

TEXAS REGISTER

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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 opinions

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

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

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 20 (1995) is cited as follows: 20 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 "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 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
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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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COMING SOON From the *TEXAS REGISTER*

In response to your inquiries, the *Texas Register* will begin offering the following new services starting in September, 1995:

Anonymous FTP Server

The *Texas Register* and the *Texas Administrative Code* will be available FREE on an anonymous FTP server.

World Wide Web

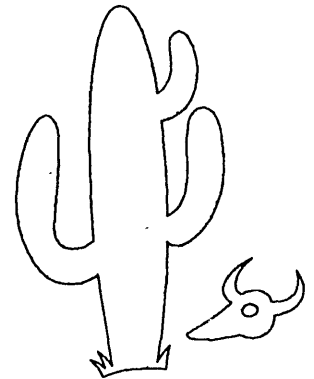
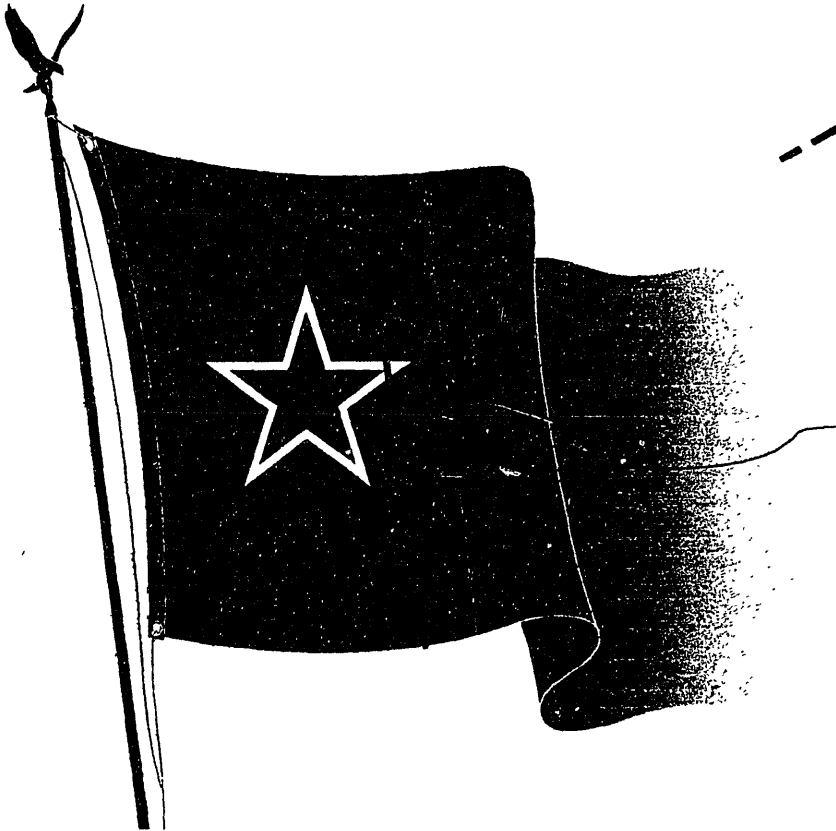
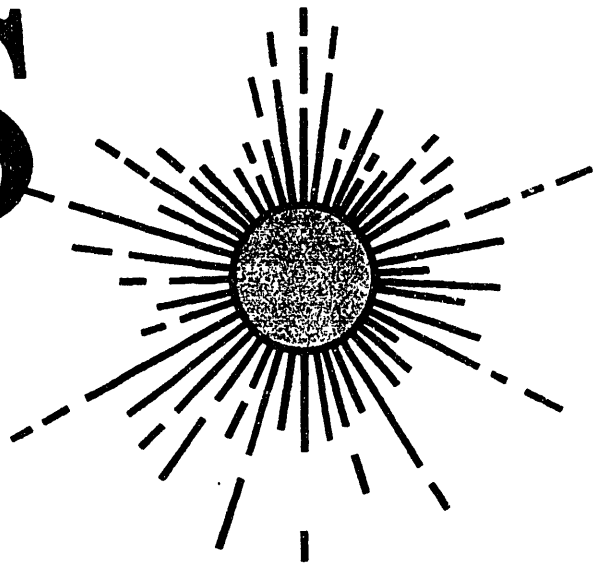
Both the *Texas Register* and the *Texas Administrative Code* will be available on the World Wide Web. To access the World Wide Web, a user must have Internet access and a Web browser on the local machine. Users will be able to choose from *Texas Register* access only, *Texas Administrative Code* access only, or access to both the *Texas Register* and the *Texas Administrative Code*. Prices to be announced at a later date.

