following requirements for recertification. The certificant shall:

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

(D) complete the department's CE evaluation [which shall be an attempt to measure the individual's knowledge necessary for the adequate provision of emergency care for current level of certification]. The department has final authority for scheduling all written CE evaluation sessions.

(2)-(4) (No change.)

(5) In conjunction with the certificant's two-year interim CE reporting cycle, the certificant may elect to complete the CE evaluation or the certificant's medical directors, providers, first responder organizations and/or employers may mandate that the certificant complete the CE evaluation and, if applicable, one re-evaluation. The first CE evaluation shall be completed within 180 days after [from] the deadline date of the interim two-year reporting cycle. The re-evaluation may be completed after the 180-day period. The CE evaluation results will be issued as described in paragraph (3) of this subsection.

(6) (No change.)

(c) Late recertification.

(1) If an application and the non-refundable fee for recertification, including a \$25 late fee, are postmarked within 90 days following the expiration date, the applicant shall qualify for recertification by:

(A) completing the CE requirements for recertification as required in §157.38 of this title; and

(B) meeting the certification requirement as described in subsection (b)(1)(C) and (D) of this section no later than 90 days from the expiration date. Certification shall continue during the 90-day period.

(2) Persons who do not complete the recertification process by the 90th day following their expiration date shall follow the procedure in subsection (d) of this section to become certified.

[(c) Early recertification.

[(1) If a certificant requests to recertify prior to the 180-day notice, the certificant shall meet all the requirements of

subsection (b) of this section within 90 days of the application date.

[(2) An application for a lower level of certification may be submitted with the applicable fee as described in subsection (b)(1)(B) of this section if the certificant meets the requirements for the level of certification requested as described in subsection (b)(1)(A) and (C) of this section.

[(3) A certificant who meets the requirements of this subsection shall be recertified for four years commencing on the date of issuance of a new certificate and wallet-sized certificate signed by department officials.]

(d) Re-entry. [Late recertification.]

[(1) If the application and the non-refundable fee for recertification are postmarked at least 30 days prior to the expiration date of the certificate, the certification shall continue for a period not to exceed 90 days from the expiration date. The applicant shall qualify for recertification by:

[(A) completing the CE requirements for recertification as required in §157.38 of this title; and

[(B) meeting the certification requirement as described in subsection (b)(1)(C) and (D) of this section no later than 90 days from the expiration date.

[(2) If an application and the non-refundable fee for recertification, including a \$25 late fee, are postmarked less than 30 days before the expiration date but within 90 days following the expiration date, the applicant shall qualify for recertification by:

[(A) completing the CE requirements for recertification as required in §157.38 of this title; and

[(B) meeting the certification requirement as described in subsection (b)(1)(C) and (D) of this section no later than 90 days from the expiration date. Certification shall not continue during the 90-day period.]

(1) [(3)] If an application, and non-refundable fee, for certification [recertification] is received after the 90-day period beyond the expiration date of the previous certificate, but within one year following the expiration date, the applicant shall submit, in addition to the certification [recertification] fee, a non-refundable late fee of \$25. The applicant is not certified during this period. If he represents himself as a certified EMS person, the applicant may be denied certification [recertification] and may be subject to the civil and criminal

penalties under the Health and Safety Code, §773.063 and §773.064.

(A) A person who submitted an application, fee, and late fee if applicable under subsections (b) and (c) of this section; but who did not complete recertification requirements within the established time frames is not required to submit a new application and fee under this subsection.

(B)[(A)] All requirements in subparagraph (C)(i)-(iii) [paragraph (3)(B)(i) and (ii)] of this paragraph [subsection] shall be completed no later than one year from the expiration date of the most recent certificate.

(C)[(B)] The applicant shall qualify for certification [recertification] by successfully:

(i) completing the CE requirements for recertification as required in §157.38 of this title no earlier than two years prior to the application;

(ii) completing verification of skills proficiency as described in §157.41(a)(5) of this title; and

(iii) achieving a passing grade on the certification examination as required in §157.41(a)(6) of this title and on each critical subscale. An applicant who fails the certification examination may retest one time, provided a fee of \$25, if applicable, accompanies the application for retest.

[(C) A candidate who does not successfully complete the recertification requirements in subparagraphs (A) and (B) of this paragraph shall meet the requirements of §157.41 of this title prior to being eligible for certification.]

(D) A candidate who fails the retest and wishes to become certified shall take a department-approved refresher course, complete skills proficiency verification, and submit an application and non-refundable fee as appropriate prior to completing the certification examination. An applicant who fails the certification examination may retest one time provided a fee of \$25 accompanies the application for a retest. The process in this paragraph may be repeated if necessary and if time allows.

(E) A candidate who does not successfully complete the re-entry requirements in subparagraph (B), (C), or (D) of this paragraph within one year following their expiration date shall meet

the requirements in paragraph (2) of this subsection prior to being eligible for certification or the requirements of §157.41 of this title as appropriate.

(2)[(4)] If an application and non-refundable fee for certification and a non-refundable late fee of \$25 is received more than one year following the expiration date but within two years following the expiration date, the applicant shall qualify for recertification by completing the requirements in subsection (f)(1)(A)(i), (B)(i), or (C)(i) of this section for the appropriate level of certification. To receive credit, these requirements must be completed no earlier than two years prior to the application.

(A) Candidates completing the requirement of this subsection shall achieve a passing grade on the certification examination as required in §157.41(a)(6) of this title and on each subscale. An applicant who fails the certification examination may retest one time provided a fee of \$25 accompanies the application for a retest.

(B) A candidate who fails the retest and wishes to become certified shall take a department-approved refresher course, complete skills proficiency verification, and submit an application and non-refundable fee as appropriate prior to completing the certification exam. An applicant who fails the certification examination may retest one time provided a fee of \$25 accompanies the application for a retest.

(C)[(B)] All requirements shall be completed within two years from the expiration date of the most recent certificate [certification].

(D)[(C)] A candidate who does not successfully complete the re-entry [recertification] requirements in this subsection shall meet the requirements of §157.41 of this title prior to being eligible for certification.

(e) Inactive status. A certified emergency medical technician (EMT), EMT-Intermediate (EMT-I), or EMT-Paramedic (EMT-P) [not actively engaged in the provision of emergency medical services] may make application to the department for inactive status.

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

(f) Return [Re-entry] into active status.

(1) To regain active status a certificant shall complete the following requirements prior to submitting an application and fee as set out in §157.41(a)(4) of

this title [for re-entry into active status]. All requirements shall be completed within the two years prior to the application.

(A) Paramedics.

(i) The paramedic shall successfully complete:

(I)-(II) (No change.)

(III) a Prehospital Pediatric Provider Course (PPPC) or Pediatric Advanced Life Support (PALS) course;

(IV)-(V) (No change.)

(ii) (No change.)

(iii) A candidate who fails and wishes to become certified shall take a department-approved refresher course, complete skills proficiency verification, and submit an application and non-refundable fee as appropriate prior to completing the certification exam. An applicant who fails the certification examination may retest one time provided a fee of \$25 accompanies the application for a retest.

(B) EMT-I.

(i) The EMT-I shall successfully complete:

(I) -(II) (No change.)

(III) a PPPC or PALS course;

(IV) -(V) (No change.)

(ii) (No change.)

(iii) A candidate who fails and wishes to become certified shall take a department-approved refresher course, complete skills proficiency verification, and submit an application and non-refundable fee as appropriate prior to completing the certification exam. An applicant who fails the certification examination may retest one time provided a fee of \$25 accompanies the application for a retest.

(C) EMT.

(i)-(ii) (No change.)

(iii) A candidate who fails and wishes to become certified shall take a department-approved refresher course, complete skills proficiency verification, and submit an application and non-refundable fee as appropriate prior

to completing the certification exam. An applicant who fails the certification examination may retest one time provided a fee of \$25 accompanies the application for a retest.

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

(g) Military personnel. An individual who fails to renew certification within 90 days of the expiration date because of active duty serving outside the State of Texas, shall have one year from the date of return to the state in which to:

(1) complete department-approved CE requirements[;] as outlined in §157.38 of this title;

(2)-(4) (No change.)

(h) Hardship cases. The bureau chief may review special hardship cases and allow a candidate additional time to complete requirements beyond the two-year CE reporting deadline or certification expiration date. Although additional time may be allowed to complete requirements, certification shall not continue beyond 90 days following the certification expiration date. This subsection does not apply to re-entry or return candidates as described in subsections (d) and (f) of this section.

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

Issued in Austin, Texas, on March 22, 1995.

TRD-9503613

Susan K. Steeg
General Counsel
Texas Department of
Health

Earliest possible date of adoption: June 29, 1995

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

◆ ◆ ◆
Chapter 229. Food and Drug
Regulation of Foods, Dietary
Supplements and Drugs
Containing Ephedrine

• 25 TAC §§229.461-229.464

The Texas Department of Health (department) proposes new §§229.461-229.464, concerning the regulation of ephedrine containing products. The proposed section bans the sale of foods and dietary supplements containing ephedrine in amounts other than that which occurs in nature. The section also identifies ephedrine containing drugs not exempted as prescription drugs. The section limits the marketing and advertising of ephedrine containing products available without prescription. The section is proposed to address the department's concerns for public safety.

Cynthia Culmo, R.Ph., Director, Drugs and Medical Devices Division, 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.

Ms Culmo 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 a decrease in reports of ephedrine abuse and related injuries. The effect on small businesses will be the requirement to reformulate and relabel products. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There will be no effect on local employment.

Comments on the proposal may be submitted to Cynthia Culmo, R.Ph., Director, Drugs and Medical Devices Division, 1100 West 49th Street, Austin, Texas 78756-3182, (512) 719-0200. Public comments will be accepted for 30 days after publication of the sections in the *Texas Register*. In addition, a public hearing will be held on April 28, 1995, at the Texas Department of Health Lecture Hall, 1100 West 49th Street, Austin, Texas, beginning at 9:00 a.m.

The new sections are proposed under the Health and Safety Code (HSC), §431.021, which prohibits the introduction or delivery into commerce of any food or drug that is adulterated and prohibits the dissemination of any false advertisement, HSC, §483.003, which gives the board the authority to limit the availability of an abused drug by permitting its dispensing only on the prescription of a practitioner, and HSC, §12.001, which provides the Texas Board of Health with authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

The Health and Safety Code, Chapter 431 is affected by the new sections.

§229.461. General Provisions. The purpose of these sections is to ensure that foods, dietary supplements and drugs containing ephedrine manufactured and/or distributed in this state are safe, are not misbranded or adulterated and are not marketed through the use of false or misleading advertising or labeling. The following sections restrict the sale or distribution of certain products containing synthetic or natural ephedrine, its salts, optical isomers or salts of optical isomers.

§229.462. Ban on the Sale and Distribution of Foods and Dietary Supplements Containing Ephedrine.

(a) No food or dietary supplement containing synthetic or natural ephedrine, its salts, optical isomers or salts of optical isomers shall be sold, distributed, introduced into commerce, manufactured, produced, packaged, exposed, offered, possessed or held for sale, dispensed or given away in this state.

(b) Food or dietary supplement products containing ma huang or other ge-

nus ephedra in their natural state are exempt from the provisions of this section. The total ephedrine alkaloid content of the ma huang or other genus ephedra ingredient shall not exceed 2.5%. Any reformulation of genus ephedra or botanical products containing ephedrine alkaloids which increases the ephedrine alkaloid content above naturally occurring amounts shall not be exempt from the provisions of this section.

(c) No food or dietary supplement products containing ma huang or other genus ephedra in its natural state shall be formulated in combination with any source of caffeine to be sold, distributed, introduced into commerce, manufactured, produced, packaged, exposed, offered, possessed or held for sale, dispensed or given away in this state.

§229.463. Restrictions on Sale and Distribution of Drug Products Containing Ephedrine.

(a) Except as hereinafter provided, any product that contains any quantity of ephedrine, its salts, optical isomers or salts of optical isomers, may be dispensed only upon the prescription of a licensed practitioner.

(b) The following products, as formulated in March, 1995, and generic equivalents of the March 1995 formulations of the following products are exempt from the designation as prescription drugs under subsection (a) of this section:

- (1) Breathe-Aid;
- (2) BronCare;
- (3) Bronchial Congestion;
- (4) Bronkaid Tablets;
- (5) Bronkaid Dual Action Caplets;
- (6) Bronkotabs;
- (7) Bronkolixir;
- (8) NeoRespIn;
- (9) Pazo Hemorrhoid Ointment and Suppositories;
- (10) Primatene Tablets;
- (11) Primatene "Dual Action" Formula;
- (12) Quelidrine;
- (13) Resp;
- (14) Tedrigen;
- (15) Theodrine; and
- (16) Vatronal Nose Drops.

§229.464. Restrictions on Marketing, Advertising, or Labeling of Ephedrine Products. The marketing, advertising, or label-

ing of any product containing ephedrine, its salts, optical isomers, or salts of optical isomers, for the indication of stimulation, mental alertness, weight loss, appetite control, or energy, or any other indication not approved by the United States Food and Drug Administration in an over the counter monograph or new drug approval, is prohibited. In determining compliance with this requirement the department may consider the following factors:

- (1) packaging of the drug product;
- (2) name and labeling of the product;
- (3) manner of distribution, advertising, and promotion of the product;
- (4) verbal representations made concerning the products; and
- (5) duration, scope and significance of abuse or misuse of the particular product.

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

Issued in Austin, Texas, on March 23, 1995.

TRD-9503690

Susan K. Steeg
General Counsel
Texas Department of
Health

Earliest possible date of adoption: May 1, 1995

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

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 79. Legal Services

Subchapter Z. Reimbursement Rates for Prosecution of Intentional Program Violations

• 40 TAC §79.2501

The Texas Department of Human Services (DHS) proposes an amendment to §79.2501, concerning rates of reimbursement, in its Legal Services rule chapter. The purpose of the amendment is to reduce the prosecution rates for contested and uncontested fraud cases involving Aid to Families with Dependent Children (AFDC) program and Food Stamp program benefits.

Burton F. Raiford, commissioner, has determined that for the first five-year period the amendment will be in effect there will be fiscal implications as a result of enforcing or administering the amendment. The effect on local

government for the first five-year period the section will be in effect is an estimated reduction in the amount of reimbursement for prosecution of intentional program violations of \$48,000 in the remainder of fiscal year 1995; and \$291,000 in each of fiscal years 1996-1999. There will be no effect on state government as a result of enforcing or administering the proposed amendment.

Mr. Raiford 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 appropriate reimbursement of county and district attorneys for the costs involved in prosecuting public assistance fraud cases. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Gordon Hardy at (512) 450-4210 in DHS's Office of Inspector General. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-212, 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 amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§33.001-33.025.

§79.2501. Rates of Reimbursement. The Texas Department of Human Services (DHS) contracts with county commissioners for prosecuting Aid to Families with Dependent Children (AFDC) and Food Stamp intentional program violations. As approved by the Texas Board of Human Services, DHS passes to the local prosecutors the federal share of the cost per case, and the local prosecutors supply the state match. The Budget Deficit Reduction Act of 1993 reduces the federal participation rate from 75% to 50% for fraud control activities, effective July 1, 1995. DHS is

required to reduce the rate in effect before July 1, 1995, by 25% from [Based on a review and analysis of prosecutors' costs, DHS has established the payment rates as follows]:

- (1) \$420 to \$280 for uncontested cases; and
- (2) \$1,017 to \$678 for contested cases.

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

Issued in Austin, Texas, on March 27, 1995.

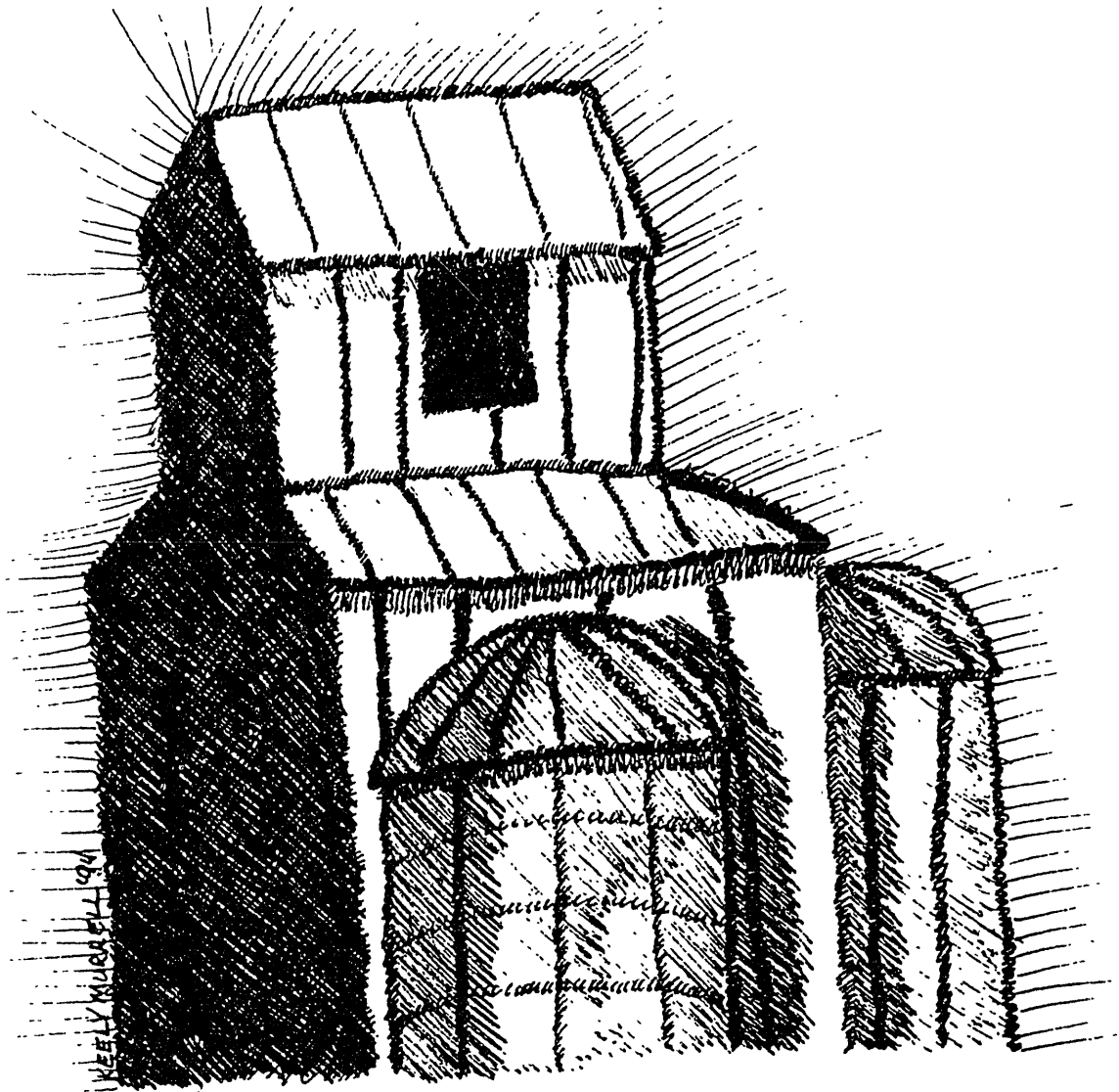
TRD-9503697

Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: July 1, 1995

For further information, please call: (512) 450-3765

◆ ◆ ◆



Name: Keely Murrell
Grade: 10
School: Perryton High School, Perryton ISD

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the **Texas Register**. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the **Texas Register**, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the **Texas Register**.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter T. Administration

• 40 TAC §19.1932

The Texas Department of Human Services (DHS) has withdrawn from consideration its proposed new §19.1932, concerning adjustment or repair of prosthetic devices, in its Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification rule chapter. The text of the proposed repeal appeared in the October 21, 1994, issue of the *Texas Register* (19 TexReg 8349). The effective date of the withdrawal is March 24, 1995.

Issued in Austin, Texas, on March 24, 1995.

TRD-9503636

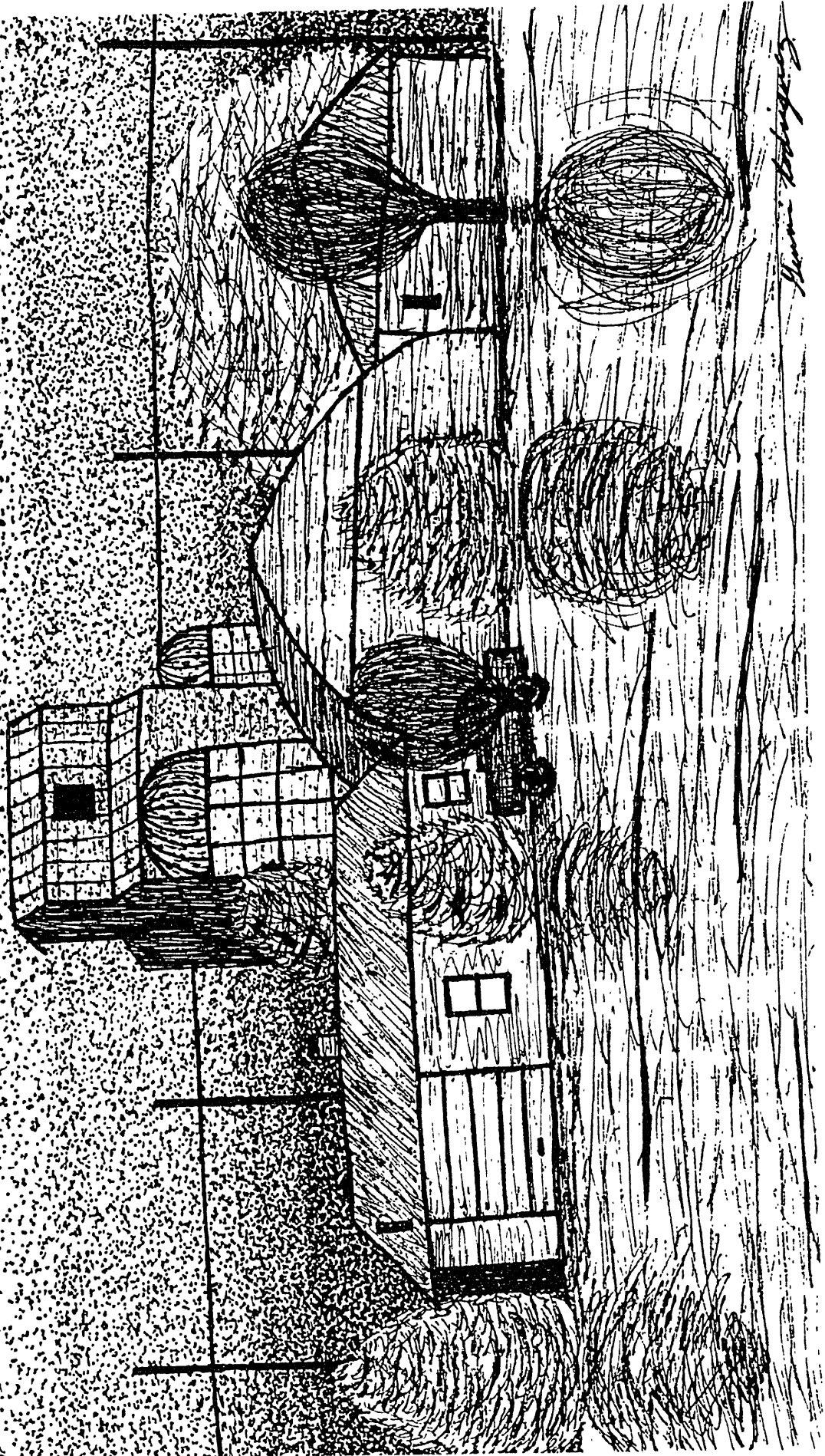
Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: March 24, 1995

For further information, please call: (512)
450-3765



Name: Genni Rodriguez
Grade: 10
School: Perryton High School, Perryton ISD



Genni Rodriguez

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 235. Licensing

Issuance of Licenses

• 22 TAC §235.48, §235.50

The Board of Vocational Nurse Examiners adopts an amendment to §235.48, relating to reactivation of a license; and new §235.50, relative to an active license, without changes to the proposed text as published in the February 21, 1995, issue of the *Texas Register* (20 TexReg 1256)

The amendment to §235.48 is adopted to clarify the language previously used and to comply with the Vocational Nurse Act. New §235.50 is adopted to clarify the requirements a licensee must meet in order for their license to be considered active.

No comments were received regarding adoption of the amendment and new section.

The amendment and new section are adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 24, 1995.

TRD-9503632

Marjorie A Bronk
Executive Director
Board of Vocational Nurse
Examiners

Effective date: April 14, 1995

Proposal publication date: February 21, 1995

For further information, please call: (512) 835-2071

Chapter 237. Continuing Education

Continuing Education

• 22 TAC §237.19

The Board of Vocational Nurse Examiners adopts an amendment to §237.19, relative to continuing education, without changes to the proposed text as published in the February 21, 1995, issue of the *Texas Register* (20 TexReg 1257)

The amendment is adopted to clarify language and allow the language to be the same throughout the rules and regulations of the Board of Vocational Nurse Examiners.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9503631

Marjorie A Bronk
Executive Director
Board of Vocational Nurse
Examiners

Effective date: April 14, 1995

Proposal publication date: February 21, 1995

For further information, please call: (512) 835-2071

Part XVI. Texas Board of Physical Therapy Examiners

Chapter 329. Licensing Procedure

• 22 TAC §329.3, §329.5

The Texas Board of Physical Therapy Examiners adopts amendments to §329.3 and §329.5, concerning Temporary Licensure for Examination Candidates, without changes to

the proposed text as published in the February 3, 1995 issue of the *Texas Register* (20 TexReg 616).

Section 329.3 is being amended to clarify what is necessary for an applicant who wishes to become a physical therapist or physical therapist assistant to obtain a temporary license.

This section informs applicants who will approve or deny their application and informs them that they are not eligible for a temporary license if they have taken the national examination.

Section 329.5 is being amended to clarify what is required of a foreign-trained applicant in order to take the physical therapist examination in Texas.

Section 329.5 allows foreign-trained applicants to use up to 12 semester credits achieved through College Level Examination program (CLEP) credits to satisfy general education requirements in Texas. Also, this section requires foreign-trained applicants to be licensed in the country where they received their education.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 22, 1995.

TRD-9503545

John Maline
Executive Director
Texas Board of Physical
Therapy Examiners

Effective date: April 12, 1995

Proposal publication date: February 3, 1995

For further information, please call: (512) 443-8202

Chapter 341. License Renewal

• 22 TAC §341.3

The Texas Board of Physical Therapy Examiners adopts an amendment to §341.3, concerning License Renewal, without changes to the proposed text as published in the February 3, 1995, issue of the *Texas Register* (20 TexReg 617)

This amendment clarifies what is necessary for renewal of a license as a physical therapist or physical therapist assistant

This section informs licensees what types of courses will be approved by the board for continuing education purposes

No comments were received regarding the adoption of the amendment

The amendment is adopted under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas on March 22, 1995

TRD-9503546 John Maline
Executive Director
Texas Board of Physical
Therapy Examiners

Effective date April 12, 1995

Proposal publication date February 3, 1995

For further information, please call (512) 443-8202

• 22 TAC §341.21

The Texas Board of Physical Therapy Examiners adopts new §341.21, concerning Report of Malpractice Claims or Actions or Disciplinary Actions, without changes to the proposed text as published in the February 3, 1995, issue of the *Texas Register* (20 TexReg 617)

This section is being adopted to require physical therapists and physical therapist assistants who are licensed in Texas but practice in other states to notify the board when they have a malpractice claim or are disciplined in another state

This section requires licensees to send a copy of judgments and disciplinary actions to the board

No comments were received regarding adoption of the section

The rule is adopted under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

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TRD-9503547 John Maline
Executive Director
Texas Board of Physical
Therapy Examiners

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Proposal publication date February 3, 1995

For further information, please call (512) 443-8202

Chapter 343. Contested Case Procedure

• 22 TAC §§343.35, 343.36, 343.42, 343.48, 343.49, 343.56

The Texas Board of Physical Therapy Examiners adopts new §§343.35, 343.36, 343.42, 343.48, 343.49, and 343.56, concerning Contested Case Procedure, without changes to the proposed text as published in the February 3, 1995, issue of the *Texas Register* (20 TexReg 617)

These new sections are being adopted to inform the public about complaint investigation and disposition

These new sections explain the processes involved in receiving, tracking and disposing of complaints, including investigation procedures and administration. These sections also establish a procedure for monitoring licensees who have been disciplined by the board

No comments were received regarding adoption of the new sections

The new sections are adopted under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 22, 1995

TRD-9503548 John Maline
Executive Director
Texas Board of Physical
Therapy Examiners

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Proposal publication date February 3, 1995

For further information, please call (512) 443-8202

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Statewide Immunization of Children by Hospitals, Physicians, and Other Health Care Providers

• 25 TAC §97.101, §97.102

The Texas Department of Health (department) adopts new §97.101 and §97.102, concerning the statewide immunization of children by hospitals, physicians, and other health care providers, with changes to the proposed text as published in the December 9, 1994, issue of the *Texas Register* (19 TexReg 9716) Section 97.101 and §97.102 are adopted with minimal changes to the scope of providers who must screen and assess and review the records of children and immunize or refer children for immunizations as needed

A summary of comments received and the departments responses for the proposed new immunization rules are as follows

Comment Concerning §97.101, four commenters suggested that the department add the generic term "health care providers" to the scope of providers who must assess, immunize, or refer for immunization children covered under these rules

Response The department agrees and has added the phrase "and other health care providers," after each reference to physicians in §97.101 This minimal change reflects the intent of the statute, to require all health care providers, at every opportunity, to assess immunization records and immunize or refer children as needed

Comment One commenter, stated that their facility's Emergency Department already had a policy in place to immunize or refer presenting children for immunization

Response The department acknowledged the statement

The comments were received from representatives of four organizations and one individual The organizations on whose behalf these comments were made were the Houston Area Chapter of the National Association of Pediatric Nurse Associates and Practitioners, Texas Nurse Practitioners, the Consortium of Texas Certified Nurse-Midwives, and the Good Shepherd Medical Center in Longview The commenters were generally in favor of the rules, but offered suggestions for beneficial change

The new sections are adopted under Health and Safety Code, Chapter 161, Public Health Provision, Subchapter A, Immunizations These sections require the department to establish rules by which hospitals and physicians and other health care providers will

assess and review the immunization records of children and immunize or refer children as appropriate. The sections also require facility physicians with the Texas Department of Criminal Justice, Texas Department of Mental Health and Mental Retardation, and the Texas Youth Commission to review the immunization records and immunize as appropriate all children admitted, detained, or committed to those facilities.

§97.101 Statewide Immunization of Children

(a) Every person less than 18 years old shall be immunized against vaccine-preventable diseases caused by infectious agents in accordance with the immunization schedule adopted by the Board of Health. The immunization requirements are also adopted as a statewide "control measure" for communicable diseases as that term is used in the Health and Safety Code, §§81.081 and §81.082 and as an "instruction of the department" as that term is used in the Health and Safety Code, §81.007.

(b) The required immunization schedule shall be based upon the immunization requirements for children and students under §§97.61-97.77 of this title (relating to Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education). Additional copies may be obtained from Literature and Forms, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7284.

(c) All private and public hospitals in Texas that provide health care to children shall

(1) administer age-appropriate vaccines or refer newborns for immunizations to other health care providers at the time of the newborn screening test,

(2) review the immunization history of every child admitted to the hospital, examined in the hospital's emergency room, or outpatient clinic; and

(3) administer the needed vaccines or refer the child to another health care provider for immunizations.

(d) All physicians and other health care providers who provide health care to children in Texas shall

(1) review the immunization history of every child examined; and

(2) administer vaccine(s) or refer every child who needs immunizations to another health care provider.

(e) Hospitals, all physicians, and other health care providers, who provide health care to children in Texas, must document in a newborn's or other child's hospital or medical record that the newborn or child has either received age-appropriate

immunizations or has been referred for immunizations at the time of the newborn screening or upon a child's admission to the hospital, examination in a hospital emergency room or visit to an outpatient clinic. Hospitals, all physicians, and other health care providers, who provide health care to children in Texas must document in a newborn's or other child's hospital or medical record that the

(1) newborn's or other child's immunization history has been reviewed; and

(2) that the newborn or child has been age-appropriately immunized or that the newborn has been referred to another health care provider for immunizations.

(f) If requested by the local health unit, local health department, public health district, or the department, the provider shall furnish identifying information on those children who have been immunized or referred for immunizations. The information must include at least the child's name, child's date of birth, child's address, a parent's name, a parent's telephone number, and if applicable, the name or type of vaccine administered, and the month, day, and year that the vaccine was administered.

(g) Children are exempt from immunizations if

(1) immunization conflicts with the tenets of an organized religion to which parent, managing conservator or guardian belongs, or

(2) the immunization is medically contraindicated based on an examination of the child by a physician licensed to practice by any state in the United States.

§97.102. Immunizations Required Upon Admission of a Child to the Texas Department of Criminal Justice, Texas Department of Mental Health and Mental Retardation, or the Texas Youth Commission

(a) On admission of a child to a facility of the Texas Department of Mental Health and Mental Retardation, the Texas Department of Criminal Justice, or the Texas Youth Commission, the facility physician shall review the immunization history of the child and administer any needed immunization(s) or refer the child for immunization(s) to another health care provider. Required immunizations are those set out in §97.63 of this title (relating to Required Immunizations). Copies may be obtained from Literature and Forms, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7284.

(b) The provisions of §97.62 of this title (relating to Exclusions of Compliance) and §97.71 of this title (relating to Provisional Enrollment) apply to this section.

(c) The facility covered by this section shall keep an individual's immunization record during the child's period of admission, detention, or commitment in the facility. The records shall be open to inspection at all reasonable times by a representative of the local health unit, local health department, public health district or the department. The immunization record will record the name or type of vaccine administered; and the month, day and year that the vaccine was administered.

(d) This section does not affect the requirements of the Education Code, §2.09 and §2.091 or the Human Resources Code, §42.043, or sections of this chapter written under their authority.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 23, 1995.

TRD-9503607

Susan K Steeg
General Counsel
Texas Department of
Health

Effective date: April 14, 1995

Proposal publication date: December 9, 1994

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

◆ ◆ ◆
Chapter 129. Opticians' Registry

The Texas Department of Health (department) adopts the repeal of §129.3 and new §129.3, concerning the Opticians' Registry Advisory Committee. New §129.3 is adopted with changes to the proposed text as published in the December 27, 1994, issue of the *Texas Register* (19 TexReg 10293). The new section covers the committee, applicable law, purpose, tasks, review and duration, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports to the board, and reimbursement of members' expenses. The repeal of §129.3 is adopted without changes and will not be republished.

The following comment was received in regards to the proposed section.

Comment Concerning new §129.3(a)(2), department staff commented that the statutory reference should be to the Health and Safety Code, §11.016, which gives the Texas Board of Health authority to establish advisory committees.

Response. The department agrees and has changed the statutory reference.

◆ ◆ ◆
• 25 TAC §129.3

The repeal is adopted under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function; and under the Health and Safety Code, §11.016, which

allows the Board of Health (board) to establish advisory committees

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 23, 1995

TRD-9503608

Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date April 14, 1995

Proposal publication date December 27, 1994

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

The new section is adopted under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function, Texas Civil Statutes, Article 4551-1, §5, relating to rules for the opticians' registry program, and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health

§129.3 Opticians' Registry Advisory Committee

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Opticians' Registry Advisory Committee (committee)

(2) The committee is required to be established by the Texas Board of Health (board) by Texas Civil Statutes, Article 4551-1

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33, relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of opticianry and the regulation of dispensing opticians.

(d) Tasks

(1) The committee shall advise the board concerning rules relating to opticians

(2) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By November 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee or abolished. If the committee is not

continued or consolidated, the committee shall be abolished on that date

(f) Composition. The committee shall be composed of nine members appointed by the board. The composition of the committee shall include two consumer representatives, three opticians, two optometrists, and two physicians (ophthalmology)

(g) Terms of office. The term of office of each member shall be six years

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on March 1 of odd numbered years

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year

(1) Each officer shall serve until the next regular election of officers

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer

(6) The committee may refer to its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings

(k) Staff. Staff support for the committee shall be provided by the department

(l) Procedures. *Roberts Rules of Order, Newly Revised*, shall be the basis of parliamentary decisions except where otherwise provided by law or rule

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status

(5) Minutes of each committee meeting shall be taken by department staff

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each September. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 23, 1995

TRD-9503609 Susan K Steeg
General Counsel
Texas Department of Health

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Proposal publication date: December 27, 1994

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

Chapter 130. Code Enforcers

• 25 TAC §130.3

The Texas Department of Health (department) adopts the repeal of §130.3, concerning operating procedures for the Code Enforcement Advisory Committee (committee), without changes to the proposed text as published in the December 27, 1994, issue of the *Texas Register* (19 TexReg 10295)

The rule is being repealed to abolish the advisory committee because the department has determined the committee should be consolidated with the Sanitarian Advisory Committee. The committee evaluation was conducted in accordance with Texas Civil Statutes, Article 6252-33

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function, and under the Health and Safety Code, §12 001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 23, 1995

TRD-9503610 Susan K Steeg
General Counsel
Texas Department of Health

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

Chapter 141. Massage Therapists

• 25 TAC §141.2

The Texas Department of Health (department) adopts the repeal of §141.2, concerning operating procedures for the Advisory Council on Massage Therapy (committee), without changes to the proposed text as published in the December 27, 1994, issue of the *Texas Register* (19 TexReg 10296)

The section is being repealed to abolish the advisory committee because the department has determined the committee no longer serves a useful purpose, its functions can be more efficiently accomplished by department personnel and the department will be able to use other methods such as informal meetings and public hearings on rules to obtain input relating to the massage therapy program. The committee evaluation was conducted in accordance with Texas Civil Statutes, Article 6252-33

The department received comments from the Texas Osteopathic Medical Association (TOMA) and five individuals. A summary of the comments received and the department's response to the comments follow

Comment TOMA supported the repeal because the committee no longer serves a useful purpose and should be abolished, and its functions can be accomplished by department personnel and other professionals

Response The department agrees with the comments

Comment Five individuals, four of whom are current or former members of the committee, objected to the abolishment of the committee because they believed that the committee is an effective opportunity for industry input

Response. The department disagrees that abolishment of the committee would limit public input into the rulemaking process. The department continues to receive input from the massage therapy industry through informal meetings, public hearings, and written comments during the 30-day comment period to the proposed rule actions. The department anticipates continuing such contact with interested individuals and associations. Abolishment of the committee will allow the department to redirect funds used for committee expenses to enhance communications with the registrants. The department believes this action will serve the needs of the public and the health care professionals rather than focusing only on the needs of the massage therapy community. Additionally, abolishment of the committee will eliminate confusion as to who issues registrations and enforces the registration law. Many individuals think the committee has more than advisory functions and fail to recognize that the department administers the program

The repeal is adopted under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function; and under the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 23, 1995

TRD-9503611

Susan K Steeg
General Counsel
Texas Department of
Health

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Proposal publication date. December 27, 1994

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

◆ ◆ ◆
Chapter 229. Food and Drug
Licensing of Wholesale Dis-
tributors of Drugs-Including
Good Manufacturing Prac-
tices

• 25 TAC §229.255

The Texas Department of Health (department) adopts new §229.255, concerning the Wholesale Drug Distributors Advisory Committee, with changes to the proposed text as published in the December 27, 1994, issue of the *Texas Register* (19 TexReg 10298)

The section covers applicable law, purpose, tasks, abolishment, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports to the board and reimbursement of members' expenses. The committee's size and structure has remained the same. The section establishes and clarifies policies and procedures for the wholesale drug advisory committee.

A summary of comments and the department's responses to the comments follows.

Comment Concerning §229.255(f), one commenter stated that the committee membership should include at least one pharmacist actively engaged in the practice of Pharmacy

Response: The department's response is that if a pharmacist meets the qualifications for appointment under the requirements of the statute, then the pharmacist can be nominated and appointed to the committee.

Comment: Concerning §229.255(a)(2), department staff commented that the statutory reference should be to the Health and Safety Code, §11.016, which gives the Texas Board of Health authority to establish advisory committees

Response: The department made the change

Editorial changes were made for clarification purposes

The new section is adopted under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function, and under Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the Commissioner of Health

§229.255. *Wholesale Drug Distributors Advisory Committee.*

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Wholesale Drug Distributors Advisory Committee (committee).

(2) The committee is established under Health and Safety Code, §11.016, which allows the Texas Board of Health (board) to establish advisory committees.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33, relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of licensure of wholesale drug distributors.

(d) Tasks

(1) The committee shall advise the board concerning rules relating to licensing of wholesale drug distributors.

(2) The committee shall advise the board in the development of standards and procedures relating to the licensing of wholesale drug distributors; make recommendations to the board relating to the content of the rules adopted to implement the licensing of wholesale drug distributors; and perform any other functions requested by the board to implement and administer the rules regarding the licensing of wholesale drug distributors.

(3) The committee shall carry out any other tasks given to the committee by the board

(e) Review and duration. By September 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date

(f) Composition. The committee shall be composed of six members appointed by the board. The composition of the committee shall include:

(1) two consumer representatives; and

(2) four nonconsumer representatives.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on August 31st of each odd numbered year

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired

portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer

(6) The committee may reference its officers by other terms such as chairperson and vice-chairperson

(l) Meetings The committee shall meet only as necessary to conduct committee business

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of

the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings

(k) Staff Staff support for the committee shall be provided by the department

(l) Procedures Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status

(5) Minutes of each committee meeting shall be taken by department staff

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee

(o) Reports to board The committee shall file an annual written report with the board

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each August. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 23, 1995

TRD-9503612

Susan K Steeg
General Counsel
Texas Department of
Health

Effective date: April 14, 1995

Proposal publication date: December 27,
1994

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

◆ ◆ ◆
TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 305. Consolidated Permits

Subchapter D. Amendments, Transfers, Corrections, Revocation, and Suspension of Permits

• **30 TAC §305.69**

The Texas Natural Resource Conservation Commission (TNRCC or Commission) adopts an amendment to §305.69, concerning solid waste permit modification at the request of the permittee, without changes to the proposed text as published in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10478)

The amendment incorporates one new requirement for Class 3 permit modifications, clarifies the requirement that permittees include the opportunity for hearing in their notice of a Class 3 permit modification and makes corrections to designations and citations throughout the section

No comments were received regarding adoption of the amendment

The amendment is adopted under the Texas Water Code, §5.102 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the State of Texas, and to establish and approve all general policy of the commission; and under the Texas Solid Waste Disposal Act (Act), Texas Health and Safety Code, §361.017 and §361.024, which gives the TNRCC the authority to regulate solid and hazardous wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 27, 1995.

TRD-9503709

Lydia Gonzalez-Gomatzky
Acting Director, Legal
Division
Texas Natural Resource
Conservation
Commission

Effective date: April 17, 1995

Proposal publication date: December 30,
1994

For further information, please call: (512)
239-6087

◆ ◆ ◆
TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 355. Research and Planning Fund

Subchapter B. Economically Distressed Areas Facility Engineering

Criteria for Eligibility

• **31 TAC §355.72**

The Texas Water Development Board (the board) adopts an amendment to §355.72, relating to Criteria for Eligibility, Research and Planning Fund, Economically Distressed Areas Facility Engineering, without changes to the proposed text as published in the January 24, 1995, issue of the *Texas Register* (20 TexReg 326). New subsection (a) will set forth the method that the board uses to identify affected counties as that term is defined in Texas Water Code, §16.341, will provide for publication of the list of eligible counties in the *Texas Register*, and will allow political subdivisions in affected counties to continue to be eligible to apply for financial assistance for facility engineering until a new list of eligible counties is published in the *Texas Register*. The current §355.72 is changed to subsection (b) to accommodate the new subsection (a).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Water Code, §6.101 and §15.403, which requires the Board to adopt rules to carry out the purposes of the Texas Water Code and the Texas Water Assistance Program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 23, 1995.

TRD-9503579

Suzanne Schwartz
General Counsel
Texas Water Development
Board

Effective date: April 13, 1995

Proposal publication date: January 24, 1995

For further information, please call: (512)
463-7981

Chapter 363. Financial Assistance Programs

Subchapter A. General Provisions

The Texas Water Development Board (board) adopts the repeal of §363.3, concerning Adoption of Memorandum of Understanding (MOU) by Reference; and new §363.3, concerning Memorandum of Understanding between the Texas Water Development Board and the International Boundary and Water Commission, without changes to the proposed text as published in the February 17, 1995, issue of the *Texas Register* (20 TexReg 1108) The change is proposed to incorporate the Memorandum of Understanding and first amendment into Board rules rather than to adopt by reference. The Board previously has adopted the MOU by reference as §363.3. The board adopted an emergency amendment to §363.3 published in the January 27, 1995, issue of the *Texas Register* (20 TexReg 417) to incorporate the first amendment to the MOU. That amendment is incorporated in the proposed new §363.3.

No comments were received regarding adoption of the repeal and new section.

Introductory Provisions

• **31 TAC §363.3**

The repeal is adopted under the Texas Water Code, §6.101 and §15.403, which requires the board to adopt rules to carry out the powers and duties of the board, under the Texas Water Code including Chapter 15, and other laws of this state.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 23, 1995.

TRD-9503581

Suzanne Schwartz
General Counsel
Texas Water Development
Board

Effective date: April 13, 1995

Proposal publication date: February 17, 1995

For further information, please call: (512)
463-7981

◆ ◆ ◆
The new section is adopted under the Texas Water Code, §6.101 and §15.403, which requires the board to adopt rules to carry out the powers and duties of the board, under the Texas Water Code including Chapter 15, and other laws of this state.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 23, 1995.

TRD-9503599

Suzanne Schwartz
General Counsel
Texas Water Development
Board

Effective date: April 13, 1995

Proposal publication date: February 17, 1995

For further information, please call (512) 463-7981

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

The Texas Department of Human Services (DHS) adopts the repeal of §§19. 1, 19.101, 19.301-19.305, 19.401, 19.501-19.505, 19.601-19.604, 19.701, 19.801-19.806, 19.808-19.813, 19.901-19.911, 19.1001-19.1005, 19.1007-19.1010, 19.1101-19.1106, 19.1201-19.1208, 19.1401, 19.1402, 19.1602-19.1611, 19.1613, 19.1701-19.1708, 19.1901-19.1910, 19.1912-19.1917, 19.1919-19.1928, 19.1930-19.1933, 19.2001-19.2011, 19.2013, 19.2201-19.2209, and 19.2211-19.2216; and adopts new §§19.1, 19.101, 19.300-19.315, 19.401-19.414, 19.416-19.421, 19.501-19.505, 19.601, 19.602, 19.604, 19.606, 19.701-19.705, 19.801-19.803, 19.901, 19.1001, 19.1002, 19.1004, 19.1006, 19.1010-19.1012, 19.1101-19.1105, 19.1107-19.1111, 19.1201-19.1206, 19.1208, 19.1210, 19.1212, 19.1301-19.1304, 19.1401, 19.1402, 19.1601, 19.1602, 19.1701-19.1727, 19.1901-19.1917, 19.1920-19.1924, 19.1928, 19.1930, 19.1934, 19.2002, 19.2004, 19.2006, 19.2008, 19.2010, 19.2011, 19.2204, 19.2206, 19.2208, 19.2301, 19.2302, 19.2304, 19.2306, 19.2308, 19.2310, 19.2312, 19.2314, 19.2316, 19.2318, 19.2320, 19.2322, 19.2324, 19.2326, 19.2402-19.2405, 19.2407-19.2411, 19.2413, 19.2500, 19.2601-19.2608, and 19.2610, concerning Nursing Facility Requirements for Licensure and Medicaid Certification (formerly Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification)

New §§19.1, 19.101, 19.300-19.303, 19.306, 19.311-19.313, 19.406, 19.416, 19.502, 19.701, 19.1006, 19.1104, 19.1107, 19.1109, 19.1302, 19.1401, 19.1601, 19.1902, 19.1905, 19.1911, 19.1912, 19.1916, 19.1917, 19.1921-19.1923, 19.1934, 19.2002, 19.2004, 19.2308, 19.2316, 19.2318, 19.2320, 19.2322, 19.2403, 19.2404, 19.2408, 19.2409, 19.2500, and 19.2604 are adopted with changes to the proposed text as published in the October 21, 1994, issue of the *Texas Register*. The repeals of §§19.1, 19.101, 19.301-19.305, 19.401, 19.501-19.505, 19.601-19.604, 19.701, 19.801-19.806, 19.808-19.813, 19.901-19.911, 19.1001-19.1005, 19.1007-19.1010, 19.1101-19.1106, 19.1201-19.1208, 19.1401,

19.1402, 19.1602-19.1611, 19.1613, 19.1901-19.1910, 19.1912-19.1917, 19.1919-19.1928, 19.1930-19.1933, 19.2001-19.2011, 19.2013, 19.2201-19.2209, and 19.2211-19.2216; and new §§19.304, 19.305, 19.307-19.310, 19.314, 19.315, 19.401-19.405, 19.407-19.414, 19.417-19.421, 19.501, 19.503-19.505, 19.601, 19.602, 19.604, 19.606, 19.702-19.705, 19.801-19.803, 19.901, 19.1001, 19.1002, 19.1004, 19.1010-19.1012, 19.1101-19.1103, 19.1105, 19.1108, 19.1110, 19.1111, 19.1201-19.1206, 19.1208, 19.1210, 19.1212, 19.1301, 19.1303, 19.1304, 19.1402, 19.1602, 19.1901, 19.1903, 19.1904, 19.1906-19.1910, 19.1913-19.1915, 19.1920, 19.1924, 19.1928, 19.1930, 19.2006, 19.2008, 19.2010, 19.2011, 19.2204, 19.2206, 19.2208, 19.2301, 19.2302, 19.2304, 19.2306, 19.2310, 19.2312, 19.2314, 19.2324, 19.2326, 19.2402, 19.2405, 19.2407, 19.2410, 19.2411, 19.2413, 19.2601-19.2603, 19.2605-19.2608, and 19.2610 are adopted without changes to the proposed text, and will not be republished.

New §§19.1702, 19.1704, 19.1708-19.1711, 19.1718-19.1720, 19.1722-19.1724, 19.1726, and 19.1727 are adopted with changes to the proposed text as published in the October 28, 1994, issue of the *Texas Register* (19 TexReg 8589). The repeal of §§19.1701-19.1708 and new §§19.1701, 19.1703, 19.1705-19.1707, 19.1712-19.1717, 19.1721, and 19.1725 are adopted without changes to the proposed text, and will not be republished.

DHS withdrew from consideration for permanent adoption effective February 22, 1995, its proposed repeal of §19.1918 in the February 28, 1995, issue of the *Texas Register* (20 TexReg 1413) and proposed an amendment to §19.1918 in that issue of the *Texas Register* (20 TexReg 1410).

In the March 21, 1995, issue of the *Texas Register* (20 TexReg 2054), DHS adopted new Subchapter C, Nursing Facility Licensure Application Process; new Subchapter P, Pharmacy Services; and new Subchapter V, Enforcement, which were proposed in the September 30, 1994, issue of the *Texas Register* (19 TexReg 7765). In the March 7, 1995, issue of the *Texas Register* (20 TexReg 1659), DHS adopted related repeals, amendments, and new sections in its Chapter 90, Intermediate Care Facilities Serving Persons with Mental Retardation or a Related Condition (formerly Nursing Facilities and Related Institutions)

Also in this issue of the *Texas Register*, DHS is withdrawing from consideration for permanent adoption its proposed new §19.1932, Adjustment or Repair of Prosthetic Devices.

The justification for the repeals and new sections is to combine nursing facility licensure standards and certification requirements into one chapter in compliance with Texas Civil Statutes, Article 4413(502) historical note (Vernon Supplement 1994) (Act of August 9, 1991, 72nd Legislature, First Called Session, Chapter 15, §11, 1991 Texas General Laws 298). The majority of the rules have been only reorganized and edited for clarity; there are few substantive changes.

The repeals and new sections will function by providing one set of rules that cover licensure and certification requirements

During the public comment period, DHS received written comments and received oral comments at a public hearing November 30, 1994. Comments were received from the Texas Health Care Association, the Texas Association of Homes for the Aging, the HEA Management Group, an owner and administrator of a nursing facility, Advocates for Nursing Home Reform, and the State Ombudsman-Texas Department on Aging. A summary of the comments and DHS's responses follow.

COMMENT: The department should withdraw these proposed rules and adopt the federal Omnibus Budget Reconciliation Act (OBRA) regulations for Medicaid certification and enforcement rules verbatim, except where specifically authorized to develop rules under the state plan

RESPONSE: DHS has a statutory mandate to have one set of combined licensing and Medicaid rules for all nursing facilities. Adopting only federal regulations would leave out the licensing rules. Additionally, DHS has learned from experience that state rules which clarify or elaborate on federal rules are necessary, in some instances. DHS will proceed with the rules as proposed, with the exception of some changes in response to specific comments

COMMENT: In the proposed rules, there is considerable confusion concerning which rules are for licensure. It is extremely important for nursing facilities that are licensed-only and do not choose to participate in the Medicaid program to know which rules are applicable to their facilities.

RESPONSE: DHS disagrees. In §19.1(b), Scope, the requirements clearly state that rules specific to Medicaid facilities will be so-designated. All rules not designated as Medicaid-only apply to all licensed facilities.

SUBCHAPTER A. BASIS AND SCOPE

COMMENT: In §19.1(a), change the last sentence to read "If there is a conflict between material in these requirements and the laws or applicable federal regulations governing the program, the latter are controlling" in order to comply with Health Care Financing Administration (HCFA) requirements.

RESPONSE: DHS believes the language as originally proposed is sufficient.

COMMENT: Section 19.1(b)(2) should become number (3) and a new item (2) created that specifies which portions of the rules are applicable to Medicare skilled nursing facilities (SNF) and which rules are applicable to licensed-only units.

RESPONSE: This change is unnecessary because these rules are not intended to provide rules for Medicare SNF units.

COMMENT: Regarding §19.1(b)(3), if Medicare-only facilities under Chapter 241 do not need to follow these rules, what do they do for state licensure? There should be uniform standards for all SNFs

RESPONSE Medicare-only facilities licensed under Chapter 241 are SNF units attached to hospitals and, as such, are licensed as part of the hospital. They are required to follow the federal rules at 42 Code of Federal Regulations, §§483.5-483.75, as are all SNFs.

COMMENT In §19.1(b)(4)(K), should this be "Methicillin Resistant Staphylococcus Aureus" (MRSA)?

RESPONSE Yes. The section as adopted includes this change.

SUBCHAPTER B DEFINITIONS

COMMENT The definitions need to be numbered or lettered for reference purposes.

RESPONSE The *Texas Register* requires this format for definitions.

COMMENT Regarding the following definitions under "Abuse":

Involuntary seclusion-At the beginning of the second sentence replace the word "temporary" with "emergence or short term." Also, add "to meet the needs of the resident" to the end of this definition. **Mental/psychological abuse**-Change this to follow the federal definition for "mental abuse" which includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation.

Sexual abuse-Change this definition to follow the federal definition for "sexual abuse" which includes, but is not limited to, sexual harassment, sexual coercion, or sexual assault.

Verbal abuse-Change this definition to follow the federal definition for "verbal abuse" which states "The use of any oral, written, or gestured language that includes disparaging or derogatory terms to a resident or within the resident hearing distance to describe residents, regardless of the resident's age, ability to comprehend, or disability."

RESPONSE: These definitions were developed by a tri-agency committee composed of staff from DHS, the Texas Department of Health (TDH), and the Texas Department of Mental Health and Mental Retardation (TDMHMR), and because of the involvement of the three agencies, DHS is adopting the definitions as proposed at this time.

COMMENT: In the definition of "Admission determination of medical necessity," change 120 days to 180 days.

RESPONSE DHS has made the suggested change, and related changes, to §19.2403.

COMMENT The definition of "affiliate" is too broad. Only persons who have control of a facility should be named in the license.

RESPONSE: Only the applicants will be named in the license, however, DHS requires that information about affiliates be disclosed in the application.

COMMENT: "Certification" is the function delegated to the Department by HFCA in the area of "certification." State the fact that TDHS is certifying to HCFA that a facility meets "Requirements for Long Term Care Facilities" contained in 42 CFR §483.1.

RESPONSE: DHS believes the definition is sufficient as proposed.

COMMENT Delete the definition of dietician. It is duplicative of §19.1102(1).

RESPONSE DHS is adopting the definition with changes consistent with §19.1102(1).

COMMENT Delete the definition of "Drug Administration Error" because it is already covered under Pharmacy Services.

RESPONSE: DHS agrees and has deleted this definition.

COMMENT The definition of "Exposure (infections)" appears to exceed Occupational Safety and Health Administration (OSHA) and Center for Disease Control (CDC) language by including "potentially infectious" and not limiting such substances to those with visible blood?

RESPONSE. This definition is taken directly from OSHA rules.

COMMENT: Do "incidents" also include fires, missing residents, and other unusual events?

RESPONSE Yes. DHS is adopting the definition of incident with changes to read "An abnormal event, including accidents or injury to staff or residents, which are documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DHS."

COMMENT: Is there a difference between "inspection" and a "survey"? Both are used in the rules.

RESPONSE The term "inspection" is reserved for licensure action.

COMMENT Amend the definition of "Management services" by changing "may not" to "do not" in the last sentence.

RESPONSE: DHS is adopting the last sentence of the definition with changes to read "Management services do not include contracts solely for maintenance, laundry, or food service."

COMMENT: In the definition of "Medicaid nursing facility vendor payment system" delete everything after the first sentence. Cover remaining information under Vendor Payment, Reimbursement, or in the Provider Manual.

RESPONSE: DHS agrees and is adopting the definition with the recommended change and is moving the remaining text under the definition of "Vendor Payment".

COMMENT Change the definition of "Neglect" to follow the federal definition of neglect which states: "failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness."

RESPONSE This definition was developed by a tri-agency committee composed of staff from DHS, TDH, and TDMHMR, and because of the involvement of the three agencies, DHS is adopting the definition as proposed at this time.

COMMENT: What does the definition of "remodeling" mean? If a facility moves a wall or takes a plywood wall out is this considered remodeling? Define "existing plan and use areas." Define the trigger that will require a

facility to comply with the new construction standards. In reference to §19.300(a)(1), (c)(3), (d)(4), and 19.303(a), what is considered remodeling of existing licensed facilities? Define remodeling.

RESPONSE. DHS is adopting §19.101 with changes to read as follows: "Remodeling-The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use."

SUBCHAPTER D. FACILITY CONSTRUCTION

COMMENT Regarding §19.300(a)(4), we question if there is statutory authority for TDHS to let the local fire marshal or health authority veto these plans.

RESPONSE. DHS concludes that it has sufficient statutory authority to require proof of compliance with local health and fire safety requirements as a condition of licensure under Chapter 242, Health and Safety Code. Section 242.037, Health and Safety Code, authorizes DHS to adopt and enforce minimum standards relating to the construction of an institution licensed under Chapter 242 and the equipment essential to the health and welfare of an institution's residents, including standards relating to fire safety. Section 242.007, Health and Safety Code, which authorizes DHS to consult and cooperate with local authorities, does not prohibit DHS from requiring proof of compliance with local health and fire safety requirements as a condition of licensure. DHS has, however, deleted the requirement for approval of the local health authority because it is unnecessary. The last sentence in §19.300(a)(4) is adopted with changes to read as follows: "Written approval of the local building department and the local fire marshal must be submitted."

COMMENT: "Construction" needs to be defined in §19.301(e). If a facility puts up one wall to divide a dining room, is the facility subject to all of the new construction standards?

RESPONSE: A threshold defining compliance with new construction requirements cannot be provided because it is dependent on the specific areas affected by the changes being made, however, §19.301(e) is being adopted with changes to agree with the revised definition of "remodeling" under §19.101, as follows: "Remodeling is the construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use."

COMMENT: Section 19.302(b) and (c) requires a three-week advance notice. Will TDHS respond in that time frame? What if TDHS takes four weeks to respond?

RESPONSE: The three-weeks advance notice in §19.302(b)(1) is required due to the difficulty in scheduling construction inspection.

tions across the state and allows for DHS staff to respond to requests for inspection in a timely manner. This is no guarantee that the inspection will be scheduled on the specific date requested.

COMMENT: Regarding §19.302(b)(1), (b)(3)(A), and (c)(1)(C) requiring the written approval of the fire marshal, health department, and building inspector exceeds the license application standards.

RESPONSE: DHS is adopting §19.302(b)(1) with changes to delete the requirement for written approval of the health department, however, the requirement for the written approval of the fire marshal and building inspector is part of the final construction requirements. The last sentence of 19.302(b)(1) has been revised as follows: "The completed construction must have the written approval of the local authorities having jurisdiction, including the fire marshal and building inspector."

Similarly, the requirement for the approval of the health officer has been deleted from the first sentence in §19.304(a), as follows: "(a) Site approval is normally required of the local building department and fire marshal having jurisdiction."

COMMENT: Regarding §19.303(i), delete the street address and use the TCHS post office box number. Every time the address changes the department will have to go to the *Texas Register* to change a mailing address.

RESPONSE: DHS agrees and is adopting §19.303(i) with changes to revise the address to read as follows: "Texas Department of Human Services, Long Term Care-Regulatory, Mail Code Y-976, P.O. Box 149030, Austin, Texas 78714-9030."

COMMENT: The requirement found at §19.306(1)(J) does not need to be in this section since it has nothing to do with construction. Sometimes a patient brings in a bed or wants the castors removed.

RESPONSE: DHS disagrees based on the Life Safety Code, §31-4.1.2, which requires beds to be easily movable under conditions of evacuation and equipped with castors to allow easy mobility.

COMMENT: In §19.306(3)(D), delete "to minimize excess moisture retention and resulting mold and mildew problems."

RESPONSE: This wording is needed to clarify the purpose of the exhaust in the bathing areas and has been retained in the adopted rule.

COMMENT: In §19.306(3)(G), delete "and separate toothbrush holders." Toothbrush holders do not have anything to do with hand drying.

RESPONSE: Separate toothbrush holders provide for proper sanitation, therefore, this language is retained in the adopted rule. Section 19.306(3)(G) is, however, being adopted as follows for clarification: "Provision must be made for sanitary hand drying and toothbrush storage at lavatories. There must be paper towel dispensers or separate towel racks and separate toothbrush holders."

COMMENT: Regarding §19.306(4), what is the definition of sterilization? What equipment is being referenced? Do you mean sanitize? Sterilization procedures have been replaced by disposable items. Also, there is a great difference between sterilizing and sanitizing equipment. It would be difficult to sterilize scales, wheel chairs, etc.

RESPONSE: DHS has deleted the reference to sterilization and revised §19.306(4) to read: "(4) Disposal facilities. Space and facilities must be provided for the sanitary storage of waste by incineration, mechanical destruction, compaction, containerization, removal, or by a combination of these techniques."

Additionally, §19.1719(s) is revised to read (s) Disposal facilities. A policy and procedure for the safe and sanitary disposal of special waste must be provided. The facility must comply with Texas Department of Health requirements.

COMMENT: The requirement in §19.306(7)(A)(viii) for a staff rest room with lavatory directly accessible to kitchen staff was deleted many years ago. Also, delete the vestibule requirement.

RESPONSE: This requirement provides for proper sanitation. It is not new. The section is adopted as proposed.

COMMENT: The requirement at §19.306(7)(A)(xiv) is too prescriptive. A facility should not be instructed on how to clean their garbage cans since there are numerous products available today. Delete this item.

RESPONSE: The requirement for hot water assures greater ability to clean garbage cans and allows for employees to wash their hands before reentering the building.

COMMENT: The requirement at §19.306(7)(A)(xvii) regarding a grease trap needs clarification.

RESPONSE: DHS is adopting this section to read: "Grease traps must be provided in compliance with the local plumbing code or other nationally recognized plumbing code."

COMMENT: The requirement at §19.309(m) should end with NFPA Standard 10. It should not go on to allow the local fire department and DHS to make the decision of portable fire extinguisher. This is too open-ended.

RESPONSE: DHS disagrees with deleting "and as determined by the local fire department and DHS" because facilities must meet the requirements of both.

COMMENT: The regulations at §§19.311(g) and 19.312(1)(A) should either not list any codes or list them all. Instead the department should consider allowing the design architect/engineer to specify. Delete "such as the Standard Building Code of the Southern Building Code Congress International, Inc." Instead use the following: "as specified by the design Architect/Engineer."

RESPONSE: DHS agrees with deleting the reference to Standard Building Code and Standard Plumbing Code. Section 19.311(g) is adopted to read: "In the absence of a local building code, a nationally recognized building code must be used with regard to the construction integrity of the building. The Life

Safety Code must be used for fire safety requirements."

Additionally, §19.312(1)(A) is adopted to read: "All plumbing systems must be designed and installed in accordance with the requirements of the plumbing code of the municipality. In the absence of a municipal code, a nationally recognized plumbing code must be used. Any discrepancy between an applicable code and these requirements must be called to the attention of the Texas Department of Human Services (DHS) for resolution."

COMMENT: In §19.312(1)(C), (D), and (N), are water and sewage systems approved by the Texas Natural Resource Conservation Commission (TNRCC)?

RESPONSE: Water supply systems are approved by the TNRCC, therefore, §19.312(1)(C) is adopted as proposed. Sewage systems are permitted by the TNRCC; therefore, §19.312(1)(D) is adopted to read: "The sewage system must connect to a system permitted by the Watershed Management Division, Texas Natural Resources Conservation Commission, or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Utility Division, Texas Natural Resources Conservation Commission."

Additionally, §19.312(1)(N) is adopted with changes to clarify the requirement for siphon breakers or back-flow preventers: "Siphon breakers or back-flow preventers must be installed with any water supply fixture where the outlet or attachments may be submerged."

COMMENT: In §19.312(2)(D), the temperatures exceed federal guidelines of 72 degrees to 82 degrees. Delete the temperature degrees or at least follow the federal guidance provider manual.

RESPONSE: DHS disagrees with the comment because temperatures designated require systems that are designed to assure resident comfort.

COMMENT: Section 19.312(3)(C)(v) says that the duct material must be steel. Does this really mean steel or is metal or sheet metal acceptable? If the ducts must be steel what gauge steel is required?

RESPONSE: DHS will allow ducts to be of metal, and §19.312(3)(C)(v) is adopted to read: "All exhausts must be continuously ducted to the exterior. Exhausting air into attics or other spaces is not permitted. Duct material must be metal."

COMMENT: The chart after §19.312(3)(C)(xi) shows the design temperature 70/75. Previously this was 75 degrees and 78 degrees.

RESPONSE: DHS has revised the chart showing design temperature to agree with §19.312(2)(D) and has changed the temperatures listed as 70/75 to 75/78.

COMMENT: In §19.313(d)(1)(B)(i)(V), define what is meant by "where patient care-related electrical appliances are utilized".

RESPONSE: Patient care-related electrical appliance is defined in §19.101, Definitions.

COMMENT In §19.313(d)(3)(D), what is meant by "future needs of the residents and equipment"? How is someone to know the future needs? If they did know, they would have built it that way in the first place.

RESPONSE The design and construction phase is the time to consider additional receptacles that may be needed in the future. Later revisions to the electrical system may be very costly in order to remain in compliance with the National Electrical Code.

COMMENT In §19.313(d)(4), the proposed rule states "The amplitude or pitch of the audible signal must not be such that it is irritating to residents or visitors." How can the facility determine when the signal is irritating? To some, if you can hear it, it is irritating. Also, the end of section (B) states that "Intercom-type systems must be installed only after approval by DHS." Why is approval by DHS necessary?

RESPONSE The nurse call audible signal must be of sufficient amplitude to be heard by nursing staff, however, it should not be extremely loud or have a pitch that would be irritating to residents or visitors. The acceptability of the amplitude and pitch would depend on the judgment of the approving inspector with DHS as the authority having jurisdiction. DHS must approve intercom-type systems to assure proper cancellation of calls. DHS is adopting the last sentence of §19.313(d)(4) with changes for clarification to read "Intercom-type systems must be approved by DHS prior to installation."

COMMENT In §19.306(8)(A)(ii)(V), the phrase "at no cost to resident" should be added to the requirement for a public access telephone. Although covered in another section, this section should make clear that the resident has access to a telephone, and one that will permit calls to be made to 800 numbers to access regulatory and advocacy entities.

RESPONSE DHS is adopting the language as proposed. This subchapter addresses requirements for new construction and is not an appropriate place for a requirement addressing resident rights.

SUBCHAPTER E. RESIDENT RIGHTS

COMMENT Regarding §19.405, Additional Requirements for Trust Funds in Medicaid-Certified Facilities, recently an interpretation was sent which allowed a facility to safeguard small amounts of money for a resident in the facility, i.e., not as part of the trust fund bank account. Include this permissive language in this section so patients will be allowed to lock up money without having to put it in the trust account, e.g. "Nothing in this section shall prevent a resident from authorizing a facility to hold and safeguard small amounts of cash in the facility other than in a resident trust fund."

RESPONSE DHS is concerned that the proposed language could encourage facilities to keep small amounts of money for individuals, including disbursing small amounts now and then, which is the function of a trust fund, therefore, DHS is adopting the language as proposed.

COMMENT Regarding §19.405(d), this item should end with "Generally Accepted Accounting Standards." The remainder of this item including (1) through (6) is overly prescriptive and instructs the facility on how to comply with the rule. The facility is often the payee for funds, is authorized and mandated to manage and account for funds in a fiduciary manner in accordance with sound accounting principles. Also, we must send quarterly statements. It is excessive to require so many signatures from residents/witnesses on these documents.

RESPONSE DHS disagrees. DHS's difficulties in monitoring trust funds in the past require that these clarifications of the federal regulations be included.

COMMENT Move §19.405(h)(5)(Q)(i) and (ii) to either reimbursement or vendor payment.

RESPONSE The organization of these rules reflects the federal format, therefore, DHS is adopting the language as proposed.

COMMENT Delete the requirement that the facility provide the "DHS Users Guide for Medicaid Services" to all recipients because DHS already mails it to all applicants for Medicaid.

RESPONSE DHS agrees and has deleted this requirement from §19.406(c). However, facilities are still responsible for complying with 42 CFR §483.10(b)(7)(ii).

COMMENT Regarding §19.410(c), which requires the facility to refund private payments for periods covered by Medicaid, isn't it excessive to require that the staff also write to the resident/responsible party about the right to a refund? Delete this item.

RESPONSE DHS believes that the notification is an important element of the rule and is adopting the language as proposed.

COMMENT In §19.416(3), "facility" is misspelled.

RESPONSE DHS has made the correction.
SUBCHAPTER F. ADMISSION, TRANSFER, AND DISCHARGE RIGHTS IN MEDICAID-CERTIFIED FACILITIES

COMMENT Please provide clarification on which situations in §19.502(e)(3)(D) "specified in subsection (b)(1)" allow less than 30 days notice.

RESPONSE Section 19.502(e)(3)(D) is adopted with changes to read "(D) the transfer and discharge is necessary for the resident's welfare because the resident's needs cannot be met in the facility, as specified in subsection (b)(1) of this section, and the resident's urgent medical needs require an immediate transfer or discharge, or."

COMMENT: Delete §19.502(e)(4)(A) and (B). The facility's need to protect patients from harm is paramount to any purpose behind this requirement.

RESPONSE DHS disagrees. In rare instances, facilities are incorrectly alleging that a resident is a danger to the health or safety of individuals in the facility in order to discharge immediately rather than with 30 days notice. In these situations, DHS has an obligation to become involved in the process to protect the rights of that resident.

COMMENT In §19.502(i) and (j)(1), is the time limit for appeal 10 working days? RESPONSE The time limit is 10 calendar days. In rule language, the term "day" means calendar day unless specifically designated as a workday.

SUBCHAPTER G. RESIDENT BEHAVIOR AND FACILITY PRACTICE

COMMENT In §19.601(c)(2), define "reported immediately".

RESPONSE "Reported immediately" means as soon as practical after the occurrence. This phrase is one which is commonly understood and needs no definition.

COMMENT In §19.601(C)(4), the term "other officials" needs to be defined.

RESPONSE: The specific requirement is that the results of investigations of abuse and neglect be reported to "other officials" in accordance with Texas law. The facility is responsible for determining which officials to notify for each unique situation.

COMMENT In §19.602, define "immediately." Replace "on learning" with "or when knowledgeable."

RESPONSE DHS believes "immediately" is commonly understood and does not require definition. The rest of the requirement is sufficient as stated.

SUBCHAPTER H. QUALITY OF LIFE

COMMENT In reference to §19.701(3)(A)(i)-(iii), the purpose of resident groups is not just to complain. Also, this regulation is overly narrow and prescriptive. This rule is not necessary. Delete "Examples of such groups..." and delete (i) through (iii).

RESPONSE: DHS agrees and has made the requested deletions in the adopted rule.

SUBCHAPTER K. NURSING SERVICES

COMMENT: In §19.1006, is this "Rehabilitative" or "Restorative" nursing?

RESPONSE DHS has changed "rehabilitative" to "restorative" throughout this section.

COMMENT: In §19.1010(e)(2), does exception charting include "prompt" recording of "progress"? Delete "progress".

RESPONSE: DHS agrees and has made this change.

SUBCHAPTER L. DIETARY SERVICES

COMMENT Section §19.1104(c) is overly prescriptive in comparison to the requirements for other professionals' involvement in assessment and care plan activities (e.g., social workers). Change (c) to "The qualified dietician must be a part of the interdisciplinary team conducting assessment and care planning where indicated by the individual resident's needs." Delete (1)-(8).

RESPONSE: DHS agrees and has made the suggested change.

COMMENT: Section 19.1104(d)(1)-(9) is overly detailed and prescriptive. Intent is adequately covered elsewhere (e.g., §19.1104(d)(7) is covered in §19.1107(a)(4)). Delete entire section.

RESPONSE DHS agrees and has deleted §19 1104(d)(1)-(9)

COMMENT Section §19 1107(h) repeats/duplicates requirements adequately covered elsewhere Delete this section

RESPONSE DHS has deleted all but the last sentence, which will be moved to §19 1107(d) The second sentence in §19 1107(d) has been moved to (f)

COMMENT. In reference to §19 1109(1), resident diets are identified on tray cards in 19 1107(i) Also, nursing personnel are needed in other parts of the building to assist with feeding Not all residents are in the dining room during mealtime Residents safety can be monitored by non-nursing personnel, so long as residents needing assistance are attended by nursing personnel Delete this item

RESPONSE DHS agrees and has deleted this item

COMMENT The reference in §19 1111(a)(2) is obsolete and has not been updated in accordance with current standards of practice. Perhaps the FDA's 1993 guidelines could be referenced if a reference is necessary Delete the reference to the "Texas Department of Health food service sanitation requirement"

RESPONSE The Texas Department of Health (TDH) has not yet adopted rules based on the FDA's new guidelines When TDH adopts rules, DHS will update these rules accordingly

SUBCHAPTER M PHYSICIAN SERVICES

COMMENT In §19.1205(c), what is the statute that prohibits this physician extender from being an employee of the facility? Change the language in the Medicaid facility rule to mirror the Medicare facility language which is in 19 1205(a)

RESPONSE The federal regulations at 42 CFR §483 40(f) are directly reflected in §19 1205(c), therefore, the suggested change cannot be made

SUBCHAPTER N REHABILITATION SERVICES

COMMENT Please change the reference to "physical therapy assistant" to "physical therapist assistant" There is no professional designation for a physical therapy assistant

RESPONSE DHS has made the suggested change

SUBCHAPTER O DENTAL SERVICES

COMMENT Does §19 1402 need to be part of the standards? Add a Dental section in the Provider Manual

RESPONSE DHS is currently revising the Provider Manual and will add this section and eventually delete it from the requirements

COMMENT Information on using "incurred medical expenses" to pay for dental services should be included in this section

RESPONSE DHS agrees. The following addition to §19 1401(d) has been made "Payment for services provided on the teeth, gums, alveolar ridges, and supporting struc-

tures are not a benefit of the Texas Medicaid Program however, recipients with applied income may use incurred medical expenses to pay for routine dental services and appliances"

SUBCHAPTER Q INFECTION CONTROL

COMMENT Delete §19 1601(1)(B). The "Infection Control Program" is designed to oversee general conditions and patterns, not prescribe specific individual resident plans

RESPONSE This requirement is taken verbatim from 42 CFR §483 65(a)(2) and, as such, cannot be deleted

COMMENT In §19 1601(2)(A), the "infection control program" may set up guidelines but does not actually "determine" if a resident needs isolation Change to "When a resident has an infection requiring isolation under the guidelines of the facility's infection control program"

RESPONSE. The language directly reflects 42 CFR §483 65(b)(1) and, as such, is adopted as published

SUBCHAPTER R. PHYSICAL PLANT AND ENVIRONMENT

COMMENT The reference in §19 1702(a) needs clarification that this is the 1985 edition for Medicare/Medicaid of the Life Safety Code of the National Fire Protection Association Also, the NFPA is not designated by federal law, the designation is state law Add "for Medicare/Medicaid" after "edition" and change "federal law" to "state law" in the first sentence of this section

RESPONSE The 1985 edition as designated by federal law and regulations is not for Medicare/Medicaid only The Health and Safety Code, §242 039(b), has adopted the edition of the Life Safety Code of the National Fire Protection Association as designated by federal law

COMMENT Define "remodeling and additions" in §19 1702(a) Also, what is meant by the last sentence?

RESPONSE Remodeling and addition are defined in §19 101, Definitions The last sentence refers to any building components or equipment that may have been required by a previous code or installed at the facility's option These must be maintained operational or removed They may not be removed, however, without prior approval of DHS The sentence is adopted with changes for clarification to read "Life safety features and equipment that have been installed in existing buildings which are now in excess of that required by the Life Safety Code must continue to be maintained or may be completely removed if prior approval is obtained from the Texas Department of Human Services (DHS)."

COMMENT In §19 1702(c)(2), specific codes such as municipal codes, Standard Building Code, and the Standard Plumbing Code should not be specified Delete item (2) and substitute the following wording. "A nationally recognized code will be designated by the design architect as the code governing construction The code specified must be used in all parts"

RESPONSE DHS agrees with deleting the reference to Standard Building Code and Standard Plumbing Code Section 19 1702(c)(2) is adopted with changes to read "In the absence of municipal codes, nationally recognized codes must be used To assure continuity, all nationally recognized codes, when used, must be publications of the same group or organization"

COMMENT. Section 19 1704(a)(1)(E) exceeds Life Safety Code requirements The intent is for life support, but as it is written it would include an electric razor. Change to read "selected duplex receptacles including at least one receptacle in each resident corridor, each resident-bed location where life sustaining patient care electrical equipment is utilized"

RESPONSE. DHS disagrees "Patient care-related electrical appliance" is defined in §19 101, Definitions, as an electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area

COMMENT In §19 1707(12), delete "Negative air pressure in relation to adjacent areas with air exhausted through ducts to the exterior" and substitute "effective forced air or gravity exhaust to exterior."

RESPONSE: Negative air pressure is necessary to assure proper flow of air, which may or may not be obtained through forced air or gravity exhaust. The method is optional in existing facilities provided negative air pressure is maintained

COMMENT: Does §19.1707(13) allow for heating through a central heating system, or does it require a separate heater in the bathing area? Do not specify source of heat but determine adequacy based on resident comfort This item could be deleted as it duplicates 19 1722(i)

RESPONSE Source of heat is not specified in 19.1707(13), only that there be heating and that it be safe Section 19.1722(i) is adopted with changes to remove suggested methods as follows: "A comfortable temperature for residents when bathing must be provided."

COMMENT: In §19 1708(d), the term "irritating" is too subjective and impossible to enforce. Delete "The amplitude or pitch of the audible signal must not be irritating to residents or visitors"

RESPONSE The nurse call audible signal must be of sufficient amplitude to be heard by nursing staff, however, it should not be extremely loud or have a pitch that would be irritating to residents or visitors The acceptability of the amplitude and pitch would depend on the judgment of the DHS surveyor as the authority having jurisdiction

COMMENT. In §19.1709(c)(2), explain the term "continuing deficiencies."

RESPONSE: DHS has deleted the reference to "continuing deficiencies." Physical Environment is not an appropriate area to address such problems. Section 19.1709(c) is adopted with changes to delete this part as follows: "(c) Dining areas. Dining space must be provided to adequately serve needs of the residents and provide an efficient, sanitary, and pleasant environment for dining."

COMMENT The requirement at §19.1710(3) implies that adult demented patients are not prone to endangering their safety while pediatric residents are. Delete entire last sentence in this requirement ("This type of safety on all electrical outlets"). In the alternative, modify this requirement to include safety covers on electrical outlets not in use which are accessible to children. Safety covers cannot be put in outlets which are being used.

RESPONSE DHS agrees with comment on modification of requirement. The last sentence of §19.1710(3) is adopted with changes to read "This type of safety proofing is above the normal level of hazard control maintained for adult residents and includes the addition of safety covers on electrical outlets not in use which are accessible to children."

COMMENT. Should the reference in §19.1710(7)(E) be changed to TDH or TNRCC?

RESPONSE DHS approves devices such as those listed in §19.1710(7)(E).

COMMENT: In §19.1712(b), does the TDH or TNRCC approve water systems?

RESPONSE The fire department and the Texas Department of Health determine if the water supply is adequate for purposes of fire fighting.

COMMENT: In §19.1712(d), define "suitable" fire lanes and "local fire authorities".

RESPONSE. Suitable fire lanes for new facilities consist of 10-foot tall weather lanes on two sides of the building. Fire lanes for existing buildings must be acceptable to DHS and the local officials responsible for fire fighting.

COMMENT: The requirement in §19.1717(d) is merely for the convenience of DHS staff and serves no safety function, therefore is excessive. Delete last sentence ("Location of dampers must be identified on the wall or ceiling of the occupied area below").

RESPONSE The identification of damper locations is necessary for maintenance staff, fire alarm companies, and inspectors to locate dampers for maintenance and inspection purposes. The proposed language is retained in the adopted rule.

COMMENT: The regulation at §19.1719(a)(4) should not include "may." Reword paragraph to say "must be observed by direct line of sight or by mechanical means." Delete the last sentence ("They may also be observable, usually by mechanical means, at the nurses station".)

RESPONSE: DHS agrees and has deleted the last sentence of §19.1719(a)(4).

COMMENT: In §19.1719(c)(2)(F), the reference to "subsections (a)-(d)" is incorrect. Should it be (A)-(D)?

RESPONSE. DHS agrees and is adopting §19.1719(c)(2)(F) with changes to read as follows. "If they perform the minimum basic functions specified in subparagraphs (A)-(D) of this paragraph, television monitoring systems..."

COMMENT: The regulation at §19.1719(e) is excessive and overly prescriptive. Delete

"When not in use, the medication cart must be secured in a locked medication storage room designated only for the storage of medications."

RESPONSE DHS agrees and has revised §19.1718(e) to read "When not in use, the medication cart must be secured in a designated area."

COMMENT Change "negative air pressure" in §19.1719(r) to "forced air or gravity exhaust."

RESPONSE: Negative air pressure is necessary to assure proper flow of air, which may or may not be obtained through forced air or gravity exhaust. The method is optional in existing facilities provided negative air pressure is maintained.

COMMENT The specifications at §19.1720(6) and (7) would be better incorporated with the requirement that there be at least one wheelchair-accessible rest room. Otherwise it could be interpreted to mean that existing facilities will be required to lower all mirrors and raise all toilet seats.

RESPONSE The requirements for water closet seat height in toilet facilities and for mirrors and dispensers apply to all facilities for persons with disabilities. Sections 19.1720(6) and (7) are adopted with changes for clarification to read. "(f) Water closet seat height in toilet facilities for persons with disabilities must be 17 to 19 inches from floor." "(g) Mirrors and dispensers for persons with disabilities must be no higher than 40 inches above the floor."

COMMENT. The rule at §19.1724(a) is outdated and often is used as an excuse for nursing personnel to not clean up spills, etc., which occur when housekeepers are not available, such as during the night shift. Delete "Nursing personnel must not be assigned routine housekeeping duties."

RESPONSE DHS agrees and has deleted the requirement from the adopted rule.

COMMENT The option to sew a tear should be included in §19.1726(b). Add "or repair."

RESPONSE. DHS is adopting §19.1726 with changes to delete the second sentence.

COMMENT. The requirement at §19.1726(d) is excessive. Replace with the following ". . .with sufficient linen clean and ready for use to meet the needs of the residents at all times." Delete the last part of this item "with at least one complete set of linen per resident clean and available for use at any time."

RESPONSE: DHS is adopting §19.1726 with changes to delete subsection (d). Subsection (a) of the section addresses this subject sufficiently.

COMMENT: The requirement at §19.1727(a)(5) is covered more completely under §19.1704. Delete the second sentence in this item, "An emergency electrical system..."

RESPONSE: DHS agrees with deletion of the second sentence. The requirement for night lights to be connected to the emergency system has been moved to, and is being adopted

in, §§19.1704(a)(1) and 19.313(d)(1)(B)(i) for new construction since it was not previously listed in those sections. A requirement has also been added to §19.313(d)(1)(B)(i) for a light and receptacle in the electrical and/or boiler room.

Section 19.1727(a)(5) is adopted with changes to delete the second sentence: "(5) The facility must have an emergency contingency plan to ensure the residents' comfort and safety, including the provision of potable water."

Section 19.1704(a)(1) is adopted with changes as follows: "(F) nurse calling systems, (G) resident room night lights where required, (H) elevator cab lighting, control, and communication systems; (I) all facility telephone equipment, and (J) those paging or speaker systems."

Section 19.313(d)(1)(B)(i) is adopted with changes as follows: "(VI) nurse calling systems, (VII) resident room night lights, (VIII) a light and receptacle in the electrical and/or boiler room, (IX) elevator cab lighting, control, and communication systems, (X) all facility telephone equipment, and (XI) paging or speaker systems if..."

COMMENT The requirement at §19.1727(b) should be changed to "required to notify as soon as possible of the nature of all fires and disasters."

RESPONSE: DHS needs immediate notification by phone of any fires or disasters which caused death or serious injury and written reports within 15 days so that necessary investigations can be conducted and statistical reports can be compiled.

COMMENT The requirement at §19.1727(g) for a 30-second test is not adequate to ensure safety. Increase the functional test on battery emergency systems to 30 minutes.

RESPONSE DHS agrees that a 30-second test is not adequate to check battery emergency lighting systems, and is adopting the section with changes to increase the test to 30 minutes and to clarify that the record must be physically kept in the facility. Section 19.1727(g) is adopted with changes to read as follows: "(g) A functional test must be conducted on every required battery emergency lighting system at 30-day intervals for a minimum of 1/2 hour. An annual test must be conducted for a one and 1/2 hour duration. Equipment must be fully operational for the duration of the test. Written records of testing must be kept in the facility for inspection by the authority having jurisdiction."

COMMENT. Regarding the smoking rules at §19.1727(k)(1) and (2), many residents are mentally and physically competent to carry smoking materials and to smoke without direct supervision. These issues should be assessed and thoroughly covered in the resident's plan of care, according to the individual abilities of the resident. This rule is demeaning to competent adults, and violates their dignity. Also, it ties up valuable staff time sitting and watching people smoking when there is no indication that the smoker is a danger. Delete or amend this section.

RESPONSE Smoking requirements outlined in §19.1727(k)(1) and (2) are for the safety of all residents, visitors, and staff in nursing facilities, therefore, DHS has retained the proposed language in the adopted rule

In addition, DHS is adopting a number of sections in Subchapter R with changes as follows

In §19.1708(e)-Changes the second sentence as follows to be consistent with §19.313(d)(4), Electrical Requirements "Intercom-type systems must be approved by DHS prior to installation"

In §19.1710(4)-Changes the second sentence from "These" to "This", as follows "This separation must be in relation to traffic flow, air currents, "

In §19.1711(h)-Changes the reference to §19.2208(a)(6)

In §19.1719(j)-Deletes the rest of the paragraph from "Continuing problems directly attributable to an inadequately sized kitchen " to agree with deletion of continuing deficiencies in the service of meals in §19.1709(c)(2)

In §19.1723(a)-Deletes "such as the Standard Plumbing Code of the Southern Building Code Congress International, Inc." to be consistent with the changes to §19.312(1)(A)

SUBCHAPTER T ADMINISTRATION

COMMENT In §19.1902(b)(1), change the reference to the Texas Board of Nursing Home Administrators to the Texas Board of Nursing Facility Administrators

RESPONSE DHS has made this change

COMMENT Delete the lengthy administrator's job description in §19.1902(c) (1)-(7)

RESPONSE DHS has deleted the job description because it is overly prescriptive

COMMENT In reference to §19.1903(4)(A) and (5)(A), is the nurse aide trainee required to be a "full time employee?"

RESPONSE Yes

COMMENT Delete §19.1905(a)-(c); this is covered under appropriate sections

RESPONSE DHS has deleted subsection (c) Subsections (a) and (b) are taken verbatim from the federal regulations and, as such, cannot be deleted

COMMENT. Most of the items listed in §19.1911 are covered elsewhere in the rules, such as §19.801-19.803 Delete this section

RESPONSE In response to this comment, DHS is adopting §19.1911(1) with changes to read as follows "(1) Sufficient information to identify and care for the resident, to include at a minimum (A) full name of resident, (B) full home/ mailing address, (C) social security number, (D) health insurance claim numbers, if applicable, (E) date of birth, and, (F) clinical record number, if applicable" In addition, DHS is adopting §19.1911(7) with changes to read as follows "Discharge information (Discharge Plan of Care) and a physician discharge summary, to include at least, dates of admission and discharge, admitting and discharge diagnoses, condition on discharge, and prognosis, if applicable"

COMMENT Item §19.1912(c)(1) is not necessary since it is already covered in (c) If information is in ink, it cannot be erased Delete this item

RESPONSE In response to this comment, DHS is adopting §19.1912(c) with changes to read as follows: "Method of permanent print except for the medication/treatment diet section of the care plan Correction of errors will be in accordance with accepted health information management standards"

COMMENT Section 19.1912(e)(1)(D) implies all diagnoses must be on a face sheet Delete "update the admission sheet and"

RESPONSE DHS agrees and is adopting the rule with the recommended change

COMMENT Item §19.1912(f) duplicates §19.1911(12)(b) Delete this item

RESPONSE The department agrees and is adopting §19.1912 with the requested change

COMMENT Regarding §19.1912(g)(1)(A-D), faxing is so common place it is not reasonable to get a letter from each sender in advance It is unnecessary to repeat medical record confidentiality standards Delete everything beginning with "Long term care facilities " and (A) through (D)

RESPONSE DHS is adopting §19.1912(g) with changes as follows to subparagraphs (A) and (B) and has deleted (C) and (D) "(A) The facility must implement safeguards to assure that faxed documents are directed to the correct location to protect confidential health information " "(B) All faxed documents must be signed by the author before transmission "

COMMENT. Section 19.1912(i)(1)-(2) duplicates material covered elsewhere Delete these sections

RESPONSE DHS is adopting paragraphs (1) and (2) Paragraph (1) is adopted with changes to read as follows "(1) Except as provided in paragraph (2) of this subsection, the facility must not allow access to a resident's clinical record unless a physician's order exists for supplies, equipment, or services provided by the entity seeking access to the record"

COMMENT Delete §19.1914, it duplicates §19.1727 regarding safety operations

RESPONSE This section reflects federal regulations and cannot be deleted

COMMENT What is the rationale for the requirement at §19.1916(3) that a facility notify DHS that it offers respite services? This has no more validity than sending a facility's training coordinator's resume or our medication cart style for approval. Delete this item since there is no separate licensure or certification category or approval/disapproval mechanism

RESPONSE The notification is required by the Texas Health and Safety Code, §242.184

COMMENT In §19.1916(4), add an exception to the clinical records requirement at §19.1912(e)(2) requiring a new medical record for anyone discharged over 30 days.

RESPONSE DHS is adopting §19.1916(4) with subparagraph (C) which reads "The clin-

ical records requirement found at §19.1912(e)(2) of this title (relating to Additional Clinical Record Requirements) does not apply"

COMMENT Delete §19.1916(5) and use remedies available for any failure to meet needs of residents This service does not need special remedies

RESPONSE The Texas Health and Safety Code, §242.186, provides for the suspension of a license in such instances DHS is adopting the paragraph as proposed

COMMENT Section §19.1917(e) is an attempt to keep the obsolete "pharmacy committee" and "infection control committee" alive The QA committee is responsible for quality assurance in all areas of performance in the facility and deficiency situations Delete this item

RESPONSE DHS agrees that there is no need to specify which areas the QAA committee oversees and is adopting the section with the recommended change

COMMENT The requirement found at §19.1917(f) is covered under §19.1923 Delete this item

RESPONSE DHS agrees and is adopting the section with the recommended change

COMMENT The requirement at §19.1921(d) is repeated and expanded on under §19.2002(h)(1)-(4) Delete this item

RESPONSE DHS agrees and is adopting the section with the recommended change

COMMENT Regarding §19.1921(e)(2), if the closure is involuntary, the DHS staff should provide this notification if facility personnel cannot be relied upon to complete the task Change "facility" to "DHS"

RESPONSE Notification by the facility is required by Health and Safety Code §242.100 DHS is adopting the language as proposed.

COMMENT The facilities never receive the "concise summary in non-technical language of the most recent inspection report" referenced in §19.1921(f)(4) Also, nursing facilities never receive complaint investigation reports unless they result in a deficiency citation Either delete the concise summary as a potential deficiency, or recommend these summaries be provided Also, require the agency to leave a report even if no complaint is substantiated

RESPONSE The summaries of the inspection reports are now being left with facilities. Complaint investigation reports are public information and may be obtained by following DHS's procedures for the release of information

COMMENT Regarding the requirement at §19.1921(j), it is impossible to keep track of the coming and going of personal property of the resident Also difficult after several years to reconstruct what happened to personal property in order to get a signed receipt of its disposition Protection of resident property is covered under §19.416. Delete this inventory requirement

RESPONSE DHS's position is that it is the facility's responsibility to safeguard residents'

personal property DHS is adopting the language as proposed

COMMENTS Regarding §19 1921(k) and (l), grounds for granting/revoking a license of a facility are covered elsewhere Delete these items

RESPONSE DHS agrees and is adopting the section with the recommended changes

COMMENT Each of the topics in §19 1922 is covered elsewhere in the rule Delete everything in this section beginning with "These written policies must also include but are not limited to" through §19 1922(a)(24)

RESPONSE DHS agrees and is adopting the section with the recommended changes

COMMENT The requirement at §19 1922(c) is prescriptive and meaningless in light of the overall message in these regulations. Delete this item

RESPONSE. DHS agrees and is adopting the section with the recommended change

COMMENT The requirement at §19 1923(c)(1) is vague and open-ended and has little value in tracking trends of incidents. The "final disposition" could be hours, days, or weeks later Delete "and final disposition that indicates the resident's condition has stabilized and/or is resolved The final disposition must include the date, time of entry, resident's vital signs, and description of the resident's current health condition" Insert in place of the deleted language "and an assessment of the apparent effect of the incident on the resident's current health status."

RESPONSE In response to this comment, DHS is adopting the section with changes to read "For incidents involving residents, the name of the resident, witnesses, if any, date, time, and description of the incident; circumstances under which it occurred, action taken, including documentation of notification of the responsible party and attending physician, if appropriate, and the resident's current (post-incident) health condition, including vital signs and date and time of entry"

COMMENT. In reference to §19 1923(d), a safety committee or other person(s) may do this review It does not need to be the actual QAA Committee which does the review Delete reference to "see 19 1917 of this title (relating to Quality Assessment and Assurance)"

RESPONSE DHS agrees and is adopting the section with the recommended change

COMMENT Section §19 1932 is not a requirement Delete it It imposes no obligation on the facility and could not be cited as a deficiency

RESPONSE. DHS agrees and is adopting the section with the recommended change

COMMENT Item §19 1934(c) is duplicative and inconsistent For example, (c)(2) could be added to (a)(1)(A) as "including a provision for resolution of conflicts over such issues as time, space and equipment" Delete(c)(1)-(4) and move relevant items to (a)(1).

RESPONSE. In response to this comment, DHS has deleted subsection (c)(1)-(2) and

moved subsection (c)(3)-(4) under (a)(2) in the adopted rule

COMMENT. In reference to §19 1934(c)(4) and (c)(4)(a), a common terminology is needed for the care plan, such as "comprehensive care plan" Also, these specifications are unnecessary and prescriptive The comprehensive care plan must draw from all relevant disciplines Change "interdisciplinary medical social plan of care" to "comprehensive care plan" Also, delete the language "the following necessary information from the IEP, the designated school representative, other written reports, and documented telephone contacts"

RESPONSE DHS agrees and is adopting the section with the recommended changes

SUBCHAPTER U INSPECTIONS, SURVEYS AND VISITS

COMMENT Section 19 2002 needs to be changed to appropriately specify when it applies to a "survey" for Medicaid purposes or when it applies to an "inspection" for licensing purposes? This needs to be specifically outlined

RESPONSE The title of this section is Procedural Requirements-Licensure Inspections and Surveys No further clarification is needed.

COMMENT In §19.2002(b), delete "Of which one member is a qualified surveyor" and insert in its place "of qualified surveyors"

RESPONSE. Only one member of a team is required to be a qualified surveyor

COMMENT In §19 2002(g)(1), change "continuous compliance" to "substantial compliance" to track the federal enforcement rules

RESPONSE There is no need for purely licensure rules to track the federal regulations.

COMMENT The language in §19 2002(h)(1) needs to be reworked, as stated, it implies that a document can threaten the health and safety of a resident

RESPONSE The department has rephrased paragraph (1) to read "During an inspection, survey, or investigation, DHS is authorized to photocopy documents, photograph residents, and use any other available recordation devices to preserve all relevant evidence of conditions that DHS reasonably believes threaten the health and safety of a resident"

COMMENT. In §19 2004(e), the "summary" referenced is not being sent in all cases. Also, the "inspection of care" no longer exists. Is this "summary" something different from the official final list of violations? Clarify the intent of the paragraph.

RESPONSE In response to this comment, DHS is adopting §19 2004(e) with changes to read "A clear and concise summary in non-technical 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"

COMMENT Most of §19 2006 seems to be a general procedure rather than licensure standards Delete this entire section. Move any thing of urgent value to §19.602.

RESPONSE: DHS disagrees Section 19 2006 directly reflects the law found in the Texas Health and Safety Code, Chapter 242 123-242 124, and provides information to the public about the procedure for reporting an incident or complaint

COMMENT Section §19 2006(a) could be interpreted that all complaints (i. e. lost clothes, cold food) cause an investigation Also, a copy of the report of contact should be given to the facility if the complaint is invalid. Add "A report of contact will be given to the facility if the complaint is invalid"

RESPONSE DHS disagrees This section does not address investigation of complaints, only the reporting Complaint reports can be accessed through regular DHS procedures governing the release of information

COMMENT. In reference to §19 2011(a)-(f), this code does not need to be quoted here because it is not a requirement which applies to nursing facility licensure or certification. The reference is adequate by itself. Delete everything following "procedures for public records will be in accordance with the Texas Government code, Chapter 552"

RESPONSE The code is not quoted, only referenced The additional rules contain pertinent information about the DHS's procedure.

SUBCHAPTER W CERTIFICATION OF FACILITIES FOR CARE OF PERSONS WITH ALZHEIMER'S DISEASE AND RELATED DISEASE

COMMENT: This entire section jumps from policies, to physical plant, to staffing, back to physical plant, and ends with two virtually identical sections (§19 2208(c)(9) and (10)) on locking devices Consolidate and reorganize sections to limit repetition and to keep related issues grouped

RESPONSE DHS is adopting the language as proposed.

SUBCHAPTER X REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

COMMENT. Regarding §19.2302(b), the basis for being eligible to participate in the Medicaid program is compliance with the federal requirements for participation Delete this paragraph

RESPONSE Facilities are also required to meet state participation requirements (that is, utilizations review, vendor payment) and the terms of their Medicaid contract DHS is adopting the language as proposed

COMMENT. The requirements at §19.2302(c) and (d) are covered in other requirements such as Resident Rights. Delete (1)-(9) and §19.2303(d).

RESPONSE. DHS is adopting the language as proposed

COMMENT. Make §19.2302(e) and (f) consistent with the final federal enforcement rules Delete this item since it conflicts with HCFA's final enforcement rule regarding appeals Reword (e) to include opportunity for appeal of all deficiencies cited regardless of any remedies imposed

RESPONSE: These rules are not intended to be consistent with the final federal enforce-

ment rules, but when the final rules are effective in July 1995, DHS will consider this change.

COMMENT: Much of §19.2302(h) seems to duplicate licensure policy and procedure for applicants. Can this be consolidated there and deleted here? The same seems true for parts of (i), (j), (k), (l), (m)

RESPONSE. DHS agrees and will be consolidating the process at some point in the future. Until that time, these rules are necessary.

COMMENT: The time limited contracts referenced in §19.2304(a)(3) are not allowed under federal rules. Delete this section

RESPONSE. DHS is adopting the section with the references to time-limited agreements deleted

COMMENT In §19.2304(b), delete the words "state and". All requirements for participation in Medicaid are specified in federal rules.

RESPONSE: Facilities are also required to meet state participation requirements (that is, utilization review, vendor payment). DHS is adopting the language as proposed.

COMMENT: Sections 19.2306(a)(1),(2), and (b)(1) should specify Medicaid standards and requirements. Add Medicaid before "standards" in (a)(1), before "requirements" in (a)(2) and before "all" in (b)(1)

RESPONSE: This entire chapter is entitled Requirements for Medicaid-Certified Facilities. It is not necessary to specify Medicaid again.

COMMENT. In §19.2306(b)(2), change "accepted by DHS" to "filed with DHS staff"

RESPONSE: DHS is adopting the language as proposed. Filing with DHS is not equivalent to being acceptable to DHS.

COMMENT The rules at §19.2306(a) and (b)(1) should be consistent with the new federal enforcement rules. Change "meets" to "is in substantial compliance with." This is consistent with federal language regarding certification.

RESPONSE: When the federal rules are effective, DHS will consider making this change.

COMMENT. Regarding §19.2308(4) and (5), sales of problem facilities would be easier if the new owner is assured uninterrupted flow of vendor payments to cover operational costs. Delete the prohibition against "non-split arrangements", if the safeguards addressed in §19.2308(2) have been satisfied

RESPONSE: DHS is adopting the language as proposed.

COMMENT In §19.2308(7), replace "corporation" with "prior owner."

RESPONSE: DHS is adopting the section with changes to read. "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 trust fund records,

including ledger cards, must remain with the new owner"

COMMENT. In §§19.2316(b)-(f), 19.2318, and 19.2320, change the term "resident" to "recipient" to be consistent with usage throughout the rule

RESPONSE DHS is adopting the section with the recommended change

COMMENT Regarding §19.2320, no matter how many times we try to convince them not to, hospitals automatically send patients back to a facility in an ambulance after an emergency transfer from the facility. The facility should not be liable for this cost if it has not been given the opportunity to arrange for alternate transportation. Add section (h) as follows "A nursing facility is not financially liable for the cost of transportation arranged by a hospital or other third party without the facility's knowledge or approval"

RESPONSE DHS believes the language as proposed is appropriate. Developing effective working relationships with hospitals is part of a nursing facility's business practice

COMMENT. In §19.2322(a), hasn't 1861(j)(1) been deleted from HCFA rule language with OBRA? Delete this item

RESPONSE In the adopted rule, DHS has deleted subsection (a) and renumbered the remaining subsections

COMMENT In §19.2322(c)(2) and (3), is this referring to decertification or contract cancellation? These do not necessarily occur on the same day.

RESPONSE The first item refers to decertification and the second to contract cancellation

COMMENT: In §19.2322(c)(8)(C), we suggest the following minor changes to the wording of the proposed rules to clarify their applicability. In (ii), replace "completed" with "initiated;" in (iii), add "by a loan insured" after "financed;" and in (iv), change the date to March 1, 1995

RESPONSE DHS is adopting the section with the recommended changes, except, DHS has replaced "completed" with "undertaken", as follows: "(ii) A substantial amount of construction was undertaken within the time limit specified in the rules, (iii) The construction of the facility is being financed by a loan insured by the United States Department of Housing and Urban Development or other government entity, and (iv) Construction, licensure, and certification are completed by March 1, 1995"

COMMENT The exemptions at §19.2322(c)(7)(A) and (B) are no longer valid. Delete them

RESPONSE While the exemptions are no longer valid, facilities which received the exemptions are still bound by these rules.

COMMENT Move §19.2322(d) to §19.2322(a) for clarity since it relates to all facilities, not just those seeking an increase in capacity

RESPONSE. DHS agrees and is adopting the section with the recommended changes

COMMENT. The language at §19.2326(f) might allow the hospital to use average length of stay figures, which was not the intent of the requirement. Change the final sentence to read "if the rural hospital's swing beds are used for more than one 30-day length of stay per year for any individual resident, the hospital must comply with full Nursing facility requirements."

RESPONSE DHS believes the current language is clear and not subject to misinterpretation

SUBCHAPTER Y MEDICAL REVIEW AND RE-EVALUATION

COMMENT Change §19.2403(2)(A)(iii) to allow the pre-admission medical necessity to be valid for 90 days

RESPONSE In light of this comment and recent changes to the PASARR process, DHS is making the preadmission MN an optional requirement. Related changes in Subchapter Z, Preadmission Screening and Annual Resident Review, also have been made.

COMMENT Regarding §19.2403(2)(B)(ii) and (2)(C), a shorter review period on admission will not affect the length of stay for nursing facility patients. The shorter review period is burdensome and confusing, and does not achieve the desired outcome of preventing patients from remaining in nursing facilities. Change the admission review and determination of medical necessity to remain valid for 180 days.

RESPONSE DHS has made this change

COMMENT Regarding §19.2403(2)(C)(i), there needs to be consistency in the medical necessity (MN) evaluation process. Change to "the assessment may be completed no more than 45 days before the expiration date"

RESPONSE This change has been made

COMMENT: The reference in §19.2404(1)(A) should be to calendar days, not working days, as in (1) and (1)(B)

RESPONSE DHS is adopting the section with the recommended change

COMMENT. Change §19.2407(5) so that the recipient's appeal is due within 10 working days, not calendar days

RESPONSE. DHS is adopting this requirement as proposed. Ten calendar days allows sufficient time for the filing of an appeal.

COMMENT: Section 19.2409(3) is unnecessary since all current residents have been granted a permanent MN as of 9/1/94. Delete reference to (3) in §19.2409

RESPONSE: DHS is adopting the section with the recommended change

SUBCHAPTER Z. PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW (PASARR)

COMMENT: Regarding §19.2500(a)(14), within the past two years, the disorder has required psychiatric treatment, more than one time, per HCFA guidelines. Add this qualification or delete this extra descriptive language because it duplicates 19.2500(b)(3)(A).

RESPONSE. DHS agrees and is adopting this language in the definition in §19.2500(a)(14)

COMMENT. In §19.2500(a)(25), delete the term "as contrasted with other facilities" per HFCA directive. Replace this item with "as defined by medical necessity."

RESPONSE. DHS agrees and is adopting the section with the recommended change.

COMMENT. The reference in §19.2500(b)(5) is incorrect (§19.1601 should be changed to current reference number). Also, clarify that the Long Term Care Assessment only meets pre-admission MN requirements and does not substitute for admission MN requirements.

RESPONSE. This paragraph has been deleted entirely because the Long Term Care Assessment Pilot Project has been discontinued.

COMMENT. In §19.2500(d)(1)(A), change the reference to §19.1609 and §19.1610 to §19.2409 and §19.2410, respectively.

RESPONSE. DHS is adopting the section with the recommended changes.

COMMENT. In §19.2500(d)(2)(D), change the reference from §19.302 to §19.502.

RESPONSE. DHS is adopting the section with the recommended change.

COMMENT. Should re-number §19.2500(d)(2)(E) for relationship to the like-numbered criteria. Also, add the resident may receive specialized services "if required".

RESPONSE. DHS is adopting the language as proposed.

COMMENT. In §19.2500(e)(3), change the reference from §19.1103(a) to §19.1303(a).

RESPONSE. DHS is adopting the section with the recommended change.

COMMENT. Change the reference in §19.2500(e)(7) to "TDA staff" to "TDoA staff."

RESPONSE. DHS is adopting the section with the recommended change.

COMMENT. In §19.2500(e)(10), replace "interdisciplinary medical plan of care" with "comprehensive care plan" for consistency with §19.802.

RESPONSE. DHS is adopting the section with the recommended change.

COMMENT. In §19.2500(e)(10)(A), replace "medical-social plan of care" with "comprehensive care plan."

RESPONSE. DHS is adopting the section with the recommended change.

COMMENT. In §19.2500(f)(4), reword "resident's nursing facility medical record" to "resident's nursing facility clinical record."

RESPONSE. DHS is adopting the suggestion with changes to read "resident's clinical record."

SUBCHAPTER AA. VENDOR PAYMENT

COMMENT. Regarding §19.2601(b)(7)(D), some recipients own very old or expensive equipment that the recipient will take with him when he leaves, and/or which will pass to the

estate. The facility should have the prerogative to request that the recipient or family repair the equipment, so long as no recipient is forced to rely on non-functioning equipment if resources are not otherwise available to pay for the repair. This is similar to medical transportation §19.2320(g) and residents' choice to purchase preferred items. Reword this regulation as follows: "If a recipient owns a piece of equipment that is medically necessary, the facility must ensure that the equipment is maintained in good repair."

RESPONSE. DHS disagrees. When residents bring equipment to the facility, the facility benefits to a certain extent by not having to provide that equipment. DHS does not think it is unreasonable to ask the facility to accept the responsibility of maintaining the equipment in good repair.

COMMENT. Change the last sentence in §19.2604(g) to read "in order for the facility to receive payment for the service."

RESPONSE. DHS is adopting the section with the recommended change.

Subchapter A. Basis and Scope

• 40 TAC §19.1

The repeal is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 24, 1995

TRD-9503637

Nancy Murphy
Section Manager, Media
and Policy Services
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Human Services

Effective date: May 1, 1995

Proposal publication date: October 21, 1994

For further information, please call (512) 450-3765



Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter A. Basis and Scope

• 40 TAC §19.1

The new section is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs, and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 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.

(b) Scope. The Nursing Facility Requirements for Licensure and Medicaid Certification contain the requirements that an institution must meet in order to be licensed as a nursing facility and also to qualify to participate in the Medicaid program. The requirements serve as a basis for survey activities for licensure and certification.

(1) Certain requirements are specific to Medicaid-certified facilities and are so designated. The Medicaid-specific requirements apply to all residents, including, but not limited to private pay, Medicaid applicants and recipients, VA patients, and Medicare recipients, who are admitted to and reside in a Medicaid-certified facility or a Medicaid-certified distinct part of a facility.

(2) Additional Requirements for facilities or distinct parts of facilities that are certified for Medicare-only participation are in Chapter 42, Code of Federal Regulations, §§483.5-483.75.

(3) These requirements do not apply to skilled nursing facilities (SNFs) licensed under the Health and Safety Code, Chapter 241, participating only in the Medicare program.

(4) Additional documents that a facility may need for reference include, but are not limited to:

(A) Medication Aide Rules (DHS);

(B) Nurse Aide Training Rules (DHS);

(C) Nurse Aide Training Manual (DHS);

(D) Occupational Safety and Health Administration (OSHA) rules and guidelines;

(E) rules and regulations for the Control of Communicable Diseases (TDH) ;

(F) Medical Waste Regulation in Texas (Publication RG-1, Texas Natural Resource Conservation Commission);

(G) Nurse Practice Act and Licensed Vocational Nurse Act;

(H) Food Service Guidelines (TDH);

(I) Centers for Disease Control.