Adobe Acrobat

Adobe Acrobat is a software format that allows the publisher to capture a print file into a format that Acrobat can convert to allow the user to see the publication as it is in the print version. Acrobat allows bookmarks, limited search capabilities, and other features for the user. To access the converted files, the user will download or obtain from the *Texas Register* free Reader software. No graphic material will be included but will be made available upon request.

In addition to these new services, the *Texas Register* is still available in the printed format, as ASCII files on 3 1/2" or 5 1/4" diskette, or through the online gopher. For more information about the new services, please contact Dee Wright at (512) 463-5561.

TEXAS



REGISTER

Name: Frankie Conklin
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THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the **Texas Register** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made July 20, 1995

Governor Bush appointed Dr. Oliver R. Smith, Jr. of El Paso to the Texas State Board of Chiropractic Examiners on July 11, 1995, for a term to expire on August 3, 1995.

Please change your records to show that Dr. Smith's term will expire on February 1, 2001.

Appointments Made July 21, 1995

To be a member of the Texas Low-Level Radioactive Waste Disposal Authority Board of Directors for a term to expire February 1, 2001: John E. Simek, 4720 Hunnington Drive, Bryan, Texas 77802-5901. Mr. Simek is being reappointed.

To be a member of the Texas Low-Level Radioactive Waste Disposal Authority Board of Directors for a term to expire February 1, 2001: Milton J. Guiberteau, M.D., 5211 Bayou Glen Road, Houston, Texas 77056-7705. Dr. Guiberteau is being reappointed.

To be a member of the Texas Board of Nursing Facility Administrators for a term to expire February 1, 2001: Linda A. Batchelor, P.O. Box 936, Mason, Texas 76856-0936. Ms. Batchelor will be replacing Johnnie Richardson of Houston whose term expired.

To be a member of the Texas State Board of Chiropractic Examiners for a term to expire February 1, 1999: Carolyn Davis Williams, D.C., 3213 Binz, Houston, Texas 77004. Dr. Williams will be filling the unexpired term of Dr. Toy Brando Halsey of Houston who resigned.

To be a member of the Department of Information Resources Board of Directors for a term to expire February 1, 2001: Harry H. Richardson, 11858 Gallery View, San Antonio, Texas 78249. Mr. Richardson is being reappointed.

To be a member of the Department of Information Resources Board of Direc-

tors for a term to expire February 1, 1999. The Honorable Scott Hochberg, State Representative, P.O. Box 2910, Austin, Texas 78769. Representative Hochberg will be filling the unexpired term of Elton Bomer of Austin who resigned.

To be a member of the Department of Information Resources Board of Directors for a term to expire February 1, 2001: Walter A. (Trey) Bradley, III, 1033 Oxfordshire Drive, Carrollton, Texas 75007-4909. Mr. Bradley will be replacing Jon Martin Bradley of Dallas whose term expired.

To be members of the Governor's Drug Policy Advisory Board for terms at the pleasure of the Governor pursuant to Executive Order GWB 95-7 dated May 26, 1995: Manuel Abrego, Sears Service Center, 1927 West Jefferson, Harlingen, Texas 78551; Raymond L. Armstrong, Administrative Office of U.S. Courts, Probation Division, 300 Willow, Room 327, Beaumont, Texas 77701-2216; The Honorable Sue Lagarde, Justice, Fifth Court of Appeals, George Allen Courts Building, Dallas, Texas 75202; John K. McKissick, Director, Public Affairs-Texas, Coca-Cola Enterprises, P.O. Box 2008, Dallas, Texas 75221; Colleen D. Murphy, Assistant United States Attorney, 801 Cherry Street, Suite 1700, Fort Worth, Texas 76102; Patrick D. Dalager, Chief of Police, City of Mission, 200 East Tom Landry, Mission, Texas 78572; The Honorable Al Schorre, 142nd District Attorney, 200 West Wall, Midland, Texas 79701; Michael D. Scott, Assistant Chief-Criminal Law, Enforcement Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001; Russell Smith, Chief of Police, San Angelo Police Department, P.O. Box 5020, San Angelo, Texas 76902; and Quincy White, Assistant Director of Human Resources, City of Lubbock, P.O. Box 2000, Lubbock, Texas 79457.

To be members of the Juvenile Justice Advisory Board for terms at the pleasure of the Governor pursuant to Executive Order GWB 95-6 dated May 26, 1995: Judge Robert G. Baum, 7719 Bellaire Boulevard, Houston, Texas 77036; Mary H. "Cookie" Charlton, 210 East Lamberth Road, Sherman, Texas 75092; Milton L. Duntley, Dep-

uty Sheriff, El Paso County, P.O. Box 125, El Paso, Texas 79941; Elizabeth Barnes Godwin, Assistant District Attorney, 201 Fannin, Houston, Texas 77002; Tammy Hawkins, Odessa Teen Court, Municipal Court, 201 North Grant, Odessa, Texas 79761; Judge Hal Gaither, 304th District Court, Third Floor, Henry Wade Justice Center, 2600 Lone Star Drive, Dallas, Texas 75212; Felix Mejia, Jr., Brownsville I.S.D., 1900 Price Road, Brownsville, Texas 78521; Nance Eliot Munoz, Jr., Rio Grande City Consolidated I.S.D., Fort Ringgold Campus, Rio Grande City, Texas 78582; Janace Ponder, Amarillo I.S.D., 7200 I-40 West, Amarillo, Texas 79106; Ciro Ramirez, 12330 Determined, Houston, Texas 77039; Judge Susan D. Reed, 144th District Court, Bexar County Courthouse, San Antonio, Texas 78205; Louis E. Sturns, Attorney at Law, 4214 Little Road, Arlington, Texas 76016; and Jane A. Wetzel, 4250 Westway, Dallas, Texas 75205.

Appointments Made July 24, 1995

To be a member of the Board of Directors of the Sabine River Authority of Texas for a term to expire July 6, 2001. James E. Campbell, P.O. Box 2108, 820 San Augustine Street, Center, Texas 75935. Mr. Campbell is being reappointed.

To be a member of the Board of Directors of the Sabine River Authority of Texas for a term to expire July 6, 2001: Karen C. Hampton, 3326 McMillan Drive, Tyler, Texas 75701. Mrs. Hampton will be replacing Tommy Merritt of Longview whose term expired.

To be a member of the Board of Directors of the Sabine River Authority of Texas for a term to expire July 6, 2001: Margin Stovall Latham, 1607 Raintree Circle, Sulphur Springs, Texas 75482. Mrs. Latham will be replacing Jerry Forbes of Quinlan whose term expired.

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

TRD-9509390

George W. Bush
Governor of Texas



Artist Name: Tavio Garcia
School District: G.I.S.D.
School: Gainesville High School
Grade: 10
City: Gainesville, Tx.



Tavio Garcia

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

AOR 307. The Texas Ethics Commission has been asked to consider the following question:

A citizen group is formed based on a city council's decision to use tax revenue and obtain indebtedness to finance a certain project without voter approval. State law requires the city to hold an election if a specified number of petitions of qualified voters are presented to the city council. The citizen group begins a petition drive and begins to raise money for expenses. The citizen group has no interest other than forcing a city-wide vote on the proposed expenditure. The citizen group has no position on the matter other than allowing the voters to

determine the outcome. The group has no opinion on the outcome of the election.

AOR 308. The Texas Ethics Commission has been asked to consider the following questions about the judicial campaign finance law:

1. Lawyer Sam Houston, with the firm of Houston & Houston, has made his maximum allowable contribution to Judge Dredd and his firm has also reached their maximum allowable limit. Can lawyer Sam Houston still make a \$50 contribution to Judge Dredd? And if he can still make a \$50 contribution, what restrictions are there on the frequency (per day, per event, per reporting period) with which he can make additional \$50 contributions?

2. Lawyer Steve Austin, with the firm of Travis & Bowie makes a \$2,500 contribution to Judge Dredd and other members of

the firm contribute \$27,500. Subsequent to that contribution, Mr. Austin leaves the firm. He moves to the firm of Lamar & de Zavala. Does Austin's \$2,500 contribution now count against Lamar & de Zavala's contribution limit? And if so, can the lawyers of Travis & Bowie now make an additional \$2,500 contribution? And if Austin's \$2,500 contribution now counts against Lamar & de Zavala's limit, what would happen if they had already reached their maximum allowable limit before Austin joined the firm, would some contributions have to be returned? The requestor posits that Judge Dredd is a state district judge in a judicial district with a population of more than 1 million.