(i) Handwashing Guidelines;

(ii) Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public Safety Workers;

(iii) Guidelines for Isolation Precautions in Hospitals and Infection Control in Hospital Personnel;

(iv) Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures; and

(v) Prevention and Control of Tuberculosis in Facilities Providing Long Term Care to the Elderly;

(J) §§96.1-96.9 of this title (relating to Certification of Long Term Care Facilities);

(K) Methicillin-Resistant Staphylococcus Aureus: A Protocol for Infection Control (TDH); and

(L) HIV/AIDS Model Workplace Guidelines (TDH).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority

Issued in Austin, Texas, on March 24, 1995.

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Nancy Murphy
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Human Services

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For further information, please call (512) 450-3765

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**Chapter 19. Long Term Care
Nursing Facility
Requirements for Licensure
and Medicaid Certification**

Subchapter B. Definitions

• **40 TAC §19.101**

The repeal is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502) , §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority

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Nancy Murphy
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**Chapter 19. Nursing Facility
Requirements for Licensure
and Medicaid Certification**

Subchapter B. Definitions

• **40 TAC §19.101**

The new section is adopted under the Health and Safety Code, Chapter 242, which pro-

vides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs, and under Texas Civil Statutes, Article 4413 (502) , §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds

The new section implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 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—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.

Act-Chapter 242 of the Health and Safety Code.

Activities assessment-See Comprehensive Assessment and Comprehensive Plan of Care.

Activities director-The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this title (relating to Activities)

Addition-The addition of floor space to an institution

Administrator-Licensed nursing facility administrator.

Admission determination of medical necessity-The decision regarding an individual's need for medical and nursing services upon his entry into a nursing facility or upon his becoming eligible for Medicaid. The admission determination of medical necessity is valid for up to 120 days from the effective date assigned by the Utilization Review Committee

Affiliate-With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

Agent-An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

Applicant-A person or governmental unit, as those terms are defined in the Health and Safety Code, Chapter 242, applying for a license under that chapter.

APA-The Administrative Procedure Act, Texas Government Code, Chapter 2001.

Attending physician-A physician, currently licensed by the Texas State Board of Medical Examiners, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

Barrier precautions-Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, faceshields, and protective clothing for purposes of infection control.

Board-Texas Board of Human Services.

CARE form-The DHS Client Assessment, Review and Evaluation (CARE) form completed by Medicaid-certified nursing facilities which allows for determination of medical necessity, reimbursement rate, initial level of the Preadmission Screening and Annual Resident Review (PASARR) and the initial medical care determination and reassessment of the 1915(c) waivers.

Care and treatment-Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

Case mix-A method of classifying recipients based upon resource and service needs and paying nursing facilities a per diem rate according to the recipient's classification.

Certification-The determination by the Texas Department of Human Services (DHS) that a nursing facility meets all the requirements of the Medicaid and/or Medicare programs.

CFR-Code of Federal Regulations.

Complaint-Any allegation received by DHS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards

Comprehensive assessment-An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity.

Comprehensive care plan-A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this title (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and/or

(D) assisting in the development of appropriate coping mechanisms.

Controlled substance-A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, and/or the Federal Controlled Substance Act of 1970, Public Law 91-513.

Dangerous drugs-Any drug as defined in the Texas Health and Safety Code, Chapter 483.

Dentist-A practitioner licensed by the Texas State Dental Examiners Board.

Department-Texas Department of Human Services.

DHS-Texas Department of Human Services.

Dietitian-A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the American Dietetic Association; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

Direct care by licensed nurses-Direct care consonant with the physician's planned regimen of total resident care includes:

(A) assessment of the resident's health care status;

(B) planning for the resident's care;

(C) assignment of duties to achieve the resident's care;

(D) nursing intervention; and

(E) evaluation and change of approaches as necessary.

Distinct part-That portion of a facility certified to participate in the Medicaid Nursing Facility program.

Drug (also referred to as medication)-Any of the following:

(A) Any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) Any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) Any substance (other than food) intended to affect the structure or any function of the body of man; and

(D) Any substance intended for use as a component of any substance specified in subparagraphs (A)-(C) of this definition. It does not include devices or their components, parts, or accessories.

Durable power of attorney for health care—The legal document which designates an agent to make treatment decisions if the individual designator becomes incapable.

Emergency—A sudden change in a resident's condition requiring immediate medical intervention.

Exploitation—The illegal or improper act or process of a caretaker using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain.

Exposure (infections)—The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood, and all body fluids when it is difficult or impossible to differentiate between body fluids.

Facility—Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a)(d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in §19.2500 of this title (relating to Preadmission Screening and Annual Resident Review (PASARR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

Facility nurse assessor—The licensed nurse in the nursing facility, who completes the Client Assessment, Review and Evaluation (CARE) forms.

Family representative—An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

Fiduciary agent—An individual who holds in trust another's monies.

Free choice—Unrestricted right to choose a qualified provider of services.

Goals—Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results which provide the means to evaluate the resident's progress toward achieving long-term goals.

Governmental unit—A state or a political subdivision of the state, including a county or municipality.

HCFA—Health Care Financing Administration.

Health care provider—An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

Hearing—A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and DHS's formal hearing procedures in Chapter 79 of this title (relating to Legal Services).

HIV—Human Immunodeficiency Virus.

Incident—An abnormal event, including accidents or injury to staff or residents, which are documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DHS.

Infection control—A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

Inspection—Any on-site visit to or survey of an institution by DHS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

Interdisciplinary care plan—See the definition of "comprehensive care plan"

IV—Intravenous.

Legend drug or prescription drug—Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

Licensed health professional—A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; or licensed social worker.

Licensed nursing home (facility) administrator—A person currently licensed by the Texas Board of Nursing Facility Administrators.

Licensed vocational nurse (LVN)—A nurse who is currently licensed by the Board of Vocational Nurse Examiners for the State of Texas.

Life Safety Code (also referred to as the Code or NFPA 101)—The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

Life safety features—Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

Life support—Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this title (relating to Directives and Durable Powers of Attorney for Health Care).)

Local authorities—Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

Local health authority—The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Health and Safety Code, §121.021.

Long-term care-regulatory—A department in the long-term care division of DHS responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

Manager—A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

Management services—Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

Medicaid applicant—A person who is requesting the determination of eligibility to become a Medicaid recipient.

Medicaid nursing facility vendor payment system—Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

Medicaid recipient—A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

Medical director—A physician licensed by the Texas State Board of Medical Examiners, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care

Medical necessity (MN)—The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need

Medical necessity assessment—The process by which the applicant's or recipient's medical condition is evaluated to determine the need for nursing facility care based upon information supplied by the nursing facility

Medical-social care plan—See Interdisciplinary Comprehensive Care Plan

Medically-related condition—An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses

Medication aide—A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication

Minimum data set (MDS)—See Resident Assessment Instrument (RAI)

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

Natural Death Act—Provisions of Texas Health and Safety Code, Chapter 672.

Neglect—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

NHIC—The National Heritage Insurance Corporation; the intermediary for the Texas Medicaid program.

Nonnursing personnel—Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

Nurse aide—An individual providing nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not in-

clude an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing and/or nursing-related services for which a license or registration is required under state law.

Nurse aide trainee—An individual who is attending a program teaching nurse aide skills.

Nurse practitioner—A registered nurse currently licensed by the Board of Nurse Examiners for the State of Texas, who is prepared for advanced nursing practice by nature of knowledge and skills obtained through a post-basic or advanced educational program of study acceptable to the Board and which meet the requirements of Rule 219.1—Rules and Regulations Related to Professional Nurse Education, Licensure, and Practice from the Board of Nurse Examiners for the State of Texas. According to federal requirements (42 Code of Federal Regulations §491.2) a nurse practitioner is a registered professional nurse who is currently licensed to practice in the State of Texas, who meets the state's requirements governing the qualifications of nurse practitioners, and who meets one of the following conditions

(A) is currently certified as a primary care nurse practitioner by the American Nurses' Association or by the National Board of Pediatric Nurse Practitioners and Associates, or

(B) has satisfactorily completed a formal one-academic-year educational program that

(i) prepares registered nurses to perform an expanded role in the delivery of primary care;

(ii) includes at least four months (in the aggregate) of classroom instruction and a component of supervised clinical practice, and

(iii) awards a degree, diploma, or certificate to persons who successfully complete the program; or

(C) has successfully completed a formal educational program (for preparing registered nurses to perform an expanded role in the delivery of primary care) that does not meet the requirements of paragraph (b)(2) of 42 CFR §491.2, and has been performing an expanded role in the delivery of primary care for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

Nurse reviewer—The registered professional nurse employed by DHS to monitor the accuracy of the CARE assessment data.

Nursing assessment—See definition of "comprehensive assessment" and "comprehensive care plan."

Nursing care—Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability, management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

Nursing facility/home—An institution that provides organized and structured nursing care and service, and is subject to licensure under Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

Nursing facility/home administrator—See the definition of "licensed nursing home (facility) administrator."

Nursing personnel—Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurses aides, orderlies, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

Objectives—See definition of "goals."

OBRA—Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform as amended.

Ombudsman—An advocate who is a certified representative, staff member, or volunteer, of the Office of the State Long Term Care Ombudsman, Texas Department on Aging.

Optometrist—An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

PASARR—Preadmission Screening and Annual Resident Review

Patient care-related electrical appliance—An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

Person—An individual, firm, partnership, corporation, association, or joint stock company, including a legal successor of those entities.

Person with a disclosable interest—A person with a disclosable interest is any person who owns at least a 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Health and Safety Code, Chapter 242. A person with a disclosable interest does

not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility

Pharmacist—An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

Physical restraint—See Restraints (physical).

Physician—A doctor of medicine or osteopathy currently licensed by the Texas State Board of Medical Examiners

Physician assistant (PA)—

(A) A graduate of a physician assistant training program that is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association, or

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician's assistants that.

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation, or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month

period immediately preceding July 14, 1978.

Podiatrist—A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatry Examiners

Poison—Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally which contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

Practitioner—A physician, podiatrist, or dentist, when relating to Pharmacy Services.

Preadmission medical necessity determination—The determination of need for nursing facility care before the individual's admission into the nursing facility. This determination is valid until admission into a nursing facility or up to 30 days from the effective date.

PRN (pro re nata)—As needed.

Provider—The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DHS.

Psychoactive drugs—Drugs prescribed to control mood, mental status, or behavior.

Qualified surveyor—An employee of DHS who has completed state and federal training on the survey process and passed a federal standardized exam.

Quality assessment and assurance committee—A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

Recipient—Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

Registered nurse (RN)—An individual currently licensed by the Board of Nurse Examiners for the State of Texas as a Registered Nurse in the State of Texas

Rehabilitative/restorative nursing—Nursing interventions which promote the resident's ability to adapt and adjust to living as independently and safely as possible. This concept actively focuses on optimal improvement of the resident's physical, mental, and social function.

Reimbursement methodology—The method by which DHS determines nursing facility per diem rates.

Remodeling—The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and

emergency systems) or the conversion of space in a facility to a different use.

Renovation—The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

Representative payee—A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs

Resident—Any individual residing in a nursing facility.

Resident assessment instrument (RAI)—An assessment tool utilized to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Health Care Financing Administration (HCFA); utilization guidelines; and Resident Assessment Protocols (RAPS).

Responsible party—An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or verbal.

Restraints (chemical)—Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

Restraints (physical)—Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body

Secretary—Secretary of Health and Human Services.

Services required on a regular basis—Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

SNF—A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

Social Security Administration—Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries in filing claims, and provide information about the Medicare program.

Social Worker—A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by Chapter 50 of the Human Resources Code and who has at least:

(A) a bachelor's degree in social work, or

(B) similar professional qualifications which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

Standards—The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

State plan—A formal plan for the medical assistance program, submitted to HCFA, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the United States Department of Health and Human Services.

State survey agency—The Texas Department of Human Services is the agency, which through contractual agreement with the single state agency, is designated as the agency responsible for Title XIX survey and certification of nursing facilities and utilization review in the Title XIX nursing facilities.

Supervising physician—A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas State Board of Medical Examiners to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

Supervision—General supervision, unless otherwise identified.

Supervision (direct)—Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

Supervision (general)—Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

Supervision (intermittent)—Authoritative procedural guidance by a qualified person for the accomplishment of a function

or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

Texas Register—A publication of the Texas Register Publications Section of the Office of the Secretary of State which contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The Texas Register was established by the Administrative Procedure and Texas Register Act of 1975.

Therapeutic diet—A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

TILE—Texas Index for Level of Effort; an index of 11 categories plus a default that consists of relative resource utilization groups. The index determines where a nursing facility client fits based upon service and care requirements. It determines the daily rate to be paid on behalf of the client.

Title II—Retirement Survivors' Disability Insurance of the Social Security Act.

Title XVI—Supplemental Security Income (SSI) of the Social Security Act.

Title XVIII—Medicare provisions of the Social Security Act.

Title XIX—Medicaid provisions of the Social Security Act.

Total health status—Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

TXMHMR—Texas Department of Mental Health and Mental Retardation.

UAR—DHS's Utilization and Assessment Review Section.

Uniform data set—See Resident Assessment Instrument (RAI).

Universal precautions—The use of barrier and other precautions by long term care facility employees and/or contract agents to prevent the spread of blood-borne diseases.

Utilization review committee—The group of health care professionals contracted by DHS to make individual determinations of medical necessity regarding nursing facility care. The Utilization Review Committee consists of physicians and registered nurses.

Vendor payment—Payment made by DHS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's claim approval of the DHS-generated Nursing Facility Billing Statement to DHS. The Nursing Facility Billing Statement, subject to adjustments

and corrections, is prepared from information submitted by the nursing facility which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

Working day—Any 24-hour period, Monday through Friday, excluding state and federal holidays.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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For further information, please call: (512) 450-3765

Subchapter D. Facility Construction

• 40 TAC §§19.300-19.315

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs.

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§19.300. Plans, Approvals, and Construction Procedures.

(a) Submittal of preliminary plans.

(1) When construction is contemplated for new buildings, additions, conversion of buildings not licensed by the Texas Department of Human Services (DHS) (including formerly licensed facilities), or remodeling of existing licensed facilities, one copy of the preliminary proposed plans must be submitted to DHS (Architectural Section) for review prior to the preparation of working drawings. For additions, an overall plan similar to that described in §19.302(c)(3) of this title (relating to Construction and Initial Survey of Completed Construction) must be included.

(2) Fees for plan reviews will be required in accordance with §19.301 of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services).

(3) The project will be considered abandoned and the plans will be destroyed if final plans are not submitted to DHS 12 months from the submittal date of the preliminary plans for review and approval.

(4) The plans must be drawn to scale and must indicate the usage of all spaces, sizes of areas and rooms, and the type and location of fixed equipment. New construction or additions must include a site plan showing all pertinent conditions including grades and all structures on the site. Written approval of the local building department and the local fire marshal must be submitted.

(5) A general description of the surrounding area and vicinity, including, but not limited to, commercial, residential, rural, and shopping areas, and available transportation must be furnished for new locations.

(b) Submittal of intermediate plans. Facilities may be required to submit intermediate stage plans and specifications (50% to 75% complete) for review, particularly on new, larger, or more complex construction projects.

(c) Submittal of final plans.

(1) Before construction is begun, one copy of working drawings and specifications (contract documents) in sufficient detail to interpret compliance with these standards and assure proper construction must be submitted to DHS for review within 60 days of receipt of these documents and required plan review fee. These documents must be prepared according to accepted architectural practice and must include general construction, special conditions, schedules, and any other pertinent information that DHS may require. In addition, two extra copies of the floor plan only must be submitted with the complete set.

(2) The project will be considered abandoned and the plans destroyed if the project is not under construction and continuing progress shown six months from the date of the final review of the plans. Resubmittal of plans and full plan review fee will again be required if, after the abandonment period, the project will be constructed. Fees will be as required in accordance with §19.301 of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services).

(3) Final copies of plans must have (in the reproduction process by which plans are reproduced) a title block showing name of facility, person or organization preparing the sheet, sheet numbers, facility address, and drawing date. Certain parts of final plans, designs, and specifications must bear the seal of a registered professional

engineer approved by the State Board of Registration for Professional Engineers to operate in Texas. These certain parts include sheets and sections covering structural, electrical, mechanical, and sanitary engineering. Contract documents for additions and remodeling and for the construction of an entirely new facility must be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings must bear the seal of the architect.

(4) A final plan for a major addition to a facility must include a basic layout to scale of the entire building onto which the addition connects. North direction must be shown. Usually the entire basic layout can be to scale such as 1/16 inch per foot or 1/32 inch per foot for very large buildings.

(5) Plans and specifications for conversions or remodeling must be complete for all parts and features involved.

(6) It is the sponsor's responsibility to employ qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that conformance with standards cannot be reasonably assured or determined, a revised set of documents for review may be requested. For additions and remodeling to existing licensed facilities, construction must not be started until the final contract documents are reviewed and approved in writing by DHS within 60 days of receipt of final drawings and required plan review fee.

(7) The review of plans and specifications by DHS is based on general utility, minimum licensing standards, and conformance with the Life Safety Code, and is not to be construed as all-inclusive approval of the structural, electrical, or mechanical components.

(d) Contract documents.

(1) Site plan documents must include grade contours; streets (with names); north arrow; fire hydrants; fire lanes; utilities, public or private; fences; unusual site conditions, such as ditches, low water levels, other buildings on-site; and indications of buildings five feet or less beyond site property lines. Site plan documents for nursing facilities may include the developed landscaping plan for resident use as called for in §19.304(f) of this title (relating to Location and Site).

(2) Foundation plan documents must include general foundation design and details.

(3) Floor plan documents must include room names, numbers, and usages; resident care areas, doors (numbered) including swing; windows; legend or clarification of wall types; dimensions; fixed

equipment; plumbing fixtures; and kitchen basic layout; and identification of all smoke barrier walls (outside wall to outside wall) or fire walls.

(4) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8 1/2 inch by 11 inch sheet; submit two reduced plans for file record. See §19.302(c)(3) of this title (relating to Construction and Initial Survey of Completed Construction).

(5) Schedules must include door materials, widths, types; window materials, sizes, types, room finishes; special hardware.

(6) Elevations and roof plan must include, but is not limited to, exterior elevations, including material note indications and any roof top equipment, roof slopes, drains, and gas piping, and interior elevations where needed for special conditions.

(7) Details must include wall sections as needed (especially for special conditions); cabinet and built-in work, basic design only; cross sections through buildings as needed; and miscellaneous details and enlargements as needed.

(8) Building structure documents must include structural framing layout and details (primarily for column, beam, joist, and structural frame building); roof framing layout (when this cannot be adequately shown on cross section); cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design, also calculated design loads.

(9) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system (exit signs and emergency egress lighting); emergency electrical provisions (such as generators and panels); fire alarm and similar systems (such as control panel, devices, and alarms), a nurse call system; and sizes and details sufficient to assure safe and properly operating systems.

(10) Plumbing documents must include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(11) Heating, ventilation, and air-conditioning (HVAC) documents must include sufficient details of HVAC systems

and components to assure a safe and properly operating installation including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers, and equipment types, sizes, and locations.

(12) Sprinkler system documents must include plans and details of National Fire Protection Association (NFPA) designed systems; plans and details of partial systems provided only for hazardous areas; electrical devices interconnected to the alarm system.

(13) Other layouts, plans, or details as may be necessary for a clear understanding of the design and scope of the project; including plans covering private water or sewer systems must be reviewed by the local health or wastewater authority having jurisdiction. If no local authority exists, the plans will be reviewed by DHS.

(14) Specifications must include installation techniques, quality standards and/or manufacturers, references to specific codes and standards, design criteria, special equipment, hardware, painting, and any others as needed to amplify drawings and notes.

§19.301. Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services

(a) Under Texas Revised Civil Statutes, Article 4413(502) historical note (Vernon Supplement 1994) (Act of August 9, 1991, 72nd Legislature, First Called Session, Chapter 15, §1.11, 1991 Texas General Laws 298), the Texas Department of Human Services (DHS) has the authority to charge fees for providing services described in this section. Pursuant to this authority, DHS establishes the fees, as shown in the fee schedule in subsection (j) of this section, to cover plan review services, construction inspection services, and feasibility inspection services. The fees are designed not to exceed the costs to DHS to provide these services.

(b) When DHS finds in a licensed facility a violation of standards and when plans are submitted for the purpose of showing how the violation will be corrected, there will be no fee for this plan review. There will similarly be no fee for a construction visit made pursuant to a plan review.

(c) The plan review fees shown in the fee schedule in subsection (j) of this section cover the review of plans in all the stages of development.

(d) In determining the cost of additions or remodeling, only the direct construction costs need to be considered, that

is, construction contract amount plus any add-on costs by contractor or owner during construction. Costs do not include land acquisition, architectural and/or engineering fees, financing, legal fees, fund raising fees, furnishings, or movable equipment.

(e) Remodeling is the construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems), or the conversion of space in a facility to a different use.

(f) General maintenance and repairs of existing material and equipment, repainting, applications of new floor, wall, or ceiling finishes, or similar projects are not included as remodeling, unless as a part of new construction DHS must be provided flame spread documentation for new materials applied as finishes

(g) Fees are due for payment as follows

(1) When plan development has reached the preliminary plan stage and preliminary plans are submitted for review, 30% of the plan review fee must accompany the plans. Before final plans are reviewed, the full fee, if preliminary plans were not submitted, or the balance of the plan review fee must be paid

(2) Construction inspection fees for new facilities and for additions or remodeling of existing licensed facilities are due for payment before the facility is licensed or otherwise accepted by DHS under licensure.

(3) Feasibility inspection fees are due for payment prior to the inspection being made

(h) Payment of fees must be by check or money order made payable to the Texas Department of Human Services. All fees are nonrefundable except as provided by Texas Government Code, Chapter 2005.

(i) If the facility or institution requests construction inspections beyond those called for in the schedule, the appropriate additional fees must be submitted. If DHS elects to make additional construction inspections, there will be no charge for these inspections

(j) The fee schedule is as follows:
Figure 1: 40 TAC §19.301(j)

§19.302. Construction and Initial Survey of Completed Construction.

(a) Construction phase.

(1) The Texas Department of Human Services (DHS) must be notified in writing of construction start.

(2) All construction must be done in accordance with the completed plans and specifications as submitted for review and as modified in accordance with review requirements. Any deviations therefrom must have prior DHS approval. Revised drawings may be required if the change is significant.

(3) A preliminary stage construction inspection is required for most construction work unless otherwise instructed by DHS. A minimum of three weeks notification prior to applying interior wall and ceiling surfaces (except for smoke barrier wall surfaces which must be completed) must be given so that the inspector may schedule the preliminary visit.

(b) Initial survey of completed construction.

(1) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection (initial survey) of the facility is required to be performed by DHS (architectural section) prior to admitting residents. A minimum of three weeks advance notice is needed. The completed construction must have the written approval of the local authorities having jurisdiction, including the fire marshal and building inspector

(2) After the completed construction has been surveyed by a representative of DHS's architectural section and found acceptable, this information will be conveyed to the licensing officer as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building, grades, drives, parking, and grounds must be essentially 100% complete at the time of this initial survey visit for occupancy approval and licensing, including basic furnishings and operational needs.

(3) The following documents must be available to DHS's architectural inspecting surveyor at the time of the survey of the completed building:

(A) written approval of local authorities as called for in paragraph (1) of this subsection,

(B) written certification of the fire alarm system by the installing agent (Form FML-009 of the Texas State Fire Marshal);

(C) documentation of materials used in the building which are required to have a specific limited fire or flame spread rating including, but not limited to, special wall finishes or floor coverings, flame retardant curtains (including cubicle

curtains), and rated ceilings. This must include a signed letter from the installer verifying that the material installed, such as carpeting, is the same material named in the laboratory test document;

(D) approval of the completed sprinkler system installation by the Texas Department of Insurance or the designing engineer. A copy of the material list and test certification must be available;

(E) service contracts for maintenance and testing of systems, including, but not limited to, alarm systems and sprinkler systems;

(F) a copy of gas test results of the facility's gas lines from the meter;

(G) a written statement from an architect and/or engineer stating that, to the best of his knowledge, the building was constructed in accordance with the approved drawings; and

(H) any other similar documentation as needed and called for.

(c) Nonapproval of new construction.

(1) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, he may recommend to DHS that the facility not yet be licensed and approved for occupancy. Such basic items may include the following.

(A) substantial changes made during construction which were not submitted to DHS for review and which may require revised as-built drawings to cover the changes. This may include architectural, structural, mechanical, and electrical items (reference subsection (a)(2) of this section);

(B) construction which does not meet minimum code or licensure standards for basic requirements such as corridor widths being less than eight feet clear width, ceilings installed at less than the minimum seven feet six inches height, resident bedroom dimensions less than required width, and other similar features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(C) no written approval by local authorities;

(D) fire protection systems not completely installed or not functioning

properly including, but not limited to, fire alarm systems, emergency power and lighting, and sprinkler systems;

(E) required exits are not all usable according to Life Safety Code requirements;

(F) telephone not installed or not properly working;

(G) sufficient basic furnishings, essential appliances and equipment are not installed or not functioning; and

(H) any other basic operational or safety feature which the surveyor, as the authority having jurisdiction, encounters which in his judgment would preclude safe and normal occupancy by residents on that day.

(2) If the surveyor encounters deficiencies that do not affect the health and safety of the residents, licensure may be recommended based on an approved written plan of correction by the facility's administrator.

(3) Copies of reduced size floor plan (on an 8 1/2 inch by 11 inch sheet) must be submitted in duplicate to DHS for record and/or file use and for the facility to use in evacuation planning and fire alarm zone identification. The plan must contain basic legible information such as overall dimensions, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

(d) Feasibility inspections. A feasibility inspection may be requested on any existing structure that is proposed to be converted to a facility. This inspection must be requested through DHS. A fee will be charged as required by §19.301 of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services).

§19.303. Construction Standards for Additions, Remodeling, and New Nursing Facilities.

(a) This subchapter is written for, and applies to, new construction, including conversions, additions, and remodelings. The requirements of the Life Safety Code, Standard 101 of the National Fire Protection Association (NFPA), as required under Health and Safety Code, §242.039, and other applicable NFPA codes and standards referenced in NFPA 101 will apply unless otherwise noted or modified in this subchapter. The provisions of the chapter or subchapter and the provisions of the New Health Care Occupancies of the Life Safety Code are applicable.

(1) Life Safety Code, NFPA 101, is a registered trademark of the National Fire Protection Association, Inc., Quincy, Massachusetts 02269.

(2) These sections also describe minimum requirements for space use and other architectural and environmental aspects deemed necessary to provide a favorable environment for nursing facility residents.

(3) The definitions listed in §19.101 of this title (relating to Definitions) also apply to the sections in this subchapter.

(4) In addition to the Life Safety Code and the standards referenced therein, this subchapter is subject to the codes, standards, and requirements established by the following: Underwriters Laboratories, Inc. (UL); the American National Standards Institute, Inc. (ANSI); the National Electrical Code (NFPA 70); the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE); and the American Society for Testing Materials (ASTM). Various references to these entities will be made throughout these sections.

(b) Existing nursing facilities must meet, as a minimum, the requirements of Existing Health Care Occupancies of the Life Safety Code, and the requirements concerning physical plant and environment in §§19.1701-19.1727 of this title (relating to Physical Plant and Environment).

(c) New nursing facilities must meet the requirements of §§19.1701-19.1727 of this title (relating to Physical Plant and Environment), in addition to the requirements of this subchapter. This subchapter must be referenced for new facilities for any conflicting requirements.

(d) All applicable local, state, or national codes and ordinances must be met as determined by the authority having jurisdiction for those codes and ordinances and by DHS. Any conflicts must be made known to DHS for appropriate resolution.

(e) The design of structural systems must be done by or under the direction of a professional engineer who is currently registered by the Texas State Board of Registration for Professional Engineers. New facility construction and projects of unusual complexity require that plans and specifications be done by or under the direction of an architect currently registered by the Texas State Board of Architectural Examiners. Documents must bear the legible seal of the architect and of the engineer(s).

(f) If an existing licensed facility plans building additions or remodeling which includes construction of additional resident beds, then the ratio of bathing units must be reevaluated to meet minimum standards and the square footage of dining and living areas must be reevaluated by DHS at

a minimum of 19 square feet per bed. Conversion of existing living, dining, or activity areas to resident bedrooms must not reduce these functions to a total area of less than 19 square feet per bed. The dietary department must be evaluated by the facility's registered or licensed dietitian or architect having knowledge in the design of food service operations. This evaluation must be provided to DHS.

(g) No construction or demolition may be started prior to submittal of final plans to DHS for review and approval. See §19.307 of this title (relating to Exit Provisions) for remodeling safety requirements.

(h) No building may be occupied by residents prior to inspection and approval to occupy by DHS.

(i) Questions pertaining to architectural or code requirements should be directed to DHS: Texas Department of Human Services, Long Term Care-Regulatory, Mail Code Y-976, P.O. Box 149030, Austin, Texas 78714-9030.

(j) The words "shall" or "must" are requirements. The word "should" is a recommendation which is expected to be followed unless there is valid reason not to do so.

(k) Nothing in these sections may be construed as prohibiting a better type of building or construction, more space, services, features, or greater degree of safety than the minimum requirements specified in the sections.

§19.306. Architectural Space Planning and Utilization For supplemental information to this section, see §19.300 of this title (relating to Plans, Approvals, and Construction Procedures) for drawings and specifications required for review and construction purposes.

(1) Resident bedrooms. Each resident bedroom must meet the following requirements:

(A) The maximum room capacity must be four residents.

(B) No more than 25% of the total licensed beds may be in bedrooms with more than two beds each.

(C) Minimum bedroom area, excluding toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, must be 100 square feet in single occupancy rooms and 80 square feet per bed in multi-bed rooms.

(D) The minimum allowable room dimension is ten feet. The room must

be designed to provide at least 36 inches between beds and 24 inches between any bed and the adjacent (parallel) wall.

(E) Each room must have at least one operable outside window arranged and located so that it can be easily opened from the inside without the use of tools or keys. The maximum allowable sill height (to opening) must not exceed 36 inches above the floor. All operative windows must have insect screens. The minimum area of window(s) in each bedroom must equal at least 16 square feet or 80% of the room area, whichever is larger.

(F) Each room must have general lighting, bed reading lights, and night lighting. The night light must be switched just inside the entrance to each resident room with a silent type switch unless otherwise approved by DHS. The light providing general illumination must be switchable at the door of the resident room for use of staff and residents. A durable nonglare (opaque front panel) reading light securely anchored to the wall, integrally wired, must be provided for each resident bed. The switch must be within reach of a resident in the bed.

(G) Two duplex (or a fourplex) grounding type receptacles must be provided beside the head of each bed. Other walls must have duplex receptacles as needed for TV, radio, razors, hairdryers, clocks, and/or as required by the National Electrical Code, NFPA 70, which is a registered trademark of the National Fire Protection Association, Inc., Quincy, Massachusetts 02269.

(H) Each resident must have access to a toilet room without entering the general corridor area. One toilet room must serve no more than two resident rooms. The toilet room must contain a water closet and a lavatory. The lavatory may be omitted from a toilet room which serves two bedrooms if each resident room contains a lavatory. See paragraph (3)(A) of this section for baths and other toilet facility requirements.

(I) Each resident must have a bed with a comfortable mattress, a bedside stand with at least two enclosed storage spaces, a dresser, and closet or wardrobe space providing privacy for clothing and personal belongings. Clothes storage space must provide at least 22 inches of lineal hanging space per bed and have closable doors. Chairs and space must be provided for use by residents and/or visitors.

(J) All beds must have castors with wheel-locking devices.

(K) Each room must open onto an exit corridor and must be arranged for convenient resident access to dining, living, and bathing areas.

(L) Visual privacy (such as cubicle curtains) must be available for each resident in multi-bed rooms. Design for privacy must not restrict resident access to entry, lavatory, or toilet, nor may it restrict bed evacuation or obstruct sprinkler flow coverage.

(M) At least one noncombustible wastebasket must be provided in each bedroom.

(N) See the requirements in §19.313(d)(4) of this title (relating to Electrical Requirements) for nurse call systems.

(2) Nursing service areas. The service areas described in this paragraph must be located in or readily available to each nursing unit. The size and disposition of each service area will depend upon the number and types of beds to be served. Each service area may be arranged and located to serve more than one nursing unit, but at least one service area must be provided on each nursing floor. The maximum allowable distance from a resident room door to a nurse station is 150 feet. The following requirements are applicable to services areas:

(A) Nurse stations must be provided with space for nurses' charting, doctors' charting, and storage for administrative supplies. Nurses' stations must be located to provide a direct view of resident corridors. A direct view of resident corridors is acceptable if a person can see down the corridors from a point within 24 inches of the outside of the nurse station counter or wall.

(B) Lounge and toilet room(s) must be provided for nursing staff.

(C) Lockers and/or security compartments must be provided for the safekeeping of personal effects of staff. These must be located convenient to the duty station of personnel or in a central location.

(D) Clean utility room(s) must contain a work counter, sink with high-neck faucet with lever controls, and storage facilities and must be part of a system for storage and distribution of clean and sterile supply materials.

(E) Soiled utility room(s) must contain a water closet or equivalent flushing rim fixture, a sink large enough to submerge a bedpan with spray hose and high-neck faucet with lever controls, work counter, waste receptacle, and linen receptacle. These utility rooms must be part of a system for collection and cleaning or disposal of soiled utensils or materials. A separate handwash sink must be provided if the bedpan disinfecting sink cannot normally be used for handwashing.

(F) Provision must be made for convenient and prompt 24-hour distribution of medication to residents. The medication preparation room must be under the nursing staff's visual control and contain a work counter, refrigerator, sink with hot and cold water, and locked storage for biologicals and drugs and must have a minimum area of 50 square feet. The minimum dimension allowed is five feet six inches. An appropriate air supply must be provided to maintain adequate temperature and ventilation for safe storage of medications. For purposes of storage of unrefrigerated medications, the room temperature must be maintained between 59 degrees and 86 degrees Fahrenheit.

(G) Provision must be made for separate closets or room for clean linens. Corridors must not be used for folding or cart storage. Storage rooms must be located and distributed in the building for efficient access to bedrooms.

(H) Soiled linen rooms must be provided as required in paragraph (12) of this section.

(I) A nourishment station(s) is usually required in all but the smaller facilities and must contain a sink equipped for handwashing, equipment for serving nourishment between scheduled meals, refrigerator, and storage cabinets. Ice for residents' service and treatment must be provided only by icemaker units. This station may be furnished in a clean utility room.

(J) An equipment storage room must be provided for equipment such as intravenous stands, inhalators, air mattresses, and walkers.

(K) Parking spaces for stretchers and wheelchairs must be located out of the path of normal traffic.

(3) Residents' bathing and toilet facilities. The following requirements are applicable to bathing and toilet facilities:

(A) Bathtubs or showers must be provided at the rate of one for each 20 beds which are not otherwise served by bathing facilities within residents' rooms. At least one bathing unit must be provided in each nursing unit. Each tub or shower must be in an individual room or enclosure which provides space for the private use of the bathing fixture, for drying and dressing, and for a wheelchair and an attendant. Each general-use bathing room (those not directly serving adjoining bedrooms) must be provided with at least one water closet (in a stall, room, or area for privacy) and one lavatory. These bathing room(s) must be located conveniently to the bedroom area it serves and must not be more than 100 feet from the farthest bedroom. See requirements in paragraph (1) (H) of this section for resident toilets at bedrooms. Each facility must provide at least one whirlpool tub unit as one of the required bathing units.

(B) At least 50% of bathrooms and toilet rooms, fixtures, and accessories must be designed and provided to meet criteria under the Americans with Disabilities Act for individuals with disabilities unless otherwise approved by DHS.

(C) All rooms containing bathtubs, sitz baths, showers, and water closets, subject to occupancy by residents, must be equipped with swinging doors and hardware which will permit access from the outside in any emergency.

(D) Bathing areas must be provided with safe and effective auxiliary or supplementary heating. Bathing areas must be free of drafts and must have adequate exhaust ducted to the outside to minimize excess moisture retention and resulting mold and mildew problems.

(E) Tubs and showers must be provided with slip-proof bottoms.

(F) Lavatories and handwashing facilities must be securely anchored to withstand an applied downward load of not less than 250 pounds on the front of the fixtures.

(G) Provision must be made for sanitary hand drying and toothbrush storage at lavatories. There must be paper towel dispensers or separate towel racks and separate toothbrush holders

(H) Mirrors must be arranged for convenient use by residents in wheelchairs as well as by residents in a standing position, and the minimum size

must be 15 inches in width by 30 inches in height, or tilt type.

(I) Rooms with toilets must be provided with effective forced air exhaust ducted to the exterior to help remove odors. Ducted manifold systems are recommended for some multiple-type installations.

(J) Floors, walls, and ceilings must have nonabsorbent surfaces, be smooth, and easily cleanable.

(4) Disposal facilities. Space and facilities must be provided for the sanitary storage of waste by incineration, mechanical destruction, compaction, containerization, removal, or by a combination of these techniques.

(5) Resident living areas. The following requirements are applicable to resident living areas:

(A) Social-diversional spaces such as living rooms, dayrooms, lounges, sunrooms, must be provided on a sliding scale as follows:
Figure 2: 40 TAC §19.306(5)(A)

(B) Where a required way of exit (or a service way) is through a living (or dining) area, a pathway equal to the corridor width will normally be deducted for calculation purposes and discounted from that area. These exit pathways must be kept clear of obstructions.

(C) Each resident living room and dining room must have at least one outside window. The window area must be equal to at least 8.0% of the total room floor area. Skylighting may be used to fulfill one-half of the 8.0% minimum area.

(D) See §19.303(f) of this title (relating to Construction Standards for Additions, Remodeling, and New Nursing Facilities) for capacity increases to existing facilities.

(E) Open or enclosed seating space must be provided within view of the main nurse station that will allow furniture or wheelchair parking that does not obstruct the corridor way of egress.

(6) Dining space. Dining space must be adequate for the number of residents served, but no less than ten square feet per resident bed. See §19.303(f) of this title (relating to Construction Standards for Additions, Remodeling, and New Nursing Facilities) for bed capacity increases to existing facilities.

(7) Dietary facilities. The following requirements are applicable to dietary facilities:

(A) Kitchens (main/dietary) must be as follows:

(i) Kitchens will be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals to residents. Consideration will be given to planning for the type of meals served, the overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food. Plans must include a large-scale detailed kitchen layout designed by a registered or licensed dietitian or architect having knowledge in the design of food service operations.

(ii) Kitchens must be designed so that room temperature at peak load (summertime) will not exceed a temperature of 85 degrees Fahrenheit measured over the room at the five-foot level. The amount of supply air must take into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(iii) Operational equipment must be provided as planned and scheduled by the facility consultants for preparing and serving meals and for refrigerating and freezing of perishable foods, as well as equipment in, and/or adjacent to, the kitchen or dining area for producing ice.

(iv) Facilities for washing and sanitizing dishes and cooking utensils must be provided. These facilities must be designed based on the number of meals served and the method of serving (that is, use of permanent or disposable dishware). As a minimum, the kitchen must contain a multi-compartment sink large enough to immerse pots and pans. In all facilities, a mechanical dishwasher is required for washing and sanitizing dishes. Separation of soiled and clean dish areas must be maintained, including air flow.

(v) A vegetable preparation sink must be provided, and it must be separate from the pot sinks.

(vi) A supply of hot and cold water must be provided. Hot water for sanitizing purposes must be 180 degrees Fahrenheit or the manufacturer's suggested temperature for chemical sanitizers. For mechanical dishwashers the temperature measurement is at the manifold.

(vii) A kitchen must be provided with a hand-washing lavatory in the food preparation area with hot and cold water, soap, paper towel dispenser, and waste receptacle. The dish room area must have ready access to a handwashing lavatory.

(viii) Staff rest room facilities with lavatory must be directly accessible to kitchen staff without traversing resident use areas. The rest room door must not open directly into the kitchen (that is, provide a vestibule).

(ix) Janitorial facilities must be provided exclusively for the kitchen and must be located in the kitchen area.

(x) Nonabsorbent smooth finishes or surfaces must be used on kitchen floors, walls, and ceilings. These surfaces must be capable of being routinely cleaned and sanitized to maintain a healthful environment. Counter and cabinet surfaces, inside and outside, must also have smooth, cleanable, relatively nonporous finishes.

(xi) Operable windows must have insect screens provided.

(xii) Doors between kitchen and dining or serving areas must have 1/4 inch fixed wire glass view panel mounted in a steel frame. Reference §19.310(d) of this title (relating to Hazardous Areas).

(xiii) See §19.310 of this title for hazardous area requirements.

(xiv) A garbage can or cart washing area with drain and hot water must be provided.

(xv) Floor drains must be provided in the kitchen and dishwashing areas.

(xvi) Vapor removal from cooking equipment must be designed and installed in accordance with NFPA 96.

(xvii) Grease traps must be provided in compliance with local plumbing code or other nationally recognized plumbing code.

(xviii) See §19.303(f) of this title (relating to Construction Standards for Additions, Remodeling, and New Nursing Facilities) for bed capacity increases to existing facilities.

(B) Food storage areas must be as follows:

(i) Food storage areas must provide for storage of a seven-day minimum supply of nonperishable foods at all times.

(ii) Shelves must be adjustable wire type. Walls and floors must have a nonabsorbent finish to provide a cleanable surface. No foods may be stored on the floor; dollies, racks, or pallets may be used to elevate foods not stored on shelving.

(iii) Dry foods storage must have an effective venting system to provide for positive air circulation.

(iv) The maximum room temperature for food storage must not exceed 85 degrees F at any time. The measurement must be taken at the highest food storage level but not less than five feet from the floor.

(v) Food storage areas may be located apart from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(C) Auxiliary serving kitchens (not contiguous to food preparation/serving area) must be as follows:

(i) Where service areas other than the kitchen are used to dispense foods, these must be designated as food service areas and must have equipment for maintaining required food temperatures while serving.

(ii) Separate food service areas must have hand-washing facilities as a part of the food service area.

(iii) Finishes of all surfaces, except ceilings, must be the same as those required for dietary kitchens or comparable areas.

(8) Administrative and public areas.

(A) The following elements must be provided in the public area:

(i) The entrance must be at grade level, sheltered from the weather, and able to accommodate wheelchairs. A drive-under canopy must be provided for the protection of residents or visitors entering or leaving a vehicle. The latter may be a secondary entrance.

(ii) The lobby must include:

(I) storage space for wheelchairs (if more than one is kept available);

(II) a reception and/or information area (may be obviously adjacent to lobby);

(III) waiting space(s);

(IV) public toilet facilities for individuals with disabilities (may be adjacent to lobby);

(V) at least one public access telephone(s), installed to meet standards under the Americans with Disabilities Act; and

(VI) drinking fountain(s). These may be provided in a common public area and at least one must be installed to meet standards under the Americans with Disabilities Act; and

(iii) A lobby may also be use-designed to satisfy a portion of the minimum area required for resident living room space.

(B) The following must be provided in the administrative area:

(i) General or individual offices(s) for business transactions, medical and financial records, administrative and professional staff, and for private interviews relating to social service, credit, and admissions.

(ii) A multipurpose room for conferences, meetings, and health education purposes including facilities for showing visual aids.

(iii) Storage and work area for office equipment and supplies must be provided and accessible to the staff using such items.

(C) Toilet facilities for the disabled must be available in the building.

(9) Physical therapy facilities.

(A) Physical therapy facilities must be provided if required by the treatment program. The facilities stated in clause (ii) of this subparagraph and (B)(iii)-(v) of this paragraph may be planned and arranged for shared use by occupational therapy residents and staff if the treatment program reflects this sharing concept. Physical therapy facilities must include the following:

(i) Provision for cubicle curtains around each individual treatment area; handwashing facility(ies) (one lavatory or sink may serve more than one cubicle); and facilities for the collection of soiled linen and other material that may be used in the therapy.

(ii) Residents' dressing areas, showers, lockers, and toilet rooms if the therapy is such that these would be needed at the area.

(B) Physical therapy facilities may also include the following:

(i) treatment area(s) with space and equipment for thermotherapy, diathermy, ultrasonics, and hydrotherapy;

(ii) an exercise area;

(iii) storage for clean linen, supplies, and equipment used in therapy;

(iv) service sink located near therapy area; and

(v) wheelchair and stretcher storage.

(10) Occupational therapy Occupational therapy facilities must be provided if required by the treatment program.

(A) An activities area with a sink or lavatory and facilities for collection of waste products prior to disposal must be provided.

(B) Storage for supplies and equipment used in the therapy must be provided.

(11) Personal grooming area (barber/beauty shop). A separate room with appropriate equipment must be provided for hair care and grooming needs of residents in facilities with over 60 beds.

(12) Laundry/linen services.

(A) On-site processing must be as follows:

(i) Because of the high incidence of fires in laundries, it is highly recommended that the laundry be in a separate building 20 feet or more from the main building. If the laundry is located within the main building it must be separated by minimum one-hour fire construction to structure above, and sprinklered, and must be located in a remote area away from resident sleeping areas. Access doors must be from the exterior or interior nonresident use area such as a service corridor (not required exit) which is separated from the resident area

(ii) If linen is to be processed on the site, the following must be provided:

(I) A soiled linen receiving, holding, and sorting room with a rinse sink. This area must have a floor drain and forced exhaust to the exterior which must operate at all times there is soiled linen being held in the area.

(II) A laundry processing room with equipment which can process seven days needs within a regularly scheduled work week. Hand-washing facilities must be provided. The washer area must have a floor drain.

(III) storage for laundry supplies;

(IV) a clean linen inspection and mending room or area and a folding area,

(V) a clean linen storage, issuing, or holding room or area;

(VI) a janitors' closet containing a floor receptor or service sink and storage space for housekeeping equipment and supplies; and

(VII) sanitizing (washing) facilities and a storage area for carts.

(iii) Soiled and clean operations must be planned to maintain sanitary flow of functions as well as air flow. If carts containing soiled linens from resident rooms are not taken directly to the laundry area, intermediate holding rooms must be provided and located convenient to resident bedroom areas.

(iv) Laundry areas must have adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire wall separation.

(v) Provisions must be made to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(B) For off-site linen processing, the following must be provided on the premises.

(i) a soiled linen holding room (provided with adequate forced exhaust ducted to the exterior),

(ii) clean linen receiving, holding, inspection, sorting or folding, and storage room(s); and

(iii) sanitizing facilities and storage area for carts

(C) Resident-use laundry, if provided, must be limited to not more than one residential type washer and dryer per laundry room. This room must be classified as a hazardous area as in accordance with the Life Safety Code.

(13) General storage The following requirements are applicable to general storage facilities:

(A) A general storage room(s) must be provided as needed to accommodate the facility's needs. It is recommended that a general storage area provide at least two square feet per resident bed. This area would be for items such as extra beds, mattresses, appliances, and other furnishing and supplies.

(B) Storage space with provisions for locking and security control

should be provided for residents' personal effects which are not kept in their rooms.

(14) Janitors' closet. In addition to the janitors' closet called for in certain departments, a sufficient number of janitors' closets must be provided throughout the facility to maintain a clean and sanitary environment. These must contain a floor receptor or service sink and storage space for housekeeping equipment and supplies.

(15) Maintenance/engineering service and equipment areas. Space and facilities for adequate preventive maintenance and repair service must be provided. The following spaces are needed (it is suggested that these be part of a separate laundry building or area):

(A) A storage area for building and equipment maintenance supplies, tools, and parts must be provided.

(B) A space for storage of yard maintenance equipment and supplies, including flammable liquids bulk storage, must be provided separate from the resident-occupied facility.

(C) A maintenance and/or repair workshop of at least 120 square feet and equipment to support usual functions is recommended

(D) A suitable office or desk space for the maintenance person(s) is recommended (this may be located within the previously stated repair shop area) with space for catalogs, files, and records.

(16) Oxygen. The storage and use of oxygen and equipment must meet applicable NFPA standards for oxygen, including NFPA 56F.

§19.311. Structural Requirements.

(a) Every building and every portion thereof must be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards.

(b) Special provisions must be made in the design of buildings in regions where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornadoes, earthquakes, or floods.

(c) The sponsor is responsible for employing qualified personnel in the preparation of plan designs and engineering and in the construction of the facility to assure that all structural components are adequate, safe, and meet the applicable construction requirements.

(d) The design of the structural system must be done by or under the direction of a professional (structural) engineer who is currently registered by the Texas State Board of Registration for Professional Engineers in accordance with state law.

(e) The parts of the plans, details, and specifications covering the structural design must bear the legible seal of the engineer on the original drawings (from which the prints are made).

(f) If the municipality has a building code, that code must govern the building requirements for the construction involved. The Life Safety Code must be used for fire safety requirements. Should discrepancies between the codes arise, they must be called to the attention of the Texas Department of Human Services for resolution.

(g) In the absence of a local building code, a nationally recognized building code must be used with regard to the construction integrity of the building. The Life Safety Code must be used for fire safety requirements.

(h) Each building must be classified as to building construction type for fire resistance rating purposes in accordance with NFPA 220 and the Life Safety Code.

(i) Enclosures of vertical openings between floors must meet the Life Safety Code.

(j) All interior walls, partitions, and roof structure in buildings of fire resistive and noncombustible construction must be of noncombustible or limited combustible materials.

(k) Building insulation materials, unless sealed on all sides and edges in an approved manner, must have a flame spread rating of 25 or less when tested in accordance with NFPA 255 and NFPA 258.

§19.312. Mechanical Requirements. The design of the mechanical systems must be done by or under the direction of a registered professional (mechanical) engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas, and the parts of the plans and specifications covering mechanical design must bear the legible seal of the engineer. Building services pertaining to utilities; heating, ventilating, and airconditioning systems; vertical conveyors; and chutes must be in accordance with the Life Safety Code. Required plumbing fixtures must be in accordance with the Life Safety Code and §19.306 of this title (relating to Architectural Space Planning and Utilization) in specific use areas.

(1) Plumbing.

(A) All plumbing systems must be designed and installed in accordance with the requirements of the plumbing code of the municipality. In the absence of a municipal code, a nationally recognized plumbing code must be used. Any discrepancy between an applicable code and these requirements must be called to the attention of the Texas Department of Human Services (DHS) for resolution.

(B) Supply systems must assure an adequacy of hot and cold water. An average rule-of-thumb design for hot water for resident usage (at 110 degrees Fahrenheit) is to provide 6 1/2 gallons per hour per resident in addition to kitchen and laundry use.

(C) Water supply must be from a system approved by the Water Utility Division, Texas Natural Resources Conservation Commission, or from a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Utility Division, Texas Natural Resources Conservation Commission.

(D) The sewage system must connect to a system permitted by the Watershed Management Division, Texas Natural Resources Conservation Commission, or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Utility Division, Texas Natural Resources Conservation Commission.

(E) The minimum ratio of fixtures to residents shall be as required in §19.306(3) of this title.

(F) For design calculation purposes, resident-use hot water must not exceed 110 degrees Fahrenheit at the fixture. (For purposes of conforming to licensure requirements, an operating system providing water from 100 degrees Fahrenheit to 115 degrees Fahrenheit is acceptable.) Hot water for laundry and kitchen use must be normally 140 degrees Fahrenheit except that dish sanitizing, if done by hot water, must be 180 degrees Fahrenheit.

(G) Water closets raised to provide a seat height 17 inches to 19 inches from the floor is required for persons with disabilities.

(H) Showers for wheelchair residents must not have curbs. Tub and shower bottoms must have a slip-resistant surface. Shower and tub enclosures, other than curtains, must be of tempered glass, plastic, and other safe materials.

(I) Drinking fountains must not extend into exit corridors.

(J) Fixture controls easily operable by residents must be provided (such as lever type).

(K) Plumbing fixtures for residents must be vitreous china or porcelain finished cast iron or steel unless otherwise approved by DHS. Bathing units constructed of class B fire rated fiberglass are acceptable for use.

(L) Hand-washing sinks for staff use are required in many areas throughout the facility in accordance with §19.306 of this title (relating to Architectural Space Planning and Utilization). Lavatories are required to be provided adjacent to water closets in each area.

(M) The soiled utility room must be provided with a flushing device such as a water closet with bedpan lugs, a spray hose with a siphon breaker or similar device, such as a high neck faucet with lever controls and a deep sink that is large enough to submerge a bedpan. A sterilizer for sanitizing may be used in place of a deep sink.

(N) Siphon breakers or back-flow preventers must be installed with any water supply fixture where the outlet or attachments may be submerged.

(O) Clean-outs for waste piping lines must be provided and located so that there is the least physical and sanitary hazard to residents. Where possible, clean-outs must open to the exterior or areas which would not spread contamination during clean-out procedures.

(2) Heating, ventilating, and air-conditioning systems.

(A) Heating, ventilating, and air-conditioning systems must be designed and installed in accordance with the Heating, Ventilating, and Air-Conditioning Guide of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), except as may be modified by this section

(B) Heating, ventilating, and air-conditioning systems must meet the requirements of the Life Safety Code and NFPA 90A. The plans must have a statement verifying that the systems are designed to conform to NFPA 90A. Requirements for conditions related to

smoke compartmentation must be in accordance with §19.308 of this title (relating to Smoke Compartmentation (Subdivision of Building Spaces)).

(C) Systems using liquefied petroleum gas fuel must meet the requirements of the Railroad Commission of Texas and NFPA 54.

(D) The heating system must be designed, installed, and functioning to be able to maintain a temperature of at least 75 degrees Fahrenheit for all areas occupied by residents. For all other occupied areas, the indoor design temperature must be at least 72 degrees Fahrenheit. The cooling system must be designed, installed, and functioning to be able to maintain a temperature of not more than 78 degrees Fahrenheit. Occupied areas generating high heat, such as kitchens, must be provided with a sufficient cool air supply to maintain a temperature not exceeding 85 degrees Fahrenheit at the five-foot level (with doors kept closed as required by the Life Safety Code for hazardous areas). Supply air volume must be approximately equal to the air volume exhausted to the exterior for these areas.

(E) Air systems must provide for mixing at least 10% outside air for the supply distribution. Blowers for central heating and cooling systems must be designed so that they may run continuously.

(F) Floor furnaces, unvented space heaters, and portable heating units must not be used. Heating devices or appliances must not be a burn hazard (to touch) to residents.

(G) A combustion fresh air inlet must be provided to all gas or fossil fuel operated equipment in steel ducts or passages from outside the building in accordance with NFPA 54. Rooms must also be vented to the exterior to exhaust heated ambient air in the room. Combustion air will require one vent within 12 inches of the floor and one vent within 12 inches of the ceiling.

(H) The location and design of air diffusers, registers, and return air grilles, must ensure that residents are not in harmful or excessive drafts in their normal usage of the room.

(I) In areas requiring control of sanitation, the air flow must be from the clean area to the dirty area. Air supply to food preparation areas must not be from air which has circulated places such as resident bedrooms and baths.

(J) Air from unsanitary areas such as janitors closets, soiled linen areas, utility areas, and soiled area of laundry rooms, must not be returned and recirculated to other areas.

(K) Intakes for fresh outside air must be located sufficiently distant from exhaust outlets or other areas or conditions which may contaminate or otherwise pollute the incoming fresh air. Fresh air inlets must be appropriately screened to prevent entry of debris, rodents, and animals. Provision must be made for access to such screens for periodic inspection and cleaning to eliminate clogging or air stoppage (see paragraph (3)(C)(i) of this section).

(L) Systems must be designed as much as possible to avoid having ducts passing through fire walls or smoke barrier walls. All openings or duct penetrations in these walls must be provided with approved automatic dampers. Smoke dampers at smoke partitions must close automatically upon activation of the fire alarm system to prevent the flow of air or smoke in either direction.

(M) Ducts with smoke dampers must have maintenance panels for inspections. The maintenance panels must be removable without tools. Means of access must also be provided in the ceiling or side wall to facilitate smoke damper inspection readily and without obstruction. Location of dampers must be identified on the wall or ceiling of the occupied area below.

(N) Fusible links are not approved for smoke dampers.

(O) Central air supply systems and/or systems serving means of egress must automatically and immediately shut down upon activation of the fire alarm system. (An exception must be approved, engineered smoke-removal systems.)

(P) Ducts must be of metal or other approved noncombustible material. Cooling ducts must be insulated against condensation drip.