Issued in Austin, Texas, on July 28, 1995

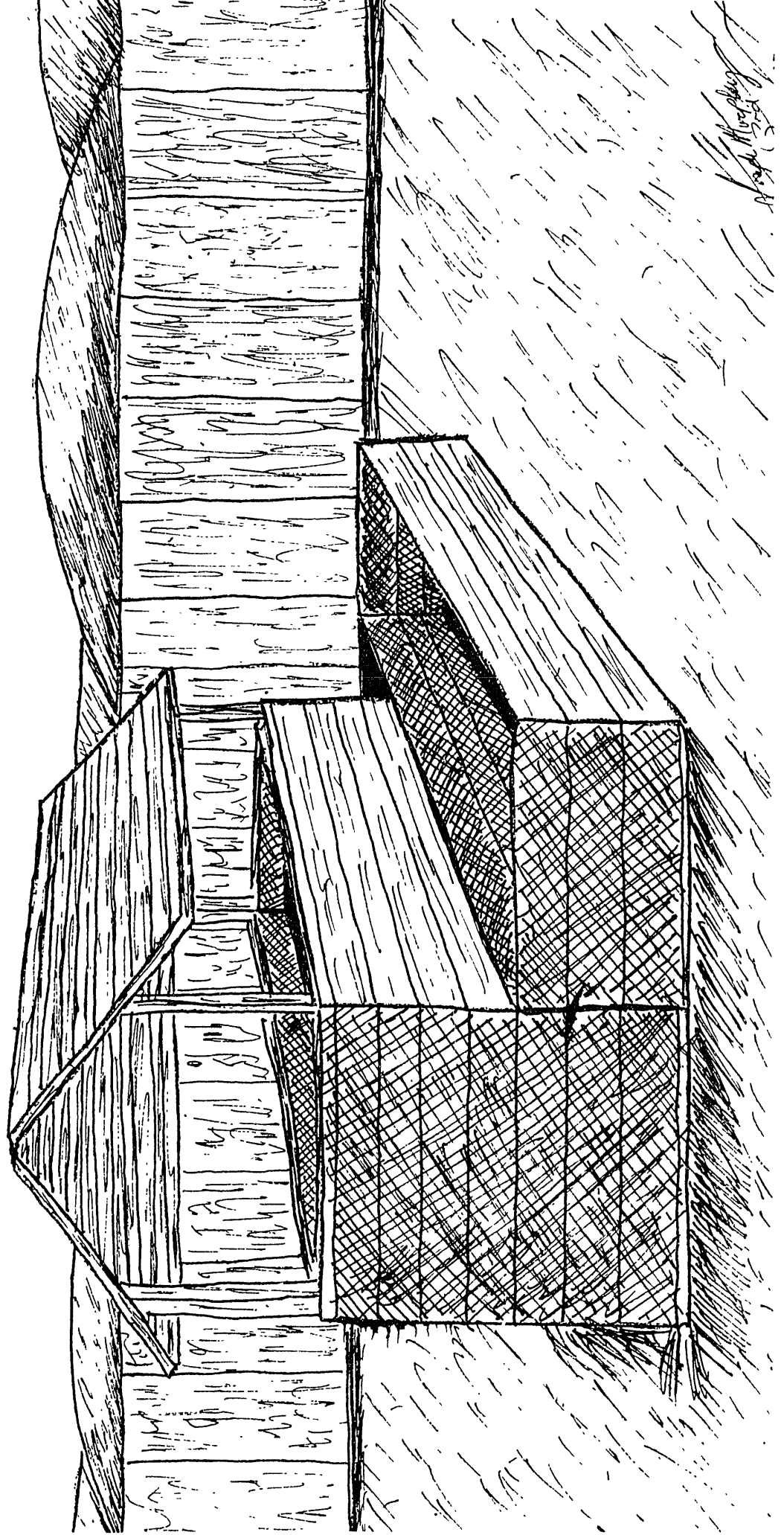
TRD-9509439

Sarah Woelk
Acting Director
Texas Ethics Commission

Filed: July 28, 1995

◆ ◆ ◆

Name: Joseph Murphy
Grade: 9
School: Gainesville High School, Gainesville 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 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter E. Contracts Management

• 25 TAC §401.375, §401.389

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts on an emergency basis amendments to §409.375, concerning general requirements for the department and MHMRAs, and §401.389, concerning contract terminations.

The purpose of the emergency adoption is to provide a mechanism by which the department can, without undue delay, terminate contracts of mental health and mental retardation authorities under certain conditions and in certain situations which represent imminent danger to public health, welfare, or safety.

The sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking powers, and §534.052, which requires the board to promulgate rules necessary to ensure the adequate provision of community-based mental health and mental retardation services; and §2001.034 of the Government Code, which provides for the emergency adoption of rules

The emergency adoption affects the Health and Safety Code, §534.054.

§401.375. General Requirements for the Department and MHMRAs.

(a)-(h) (No change.)

(i) If the department or the MHMRA determines that the contractor/subcontractor has placed the health, welfare, or safety of any person served in immediate jeopardy, or if the department or MHMRA has reason to believe the contractor/subcontractor has engaged in the willful or negligent discharge of its duties under the contract, including failure to comply with the terms and condi-

tions of the contract or failure to deliver contracted services as specified, or the department or the MHMRA has reason to believe a contractor/subcontractor has engaged in the misuse of state or federal funds, fraud, or illegal acts, the department or the MHMRA will take such steps as are necessary to secure the [person's] health, welfare, or safety of persons receiving services, including but not limited to removal of persons [the person] served from the program and [or] termination of the contract without prior notice, and will take whatever action it deems necessary to [The department or the MHMRA shall] ensure the availability and quality of services [care] during the transition from one provider to another.

(j) (No change.)

§401.389. Contract Terminations

(a) Terminations of contracts occur when the term of the contract expires, both parties mutually agree to end the contract, and/or when either party terminates a contract because of the other party's breach of contract terms [irreconcilable differences].

(b) Nothing in this section is meant to abridge the rights of the department or the MHMRA to terminate a contract immediately [without notice] when the life, health, welfare, or safety of individuals served is endangered or could be endangered either directly or through the contractor's willful or negligent discharge of its duties under the contract, including failure to comply with the terms and conditions of the contract or failure to deliver contracted services as specified, or when the department or the MHMRA has reason to believe that the contractor/subcontractor has engaged in the misuse of state or federal funds, fraud, or illegal acts.

(c)-(i) (No change.)

Issued in Austin, Texas, on July 26, 1995.

TRD-9509350

Ann Utley
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: July 26, 1995

Expiration date: November 23, 1995

For further information, please call: (512) 206-4516

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 15. Transportation Planning and Programming

International Bridges

• 43 TAC §§15.70-15.76

The Texas Department of Transportation adopts on an emergency basis new §§15.70-15.76, concerning international bridges.

Texas Civil Statutes, Article 6674v-8, provide that a political subdivision or private entity authorized to construct or finance the construction of a bridge over the Rio Grande must obtain approval of the Texas Transportation Commission for the construction of the bridge before requesting approval from the federal government under Subchapter IV, Chapter 11, Title 33, United States Code 74v-8.

Section 15.70 explains that the purpose of the rules is to describe the procedures and conditions by which a political subdivision or private entity may obtain the approval of the commission to provide an international bridge. Section 15.71 defines words and terms. Section 15.72 requires that in order to obtain approval to construct or finance the construction of a bridge the applicant must submit an application and comply with the requirements of this undesignated head. Section 15.73 explains design, financial feasibility, and the social and environmental impact studies which must be conducted prior to submittal of the application. Section 15.74 describes the documents that accompany an application. Section 15.75 establishes the procedure for coordination with other governmental entities, processing and analyzing the application, a public hearing, and describes the requirements of the report to be submitted to the commission. Section 15.76 describes the commission's analysis of the project including consideration of comments of other entities, project requirements, and financial requirements, and provides that the approval or disapproval of the project shall be by written order of the commission.

It is necessary to adopt these new sections on an emergency basis in order to comply with Texas Civil Statutes, Article 6674v-8, which became effective on May 19, 1995, and to serve the economic needs and welfare of the border regions and the state as a whole so that the economy is not adversely affected by failure to develop the crossings that are necessary to fulfill the spirit of the North American Free Trade Agreement

The new sections are adopted under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6674v-8, which provide that a political subdivision or private entity authorized to construct or finance the construction of a bridge over the Rio Grande must obtain approval of the commission for the construction of the bridge before requesting approval from the federal government under Subchapter IV, Chapter 11, Title 33, United States Code 74v-8.