(3) Ventilating and exhaust.

(A) General ventilating systems must be in accordance with paragraph (2) of this subsection.

(B) Provisions for natural ventilation using windows or louvers must be incorporated into the building design where possible and practical. These windows or louvers must have insect screens.

(C) Details for the ventilation system are set out in this subparagraph. All air-supply and air-exhaust systems must be mechanically-operated. The ventilation rates shown in the table in clause (xi) of this subparagraph must be considered as minimum acceptable rates and must not be construed as precluding the use of higher ventilation rates.

(i) Outdoor air intakes must be located as far as practical (but normally not less than ten feet) from exhaust outlets or ventilating systems, combustion equipment stacks, medical vacuum systems, plumbing vent stacks, or from areas which may collect vehicular exhaust and other noxious fumes.

(ii) The ventilation systems must be designed and balanced to provide the pressure relationship as shown in the table in clause (xi) of this subparagraph. A final engineered system air balance report will be required for the completed system to be furnished and certified by the installer.

(iii) The bottoms of ventilation openings must be not less than three inches above the floor of any room.

(iv) Doors protecting corridors or ways of egress must not have air transfer grilles or louvers. Corridors must not be used to supply air to or exhaust air from any room except that air from corridors may be used as make-up air to ventilate small toilet rooms, janitor's closets, and small electrical or telephone closets opening directly on corridors, provided that the ventilation can be accomplished by door undercuts not exceeding 3/4 inches.

(v) All exhausts must be continuously ducted to the exterior. Exhausting air into attics or other spaces is not permitted. Duct material must be metal.

(vi) All central ventilation or air-conditioning systems must be equipped with filters of sufficient efficiency to minimize dust and lint accumulations throughout the system and building including supply and return plenums and ductwork. Filters with efficiency rating of 80% or greater (based on ASHRAE) are recommended. Filters for individual room units must be as recommended by the equipment manufacturer. Filters must be easily accessible for routine changing or cleaning.

(vii) Static pressures of systems must be within limits recommended by ASHRAE and the equipment manufacturer (upstream and downstream).

(viii) In geographic locations or interior room areas where extreme humidity levels are likely to occur for ex-

tended periods of time, apparatus for controlling humidity levels (preferably between 40-60%) are recommended to be installed as a part of central systems and with automatic humidistat controls.

(ix) Exhaust hoods, ducts, and automatic extinguishers for kitchen cooking equipment must be in accordance with NFPA 96.

(x) Forced air exhaust must be provided in laundries, kitchens, and dishwashing areas to remove excess heat and moisture and to maintain air flow in the direction of clean to soiled areas.

(xi) Ventilation requirements for nursing areas must be according to the following table:

Figure 3: 40 TAC §19.312(3)(C)(xi)

(xii) With relationship to adjacent areas, a positive air pressure must be provided for clean utility rooms, clean linen rooms, and medication rooms. Conditioned supply air must be introduced into these rooms.

(4) Sprinkler systems. The following requirements are applicable to sprinkler systems:

(A) sprinkler systems must be in accordance with NFPA 13 and this subchapter;

(B) the design and installation of sprinkler systems must meet any applicable state laws pertaining to these systems and one of the following criteria:

(i) the sprinkler system plans and installation must be approved by the Texas Department of Insurance;

(ii) the sprinkler system must be designed by a qualified registered professional engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas. The engineer must supervise the installation and provide written approval of the completed installation; and

(iii) the sprinkler system must be planned and installed in accordance with NFPA 13 by firms with certificates of registration issued by the office of the state fire marshal that have at least one full-time licensed responsible managing employee (RME). The RME's license number and signature must be included on the prepared sprinkler drawings;

(C) the approved sprinkler plans must be submitted to DHS along with final construction plans for general appraisal, review, and record; and

(D) particular attention should be paid to adequate, safe, and reasonable freeze protection for all piping. The design of freeze protection should minimize the need for dependence on staff action or intervention to provide protection.

§19.313. Electrical Requirements.

(a) The design of the electrical systems must be done by or under the direction of a registered professional electrical engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas, and the parts of the plans and specifications covering electrical design must bear the legible seal of the engineer. Requirements pertaining to utilities, heating, ventilating, and air-conditioning systems, vertical conveyors, and chutes must be in accordance with the Life Safety Code, Chapter 7, Building Service and Fire Protection Equipment.

(b) Requirements for fire protection systems must be in accordance with §19.309 of this title (relating to Fire Protection Systems).

(c) Electrical systems must meet the requirements of the NFPA 70.

(d) Specific requirements for lighting and outlets at resident bedrooms must be in accordance with §19.306 of this title (relating to Architectural Space Planning and Utilization).

(1) Emergency electrical service.

(A) To provide electricity during an interruption of the normal electric supply, an emergency source of electricity must be provided and connected to certain circuits for lighting and power.

(B) Emergency electrical connection service must be provided to the distribution systems as required by the Life Safety Code and NFPA 99.

(i) Emergency systems must include the following:

(I) illumination for means of egress, nurse stations, medication rooms, dining and living rooms, group bathing rooms (those not directly connected to resident bedrooms), and areas immediately outside of exit door (egress lighting must not be switched);

(II) exit signs and exit directional signs as required by the Life Safety Code;

(III) alarm systems including fire alarms activated by manual sta-

tions, water flow alarm devices of sprinkler systems, fire and smoke detecting systems, and alarms required for nonflammable medical gas systems if installed (where hospital-type functions are included in the nursing home facility, applicable standards will apply);

(IV) task illumination and selected receptacles at the generator set location;

(V) selected duplex receptacles including such areas as resident corridors, each bed location where patient care-related electrical appliances are utilized, nurse stations, and medication rooms including biologicals refrigerator;

(VI) nurse calling systems;

(VII) resident room night lights;

(VIII) a light and receptacle in the electrical and/or boiler room;

(IX) elevator cab lighting, control, and communication systems;

(X) all facility telephone equipment; and

(XI) paging or speaker systems if intended for communication during emergency. Radio transceivers where installed for emergency use must be capable of operating for at least one hour upon total failure of both normal and emergency power.

(ii) Critical systems (delayed automatic or manual connections to critical systems) must include the following:

(I) heating equipment must provide heating for general resident rooms. This will not be required if:

(-a-) the outside design temperature is higher than 20 degrees Fahrenheit (-6 degrees Celsius);

(-b-) the outside design temperature is lower than 20 degrees Fahrenheit (-6 degrees Celsius) and where selected rooms are provided for the needs of all confined residents, then only those rooms need to be heated; or

(-c-) the facility is served by a dual source of normal power; and

(II) in instances when interruptions of power would result in elevators stopping between floors, throw-over facilities must be provided to allow the temporary operation of any elevator for the release of passengers.

(C) The emergency lighting must be automatically in operation within ten seconds after the interruption of normal electric power supply. Emergency service to receptacles and equipment may be delayed automatic or manually connected. Receptacles connected to emergency power must have red face plates. Stored fuel capacity must be sufficient for not less than four-hour operation of required generator.

(D) The design and installation of emergency motor generators must be in accordance with NFPA 37, NFPA 99, and NFPA 110.

(i) Generators must be a minimum of three feet from the combustible exterior building finish and a minimum of five feet from a building opening if located on the exterior of the building.

(ii) Generators located on the exterior of the building must be provided with a noncombustible protective cover or be protected as per manufacturer's recommendations.

(iii) Motor generators fueled by public utility natural gas must have the capability to be switched to an alternate fuel source in accordance with NFPA 70.

(E) The normal wiring circuit(s) for the emergency system must be kept entirely independent of all other wiring and must not enter the same race-ways, boxes, or cabinets in accordance with NFPA 70.

(2) General lighting requirements are as follows:

(A) all spaces occupied by people, machinery, equipment, approaches to buildings, and parking lots must have lighting;

(B) the quality, intensity, and type of lighting must be adequate and appropriate to the space and all functions within the space;

(C) minimum lighting levels can be found in the Illuminating Engineering Society (IES) Lighting Handbook, latest edition. Minimum illumination must be 20-foot candles in resident rooms, corridors, nurses' stations, dining rooms, lobbies, toi-

lets, bathing facilities, laundries, stairways, and elevators. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for overbed reading lamps, medication-preparation or storage area, kitchens, and nurse's station desks must be 50 foot candles. Illumination requirements for these areas apply to the task performed and should be measured on the task;

(D) nursing unit corridors must have general illumination with provisions for reduction of light levels at night;

(E) exposed incandescent light bulbs (or other high heat generating lamps) in closets or other similar spaces must be provided with basket wire guards or other suitable shield to prevent contact of combustible materials with the hot bulb and to help prevent breakage; and

(F) exposed incandescent or fluorescent bulbs will not be permitted in food service or other areas where glass fragments from breakage may get into food, medications, linens, or utensils. All fluorescent bulbs will be protected with a shield or catcher to prevent bulb drop-out.

(3) Receptacles (convenience outlets).

(A) Receptacles at bedrooms must be in accordance with §19.306(1)(G) of this title (relating to Architectural Space Planning and Utilization).

(B) Duplex receptacles for general use must be installed in corridors spaced not more than 50 feet apart and within 25 feet of ends of corridors.

(C) Receptacles must be provided for essential needs such as medication refrigerators and life support systems or equipment. At least one outlet in each resident corridor must be provided with emergency electrical service. All receptacles on emergency circuits must be clearly, distinctly, and permanently identified, such as using a red face plate and/or a small label that says "Emergency."

(D) Receptacles in the remainder of the building must be sufficient to serve the present and future needs of the residents and equipment

(E) Location of receptacles (horizontally and vertically) should be carefully planned and coordinated with the ex-

pected designed use of furnishings and equipment to maximize their accessibility and to minimize conditions such as beds or chests being jammed against plugs used in the outlets.

(F) Exterior receptacles must be approved waterproof type

(G) Ground fault interruption protection must be provided at appropriate locations such as at whirlpools and other wet areas in accordance with the National Electrical Code.

(4) Nurse call systems. Intercom-type systems must be approved by DHS prior to installation.

(A) A nurse call system consists of power units, annunciator control units, corridor dome stations, emergency call stations, bedside call stations, and activating devices. The units must be compatible and laboratory listed for the system and use intended.

(B) Each resident bedroom must be served by at least one calling station and each bed must be provided with a call switch. Two call switches serving adjacent beds may be served by one calling station. Each call entered into the system must activate a corridor dome light above the bedroom/bathroom/toilet corridor door, a visual signal at the nurses station which indicates the room from which the call was placed, and a continuous or intermittent continuous audible signal of sufficient amplitude to be clearly heard by nursing staff. The amplitude or pitch of the audible signal must not be such that it is irritating to residents or visitors. The system must be designed so that calls entered into the system may be canceled only at the calling station. Intercom-type systems must be installed only after approved by DHS.

(C) Nurse calling systems which provide two-way voice communication must be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating.

(D) A nurse call emergency switch(es) must be provided for resident use at each resident's toilet, bath, and shower. These switches must be usable by residents using the fixtures and by a collapsed resident lying on the floor.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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TRD-9503641 Nancy Murphy
Section Manager, Media
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For further information, please call: (512)
450-3765

◆ ◆ ◆
**Chapter 19. Long Term Care
Nursing Facility
Requirements for Licensure
and Medicaid Certification**

**Subchapter D. Admission,
Transfer, and Discharge
Rights**

• **40 TAC §§19.301-19.305**

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502) , §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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**Subchapter E. Resident
Behavior and Facility Prac-
tice**

• **40 TAC §19.401**

The repeal is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil

Statutes, Article 4413 (502) , §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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◆ ◆ ◆
**Chapter 19. Nursing Facility
Requirements for Licensure
and Medicaid Certification**

Subchapter E. Resident Rights

• **40 TAC §§19.401-19.414,
19.416-19.421**

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§19.406. Free Choice.

(a) Resident rights. The resident has the right to:

(1) choose and retain a personal attending physician, subject to that physician's compliance with the facility's standard operating procedures for physician practices in the facility;

(2) be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(3) unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State of Texas, participate in planning care and treatment or

changes in care and treatment. See §19.419 of this title (relating to Directives and Durable Powers of Attorney).

(b) Licensed-only facilities The resident must be allowed complete freedom of choice to obtain pharmacy services from any pharmacy that is qualified to perform the services. A facility must not require residents to purchase pharmaceutical supplies or services from the facility itself or from any particular vendor. The resident has the right to be informed of prices before purchasing any pharmaceutical item or service from the facility, except in an emergency.

(c) Additional requirements regarding freedom of choice for Medicaid recipients. The recipient must be allowed complete freedom of choice to obtain any Medicaid services from any institution, agency, pharmacy, person, or organization that is qualified to perform the services, unless the provider causes the facility to be out of compliance with the requirements specified in this chapter.

(1) A facility must not require recipients to purchase supplies or services, including pharmaceutical supplies or services, from the facility itself or from any particular vendor. The recipient has the right to be informed of prices before purchasing any item or services from the facility, except in an emergency (see §19.1502(b)(3) of this title (relating to Choice of Pharmacy Provider)).

(2) The facility must furnish Medicaid recipients with complete information about available Medicaid services, how to obtain these services, their rights to freely choose service providers as specified in this subsection and the right to request a hearing before the Texas Department of Human Services (DHS) if the right to freely choose providers has been abridged without due process.

§19.416 Personal Property. The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing as space permits, unless to do so would infringe upon the rights or health and safety of other residents. Reasons for any limitations are documented in the resident's clinical record. See §19.1921(n) of this title (relating to General Requirements for a Nursing Facility).

(1) If the resident dies, personal property must be transferred to the estate or the person designated by the resident.

(2) If it is donated or sold to the facility by the resident or estate, the transaction must be documented.

(3) If the resident dies and there is no responsible party, family, or legal

guardian and no arrangements have been made for the disposition of property, the facility must dispose of property according to the Texas Property Code, Title 6, Chapter 71 (relating to Escheat of Property) and according to the Texas Probate Code, Chapter 10 (relating to Payment of Estates into State Treasury).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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◆ ◆ ◆
**Chapter 19. Long Term Care
Nursing Facility
Requirements for Licensure
and Medicaid Certification**

Subchapter F. Quality of Life

• 40 TAC §§19.501-19.505

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities, the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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**Chapter 19. Nursing Facility
Requirements for Licensure
and Medicaid Certification**

**Subchapter F. Admission,
Transfer, and Discharge
Rights in Medicaid-Certified
Facilities**

• 40 TAC §§19.501-19.505

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

*§19.502. Transfer and Discharge in
Medicaid-certified Facilities.*

(a) Definition. Transfer and discharge includes movement of a resident to a bed outside the certified facility, whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement within the same certified facility.

(b) Transfer and discharge requirements. The facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless.

(1) the transfer or discharge is necessary for the resident's welfare, and the resident's needs cannot be met in the facility;

(2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.

(3) the safety of individuals in the facility is endangered;

(4) the health of other individuals in the facility would otherwise be endangered;

(5) the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;

(6) the resident, responsible party, or family or legal representative requests a voluntary transfer or discharge; or

(7) the facility ceases to operate or participate in the program which pays for the resident's care.

(c) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in subsection (b)(1)-(5) of this section, the resident's clinical record must be documented. The documentation must be made by:

(1) the resident's physician when transfer or discharge is necessary under subsection (b)(1) or (2) of this section; and

(2) a physician when transfer or discharge is necessary under subsection (b)(4) of this section.

(d) Notice before transfer. Before a facility transfers or discharges a resident, the facility must:

(1) notify the resident and, if known, a responsible party or family or legal representative of the resident about the transfer or discharge and the reasons for the move in writing and in a language and manner they will understand;

(2) record the reasons in the resident's clinical record; and

(3) include in the notice the items described in subsection (f) of this section.

(e) Timing of the notice.

(1) Except when specified in paragraph (3) of this subsection, the notice of transfer or discharge required under subsection (d) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(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) Notice may be made as soon as practicable before transfer or discharge when:

(A) the safety of individuals in the facility would be endangered, as specified in subsection (b)(3) of this section;

(B) the health of individuals in the facility would be endangered, as

specified in subsection (b)(4) of this section;

(C) the resident's health improves sufficiently to allow a more immediate transfer or discharge, as specified in subsection (b)(2) of this section;

(D) the transfer and discharge is necessary for the resident's welfare because the resident's needs cannot be met in the facility, as specified in subsection (b)(1) of this section, and the resident's urgent medical needs require an immediate transfer or discharge; or

(E) a resident has not resided in the facility for 30 days.

(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) Contents of the notice. For nursing facilities, the written notice specified in subsection (d) of this section must include the following:

(1) the reason for transfer or discharge;

(2) the effective date of transfer or discharge;

(3) the location to which the resident is transferred or discharged;

(4) a statement that the resident has the right to appeal the action as outlined in DHS's Fair Hearings, Fraud, and Civil Rights Handbook by requesting a hearing through the Medicaid eligibility worker at the local DHS office within ten days;

(5) the name, address, and telephone number of the regional representative of the Office of the State Long Term Care Ombudsman, Texas Department on Aging, and of the toll-free number of the Texas Long Term Care Ombudsman, 1-800-252-2412 or 1-800-252-2312;

(6) in the case of a resident with mental illness or mental retardation, the address and phone number of the state mental health/mental retardation authority, which is: Texas Department of Mental Health and

Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, (512) 323-3282; and the phone number of the agency responsible for the protection and advocacy of persons with mental illness or mental retardation and/or related conditions, which is: Advocacy Incorporated, 7800 Shoal Creek Boulevard, Suite 175-E, Austin, Texas 78757, (512) 454-4819.

(g) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(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) the reasons for the relocation;

(2) the effective date of the relocation; and

(3) the room to which the facility is relocating the resident.

(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 ten 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.

(j) Fair hearings-All other discharges.

(1) Individuals who receive a discharge notice from a facility have ten 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.

(k) 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.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority

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**Chapter 19. Long Term Care
Nursing Facility
Requirements for Licensure
and Medicaid Certification**

Subchapter G. Resident Assessment

◆ ◆ ◆
• 40 TAC §§19.601-19.604

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502) , §16, which pro-

vides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority

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**Chapter 19. Nursing Facility
Requirements for Licensure
and Medicaid Certification**

**Subchapter G. Resident
Behavior and Facility
Practice**

◆ ◆ ◆
**• 40 TAC §§19.601, 19.602, 19.604,
19.606**

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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**Chapter 19. Long Term Care
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Requirements for Licensure
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Subchapter H. Quality of Life

◆ ◆ ◆
• 40 TAC §19.701

The repeal is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502) , §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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◆ ◆ ◆
**Chapter 19. Nursing Facility
Requirements for Licensure
and Medicaid Certification**

Subchapter H. Quality of Life

◆ ◆ ◆
• 40 TAC §§19.701-19.705

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§19.701. *Quality of Life.* A facility must care for its residents in a manner and in an environment that promotes maintenance or

enhancement of each resident's quality of life. If children are admitted to a facility, care must be provided to meet their unique medical and developmental needs.

(1) Dignity. The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his individuality.

(2) Self-determination and participation. The resident has the right to:

(A) choose activities, schedules, and health care consistent with his interests, assessments, and plans of care;

(B) interact with members of the community both inside and outside of the facility; and

(C) make choices about aspects of his life in the facility that are significant to him

(3) Participation in resident and family groups.

(A) A resident has the right to organize and participate in resident groups in the facility.

(B) A resident's family has the right to meet in the facility with the families of other residents in the facility

(C) The facility must provide a resident or family group, if one exists, with private space.

(D) Staff or visitors may attend meetings at the group's invitation.

(E) The facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings.

(F) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(G) The facility must assist residents to attend meetings.

(4) Participation in other activities. A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(5) Accommodation of needs. A resident has the right to:

(A) reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(B) receive notice before the resident's room or roommate in the facility is changed.

(6) Accommodations for Children. Pediatric residents should be matched with roommates of similar age and developmental levels.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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**Chapter 19. Long Term Care
Nursing Facility
Requirements for Licensure
and Medicaid Certification**

Subchapter I. Nursing Services

**• 40 TAC §§19.801-19.806,
19.808-19.813**

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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**Chapter 19. Nursing Facility
Requirements for Licensure
and Medicaid Certification**

**Subchapter I. Resident
Assessment**

• 40 TAC §§19.801-19.803

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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**Chapter 19. Long Term Care
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Requirements for Licensure
and Medicaid Certification**

Subchapter J. Dietary Services

• 40 TAC §§19.901-19.911

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter J. Quality of Care

• 40 TAC §19.901

The new section is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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Chapter 19. Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter K. Physician Ser- vices

• 40 TAC §§19.1001-19.1005, 19.1007-19.1010

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter K. Nursing Ser- vices

• 40 TAC §§19.1001, 19.1002, 19.1004, 19.1006, 19.1010-19. 1012

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§19.1006. *Nursing Facility Restorative Nursing Care.* The facility must have a program of restorative nursing care that is an integral part of nursing service and is directed toward helping each resident to achieve and maintain an optimal level of self-care and independence, as defined by the Comprehensive Assessment and Comprehensive Care Plan. Nursing personnel must be trained in restorative nursing and must provide restorative services daily for residents who require them. Nursing personnel must routinely record these services in the resident's clinical record.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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Chapter 19. Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter L. Specialized Re- habilitative Services

• 40 TAC §§19.1101-19.1106

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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**Chapter 19. Nursing Facility
Requirements for Licensure
and Medicaid Certification**
Subchapter L. Dietary Services
• 40 TAC §§19.1101-19.1105,
19.1107-19.1111

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§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 as follows:

(1) facility population: 60 residents or under-eight hours;

(2) facility population. each additional 30 residents or fraction thereof-four hours.

(b) To meet the consultant-hour requirement, time is accrued and counted exactly as rendered.

(c) The qualified dietitian must be a part of the interdisciplinary team conducting assessment and care planning where indicated by the individual resident's needs.

(d) The facility must outline consultant services in a signed contract. This requirement does not apply to facilities which employ a qualified dietitian on their staff.

§19.1107. Menus and Nutritional Adequacy.

(a) Menus must:

(1) meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

(2) be prepared at least one week in advance;

(3) be written for each type of diet ordered in the facility, in accordance with the facility's diet manual;

(4) be written or completely evaluated by the facility's dietitian or consultant dietitian;

(5) vary from week to week, taking the general age-group of residents into consideration; and

(6) be followed. Any substitutions must be documented as required in subsection (d) of this section.

(b) A qualified dietitian may accept diet orders and changes from the physician.

(c) The facility must ensure that a current diet manual, approved by the facility dietitian or the consultant dietitian, is readily available to dietary service personnel and the supervisor of nursing service. To be current, the diet manual must be no more than five years old.

(d) The facility must retain records of menus served and food purchased for 30 days. A list of residents receiving special diets and a record of their diets must be kept in the dietary area for at least 30 days.

(e) The facility must post the current week's menu:

(1) in the dietary department, including therapeutic diet menus, so employees responsible for purchasing, preparing, and serving foods can use it; and

(2) in a convenient location so the residents may see it.

(f) The dietary department must keep a seven-day supply of staple foods and a two-day supply of perishable foods at all times. The facility is allowed the flexibility to use food on hand to make substitutions at any interval as long as comparable nutritional value is maintained. Any substitution of menu items must be recorded on the day of use. See also §19.1719(o)(1) of this title (relating to Other Rooms and Areas) for information concerning storage areas.

(g) Accommodation of resident needs. The facility must provide:

(1) table service for all who can and will eat at the table, including wheelchair residents;

(2) firm supports, such as over-bed tables, for serving trays to bedfast residents;

(3) sturdy tray stands of proper height to residents able to be out of bed for their meals;

(4) special eating equipment and utensils for residents who need them; and

(5) prompt assistance for residents who need help eating.

(h) An identification system, such as tray cards, must be available to ensure that all diets are served in accordance with physician's orders.

§19.1109. Food Intake. Food intake of residents must be monitored and recorded as follows.

(1) Deviations from normal food and fluid intake must be recorded in the clinical records. See also §19.1911(12)(b)(vi) of this title (relating to Contents of the Clinical Record) for information concerning dietary intake and clinical records.

(2) In-between meals and bed-time snacks, and supplementary feedings, either as a part of the overall care plan or as ordered by a physician, including caloric-restricted diets, must be documented using the point, percentage, or other system consistently facility-wide. See also §19.1911(12) (B)(vi) of this title (relating to Contents of the Clinical Record) for information concerning dietary intake and clinical records.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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**Chapter 19. Long Term Care
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Subchapter M. Dental Services
• 40 TAC §§19.1201-19.1208

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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◆ ◆ ◆
**Chapter 19. Nursing Facility
Requirements for Licensure
and Medicaid Certification**

**Subchapter M. Physician Ser-
vices**

- 40 TAC §§19.1201-19.1206,
19.1208, 19.1210, 19.1212

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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◆ ◆ ◆
**Subchapter N. Rehabilitative
Services**

- 40 TAC §§19.1301-19.1304

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and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§19.1302. *Qualifications.* Rehabilitative services must be provided under the written order of a physician by qualified personnel

(1) A qualified therapist is.

(A) a speech-language pathologist who:

(i) is a Texas licensed speech-language pathologist; or

(ii) meets the educational requirements for license and has accumulated, or is in the process of accumulating, the supervised professional experience (the internship) required for license;

(B) an audiologist who:

(i) is a Texas-licensed audiologist; or

(ii) meets the educational requirements for license and has accumulated, or is in the process of accumulating, the supervised professional experience (the internship) required for license;

(C) an occupational therapist (a qualified consultant) who is currently licensed by the Texas Board of Occupational Therapy Examiners;

(D) an occupational therapy assistant who is currently licensed by the Texas State Board of Occupational Therapy Examiners,

(E) a physical therapist who is currently licensed as a physical therapist by the Texas State Board of Physical Therapy Examiners; or

(F) a physical therapist assistant who is licensed as a physical therapist assistant by the Texas State Board of Physical Therapy Examiners.

(2) A physical therapy aide is a person who assists in the practice of physical therapy and whose activities require on-the-job training and on-site supervision by a physical therapist or physical therapist assistant. A physical therapy aide is not a certified corrective therapist or an adaptive or corrective physical education specialist.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority

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◆ ◆ ◆
**Chapter 19. Long Term Care
Nursing Facility
Requirements for Licensure
and Medicaid Certification**

**Subchapter O. Infection Con-
trol**

- 40 TAC §19.1401, §19.1402

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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◆ ◆ ◆
**Chapter 19. Nursing Facility
Requirements for Licensure
and Medicaid Certification**

Subchapter O. Dental Services

- 40 TAC §19.1401, §19.1402

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the

Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§19.1401. *Dental Services.*

(a) The facility must assist residents in obtaining routine and 24-hour emergency dental care.

(1) At the time of admission, the facility must obtain the name of the resident's preferred dentist and record the name in the clinical record.

(2) At least annually, the facility must ask each resident and/or responsible party if they desire a dental examination at the resident's expense.

(3) The facility must make all reasonable efforts to arrange for a dental examination for each resident who desires one.

(4) The facility is not liable for the cost of the resident's dental care.

(5) Licensed-only facilities must maintain a list of local dentists for residents who require one.

(b) Medicaid-certified facilities also must provide or obtain from an outside resource, in accordance with §19.1906 of this title (relating to Use of Outside Resources), the following dental services to meet the needs of each resident:

(1) emergency dental services, which are limited to procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures which are required to prevent the imminent loss of teeth; treatment of injuries to the teeth or supporting structures.

(A) Covered emergency dental procedures include, but are not limited to:

(i) alleviation of extreme pain in oral cavity associated with serious infection or swelling;

(ii) repair of damage from loss of tooth due to trauma (acute care only, no restoration);

(iii) open or closed reduction of fracture of the maxilla or mandible;

(iv) repair of laceration in or around oral cavity;

(v) excision of neoplasms, including benign, malignant and premalignant lesions, tumors and cysts;

(vi) incision and drainage of cellulitis;

(vii) root canal therapy. Payment is subject to dental necessity review and pre- and post-operative x-rays are required; and

(viii) extractions: single tooth, permanent; single tooth, primary; supernumerary teeth; soft tissue impaction; partial bony impaction; complete bony impaction; surgical extraction of erupted tooth or residual root tip.

(B) Routine restorative procedures are not considered emergency procedures. Dental services not covered include, but are not limited to:

(i) cleaning;

(ii) filling teeth with amalgam composite, glass ionomer, or any other restorative material;

(iii) cast or preformed crowns (capping);

(iv) restoration of carious or noncarious permanent or primary teeth, including those requiring root canal therapy;

(v) replacement or repositioning of teeth;

(vi) services to the alveolar ridges or periodontium of the maxilla and the mandible, except for procedures covered under subparagraph (A) of this paragraph; and

(vii) complete or partial dentures.

(2) assistance to the resident, if necessary:

(A) in making appointments, and

(B) by arranging for transportation to and from the dentist's office.

(3) prompt referral of residents with lost or damaged dentures to a dentist.

(4) coordination of dental services for pediatric residents age 12 months to 21 years, in accordance with Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) guidelines.

(c) Medicaid-certified facilities are not required to provide routine dental services.

(d) Payment for services provided on the teeth, gums, alveolar ridges, and supporting structures are not a benefit of the Texas Medicaid Program; however, recipi-

ents with applied income may use incurred medical expenses to pay for routine dental services and appliances.

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◆ ◆ ◆
Chapter 19. Nursing Facility
Requirements for Licensure
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Subchapter Q. Infection Control

• 40 TAC §19.1601, §19.1602

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§19.1601. *Infection Control.* The facility must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(1) Infection control program. The facility must establish an infection control program under which it:

(A) investigates, controls, and prevents infections in the facility;

(B) decides what procedures, such as isolation, should be applied to an individual resident; and

(C) maintains a record of incidents and corrective actions related to infections.

(2) Preventing spread of infection.

(A) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility must isolate the resident. Residents with communicable disease must be provided acceptable accommodations according to current practices and policies for infection control. See §19.1(b)(7)(K) of this title (relating to Basis and Scope) for information concerning the Centers for Disease Control Guidelines publications

(B) The facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

(C) The facility must require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice.

(D) The name of any resident with a reportable disease as specified in 25 Texas Administrative Code §§97.1-97.11 (relating to Control of Communicable Diseases) must be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures must be implemented as directed by the local health authority.

(E) The facility must have written policies for the control of communicable diseases in employees and residents and must maintain evidence of compliance with local and/or state health codes or ordinances regarding employee and resident health status.

(i) Tuberculosis.

(I) The facility must screen all employees for tuberculosis within two weeks of employment and annually, according to Center for Disease Control (CDC) guidelines. All persons providing services under an outside resource contract must, upon request of the nursing facility, provide evidence of compliance with this requirement.

(II) All residents should be screened upon admission and after exposure to tuberculosis, in accordance with the attending physician's recommendations and CDC guidelines.

(ii) Hepatitis B.

(I) The facility's policy regarding hepatitis B vaccinations must address all circumstances warranting these vaccinations and identify employees at risk of directly contacting blood or potentially infectious materials.

(II) All these employees must be offered hepatitis B vaccinations within ten days of employment. If the employee initially declines hepatitis B vaccination but at a later date, while still at risk of directly contacting blood or potentially infectious materials, decides to accept the vaccination, the facility must make the vaccination available at that time.

(3) Linens. Personnel must handle, store, process, and transport linens so as to prevent the spread of infection. See also §19.1726 of this title (relating to Linen).

(4) The Quality Assessment and Assurance Committee as described in §19.1917 of this title (relating to Quality Assessment and Assurance) will monitor the infection control program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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Subchapter Q. Medical Review and Re-evaluation

• 40 TAC §§19.1602-19.1611, 19.1613

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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Chapter 19. Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter R. Vendor Payment • 40 TAC §§19.1701-19.1708

The repeals are proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter R. Vendor Payment • 40 TAC §§19.1701-19.1727

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and

under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042

§19.1702. *Applicable Codes and Standards*

(a) The facility must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (NFPA) as designated by federal law and regulations (Health and Safety Code, §242.039(b)). The Life Safety Code is available for inspection at the Office of the Federal Register Information Center, Washington, D.C. Copies may be obtained from the NFPA, Batterymarch Park, Quincy, Massachusetts 02200. The New Health Care Occupancies chapter of the Life Safety Code is applicable to new construction, conversions of existing unlicensed buildings, remodeling, and additions. The Existing Health Care Occupancies chapter of the Life Safety Code is applicable to existing nursing homes. Life Safety features and equipment that have been installed in existing buildings which are now in excess of that required by the Life Safety Code must continue to be maintained or may be completely removed if prior approval is obtained from the Texas Department of Human Services (DHS)

(b) In addition to the Life Safety Code, facilities must meet any other codes and standards of the NFPA referenced by the Life Safety Code and those listed in this chapter, except as may be otherwise approved or required by DHS.

(c) The following codes, standards, or guidelines generally govern their subject areas for existing construction

(1) If the municipality has a building code and a plumbing code, those codes govern.

(2) In the absence of municipal codes, nationally recognized codes must be used. To assure continuity, all nationally recognized codes, when used, must be publications of the same group or organization.

(3) Heating, ventilating, and air-conditioning systems must be designed and installed in accordance with NFPA 90A and the Heating, Ventilating, and Air-Conditioning Guide of the American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE), except as may be modified in this subchapter.

(4) Electrical and illumination systems must be designed and installed in accordance with NFPA 70 and the Lighting

Handbook of the Illuminating Engineering Society (IES) of North America, except as may be modified in this subchapter.

(5) Accessibility for individuals with disabilities must be designed and installed in accordance with the following laws: the Americans with Disabilities Act of 1990 (Public Law 101-336; Title 42, United States Code, Chapter 126), Title 28, Code of Federal Regulations, Part 35; Texas Civil Statutes, Article 9102, and Title 16, Texas Administrative Code, Chapter 68. Plans for new construction, substantial renovations, modifications, and alterations must be submitted to the Texas Department of Licensing and Regulation (Attn: Elimination of Architectural Barriers Program) for accessibility approval under Article 9102.

(6) Every building and portion thereof must be capable of sustaining all dead and live loads in accordance with accepted engineering practices and standards.

(7) Each building must be classified as to building construction type for fire resistance rating purposes in accordance with NFPA 220 and the Life Safety Code.

(8) Building insulation materials, unless sealed on all sides and edges in an approved manner with noncombustible material, must have a flame-spread rating of 25 or less when tested in accordance with NFPA 255 and NFPA 258.

§19.1704. *Emergency Power.*

(a) An emergency electrical power system must supply power adequate at least for lighting all entrances and exits; equipment to maintain the fire detection, alarm, and extinguishing systems; and life-support systems if the normal electrical supply is interrupted. Emergency electrical services by generator or battery must be provided to comply with the provisions of the National Fire Protection Association (NFPA) 70. Battery systems must be capable of sustaining power for a duration of at least one and one-half hours.

(1) Life safety systems must include:

(A) illumination for means of egress, nurse stations, medication rooms, dining and living rooms, and areas immediately outside of exit doors;

(B) exit signs and exit directional signs required by the Life Safety Code;

(C) alarm systems, including fire alarms activated by manual stations, water flow alarm devices of sprinkler systems, fire and smoke detecting systems, and alarms required for nonflammable medical

gas systems if installed (where hospital-type functions are included in the nursing home facility, applicable standards apply);

(D) task illumination and selected receptacles at any required or provided generator set location;

(E) selected duplex receptacles, including receptacles in resident corridors, each resident-bed location where patient-care-related electrical appliances are utilized, nurse stations, medication rooms, including biological refrigerator, if a generator is required or provided;

(F) nurse calling systems;

(G) resident room night lights where required;

(H) elevator cab lighting, control, and communication systems;

(I) all facility telephone equipment; and

(J) those paging or speaker systems that are necessary for the communication plan for an emergency. Radio transceivers that are necessary for emergency use must be capable of operating for at least one hour upon total failure of both normal and emergency power.

(2) Where critical systems are provided, there must be a delayed automatic connection.

(3) The emergency lighting must be automatically in operation within 10 seconds after the interruption of normal electric power supply. Emergency service to receptacles and equipment may be a delayed automatic connection. Receptacles connected to emergency power must be of a uniform and distinctive color. Stored fuel capacity must be sufficient for not less than four-hour operation of required generator.

(4) Emergency motor generator, if required or provided, must meet the following standards:

(A) any emergency generator must be installed in accordance with NFPA 37 and NFPA 99;

(B) generators located on the exterior of the building must be provided with a noncombustible protective cover or be protected as per manufacturer's recommendations; and

(C) motor generators fueled by public utility natural gas must have the capacity to be manually or automatically switched to an alternate fuel source. (Reference NFPA 70).

(5) Wiring for the emergency system must be in accordance with NFPA 70.

(b) When life support systems are used, the facility must provide emergency electrical power with an emergency generator (as defined in NFPA 99, Health Care Facilities) located on the premises.

§19.1708. Resident Call System.

(a) The nurse's station must be equipped to receive resident calls through a communication system from:

- (1) resident rooms; and
- (2) toilet and bathing facilities.

(b) The call cord does not have to be accessible in all parts of the room, but must be accessible to the resident. The system must be connected to on and off switches operable at each bed, toilet unit, and bathing unit.

(c) Each call entered into the system must activate a corridor dome light above the bedroom/bathroom/toilet corridor door that opens onto a corridor.

(d) A visual signal at the nurses station must indicate the room from which the call was placed with an audible signal of sufficient amplitude to be clearly heard by nursing staff. The amplitude or pitch of the audible signal must not be irritating to residents or visitors.

(e) The system must be designed so calls entered into the system may be canceled only at the calling station. Intercom-type systems must be approved by the Texas Department of Human Services prior to installation.

§19.1709 Dining and Resident Activities.

(a) The facility must provide one or more rooms designated for resident dining and activities. These rooms must be:

- (1) well-lighted;
- (2) well ventilated, with non-smoking areas identified;
- (3) adequately furnished; and
- (4) sufficiently spacious to accommodate all activities.

(b) Resident living areas.

(1) Resident living areas such as living rooms, dayrooms, lounges, recreation rooms, and sunrooms must be provided to meet the needs of the residents' comfort. Combined living and dining areas should be

not less than 19 square feet per bed, but must not be less than 10 square feet per bed.

(2) No single room less than 100 square feet will be included as part of the acceptable total area required.

(3) At least one living area must have an outside window.

(4) Living areas must be provided with comfortable furniture of substantial construction and be appropriately decorated to provide a pleasant and comfortable environment for residents and visitors. Furnishings and decorations must not obstruct exits or ways of egress.

(5) Nonsmoking areas must be provided and identified.

(c) Dining areas. Dining space must be provided to adequately serve needs of the residents and provide an efficient, sanitary, and pleasant environment for dining.

§19.1710. Other Environmental Conditions. The facility must provide a safe, functional, sanitary, and comfortable environment for residents, staff, and the public.

(1) The facility must:

(A) establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;

(B) have adequate outside ventilation by means of windows, mechanical ventilation, or a combination of the two;

(C) equip corridors with firmly secured handrails on each side on all walls 18 inches or greater. These rails must be substantially anchored to withstand downward force and must be mounted 33 to 36 inches from the floor; and

(D) maintain an effective pest control program so that the facility is free of pests and rodents. (See §19.1725 of this title (relating to Pest Control)).

(2) No occupancies or activities undesirable to the health, safety, or well-being of residents will be located in the facility.

(3) For pediatric residents, the environment must be the least restrictive allowable while remaining within the parameters of safety. All areas of the facility accessible to children must be "child proof" for safety hazards. This type of safety proofing is above the normal level of hazard control maintained for adult residents and includes the addition of safety covers on electrical outlets not in use which are accessible to children.

(4) In operations where there is a chance of cross-contamination, clean and soiled operations must be separated to lessen the chance of cross-contamination by facility employees, residents, and others. This separation must be in relation to traffic flow, air currents, air exhaust, water flow, vapors, and other conditions.

(5) An electric water cooler or water fountain must be accessible to residents. When new drinking fountains are provided, at least one must be installed to be accessible to persons in wheelchairs.

(6) Public toilet(s) with sanitary handwashing and drying provisions must be provided or designated.

(7) If deodorant is used for air-freshening purposes, the following procedures must apply:

(A) deodorants or air fresheners are permitted provided the dispensing device is located where it is inaccessible to residents/patients;

(B) these products are not used to cover odors resulting from poor housekeeping practices or unsanitary conditions;

(C) these products are not used in excess;

(D) there is no contradiction on the label of the product indicating that the product should not be used in the presence of the aged or ill;

(E) devices, such as ozone generators, ultra-violet generators, and smoke eliminators, must be approved by the Texas Department of Human Services.

§19.1711. Site and Grounds.

(a) Site grades must provide for positive surface water drainage so that there will be no ponding or standing water at or near the building that would present a hazard to health or provide a breeding site or harborage for carriers of disease.

(b) Outdoor activity, recreational, and sitting spaces must be provided for residents as space permits.

(c) Each facility must have parking spaces to satisfy the needs of residents, employees, staff, and visitors. Provisions must be made for handicapped parking and access into the building.

(d) Protection must be provided for resident safety from traffic or other site hazards by the use of appropriate methods, such as fences, hedges, retaining walls, rail-

ings, or other landscaping. This protection must not inhibit the free emergency egress to a safe distance away from the building.

(e) Auxiliary buildings located on the site within 20 feet of the main licensed structure and which contain hazardous operations or contents, such as laundries or storage buildings, must meet the same code requirements for safety as the main licensed structure.

(f) Other buildings on the site must meet the appropriate occupancy section or separation requirements of the Life Safety Code

(g) All outside areas, grounds, and adjacent buildings on the site must be maintained in good condition and kept free of rubbish, garbage, and untended growth that may constitute a fire or health hazard.

(h) Enclosed exterior spaces, such as fenced areas, that are in a means of egress to a public way must meet the requirements of §19.2208(a)(6) of this title (relating to Standards for Certified Alzheimer's Facilities).

§19.1718. Elevators and Escalators. Elevators must comply with the provisions of the Life Safety Code and American National Standard Institute Safety Code for Elevators and Escalators (ANSI/ASME A17.1). Elevators are required for buildings having residents' facilities (such as bedrooms, dining, or recreation areas) or services (such as diagnostic or therapy) located on other than the main entrance floor. Passenger elevators and escalators must be inspected by a qualified agent at least every six months. Freight elevators must be inspected every 12 months.

§19.1719. Other Rooms and Areas.

(a) Nurses station. A nurses station is an area designated as the focal point on all shifts for the administration and supervision of resident-care activities for a designated number of resident bedrooms.

(1) All resident bedroom corridors must be observable by direct line of sight or by mechanical means from a designated nurses station or auxiliary station. There must be at least one nurses station per floor in multi-storied buildings.

(2) If all resident bedroom corridors are observable by direct line of sight from inside the nurses station or from within 24 inches of the counter or hall of the nurses station, no auxiliary stations are required, even if resident bedrooms are more than 150 feet from the nurses station.

(3) When resident bedrooms are more than 150 feet from the nurses station and the adjacent corridors are not observable from the station by direct line of sight,

an auxiliary station must be established and used.

(4) All corridors adjacent to resident bedrooms that are more than 150 feet from a designated nurses station or auxiliary station must be observable by direct line of sight from the designated nurses station or auxiliary station. Corridors located in the service area of an auxiliary station must be observable, as described in paragraph (3) of this subsection, at the auxiliary station.

(5) The 150-foot limitation described in this paragraph and paragraphs (3)-(4) of this subsection may be increased to 165 feet in facilities or additions to facilities completed before August 10, 1983.

(b) Auxiliary Station. Each auxiliary station must include a work area in which nursing personnel can document and maintain resident data, even if the facility's initial decision is to maintain clinical records at the nurses station.

(1) Auxiliary stations must be staffed by nursing personnel during all shifts.

(2) More than one auxiliary station may be assigned to a designated nurses station, regardless of the distance between stations. More than one corridor may be observed by mechanical means from a designated nurses station or auxiliary station.

(3) A nurse call system, located in the service area or a designated auxiliary station, must register calls at the nurses station to which it is assigned.

(4) Each auxiliary station must have an emergency electrical source adequate to power lights at the station.

(5) Medications and clinical records may be maintained at an auxiliary station.

(6) If a required auxiliary station does not already exist and the facility must establish a new auxiliary station, all applicable standards, particularly those pertaining to the physical plan and the Life Safety Code, must be observed. All renovations and structural changes require prior approval from the Texas Department of Human Services (DHS).

(7) All new construction completed after August 10, 1983, must allow direct line-of-sight observation of all resident bedroom corridors from the nurses station or auxiliary station.

(c) Mechanical means for resident observation.

(1) The nursing facility may use mechanical means, such as closed-circuit television and mirrors, to observe residents in the facility.

(2) Closed-circuit television monitoring systems must meet the following criteria.

(A) The camera(s) must be placed to view the entire corridor length, without any "blind spots."

(B) The camera(s) must be capable of providing recognizable images, in minimum and maximum light levels, for the complete viewing area.

(C) The monitor(s) must be installed and be clearly visible to persons in the nurses station or auxiliary station who are assigned to the area monitored by the camera.

(D) The system must be supplied with emergency power that enables the system to function during electrical service failures.

(E) Each camera must have its own separate monitor.

(F) If they perform the minimum basic functions specified in subparagraphs (A)-(D) of this paragraph, television monitoring systems installed before March 1984 may remain in service until the equipment is replaced or the system is expanded. Replacement systems or new component equipment must satisfy subparagraphs (A)-(E) of this paragraph.

(3) Mirrors must meet the following criteria:

(A) The mounting height of the mirror must be no less than six feet and eight inches from the floor to the bottom of the mirror.

(B) The mirror(s) must not extend more than three and one-half inches from the face of the corridor wall, unless the bottom of the mirror is more than seven feet and six inches above the floor.

(C) The mirror image must be clear enough that individuals can be recognized, in minimum and maximum light levels, throughout the viewing area.

(4) The monitoring systems described in this section must not be used to deny privacy to staff or residents.

(d) Resident call system. Each nurses station must be equipped to register residents' calls through a communication system from resident areas. (See §19.1708 of this title (relating to Resident Call System) for specific requirements.)

(e) Medication storage area. There must be sufficient, lockable, enclosed medi-

cine storage spaces, medicine room, or medication cart. The medication storage area must be furnished with a refrigerator. There must be sufficient space available for a medication preparation area equipped with a sink having hot and cold water. When not in use, the medication cart must be secured in a designated area. Only authorized personnel must have access to the medication storage area and the medication cart. Medication storage and preparation areas must be adequately ventilated and temperature controlled (See §19 1501 of this title (relating to Pharmacy Services)).

(f) Clean utility room. A clean utility room must be provided and must contain a sink with hot and cold water. It must be part of a system for storage and distribution of clean and sterile supply materials and equipment

(g) Soiled utility room. A soiled utility room must be provided and contain a flushing fixture and a sink with hot and cold water. It must be part of a system for collection and cleaning or disposal of soiled utensils or materials.

(h) Soiled linen room. Soiled linen rooms must be provided as needed commensurate with the type of laundry system used. In relation to adjacent areas, a negative air pressure must be provided with air exhausted through ducts to the exterior. Air must be exhausted continually whenever there are soiled linens in the room. A soiled linen room may be combined with a soiled utility room.

(i) Clean linen storage. Clean linen storage must be provided, conveniently located to resident bedroom areas

(j) Kitchens.

(1) Nursing facility kitchens will be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals. Consideration will be given to planning for the type of meals served, the overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food. Evaluation will be based on the number of meals served.

(2) Kitchen temperature, at peak load, must not exceed a temperature of 85 degrees Fahrenheit measured over the room at the five foot level. Sufficient heating must be provided to maintain an average temperature of not less than 70 degrees Fahrenheit in winter (with exhausts operating) at the five-foot level.

(3) The kitchen must have operational equipment for preparing and serving meals and for refrigerating and freezing of perishable foods, as well as equipment in, and/or adjacent to, the kitchen or dining area for producing ice.

(4) The kitchen must have facilities for washing and sanitizing dishes and cooking utensils. These facilities must be adequate for the number of meals served and the method of serving (such as use of permanent or disposable dishware). The kitchen must contain a multi-compartment sink large enough to immerse pots and pans. In all facilities, a mechanical dishwasher is required for sanitizing dishes. Separation of soiled and clean dish areas must be maintained, including air flow and traffic flow.

(5) The kitchen must have an adequate supply of hot and cold water. Hot water for sanitizing purposes must be 180 degrees Fahrenheit or the manufacturer's suggested temperature for chemical sanitizers, as specified for the system in use. For mechanical dishwashers, the temperature measurement is at the manifold. Hot water for general kitchen use must be 140 degrees Fahrenheit.

(6) A kitchen must have at least one handwashing lavatory in the food-preparation area. The dish washing area must have ready access to a handwashing lavatory or handsanitizing device. Handwashing lavatories must be provided with hot and cold running water, a sanitary soap dispenser, and paper towel dispenser (or hot air dryer)

(7) Nonabsorbent smooth finishes or surfaces must be used on kitchen floors, walls, and ceilings. These surfaces must be capable of being routinely sanitized to maintain a healthful environment.

(8) A janitor's closet with service sink must be easily and readily accessible to the kitchen.

(9) Kitchen exhaust hood at cooking equipment and its attached automatic chemical extinguisher must comply with National Fire Prevention Association (NFPA) 96. DHS may waive certain details of NFPA 96 for existing kitchen exhausts at cooking equipment provided that basic function and safety are not compromised.

(10) Gas-fired equipment must be in rooms of one-hour, fire-resistive construction and provided with sprinkler protection.

(k) Food storage areas.

(1) Food storage areas must provide for storage of a seven-day minimum supply of nonperishable (staple) foods and a two-day supply of perishable foods at all times

(2) Shelves and pallets must be moveable wire, metal, or sealed lumber, and walls must be finished with a nonabsorbent finish to provide a cleanable surface.

(3) Dry food storage must have a venting system to provide for reliable positive air circulation.

(4) The maximum room temperature for food storage must not exceed 85 degrees Fahrenheit at all times. The measurement must be taken at the five-foot level.

(5) Foods must not be stored on the floor. Dunnage carts or pallets may be used to elevate foods not stored on shelving.

(6) Sealed containers must be provided for storing dry foods after the package seal has been broken.

(7) Food storage areas may be located apart from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(l) Auxiliary serving kitchens (those not contiguous to food preparation/serving areas).

(1) Where service areas other than the kitchen are used to dispense foods, these must be designated as food service areas and must have equipment for maintaining required food temperatures while serving.

(2) Separate food service areas must have handwashing facilities as a part of the food service area.

(3) Finishes of all surfaces except ceilings must be the same as those required for dietary kitchens.

(m) Administrative and public areas. Facilities must have administrative area(s) for normal business transactions and maintenance of records.

(n) Laundry.

(1) Laundry facilities must be located in areas separate from resident rooms. The laundry must be designed, constructed, and equipped and appropriate procedures must be utilized to assure that laundry is handled, cleaned, and stored in a sanitary manner.

(2) Laundry for general linen and clothing must be arranged so as to separate soiled and clean operations as they relate to traffic, handling, and air currents. Suitable exhaust and ventilation must be provided to prevent air flow from soiled to clean areas.

(3) Floors, walls, and ceilings must be nonabsorbing and easily cleanable.

(4) Soiled linen must be stored and/or transported in closed or covered containers. Soiled linen storage or holding rooms must have a negative air pressure in relation to adjacent areas with air exhausted through ducts to the exterior.

(5) Laundry areas must have air supply and ventilation to minimize mildew and odors. Doors must not remain open, for sanitation and safety reasons.

(6) Room size, and number and type of appliances must provide efficient, sanitary, and timely laundry processing to meet the needs of the facility.

(7) The laundry, if located in the facility, must meet Life Safety Code requirements for separation and construction for hazardous areas.

(8) Gas fired equipment must be in rooms of one-hour, fire-resistive construction and provided with sprinkler protection.

(o) Resident-use laundry. This service, if provided, must be limited to not more than one residential type washer and dryer per laundry room. This room must be classified as a hazardous area according to the Life Safety Code.

(p) Personal grooming area. Space and equipment must be provided for the hair care and grooming needs of the residents. Hair care and grooming service will be provided in resident bedrooms or in designated areas which are not in a way of egress.

(q) Storage rooms. General and/or specific storage areas must be provided as needed and required for safe and efficient operation of the facility. Items must not be stored in inappropriate places such as corridors or rooms which are not equipped for special hazard protection.

(r) Janitor closets. In addition to the janitors' closet called for in certain departments, other janitors' closets must be provided throughout the facility to maintain a clean and sanitary environment. All janitor closets must have a negative air pressure in relation to adjacent areas with air exhausted through ducts to the exterior.

(s) Disposal facilities. A policy and procedure for the safe and sanitary disposal of special waste must be provided. The facility must comply with Texas Department of Health requirements as described in Texas Administrative Code, Title 25, §§1.131-1.137 (relating to Definitions and Treatment of Special Waste from Health Care Related Facilities). The facility must also comply with Texas Natural Resource Conservation Commission requirements for medical waste management (refer to 30 TAC Chapter 330, Subchapter Y). Space and facilities must be provided for the sanitary storage and disposal of waste, not classified as special, by incineration, mechanical destruction, compaction, containerization, removal, or contract with outside resources, or by a combination of these techniques.

(t) Maintenance/engineering service and equipment areas.

(1) The facility must provide storage for building equipment, supplies,

tools, parts, and yard maintenance equipment.

(2) Volatile liquids and supplies must not be kept within the main building housing residents.

(3) All equipment requiring periodic maintenance, testing, and servicing must be reasonably accessible. Necessary equipment to conduct these services (such as ladders, specific tools, keys) must be readily available on site.

(u) Oxygen.

(1) The facility must implement procedures that assure the safe and sanitary use and storage of oxygen.

(2) Liquid oxygen containers must be certified by Underwriters Laboratory (UL) or other approved testing laboratory for compliance with NFPA 50 requirements. The storage, handling, assembly, and testing must be in compliance with all applicable NFPA standards, including NFPA 99 and NFPA 50 requirements. The facility is responsible for defining all potential hazards both graphically and verbally to all persons involved in the use of liquid oxygen and ensuring that the liquid-oxygen provider does also.

§19.1720. Provisions for Persons with Disabilities. New facilities and additions must meet the requirements of the Texas Department of Licensing and Regulation, Elimination of Architectural Barriers Section Existing facilities must meet the requirements of the Americans with Disabilities Act and must, at a minimum, comply with the following:

(1) The facility must provide and mark at least one parking space for persons with disabilities.

(2) The facility must provide wheelchair access into the building by use of ramps and curb breaks. Ramps must not slope more than 1:12 (one unit of rise to 12 units of run).

(3) Room identification signs or letters must be installed four feet six inches to five feet above finished floor and located on the corridor walls adjacent to the latch side of the door jamb. Letters or numbers on signs must be raised or recessed at least 1/32 inch minimum. Characters must be at least 5/8 inch in height and no higher than two inches.

(4) Grab bars at toilet and bathing units must be 1 1/4 inch to 1 1/2 inch in diameter.

(5) Toilet facilities must be available and of sufficient size to accommodate wheelchairs. There must be at least one public wheelchair-accessible restroom.

(6) Water closet seat height in toilet facilities for persons with disabilities must be 17 to 19 inches from floor.

(7) Mirrors and dispensers for persons with disabilities must be no higher than 40 inches above the floor.

(8) Drinking fountains or coolers must meet ANSI A117.1 (that is, up front spout and controls no more than 36 inches from floor maximum). Fountains existing at the time of this publication do not have to be altered.

(9) Public telephones, if provided, must meet ANSI A117.1. Mounting height must not exceed 48 inches to coin slot.

§19.1722. Heating, Ventilating, and Air-conditioning Systems (HVAC).

(a) The heating system must be capable of maintaining a temperature of not less than 71 degrees Fahrenheit at the resident level in all resident-use areas. Auxiliary heating devices permanently installed, such as heat strips in ducts, electric ceiling-mounted heating units, and electric baseboards, may be used to augment a central heating system as approved by the Texas Department of Human Services (DHS). (See §19.705 of this title (relating to Environment).)

(b) The cooling system must be capable of maintaining a temperature suitable for the comfort of the residents in resident-use areas.