Texas Civil Statutes, Article 6674v-8, is affected by the emergency new sections

§15.70. Purpose. Texas Civil Statutes, Article 6674v-8, provides that a political subdivision or private entity authorized to construct or finance the construction of a bridge over the Rio Grande must obtain approval of the Texas Transportation Commission for the construction of the bridge before requesting approval from the federal government under Subchapter IV, Chapter 11, Title 33, United States Code. This undesignated head prescribes the procedures and conditions by which a political subdivision or private entity may obtain the approval of the commission

§15.71. Definitions. The following words and terms, when used in this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant—A political subdivision or private entity authorized by law to construct or finance the construction of a bridge over the Rio Grande.

Commission—The Texas Transportation Commission.

Department—The Texas Department of Transportation.

Metropolitan planning organization—An organization designated in certain urbanized areas to carry out the transportation planning process as required by Title 23, United States Code, §134.

Project—The construction or the financing of the construction of a bridge over the Rio Grande.

Study sector—The affected area of the proposed bridge as defined in the Texas Mexico Toll Bridge Study, Research Report Number 1976; this area will encompass both sides of the Texas-Mexico border affected by the proposed bridge.

Texas-Mexico Toll Bridge Study—Research Report Number 1976. Center for Transportation Research, Bureau of Engineering Research, The University of Texas at Austin, April 1994

§15.72. New Bridge. A political subdivision or private entity that desires to construct or finance the construction of a bridge over the Rio Grande must obtain approval from the commission for the construction of the bridge before requesting approval from the federal government under Subchapter IV, Chapter 11, Title 33, United States Code. To obtain such approval, the political subdivision or private entity must submit an application and comply with all requirements and conditions imposed by these sections

§15.73. Preliminary Studies. Prior to submitting an application to the department for the approval of a project, an applicant shall conduct a study of the design, financial feasibility, and the social and environmental impact of the project.

(1) Design The applicant shall provide a preliminary design geometric layout certified by a registered professional engineer to be in accordance with standards and criteria from appropriate design manuals applicable at the date of application. The layout must identify:

(A) horizontal and vertical alignments and cross-slope data of the proposed structure showing overall structure length, width, spans, span length, and type of construction, along with dimensions, where applicable, of:

- (i) lane width;
- (ii) curb width;
- (iii) sidewalks;
- (iv) shoulder width;
- (v) calculated minimum vertical clearance over other roadways and waterways; and
- (vi) toll booths and miscellaneous appurtenances;

(B) geometric termini locations along with inspection stations and queue lanes where applicable.

(C) the location and preliminary layout of approach roadways and intersections on both sides of the border with changes necessitated by the project to existing facilities on both sides of the border; and

(D) the location and layout of any other accommodation of buildings or

appurtenances deemed necessary by the applicant and any law or regulation governing the operation and maintenance of port of entry operations.

(2) Financial feasibility study. An applicant shall conduct a feasibility study to determine the financial viability of the project. The study shall include the following information.

(A) A financial overview of the project, which shall include:

(i) summary cost estimates for the planning, design, construction, operation, and maintenance of the project; and

(ii) a statement of all financing requirements for the project and sources of all financing.

(B) A project construction schedule identifying the timing, amount, and source of all cash required to pay for all construction costs.

(C) An analysis of the expected financing period of the project, such period to be the greater of ten years or the time taken to fully pay any and all liabilities incurred for the planning, design, construction, operation, and maintenance of the project plus the time taken to fully pay any and all liability refunding, renegotiations, conversions, and extensions.

(i) An applicant that issues or contemplates issuing any form of liability with a term longer than one year within three years of the date of application shall consider a portion of that liability as incurred for the planning, design, construction, operation, and maintenance of the project unless the applicant demonstrates otherwise to the satisfaction of the commission in the financial feasibility study. A liability not less than the cost of construction and not more than the costs of planning, design, and construction shall be considered in the financial feasibility study as if it had been incurred directly for the project.

(ii) The term of any liability amount determined in clause (i) of this subparagraph shall be the longest term of any liabilities issued or contemplated by the applicant within three years of the application date plus the time taken to fully pay any and all liability refundings, renegotiations, conversions, and extensions.

(D) A detailed analysis of costs over the expected financing period of the project, which shall include:

(i) costs of operations by reasonable expense categories for each year; and

(ii) costs of maintenance for each year, such costs identifying each major system, structure, and component of the project that is subject to wear or deterioration, and the analysis of such costs stating both the cost and the expected frequency of inspection, repair, renewal, rehabilitation, and/or replacement required to keep the project in like-new condition.

(E) A *pro forma* analysis based on Generally Accepted Accounting Principles (GAAP) for each year of planning, design, construction, and the expected financing period of the project showing:

(i) anticipated revenues, sources of revenues, and rates charged to achieve those revenues;

(ii) anticipated expenses;

(iii) fund balances or equity balances as appropriate to the legal form of the applicant;

(iv) debt service requirements including any bond sinking fund requirements and loan or liability amortization payments.

(F) A *pro forma* analysis based on cash basis accounting for each year of planning, design, construction, and the expected financing period of the project showing:

(i) anticipated cash receipts, sources of cash receipts, and rates charged to achieve those cash receipts;

(ii) anticipated cash disbursements;

(iii) anticipated cash balances;

(iv) cash used to meet the requirements of any bond sinking fund and loan or liability amortization payments.

(G) A reconciliation of *pro forma* amounts between GAAP and cash basis.

(H) A description of the methods used in preparing the financial feasibility study, the assumptions contained in the study, and persons and entities responsible for the preparation of the study.

(I) An analysis of the need for the project and potential impact on traffic congestion and mobility, including identification of the Texas-Mexico Toll Bridge Study sector in which the project is located, and:

(i) average annual daily traffic (AADT) in the study sector for major arterials and controlled access roadways for

both sides of the border for five years preceding the date of the application;

(ii) data from any existing international bridge or other international crossing in the study sector and adjacent sectors indicating AADT for the five preceding years;

(iii) data from any existing international bridge or other international crossing in the study sector and the adjacent sectors indicating average delay time for traffic seeking to use any international bridge or other international crossing for the five preceding years;

(iv) projected AADT for the proposed bridge and other crossings in the study sector and adjacent sectors 20 years after completion (projections shall be based on the current department travel demand model, and the process used to make the projections shall be clearly identified and submitted with the data);

(v) a comparison of the project with other similar projects already in operation, and

(vi) a projection of changes in the free flow of trade caused by the project.

(3) Social and environmental impact. An applicant shall conduct a study of the social and environmental impact of the project, consistent with the spirit and intent of the National Environmental Policy Act, Title 42, United States Code, §§4321 et seq, and Title 23, United States Code, §109(h), and shall provide for public involvement.

(A) Environmental documentation.

(i) An applicant shall prepare an environmental assessment and/or an environmental impact statement in accordance with §2.43(d) and (e) of this title (relating to Highway Construction Projects-State Funds).

(ii) The form and content of an environmental assessment and environmental impact statement prepared by an applicant and any decision by an applicant that an environmental impact statement is not necessary must be approved by the department.

(B) Public involvement. An applicant shall provide for public involvement by:

(i) complying with §2.43(b) of this title (relating to Highway Construction Projects-State Funds);

(ii) holding one or more public hearings following the completion of the studies required by this section as may

be necessary to ensure participation by each community affected by the project; and

(iii) notifying the department in writing not less than ten days in advance of all public meetings and public hearings held under this section

(C) Record. An applicant shall provide the department a summary of all public meetings and a summary and analysis of all public hearings held under this section. The summary and analysis for each public hearing shall include

(i) the verbatim transcript of the hearing;

(ii) a summary of comments received, and the response to and analysis of comments;

(iii) any proposed changes in project location and design planned as a result of comments; and

(iv) certification that the public hearings were held in accordance with §2.43(b) of this title (relating to Highway Construction Projects-State Funds), and the Civil Rights Act of 1964

(D) Revision to environmental document. Following the public hearing, an applicant shall revise the environmental document for the project to address any issues or concerns identified during the public involvement process

§15.74. *Application.* To secure approval of a project, an applicant must file an application and 20 copies of the application with the department's deputy executive director for transportation planning and development or his or her designee who shall serve as department liaison for the project. The application shall be in a form prescribed by the department, and must be accompanied by:

(1) a description of the application, including:

(A) form of organization under the laws of this state; and

(B) history of operations and/or business conducted;

(2) a definition of major financial, operating, and business policies of the applicant that will affect operations or the conduct of business, including:

(A) key operating conditions; and

(B) compliance with existing federal, state, and local laws and regulations;

(3) the preliminary study completed in accordance with §15.73 of this title (relating to Preliminary Studies); and

(4) written commitments from the Undersecretary for Infrastructure of the Mexican Secretaria de Comunicaciones y Transportes to provide adequate roadway connections to the bridge, and similar commitments from state and municipal transportation agencies for any state highway or local street infrastructure necessary to make the bridge fully operational

§15.75. Department Action

(a) Coordination.