(c) Air flow must be directed or adjusted so that a resident is not in direct drafts that could be harmful to the health and comfort of the resident.

(d) Unvented heating units and portable heaters are prohibited.

(e) The facility must be well ventilated through the use of windows, mechanical ventilation, or a combination of both. Rooms and areas which do not have outside windows and which are used by residents or personnel must be provided with functioning mechanical ventilation to change the air on a basis commensurate with the room usage. Air systems must provide for the induction and mixing of at least 10% outside fresh air into the facility unless otherwise approved by DHS (that is, 100% continuous recirculation of interior air in most areas is not acceptable). When certain rooms or areas are dependent on a central air system for proper ventilation, including exhaust, that central air system fan must run continuously.

(f) Operable outside windows must be provided with insect screens. Outside doors must be self-closing to control entry of insects. All exterior doors must be effectively weather stripped.

(g) Heating and air conditioning systems must be provided with clean and effective air filters.

(h) Ducts and piping subject to surface condensation must be insulated to prevent condensation at least in areas which may affect sanitation or cause building deterioration.

(i) A comfortable temperature for residents when bathing must be provided.

(j) Heating, ventilating, and air conditioning systems must comply with the provisions of applicable National Fire Prevention Association (NFPA) standards. Ducts are to be of a Class A material (non-combustible). Gas-fired equipment must be in rooms of one-hour, fire-resistive construction and provided with sprinkler protection. Combustion air for gas-fired equipment must be ducted from the exterior.

(k) Air flow must be designed to prevent cross contamination within any area where applicable, such as laundries and kitchens, as well as the system or facility as a whole.

(l) In relation to adjacent areas, a positive air pressure must be provided for clean utility rooms, clean linen rooms, and medication rooms. Conditioned supply air must be introduced into these rooms.

(m) In relation to adjacent areas, a negative air pressure must be provided for soiled utility rooms, soiled laundry rooms, bathrooms, toilets, and other odor-producing rooms. Air from these rooms must not be recirculated, but instead must be exhausted through ducts to the exterior by effective means.

(n) Facility temperature must be maintained for the comfort of residents.

§19.1723. Plumbing.

(a) If the municipality has a plumbing code, that code must be used as a basis for determining the correctness of plumbing installation. In the absence of a municipal code, a nationally recognized plumbing code must be used.

(b) The water supply must be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure. The water must be obtained from a water supply system, the location, construction, and operation of which are approved by the Texas Natural Resource Conservation Commission.

(c) Sewage must be discharged into a state-approved sewerage system or the sewage must be collected, treated, and disposed of in accordance with applicable Texas Natural Resource Conservation Commission rules and regulations.

(d) The wastewater drainage and sewage system must assure that sanitation is maintained for residents. Wastewater or sewage must not be discharged on the surface of the ground. Traps must not be allowed to lose their seal. Appliances must have air gaps as required for connections to the sewerage system. Venting must assure a rapid flow of wastewater in the sewage system.

(e) The interior cold water supply system and piping must be so placed or so insulated as to prevent condensation drip in habitable areas and in storage areas.

(f) Backflow preventers or vacuum breakers must be installed with any water supply fixture where the outlet or attachments may be submerged.

(g) Resident-use hot water must be reliably controlled, such as by thermostatic or mixing valves, to not exceed 110 degrees Fahrenheit at each fixture (and not less than 100 degrees Fahrenheit).

(h) Hot water for other usages must be provided at the temperatures required for the appliance or fixture or for the operation involved, such as dishwashing and laundry.

(i) The supply quantity of hot water must be adequate for normal peak load usage. Facilities which continue to experience a shortage of hot water must remedy the situation by such means as adding storage tanks, adding or increasing the size of water heaters, or other approved means.

(j) Water heaters must be equipped with pressure temperature relief valves.

§19.1724. Housekeeping Services.

(a) The facility must provide sufficient housekeeping and maintenance personnel, equipment, and supplies to maintain the interior, exterior, and grounds of the facility in a safe, clean, orderly, and attractive manner. In a nursing facility, an employee must be designated as responsible for housekeeping services.

(b) Occupied resident rooms must be cleaned and put in order at least daily.

(c) Storage areas must be kept safe and free from accumulations of extraneous materials such as refuse, discarded furniture, and newspapers. Combustibles, such as cleaning rags and compounds, must be kept in closed metal containers and labeled.

(d) Attics, mechanical rooms, boiler rooms, and other similar areas must not be used for storage purposes.

(e) All bleaches, detergents, disinfectants, insecticides, and other poisonous substances must be kept in a safe place accessible only to employees. They must not be kept in containers previously containing food or medicine. Containers must be labeled.

§19.1726. Linen.

(a) The nursing facility must have available at all times a quantity of linen essential for the proper care and comfort of residents. Linens must be handled, stored, and processed so as to control the spread of infection.

(b) Linen will be maintained in good repair.

(c) Linen must be washed, dried, stored, and transported in a manner which will produce hygienically clean linen. The washing process must have a mechanism for soil removal and bacteria kill.

(d) Clean linen must be stored in a clean linen area easily accessible to the personnel.

(e) Clean towels and washcloths must be provided to each resident as needed or desired. Towels and washcloths must be stored in a sanitary manner between uses by the resident and must not be used by more than one resident between launderings.

(f) Soiled linen and clothing must be stored separately from clean linen and clothing. Soiled linen and clothing must be stored in well ventilated areas, and must not be permitted to accumulate in the facility. Soiled linen and clothing must be transported in accordance with procedures consistent with universal precautions. Bags or containers must not be reused to transport or store clean items.

(g) Soiled linen must not be sorted, laundered, rinsed, or stored in bathrooms, resident rooms, corridors, kitchens, or food storage areas, except soiled linen and clothing which is not contaminated with blood may be rinsed in a resident's bathroom water closet.

(h) Resident's personal clothing that is not soiled with body wastes may be stored in a closed container in the resident's closet. The clothing must be collected and cleaned at least weekly.

(i) Facility staff must wash their hands both after handling soiled linen and before handling clean linen.

§19.1727. Safety Operations.

(a) The facility must have a written plan with procedures to be followed in an internal or external disaster and for the care of casualties.

(1) The facility must maintain the plan and procedures at the nurses station and with department managers within the facility. The facility must ensure that the plan and procedures are reviewed at least annually. Changes in administrator, construction, or emergency phone numbers will require the facility to review and possibly

modify the disaster plan. All reviews of disaster plans must be documented.

(2) The facility must include in the disaster plan, evacuation routes and procedures to be followed in the event of fire, explosion, or other disaster. The plan must also include procedures for the prompt transfer of casualties, clinical records, medications, and notification of appropriate persons.

(3) All employees must be familiar with the disaster plan and must be instructed in the location and use of the facility's alarm systems, fire-fighting equipment, and procedures. The facility must post fire and explosion evacuation routes prominently throughout the facility. The facility must have a fire safety plan within the disaster plan. The fire safety plan must be rehearsed quarterly on each shift with at least one rehearsal conducted each month. A comprehensive fire drill report form must be completed for each rehearsal of the fire safety plan.

(4) In smaller, simple, one story buildings where all exits are obvious, the Texas Department of Human Services (DHS) may not require the posting of evacuation routes.

(5) The facility must have an emergency contingency plan to ensure the residents' comfort and safety, including the provision of potable water.

(6) Emergency telephone numbers must be clearly posted on or near each phone. Emergency telephone numbers must include the local fire department, ambulance, and police.

(b) The facility must report all fires to DHS on Form X-9 within 15 days after the fire. The facility must immediately notify DHS by phone of disasters or any fires which caused death or serious injury. Telephone reports must be followed by written reports. Failure of the fire alarm, emergency power, or sprinkler system will require that all facility staff be informed of conditions, and the facility must take special precautions such as establishing a fire watch, appropriate to the situation. These situations must be reported to the local fire authority.

(c) Severe weather drills and other emergency drills must be held as needed and as called for by the facility's policy and procedure manual.

(d) The fire alarm and sprinkler systems must be inspected and tested at least once every three months by a licensed agent. Each quarterly inspection and test must be of the complete system, including smoke dampers and individual sprinkler heads. A standard report form of the inspection must be completed by the agent and kept on file by the facility. The report must include the signature of the person making

the inspection and the date of the inspection. The facility must maintain a current contract on file for the services of the inspecting company.

(e) The facility may, at its own discretion, make simple periodic tests of the basic fire alarm system, such as by activating a manual-pull station, particularly when conducting required fire drills. At any time the facility staff verifies or suspects some malfunction of the system, the condition must be immediately investigated and corrected.

(f) Emergency generators, if required or provided, must be maintained in operating condition at all times. These must be inspected and run, under load, for at least 30 minutes each week. A signed or initialed record or log must be kept on file by the facility. The condition and proper operation of the emergency egress lighting should also be checked at this time.

(g) A functional test must be conducted on every required battery emergency lighting system at 30-day intervals for a minimum of 1/2 hour. An annual test must be conducted for a one and 1/2 hour duration. Equipment must be fully operational for the duration of the test. Written records of testing must be kept in the facility for inspection by the authority having jurisdiction.

(h) Automatic, fixed, dry-chemical extinguishers mounted in kitchen range hoods must be inspected and serviced by a licensed agent (type A license with the State Fire Marshal's office) at least once every six months. A written, signed report must be left on file with the facility. The hood, exhaust ducts, and filters must be kept clean and free of accumulated grease.

(i) Portable fire extinguishers must be visually inspected monthly by facility staff and must have maintenance provided annually by a licensed agent in accordance with National Fire Prevention Association (NFPA) 10. A record of the annual maintenance must be kept in the facility. Portable extinguishers must be protected from damage and must be kept on their mounting brackets or in cabinets at all times.

(j) Facilities using gas must have the gas piping lines from the meter and appliances tested for leaks annually by a qualified person. A written, signed report must be made of these tests and kept on file. Any unsatisfactory conditions must be noted and corrected promptly.

(k) Smoking policies must be formulated and adopted 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 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) No storage is permitted in rooms with gas-fired equipment. Bulk storage of volatile or flammable liquids or materials is not allowed anywhere within the building.

(m) Medical equipment, carts, wheelchairs, tables, furniture, dispensing machines, and similar physical objects, must not be stored in corridors or other ways of egress.

(n) Smoke doors, fire doors, and doors to hazardous rooms must be kept closed and must not be propped or wedged open. Only approved devices such as alarm-activated electromagnetic hold-open devices may be used to hold these doors open, except doors to rooms classified as severe hazard.

(o) Electrical extension cords must not be used on a permanent or semi-permanent basis as a substitute for approved wiring methods. Approved electrical receptacles must be provided in quantity and location for the normal use of appliances.

(p) All abandoned utilities such as electrical wiring, ducts, and pipes, must be removed from the facility when no longer usable.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 24, 1995.

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Nancy Murphy
Section Manager, Media
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Texas Department of
Human Services

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For further information, please call: (512) 450-3765

Subchapter T. Administration

- 40 TAC §§19.1901-19.1910, 19.1912-19.1917, 19.1919-19.1928, 19.1930-19.1933

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs, and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter T. Administration

- 40 TAC §§19.1901-19.1917, 19.1920-19.1924, 19.1928, 19.1930, 19.1934

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§19.1902. Governing Body.

(a) The facility must have a governing body, or designated persons functioning as a governing body that is legally responsible for establishing and implementing policies regarding the management and operation of the facility. The governing body must have periodically updated written policies and procedures that are formally adopted and dated, specifying and governing all services. The policies and procedures must be available to all of the facility's governing body's members, staff, residents, family or legal representatives of residents, and the public. The governing body must:

(1) designate a person to exercise the administrator's authority when the facility does not have an administrator. The facility must secure a licensed nursing home administrator within 30 days; and

(2) ensure that a person designated as being in authority notifies the Texas Department of Human Services immediately when the facility does not have an administrator.

(b) The facility must operate under the supervision of a nursing facility administrator who is:

(1) licensed by the Texas Board of Nursing Facility Administrators;

(2) responsible for management of the facility; and

(3) required to work at least 40 hours per week on administrative duties.

(c) The administrator must be accountable to the governing body for overall management of the nursing facility.

§19.1905. Staff Qualifications.

(a) The facility must employ on a full-time, part-time, or consultant basis those professionals necessary to carry out the provisions of these requirements of participation.

(b) Professional staff must be licensed, certified or registered in accordance with applicable state laws.

§19.1911. Contents of the Clinical Record. The clinical record of each resident must contain:

(1) Sufficient information to identify and care for the resident, to include at a minimum:

(A) full name of resident;

(B) full home/ mailing address;

(C) social security number;

(D) health insurance claim numbers, if applicable;

(E) date of birth; and

(F) clinical record number, if applicable.

(2) A record of the resident's assessments.

(3) The comprehensive, interdisciplinary plan of care and services provided (see also §19.802 of this title (relating to Comprehensive Care Plans)).

(4) The results of any preadmission screening and annual resident review conducted by the Texas Department of Human Services (DHS) or the Texas Department of Mental Health and Mental Retardation (TXMHMR).

(5) Progress notes from all health care practitioners involved in the resident's care.

(6) Any directives or durable powers of attorney as described in §19.419 of this title (relating to Directives and Durable Powers of Attorney for Health Care).

(7) Discharge information in accordance with §19.803 of this title (relating to Discharge Summary (Discharge Plan of Care)) and a physician discharge summary, to include, at least, dates of admission and discharge, admitting and discharge diagnoses, condition on discharge, and prognosis, if applicable.

(8) At admission or within 14 days, documentation of an initial medical evaluation, including history, physical examination, diagnoses and an estimate of discharge potential and rehabilitation potential and documentation of an annual medical examination.

(9) Authentication of any hospital diagnoses.

(A) This may be in the form of a signed hospital discharge summary, a signed report from the resident's hospital or attending physician, or a transfer form signed by the physician.

(B) The facility is allowed 14 workdays after admission to receive this information from the hospital or transferring facility. If the author of such reports is not the resident's attending physician, then the attending physician must acknowledge the report in writing by co-signing the report at his or her next scheduled visit.

(10) The physician's signed and dated orders, including medication, treatment, diet, restorative and special medical procedures, and routine care to maintain or improve the resident's functional abilities (required for the safety and well-being of the resident). Changes cannot be made either on a handwritten or computerized physician's order sheet after the orders have been signed by the physician unless space allows for additional orders below the physician's signature, including space for the physician to sign and date again.

(11) Arrangements for the emergency care of the resident in accordance with §19.1204 of this title (relating to Availability of Physician for Emergency Care)

(12) Observations made by nursing personnel according to the time frames specified in §19.1010 of this title (relating to Nursing Practices). Facility staff must ensure that the observations show at least the following:

(A) items as specified on the Resident Assessment Instrument and the Texas Nursing Facility Client Assessment Review and Evaluation (CARE) form; and

(B) current information including:

(i) PRN medications and results;

(ii) treatments and any notable results;

(iii) physical complaints, changes in clinical signs and behavior, mental and behavioral status, and all incidents or accidents;

(iv) flow sheets which may include bathing, restraint observation and/or release documentation, elimination, fluid intake, vital signs, ambulation status, positioning, continence status and care, and weight;

(v) the resident's ability to participate in activities of daily living as defined in §19.1010(1) of this title (relating to Nursing Practices); and

(vi) dietary intake to include deviations from normal diet, rejection of substitutions, and physician's ordered snacks and/or supplemental feedings.

(13) The date and hour all drugs and treatments are administered.

(14) Documentation of special procedures performed for the safety and well-being of the resident must be included in the clinical record.

(15) Laboratory results for HIV testing which must be kept separate from

the active clinical record. Upon discharge, these reports become part of the resident's closed clinical record.

§19.1912. Additional Clinical Record Service Requirements.

(a) Index of admissions and discharges. The facility must maintain a permanent, master index of all residents admitted to and discharged from the facility. This index must contain at least the following information concerning each resident:

(1) name of resident (first, middle, and last);

(2) date of birth;

(3) date of admission;

(4) date of discharge; and

(5) social security, Medicare, or Medicaid number.

(b) Facility closure. In the event of closure of a facility, change of ownership or change of administrative authority, the new management must maintain documented proof of the medical information required for the continuity of care of all residents. This documentation may be in the form of copies of the resident's clinical record or the original clinical record. In a change of ownership, the two parties will agree and designate in writing who will be responsible for the retention and protection of the inactive and closed clinical records.

(c) Method of recording/correcting information. All resident care information must be recorded in ink or permanent print except for the medication/treatment/diet section of the care plan. Correction of errors will be in accordance with accepted health information management standards.

(1) Erasures are not allowed on any part of the clinical record, with the exception of the medication/treatment/diet section of the resident care plan.

(2) Correction of errors will be in accordance with accepted health information management standards.

(d) Required record retention. Periodic thinning of active clinical records is permitted; however, the following items must remain in the active clinical record:

(1) current history and physical,

(2) current physician's orders and progress notes,

(3) current resident assessment instrument (RAI) and subsequent quarterly reviews; in Medicaid-certified facilities, all Resident Assessment Instruments and Quarterly Reviews for the prior 24-month period,

(4) current care plan,

(5) most recent hospital discharge summary or transfer form

(6) current nursing and therapy notes,

(7) current medication and treatment records,

(8) current lab and x-ray reports, and

(9) the admission record.

(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) obtain current, signed physician's orders;

(B) record a descriptive nurse note, giving a complete assessment of the resident's condition;

(C) start a new medication sheet to document medications ordered by the physician;

(D) include any changes in diagnoses, etc.;

(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

(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) A new clinical record must be initiated if the resident is a new admission or has been discharged for over 30 days.

(f) Signatures.

(1) The use of electronic data transmission of facsimiles (faxing) is acceptable for sending and receiving health care documents, including the transmission of physicians' orders. Long term care facilities may utilize electronic transmission if they adhere to the following requirements:

(A) The facility must implement safeguards to assure that faxed documents are directed to the correct location to protect confidential health information.

(B) All faxed documents must be signed by the author before transmission

(2) Stamped signatures are acceptable for all health care documents requiring a physician's signature, if the person using the stamp sends a letter of intent which specifies that he will be the only one using the stamp, and then signs the letter with the same signature as the stamp.

(3) The facility must maintain all letters of intent on file and make them available to representatives of the Texas Department of Human Services (DHS) upon request.

(4) Use of a master signature legend in lieu of the legend on each form for nursing staff signatures of medication, treatment, or flow sheet entries is acceptable under the following circumstances:

(A) Each nursing employee documenting on medication, treatment, or flow sheets signs his full name, title, and initials on the legend.

(B) The original master legend is kept in the clinical records office or director of nurses' office.

(C) A current copy of the legend is filed at each nurses station.

(D) When a nursing employee leaves employment with the facility, his name is deleted from the list by lining through it and writing the current date by the name.

(E) The facility updates the master legend as needed for newly hired and terminated employees.

(F) The master signature legend must be retained permanently as a reference to entries made in clinical records.

(g) Destruction of Records. When resident records are destroyed after the retention period is complete, the facility must shred or incinerate the records in a manner which protects confidentiality. At the time of destruction, the facility must document the following for each record destroyed:

- (1) resident name;
- (2) medical record number, if used;
- (3) social security number, Medicare/Medicaid number, or the date of birth; and
- (4) date and signature of person carrying out disposal.

(h) Confidentiality. The facility must develop and implement policies and procedures to safeguard the confidentiality of medical record information from unauthorized access.

(1) Except as provided in paragraph (2) of this subsection, the facility must not allow access to a resident's clinical record unless a physician's order exists for supplies, equipment, or services provided by the entity seeking access to the record.

(2) The facility must allow access and/or release confidential medical information under court order or by written authorization of the resident or his or her legal representative (see §19.407 of this title (relating to Privacy and Confidentiality)).

§19.1916. Respite Care. Facilities offering respite care must meet the requirements of this chapter, except as provided in paragraph (4) of this section.

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

(A) Plan of care—A written description of the medical care or the supervision and nonmedical care needed by an individual during respite care.

(B) Respite care—The provision by a facility to an individual, for not more than two weeks for each stay in the facility, of room, board, and care at the level ordinarily provided for permanent residents.

(2) Plan of care. The facility and the individual arranging respite care must agree on the plan of care, and the plan must be filed at the facility before the facility admits the individual.

(A) The plan of care must be signed by:

(i) a licensed physician if the individual needing care requires medical care or treatment; or

(ii) the individual arranging the care if medical care or treatment is not required.

(B) The facility may keep a plan of care for an individual for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(3) Notification. A facility must notify the Texas Department of Human Services (DHS) in writing that it offers respite services.

(4) Inspections During licensing or certification inspections, or at other times DHS determines necessary, DHS inspects a facility's records of respite care services, physical accommodations for respite care, and the plan of care records to ensure that the respite care services comply with the certification requirements of this chapter, with the following exceptions:

(A) The clinical record of each respite care resident must contain:

(i) general identifying information necessary to care for the individual and maintain his clinical record;

(ii) resident assessment and care plan according to facility policy;

(iii) progress notes and/or flow sheets which document care and services;

(iv) reports of diagnostic or lab studies;

(v) physician's orders; and

(vi) discharge and readmission information as required by facility policy for respite care services.

(B) Resident assessment requirements of §19.801 of this title (relating to Resident Assessment) apply to respite care services only on the 14th day of care.

(C) The clinical records requirement found at §19.1912(e) of this title (relating to Additional Clinical Record Service Requirements) does not apply.

(5) Suspension. DHS may require an institution to cease providing respite care if DHS determines that the respite care does not meet the requirement of this chapter and that the facility cannot comply with those requirements in the respite care it provides. DHS may suspend the license of a facility that continues to provide respite care after receiving a written order from DHS to cease.

(6) Licensed capacity. When a facility provides respite care:

(A) the total number of individuals receiving services in the facility must not exceed the number of licensed beds; and

(B) any required nurse-to-resident ratio must include any individual receiving respite care services regardless of the number of hours that the individual spends in the facility.

§19.1917. Quality Assessment and Assurance.

(a) The facility must maintain a Quality Assessment and Assurance Committee consisting of:

(1) the director of nursing services;

(2) a physician designated by the facility; and

(3) at least three other members of the facility's staff.

(b) The Quality Assessment and Assurance Committee:

(1) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and

(2) develops and implements appropriate plans of action to correct identified quality deficiencies.

(c) Texas or the Secretary of Health and Human Services may not require disclosure of the records of the Quality Assessment and Assurance Committee except insofar as such disclosure is related to the compliance of the committee with the requirements of subsection (b) of this section.

(d) Good faith attempts by the committee to identify and correct quality deficiencies may not be used as a basis for sanctions.

§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.

(b) Individuals who have met the requirements of §19.2500 of this title (relating to Preadmission Screening and Annual Resident Review (PASARR)) and have mental and/or physical diseases which endanger other residents may be admitted or retained if adequate rooms and care are provided to protect the other residents.

(c) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.

(d) In the event any facility ceases operation, temporarily or permanently, voluntarily or involuntarily, notice must be provided to the residents and residents' relatives or responsible parties of closure.

(1) If the closure is voluntary, notice to residents' relatives or responsible parties must be in writing, not later than one week after the date on which the decision to

close is made, giving at least seven days notice for relocation after receipt of notice.

(2) If the closure is involuntary, the facility must make the notification, whether verbally or in writing, immediately on receiving notice of the closure.

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs (1)-(5) 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) the facility license;

(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 reports and related reports are available at the facility for public inspection;

(4) a concise summary in non-technical language prepared by DHS of the most recent inspection report; and

(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.

(f) The inspection reports and related reports that will be available at the facility for public inspection must include licensing inspection reports, deficiency sheets, and plan of correction of Medicare

and Medicaid participating facilities, and summaries provided by the DHS of inspections and complaint investigations. This material must cover the most current 12 months. The material available for public inspection must be available at the facility business office or administrator's office during normal office hours. On admission to the facility, the resident and/or responsible party must be advised that these reports are available.

(g) A copy of the Health and Safety Code, Chapter 242, referred to in subsection (j)(5)(C) of this section, must be available for public reference at the facility business office or administrator's office during normal office hours.

(h) Summaries, inspection reports, and related reports prepared by DHS must be available to the public through DHS's public disclosure procedures.

(i) Within 72 hours of admission, the facility must prepare a written inventory of the personal property a resident brings to the facility, such as furnishings, jewelry, televisions, radios, sewing machines, and medical equipment. The facility does not have to inventory the resident's clothing; however, the operating policies and procedures must provide for the management of resident clothing to prevent loss and/or damage. The facility administrator or his or her designee must sign and retain the written inventory and must give a copy to the resident and/or the resident's responsible party. The facility must revise the written inventory to show if property is lost, destroyed, damaged, replaced, or supplemented. Upon discharge of the resident, the disposition of personal effects must be documented by a dated receipt bearing the signature of the resident and/or the resident's responsible party. See §19.416 of this title (relating to Personal Property).

(j) Criminal History Checks of Certain Employees. Persons convicted of certain crimes may not be employed in nursing facilities. As required by Chapter 250 of the Health and Safety Code and as found in 40 TAC §§76.101-76.108, the facility must, prior to an offer of employment, conduct criminal history checks on persons whose positions involve direct contact with residents, unless they are licensed under another law.

§19.1922. Resident Care Policies.

(a) The facility must have written policies to govern the nursing care and related medical or other services provided. The written policies must include plans for promoting self-care and independence. If children are admitted to the facility, written policies must address the care of children, consistent with currently acceptable pediatric practice and should address the ongoing

assessment of the potential for community reintegration.

(b) Resident care policies are developed by the medical director and by professional personnel, including one or more physicians, licensed or registered nurses, a registered pharmacist, and the licensed nursing home administrator. The advisory group must review the policies at least annually and update them as necessary.

§19.1923. Incident or Accident Reporting.

(a) The facility must detail in the medical record every accident or incident, including allegations of mistreatment of residents by facility staff, medication errors, and drug reactions.

(b) Accidents, whether or not resulting in injury, and any unusual incidents or abnormal events including allegations of mistreatment of residents by staff or personnel or visitors, must be described in a separate administrative record and reported by the facility in accordance with the licensure Act and this section.

(1) If the incident appears to be of a serious nature, it must be investigated by or under the direction of the director of nurses, the facility administrator, or a committee charged with this responsibility.

(2) If the incident involves a resident and is serious or requires special reporting to the Texas Department of Human Services (DHS), the resident's responsible party and attending physician must be immediately notified.

(c) Accident or incident reports must be retained for at least two years following the occurrence and must contain the following information:

(1) For incidents involving residents, the name of the resident; witnesses, if any; date, time, and description of the incident; circumstances under which it occurred; action taken including documentation of notification of the responsible party and attending physician, if appropriate; and the resident's current (post-incident) health condition, including vital signs and date and time of entry.

(2) Incident reports describing incidents not involving residents must contain such information as names of individuals involved, date, time, witnesses (if witnesses were present), description of the event or occurrence, including the circumstances under which it occurred, action taken, and final disposition that indicates resolution of the event or occurrence.

(d) The facility must investigate incidents/accidents and complaints for trends which may indicate resident abuse. Trends that might be identified include but are not limited to: type of accident, type of injury,

time of day, staff involved, staffing level, and relationship to past complaints.

(e) The facility must make incident reports available for review, upon request and without prior notice, by representatives of DHS, the U.S. Department of Health and Human Services, if applicable; and the Texas Department of Protective and Regulatory Services. Reports related to specific incidents must be available to the designated regional staff ombudsman, Office of the State Long Term Care Ombudsman, Texas Department on Aging.

§19.1934. Educational Requirements for Persons Under Age 22.

(a) A nursing facility that accepts school-age residents, ages 3 through 21, must provide assurances to the Texas Department of Human Services (DHS) that it has:

(1) established a written cooperative agreement with the local independent school district that includes:

(A) general responsibilities of the facility and the school district in delivering appropriate and mutually supportive services to eligible school-age residents;

(B) a provision allowing the school district staff to access, with appropriate consent of the eligible resident or guardian, the facility's resident record and assessment information to avoid unnecessary duplication of services;

(C) a provision allowing the school district staff an opportunity to participate in or provide information for the facility's admission, programmatic, and discharge-planning meetings when the educational needs of an eligible resident are being considered; and

(D) a provision allowing the NF staff to participate in or provide information to the school district's admission, review, and dismissal (ARD) committee during its deliberations about each eligible school-age resident; and

(2) developed written policies and procedures to ensure that all eligible school-age residents, ages 3 through 21, who have neither successfully graduated from nor completed an approved school program are enrolled in a Texas Education Agency-approved educational program.

(A) The nursing facility must maintain, as a separate document in the school-age resident's record, a copy of the original Individual Education Plan (IEP) de-

veloped by the school district, and any subsequent changes; and

(B) In order to address the resident's educational needs, the facility must document, in the comprehensive care plan, the following:

(i) efforts to resolve differences between the IEP and the comprehensive care plan;

(ii) educational objectives (such as behavior therapy or speech therapy), services, and approaches;

(iii) the resident's adjustment to the educational program;

(iv) changes and modifications to the plan; and

(v) discipline(s) in the facility responsible for follow-through on each educational objective.

(b) If a provider desires to provide and administer the provider's own educational program(s), the provider must secure and maintain certification as a nonpublic school from the Texas Education Agency.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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**Chapter 19. Long Term Care
Nursing Facility
Requirements for Licensure
and Medicaid Certification**

**Subchapter U. State and Local
Requirements**

• **40 TAC §§19.2001-19.2011,
19.2013**

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042

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Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter U. Inspections, Surveys, and Visits

• 40 TAC §§19.2002, 19.2004, 19.2006, 19.2008, 19.2010, 19. 2011

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042

§19.2002 *Procedural Requirements- Licensure Inspections and Surveys.*

(a) The Texas Department of Human Services (DHS) inspection and survey personnel will perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate or as required for carrying out the responsibilities of licensing.

(b) An inspection may be conducted by an individual qualified surveyor or by a team, of which at least one member is a qualified surveyor.

(c) To determine standard compliance which cannot be verified during regular working hours, night or weekend inspections may be conducted to cover spe-

cific segments of operation and will be completed with the least possible interference to staff and residents.

(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.

(e) Certain visits may be announced, including, but not limited to, consultation visits to determine how a physical plant may be expanded or upgraded and visits to determine the progress of physical plant construction or repairs, equipment installation or repairs, or systems installation or repairs or conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(f) Persons authorized to receive advance information on unannounced inspections include:

(1) citizen advocates invited to attend inspections, as described in subsection (g) of this section;

(2) representatives of the Texas Department of Aging serving as ombudsmen or authorized to attend or participate in inspections;

(3) representatives of the United States Department of Health and Human Services whose programs relate to the Medicare/Medicaid Long Term Care Program; and

(4) representatives of the Texas Department of Human Services whose programs relate to the Medicare/Medicaid long term care program

(g) DHS will conduct at least two unannounced inspections during each licensing period of each institution licensed under Health and Safety Code, Chapter 242, except as provided for in this subsection.

(1) In order to ensure continuous compliance, a sufficient number of inspections will be conducted between the hours of 5:00 p.m. and 8:00 a.m. in randomly selected institutions. This cursory after-hours inspection will be conducted to verify staffing, assurance of emergency egress, resident care, medication security, food service or nourishments, sanitation, and other items as deemed appropriate. To the greatest extent feasible, any disruption of the residents will be minimal.

(2) For at least two unannounced inspections each licensing period, DHS will invite to the inspections at least one person as a citizen advocate from the American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, the

Texas Department on Aging Certified Long Term Care Ombudsman, or any other statewide organization for the elderly. DHS will provide to these organizations basic licensing information and requirements for the organizations' dissemination to their members whom they engage to attend the inspections. Advocates participating in the inspections must follow all protocols of DHS. Advocates will provide their own transportation. The schedule of inspections in this category will be arranged confidentially in advance with the organizations. Participation by the advocates is not a condition precedent to conducting the inspection.

(h) The facility must make all of its books, records, and other documents maintained by or on behalf of a facility accessible to DHS upon request.

(1) During an inspection, survey, or investigation, DHS is authorized to photocopy documents, photograph residents, and use any other available recordation devices to preserve all relevant evidence of conditions that DHS reasonably believes threaten the health and safety of a resident.

(2) Examples of records and documents which may be requested and photocopied or otherwise reproduced are resident medical records, including nursing notes, pharmacy records medication records, and physician's orders.

(3) When the facility is requested to furnish the copies, the facility may charge DHS at the rate not to exceed the rate charged by DHS for copies. The procedure of copying will be the responsibility of the administrator or his designee. If copying requires the records be removed from the facility, a representative of the facility will be expected to accompany the records and assure their order and preservation.

(4) DHS will protect the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and department policy.

(i) DHS will provide for a special team to conduct validation surveys or verify findings of previous licensure surveys.

(1) At DHS's discretion, based on record review, random sample, or any other determination, DHS may assign a team to conduct a validation survey. DHS may use the information to verify previous determinations or identify training needs to assure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(2) Facilities will be required to correct any additional deficiencies cited by the validation team but will not be subject to any new or additional punitive action.

§19.2004. Determinations and Actions Pursuant to Inspections.

(a) The Texas Department of Human Services (DHS) will determine if a facility meets the licensing rules, including both physical plant and facility operation requirements.

(b) Violations of regulations will be listed on forms designed for the purpose of the inspection or will be listed in letter form when administrative penalties are being proposed.

(c) Violations found during complaint investigations will be discussed with the facility management at the exit conference. If deficiencies are cited, a list of the deficiencies will be sent to the facility within ten days. The source of the complaint will not be revealed.

(d) At the conclusion of an inspection or survey, the violations will be discussed in an exit conference with the facility's management. A written list of the violations will be left with the facility at the time of the exit conference; any additional violation that may be determined during review of field notes or preparation of the official final list (when the official final list was not issued at the exit conference) will be communicated to the facility in writing within ten working days of the exit conference, and the facility will have ten working days to reply before the additional violation is made a part of the permanent record. Copies of any narratives or similar papers written to further describe the conditions will be furnished to the facility.

(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.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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Chapter 19. Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter W. Remedies for Violations of Title XIX Nursing Facility Provider Agreements

- 40 TAC §§19.2201-19.2209, 19.2211-19.2216

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter W. Certification of Facilities for Care of Persons with Alzheimer's Disease and Related Disorders

- 40 TAC §§19.2204, 19.2206, 19.2208

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; and the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

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Subchapter X. Requirements for Medicaid-Certified Facilities

- 40 TAC §§19.2301, 19.2302, 19.2304, 19.2306, 19.2308, 19.2310, 19.2312, 19.2314, 19.2316, 19.2318, 19.2320, 19.2322, 19.2324, 19.2326

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.024 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. DHS will recognize ownership changes effective as of the date of the legally effective transfer of ownership subject to the following conditions:

(1) The Texas Department of Human Services (DHS) will recognize an ownership change effective as the date of transfer of ownership agreed to between the prior owner and the new owner (agreed change date) if DHS receives written notice of the change on or before the agreed change date. If written notice is received after the agreed change date, DHS will recognize the change effective on the date that DHS receives written notice of the change. In no case will DHS recognize a change date that would cause DHS to make double payments for the same services. If written notice of the change is not received by DHS

at least 30 days before the agreed change date. DHS is not responsible for payments made to the prior owner or new owner that do not reflect the agreed change date. DHS will not request repayment of such payments on behalf of either entity nor will DHS issue a duplicate payment. It is the responsibility of the prior and new owner to make arrangements between themselves for such contingencies.

(2) When DHS receives information about a proposed or actual change of ownership, DHS has the option to place vendor payments to the prior owner and/or the new owner on hold. Release of the vendor payments depends upon:

(A) DHS's receiving information sufficient to verify the ownership change, if DHS requests such information;

(B) the prior owner providing DHS with an acceptable final cost report, and

(C) the prior owner providing, at DHS's option, one of the following documents in a format acceptable to DHS to cover possible liabilities of the prior owner:

(i) a surety bond or an irrevocable letter of credit as described in §19.2312 of this title (relating to Surety Bonds or Letters of Credit);

(ii) the new owner's non-transferable written agreement that the new owner has agreed to pay DHS for any liabilities that exist or may be found to exist during the period of the prior owner's contract with DHS; or

(iii) written authority by the prior owner to withhold and retain funds normally due the prior owner from other Medicaid contracts the prior owner may have with DHS.

(3) When a change in ownership occurs, DHS assigns the agreement to the new owner by issuing a new contract to the new owner effective on the later of: the agreed change date; the date DHS received written notice of the change; or the date necessary to avoid double payments. By signing the contract, the new owner is representing to DHS that the new owner meets the requirements of the contract and the requirements for participation in the Medicaid program. The new owner's contract is subject to the prior owner's contract terms and conditions that were in effect at the time of transfer of ownership, including, but not limited to, the following:

(A) any plan of correction;

(B) compliance with health and safety standards;

(C) compliance with the ownership and financial interest disclosure requirements of 42 Code of Federal Regulations §§455.104, 455.105, and 1002.3;

(D) compliance with civil rights requirements in 45 Code of Federal Regulations, Parts 80, 84, and 90;

(E) compliance with additional requirements imposed by DHS; and

(F) any sanctions as specified in this chapter relating to remedies for violations of Title XIX nursing facility provider agreements, including deficiencies, vendor holds, compliance periods, accountability periods, monetary penalties, notification for correction of contract violations, probationary contracts, and history of deficiencies.

(4) Neither medical assistance nor amounts payable to vendors out of public assistance funds are transferable or assignable at law or in equity. DHS will not allow non-split agreements in the case of ownership changes. Non-split arrangements are arrangements where DHS does not interrupt payments to old and new owners but continues reimbursements as though no ownership change has occurred. A split in pay agreement ensures that payments to the prior owner stop on a certain date and payments for services thereafter go to the new owner.

(5) The new owner and the prior owner of a nursing facility may reach any agreement they wish, but DHS will not participate in a non-split procedure which would allow the new owner to receive the prior owner's accrued vendor payments.

(6) A financial audit will follow each change in ownership. When audit discrepancies are found, restitution settlement will be the responsibility of the appropriate party based on the split agreement.

(7) 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 trust fund records, including ledger cards, must remain with the new owner.

§19.2316. Collection of Applied Income.

(a) Nursing facilities may collect from the recipient only the applied income that is specified on the recipient's payment plan forms, except when that amount exceeds the monthly vendor rate. In this event, the facility may collect only an

applied-income amount equal to the maximum monthly Medicaid vendor rate.

(b) If a payment plan appears incorrect, the facility administrator should contact the local Texas Department of Human Services (DHS) worker to correct the plan. Even if a recipient's income increases, the administrator must not collect an increased payment until the plan is changed. The administrator should not collect an increased payment in anticipation of a payment plan increase.

(c) If an admitted recipient does not have a payment plan, the administrator should contact the local worker for help in determining how much applied income is owed. If the forthcoming forms indicate a lesser payment, the administrator should refund the excess immediately and notify the worker.

(d) Facilities that collect payments (part applied income, part Medicaid) in excess of the vendor rate are in violation of DHS regulations and of Public Law 95-142 which makes "solicitation of supplementation" a felony.

(e) Regional DHS staff must report any violations. If an investigation shows that the facility has violated this standard, a recommendation for withholding vendor payments, contract termination, referral to the courts, or other contract action may be made.

(f) The nursing facility must refund the recipient's prorated applied income money when the recipient has paid in advance for the full month and is discharged from the facility any time during the month. The facility must make the refund within 30 calendar days from and including the date of discharge, even when vendor payment has not been received from DHS.

§19.2318. Computation of Daily Reimbursement Rate for Recipients with Applied Income.

(a) Reimbursement is computed by multiplying the established daily rate by the number of days in the month. The recipient's applied income is then subtracted and the result is divided by the number of days in the month.

(b) A facility may not collect more than the applied income reported on the payment plan form in a 31-day month.

§19.2320. Medical Transportation.

(a) The nursing facility is responsible for providing normal transportation for the recipient to medical services outside the facility. The attending physician must have ordered the medical services.

(b) Normal transportation is to and from the medical care provider of the recipient's choice, who is generally available and used by recipients of the locality for medical care included under the Texas Medical Assistance program. If a Title XIX provider is not in the locality, transportation is to and from the nearest appropriate Title XIX provider if the recipient so chooses. The term "locality" means the service area surrounding the nursing facility from which individuals ordinarily come or are expected to come for inpatient or outpatient services.

(c) Transportation charges, including non-emergency, routine ambulance services, involved in the certification or recertification of a recipient are the responsibility of the nursing facility.

(d) The facility may not charge the state's Medicaid health insuring agent, the recipient, the family, or responsible party for normal transportation as defined in this section. Normal transportation charges are covered in the monthly vendor rate. The facility may not use the state's Medicaid community-based Title XIX medical transportation program.

(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) emergency transport, which is ambulance service for a Medicaid recipient with an emergency medical condition. Emergency medical condition is defined as one which manifests itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could result in placing the recipient's health in serious jeopardy; and

(2) nonemergency transport, 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.

(f) If ambulance services are reimbursable by the state's Medicaid health insuring agent, they are not the responsibility of the recipient, the family, or the responsible party.

(g) Nursing facilities are encouraged to use family, friends, sponsors, civic groups, or charitable organizations as resources for transportation services. If normal transportation is not obtainable from these sources, the facility must provide or purchase the appropriate services.

§19.2322. Additional Participation Requirements.

(a) Facilities must submit properly completed monthly occupancy report forms to DHS each month. This report must be submitted on or before the fifth day of the month following the reporting period month.

(b) Except as specified in subsection (c) of this section and in §19.2324 of this title (relating to Selection and Contracting Procedures for Adding Beds in High-Occupancy Areas), the Texas Department of Human Services (DHS) does not accept applications for participation in the Texas Medicaid Nursing Home Program or for a contract for nursing facility beds with any nursing facility that was not granted a valid certificate of need (CON) by the Texas Health Facilities Commission before September 1, 1985; a waiver by DHS prior to January 1, 1993; or other valid order that had the effect of authorizing the operation of the facility at the bed capacity for which participation is sought.

(c) If the provider meets all criteria, DHS may exempt the following facilities from the policy stated in subsection (b) of this section.

(1) Facilities that change ownership. Except as otherwise provided in this section, DHS limits contracting with the new owner to no more certified Medicaid beds than the prior owner had when the ownership change occurred.

(2) Facilities that DHS has decertified. DHS limits contracting to no more than the number of certified Medicaid beds on the effective date of decertification. The facility must meet all certification and contract requirements within 12 months of the effective date of decertification.

(3) Facilities whose Medicaid contracts are terminated because of the imposition of any remedies as specified in Subchapter V of this chapter (relating to Enforcement). DHS limits contracting to no more than the number of certified Medicaid beds on the effective date of the contract cancellation. The facility must meet all certification and contract requirements within 12 months of the effective date of its contract cancellation.

(4) Facilities being replaced in whole or in part. DHS limits contracting of the replacement beds to the county in which the original facility was located and to no more than the number of certified Medicaid beds being replaced.

(5) Facilities that add no more than ten beds or 10% of the existing number of certified Medicaid beds, whichever is less, within a 24-month period. In computing the 24-month periods, the first 24-

month period begins September 1, 1985, and expires August 31, 1987. DHS will accept an application from a facility if the facility:

(A) has a Medicaid contract to provide nursing facility services;

(B) has an occupancy rate of at least 90% during each of the previous six months ending the last day of the month immediately preceding the month of application (the facility must submit written documentation acceptable to DHS substantiating the occupancy rate);

(C) is located in a county where the occupancy rate is at least 85% during each of the previous six months ending the last day of the month immediately preceding the month of application; and

(D) has not had remedies imposed as specified in this chapter which have resulted in contract cancellation in the 12-month period immediately preceding the month of application.

(6) Facilities whose capacity is less than 60 licensed beds. For reasons of efficiency, DHS will accept an application to contract up to 60 beds from a small facility of less than 60 licensed beds if the facility:

(A) is located in a county where the occupancy rate for contracted Medicaid beds is at least 85% during each of the previous six months immediately preceding the month of application (the facility must submit written documentation acceptable to DHS substantiating the occupancy rate);

(B) has a Medicaid contract to provide nursing facility services; and

(C) has not had remedies imposed as specified in this chapter which have resulted in contract cancellation in the 12-month period immediately preceding the month of application.

(7) Facilities contracted to operate as teaching nursing facilities must have met the following criteria.

(A) The facility must have provided DHS with acceptable written documentation that is entered into an affiliation agreement of at least five years' duration with a school offering an accredited family practice residency program and/or an accredited nursing program for registered or vocational nurses or both. The school must offer classroom training on its own campus

or on the campus of an accredited college or university of which it is a part, and the curriculum must include a geriatric component. At the end of the five year period, the facility may continue or discontinue the affiliation agreement at its own discretion.

(B) After the first year of the initial Medicaid contract for beds, DHS will accept an ownership change as long as the change does not affect continuance of the affiliation agreement between the facility and a school for the remainder of the five years specified in subparagraph (A) of this paragraph.

(8) Facilities that apply for participation under the special DHS commissioner's waiver authority.

(A) The commissioner of DHS has authority to waive the restriction on contracting in subsection (b) of this section and direct DHS to enter into Medicaid contracts with nursing facilities that satisfy the requirements specified in this subparagraph. In a manner acceptable to DHS, each of these facilities must:

(i) document that there is a crisis and immediate need for additional Medicaid nursing-facility beds in the facility's community;

(ii) document that there are problems with the quality of care available in the facility's community, and show that new Medicaid-contracted beds will remedy these problems;

(iii) demonstrate that Medicaid residents in the facility's community do not have reasonable access to nursing-facility care;

(iv) document strong community support for a new Medicaid nursing facility; and

(v) agree to make a contractual commitment that the individual or company entering into a Medicaid contract under the provisions of this paragraph will directly own and operate the facility for at least three years.

(B) DHS applies the following criteria when granting special DHS commissioner's waivers:

(i) If facilities have not completed construction requirements, and if facilities have not been licensed and certified within 18 months of the date on the DHS letter approving the waiver, the DHS commissioner will rescind the approvals for all such waivers granted.

(ii) DHS may grant one 90-day extension for extenuating circumstances, at the discretion of the DHS commissioner.

(C) Facilities whose commissioner's waiver was rescinded after September 1, 1994, may apply for participation under the previous waiver, and any rescission of that waiver will be nullified, if the following circumstances can be documented in a manner acceptable to DHS:

(i) the previous waiver was rescinded because the facility had not completed construction requirements within the time limits specified in the rule and such failure was due to circumstances beyond the control of the facility;

(ii) a substantial amount of construction was undertaken within the time limit specified in the rules;

(iii) the construction of the facility is being financed by a loan insured by the United States Department of Housing and Urban Development or other governmental entity; and

(iv) construction, licensure, and certification are completed by March 1, 1995.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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Subchapter Y. Medical Review and Re-evaluation

• 40 TAC §§19.2402-19.2405, 19.2407-19.2411, 19.2413

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§19.2403. Utilization Review Process. The Utilization Review Committee determines the need for nursing facility care by evaluating the recipient's medical and/or nursing needs based on facility documentation re-

quired by the Texas Department of Human Services (DHS). The medical necessity determination must be made before receiving vendor payment for service delivery, except as provided in §19.2408 of this title (relating to Retroactive Medical Necessity Determinations) and §19.2413 of this title (relating to Reconsideration of Medical Necessity Determination (MN) and Effective Dates).

(1) Documentation and utilization requirements are based on each recipient's need for care, under daily supervision of licensed nurses. All forms must contain the signature and license number of the director of nurses and the nurse assessor.

(2) The review process is initiated when the Utilization Review Committee receives a Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE) form indicating that a Medicaid applicant or recipient is requesting vendor payment for care in a contracted nursing facility.

(A) A preadmission screening for PASARR is necessary when an individual is being admitted to any nursing facility in which he has not recently resided and to which he cannot qualify as a readmission (see §19.2500 of this title (relating to Preadmission Screening and Annual Resident Review (PASARR))).

(B) A preadmission review of a CARE form may be submitted on any individual seeking admission to a Medicaid facility. The optional preadmission review allows a facility to determine whether the individual would meet the medical necessity requirements for the Medicaid Nursing Facility Program. A preadmission review does not establish medical necessity, an authorization for reimbursement, or a level of reimbursement.

(C) An admission review of a CARE form determines the medical necessity and establishes an authorization for reimbursement and a level of reimbursement. A valid medical necessity determination is an eligibility requirement for Medicaid participation, and vendor payments cannot be made on behalf of recipients who do not have established medical necessity determinations.

(i) If a facility is receiving Medicare copayment from DHS for a recipient, that recipient is not considered to be in the Medicaid vendor payment system.

(ii) The CARE form must be received by the Utilization Review Committee in accordance with §19.2405 of this title (relating to Utilization Review Effective Dates). The admission review and de-

termination of medical necessity (MN) remains valid for up to 180 days from date of admission or the stamp-in date when not received by the Utilization Review Committee within 20 days of admission.

(iii) An admission Texas Nursing Facility CARE form must include a current certification by a physician.

(iv) Admission reviews must be done on all new Medicaid admissions who do not have a permanent medical necessity.

(D) The medical necessity review (MNR) is due 180 days after the effective date of the admission MN determination. If the MNR indicates an MN for nursing facility care, the MN will become permanent. If a CARE form is not received by the day after the expiration date of the current MN determination, the current MN determination ceases to exist. To reinstate an expired MN determination:

(i) if more than 30 days have elapsed, facility staff must submit an admission CARE form assessment, signed by the physician, to the Utilization Review Committee

(ii) if 30 days or less have elapsed, an MN review is submitted. The date of receipt of these CARE forms is the new effective date of the MN.

(E) Texas Index for Level of Effort (TILE) review is done 180 days after the effective date of the MNR and every 180 days thereafter, except for recipients with a TILE level of 211. For TILE level 211, no additional assessment forms are required, and payment will continue at that level, unless the facility submits a form indicating a change in condition.

(3) To ensure that payments continue, the facility must submit all forms in a timely manner so that they are received by the Utilization Review Committee no later than the day after the expiration of the current form.

(A) When submitting forms by mail, the stamp-in date (effective date) will be considered to be the date mailed only if sent by certified mail.

(i) When utilizing certified mail, the facility must enclose an original and photocopy of an alphabetized list of assessment forms being submitted with each envelope/package as well as a self-addressed, stamped envelope. The assessment forms must also be in alphabetical order. The facility is responsible for the content of each envelope/package including the accuracy and completeness of the forms and list.

(ii) The lists submitted by the facility will be compared to the envelope/package contents. Verification of content will be made and the assessment forms stamped in. Any discrepancies will be noted on the photocopy list. Each photocopy list will be returned to the facility in the envelope provided. The Utilization Review Committee must retain the alphabetized list for two years as part of the facility records.

(iii) Facilities must retain the photocopy of the alphabetized list with the certified mail receipt attached at least until all accounts are satisfied for the time periods involved, or two years, whichever is longest.

(B) Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE) forms should be submitted in the following manner:

(i) The Utilization Review Committee accepts CARE forms from facilities up to 45 days before the expiration of the recipient's current assessment, and

(ii) The CARE forms submitted for TILE reviews must be completed no more than 60 days prior to the expiration date of the current assessment.

(C) All forms must be fully completed and contain all current information. To ensure that payments continue, any forms that are returned for proper completion must be received by the Utilization Review Committee no later than the day after expiration of the current form

(D) If a CARE form is not received by the day after the expiration date of the current form, payment ceases.

(E) The Texas Department of Human Services (DHS) does not pay for the period of time between an expired form and the new effective date, unless the facility has requested and been granted a reconsideration of effective dates. See §19.2413 of this title (relating to Reconsideration of Medical Necessity Determination (MN) and Effective Dates).

(i) DHS recoups any inadvertent payments made to facilities.

(ii) If the facility does not receive payment and there has been no reconsideration of effective dates granted, then restrictions apply as described in §19.1708 of this title (relating to Limitations on Provider Charges to Patients) when the reason for no payment is facility error.

§19.2404. Utilization Review Effective Dates. When the recipient is admitted to or discharged from the Medicaid Nursing

Facility vendor payment system, the facility must submit a Resident Transaction Notice form within 72 hours.

(1) The administrator of the facility must submit to the Utilization Review Committee an admission Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE) form within 20 calendar days following admission to the Medicaid Nursing Facility vendor payment system.

(A) The CARE form must be completed and signed by the physician within 20 calendar days following admission to the Nursing Facility vendor payment system.

(B) The CARE form submitted within 20 calendar days of the date of admission will be effective on the date of the admission.

(C) The effective date of a Texas Nursing Facility CARE form not submitted within 20 calendar days following admission to the Nursing Facility vendor payment system will be the stamp-in date at the Utilization Review Committee.

(2) If a recipient who has not achieved a permanent medical necessity determination is out of the Medicaid nursing facility vendor payment system for more than 30 days, existing medical necessity determinations are no longer in effect and a new admission medical necessity determination must be done, as described in §19.2403(2)(B) of this title (relating to Utilization Review Process) for a TILE rate to be established.

(3) The Texas Department of Human Services (DHS) does not make vendor payment when a CARE form expires. See §19.2413 of this title (relating to Reconsideration of Medical Necessity (MN) Determination and Effective Dates).

(A) A provider is not entitled to payment for services rendered from the expiration date to the new effective date of a recipient's CARE form unless a reconsideration of effective dates has been granted.

(B) Vendor payment made by the Texas Department of Human Services (DHS) for any period not within CARE form effective dates is subject to recoupment.

(4) If more than 30 days elapse between the effective dates of a facility's contract cancellation and new contract, the facility must submit new documentation for recipients who have remained in the facility during the noncontracted period. Recipients with permanent medical necessity determi-

nations keep their permanent medical necessity status.

§19.2408 Retroactive Medical Necessity Determinations. Private-pay individuals living in Medicaid-certified nursing facilities, or distinct parts, who do not receive SSI cash benefits and who make application for Medicaid may be eligible for "three months prior" vendor payments. To ensure that vendor payments begin on the date that an individual's financial resources are exhausted, the potential recipient must have a valid medical necessity (MN) determination.

(1) If a recipient is found to be otherwise eligible for vendor payments for all or part of the three months prior to the date of his application for Medicaid assistance, Texas Department of Human Services (DHS) Medicaid eligibility staff will notify facility staff. Facility staff should submit a request for MN determination form (CARE) for the retroactive period.

(2) If an applicant meets all other eligibility criteria for three-months-prior coverage, DHS makes retroactive vendor payments according to the assigned Texas Index for Level of Effort (TILE) level for the period indicated on the CARE form submitted for retroactive coverage.

(3) DHS makes retroactive vendor payments for only that period of time during which physician-certification, plan-of-care, and medical necessity requirements are met. After establishment of any retroactive medical necessity, verification may be done to show that the applicant's record includes the physician's certification, recertification, and plans of care, and that the plans were reviewed as required during the applicable period(s). The effective date of the new MN determination for the retroactive period of eligibility is the first day of the earliest month in which the applicant qualified for a medical necessity determination. If the recipient has paid for the retroactive time period, the facility must reimburse him the vendor portion that DHS paid.

§19.2409. General Qualifications for Medical Necessity Determinations. Medical necessity (MN) is the prerequisite for participation in the Medicaid (Title XIX) Long-term Care program. This section contains the general qualifications for an MN determination. To verify that medical necessity exists, an individual must meet the conditions described in paragraphs (1) and (2) of this section.

(1) The individual must demonstrate a medical disorder or disease or both, with a related impairment that:

(A) limits his ability to recognize problems, changes in his condition, and the need for or side effects of prescribed medications;

(B) is of sufficient seriousness that his needs exceed the routine care which may be given by an untrained person; and

(C) requires nurses' supervision, assessment, planning, and intervention that are available only in an institution.

(2) The individual must require medical/nursing services that:

(A) are ordered by and remain under the supervision of a physician;

(B) are dependent upon the individual's documented medical, physical, and/or functional disorders, conditions, or impairments;

(C) require the skills of registered or licensed vocational nurses;

(D) are provided either directly by or under the supervision of licensed nurses in an institutional setting; and

(E) are required on a regular basis.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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**Subchapter Z. Preadmission
Screening and Annual Resident Review (PASARR)**

• **40 TAC §19.2500**

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§19.2500. Preadmission Screening and Annual Resident Review (PASARR)

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

(1) Acute inpatient care—An acute institutional setting that provides medical care, such as a hospital, but does not include inpatient psychiatric care.

(2) Alzheimer's disease—A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the *International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM)*.

(3) Amyotrophic lateral sclerosis—A degenerative motor neuron disease as diagnosed by a physician in accordance with *International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM)*.

(4) Anencephaly—A developmental anomaly with absence of neural tissue in the cranium.

(5) Chronic obstructive pulmonary disease—A disease of the respiratory system as diagnosed by a physician in accordance with the *International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM)*.

(6) Comatose—A state of unconsciousness characterized by the inability to respond to sensory stimuli as certified by a physician.

(7) Congestive heart failure—A disease of the circulatory system as diagnosed by a physician in accordance with *International Classification of Diseases, 9th Revision Clinical Modification (ICD-9-CM)*.

(8) Convalescent care—Care provided after a person's release from an acute care hospital that is part of a medically prescribed period of recovery which does not exceed 120 days.

(9) Dementia—A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the *International Classification of Diseases 9th revision Clinical Modification (ICD-9-CM)*.

(10) Functioning at the brain stem level—A significantly impaired state of consciousness characterized by normal respirations and minimal (mostly reflexive) response to environmental stimuli as certified by a physician.

(11) Huntington's disease—A disease of the central nervous system diagnosed by a physician in accordance with the *International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM)*.

(12) Level I-identification screening—The process of identifying individuals with an indication of mental illness, mental retardation and/or a related condition, who require a Level II PASARR assessment.

(13) Level II-PASARR assessment—Preadmission Screening and Annual Resident Review assessment of persons with mental illness, mental retardation, and/or a related condition conducted in accordance with Nursing Home Reform Provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

(14) Mental illness—A current primary or secondary diagnosis of a major mental disorder (as defined in the *Diagnostic and Statistical Manual of Mental Disorders*, 3rd edition, revised in 1987 (DSM-III-R)). This mental disorder is a schizophrenic, mood, paranoid, panic, or other severe anxiety disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder). The disorder results in functional limitations in major life activities within the past three to six months that would be appropriate to the individual's developmental stage. The individual typically has at least one of the following characteristics on a continuing or intermittent basis: serious difficulty in the areas of interpersonal functioning; and/or concentration, persistence, and/or pace; and/or adaption. Within the past two years, the disorder has required psychiatric treatment more than one time and more intensive than outpatient care and/or the individual has experienced an episode of significant disruption to the normal living situation for which supportive services were required to maintain functioning at home or in a residential treatment environment or which resulted in intervention by housing or law enforcement officials.

(15) Mental retardation—A diagnosis of mental retardation (mild, moderate, severe, and profound) and significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(16) New admission—An individual who is admitted to any nursing facility in which he has not recently resided and to which he cannot qualify as a readmission.

(17) Nursing facility—A Texas Medicaid-certified institution, except for a facility certified as an intermediate care facility for the mentally retarded (ICF/MR), providing nursing services to nursing facility residents.

(18) Nursing facility applicant—An individual seeking admission to a Texas Medicaid-certified nursing facility.

(19) Nursing facility resident—An individual who resides in a Texas Medicaid-certified nursing facility and receives services provided by professional medical nursing personnel of the facility.

(20) OBRA '87—Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203).

(21) QMHP—Qualified Mental Health Professional. An individual who has at least one year of experience working with persons with mental illness.

(22) QMRP—Qualified Mental Retardation Professional. An individual who has at least one year experience working with persons with mental retardation and/or a related condition.

(23) Parkinson's Disease—A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the *Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM)*.

(24) PASARR—Preadmission screening and annual resident review.

(25) PASARR determination—A decision made by Texas Department of Human Services (DHS) PASARR Determination Program professional staff to establish if an individual requires the level of services provided in a nursing facility, as defined by medical necessity, if the individual has the need for specialized services for mental illness, mental retardation, and/or a related condition. The decisions are based on information included in the Level II PASARR Assessment.

(26) Readmission—An individual who is readmitted to a nursing facility in which he has resided following a temporary absence for acute care hospitalization or for therapeutic leave.

(27) Related condition—A severe, chronic disability as defined in 42 Code of Federal Regulations §435.1009, that meets all of the following conditions:

(A) it is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition including autism, but excluding mental illness, found to be closely related to mental

retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for these persons.

(B) it is manifested before the person reaches age 22.

(C) it is likely to continue indefinitely.

(D) it results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(28) Specialized services for individuals with mental illness—The implementation of an individualized plan of care developed under and supervised by a physician, provided by a physician or other qualified mental health professionals, that prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of severe mental illness, which necessitates supervision by trained mental health personnel.

(29) Specialized services for individuals with mental retardation or a related condition—A continuous program for each client, which includes aggressive, consistent implementation of specialized and generic training, treatment, health services and related services that is directed toward:

(A) the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status. Specialized services do not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous specialized services program.

(30) Substantial risk of serious harm to self and/or others—Harm which may be demonstrated either by a person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot

remain at liberty, as determined by a court of law.

(31) Ventilator dependent—Reliance upon a respirator or respiratory ventilator as a life support system to assist with breathing.

(b) Preadmission Screenings.

(1) Purpose. All new admissions (private pay, Medicare beneficiaries, and Medicaid recipients) must have a Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE) form and be screened prior to admission to a nursing facility to determine if:

(A) the individual has mental illness (MI), mental retardation (MR), and/or a related condition (RC);

(B) the individual needs nursing facility services, as defined by medical necessity; and

(C) the individual requires specialized services:

(2) Readmissions. The following individuals are not subject to preadmission screenings:

(A) readmissions following hospitalizations;

(B) individuals who:

(i) are admitted to the nursing facility directly from a hospital after receiving acute inpatient care at the hospital,

(ii) require nursing facility services for the condition for which the individual received care in the hospital; and

(iii) have been certified by their attending physician prior to admission to the nursing facility that they are likely to require less than 30 days of nursing facility services; and

(C) residents who:

(i) transfer from their current nursing facility residence to a new nursing facility residence,

(ii) have not had any interruption in continuous nursing facility residence other than for acute care hospitalization,

(iii) have not had any change in their mental condition; and

(iv) have met the PASARR requirements as:

(I) stipulated in this section in their current nursing facility residence; and

(II) documented in their DHS CARE form and PASARR determination notification letter.

(3) Level I Identification Screening. Individuals are identified as having mental illness, mental retardation, or a related condition (MI/MR/RC) through use of DHS's CARE form, Item 34.

(A) The attending physician makes a positive response to CARE form Item 34 for the presence of MI if the individual meets two of the three following criteria:

(i) has a diagnosis of MI (excluding a primary diagnosis of Alzheimer's disease or dementia);

(ii) has a level of impairment that results in functional limitations in major life activities within the past three to six months in the areas of interpersonal functioning, concentration, persistence, pace and/or adaptation to change; or

(iii) within the last two years, due to the mental disorder, has had psychiatric treatment more intensive than outpatient care more than once and/or experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.

(B) The attending physician makes a positive response to Item 34 for the presence of MR and/or RC if the individual:

(i) has a diagnosis of MR and/or RC,

(ii) has any history of MR and/or RC identified in the past,

(iii) presents any evidence (cognitive or behavioral functioning) that may indicate the presence of MR and/or a RC, or

(iv) has been determined eligible and is referred by an agency that serves people with MR and/or RC.

(C) A positive response to CARE form Item 34 requires that an individual must receive a Level II assessment prior to admission to a nursing facility.

(D) An individual, who has medical necessity, may be immediately admitted to or continue residing in a nursing facility if:

(i) Item 34 of DHS's CARE form is marked "No";

(ii) an individual is in the nursing facility for convalescent care;

(iii) an individual is comatose, functioning at the brain stem level, ventilator dependent, terminally ill, or has a serious medical condition such as chronic obstructive pulmonary disease, anencephaly, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure which result in an impairment so severe that the individual could not be expected to benefit from specialized services;

(iv) an individual has a primary diagnosis of dementia and is not MR and/or RC;

(v) an individual has Alzheimer's disease and no other diagnosis of MR and/or RC;

(vi) an individual is determined by DHS during the Level II Assessment process not to have MI/MR/RC.

(4) Level II Assessment. DHS staff must contact the attending physician to verify the information marked on DHS's CARE form, Item 34. The physician contact sheet will be used by the assessors to allow the resident's treating physician to have input into the assessment.

(A) The assessment process consists of a:

(i) PASARR nursing facility assessment;

(ii) PASARR mental illness assessment (as appropriate); and

(iii) PASARR mental retardation and related conditions assessment (as appropriate).

(B) Depending on the mental and/or physical condition, an assessment is conducted by one or more of the following:

(i) a registered nurse who is a qualified mental health professional;

(ii) a registered nurse who is a qualified mental retardation professional; and

(iii) a psychologist who is a qualified mental retardation professional with at least a Master's degree; and

(iv) other qualified mental health professionals.

(C) DHS will have other professionals on staff and/or on a consultant basis who have the expertise in the evaluation of individuals with related conditions.

(D) If Item 34 indicates "No" on the CARE form, or Item 34 is blank, but Items 16-20 indicate a diagnosis of MI, MR, or RC, it is the responsibility of the nursing facility to contact the PASARR unit of DHS and request screening by an assessment team.

(c) Annual Resident Reviews.

(1) All current nursing facility residents with an indication of MI/MR/RC must be identified by DHS through on-site visits which includes chart reviews and interviews with residents.

(2) The nursing facility is required to assist DHS in identifying all residents who may be MI/MR/RC by providing CARE forms on all residents (Medicaid, Medicare, and private pay) and making residents' records available.

(3) Those individuals identified as having MI/MR/RC are required to receive a Level II assessment as described in subsection (b)(4) of this section.

(4) As of April 1, 1990, all identified residents must have received a Level II assessment. These residents, any new residents, or any other resident, must be reassessed annually if their condition changes to indicate a positive response to CARE form Item 34 through the identification process. The nursing facility must submit another CARE form if a resident's condition changes significantly when there is an indication that the resident might benefit from specialized services.

(5) If an individual who enters a nursing facility as an exempted hospital discharge and is later found to need more than 30 days of nursing facility care, the NF must request DHS to conduct an annual resident review within 40 calendar days of admission.

(d) Determination Process.

(1) The assessment data is analyzed by a qualified mental health and/or mental retardation professional in order to determine whether:

(A) Nursing facility services are needed, as described in §19.2409 and §19.2410 of this title (relating to General Qualifications for Medical Necessity Determinations and Criteria Specific to a Medical Necessity Determination).

(B) An individual requires specialized services for mental illness. The presence of verbalizations or behaviors which indicate a person may pose a substantial risk of serious harm to self or others is evidence that the person requires specialized services.

(C) An individual requires specialized services for mental retardation or a related condition. The presence of response by a person to the environment is evidence that the person requires specialized services

(2) One of the following determinations is made:

(A) Nursing facility services are needed, but specialized services are not needed. Those individuals may be admitted to or continue residing in a nursing facility.

(B) Nursing facility services are needed and specialized services are needed. Those individuals may be admitted to or continue residing in a nursing facility and receive specialized services within the facility.

(C) Nursing facility services are not needed but specialized services are needed. Those individuals may not be admitted to or continue residing in a nursing facility except as described in paragraph (3) of this subsection. Those individuals who are current nursing facility residents must be alternately placed as described in subsection (e) of this section

(D) Nursing facility services are not needed and specialized services are not needed. Those individuals may not be admitted to or continue residing in a nursing facility. Those individuals who are current nursing facility residents must be alternately placed, according to discharge procedures stated under §19.502 of this title (relating to Transfer and Discharge in Medicaid-Certified Facilities).

(3) If a nursing facility resident has 30 or more months of continuous residence in a nursing facility preceding the PASARR determination, the resident may choose to remain and receive specialized services in the nursing facility, or seek alternate placement.

(4) If during the determination process DHS ascertains that a person does not have MI/MR/RC, the PASARR determination process will be discontinued and the individual may be admitted to the nursing facility.

(5) DHS will notify all individuals of the results of their PASARR determination through a letter sent to them, the nursing facility administrator, the attending physician, and the local MHMR authorities, the Texas Department on Aging (TDoA), and the local Medicaid eligibility unit. Individuals who have undergone a preadmission screening will be notified within ten calendar days of the determination. Individuals who have undergone an annual review will

be notified within 30 calendar days of the determination.

(6) Any individual, or his legal representative or responsible party, not in agreement with the PASARR determination may file an appeal with DHS to receive a DHS fair hearing according to Chapter 79 of this title (relating to Legal Services).

(A) When the hearing officer reverses DHS's determination regarding nursing facility admission, the individual seeking entry into the nursing facility may be admitted immediately; and as long as the individual meets all other eligibility requirements, the facility may receive vendor payments. Current residents who have met all eligibility criteria may continue to reside in the facility and receive Medicaid reimbursement retroactive to the date when medical and financial eligibility were in effect.

(B) When the hearing officer sustains DHS's determination regarding nursing facility admission, the individual seeking entry into the nursing facility may not enter the facility and may not be Medicaid-certified for nursing facility placement. Current residents who have met all eligibility criteria may be alternately placed

(e) Specialized Services.

(1) The Texas Department of Mental Health and Mental Retardation (TXMHMR) contracts with the local MHMR authority to purchase case management, specialized services, and alternate placement for persons determined by DHS to require specialized services.

(2) A case manager will be assigned for those residents who require specialized services

(3) DHS provides specialized rehabilitative services, as stated under §19.1303(a) of this title (relating to Specialized Services in Medicaid-Certified Facilities).

(4) An interdisciplinary team will be constituted by the case manager in order to develop a plan for specialized services. This team will identify those additional services required for specialized services that are not already being provided by the nursing facility and covered in the nursing facility daily vendor rate. The following persons must be invited to participate on the team:

(A) the Director of Nurses or another appropriate nursing facility representative;

(B) primary physician;

(C) other professionals deemed appropriate, such as, but not limited to, an occupational therapist, physical therapist, or speech-language pathologist;

(D) the individual and/or his guardian, legal representative, or responsible party; and

(E) family members, if the individual or legal representative agrees.

(5) The case manager will determine how TXMHMR specialized services will be provided by the MHMR authority and will facilitate provision of those services. Those services provided by TXMHMR must meet the relevant portions of TXMHMR's community service standards.

(6) The case manager will report monthly to the primary or attending physician and to the nursing facility regarding the delivery of specialized services.

(7) The nursing facility must allow TDoA staff or representatives from Advocacy, Inc., to counsel and inform affected residents of their rights and options under PASARR

(8) Specialized services and nursing facility services are to be coordinated and integrated for maximum benefit to the resident. A nursing facility must allow for the MHMR authority or a subcontracted provider to provide specialized services within the facility. If a nursing facility accepts individuals or has individuals who require specialized services for their mental condition, it must establish and maintain a written cooperative agreement with the local MHMR authority that includes

(A) general responsibilities of the facility and the provider for delivering the appropriate and mutually supportive services to those residents requiring specialized services for their MI/MR/RC;

(B) a provision allowing the MHMR authority staff to access the resident's clinical record and assessment information to avoid unnecessary duplication of services, with appropriate consent of the eligible resident, legal representative, or responsible party.

(C) a provision allowing the MHMR authority staff an opportunity to participate in or provide information for the facility's admission, programmatic, and discharge-planning meetings when the specialized services needs of an eligible resident are being considered.

(D) a provision allowing the nursing facility staff to participate in or provide information to the MHMR authority case manager during each resident's specialized services planning; and

(E) how conflicts over such issues as time, space, and equipment should be resolved.

(9) The case manager must provide and the nursing facility must maintain, as a separate document in the resident's record, a copy of the original Individual Specialized Services Plan developed by the interdisciplinary team, and any subsequent changes.

(10) The case manager must provide to the facility and the facility must document in the comprehensive care plan the following information from the specialized services plan, the designated provider, the case manager, other written report, and documented telephone contacts:

(A) efforts to resolve the differences between the specialized services plan and the comprehensive care plan;

(B) specialized services objectives;

(C) the resident's adjustment to the specialized services program; and

(D) changes and modification to the plan.

(11) The facility must ensure that all residents who may benefit from specialized services are identified.

(12) If the individual requires specialized rehabilitation services, the facility must cooperate in obtaining the screening or evaluation.

(f) Alternate Placement.

(1) The Texas Department of Mental Health and Mental Retardation (TXMHMR) contracts with the local MHMR authority to procure alternate placement services for residents who are determined by DHS to need specialized services and require alternate placement.

(2) The local MHMR authority assigns a case manager for those residents who request alternate placement.

(3) An interdisciplinary team as described in subsection (e)(4) of this section will be constituted.

(4) The case manager must provide a monthly written report to the nursing facility regarding alternate placement activities as described in 25 Texas Administrative Code §402, subchapter (E). This report

must be retained in the resident's clinical record.

(5) For those residents who have been determined to be appropriately placed in a nursing facility and to need specialized services and who desire alternate placement, the following alternate placement activities occur:

(A) The MHMR authority may locate alternate placement in consultation with the resident or his legal representatives.

(B) The resident or his legal representative must approve the alternate placement.

(C) If the resident or his legal representative refuse all alternate placement options, the resident may remain in the nursing facility and receive specialized services there until an acceptable option is found.

(6) For those residents who have been determined to not need nursing facility services and to need specialized services and who have 30 continuous months of nursing facility residence, a choice will be offered to either seek alternate placement or remain in the nursing facility. If the resident chooses alternate placement, the following alternate placement activities occur:

(A) The MHMR authority must locate alternate placement in consultation with the resident or his legal representatives.

(B) The resident or his legal representative must approve the alternate placement.

(C) Until the resident or his legal representative approve an alternate placement, the resident may remain in the nursing facility and receive specialized services there.

(7) For those residents determined not to need nursing facility services and to need specialized services but who do not have 30 months continuous residence, the resident will be discharged according to procedures stated under §19.502 of this title (relating to Transfer and Discharge).

(g) Nursing facilities which admit or retain individuals that have not been screened by DHS or who admit or retain individuals who do not need nursing facility services and who require specialized services will not be reimbursed for that individual, as described in §19.1708 of this title (relating to Limitations on Provider Charges to Patients).

(h) Nursing facilities must provide discharge planning services to all residents who are to be alternately placed as described in this section and provide residents those rights described in §19.502 of this title (relating to Transfer and Discharge).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 24, 1995.

TRD-9503676 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: May 1, 1995

Proposal publication date: October 21, 1994

For further information, please call: (512) 450-3765

Subchapter AA. Vendor Payment

• 40 TAC §§19.2601-19.2608, 19.2610

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§19.2604. Vendor Payment Information.

(a) Vendor payment will be made based upon the nursing facility administrator's or the administrative designee's approval of the Nursing Care Statement.

(b) Vendor payment will be made at periodic intervals but not less than once per month for services rendered during the previous billing period.

(c) The vendor payment for an entire month will be in accordance with the number of calendar days in the month.

(d) Vendor payment for time periods of less than an entire calendar month shall be made in accordance with the number of days care was provided beginning with the effective date on the Notification of Recipient Medical Necessity Determination and/or Vendor Payment Plan.

(e) Days are defined as 24-hour periods extending from midnight to midnight. Payment is computed in terms of whole days, even though the recipient may

have been in a nursing facility only a fractional part of the day of entrance (See §19.2601(m) of this title (relating to Vendor Payment (Items and Services Included))).

(f) Vendor payment will be made in terms of daily rates.

(g) The recipient must have the status of a certified recipient, must have been determined to be in need of nursing facility care, and must be physically located in a Medicaid-certified bed of a facility at the time the service is rendered in order for the facility to receive payment for the service.

(h) The Texas Department of Human Services (DHS) will owe the facility no interest on payments not made within the time limits provided in these rules, the provider contract, or the Government Code, Chapter 2251 when the delay is the result of a bona fide dispute between DHS and the facility over compliance with the terms and conditions of the Medicaid program or is the result of other rules, laws or contract terms authorizing the withholding or non-payment.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 24, 1995.

TRD-9503677 Nancy Murphy
Section Manager, Media
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Part XIX. Texas Department of Protective and Regulatory Services

Chapter 709. Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services in Foster Care Settings

• 40 TAC §§709.101-709.113

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §§709.101-709.113, concerning Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services in Foster Care Settings (IBMS), in its new Chapter 709. The new sections are adopted with changes to the proposed text as published in the September 30, 1994, issue of the *Texas Register* (19 TexReg 7783).

The justification for the new sections is to improve the level of functioning of Medicaid-eligible children who have been determined by TDPRS to have been abused or neglected or who are receiving Post-Adoption services from TDPRS and whose behavior or functioning requires placement in 24-hour out-of-home care.

The new sections will function by increasing federal funds available for TDPRS programs.

During the public comment period, comments were received from the Health Care Financing Administration (HCFA) and the State Medicaid Office at the Health and Human Services Commission. HCFA commented that there was already a program in the State Medicaid Plan called Psycho-Social Treatment Services, and use of that name for another program was confusing and inappropriate. The State Medicaid Office pointed out that TDPRS contractors are the IBMS service providers rather than TDPRS. As a result of these comments, TDPRS is making the following changes. The name of the program is changed from Early and Periodic Screening, Diagnosis, and Treatment Psycho-Social Treatment Services in Foster Care Settings to Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services in Foster Care Settings (IBMS) to avoid duplication of terms with other areas of the Medicaid State Plan. The terminology to describe TDPRS's contractors for IBMS is being changed from individual provider to provider. TDPRS is recognized as the designee, rather than the provider, under contract with the Health and Human Services Commission to coordinate delivery of IBMS. In addition, references to "activities of daily living skills" have been made consistent throughout the chapter. No comments were received from the general public.

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; under Texas Civil Statutes, Article 4413 (503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to TDPRS; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement TDPRS's response to the SB-5, General Appropriations Act, 73rd Legislature, Regular Session, Article V, Section 154 (Texas Performance Review Riders).

§709.101. Introduction. The Texas Department of Protective and Regulatory Services (TDPRS) Early and Periodic, Screening, Diagnosis, and Treatment Integrated Behavior Management Services in Foster Care Settings Program is established effective October 1, 1994, by TDPRS in cooperation with the Texas Health and Human Services Commission, the single state

Medicaid agency, under the authority of Title XIX of the Social Security Act, and Texas Revised Civil Statutes, Article 4413 (502), §16.

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

Activities of daily living (ADL) skills—A set of activities within Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services in Foster Care Settings Program (IBMS) that provide skill training in problem solving as well as support and supervision related to activities of daily living (such as eating, dressing, personal care and hygiene, and housekeeping) that assist children with developmental disabilities or mental retardation to attain an optimal level of functioning.

Behavior counseling and supervision—A set of activities within IBMS that are directed toward designing, implementing or monitoring a formal, individualized behavioral counseling program or skill-training program. The purpose of these activities is to restore the child to or maintain the child at his or her best possible level of functioning. This activity also includes the performance of specialized behavior management techniques and activities designed to assist the child in managing his or her symptoms of emotional disturbance.

Case planning and coordination—A set of activities within IBMS that include the performance of activities that lead to and support the development and implementation of a child's IBMS plan of care. Specific activities include intake, development of the plan of care, service coordination and monitoring, reassessment, and implementing a discharge plan. Included within these activities are related paperwork and staff travel time.

Cost-finding and reimbursement methodology—The set of policies used by the Texas Department of Protective and Regulatory Services (TDPRS) to determine the reimbursement for the TDPRS foster care system.

Crisis intervention—A set of activities in IBMS that provides immediate response to crises to protect and stabilize children who are at high risk of harming themselves or others. Crisis intervention services may also be provided to preserve a child's current placement and avoid, if possible, the need for care in a more restrictive setting. Included in these activities are related paperwork and staff travel time.

Diagnostic assessment—A set of activities in IBMS that involves the performance of diagnostic assessments or testing for the purpose of identifying mental, emotional, social, or physical conditions which are interfering with a child's development

and functioning. Activities are directed toward developing, supervising, and monitoring a comprehensive treatment plan for children in therapeutic care or residential treatment to ameliorate such problems, and to restore the child to his or her best possible functioning level. Diagnostic assessments may include a psycho-social history, behavioral assessment, psychological evaluation, psychiatric examination, or other specialized examinations or evaluations (such as neurological or hearing). Diagnostic assessment activities include related paperwork and staff travel time.

Level of care system—TDPRS's uniform system for determining a child's treatment and service needs within an out-of-home setting and for organizing the delivery of services based on a child's individual needs.

Level of care services support system—The procedures for authorizing and re-authorizing the need for a given level of care and the utilization review system in place to monitor the quality of care delivered in the Level of Care system.

Licensed practitioner of the healing arts—An individual who is licensed to practice in a clinical field and who is qualified to determine the need for and authorize the delivery of IBMS, in accordance with federal regulations governing the Title XIX Medicaid program.

Medical care—The provision of medical care, supervision, or interventions for routine or emergency physical or mental conditions within IBMS, including the management of acute or chronic medical conditions. It also includes the performance of medical consultation on a routine or emergency basis.

Medical transportation—A set of activities within IBMS that involve arranging for and providing transportation to enable children to access needed medical, dental, mental health, substance abuse, or other health care. Activities include staff time spent transporting a child to and from needed care, and waiting to transport the child back to the facility or home.

Milieu management—A set of activities provided in IBMS that are directed to restoring or maintaining children at their best possible level of functioning. Milieu management also includes activities which promote and maintain the overall structure of the therapeutic environment or program.

Provider of IBMS—The contracted individual foster family or group home, child placing agency, residential care facility, or other 24-hour child care facility licensed, certified, or verified by TDPRS or any other individual or entity under contract to TDPRS to provide treatment or service as part of a specific level of IBMS.

Texas Department of Protective and Regulatory Services (TDPRS)—The agency in Texas authorized by the state to make determinations of abuse and neglect and to

license and certify foster family and group homes, child placing agencies, residential care facilities, and other 24-hour child care facilities. TDPRS is also the designee under contract with the Health and Human Services Commission to coordinate the delivery of IBMS.

Therapy—The provision of regularly scheduled, structured therapy sessions or other planned therapeutic interventions provided as part of IBMS. The purpose of these activities is to ameliorate or remedy social, emotional, or behavioral problems, and to restore to or maintain the child at his or her best possible functioning level. Therapeutic interventions may also be performed to enhance family relationships or structure, or to improve patterns of interaction or behavior between the child and others who are significant in his or her life. It also includes the provision of therapeutic or behavioral consultation on a routine or emergency basis. Related paperwork and staff travel time are included as part of these activities.

§709.103. *Purpose.*

(a) The purpose of Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services in Foster Care Settings Program (IBMS) is to improve the level of functioning of Medicaid-eligible children who have been determined by the Texas Department of Protective and Regulatory Services (TDPRS) to have been abused or neglected or who are receiving Post-Adoption services from TDPRS and whose behavior or functioning requires placement in 24-hour out-of-home care.

(b) Utilization of IBMS is appropriate within an individual foster family or group home, child placing agency, residential care facility or other 24-hour child care facility and in short-term crisis stabilization and/or observation settings, such as emergency shelter care and other 24-hour child care facilities.

§709.104. *Eligibility Requirements.* Persons who are eligible for Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services in Foster Care Settings Program are Medicaid-eligible children who have been determined by the Texas Department of Protective and Regulatory Services (TDPRS) to have been abused or neglected and who are in the conservatorship of TDPRS, or who are receiving post-adoption services from TDPRS and whose behavior or functioning requires placement in 24-hour out-of-home care.

§709.105. *Covered Services.*

(a) Early and Periodic Screening, Diagnosis, and Treatment Integrated

Behavior Management Services (IBMS) are covered through prior authorization as is emergency stabilization and observation. The covered services reflect the principles of the Texas Department of Protective and Regulatory Services' (TDPRS's) Level of Care system. Thus, different intensities, or levels, of IBMS are available within out-of-home settings to permit both treatment and services as well as the reimbursement of cost to be based on the needs of individual children.

(b) The elements of service within IBMS include milieu management, behavioral counseling and supervision, therapy, activities of daily living (ADL) skills, medical care, medical transportation, case planning and coordination, diagnostic assessment, and crisis intervention.

(c) Emergency stabilization and observation services, because of their temporary nature, are not defined as a distinct level of IBMS. Any child in the conservatorship of TDPRS may require this service from time to time

(d) Routine child care costs are not a covered service under IBMS.

(e) Covered IBMS are:

(1) Level II Care.

(A) Description. Level II IBMS are provided by providers in as normal a family environment as possible with additional structure and guidance. Children receiving this level of care will receive some combination of the following services, based on their individual needs: milieu management, behavioral counseling and supervision, case planning and coordination, diagnostic assessment, activities of daily living skills, therapy, medical services, medical transportation services, and crisis intervention services. All service components are delivered in as normal a family environment as possible and in accordance with any licensing requirements established by TDPRS. Services may be provided in the home, facility, community or office setting and must be in accordance with any licensing requirements established by TDPRS.

(B) Conditions of Coverage. Level II care is covered as an IBMS when the child is a Medicaid recipient and the determination of need for this service has been prior authorized by a licensed practitioner of the healing arts designated by TDPRS. This clinician must maintain a written copy of this service authorization in the child's file. The need for Level II care is reassessed, and, if appropriate, re-authorized every six months by the designated licensed practitioner of the healing arts. The clinician must maintain a written copy of such re-authorization in the child's file

(2) Level III Care.

(A) Description. This level of IBMS is provided by providers in residential care facilities or therapeutic and/or specialized foster family and group homes or other 24-hour child care facilities with ancillary services provided as appropriate. Children needing this level of care require structured, supportive care with the availability of therapy or other psycho-social interventions as necessary. Children receiving this level of IBMS will receive some combination of the following services, based on their individual needs: milieu management, behavioral counseling and supervision, therapy, activities of daily living (ADL) skills, medical care, medical transportation, case planning and coordination, diagnostic assessment, and crisis intervention. Services may be provided in the home or facility, in the community, or in an office setting and must be in accordance with any licensing requirements established by TDPRS.

(B) Conditions of Coverage. This level of IBMS is covered when the child is a Medicaid recipient and the determination of its need has been authorized by a licensed practitioner of the healing arts designated by TDPRS. This clinician must maintain a written copy of this service authorization in the child's file. The need for Level III care is reassessed and, if appropriate, is re-authorized every six months by the designated licensed practitioner of the healing arts. This clinician must maintain a written copy of the re-authorization in the child's file.

(3) Level IV Care.

(A) Description. This level of IBMS is provided in residential care facilities or highly skilled therapeutic and/or specialized foster family and group homes or other 24-hour child care facilities with ancillary services provided as appropriate. Children needing this level of care require a structured, individualized treatment program that includes regular therapeutic interventions. Children receiving this level of IBMS will receive some combination of the following services, based on their individual needs: milieu management, behavior counseling and supervision, therapy, activities of daily living (ADL) skills, medical care, medical transportation, case planning and coordination, diagnostic assessment, and crisis intervention. Services may be provided in the home or facility, in the community, or in an office setting and in accordance with any licensing requirements established by TDPRS.

(B) Conditions of Coverage. This level of IBMS is covered when the child is a Medicaid recipient and the determination of its need has been authorized by a licensed practitioner of the healing arts in the Level of Care Services Support System. This clinician must maintain a written copy of this service authorization in the child's file. The need for Level IV care is reassessed and, if appropriate, re-authorized every six months by a licensed practitioner of the healing arts. This clinician must maintain a written copy of the re-authorization in the child's file.

(4) Level V Care.

(A) Description. This level of IBMS is provided in highly specialized therapeutic foster homes, residential care facilities and other 24-hour child care facilities. Children needing this level of care require a highly structured treatment program including intensive therapeutic interventions and 24-hour management. Children receiving this level of IBMS will receive some combination of the following services, based on their individual needs: milieu management, behavioral counseling and supervision, therapy, activities of daily living (ADL) skills, medical care, medical transportation, case planning and coordination, diagnostic assessment, and crisis intervention. Services may be provided in the home, the facility, in the community, or in an office setting and must be in accordance with any licensing requirements established by TDPRS.

(B) Conditions of Coverage. This level of IBMS is covered when the child is a Medicaid recipient and the determination of need for this service has been authorized by a licensed practitioner of the healing arts designated by TDPRS. This clinician must maintain a written copy of this authorization in the child's file. The need for Level V care is reassessed and, if appropriate, re-authorized every six months by the designated licensed practitioner of the healing arts. This clinician must maintain a written copy of the re-authorization in the child's file.

(5) Level VI Care.

(A) Description. This level of IBMS is provided in residential care facilities or highly skilled therapeutic and/or specialized family homes licensed to provide a specialized behavioral approach for treatment, or licensed to care for the medically fragile, or other 24-hour child care facilities with ancillary services provided as appropriate. Children needing this level of care are severely impaired or medically fragile and require constant supervision, treatment, and care. Children receiving this

level of IBMS will receive some combination of the following services, based on their individual needs: milieu management, behavior counseling and supervision, therapy, activities of daily living (ADL) skills, medical care, case planning and coordination, medical transportation, diagnostic assessment, and crisis intervention. Services may be provided in the facility, in the community, or in an office setting and must be in accordance with any licensing requirements established by TDPRS.

(B) **Conditions of Coverage.** This level of IBMS is covered when the child is a Medicaid recipient and the determination of need for this service has been authorized by a licensed practitioner of the healing arts designated by TDPRS. This clinician must maintain a written copy of this authorization in the child's file. The need for Level VI care is reassessed and, if appropriate, re-authorized every 90 days by the designated licensed practitioner of the healing arts. This clinician must maintain a written copy of the re-authorization in the child's file.

(6) **Emergency Stabilization and/or Observation Services.**

(A) **Description.** This level of IBMS is designed to maintain the Medicaid-eligible child in a safe, controlled environment for behavior stabilization and observation so that an adequate determination of the child's treatment and service needs can be made. It is a covered service when the child is unable to remain at home or in a current placement. Emergency Stabilization and/or Observation Services are provided in facilities and family homes licensed by TDPRS to provide emergency shelter care, with ancillary services available as appropriate.

(B) **Conditions of Coverage.** This service is covered for a period of 30 days when authorized by a designated licensed practitioner of the healing arts. Authorization must occur within ten workdays of admission, except when admission occurs on a weekend or holiday. In these cases, the time of authorization is extended by 48 or 24 hours, respectively. A copy of the service authorization must be maintained in the child's TDPRS case file. This service may be re-authorized for up to 30 additional days if more interventions are required to stabilize the child's behavior or additional observations and/or diagnostic services are required. Children receiving this level of IBMS will receive some combination of the following services: milieu management, behavior counseling, and supervision, therapy, activities of daily living (ADL) skills, case planning and coordination, medical care, medical transportation,

diagnostic assessment, and crisis intervention. Services provided in the facility must be in accordance with any licensing requirements established by TDPRS.

§709.106. Prior Authorization. Procedures.

(a) Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services (IBMS) are authorized after a clinical determination is made of the child's level of care need. These prior authorizations must be performed by licensed practitioners of the healing arts designated by the Texas Department of Protective and Regulatory Services (TDPRS).

(b) Authorization for all IBMS except for Emergency Stabilization and/or Observation Services must be made using information presented in a Common Application for Placement Form, as well as from any psychological, psychiatric, or other evaluations and material that may be pertinent to the case.

(c) A copy of the authorization must be kept in the child's file. The file must be maintained at the agency responsible for the authorization.

(d) Re-authorization for IBMS must be made at the intervals noted in §709.105 of this title (relating to Covered Services). Copies of any service re-authorizations must be kept in the child's file, which must be maintained at the agency responsible for the re-authorization.

§709.107. Provider Qualifications. Providers of Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services (IBMS) must be designated by the Texas Department of Protective and Regulatory Services (TDPRS) using TDPRS's licensure, verification, certification, or contract standards. Any providers of out-of-home care must be licensed, verified or certified by TDPRS as foster family or group homes, child placing agencies, residential care facilities, or other 24-hour child care facilities. Any individual or entity providing treatment or care as part of a specific level of IBMS must either be employed by or under contract to the licensed, verified or certified entity, as described in this section, or under contract to TDPRS.

§709.108. Record Keeping and Documentation.

(a) The individual or entity responsible for authorizing the level of Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services (IBMS) to be provided to a Medicaid-eligible child is also responsible for maintaining appropriate authorization and re-

authorization forms. The Texas Department of Protective and Regulatory Services (TDPRS) also maintains records documenting the provision of care.

(b) Any provider of any level of IBMS must maintain a treatment or service plan for each child in its care in accordance with TDPRS's Minimum Standards for 24-hour child care facilities.

(c) Authorization of IBMS may be made prior to the development of a treatment or service plan. However, the provider must develop a final plan of treatment, service, or care in accordance with time frames designated in TDPRS's Minimum Standards for 24-hour child care facilities.

§709.109. Care Coordination. Each provider of a specific level of Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services (IBMS) is responsible for the overall coordination and implementation of the child's IBMS plan.

§709.110. Reserve Bed Days. Billing for reserve bed days is based on the provider or facility census which runs from midnight to midnight. Off-site activities sponsored by the provider or facility is reimbursed as a regular day of care when these activities are part of the individual's overall treatment or service plan.

(1) Reserve bed days without prior approval. Thirty reserve bed days per individual per facility are covered for any reason. These days include, but not be limited to, hospitalization, runaways, non-therapeutic off-site activities, home visits, and acclimation to a new environment.

(2) Reserve bed days with prior approval. Additional days are allowed with prior approval for visits which enable the child to adjust to a new, less restrictive form of care as part of discharge planning. In these cases, the child's discharge plan should clearly state how these reserve bed days relate to the implementation of the discharge plan. *§709.111. Utilization Review.* Utilization review must be provided by an entity or individual designated by the Texas Department of Protective and Regulatory Services (TDPRS). Six-month reviews of children placed in Level II through VI will be conducted on site except in the following cases.

(1) Ninety-day reviews of children in Short-Term Level VI Care are conducted on-site. Reviews of children living in facilities with fewer than six children must be alternately conducted through on-site and desk reviews. On-site, out-of-state reviews must be conducted annually, if deemed necessary by TDPRS.

(2) Reviews of children receiving post-adoption care who are receiving Level IV-VI Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services (IBMS) must be alternately reviewed every 90 days through alternate use of on-site and desk reviews, except that out-of-state reviews must be conducted annually if deemed necessary by TDPRS.

(3) Other on-site or desk reviews of children in any IBMS may be conducted by the designated entity or individual at TDPRS's request. Time frames for these special requests may vary from two workdays to longer time periods

§709.112. Quality Assurance.

(a) Providers of Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services must develop and maintain a written current quality assurance plan.

(b) All information must be available in a language or mode of communication which can be understood by the child and the applicant agency. Information must be available to the individual and his or her parent, guardian, or legal custodian at first contact with the provider.

§709.113. Reimbursement for Services.

(a) Reimbursement for Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services (IBMS) is made in an all-inclusive payment to the provider. The provider may elect to provide all service components directly or to subcontract for specialized services.

(b) The payment for service does not include any reimbursement for routine child care costs.

(c) Billing for days of care is based on the provider's daily census which runs from midnight to midnight. Payment is made for the day of admission and not the day of discharge.

(d) Reimbursement for the various levels of IBMS, including Crisis Stabilization and/or Observation Services, are made in accordance with established cost-finding methodology, and claims for federal support are determined based on cost reports and time studies from the providers

(e) The cost-finding methodology is codified in Chapter 700 of this title (Relating to Child Protective Services). The portion of cost reimbursable under Medicaid as IBMS is determined based upon annual cost reports and time studies of individual providers. These time studies will be conducted quarterly between April, 1994 and March, 1995 and annually thereafter. The cumula-

tive results of the first four quarterly time studies will be applied throughout State Fiscal Year 1996.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 23, 1995.

TRD-9503582

Nancy Murphy
Section Manager Media
and Policy Services
Texas Department of
Protective and
Regulatory Services

Effective date: April 13, 1995

Proposal publication date: September 30, 1994

For further information, please call: (512) 450-3765

Chapter 744. Ombudsman Services

• 40 TAC §§744. 1-744.3

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §§744.1-744.3 in its Ombudsman Services chapter. New §744.3 is adopted with changes to the proposed text as published in the December 16, 1994, issue of the *Texas Register* (19 TexReg 9985). New §744.1 and §744.2 are adopted without changes and will not be republished.

The justification for the proposal is to establish the Ombudsman Office to provide oversight and review functions related to abuse and neglect investigations, to prepare statistical reports periodically, and to receive and compile statistical data of abuse and neglect investigations in state agency operated facilities

The new sections will function by establishing a central location for accessing information, providing information, and filing complaints.

During the comment period TDPRS received comments from Texas State Foster Parents, Inc. A summary of the comments and TDPRS's responses follow

Comments concerning §744.2(a)(3): The commenter stated that the section should read something like "including but not limited to printed instructions/brochures to be mailed to all stakeholders every two years"

Response: This section meets statutory requirements TDPRS will place signs in each TDPRS office to advise the public of the availability of and how to access the Ombudsman Office Paragraph (3) of this section allows TDPRS to consider other methods of advising the public about the Ombudsman Office. Mass mailings and providing brochures to existing or prospective foster parents are not excluded by the language in the section. All TDPRS regional offices perform administrative review functions following the procedures in Item 2292 of the Child Protective Services Handbook. TDPRS's Official Record of Administrative Review of Child

Protective Services Investigative Findings form has been revised to advise alleged perpetrators of the availability of the Ombudsman Review process, including the mailing address and how to access the Ombudsman Office Therefore, TDPRS is adopting this section without change.

Comment concerning §744.2(d)(2): The commenter stated that this continues to insulate the process unless the complainant withdraws his complaint. The Ombudsman's Office should be able to use its criteria for complaints and screen those that do not meet the criteria at the onset. The commenter questioned where a complaint would be referred if deemed inappropriate for the Ombudsman Office.

Response: The criteria mentioned in subsection (d) refers to the eligibility criteria for the Ombudsman Review process. Only those individuals who have been designated as an alleged perpetrator at the administrative review are eligible for the Ombudsman Review process.

In general, complaints that are not appropriate for the Ombudsman Office include TDPRS personnel actions, other agency actions, or complaints that are not case-specific. These inquiries or complaints are directed to the appropriate entity responsible for handling the inquiry or complaint. TDPRS is adopting this section without change.

Comment concerning §744.2(e)(3): The commenter questioned how long this process could go on and stated that decisions concerning foster parents should be investigated and completed in 90 days, which is three times the amount of time allowed to provide information in writing to the Ombudsman Office. Not knowing, s agonizing while families are frozen in or out of the process.

Response: The language in this section is taken directly from the statute. Also, the Ombudsman Office currently responds to inquiries within 20 work days.

Comment concerning §744.2(e)(4): The commenter questioned if the complainant would be notified of review findings.

Response: Yes. Paragraph 744.2(e)(3) states that the complainant will be notified by the Ombudsman Office of the review findings. Also §744.2(d)(1) states that the Ombudsman Office will acknowledge receipt of each complaint and will inform the complainant whether or not the complaint meets the criteria for an Ombudsman Office review. TDPRS is adopting this section without change.

Comment concerning §744.3(a): The commenter questioned continuity region to region and stated that minimum standards require a review process, but some are very weak or deter from the standards intent.

Response: It is the function of the Ombudsman Office to review and assess the case-specific situation to determine if all program policies and procedures were followed in making a determination of the case disposition. The Ombudsman Office applies the same review criteria and standards to all cases, regardless of the region of origin.

Comment concerning §744.3(c). The commenter questioned why the Ombudsman Office has 30 days to acknowledge receipt of a complaint. Also, since the individual must request the review in writing within 30 days from the date of the administrative review of investigative findings letter was sent, would the complainant not be allowed to complain if the 30-day limit has passed. The commenter suggested that written instructions request the complaint be mailed by registered letter or return receipt requested, which will provide both parties proof of time mailed and receipt of letter.

Response: Currently, the Ombudsman Office acknowledges receipt of all written inquires within three work days of receipt of the inquiry. Regarding the suggestion that written instructions request the complaint be mailed by registered letter or return receipt requested, nothing prevents a complainant from mailing a complaint that way if he chooses. TDPRS is considering return receipt or certified mail procedural requirements; however TDPRS must first determine if this process would in any way limit or restrict an individual's opportunity to lodge a complaint with the Ombudsman Office. TDPRS is adopting this section without change.

Comment concerning §744.3(d)(3). The commenter stated that the rule allows too many exits such as "extraordinary," "at the discretion of," "should have been considered," and "not available at the time." The commenter also inquired about reasonable circumstances and omitted information.

Response: The Ombudsman Office director does not and has not limited or restricted information of relevancy to any Ombudsman Office Review. Hearsay allegations are not considered because it is impossible to determine which party is providing accurate information. It would be imprudent to consider information that is not directly related to the facts of the case and the Ombudsman Office director will consider information, such as psychological evaluations, medical evidence, etc., that may not have been available at the time the administrative review of investigative findings was completed. TDPRS is adopting this section without change.

Comments concerning §744.3(e). The commenter stated that this subsection is totally unacceptable and questioned how any mediator could justify not listening to each side of an issue/disagreement. The commenter stated that they are looking at conflict resolution and the proposed process for resolution conflicts with the terms ombudsman and mediation and resolution.

Response: The Ombudsman Office does not provide mediation or conflict resolution services. The Ombudsman Office conducts reviews of case-specific situations and actions taken by TDPRS personnel and provides recommendations to program staff either to sustain the existing case disposition or to revise the disposition.

The commenter also felt very strongly that if someone is reviewing a complaint or a case, particularly if a person is accused of being a child abuser, that the Ombudsman needs to speak to the alleged abuser and that the

alleged abuser should have some avenue of communication with the Ombudsman.

Response: The agency concurs with the commenter and is adopting §744.3(e) with a change that allows for an interview with the requester if the Ombudsman Office determines it is necessary to facilitate the review process.

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, under Texas Civil Statutes, Article 4413 (503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to TDPRS; and under Texas Civil Statutes, Article 4413 (503), §13(b)-(e), which require the department to establish methods to notify the public, consumers, and service recipients of the mailing addresses and telephone numbers of appropriate departmental personnel to direct complaints to; require the department to keep information files about complaints filed with the department relating to a license holder or entity regulated by the department or a service delivered by the department; and require the department to notify the parties of those complaints of the status of the complaint at least quarterly and until final disposition of the complaint, unless notice would jeopardize an undercover investigation.

The new sections implement the Texas Family Code, §§34 22(b), 34.23(b), and 34 23(d)

§744.3. Ombudsman Office Review.

(a) An Ombudsman Office Review is available to individuals who have been determined to be perpetrators of abuse, neglect, or exploitation as a result of an investigation performed by the Texas Department of Protective and Regulatory Services (TDPRS). An individual must have utilized the administrative review of findings process offered by the specific TDPRS program that conducted the investigation before he is eligible for the Ombudsman Office Review.

(b) Except for good cause determined by the Ombudsman Office director, an individual seeking an Ombudsman Office Review must request the review in writing 30 days from the date the administrative review of investigative findings letter was sent by the Protective Services for Families and Children program, the Child Care Licensing program, or the Adult Protective Services program. The review request should be addressed to the Ombudsman Office, Texas Department of Protective and Regulatory Services, Mail Code Y-946, P.O. Box 149030, Austin, Texas 78714-9030.

(c) The Ombudsman Office will acknowledge receipt of the request for an Ombudsman Office Review within 30 days of the receipt of the request.

(d) The Ombudsman Office will review:

- (1) the program case record;
- (2) the administrative review findings; and
- (3) additional information that was available at the time of the original investigation and either was considered or should have been considered by staff performing the investigation. Only in extraordinary circumstances, at the discretion of the Ombudsman Office director, will new information that was not available at the time of the original investigation be considered in the Ombudsman Office Review.

(e) The Ombudsman Office has the discretion to determine whether an interview with the requester is necessary to facilitate the review process.

(f) After completing the review, the Ombudsman Office will prepare written findings and recommendations for consideration by the program deputy director.

(1) If the program deputy director concurs with the Ombudsman Office Review recommendations, the Ombudsman Office director will notify the requestor of the final disposition of his case.

(2) If the Ombudsman Office and the program deputy director do not agree, the case will be forwarded to TDPRS's general counsel, who reviews the case and makes recommendations to TDPRS's executive director for final disposition. The executive director will then notify the requestor of the final case disposition.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 23, 1995

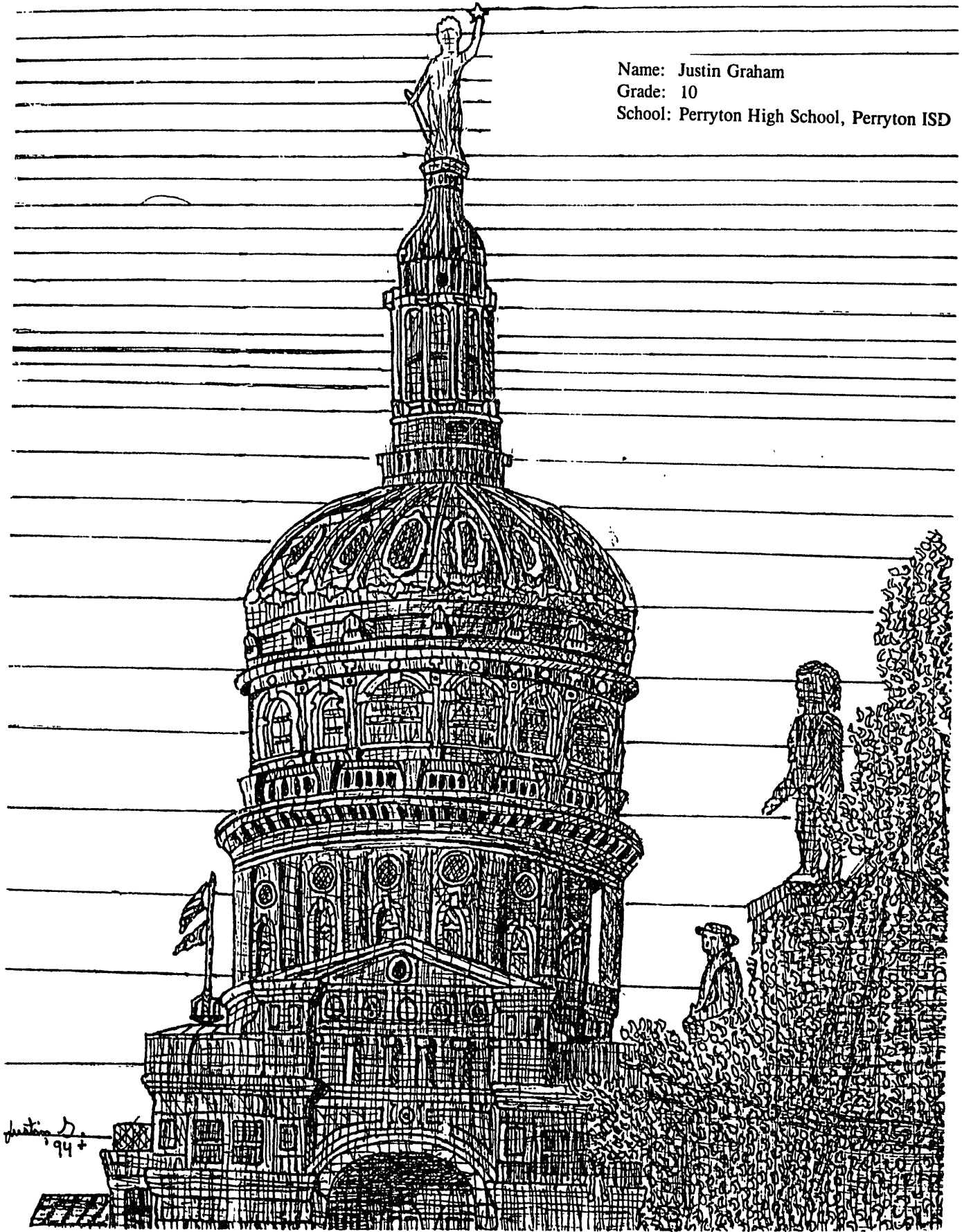
TRD-9503583 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Protective and
Regulatory Services

Effective date April 15, 1995

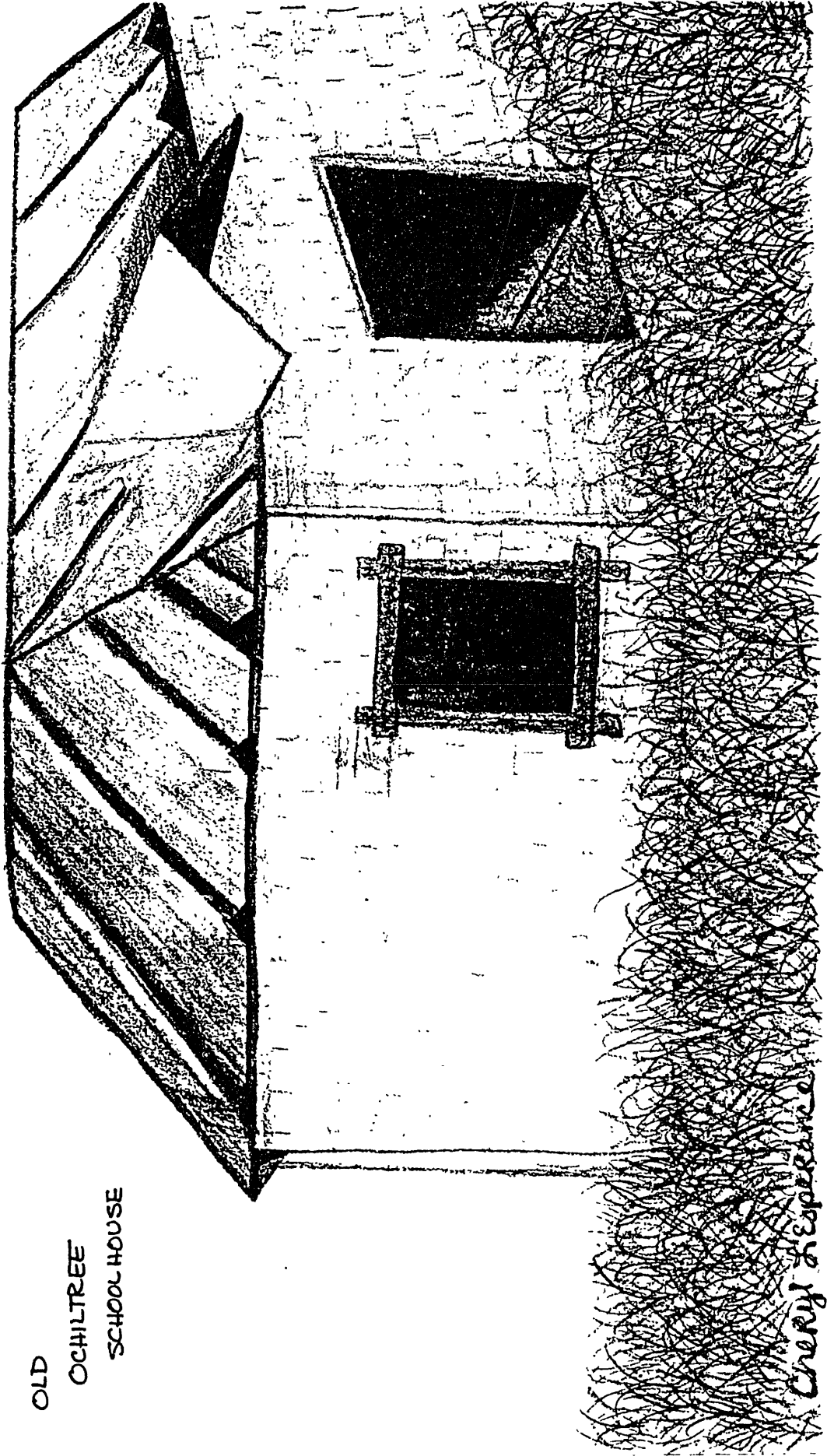
Proposal publication date: December 16, 1994

For further information, please call. (512) 450-3765

Name: Justin Graham
Grade: 10
School: Perryton High School, Perryton ISD



Name: Cheryl L'esperance
Grade: 10
School: Perryton High School, Perryton ISD



OLD
OCHILTREE
SCHOOL HOUSE

Cheryl L'esperance

● TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

See Figure 1 for 40 TAC 19.301 (j)

I. Facility Plan Review:

A. New Facility

Single Story	\$12 per bed (Minimum \$1,000)
Multiple Story	\$15 per bed (Minimum \$1,500)

B. Existing Licensed Facility

1. Additions or remodeling of \$100,000 or more:

Single Story	1% of project cost, not to exceed \$2,000*
Multiple Story	1% of project cost, not to exceed \$2,500*

2. Additions or remodeling:

\$25,000-\$99,999	\$200
under \$25,000	\$100

* NOTE: If project cost is not available, the following construction cost figures will be utilized to calculate fee:

Construction with bed addition:	\$15,000 per bed
Construction without bed addition:	\$60 per gross square foot (single story wood frame) \$70 per gross square foot (noncombustible or multi-story)

II. Inspections:

A. Construction

Preliminary inspections (each)	\$5 per bed (Minimum \$150)
Final inspections (each)	\$12 per bed (Minimum \$150)

B. Feasibility

Each feasibility inspection and each subsequent visit including final survey prior to licensure	\$10 per bed (Minimum \$250)
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See Figure 2 for 40 TAC 19.306 (5)

Number of Beds	Area Per Bed Minimum
4-15	18 square feet (Minimum 144 square feet)
16-20	17 square feet
21-25	16 square feet
26-30	15 square feet
31-35	14 square feet
36-40	13 square feet
41-50	12 square feet
51-60	11 square feet
61 and over	10 square feet (Example: 100 beds = 1,000 square feet)

See Figure 3 for 40 TAC 19.312 (xi)

Area Designation	Air Movement In Relation To Adjacent Area	Minimum Total Air Changes Per Hour	All Air Exhausted To Outside	Design Temperature
Resident Room	--	2	--	75/78
Examination and	--	4	No	75/78
Treatment Room	In	4	No	75/78
Physical Therapy	--	4	No	75/78
Occupational	--	4	No	75/78
Therapy	In	6	Yes	--
Soiled Work or	In	6	Yes	--
Holding Room	Out	4	No	--
Clean Work or	In	10	Yes	--
Holding Room	--	10	No	75/78
Toilet Rooms	--	10	No	75/78
Bath and Shower	--	10	No	75/78
Rooms	--	10	No	75/78
Janitors'	In	10	Yes	--
Closets	In	10	Yes	--

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in 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).

Texas Department on Aging

Wednesday, April 5, 1995, 9:30 a.m.

1949 South IH-35, Third Floor Conference Room

Austin

Area Agency on Aging (AAA) Operations Committee

AGENDA:

Consider and possibly act on:

Call to order; public hearing to receive comments on new, revised, relocated, and repealed administrative rules; minutes of January 26, 1994 meeting; publish new, revised, relocated and repealed rules in *Texas Register* for final adoption; public new, revised, re-located, and repealed rules in *Texas Register* for review and comment; funding methodology for fiscal year 1996 Title VII Ombudsman Activity, Elder Abuse, and Outreach, Counseling and Assistance, and Health Care Financing Administration; report on Elder Rights Division; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78704, (512) 444-2727.

Filed: March 23, 1995, 2:08 p.m.

TRD-9503577



Texas Department of Agriculture

Wednesday, March 29, 1995, 10:00 a.m.

1893 West Mockingbird Lane, Radisson Hotel

Dallas

Emergency Revised Agenda

Texas Boll Weevil Eradication Foundation
AGENDA:

The following agenda items have been added to the agenda items previously filed:

Executive session in accordance with Texas Government Code Annotated, §551.071, to consult with attorney concerning contemplated litigation.

Adjourn executive session

Take action on executive session

Reason for emergency: Unforeseen developments requiring immediate action in a matter in which litigation is contemplated, necessitate adding an emergency executive session to the next scheduled meeting of the Texas Boll Weevil Eradication Foundation.

Contact: Frank Myers, P.O. Box 5089, Abilene, Texas 79608-5089, 1-800-687-1212, 1-915-672-2800.

Filed: March 27, 1995, 3:16 p.m.

TRD-9503737

Tuesday, April 4, 1995, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of Texas Agriculture Code Annotated §§103.001-103.015 (Vernon 1982) by River City Produce Company, Inc. as petitioned by Sharyland L.P. doing business as Plantation Produce Company, Inc.

Contact: Joyce Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: March 23, 1995, 3:58 p.m.

TRD-9503591



Texas Commission on Alcohol and Drug Abuse

Monday, April 10, 1995, 9:00 a.m.

710 Brazos, Perry Brooks Building Annex
Austin

Audit Committee

AGENDA:

Call to order; approval of minutes from December 12, 1994 meeting; update on internal audit activities; update on auditing activities; other business; and adjourn.

Contact: Dwayne E. Adams, 710 Brazos, Austin, Texas 78701, (512) 867-8875.

Filed: March 27, 1995, 1:34 p.m.

TRD-9503724

Tuesday, April 11, 1995, 8:30 a.m.

710 Brazos, Eighth Floor Conference Room

Austin

Board of Commissioners

AGENDA:

Call to order, approval of March 10, 1995 minutes; public comments; report on CSAP Partnerships, action on recommendations of Task Force on Rural and Underserved Areas; federal, congressional, and legislative update; report on treatment initiatives activities; Treatment Alternatives to Incarceration Program (TAIP), Substance Abuse Felony Punishment Facility Program (SAFP), In-Prison Therapeutic Community Program (ITC), Continuum of Care (TTC), TCADA/TDCJ Training Center, and Youth Initiative; report on legality and feasibility of counseling services in county jails; report on Program Development and Initiatives Committee activities; action on CORE activities; report on Grant and Contract Review Committee activities; action by consent on adoption of amendments to the counselor licensure rules; report on Offender Credentialing Committee activities; report on Annual (First and Second Quarter) report on Performance Measures; report on funds available for reallocation; action of Fiscal Year 1995 midyear budget; report on audit activities; report on Audit Committee activities; action on TCADA administrative policies and procedures manual; action on policies and procedures; action on case of Donald Williams; action to appeal decisions of Grants and Contracts Review Committee meeting of March 12, 1995; action on standing committees; meet in executive session to discuss potential litigation issues and personnel issues; reconvene; action on confidence vote; interim executive director's report; chairman's report; and adjournment.

Contact: Otis E. Williams, 710 Brazos, Austin, Texas 78701, (512) 867-8720.

Filed: March 24, 1995, 2:59 p.m.

TRD-9503681

◆ ◆ ◆
**Texas Interagency Council
on Early Childhood Inter-
vention**

Thursday-Friday, April 6-7, 1995, 10:00 a.m. and 8:30 a.m., respectively.

4412 Spicewood Springs Road, Building 600

Austin

Advisory Committee to the Interagency Council on Early Childhood Intervention

AGENDA:

Thursday, April 6: Call to order. Approval of January, 1995 minutes. Public comment. Ongoing business: introduce Tomas Leal; travel; membership. Chair report: report on Executive Committee meeting; Diane Garner's talk about ICCs in Colorado; Nec-Tas Conference in Detroit on issues coming from 12 largest U. S. cities in implementing Part H-Verbal report from team; conference awards; report on utilization of therapist think tank. Briefings: multi-served county discussions; update on CSPD. Executive director's report: legislative update; review of compliance monitoring system. Subcommittee meetings continue until 9:00 p.m. at the pleasure of the subcommittee chair.

Friday, April 7: Call to order. Morning announcements. Council report. Director's forum report. Subcommittee meetings (continued). Subcommittee reports. FYI. Adjourn.

Contact: Linda Hill, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 502-4900.

Filed: March 24, 1995, 4:43 p.m.

TRD-9503691

◆ ◆ ◆
**Texas Employment Commis-
sion**

Tuesday, April 4, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; consideration and possible adoption of amendments to 40 TAC §301.7 regarding filing of reports; staff reports; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 14; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: March 27, 1995, 12:52 p.m.

TRD-9503722

◆ ◆ ◆
**Finance Commission of
Texas**

Friday, April 7, 1995, 9:00 a.m.

Finance Commission Building, 2601 North Lamar Boulevard, Third Floor

Austin

AGENDA:

I. Call the meeting to order; review and approval of minutes of previous meeting;

II. Discussion and review of Finance Commission matters; hear update on Finance Commission Building repairs;

III. Hear report from the Office of Consumer Credit Commissioner regarding industry status; departmental operations; discussion of legislative activity

IV. Hear report from the Savings and Loan Department regarding industry status; departmental operations; discussion of and vote to adopt a final rule regarding voluntary membership in the Federal Home Loan Bank System and Federal Reserve System for savings banks; discussion of legislative activity;

V. Hear report from the Banking Department regarding industry status; departmental operations from all department divisions; discussion of legislative activity; hear status report and possible vote on petition for rulemaking;

VI. Convene into executive session; and adjourn.

Contact: Everette D. Jobe, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Filed: March 28, 1995, 8:41 a.m.

TRD-9503747

◆ ◆ ◆
General Land Office

Tuesday, April 4, 1995, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Rooms 118 and 831

Austin

School Land Board

AGENDA:

Approval of previous board meeting minutes; opening and consideration of bids received for the April 4, 1995 oil, gas and other minerals lease sale; pooling applications, Morgan Field, (Lower Morrow), Lipscomb County; Keystone (San Andres) and Keystone (Holt) Fields, Winkler County; Arroyo Los Olmos (Y-25), Starr County; direct land sale, Crane County; tax foreclosure, Presidio County; application by Foster Mayes and Mark J. Mueller to patent land in Rusk County under Article VII, §4(a), Texas Constitution; coastal public lands, commercial lease applications, renewals and amendments, Copano Bay, Aransas County; Laguna Madre, Cameron County; Sabine River, Orange County; Clear Lake, Galveston County; lease renewal; Old Brazos River, Brazoria County; easement renewal, Colorado River, Matagorda County; structure (cabin) permit amendments, terminations and requests, Laguna Madre, Kenedy County; Laguna Madre, Cameron County; Laguna Madre,

Kleberg County; Bastrop Bay, Brazoria County; special rate request for easement, Copano Bay, Aransas County; proposal of consistency review thresholds and rule amendments for consistency with Coastal Management Program; consideration of coal for coal exchange, Jewett Mine, Leon and Freestone counties; executive session-pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: March 27, 1995, 3:16 p.m.

TRD-9503738

Health Professions Council

Wednesday, April 5, 1995, 9:30 a.m.

Board of Medical Examiners, 1812 Centre Creek Drive, Room 200

Austin

AGENDA:

1. Call to order, 9:30 a.m.
2. Roll call and introductions
3. Minutes of January 25, 1995, meeting
4. Reports of committees
5. Old business
6. New business
7. Other
8. Announcements
9. Comments from audience
10. Next meeting
11. Adjourn

Contact: Edward M. Boggess, 9101 Burnet Road, Suite 109, Austin, Texas 78758-5260, (512) 873-6565.

Filed: March 27, 1995, 3:15 p.m.

TRD-9503736

Texas Higher Education Coordinating Board

Thursday, April 6, 1995, 10:00 a.m.

Cornette Library Building, Room 153, West Texas A&M University

Canyon

Campus Planning Committee

AGENDA:

View and/or hear presentations on the following: West Texas A&M University-energy and operational efficiency improve-

ments; Texas A&M University-West Campus thermal loop completion-Phase II; Texas A&M University-Milner Hall, Military Science Building and Nagle Hall heating, ventilating and air-conditioning systems renovation; Texas Tech University-Engineering Research Building renovation; Texas State Technical College-Sweetwater-Central Plan and Thermal Storage Building system; and Texas State Technical College-Sweetwater-re-approval of recreational sports and health facility.

Contact: Don Brown, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: March 27, 1995, 9:31 a.m.

TRD-9503701

Friday, April 7, 1995, 9:00 a.m.

2901 IH-35, Conference Room, First Floor, Pharmaco Building

Austin

Campus Planning Committee

AGENDA:

View and/or hear presentations on the following: The University of Texas at Austin-purchase a lot at 2901 IH-35 including a 43,745 gross of office building; University of North Texas Health Science Center at Fort Worth-Health Science Education Building addition-fifth and sixth floors; and University of North Texas-Physics Building renovation.

Contact: Don Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483-6101.

Filed: March 27, 1995, 9:30 a.m.

TRD-9503699

Friday, April 7, 1995, 11:15 a.m.

J. C. Kellum Building, Board of Regents, 11th Floor, Southwest Texas State University

San Marcos

Campus Planning Committee

AGENDA:

View and/or hear presentations on the following: Southwest Texas State University-general classroom building renovation and addition; Southwest Texas State University-site development of Matthews Street to North LBJ; and tour sites of projects.

Contact: Don Brown, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: March 27, 1995, 9:30 a.m.

TRD-9503700

Texas Commission on Human Rights

Thursday, April 6, 1995, 9:00 a.m.

300 West 15th Street, Ninth Floor Conference Room

Austin

AGENDA:

Discussion and vote on agenda item(s) covered in executive session as necessary or required; welcoming of guests; approval of minutes; administrative reports; quarterly cash flow statement; technical changes in the commission's personnel manual required by the Appropriations Act; IAOHRA/NAHRW Southern Regional Conference; HUD's Fair Housing Advisory Council meeting; current administrative enforcement project; participation in the EEOC Task Force on Relationship with Fair Employment Practice Agencies; legislative issues for the 74th Legislative Session; status report on EEO compliance training; commission's legislative budget request before the House and Senate; commissioner issues; unfinished business.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

Filed: March 27, 1995, 9:27 a.m.

TRD-9503698

Texas Department of Insurance

Tuesday, April 11, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0092.C

To consider whether disciplinary action should be taken against American Recreational Markets General Agency, Inc. (ARM) Dallas, Texas, which holds a Managing General Agent's License issued by the Texas Department of Insurance. (continued from February 14, 1995)

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 27, 1995, 4:03 p.m.

TRD-9503741

Tuesday, April 11, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0368.C

To consider disciplinary action against Jeffrey Mark Sacks.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 27, 1995, 4:03 p.m.

TRD-9503742

Tuesday, April 11, 1995, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0448.C

To consider whether disciplinary action should be taken against Glenn Phillip Bishop, Texarkana, Texas, who holds a Group I, Legal Reserve Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328

Filed: March 27, 1995, 4:03 p.m.

TRD-9503743

Wednesday, April 12, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0485.D

To consider the disapproval of United Wisconsin Life Insurance Company's America Health Plan Benefit Program and response of the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328

Filed: March 27, 1995, 4:03 p.m.

TRD-9503744

Thursday, April 13, 1995, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0449.C

To consider whether disciplinary action should be taken against Clyde James Martin, Spring, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and a Group II 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: March 27, 1995, 4:03 p.m.

TRD-9503745

◆ ◆ ◆
Bill Blackwood Law Enforcement Management Institute of Texas

Thursday, April 13, 1995, 8:30 a.m.

Blackwood Room, Criminal Justice Center, Sam Houston State University

Huntsville

Advisory Board

AGENDA:

Meeting called to order

Opening remarks and introductions

Overview of agenda

Approve minutes of last meeting

Old business

Financial report

Quarterly activities report

Graduate Management Institute report

Upcoming events, activities, programs

New business

Open discussion

Set date for next board meeting

Closing remarks

Adjourn

Contact: Dr. Gerald L. Williams, Box 2296, Sam Houston State University, Huntsville, Texas 77341, (409) 294-1694.

Filed: March 27, 1995, 1:53 p.m.

TRD-9503727

◆ ◆ ◆
Texas Department of Licensing and Regulation

Tuesday, April 11, 1995, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Third Floor

Austin

Inspections and Investigations, Air Conditioning

AGENDA:

According to the complete agenda, the Department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for William

Nolan doing business as Cool Air Sales and Service Company for violation of the Texas Civil Statutes, Article 8861, §5(a), 16 Texas Administrative Code (TAC) §75.40(d) and §75.70(d), Article 9100, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: March 27, 1995, 2:25 p.m.

TRD-9503728

Tuesday, April 25, 1995, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor

Austin

Inspections and Investigations, Auctioneer

AGENDA:

According to the complete agenda, the Department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Charles R. Woffenden doing business as Key City Auctions for violation of the Texas Civil Statutes, Article 8700, §§7(a)(7), 10 and 10A, 16 Texas Administrative Code (TAC), §§67.70(b), 67.100(c)(1) and 67.100(d)(1)(2)(3), Article 9100, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: March 27, 1995, 2:25 p.m.

TRD-9503729

◆ ◆ ◆
Texas Mental Health and Mental Retardation Board

Thursday, April 6, 1995, 9:00 a.m.

909 West 45th Street, Auditorium

Austin

Audit and Financial Oversight Committee

AGENDA:

1. Citizens comments
2. Fiscal year 1995 mid-year expenditure report
3. Quality assessment of single audit activities
4. Update on the contract management systems audit
5. Audit activity update

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: March 27, 1995, 3:15 p.m.

TRD-9503732

Thursday, April 6, 1995, 10:30 a.m.

909 West 45th Street, Auditorium

Austin

Business and Asset Management Committee

AGENDA:

1. Citizens comments
2. Fiscal year 1996-1997 appropriations update
3. Consideration of approval of fiscal year 1995 operating budget adjustments
4. Update on real property transactions previously approved by the Board

Sale of one acre parcel at Big Spring State Hospital

Release of deed conditions on a 70.67 acre parcel in Big Spring, Texas

Conveyance of 102 acres at Fort Worth State School to Tarrant County

Conveyance of 270 acres at Travis State School to Vision Village, Inc

5. Consideration of a resolution authorizing the solicitation of bids for the lease of a portion of the Lamar/Guadalupe Triangle in Austin, Texas

6. Consideration of items related to "Central Park"

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506

Filed: March 27, 1995, 3:15 p.m.

TRD-9503733

Thursday, April 6, 1995, 1:30 p.m.

909 West 45th Street, Auditorium

Austin

Planning and Policy Development Committee

AGENDA:

1. Citizens comments
2. Legislative update
3. State school closure update
4. Update regarding State Hospital governing body activities
5. Update regarding the Authority/Provider Task Force Report
6. Update regarding the Equity of Access Task Force Report

7. Consideration of approval of a revised department organizational structure

8. Consideration of approval of appointments to the Treatment Methods Advisory Committee

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: March 27, 1995, 3:15 p.m.

TRD-9503734

Thursday, April 6, 1995, 3:30 p.m.

909 West 45th Street, Auditorium

Austin

Medicaid Committee

AGENDA:

1. Citizens comments
2. Medicaid update
3. Consideration of adoption of ICF/MR rates for state schools; large ICF/MR facilities, Level I ICF/MR facilities; Level VIII ICF/MR facilities; small community-based ICF/MR Level V facilities; and small community-based ICF/MR Level VI facilities

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: March 27, 1995, 3:15 p.m.

TRD-9503735

Friday, April 7, 1995, 9:30 a.m.

909 West 45th Street, Auditorium

Austin

AGENDA:

- I. Call to order, roll call
- II. Citizens comments
- III. Approval of minutes of March 8 and 9, 1995 meeting
- IV. Issued to be considered
 1. Chairman's report
Announcement of appointments to the Treatment Methods Advisory Committee
Community MHMR Center comments
 2. Commissioner's report
Announcements
Update on DPRS work group

Special presentation: Public/academic liaison-UTSWMS and DCMHMR research initiatives

Medical director's report

Human resources report

3. Consideration of approval of a director for El Paso State Center

Additional items to be considered.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: March 27, 1995, 3:15 p.m.

TRD-9503731

Texas Natural Resource Conservation Commission

Wednesday, April 5, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

The commission will consider approving the following matters: Municipal waste discharge permit renewal; amendment to agricultural wastewater permit; Class 3 modification; district matters; utility matter; settled hearings; Superfund contract; air quality permits; municipal waste discharge enforcement; municipal solid waste enforcement; sludge enforcement; industrial hazardous waste enforcement; petroleum storage tank enforcement; water right permit; rule; proposal for decision; executive session; in addition, 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 begins at 8:45 a.m. until 9:30 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: March 24, 1995, 3:50 p.m.

TRD-9503683

Thursday, April 6, 1995, 10:00 a.m.

Conrad Blucher Institute, Texas A&M University-Corpus Christi, 6300 Ocean Drive

Corpus Christi

Scientific/Technical Advisory Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

- I. Call to order/introduction/minutes
- II. Program update

III. Discussion of fiscal year 1996 draft scopes of work

IV. Video on Lower Laguna Madre

V. Continued discussion of draft scopes of work and the fiscal year 1996 demonstration project focus

VI. TNRCC Air Monitoring Program by Charles Speikerman

VII. Additional items/adjourn

Contact: Richard Volk, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767

Filed: March 24, 1995, 4:43 p.m.

TRD-9503692

Wednesday, April 12, 1995, 10:00 a.m.

Building C, Room 308E, 12124 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA

Notice of public hearing on assessment of administrative penalties and requiring certain actions of National Medical Waste of Texas, Inc., TNRCC Docket Number 94-0155-MSW-E

Contact: Bill Zukauckas, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100

Filed: March 24, 1995, 11:39 a.m.

TRD-9503621

Thursday, April 13, 1995, 8:30 a.m.

Building A, Room 301-D, 12124 Park 35 Austin

Office of Hearings Examiners

AGENDA

For a hearing before a hearings examiner on several petitions by the City of Arlington appealing the wholesale sewer rates charged by the City of Fort Worth in Tarrant County, Texas. These matters have been consolidated and assigned TNRCC Docket Number 95-0432-UCR. The TNRCC Docket Number encompasses the following petition applications: 9756-A, 30117-A, 30192-A, 30248-A, 30623-A, 30700-A

Contact: Tommy Broyles, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100

Filed: March 24, 1995, 1:59 p.m.

TRD-9503627

Tuesday, May 2, 1995, 9:00 a.m.

City of Aledo City Hall, Council Room, 200 Old Annetta Road

Aledo

Office of Hearings Examiners

AGENDA

For a hearing before a hearings examiner on an application by Deercreek Waterworks, Inc., for Proposed Permit Number 13759-01 to authorize the disposal of treated domestic sewage effluent by irrigation on 110 acres of land. The disposal volume is not to exceed 132,000 gallons per day average. The proposed permit will also authorize a variance to the buffer zone requirements in accordance with 30 TAC §309.13(e)(1)(B). Application rates for the irrigated land are not to exceed 1.35 acre-feet/acre/year. No discharge of pollutants into the waters of the State is authorized by this permit. The wastewater treatment facility and irrigation site are approximately three miles southeast of the intersection of Interstate Highway 20 and FM Road 5, approximately 1.6 miles southwest of the intersection of FM Road 1187 and FM Road 5 in Parker County, Texas. TNRCC Docket Number 95-0579-MWD

Contact: Linda Sorrells, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100

Filed: March 24, 1995, 2:00 p.m.

TRD-9503630

Thursday, May 4, 1995, 10:00 a.m.

Van Zandt County Courthouse, Assembly Room, 121 East Dallas

Canton

Office of Hearings Examiners

AGENDA

For a hearing before a hearings examiner on an application by Acme Brick Company for Proposed Permit Number 03761 to authorize an intermittent, flow variable discharge of mine pit water commingled with stormwater. The applicant operates the Mayfield Clay Mine. The plant site is approximately 1.5 miles west of State Highway 19 and 0.3 mile north of FM Road 1861, Van Zandt County, Texas. TNRCC Docket Number 95-0580-IWD

Contact: Alexandre Bourgeois, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100

Filed: March 24, 1995, 1:59 p.m.

TRD-9503628

Thursday, May 4, 1995, 10:00 a.m.

Park Inn International, Dallas Room, 1407 I.H. 45

Huntsville

AGENDA

On an application by Darrell Dickey, Inc., Proposed Permit Number MSW2215, authorizing a Type I municipal solid waste management facility (landfill). The pro-

posed site covers approximately 100 acres of land, is to receive approximately 537 cubic yards of solid waste per day, and is to be located approximately 4,000 feet south of the intersection of U.S. Highway 190 and FM Road 405 near Huntsville in Walker County, Texas

Contact: Sayed Miri, Mail Code 124, P.O. Box 13087, Austin, Texas 78711, (512) 239-6793.

Filed: March 27, 1995, 9:56 a.m.

TRD-9503712

Thursday, May 11, 1995, 10:00 a.m. (Rescheduled from March 23, 1995.)

Texas City/La Marque Chamber of Commerce, Chambers Conference Room, 8419 Emmett F. Lowry Expressway

Texas City

Office of Hearings Examiners

AGENDA

For a hearing before a hearings examiner on an application by the City of La Marque for an amendment to Permit Number 10410-01 in order to combine treated effluent from two wastewater treatment plants (permitted under Permits Numbers 10410-01 and 10410-02) into one single outfall (permitted under Permit Number 10410-01). Permit Number 10410-01 currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 800,000 gallons per day. Permit Number 10410-02 currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 2,000,000 gallons per day. The proposed single outfall (permitted under Permit Number 10410-01) would authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 2,800,000 gallons per day. The proposed amendment will also enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The wastewater treatment facility is at the intersection of Campbell and Sixth Street, approximately 1,300 feet southwest of the intersection of FM Road 519 and State Highway 3 in Galveston County, Texas. TNRCC Docket Number 95-0198-MWD.

Contact: Jim Bateman, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100

Filed: March 24, 1995, 1:59 p.m.

TRD-9503629

Texas Board of Occupational Therapy Examiners

Wednesday, March 29, 1995, 9:30 a.m.

3001 South Lamar Boulevard, Suite 101
Austin

Emergency Revised Agenda

Board Meeting

AGENDA:

Agenda-Addition

Approval of minutes

Reason for emergency: The above addition was a reasonably unforeseeable subject that requires attention by the board.

Contact: Josephine Sanchez, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704, (512) 443-8202.

Filed: March 27, 1995, 3:31 p.m.

TRD-9503739

Public Utility Commission of Texas

Thursday, April 6, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference has been scheduled in Docket Number 13975-application of Southwestern Bell Telephone Company for approval of new optional payment plans for Select Video Plus Service.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 24, 1995, 3 51 p.m.

TRD-9503684

Monday, April 10, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA

A prehearing conference has been scheduled in Docket Number 14020-joint petition of GTE Southwest, Inc. and Contel of Texas, Inc for a waiver of the one-party line service requirements under Substantive Rule 23 61.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 23, 1995, 12:35 p.m.

TRD-9503575

Wednesday, July 19, 1995, 1:00 p.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA.

A hearing on the merits will be held on the above date and time in Docket Number 13979-complaint of Jack Safely against Houston Lighting and Power Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 24, 1995, 9.56 a m

TRD-9503605

Railroad Commission of Texas

Tuesday, April 4, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA

The Commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division director's report on division administration, budget, procedures and personnel matters

Contact: Roger Dillon, P O Box 12967, Austin, Texas 78711-2967, (512) 463-7257

Filed: March 24, 1995, 10:53 a.m

TRD-9503614

Tuesday, April 4, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on agency administration, budget, policy and procedures, and personnel matters for all divisions The commission may meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P O. Box 12967, Austin, Texas 78711-2967, (512) 463-6981.

Filed: March 24, 1995, 10.54 a.m.

TRD-9503615

Tuesday, April 4, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Melvin B. Hodgkiss, P.E., P.O. Box 12967, Austin, Texas 78711, (512) 463-6901.

Filed: March 24, 1995, 10:54 a.m.

TRD-9503616

Tuesday, April 4, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions and personnel matters. The commission will consider and act on the Information Resource Manager's report on information resource planning documents

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251

Filed: March 24, 1995, 10:54 a.m.

TRD-9503617

Tuesday, April 4, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

1) Division director's report and commission action on AFRED administration, procedures, budget, personnel and policy matters, and contract awards relating to alternative fuels research, marketing and public education programs.

2) Alternative Fuels Curriculum. The commission will consider a proposal to use available grant funds to produce, distribute and promote alternative fuels curricular materials and train teachers in their use

3) Alternative Fuels Highway Signage. The commission will consider proposing a rule to facilitate installation of highway signs that indicate availability of alternative fuels.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: March 24, 1995, 10:54 a.m.

TRD-9503618

Tuesday, April 4, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: March 24, 1995, 10:55 a.m.

TRD-9503619

Tuesday, April 4, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments. 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: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033

Filed: March 24, 1995, 10:55 a.m.

TRD-9503620

Texas Real Estate Commission

Monday, April 3, 1995, 9:30 a.m.

Conference Room 235, Second Floor, TREC Headquarters Office, 1101 Camino La Costa

Austin

AGENDA.

Call to order; minutes of February 27, 1995 commission meeting; staff reports for January and February 1995, committee reports, possible action to authorize administrator to submit equipment financing requests to the Texas Public Finance Authority; possible action to appoint members of Liaison Committee; appearance of Ken Raupple to discuss license requirements for companies providing occupants for vacant homes, consideration of petition for rulemaking from the Greater Dallas Association of Realtors, Inc., discussion of proposed new 22 TAC §535.228, concerning standard inspection report form, and proposed amendments to 22 TAC §535.222, concerning standards of practice; discussion of proposed amendments to 22 TAC §535.164, concerning dis-

closure of agency; discussion and possible action to adopt proposed amendments to 22 TAC §§535.61, concerning acceptance of courses, 535.66, concerning proprietary schools and to §§535.71-535.73, concerning mandatory continuing education; discussion and possible action to approve MCH providers and courses or other providers and courses; consideration of legislation, executive session to discuss pending litigation pursuant to Texas Government Code, §551.071, and appointment of members of the Texas Real Estate Inspector Committee pursuant to §551.074; authorization of payments from recovery funds; discussion and possible action to appoint members of the Texas Real Estate Inspector Committee; consideration of complaint information concerning: Jerry Ben Griffin, Kimberly Lynne Bacon; entry of orders in contested cases; scheduling of future meetings.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12118, Austin, Texas 78711-2188, (512) 465-3900.

Filed: March 23, 1995, 2:09 p.m.

TRD-9503578

Recycling Market Development Board

Tuesday, April 11, 1995, 10:00 a.m.

1700 North Congress Avenue, Room 118, Stephen F. Austin Building

Austin

AGENDA

- 1 Call to order (John Hall, chairman)
- 2 Announcements
- 3 Approval of minutes from January 16, 1995 meeting
- 4 Consideration of proposal to add the Texas Department of Transportation to RMDB
- 5 Report on legislative issues (Jeff Frank, Texas General Land Office)
- 6 Report on state agency purchases (Perri Travillion, General Services Commission)
7. Update on recycling hotline proposal (Terry Robinson, Texas General Land Office)
- 8 General Land Office computer recycling report (J. Todd Cleaver, Texas General Land Office)
9. Texas Department of Transportation report on roadway recycling research (Rebecca Davio, Texas Department of Transportation)

10. Public comment

11. Adjourn

Contact: Terry Robinson, 1700 North Congress Avenue, Room 620, Austin, Texas 78701, (512) 463-5344.

Filed: March 27, 1995, 11:01 a.m.

TRD-9503718

Texas Rehabilitation Commission

Tuesday, April 25, 1995, 4:30 p.m.

Yaleta ISD Administrative and Cultural Arts Center, 9600 Sims Drive

El Paso

AGENDA:

State Plan for Vocational Rehabilitation Services, Independent Living Services and the VR Strategic Plan

A. Welcome

B. Introductions

C. Overview of Topics:

Rehabilitation engineering

Statewide assessment of rehabilitation needs

Transition from education to employment

Expanding services to individuals with severe disabilities

Order of selection

60-day limitation on eligibility determination

Consumer informed choice in selection of services and service providers

Strategic plan for rehabilitation services

Independent living services

Supported employment under Title VI, Part C of the Rehabilitation Act

D. Group Discussions:

Rehabilitation needs as seen by the consumer

Consumer informed choice

Recommendations for enhancement of rehabilitation services

Order of selection

E. Wrap-up

F. Concluding remarks

Persons planning to attend this meeting who may need auxiliary aids or service such as interpreters, readers, large print or braille should contact Lena Jackson several days before the meeting.

Contact: Lena Jackson, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4113

Filed: March 23, 1995, 3:58 p.m.

TRD-9503592

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**Texas Guaranteed Student
Loan Corporation**

Friday, March 31, 1995, 9:30 a.m.

13809 North Highway 183, Suite 301

Austin

Board of Directors

AGENDA:

1. Approval of minutes of March 3, 1995
2. Presentation of and action on a proposal to undertake the preparation of a bid to provide servicing to the Department of Education's Direct Loan Program
3. Adjourn to executive session

Consultation with attorney on litigation issues

4. Resume regular session

Adjourn

Contact: Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, (512) 219-4550.

Filed: March 23, 1995, 4:13 p.m.

TRD-9503596

Tuesday, April 4, 1995, 9:30 a.m.

13809 North Highway 183, Suite 301

Austin

Board of Directors

AGENDA:

1. Approval of minutes of March 3, 1995
2. Presentation of and action on an proposal to undertake the preparation of a bid to provide servicing to the Department of Education's Direct Loan Program
3. Adjourn to executive session

Consultation with attorney on litigation issues

4. Resume regular session

5. Adjourn

Contact: Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, (512) 219-4550.

Filed: March 27, 1995, 3:15 p.m.

TRD-9503730

**Teacher Retirement System
of Texas**

Friday, March 31, 1995, 8:30 a.m.

1000 Red River, Fifth Floor, Board Room

Austin

Board of Trustees

AGENDA:

Roll call of Board members; consideration of Board member absence from February 17, 1995, Board of Trustees meeting; public comments; approval of minutes of February 17, 1995, meeting; consideration of recommendation of Retirees Advisory Committee regarding retiree contributions and plan design changes for TRS care; report of Texas Public School Retired Employees Group Insurance Program; report of Benefits Division; consideration of proposed rule changes and proposed new rules; update on legislation affecting TRS, review of TRS actuarial valuation as of February 28, 1995; discussion of the evaluation of the TRS actuary; discussion and consideration of procedure for selection of investment counsel; report of Audit Committee and consideration of amendment to internal audit plan; report of Investment Committee; report of Real Estate Committee; consideration of exception to strategy and policies which require property held by TRST Denver, Inc. and TRST Main, Inc. to be publicly marketed; report of Policy Committee; report of Search Committee and selection of consultant to assist the Board in search and selection of the TRS executive director; consideration of TRS mission statement; report of interim executive director; comments by Board members and report of general counsel on litigation.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6411.

Filed: March 23, 1995, 3:58 p.m.

TRD-9503594

Friday, March 31, 1995, 11:00 a.m.

1000 Red River, Room 514E

Austin

Board of Trustees Real Estate Committee

AGENDA:

Approval of minutes of February 17 and February 24, 1995, meetings; review of risk rating changes; update on risk rated assets; and consideration of partial prepayment and extension of SuttCor mortgages.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6411.

Filed: March 23, 1995, 3:58 p.m.

TRD-9503593

**The University of Texas
Health Center at Tyler**

Thursday, April 6, 1995, 11:30 a.m.

Highway 271 at Highway 155, Room 116

Tyler

Animal Research Committee

AGENDA:

Approval of minutes

Chairman report

Veterinarian report

Old business

New business

Adjournment

Contact: Cindy Pessink, P.O. Box 2003, Tyler, Texas 75710, (903) 877-7594.

Filed: March 24, 1995, 1:07 p.m.

TRD-9503625

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Regional Meetings

**Meetings Filed March 23,
1995**

The Bosque County Central Appraisal District Ag Advisory Committee met at 202 South Highway 6, Meridian, March 29, 1995, at 10:00 a.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9503595.

The Golden Crescent Regional Planning Commission Board of Directors met at the Regional Airport, Building 102, Victoria, March 29, 1995, at 5:00 p.m. Information may be obtained from Rhonda G. Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9503598.

The Mason County Appraisal District Board of Directors met at 202 Westmoreland, Mason, March 29, 1995, at Noon. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989. TRD-9503584.

The Texas Panhandle Mental Health Authority Board of Trustees, TPMHA met at 7201 I-40 West, Second Floor, Amarillo, March 30, 1995, at 10:30 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116-3250, (806) 353-3699, Fax: (806) 353-9537. TRD-9503597.

The San Jacinto River Authority Board of Directors met at 2301 North Millbend Drive, Woodlands, March 29, 1995, at 12:30 p.m. Information may be obtained from James R. Adams, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9503589.

The Tarrant Appraisal District Tarrant Appraisal Review Board will meet at 2329 Gravel Road, Fort Worth, April 20, 1995 at 8:00 a.m. Information may be obtained from Linda G Smith, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884 TRD-9503587.

The Tarrant Appraisal District Tarrant Appraisal Review Board will meet at 2329 Gravel Road, Fort Worth, April 25, 1995 at 8:15 a.m. Information may be obtained from Linda G Smith, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9503588

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**Meetings Filed March 24,
1995**

The Alamo Area Council of Governments Planning and Program Development met at 118 Broadway, Suite 400, San Antonio, March 29, 1995, at 10:00 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201 TRD-9503635.

The Alamo Area Council of Governments Area Judges met at 118 Broadway, Suite 400, San Antonio, March 29, 1995, at 11:00 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9503693.

The Alamo Area Council of Governments Board of Directors met at 118 Broadway, Suite 400, San Antonio, March 29, 1995, 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-9503694.

The Aqua Water Supply Corporation Board of Directors will meet at 305 Eskew, Aqua Headquarters, Bastrop, April 3, 1995, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9503688.

The Capital Area Rural Transportation System (CARTS) CARTS Board of Directors met at 402 West Boman Drive, Round Rock, March 30, 1995, at 11:30 a.m. Information may be obtained from Edna M. Burroughs, P.O. Box 6050, Austin, Texas 78702, (512) 389-1011. TRD-9503624.

The Dallas Area Rapid Transit Audit Committee met at 1401 Pacific Avenue, Conference Room "B", Dallas, March 28, 1995, at 11:00 a.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9503680.

The Dallas Area Rapid Transit Committee-of-the-Whole met at 1401 Pacific Avenue, Conference Room "C", Dallas, March 28, 1995, at 1:00 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas

75266-0163, (214) 749-3371. TRD-9503678.

The Dallas Area Rapid Transit Board met at 1401 Pacific Avenue, Board Room-First Floor, Dallas, March 28, 1995, at 6:30 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9503679.

The Education Service Center, Region XVIII Board of Directors will meet at 2811 LaForce Boulevard, Midland, April 6, 1995, at 6:00 p.m. Information may be obtained from Dr. Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380 TRD-9503623.

The Gulf Bend Center (Revised Agenda.) Board of Trustees met at 1502 East Airline, Victoria, March 30, 1995, at Noon. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 575-0611. TRD-9503695.

The Heart of Texas Housing Finance Corporation Board met at the Hilton Inn-Waco, 113 South University Parks Drive, Waco, March 29, 1995, at Noon. Information may be obtained from Lyndon Olson, 510 North Valley Mills Drive, Suite 600, Waco, Texas 76710, (817) 776-3336. TRD-9503622.

The Heart of Texas Region MHMR Center Board of Trustees met at 110 South 12th Street, Waco, March 29, 1995, 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-9503626.

The South Texas Private Industry Council, Inc. met at 901 Kennedy Street, Zapata, March 30, 1995, at 5:00 p.m. Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044-1757, (210) 722-0546. TRD-9503682.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, April 6, 1995, at 4:00 p.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9503604.

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**Meetings Filed March 27,
1995**

The Atascosa County Appraisal District Agricultural Advisory Board will meet at Fourth and Avenue J, Poteet, March 31, 1995, at 8:00 a.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9503719

The Coryell City Water Supply District Board of Directors met at 510 South Main, McGregor, March 30, 1995, at 7:00 p.m. Information may be obtained from Helen

Swift, Route 2, Box 93, Gatesville, Texas 76528, (817) 865-6089. TRD-9503725.

The Education Service Center, Region XIV (Special Called Session) Board of Directors met at 1850 Highway 351, Abilene, March 30, 1995, at 5:30 p.m. Information may be obtained from Taressa Huey, 1850 Highway 351, Abilene, Texas 79601, (915) 675-8608. TRD-9503696.

The Grayson Appraisal District Appraisal Review Board will meet at 205 North Travis, Sherman, April 20, 1995, at 9:00 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9503746.

The Lometa Rural Water Supply Corporation (Emergency Meeting.) Board of Directors met at 111 West Railway North, Lometa, March 27, 1995, at 5:00 p.m. (Reason for emergency: Discuss water rates increase between the City of Lometa and Lometa Rural Water.) Information may be obtained from Levi G. Cash or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505. TRD-9503717

The Millersview-Doole Water Supply Corporation Board of Directors will meet one block west of FM Highway 765 and FM Highway 2134, Millersview, April 3, 1995, at 8:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9503708.

The West Central Texas Council of Governments Private Industry Council will meet at the WCTCOG Administrative Offices, Career Assistance Center, 1025 1/2 East North Tenth Street, Abilene, April 6, 1995, at 10:00 a.m. Information may be obtained from Mary Ross, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544 TRD-9503726.

The Wise County Appraisal District (Emergency Meeting.) Appraisal Review Board met at 206 South State Street, Decatur, March 30, 1995, at 9:00 a.m. (Reason for emergency: Agenda was not complete 72 hours prior to meeting.) Information may be obtained from Deidra Deaton, 206 South State, Decatur, Texas 76234, (817) 627-3081. TRD-9503740.

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**Meetings Filed March 28,
1995**

The Education Service Center, Region VI Board and Executive Committee will meet at 1301 Sam Houston Avenue, Huntsville, April 6, 1995, at 5:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9503755.

AN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards. To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Alcoholic Beverage Commission Correction of Error

The Texas Alcoholic Beverage Commission proposed new §36.1, concerning the possession and sale of firearms on licensed premises. The rule appeared in the March 24, 1995, issue of the *Texas Register* (20 TexReg 2189)

Due to an error in editing the date of adoption was incorrect. The date of adoption should have read "April 24, 1995".

Texas Commission for the Blind Request for Qualifications (RFQ)

Pursuant to Government Code, §2254.021, the Commission invites professional firms with documented expertise in the area of governmental/commercial food service industry to submit their qualifications to provide technical and managerial assistance for designated blind vendors.

The Texas Commission for the Blind (Commission), as the cognizant State Licensing Agency under the Randolph Sheppard Act, 20 U.S.C. 107-107e, is interested in pursuing contracts on military bases for food services operations

Firms must meet the following requirements to be considered:

- (1) Must provide proof of financial stability, including current balance sheet.
- (2) Must have and show proof of the ability to secure a \$500,000 line of credit.
- (3) Must have had experience managing five or more military food services contracts.

(4) Must provide three letters of recommendation reflecting satisfactory contract performance related to military food services contracts.

(5) Must provide evidence of ability to conduct business in the State of Texas.

The Commission will evaluate demonstrated experience, competence and ability to meet the previous requirements. Firms selected will be placed on a list for possible future agreements with blind vendors to develop food services contracts at military bases.

All firms wanting to submit their qualifications should contact Al Little at (512) 459-2560 for further information concerning this RFQ. Submit request to the attention of Al Little, Business Enterprises Program (BEP), 4800 North Lamar Boulevard, Austin, Texas 78756. Responses to this notice should be received by the Commission's BEP office no later than 5:00 p.m. on May 1, 1995.

Issued in Austin, Texas, on March 23, 1995.

TRD-9503576

Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Filed: March 23, 1995

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 Title 79, Texas Civil Statutes, Articles 1.04 and 1.05, as amended (Texas Civil Statutes, Article 5069-1.04 and 1.05).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	03/27/95-04/02/95	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	04/01/95-04/30/95	10.00%	10.00%

(1) Credit for personal, family or household use. (2) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on March 20, 1995.

Filed: March 23, 1995

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Texas Department of Health

Announcement of Available Funds for HIV Early Intervention Projects

The Texas Department of Health (TDH) requests proposals from governmental, public, and private non-profit entities located within the State of Texas to develop or to continue projects to provide health care and psychosocial services to Texans who have tested positive for human immunodeficiency virus (HIV), the virus that causes acquired immunodeficiency syndrome (AIDS). For the purposes of this project, the definition of early HIV infection is HIV infection before a diagnosis of AIDS, as currently defined by the Centers for Disease Control and Prevention (CDC).

Early intervention (EI) is a strategy of service delivery to persons with early HIV infection which emphasizes outpatient care, health maintenance, prevention of transmission of the virus, and the integration of the client into a system that provides support services. Early medical intervention, when combined with case management and psychosocial support, appears to be effective not only in slowing disease progression but also in assuring compliance with medical regimens, promoting healthy behavior and coping skills, and improving quality of life. Psychosocial interventions may include long-term counseling, peer support services, psychosocial and neuropsychiatric assessment, and aggressive preventive educational programs. Education of the client is a valuable strategy in gaining compliance with health maintenance measures as well as in maintaining preventive behaviors.

The objectives of EI funding are to: provide services where no current services exist, but a need is exhibited; reach out to identify individuals with early HIV infection and their partners; provide access to early intervention to persons with early HIV infection; provide services as listed in this guidance including case management and care coordination; delay disease progression through timely initiation of proven preventive therapies; prevent or reduce behaviors that result in spread of the virus; and increase life expectancy and quality.

Proposals to provide technical assistance or training to support EI services, EI case management, and EI outreach will also be considered.

ELIGIBLE APPLICANTS

Eligible applicants are governmental, public, or private non-profit entities located within the State of Texas. Eligible entities may include, but are not limited to: city and/or county health departments or districts, community-based organizations, public or private hospitals, public or private university medical facilities, and other non-profit public or private health care groups. Individuals are not eligible to apply.

AVAILABLE FUNDS

The TDH will allocate \$622,000 for the purposes of these grants for the period September 1, 1995 through August 31, 1996, including start-up costs. No contracts will be awarded in excess of \$200,000. Based on evaluation of

performance during the first year of funding, contracts may be renegotiated for the 12-month period September 1, 1996 through August 31, 1997. The funding of these projects is contingent upon legislative appropriations.

TO OBTAIN THE RFP

Requests for Proposals (RFPs) will be mailed directly to all existing TDH HIV contractors. Others may obtain copies of the RFP by calling Judith Riney at (512) 490-2525. Proposals must be received at the HIV/STD Health Resources Division offices by 5:00 p.m., May 23, 1995.

Issued in Austin, Texas, on March 23, 1995.

TRD-9503689 Susar, K. Steeg
 General Counsel
 Texas Department of Health

Filed: March 24, 1995

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Licensing Actions for Radioactive Materials—Correction of Error

The Texas Department of Health (department) issued an announcement concerning actions taken regarding possession and use of radioactive materials. The announcement appeared in the March 28, 1995, issue of the *Texas Register* (20 TexReg 2356). (TRD Docket Number 950341). Due to an error in the department's submission, a name listed under the heading "AMENDMENTS TO EXISTING LICENSES DENIED:" was incorrectly stated. The name given was Herbert C. Allen, Jr., M.D., License Number L03584, Houston, Amendment Number-0, Date of Action-February 27, 1995. The correct name should be "Atomic Energy Industrial Laboratories of the Southwest."

Issued in Austin, Texas, on March 22, 1995.

TRD-9503606 Susan K. Steeg
 General Counsel
 Texas Department of Health

Filed: March 24, 1995

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Texas Department of Insurance Company License

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for PCA Property and Casualty Insurance Company, a foreign fire and casualty company. The home office is in Longwood, Florida.

Application for admission in Texas for Mid-Continent Insurance Company, a foreign fire and casualty company. The home office is in Tulsa, Oklahoma.

Application for admission in Texas for New York Surety Company, a foreign fire and casualty company. The home office is in Great Neck, New York.

Application for admission in Texas for The Insurance Company, a foreign fire and casualty company. The home office is in Treasure Island, Florida.

Application for a name change by Provident Mutual Life Insurance Company of Philadelphia, a foreign life, accident and health company. The proposed new name is Provident Mutual Life Insurance Company. The home office is in Philadelphia, Pennsylvania.

Application for a name change by Trans-General Life Insurance Company, a foreign life, accident and health company. The proposed new name is MedAmerica Insurance Company. The home office is in Bethesda, Maryland.

Application for a name change by Mount Airy Insurance Company, a foreign fire and casualty company. The proposed new name is Coregis Insurance Company. The home office is in Indianapolis, Indiana.

Application for a name change by Municipal Bond Investors Assurance Corporation, a foreign fire and casualty company. The proposed new name is MBIA Insurance Corporation. The home office is in Armonk, New York. Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on March 23, 1995.

TRD-9503590 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: March 23, 1995

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

1. Application for admission to Texas for Cimarron Insurance Service Corporation, a foreign third party administrator. The home office is in Albuquerque, New Mexico.

2. Application for admission to Texas for Health Program Managers, Inc., a foreign third party administrator. The home office is in Sacramento, California.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on March 27, 1995.

TRD-9503711 Alicia M. Fechtei
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: March 27, 1995

Texas Natural Resource Conservation Commission Enforcement Orders

An agreed enforcement order was entered regarding Exxon Company USA, Docket Number 95-0282-IHW-E (SWR Number 30040) on March 20, 1995, assessing \$600,000 in administrative penalties with \$140,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Glen Grunberger, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3417.

An agreed enforcement order was entered regarding the following 50 Licensed and Unlicensed Water Well Drillers and Pump Installers (Docket Number 95-0397-WWD-E):

Mir Azizi, Steve Beaird, Rex Bible, Michael Bratson, Rodney Broussard, David Burleson, Jack Burns, Dean Davenport, Claude Davis, E. R. English, John Fitzgerald, Melvin Fuller, Elwyn Gibson, J. B. Gillen, J. W. Greak, Jr., Randal Johnson, Thomas Moy, Earl Haberman, Jerry Jasek, Roy Johnson, Dale Jones, Mark Lewis, Lawrence Neusch, Michael O'Day, Jerre Pritchett, Tim Robinson, Millard Smith, Jr., Roy Stricker, Jr., John Webb, John Box, Rcmn Gonzales, Alan Hagemeyer, Louis Postert, Ray Reed, Bonnie Rust, Curtis Stone, Henry Warren, Ron Wheeler, L. A. Addison, John Barker, James Bolton, R. M. Cole, Dean Davenport, Vernon Davis, Furman Greer, Kenneth Kramer, Sonny Leggett, Lloyd Munson, Aaron Peters, and Thomas F. Smith; on March 20, 1995, assessing administrative penalties totaling to \$44,900.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0678.

An agreed enforcement order was entered regarding Longview Refining Associates, Inc., Docket Number 95-0417-IHW-E (SWR Number 31376) on March 20, 1995, assessing \$88,000 in administrative penalties with \$88,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Sally Jo Hahn, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0682.

An agreed enforcement order was entered regarding Terry Morales and Janie Morales, Docket Number 95-0347-PST-E/Enforcement I.D. E10833 (TNRCC Facility I. D. 37495) on March 20, 1995, assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raymond C. Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

An agreed enforcement order was entered regarding Steiner Utility Company, Incorporated; Docket Number 95-0428-SLG-E (Permit Number 13294-01) on March 20, 1995, assessing \$14,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0678.

Issued in Austin, Texas, on March 24, 1995.

TRD-9503687 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: March 24, 1995

Notice of Applications for Waste Disposal Permits

Notices of applications for waste disposal permits issued during the period of March 20-24, 1995.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing;" a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

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, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

City of Athens; the North Wastewater Treatment Facilities; are east of One Mile Creek and approximately 3,100 feet northwest of the intersection of Prairieville, Street and State Highway 19 in the City of Athens in Henderson County, Texas; amendment; 10143-01.

Countrywide Partnership Investments, Inc.; the Northwest Pines Mobile Home Park Wastewater Treatment Facilities; the wastewater treatment facilities are at 14022 Walters Road approximately 3.5 miles west of Interstate Highway 45 and 0.75 mile south of FM Road 1960 in Harris County, Texas; renewal; 12218-01.

Crosby Municipal Utility District; the wastewater treatment facilities are at 5703 Avenue E approximately one-half mile southwest of the intersection of FM Road 2100 and the Southern Pacific Railroad in the City of Crosby in Harris County, Texas; amendment; 11388-01.

Durk Deboer; the dairy; is located on the west side of FM Road 219, approximately 1.25 miles west and north of Fairy, in Hamilton County, Texas; new; 03772.

Dripping Springs Independent School District; the Dripping Springs Middle School Wastewater Treatment Facility and subsurface disposal site are approximately 0.9 mile northwest of intersection of Ranch Road 12 and U.S. Highway 290 in Hays County, Texas; new; 13748-01.

Stephen Friedman; the wastewater treatment plant is at 5930 State Highway 6 North in Harris County, Texas; renewal; 13778-01.

City of Iredell; the Town Plant Wastewater Treatment Facilities; the wastewater treatment facilities are approximately 700 feet east of the intersection of Kidd Street and Meridian Street, approximately 1,000 feet south of the North Bosque River on the east side of the City of Iredell in Bosque County, Texas; renewal; 11565-01.

City of La Ward; the wastewater treatment plant is on the west side of Sam Houston Avenue approximately 200 feet northeast of the intersection of Palacios Street and Rio Grande Street in the City of La Ward in Jackson County, Texas; renewal; 13479-01.

City of Lefors; the wastewater treatment facilities are approximately 1,300 feet south of State Highway 273, 2.5 miles west of the intersection of FM Road 291 and State Highway 273 south of the City of Lefors in Gray County, Texas; renewal; 10411-01.

Longhorn Town Utility District; the Longhorn Town Utility District Wastewater Treatment Facilities are approximately 0.5 mile south of Interstate Highway 10 and 0.5 mile east of Baker Road in Harris County, Texas; amendment; 12356-01.

Oxy Petrochemicals, Inc.; the applicant operates the Oxychem Petrochemicals plant which primarily produces Ethylene, Propylene, Benzene, and Butadiene; the plant site is at 1501 McKinzie Road which is approximately 1.3 miles east of the State Highway 44/FM Road 24 intersection and approximately four miles east of the City of Robstown, Nueces County, Texas; amendment; 02075.

City of Rockdale; the wastewater treatment facilities are southwest of the intersection of Beverly Road and Southern Pacific Railroad in Milam County, Texas; renewal; 10658-01.

San Antonio River Authority; the Upper Martinez Creek Wastewater Treatment Facilities; the wastewater treatment facilities are approximately 400 feet north of Benz-Engleman Road, approximately one mile west of FM Road 1516, and approximately one mile north of Interstate Highway 10 in Bexar County, Texas; renewal; 107490-93.

Seven X Cattle Feeders, Inc.; the cattle feedlot; is on the south side of a unnamed county road, approximately two miles south and one mile east of its intersection with FM Road 1057. This intersection is eight miles west of Hereford on US Highway 60 in Castro County, Texas; amendment; 01338.

City of Strawn; the wastewater treatment plant is approximately 500 feet north of State Highway 108 and approximately 300 feet east of Palo Pinto Avenue on the east side of the City of Strawn in Palo Pinto County, Texas; renewal; 10326-01.

Tam Anne Farm Partnership; the cattle feedlot; is on the south side of State highway 86, approximately 11 miles west of Dimmitt, in Castro County, Texas; new; 03777.

Thousand Trails, Inc.; Lake Tawakoni Preserve Wastewater Treatment Facilities; the facilities are approximately

one mile west of FM Road 47 and approximately 1.15 miles south of FM Road 35 in Rains County, Texas; renewal; 12861-01.

U.S. Army Corps of Engineers, Lavon/Cooper Project Office; the Mallard Park Wastewater Treatment Facilities; the wastewater treatment facilities are in Mallard Park on the east side of Lavon Lake northwest of the intersection of State Highway 78 and FM Road 6 in Collin County, Texas; renewal; 12059-01.

Warren Independent School District; the wastewater treatment facilities are south of FM Road 1943 and east of Blue Berry Hill Drive in Tyler County, Texas; renewal; 11307-01.

City of Weslaco; the Weslaco Wastewater Treatment Plant; the plant site is northeast of the City of Weslaco approximately 4,000 feet east of State Highway 88 and approximately 4,000 feet north of Pike Boulevard in Hidalgo County, Texas; new; 10619-003.

Charlie West; the swine operation consists of two facilities in Hansford County, Texas; new; 03784.

Issued in Austin, Texas, on March 24, 1995.

TRD-9503685 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: March 24, 1995

Notice of Opportunity to Comment on Permitting Actions

For the week ending March 24, 1995.

The following applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mail Code 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

City of Burnet, for a minor amendment to Permit Number 10793-02, in order to allow the permittee to participate in the Lower Colorado River Authority's Highland Lakes Regional Biosolids Composting Project. The current permit authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 726,000 gallons per day, which will remain the same. The permittee is also authorized to irrigate a 245-acre irrigation tract at an application rate not to exceed 2.9 acre-feet/acre/year. The plant site is approximately 1,400 feet southeast of the Southern Pacific Railroad bridge crossing the Hamilton Creek in Burnet County, Texas.

City of Albany, for a minor amendment to Permit Number 10035-01 to revise the two-hour peak permitted flow from 600 gallons per minute (gpm) to 460 gpm. The permit currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 290,000 gallons per day, which will remain the same. The Plum Creek Wastewater Treatment Facilities are approximately one mile southeast of the intersection of U.S. Highways 180 and 283; approximately 3,200 feet east of U.S. Highway 283 in Shackelford County, Texas.

Sprint Fort Bend County Landfill, L.P., for a minor amendment to Permit Number MSW1683 in order to revise the operating hours to Monday-Saturday from 5:30 a.m. to 5:30 p.m. The municipal solid waste facility is located on Hillman Street approximately 3.3 miles north the intersection of U.S. Highway 90A and State Highway 6 and 0.5 miles south of Four Corners Intersection, northwest of Sugar Land, in Fort Bend County, Texas.

Sprint Fort Bend County Landfill, L.P., for a minor amendment to Permit Number MSW1797 in order to revise the operating hours to Monday-Saturday from 5:30 a.m. to 5:30 p.m. The municipal solid waste facility is located 0.5 miles west of State Highway 6 and 1,800 feet south of Boss Gaston Road, 1.2 miles northwest of Sugar Land, in Fort Bend County, Texas.

Sprint Fort Bend County Landfill, L.P., for a minor amendment to Permit Number MSW1396 in order to revise the operating hours to Monday-Saturday from 5:30 a.m. to 5:30 p.m. The municipal solid waste facility is located 1.3 miles west of the intersection of State Highway 6 and Boss Gaston Road, northwest of Sugar Land, in Fort Bend County, Texas.

Laidlaw Waste Systems, Inc., for a minor amendment to Permit Number MSW1417-B in order to revise the operating hours to Monday-Friday from 4:00 a.m. to 10:00 p.m., with Saturday hours remaining from 7:00 a.m. to 12:00 p.m. The existing municipal solid waste management facility is located west of and adjacent to IH-35 West at the Greenfield-Barnsville exit, 2.5 miles south of Alvarado, in Johnson County, Texas.

Sanifill of Texas, Inc., for a minor amendment to Permit Number MSW2185 in order to reduce the acreage of the west block of the permitted site by 4.12 acres. The revised acreage will be 47.51 acres of land. The municipal solid

waste facility is located at the 10300, 10400, and 10500 blocks of Tanner Road in Houston, Harris County, Texas.

Application Number 23-3997U by the City of Laredo for a Texas Water Code, §11.122, Water Use Permit Application. Amendment to Certificate Number 23-3997 to sever 1,600 acre-feet of Class "A" water rights from Certificate Number 23-140, as amended, and to change ownership, point of diversion, purpose and place of use authorized for these water rights and to combine them with water rights owned by applicant under Certificate Number 23-3997, Rio Grande, Rio Grande Basin, Webb County, Texas (Kellye Rila, 239-4612).

City of Denton, for a minor amendment to Permit Number 10027-003 to authorize the composting of digested dewatered sludge, marketing and distribution of the composted Class A sludge and land application of the composted Class A sludge on property owned, leased or under the direct control of the permittee. The permit currently authorizes the discharge of treated domestic wastewater effluent at a final volume not to exceed an average of 15,000,000 gallons per day, which will remain the same. The proposed amendment will enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The Pecan Creek Wastewater Treatment Facilities are east of the City of Denton along Pecan Creek, approximately 5,700 feet east of State Highway 288 and approximately two miles upstream from Lake Lewisville in Denton County, Texas.

Issued in Austin, Texas, on March 24, 1995.

TRD-9503686
Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: March 24, 1995

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Clean Air Act (the Act), Health and Safety Code, Chapter 382, §382.096. The Act, §382.096 requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is April 30, 1995. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate or inconsistent with the requirements of the Texas Clean Air Act. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed below. Written comments about these

AOs should be sent to the Staff Attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 30, 1995. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-0606. The TNRCC Staff Attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1) COMPANY: Advance Auto World; DOCKET NUMBER: 95-0528-AIR-E; ACCOUNT NUMBER: EE-1520-F; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: used car dealership; RULE VIOLATED: TNRCC Rule 30 TAC §114.1 and §382.085(b) of the Act, by offering for sale the following vehicles: a 1983 Pontiac 6000 with a missing air injection; a 1983 Chevy Camero with an inoperable air injection and exhaust gas recirculation system; a 1984 Ford Mustang with an inoperable positive crankcase ventilation, thermostatic air cleaner and exhaust gas recirculation system and a 1984 Mercury Topaz with an inoperable air injection. PENALTY: \$250; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(2) COMPANY: All Texas Demolishing; DOCKET NUMBER: 95-0529-AIR-E; ACCOUNT NUMBER: HG-4768-L; LOCATION: Houston, Harris County; TYPE OF FACILITY: demolition project; RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2) and §382.085(b) of the Act, by not starting demolition of the building on the notification date and failing to provide a revised notification. PENALTY: \$0; STAFF ATTORNEY: Paul C. Sarahan, (512) 239-3422; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(3) COMPANY: American Central Gas Companies, Incorporated; DOCKET NUMBER: 95-0530-AIR-E; ACCOUNT NUMBER: EB-0090-D; LOCATION: Odessa, Ector County; TYPE OF FACILITY: natural gas plant; RULE VIOLATED: TNRCC Rule 30 TAC §101.4, by emitting nuisance-level odors; TNRCC 30 TAC §101.6, by failing to report an upset; and §382.085(a) and §382.085(b) of the Act. PENALTY: \$24,000; STAFF ATTORNEY: Lisa Uselton, (512) 239-5692; REGIONAL OFFICE: 1901 East 37th Street, Suite 101, Odessa, Texas 79762, (915) 367-3871.

(4) COMPANY: Army Air Force Exchange Service; DOCKET NUMBER: 95-0531-AIR-E; ACCOUNT NUMBER: EE-1213-R; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: tire center; RULE VIOLATED: TNRCC Rule 30 TAC §114.13(a) and §382.085(b) of the Act, by dispensing gasoline that was below the required oxygenate weight content of 2.7%. PENALTY: \$0; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(5) COMPANY: Barron Stop and Go; DOCKET NUMBER: 95-0532-AIR-E; ACCOUNT NUMBER: EE-0866-T; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store; RULE VIOLATED: TNRCC Rule 30 TAC §114.13(a) and §382.085(b) of the Act, by dispensing gasoline that was below the required oxygenate weight content of 2.7%. PENALTY: \$1,000; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(6) COMPANY: Bells Plating, Incorporated; DOCKET NUMBER: 95-0533-AIR-E; ACCOUNT NUMBER: CP-0280-T; LOCATION: Royse City, Collin County; TYPE OF FACILITY: chrome electro-plating operation; RULE VIOLATED: TNRCC Rule 30 TAC §§116.110(a), 382.0518(a), and 382.085(b) of the Act, by operating a chrome electro-plating line which may emit air contaminants into the air of the state without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$0; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-0175.

(7) COMPANY: Border Dodge; DOCKET NUMBER: 95-0534-AIR-E; ACCOUNT NUMBER: EE-1497-V; LOCATION: El Paso, El Paso; TYPE OF FACILITY: used car dealership. RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(3) and §382.085(b) of the Act, by offering for sale a 1989 Dodge Ram Charger with a missing catalytic converter and failing to properly display notice required by this subsection regarding the prohibitions and requirements. PENALTY: \$250; STAFF ATTORNEY: Peter Gregg, REGIONAL OFFICE: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(8) COMPANY: Carpenter Company, Incorporated (formerly E. R. Carpenter, Incorporated); DOCKET NUMBER: 95-0535-AIR-E; ACCOUNT NUMBER: BF-0012-H; LOCATION: Temple, Bell County; TYPE OF FACILITY: urethane foam manufacturing plant; RULE VIOLATED: the Texas Air Control Board (TACB) (predecessor agency to the TNRCC) Agreed Board Order Number 91-02(d), by failing to have an "administratively and technically complete" permit application submitted to TNRCC within 180 days of the date of entry of Agreed Order, and increasing the annual usage of certain raw materials, prior to the issuance of TNRCC Permit Number 20625, over the production limit in that Order. This Order also amends TACB Agreed Board Order Number 91-02(d) to remove certain technical requirements which have since been superseded by provisions in TNRCC Permit Number C-20625. PENALTY: \$76,625; STAFF ATTORNEY: Walter Ehresman, (512) 239-0573; REGIONAL OFFICE: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240.

(9) COMPANY: Chalus Fruit Stand, DOCKET NUMBER: 95-0536-AIR-E; ACCOUNT NUMBER: EE-0888-J; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store; RULE VIOLATED: TNRCC Rule 30 TAC §114.13(a) and §382.085(b) of the Act, by dispensing gasoline that was below the required oxygenate weight content of 2.7%. PENALTY: \$1,000; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(10) COMPANY: Chemical Distribution, Incorporated; DOCKET NUMBER: 95-0567-AIR-E; ACCOUNT NUMBER: EE-0472-V; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: chemical distribution plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act, by failing to comply with Special Provisions of TNRCC Permit Number 20424. Specifically, it is alleged that on four occasions in 1994 (January 22, March 15, April 26, and September 27) the Company drummed perchlorethylene, trichlorethylene, and methylene chloride from tanker trucks without receiving approval for handling those substances at the plant as required by Special Provision Number 3. This is also a violation of §382.085(b) of the Act for failing to comply

with Paragraph 10 of TACB (predecessor agency to the TNRCC) Agreed Board Order Number 91-05(d), which requires compliance with all rules contained in TNRCC Regulation VI. PENALTY: \$4,000; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(11) COMPANY: Chemical Dynamics, Incorporated; DOCKET NUMBER: 95-0537-AIR-E; ACCOUNT NUMBER: PC-0077-R; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: aircraft parts manufacturing plant. RULE VIOLATED: TACB (predecessor agency to the TNRCC) Agreed Board Order Number 92-08(i) and §382.085(b) of the Act, by failing to cease operation of the aluminum etching and chromic acid anodizing tanks. PENALTY: \$5,250; STAFF ATTORNEY: Lisa Uselton, (512) 239-5692; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(12) COMPANY: Crown Central Petroleum; DOCKET NUMBER: 95-0538-AIR-E; ACCOUNT NUMBER: HG-0175-D; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: TNRCC Rule 30 TAC §101.20(1) which also violates TACB (predecessor agency to the TNRCC) Agreed Board Order Number 89-09(g), by failing to monitor valves in the fluid catalytic cracking unit on a monthly/quarterly basis, failing to properly test flares within 180 days of start-up; exceeded the 230 mg/dscm hydrogen sulfide concentration limit for fuel gas burned in Number 3 Reformer Unit and New Coker Unit heaters (also violates TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act, by violating Special Provision 13 of TNRCC Permit Number 20246); and exceeded the 250 ppm concentration limit for sulfur dioxide emissions from the sulfur recovery unit TNRCC Rule 30 TAC §101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants by failing to follow the notification requirements in Subpart M (asbestos), TNRCC Rule 30 TAC §116.115, by exceeding the maximum allowed firing rate of the CO Boiler; and exceeded at two units the maximum allowable emission rate for sulfur dioxide. TNRCC Rule 30 TAC §101.4 and §382.085(a) and (b) of the Act, nuisance-level odor emissions on two occasions. TNRCC Rule 30 TAC §101.6 and §382.085(b) of the Act, failing to provide timely notices of upset conditions on two occasions. TNRCC Rule 30 TAC §115.126(a)(1)(B) and §382.085(b) of the Act, by failing to continuously record upstream and downstream temperatures on a condenser for 806 days. TNRCC Rule 30 TAC §115.332(2) and §382.085(b) of the Act, by failing to repair components (three valves and one pump) as required. TNRCC Rule 30 TAC §115.332(4) and §382.085(b) of the Act, by failing to cap 20 open-ended valves as required. PENALTY: \$110,000; STAFF ATTORNEY: Walter Ehresman, (512) 239-0573; REGIONAL OFFICE: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(13) COMPANY: Dynamic Cars; DOCKET NUMBER: 95-0539-AIR-E; ACCOUNT NUMBER: JE-0512-I; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: operates a motor vehicle sales or leasing lot; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and §382.085(b) of the Act, by offering for sale a 1984 Chevrolet K-5 Blazer which lacked required emission control equipment or devices; specifically, the vehicle lacked the following equipment or devices such as oxida-

tion catalytic convertor, cold air hose on the thermostatic air cleaner and hot air hose on the thermostatic air cleaner had been disconnected; offering for sale a 1986 Ramcharger which lacked required emission control equipment or devices—specifically the vehicle lacked the hot air hose on the thermostatic air cleaner was missing; offering for sale a 1986 Chevrolet Custom Deluxe Pickup, which vehicle's required emission control systems or devices were not in good operable condition, specifically, the following equipment or devices were not in good operable condition—drive belt from the air pump was missing; and by offering for sale a 1985 Cadillac Eldorado which vehicle's required emission control systems or devices were not in good operable condition, specifically, the following equipment or devices were not in good operable condition—cold air hose was deteriorated on the thermostatic air cleaner. PENALTY: \$250; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 3870 Eastex Freeway, #110, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: E-Z Serve Convenience Stores, Inc., DOCKET NUMBER: 95-0540-AIR-E; ACCOUNT NUMBER: EE-1115-S; LOCATION: El Paso, El Paso County. TYPE OF FACILITY: convenience store; RULE VIOLATED: TNRCC Rule 30 TAC §114.13(a) and §382.085(b) of the Act, by dispensing gasoline that was below the required oxygenate weight content of 2.7% PENALTY: \$1,000; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(15) COMPANY: Exxon Chemical Company; DOCKET NUMBER: 95-0568-AIR-E; ACCOUNT NUMBER: HG-0226-L; LOCATION: Houston, Harris County; TYPE OF FACILITY: petrochemicals manufacturing plant; RULE VIOLATED: TNRCC Rule 30 TAC §115.126(a)(1)(B) and §382.085(b) of the Act, by failing to continuously monitor the upstream and downstream temperature of its liquid nitrogen chilled condenser at its oxyalkylation unit. PENALTY: \$24,000; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027, (713) 625-7900.

(16) COMPANY: Fresno-LeGrand, Inc.; DOCKET NUMBER: 95-0541-AIR-E; ACCOUNT NUMBER: FG-0015-O; LOCATION: Fresno, Fort Bend County; TYPE OF FACILITY: owner of property/sandblasting operation; RULE VIOLATED: TACB (predecessor agency to the TNRCC) Agreed Board Order Number 91-07(j) and §382.085(b) of the Act, by failing to secure the north wall of the sandblasting building, thus allowing dust to escape. PENALTY: \$0; STAFF ATTORNEY: Shannon Kilgore, (512) 239-3419; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(17) COMPANY: Guardian Industries Corporation; DOCKET NUMBER: 95-0542-AIR-E; ACCOUNT NUMBER: NB-0014-R, LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: float glass manufacturing plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.115, 101.20(3), and 382.085(b) of the Act, by exceeding the sulfur dioxide emission limit specified in PSD Permit Number PSD-TX-370M-2 and Special Provision Number 1 of TNRCC Permit Number 8518. PENALTY: \$5,000; STAFF ATTORNEY: Lisa Uselton, (512) 239-5692; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(18) COMPANY: Halten's Auto Sales; DOCKET NUMBER: 95-0543-AIR-E; ACCOUNT NUMBER: OC-0272-L; LOCATION: Orange, Orange County. TYPE OF FACILITY: motor vehicle sales or leasing lot, RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and §382.085(b) of the Act, by offering for sale a 1983 Ford pickup which lacked required emission control equipment or devices; specifically the vehicle lacked air injection system pump and hot air hose on the thermostatic air cleaner. PENALTY: \$250; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 3870 Eastex Freeway, #110, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: Albert Kalas, DOCKET NUMBER: 95-0544-AIR-E; ACCOUNT NUMBER: HG-5604-M, LOCATION: Houston, Harris County, TYPE OF FACILITY: demolishing activity, RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2) and §382.085(b) of the Act, by failing to properly conduct required survey and to submit notification of intent to demolish at least ten working days before demolition. PENALTY: \$0; STAFF ATTORNEY: Patricia Hershey, (512) 239-0587; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(20) COMPANY: Lalo's Body Shop and Auto Sales; DOCKET NUMBER: 95-0545-AIR-E; ACCOUNT NUMBER: DB-3558-Q; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: motor vehicle sales or leasing lot; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(2) and §382.085(b) of the Act, by failing to comply with TACB (predecessor agency to the TNRCC) Agreed Board Order Number 91-05(d), which requires compliance. PENALTY: \$0; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, #312, Ft. Worth, Texas 76116, (713) 625-7900

(21) COMPANY: Lyondell Petrochemical Company; DOCKET NUMBER: 95-0546-AIR-E; ACCOUNT NUMBER: HG-0033-B; LOCATION: Channelview, Harris County, TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2) and §382.085(b) of the Act; 40 CFR §61.342(b), by violating National Emissions Standards for Hazardous Air Pollutants (Benzene) PENALTY: \$10,200; STAFF ATTORNEY: Lisa Uselton, (512) 239-5692; REGIONAL OFFICE: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(22) COMPANY: Thomas Mabry doing business as T and G Services; DOCKET NUMBER: 95-0547-AIR-E; ACCOUNT NUMBER: FG-0243-W; LOCATION: Fresno, Fort Bend County; TYPE OF FACILITY: sand blasting operation; RULE VIOLATED: TACB (predecessor agency to the TNRCC) Agreed Board Order Number 92-02(ff) and §382.085(b) of the Act, failing to secure the sandblasting building, thus allowing dust to escape. PENALTY: \$0; STAFF ATTORNEY: Shannon Kilgore, (512) 239-3419; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(23) COMPANY: Milam and Company Painting, Incorporated; DOCKET NUMBER: 95-0570-AIR-E; ACCOUNT NUMBER: HG-4888-A; LOCATION: Baytown, Harris County; TYPE OF FACILITY: repair and painting contract work; RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2) and §382.085(b) of the Act, which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants by failing to follow the notifica-

tion requirements in Subpart M (asbestos). PENALTY: \$0; STAFF ATTORNEY: Lisa Uselton, (512) 239-5692; REGIONAL OFFICE 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(24) COMPANY: Montgomery Tank Lines; DOCKET NUMBER: 95-0548-AIR-E; ACCOUNT NUMBER: TA-2631-K; LOCATION: Saginaw, Tarrant County; TYPE OF FACILITY: tank truck cleaning operation; RULE VIOLATED: TNRCC Rule 30 TAC §§116.110(a), 382.0518(a), and 382.085(b) of the Act, by operating a tank truck cleaning operation which may emit air contaminants into the air of the state without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$1,000; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE, 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-0175.

(25) COMPANY Redi-Mix Concrete; DOCKET NUMBER: 95-0549-AIR-E; ACCOUNT NUMBER: DF-0010-A; LOCATION: Denton, Denton County; TYPE OF FACILITY: Concrete Batch Plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act, by failing to control dust emissions from truck traffic traversing paved plant roads, control dust emissions from the drum feed, and maintain the cement silo baghouse in good working order. PENALTY: \$1,000; STAFF ATTORNEY: Patricia Hershey, (512) 239-0587, REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(26) COMPANY: Rosewood Products, Incorporated; DOCKET NUMBER: 95-0550-AIR-E, ACCOUNT NUMBER: TA-2743-V; LOCATION: Grand Prairie, Tarrant County; TYPE OF FACILITY: woodworking operation; RULE VIOLATED: TNRCC Rule 30 TAC §§116.110(a), 382.0518(a), and 382.085(b) of the Act, by operating a painting operation which may emit air contaminants into the air of the state without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$0; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-0175.

(27) COMPANY: S. A. Healy Company; DOCKET NUMBER: 95-0551-AIR-E, ACCOUNT NUMBER: 92-2000-R; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: tunnel boring operation; RULE VIOLATED: TNRCC Rule 30 TAC §101.4 and §382.085(a) and (b) of the Act, nuisance-level dust emissions; and TNRCC Rule 30 TAC §101.6, by failing to report an upset condition. PENALTY: \$6,000; STAFF ATTORNEY: Paul C. Sarahan, (512) 239-3422; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(28) COMPANY: Sellers Grain; DOCKET NUMBER: 95-0552-AIR-E; ACCOUNT NUMBER: HC-0020-I; LOCATION: Two miles south of the intersection of Texas Highway 22 and Farm to Market Road 1602, Hamilton County; TYPE OF FACILITY: grain roasting operation; RULE VIOLATED: TNRCC Rule 30 TAC §§116.110(a), 382.0518(a), and 382.085(b) of the Act, by operating a grain roasting elevator which may emit air contaminants into the air of the state without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$0; STAFF ATTORNEY: Thomas Corwin, (512) 239-5915; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (817) 751-0335.

(29) COMPANY: Shamrock Adventure VI, Limited; DOCKET NUMBER: 95-0553-AIR-E; ACCOUNT NUM-

BER: HG-5180-V; LOCATION: Houston, Harris County; TYPE OF FACILITY: renovation operation; RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2), (the asbestos NESHAP), by failing to perform an asbestos survey and failing to submit written notification of intent to demolish or renovate at least ten days prior to the commencement of renovation activity. PENALTY: \$1,000, STAFF ATTORNEY: Patricia Hershey, (512) 239-0587; REGIONAL OFFICE: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(30) COMPANY: Stoney Point Agricorp, Inc.; DOCKET NUMBER: 95-0554-AIR-E, ACCOUNT NUMBER: HO-0094-N; LOCATION: approximately ten miles NW of Covington, Hill County; TYPE OF FACILITY: calf-raising operation, RULE VIOLATED: TNRCC Rule 30 TAC §§116.110, 382.0518(a), and 382.085(b) of the Act, by expanding its calf-raising operation, above the 1,000 head limit, without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$0; STAFF ATTORNEY: Paul C. Sarahan, (512) 239-3422; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (817) 751-0335

(31) COMPANY: Super's Motor company; DOCKET NUMBER: 95-0555-AIR-E, ACCOUNT NUMBER: TA-2730-H; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: Used car lot; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and (2) and §382.085(b) of the Act, by offering for sale to the public a 1989 Ford Mustang with a missing catalytic converter. PENALTY: \$500; STAFF ATTORNEY: Patricia Hershey, (512) 239-0587; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-05531

(32) COMPANY: Texas Department of Public Safety; DOCKET NUMBER: 95-0556-AIR-E; ACCOUNT NUMBER: EE-0168-E; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: maintenance yard; RULE VIOLATED: TNRCC Rule 30 TAC §114.13(a) and §382.085(b) of the Act, by dispensing gasoline that was below the required oxygenate weight content of 2.7%. PENALTY: \$0; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(33) COMPANY: Texas Ingredient Corporation; DOCKET NUMBER: 95-0557-AIR-E; ACCOUNT NUMBER: JH-0233-F; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: pet food manufacturing plant; RULE VIOLATED: TNRCC Rule 30 TAC §§116.110(a), 382.0518(a), and 382.085(b) of the Act, by operating a boiler without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$500; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-0175.

(34) COMPANY: Vulcan Materials Company; DOCKET NUMBER: 95-0569-AIR-E; ACCOUNT NUMBER: 90-0337-P; LOCATION: Helotes, Bexar County; TYPE OF FACILITY: asphalt batch plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act, by failing to comply with general and special provisions of TNRCC Permit Number R-337M. Specifically, the company is alleged to have violated the following provisions; Special Provision Number 5—excessive fugitive emissions from the dryer, hot elevator, screens, chute, and bins; Special Provision Number 8—exceeding the 20% opacity limit on exhaust stack emissions; and General

Condition Number 3—failing to maintain all air pollution abatement equipment in good working order and operating properly during normal operations. TNRCC Rule 30 TAC §111.111 and §382.085(b) of the Act, by causing, suffering, allowing, or permitting the opacity to exceed 20%, averaged over a six-minute period, for a stationary source on which construction began after January 31, 1972. PENALTY: \$9,500; STAFF ATTORNEY: Peter Gregg, (512) 239-0450. REGIONAL OFFICE: 6801 Sanger Avenue, #2500, Waco, Texas 76710. (817) 751-0335

(35) COMPANY: Robert E Wells Enterprises; DOCKET NUMBER: 95-0558-AIR-E; ACCOUNT NUMBER FG-0449-A. LOCATION: Stafford, Fort Bend County; TYPE OF FACILITY: Motor vehicle sales business; RULE VIOLATED: TNRCC Rule 30 TAC §§114.1(c)(1), 114.1(c)(2), 114.1(c)(3), and 382.085(b) of the Act, by offering for sale a 1984 Chevrolet truck that was missing an emissions control device (the catalytic converter) and had an evaporative emissions control system that was inoperable. PENALTY: \$0; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900

Issued in Austin, Texas, on March 27, 1995.

TRD-9503702 Lydia Gonzalez
Acting Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed March 27, 1995

Public Notice

The Texas Natural Resource Conservation Commission (TNRCC or Commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, as amended (the Act), to identify and assess facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The first registry of such sites was published in the January 16, 1987, issue of the *Texas Register* (12 TexReg 205). The last registry was published on *January 25, 1994* (19 TexReg 545). There have been three additions to the proposed registry since its last publication. Pursuant to §361.181, the registry identifying those facilities that may constitute an imminent and substantial endangerment in Texas lists those facilities in relative priority of need of action as follows:

Col-Tex Refinery, adjacent to Colorado City, Mitchell County. Oil refinery, tank farm and sludge pits.

Houston Scrap, 3799 Jensen Drive, Houston, Harris County. Scrap metal and battery recycling

Houston Lead, 300 Holmes Road, Houston, Harris County: Battery recycling

State Marine, Yacht Club Road, Port Arthur, Jefferson County: Barge cleaning.

Precision Machine, 500 West Olive Street, Odessa, Ector County. Machine and chrome plating.

Sonics International, Inc., two miles west of Ranger on the north side of FM Road 101, Eastland County: Two hazardous waste injection wells

Maintech International, 8300 Old Ferry Road, Port Arthur, Jefferson County. Chemical cleaning service.

Federated Metals, 9200 Market Street, Houston, Harris County: Metal smelting and reclamation plant.

Gulf Metals, northwest corner of the intersection of Mykawa and Alameda-Genoa, Houston, Harris County: Metal slag and organic waste disposal.

Wortham Lead Salvage, on the north side of Highway 175 approximately 2.5 miles southeast of Mabank, Henderson County: Battery recycling.

Texas American Oil, approximately three miles north of Midlothian on State Highway 67, Ellis County: Oil refining

Niagara Chemical, 421 North C Street, Harlingen, Cameron County: Pesticide formulation plant.

International Creosoting, 1110 Pine Street, Beaumont, Jefferson County. Wood creosoting.

McBay Oil and Gas, three miles northwest of Grapeland on FM 1272, Houston County. Waste oil recycling and refinery.

Aztec Mercury, 401 Callaway Drive, Alvin, Brazoria County: Mercury recycling.

Solvent Recovery Services, 5502 Highway 521 approximately 0.2 mile south of Highway 521 and Highway 6, Arcola, Fort Bend County: Solvent Recovery.

Harris Sand Pits, 23340 South Highway 16, 10.5 miles south of San Antonio city limits, Bexar County: Industrial waste disposal

Butler Ranch, 11.8 miles west of Falls City on FM 791, Karnes County: Industrial waste disposal

Pip Minerals, 3303 1/2 Beaumont Avenue, Liberty, Liberty County: Chromium, ignitable wastes, and drilling chemicals

Hayes-Sammons Warehouse, East Eighth Street and Moller Avenue, Mission, Hidalgo County: Pesticide storage

Baldwin Waste Oil Company, on County Road 44 approximately 0.1 mile west of Highway 77, Robstown, Nueces County: Waste oil recycling.

Waste Oil Tank Service, 2010 Hartwick Road off Highway 59 North, Houston, Harris County: Waste oil recycling.

Hall Street, north of intersection of California Street and 20th Street East, north of Dickinson, Galveston County: Industrial waste disposal.

Unnamed Plating Site, 6816-6824 Industrial Boulevard, El Paso, El Paso County: Metal plating waste ponds.

La Pata Oil/Southwest Oil, 1403 Ennis Street, Houston, Harris County: Waste oil recycling.

Munoz Borrow Pits, 0.1 mile south of Highway 83 on FM 1016, Mission, Hidalgo County: Pesticide contaminated fill area.

South Texas Solvents, approximately four miles south of Banquete at the intersection of FM 666 and County Road 32, Nueces County. Solvent recycling and oil refinery.

Bestplate, 1095 South I-45, south of Hutchins, Dallas County: Chromium plating.

Pursuant to §361.184(a) those facilities which have been determined to be eligible and have been proposed for

listing on the State Superfund Registry are listed in relative priority of need of action as follows:

Double R Plating Company, on CR 3544 north of Highway 96 three miles west of Queen City, Cass County: Zinc and chromium plating.

Pioneer Oil and Refining Company, adjacent to 20280 South Payne Road, outside of Somerset, Bexar County: Oil refinery.

Higgins Wood Preserving, intersection of Paul Avenue and Warren Street, Lufkin, Angelina County: Wood creosoting.

Marshall Wood Preserving, 2700 West Houston Street, Marshall, Harrison County: Wood creosoting

Thompson-Hayward Chemical, on the east side of Highway 277 between Eden and Houston Streets, Munday, Knox County: pesticide formulating.

Old Lufkin Creosoting, 1411 East Lufkin Avenue, Lufkin, Angelina County: Wood creosoting.

Hageron Road Drum, east of 1221 Hageron Road, DeWalt, Fort Bend County: Drummed industrial waste.

American Zinc, 3.5 miles north on Highway 287 and three miles east on FM 119 from Dumas, Moore County: Abandoned zinc smelting facility.

Toups, on the west side of Highway 326, 2.1 miles north of intersection of Highway 326 and Highway 105 in Sour Lake, Hardin County: Fencepost treating facility, municipal waste dump.

JCS Company, on County Road 2410 one and three quarter miles north of Highway 98 east of Phalba, Van Zandt County: Battery recycling.

Jerrell B. Thompson, on County Road 2410 one half mile north of Highway 109, east of Phalba, Van Zandt County: Battery recycling.

Hi-Yield, Northeast of Southern Pacific Railroad, bordered by Sycamore Street (South), Johnson Street (East), and Ross Street (North), Commerce, Hunt County: Pesticide blending facility.

Jensen Drive Scrap, 3603 Jensen Drive, Houston, Harris County: Scrap salvage.

Permian Chemical, 1901 Pronto Road, southeast of Odessa, Ector County: Acid production.

Tricon America, Inc., 101 East Hampton Road, Crowley, Tarrant County: Industrial waste pile.

Interested parties may submit written responses to the Commission relative to any of the sites listed above to the attention of David Davis, Director, Pollution Cleanup Division (MC 141), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. The public records for each of the sites are available for inspection and copying during regular Commission business hours. Such information may be obtained by contacting Beth Wigham, Central Records Center (MC 199), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. Copying of file information is subject to payment of a fee.

Issued in Austin, Texas, on March 27, 1995

TRD-9503710

Lydia Gonzalez-Gromatzky
Acting Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed March 27, 1995

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**North Central Texas Council of
Governments**

Notice of Contract Award

Pursuant to the provisions of the Government Code, Chapter 2254, the North Central Texas Council of Governments (NCTCOG) publishes this notice of consultant contract award. The consultant proposal request appeared in the December 16, 1994, issue of the *Texas Register* (19 TexReg 10047). The consultant will develop a Mobility Project Evaluation Methodology

The consultant selected for this project is Kimley-Horn and Associates, Inc., 12660 Coit Road, Suite 200, Dallas, Texas 75251. The maximum amount of this contract is \$55,000. The contract begins March 15, 1995 and will terminate August 31, 1995.

The consultant will develop a transportation project priority programming system. The programming system will incorporate the traditional quantifiable roadway elements of condition, safety, and service with less-traditional social, economic, and environmental elements in a practical format that can be applied to all areas of NCTCOG's Metropolitan Planning Area. Once completed, the system will be made available to local governments to assist with bond program project listings, capital improvement program planning, and Transportation Improvement Program project submittals.

Issued in Austin, Texas on March 16, 1995.

TRD-9503417

Mike Eastland
Executive Director
North Central Texas Council of
Governments

Filed March 20, 1995

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Public Utility Commission of Texas

**Notice of Joint Filing for Extended Area
Calling Service**

Southwestern Bell Telephone Company (SWB), GTE Southwest Incorporated (GTE), Sugar Land Telephone Company (Sugar Land), and Central Telephone Company of Texas (Central), and the communities of Hempstead and Prairie View have filed a joint petition and agreement for the provision of optional, flat-rate, one-way Extended Area Service (EAS) from the Hempstead and Prairie View Exchanges to the Houston Metropolitan and Cypress (Waller) Exchanges.

If approved by the Public Utility Commission of Texas (Commission or PUC), residential and business customers residing in the Hempstead and Prairie View Exchanges will have the option of subscribing to the new EAS service by paying the following monthly EAS rate additives and connection charges, which are in addition to monthly rates for basic local exchange service, as follows:

Class of Service-EAS Monthly Rate Additive

Residence (per line)-\$15;

Business (per line)-\$30.

One-Time EAS Connection Charge:

Residence (per line)-\$8 00.

Business (per line)-\$13 50.

New customers placing orders for EAS at the same time they order local exchange service will not be billed the EAS connection charge. However, standard service connection charges will be applicable. Additionally, SWB will waive the EAS connection charge for current customers who subscribe to EAS during the first 90 days that EAS is available. SWB proposes to implement EAS no later than six months following the final order of the Commission if this plan is approved. Finally, it will not be necessary for customers in the Hempstead and Prairie View Exchanges to change their telephone numbers in order to subscribe to EAS.

This proposal is filed as a joint petition and agreement under Public Utility Commission Substantive Rule 23.49(b)(8) before the Commission on behalf of SWB, GTE, Sugar Land, Central, and the communities of Hempstead and Prairie View and the unincorporated areas of Waller County. The Commission has assigned this filing Project Number 14010.

Persons who wish to intervene or otherwise participate in this proceeding should notify the Commission as soon as possible. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0257 or (512) 458-0221 (Teletypewriter for the deaf). The deadline to intervene in this Project will be 60 days from the date public notice is completed.

Issued in Austin, Texas, on March 22, 1995

TRD-9503536 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 22, 1995

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Railroad Commission of Texas

**Notice of Intent to Reclaim Abandoned
Mine Lands**

The Railroad Commission of Texas is submitting a request for funds under Title IV of the Federal Surface Mining Control and Reclamation Act of 1977 (as amended October 1, 1991) to reclaim the Butler Weddington Area 2A abandoned uranium mine near Falls City, Texas in Karnes County. The abandoned mine consists of a 41 acre pit with approximately 112 acres of spoil piles. The pit contains water to a maximum depth of 45 feet. Poorly vegetated spoil piles consisting of overburden from the pit remain on the site. Work on the project would be accomplished in accordance with the Texas Abandoned Mine Land Program administered by the Railroad Commission of Texas.

Proposed reclamation of the site would include the following: regrade approximately 100 acres of pit and spoil material; alter all remaining slopes to 7H:1V; soil treat-

ment; fertilize; seed and mulch with grasses. Details of the proposed reclamation plans can be found at the Austin address as follows:

Interested persons are invited to comment on any possible impact this proposed project might have on the area or community. Comments or inquiries are to be received no later than May 1, 1995, and may be submitted to the following mailing address: Surface Mining and Reclamation Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, Attention: Melvin B. Hodgkiss, P.E., Director.

Issued in Austin, Texas, on March 23, 1995

9503569 Mary Ross McDonald
Assistant Director Legal Division, Gas
Utilities/LP Gas
Railroad Commission of Texas

Filed: March 23, 1995

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**Texas Sustainable Energy Development
Council**

**Notice of Industrial Efficiency
Roundtable**

The Texas Sustainable Energy Development Council (SEDC), invites public comment at the Industrial Efficiency Roundtable to be held on Friday, April 7, 1995, beginning at 8:30 a.m. at the J. W. Marriott Hotel by the Galleria on Westheimer in Houston, Texas.

The roundtable, hosted by Texas A&M University and held in conjunction with the annual Industrial Energy Technology Conference, is designed to solicit input from state and national industry experts and individual citizens.

Findings from the SEDC's study on opportunities for increased industrial efficiency will be presented for industry response. In the afternoon, industry leaders and efficiency experts will discuss strategies and policy options.

The Industrial Efficiency Roundtable is second in a series of roundtables conducted by the Council to solicit input in the development of a strategic plan to optimize the use of Texas' renewable energy and energy efficiency resources. The SEDC was created by Executive Order in 1993 and is co-chaired by Texas Land Commissioner Garry Mauro. The Council is comprised of representatives from government, industry, business and environmental groups.

For registration information, contact Liz Trohan, Texas A&M University, at (409) 862-2291. The registration fee is \$35 per person and includes lunch. Persons with disabilities who have special communication or other accommodation needs who are planning to attend the roundtable should contact Ms. Trohan at the previously listed number. Requests should be made as far in advance as possible.

For additional information on the Council, contact Judith Carroll at (512) 463-1871.

Issued in Austin, Texas, on March 24, 1995.

TRD-9503705 Deborah B. Schilling
Staff Services Officer II
Texas Sustainable Energy Development
Council

Filed: March 27, 1995

Notice of Transportation Efficiency Roundtable

The Texas Sustainable Energy Development Council (SEDC) invites public comment at the Transportation Efficiency Roundtable to be held on Friday, April 28, 1995, beginning at 8:30 a.m. at the Four Seasons Hotel in Austin, Texas.

The roundtable is hosted by the Center for Transportation Research at the University of Texas at Austin and is designed to solicit input from state and national transportation industry experts and individual citizens.

The roundtable will present various perspectives on urban, freight, and Texas/Mexico border transportation issues, in addition to an overview of recent technology developments. Findings from the SEDC's study on potential energy and cost savings in Texas' transportation sector will be presented for public comment in the afternoon.

The Transportation Efficiency Roundtable is the third in a series of roundtables conducted by the Council to solicit input in the development of a strategic plan to optimize use of Texas' renewable energy and energy efficiency resources. The SEDC was created by Executive Order in 1993 and is co-chaired by Texas Land Commissioner Garry Mauro. The Council is comprised of representatives from government, industry, business and environmental groups.

For registration information, contact Jan Slack at the Center for Transportation Research, The University of Texas, at (512) 472-8875 or fax (512) 480-0235. The registration fee is \$35 per person and includes lunch. Persons with disabilities who have special communication or other accommodation needs who are planning to attend the roundtable should contact Ms. Slack at the previously listed number. Requests should be made as far in advance as possible.

For additional information on the Council, contact Judith Carroll at (512) 463-1871.

Issued in Austin, Texas, on March 24, 1995

TRD-9503706

Deborah B. Schilling
Staff Services Officer II
Texas Sustainable Energy Development
Council

Filed March 27, 1995

Request for Proposals

This request for proposals is filed pursuant to the provisions of Texas Civil Statutes, Chapter 2305.067, Government Code.

Notice of Invitation Historically Underutilized Businesses (HUBS) are encouraged to submit proposals, and all businesses that propose are encouraged to give particular attention in preparing their proposals to include HUBS as subcontractors and material providers at the first tier. The State of Texas operates under the basic principles of free and vigorous competition. In accordance with House Bill 2626, 73rd Legislature, all state agencies are to give a good faith effort to award at least 30% of the total value of all contracts to certified HUBS. Achievement of the goal may be reached by the State contracting directly with HUB firms or by the State's general contractors

establishing contracts with HUB firms as subcontractors, suppliers or material providers.

The Sustainable Energy Development Council (SEDC, also referred to as "the Council"), on behalf of the Alternative Energy Program (AEP), invites proposals from qualified firms, non-profit organizations, state and local government agencies, institutions of higher education, or individuals for the following four educational outreach projects: (1) develop a written and visual documentary of up to 20 renewable energy demonstration projects in Texas, including photographs and a 12-15 minute broadcast-quality video documentary on reinstallation in Texas; (2) create ten new fact sheets and revise ten existing fact sheets on energy efficiency, renewable energy technologies, and sustainable energy development issues, including a designated number of new and existing fact sheets in the Spanish language; and (3) design and produce one three-dimensional, interactive renewable energy display. Interested parties may submit proposals for one or more or all parts of this Request for Proposals.

Background The AEP is funded with oil overcharge funds appropriated by the 73rd Legislature for the purpose of accelerating the use of renewable energy technologies in Texas. The AEP is administered by the Council, which was created by Executive Order to craft a strategic plan for developing the State's renewable energy and energy efficiency resources.

Oil overcharge funds are monetary settlements returned to the states as a result of litigation by the United States Department of Energy (DOE) against certain oil companies for alleged violations of price controls in effect between 1973 and 1981. The courts returned these funds to the states for use in certain energy programs deemed to provide restitution to citizens aggrieved by the overcharges.

Funds are subject to program guidelines of DOE and the terms of the final Stripper Well Settlement Agreement. Approved projects will be funded on a cost reimbursement basis. All expenses must be properly documented and permissible under the contract and under federal guidelines. No advance payments are allowable, and no administrative overhead or indirect costs may be paid with oil overcharge monies.

Budget. The maximum budget for funding educational outreach projects under this Request for Proposals is \$232,000.

Services to be Performed The purpose of this project is to demonstrate through print and visual media how renewable energy technologies are currently used in Texas by individuals, businesses and utilities. This project will be accomplished through the following:

I. Documentary of Renewable Energy Projects in Texas (Not to exceed \$132,000). This project will consist of a publication containing written and photographic information about successful renewable energy projects in Texas, along with a 12-15 minute broadcast-quality video. The successful proposer will be expected to produce the following:

1. Create and design the format for the publication, "Renewable Energy in Texas," a 9-1/2 inch by 11-3/4 inch two-color pocket folder printed on recycled paper and using soy-based inks, containing both the renewable energy project information as well as the renewable energy fact sheets (see Section II of this Request for Proposals, Sustainable Energy Fact Sheets). Each renewable energy

project will feature a black-and-white photograph, a schematic or line drawing of the project, performance information and a detailed narrative describing the project. This information will be printed on the front and back of a page, in two colors using soy-based inks and on recycled paper. The documented projects will be selected from the following renewable energy projects installed in Texas and their locations are

- a. The Central and Southwest Energy Installation at Fort Davis (Jeff Davis County),
- b. The Wind Powered Project at Laredo Community College, Laredo (Webb County);
- c. The Solar Electric Navigational Aids Project, Cedar Creek Lake (Henderson County),
- d. The PV Farm Applications Project, Bryan (Brazos County);
- e. The 3M Center PV Project, PV Traffic Control Signs, The Robert Shaw ECHO Village PV Project, Decker Creek Project, Austin (Travis County);
- f. The Solar Water Pump Project, Sugarland (Fort Bend County),
- g. The Solar Hot Water Project at St. Rose Hospital, San Antonio (Bexar County),
- h. The Alternative Energy Institute Project, Canyon (Randall County),
- i. The Trans Pecos Passive Solar Residence Retrofit, El Paso (El Paso County);
- j. The Photovoltaic Lighting System for Louise Hays Park, Kerrville (Kerr County),
- k. The Solar Detoxification of Industrial Waste Water Project, Dallas (Dallas County);
- l. The Gem of the Hills Community/Recreation Center Demonstration, Blanco (Blanco County),
- m. Five Residential Scale, Net Billing Wind Projects (Leroy [McLennan County], Pleasanton [Atascosa County], Riviera [Kleberg County], Ft. Davis [Jeff Davis County], and Midland [Midland County]);
- n. The Texas Utilities Wind Farm at Big Spring (Howard County),
- o. Colonias Water Purification Project, El Paso (El Paso County),
- p. Three 300kW Wind Turbines, Amarillo (Potter County),
- q. Texas Utilities Energy Park, Dallas (Dallas County); and
- r. Texas General Land Office and the Lower Colorado River Authority Wind Project, Culberson County.

2. Print 1,000 copies of the pocket folder and renewable energy project fact sheets.
3. Provide two sets of 35 mm color slides and two sets of 8 inch by 10 inch color file prints of all the projects listed above.
4. Provide ten 30 inch by 40 inch exhibition-quality color photographs of selected renewable energy projects listed in this proposal
5. Produce a 12-15 minute broadcast quality, multiple-format video of selected renewable energy projects in Texas. The video should correspond with the photographs and the narrative written for the pocket folder publication

to some degree, but should include interviews and may depart from standard industrial videos to bring a stylistic and creative tone to this component of the project. The final video master will be on one-inch standard broadcast videotape, and will require a one-inch format dubbing master. The proposer will be responsible for scriptwriting, preproduction, shooting original footage and inserts, off-line editing, final approval and on-line editing of the video. SEDC concept and visual approval will be required after scriptwriting, and a representative from the SEDC will be present during the on-line editing process. The proposer will provide 50 to 100 copies of the final video in VHS format, as well as six to ten copies in CD-ROM format.

II. Sustainable Energy Fact Sheets (Not to exceed \$50,000). The successful proposer will be expected to:

1. Revise ten existing two-color sustainable energy fact sheets. The fact sheets are designed to communicate consumer information on renewable energy technologies. The fact sheets must contain technically correct information and the contractor should budget time and money for outside technical review. The SEDC will review the final draft for content friendliness and technical correctness before final printing. The fact sheets will be distributed in the pocket folder described in Section I and should coordinate graphically with the other printed material in the pocket folder.
2. Create six to ten new sustainable energy fact sheets.
3. Print 1,000 to 2,000 copies of the new and revised fact sheets.
4. Translate and print new and/or existing fact sheets into the Spanish language as designated or requested by the SEDC.

III. One Three-Dimensional Renewable Energy Display (Not to exceed \$50,000). The successful proposer will be expected to design and develop one three-dimensional, interactive renewable energy display. The display will be semi-permanent but will have the capability to be moved from location to location as necessary (i.e., to be used at conferences and workshops). The display should depart from conventional displays to bring a stylistic and creative tone to this project. The display will be designed to incorporate the visual and printed materials created in Section I of this Request for Proposals, and will use interactive methods to convey technical and educational information on renewable energy and energy efficiency resources and installations including solar, wind, biomass, geothermal and hydropower. The display will be designed to accommodate a monitor with CD-ROM capability. The display will be housed and maintained by the state entity responsible for promoting sustainable energy use in Texas.

Additional information concerning this project may be obtained by contacting Jane Pulaski, Sustainable Energy Development Council, at (512) 463-1796.

Closing Date. Seven copies of the sealed proposal should be mailed to Charlotte Banks at the Sustainable Energy Development Council. Proposals may be mailed to or hand-delivered to the SEDC at Stephen F. Austin Building, 1700 North Congress Avenue, Room 850, Austin, Texas 78701. In order to be considered, proposals must be received by 1:00 p.m. on the afternoon of Monday, May 1, 1995. Proposals received after that time and date, and proposals submitted by facsimile transmission, will not be considered.

All potential proposers are encouraged to attend a pre-proposal conference in Austin on Monday, April 3, 1995, at noon in Room 831 of the Stephen F Austin Building. The purpose of this meeting is to answer any questions regarding the Request for Proposals, the required format, or the evaluation process. It is anticipated that contractor selection will be made during the week of May 15, 1995. The contract period will extend from the date of signing of the contract through August 31, 1995.

Format The proposal shall be organized in the sequence described below and, when appropriate, should include reference to the specific section being addressed by number and title

1. Proposer's ability to assign qualified personnel to the project.

a. **Business Organization.** State the full name and address of the proposer's organization and identify parent company if applicable. Specify the branch office or other subordinate element which will perform, or assist in performing, the work described herein. Indicate whether the firm is operated as a partnership, corporation or sole proprietorship. Identify the state in which incorporated or licensed to operate. State the number of years the firm has been in business.

b. **Project Management Structure.** Provide an explanation, using charts or other exhibits if necessary, which specifies project leadership and reporting responsibilities. Provide a description of the methods which will be employed to organize, direct, monitor, control schedules and costs, and otherwise manage resources under the proposer's control in the performance of the work. If the use of subcontractors is proposed, identify their placement in the primary project structure, and provide an internal management description for each subcontractor, including HUB status where applicable.

c. **Authorized Negotiator.** Include name, address and telephone number of the person in the proposer's organization who is authorized to negotiate contract terms and render binding decisions on contract matters.

2. Relevant background of assigned personnel and creativity demonstrated in previous work.

a. **Prior Experience.** Describe only relevant corporate experience and individual experience for personnel who will be actively engaged in the project(s). Do not include corporate experience unless personnel assigned to this project actively participated. Describe all energy-related work. Do not include details of experience prior to 1988. Supply the project title, year, and reference name, title, present address and phone number of principal party for whom prior projects were accomplished.

b. **Personnel.** Include names, qualifications and copies of resumes for all professional personnel who will be assigned to the project(s). State the primary work assigned to each person and the percentage of time each person will devote to this work. Identify key persons by name and title.

3. Understanding of the scope of work and proposed work plan.

a. Proposed work plan, including a description of proposed methodologies to be employed.

b. Sequence and schedule of activities.

c. Proposer's current workload and staffing levels. Specify the number of personnel, both technical and clerical, who

will be assigned to this project and the percentage of working hours for each person to be assigned

d. Three references willing to attest to the proposer's timely and satisfactory completion of similar projects should be specified

4 **Soundness of Budget** The proposed budget should be detailed and reasonable.

5 **Conflicts of Interest** Describe the quantity and nature of any work, interest in work, partnership interest or other interest in any property or business arrangement which may give rise to a potential conflict of interest with the proper execution of this work. Persons employed within the past 12 months by the State Energy Conservation Office (formerly the Governor's Energy Office) or its satellite offices are not eligible to participate.

Selection Criteria. The contractor(s) selected will possess a comprehensive knowledge of photographic, videographic, graphic design and feature-writing skills necessary to create and produce a commercial-quality written and visual documentary of successful renewable energy projects in Texas, renewable energy fact sheets, and an interactive display of renewable energy resources and successful renewable energy projects in Texas.

Proposals will be reviewed by a committee of staff and Council representatives, and evaluation scores will be based on the following criteria:

1. Proposer's ability to assign qualified personnel to the project (0-20 points);

2. Relevant background of assigned personnel and creativity demonstrated on previous work (0-20 points);

3. Understanding of scope of work and proposed work plan (0-40 points);

4. Proposer's ability to complete the project in a timely manner (0-10 points); and

5. Soundness of budget (0-10 points).

Selection of a contractor will be based on the recommendations of the review panel. The review panel may require that finalists meet in Austin, Texas, for a formal interview prior to selection of a contractor. Selection for interviews will be based on the proposer's ability to satisfy the five criteria listed, and interviews will focus on published selection criteria. Recommendations of the review panel are not subject to appeal.

The proposers selected for a formal interview will be expected to bring a portfolio of work including: black-and-white and color photographs; samples of feature writing published in magazines, trade journals, corporate brochures or other written venues; a VHS-format video of no more than ten minutes of selected videographic work; and photographs or slides of displays, especially any interactive displays, all of which should be exemplary of the scope of work solicited for in this Request for Proposals.

The SEDC reserves the right to negotiate both budget and scope of work with the finalist(s). The SEDC also reserves the right to reject any or all proposals and is under no legal requirement to execute a contract on the basis of this Request for Proposals.

No respondent will be reimbursed for any costs incurred in the preparation, submission or clarification of a proposal.

This Request for Proposals was funded with 100% of PVE-Stripper Well funds; no Non-PVE funds were autho-

rized through the DOE, SEDC and through the administration of the Texas General Land Office.

Issued in Austin, Texas, on March 24, 1995

TRD-9503707 Deborah B Schilling
Staff Services Officer II
Texas Sustainable Energy Development
Council

Filed: March 27, 1995

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**Teacher Retirement System of Texas
Consultant Contract Award**

This consultant contract information is filed in compliance with the notice requirement under the Government Code, §2254.30.

The Teacher Retirement System of Texas (TRS) has contracted with a private consultant to provide the system information regarding state legislation which may significantly affect public pension plans and/or public insurance programs or other employee benefit programs. The consultant shall also provide information and advice as may be determined by the parties to be necessary in the preparation of materials, testimony and policies regarding relevant state legislative and/or administrative activities as well as providing resource witness services to the Texas Legislature on such issues as cost, the effective dates, and the administrative effects of relevant legislation

On March 1, 1995, TRS executed a contract with Jim D Rudd, P.O. Box 6845676, Austin, Texas 78768 to provide the services listed in this notice.

The agreed compensation set forth in the contract is \$70,000 payable in an initial payment of \$24,000 and two subsequent payments of \$23,000 each. The contract beginning date is March 1, 1995, and the contract ending date is May 31, 1995, unless terminated as otherwise provided in the contract

Issued in Austin, Texas, on March 24, 1995

TRD-9503713 John R Mercer
Interim Executive Director
Teacher Retirement System of Texas

Filed: March 27, 1995

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**The University of Texas System
Notice of Intent to Award Contract**

The University of Texas Medical Branch at Galveston (UTMB), in accordance with provisions of the Government Code, Chapter 2254, solicits to contract with a consultant to conduct a study of the economic impact of UTMB on the Galveston area economy for fiscal year 1994 through 1996, including an option for fiscal years 1997 and 1998. Note: These services were previously performed by a private consultant for fiscal year 1993 and the contract will be awarded to that consultant unless a better offer is submitted.

The consultant selected will assist UTMB in performing an analysis of the economic impact of UTMB on the Galveston economy. Each study will assess the economic impact attributable to UTMB on one or more of the following items: local area business volume, bank credit

base, government entities, employment, and personal income. Also, the economic impact of UTMB-related tourism will be assessed focusing on hotel and restaurant expenditures and the impact of UTMB's visitors on local business commerce. Each fiscal year study shall be completed within approximately three months from UTMB's notice.

Requests for additional information regarding submission of proposals should be addressed to Kyle Barton, Administrative Services Officer, Room 3, 202, Administration Annex Building, The University of Texas Medical Branch at Galveston, Texas 77555-0105, (409) 772-1267, Fax (409) 772-2286. Proposals will be accepted up to 30 days from the date of publication in the *Texas Register*. Proposals received late for any reason will be returned unopened.

Issued in Austin, Texas on March 21, 1995.

TRD-9503484 Arthur H. Dilly
Executive Secretary to the Board of
Regents
The University of Texas System

Filed: March 21, 1995

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**Texas Council on Workforce and
Economic Competitiveness
Notice of New Phone Numbers**

The Texas Council on Workforce and Economic Competitiveness has new phone numbers effective immediately. The new main phone number is (512) 912-7150 and the new fax number is (512) 912-7172.

Issued in Austin, Texas, on March 23, 1995.

TRD-9503601 Alexa Ray
Business Manager
Texas Council on Workforce and Economic
Competitiveness

Filed: March 24, 1995

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Notice of Solicitation of Comments

The Governor's Office has designated the Texas Council on Workforce and Economic Competitiveness (TCWEC) to take the lead in preparing the state's application for a school-to-work implementation grant and to coordinate receiving local input as the proposal is prepared. TCWEC is requesting comments in the following areas: (1) proposed selection criteria published in the *Federal Register*; (2) the state's overall approach to preparing the proposal, and (3) a series of questions regarding the key features of the school-to-work system.

A copy of the proposed selection criteria published in the *Federal Register* and information regarding the above can be obtained by calling Anne Dorsey at (512) 912-7153 or Barbara Crosby at (512) 912-7152.

Issued in Austin, Texas, on March 23, 1995.

TRD-9503600 Alexa Ray
Business Manager
Texas Council on Workforce and Economic
Competitiveness

Filed: March 24, 1995