(1) Upon the receipt of a complete application, the department will submit a copy of the application and request views and comments from the

(A) Department of Public Safety of the State of Texas;

(B) Texas Natural Resource Conservation Commission;

(C) Texas Historical Commission.

(D) Department of Agriculture,

(E) Texas Alcoholic Beverage Commission;

(F) Texas Department of Commerce,

(G) Office of the Governor;

(H) any other state agency the department determines is appropriate considering the nature of the project; and

(I) any entity which may be significantly affected by the project.

(2) The department will also seek the advice of the local metropolitan planning organization, if any, as to whether the project will be consistent with the regional transportation plan.

(3) The department will allow an agency or entity 20 days for the submission of views and comments under this subsection.

(b) Process and analysis of application.

(1) The department reserves the right to return, or hold pending corrections submitted by the applicant, an application that the department determines is not in full compliance with the requirements of §15.74 of this title (relating to Application).

(2) The department and the commission will not perform work to recast, redraw, calculate, construct, reconstruct, or otherwise produce any element of the preliminary study which is not adequately presented by the applicant.

(3) The commission may consider missing, ambiguous, uncertain, or unclear elements in the financial feasibility study as tending to the conclusion that the project has substantial speculative elements in its financing and should not be approved.

(c) Public hearing. If the department finds that the application meets the requirements of §15.74 of this title (relating to Application), it shall notify the applicant of its findings and shall conduct a public hearing to receive public comment on the project. A public hearing held by the department under this subsection shall be conducted by the executive director of the department or the director's designee in accordance with §1.5 of this title (relating to Public Hearings). Any persons, including, but not limited to, official representatives of a county, municipality, metropolitan planning organization, or other governmental entity, and any individual, group, or association may provide comment.

(d) Report to commission. Subsequent to the public hearing, the department will submit the application together with its findings and recommendations to the commission for appropriate action. The department will consider the views and comments received under subsection (a) of this section prior to making its findings and recommendations.

§15.76. Commission Action.

(a) Commission analysis.

(1) The commission may consider the advice of the staff of the department and consultants that the commission may choose regarding the sufficiency of the information, the probable accuracy of projections, the anticipated financial condition of the application and the project, the impact of the project on the economy and free trade, and any other information the commission determines appropriate.

(2) The commission may use the Texas-Mexico Toll Bridge Study as the initial basis for evaluating the demand, impact on the economy and the potential impact on the free flow of trade anticipated by the project. An applicant may submit additional information which supports, amplifies, or rebuts data in the Texas-Mexico Toll Bridge Study in the applicant's feasibility study

(b) Comments of other entities. Prior to granting approval of a project, the commission shall consider, but is not bound by, the views and comments of an agency or entity listed in §15.75 of this title (relating to Department Action).

(c) Project requirements. The com-

mission will not approve a project unless it finds that:

(1) the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts;

(2) the project is consistent with the state transportation plan and, if appropriate, with the regional transportation plan developed by a metropolitan planning organization having jurisdiction over the project; and

(3) the existing transportation infrastructure on both sides of the border will be of sufficient capacity to support the new structure.

(d) Financial requirements. The commission will not approve a project if it finds that the project's financial prospects over the expected financing period of the project are likely to categorize the project as being of less than investment quality due to one or more of the following conditions:

(1) the project has more than minimal speculative elements in its prospective finances;

(2) the financial future of the project cannot be considered as well assured;

(3) protection of any lenders or bond holders is not well safeguarded over the expected financing period of the project;

(4) the project will probably cause negative impacts on the economy or the free flow of trade that are greater than any probable positive impacts in the Texas-Mexico Toll Bridge Study sector where the project is located and adjacent sectors.

(e) Final action.

(1) Approval or disapproval of the project shall be by written order of the commission, and shall include the rationale, findings, and conclusions on which approval or disapproval is based.

(2) The commission will approve or disapprove the application within 120 days of the date of receipt of a complete application. If an application is returned under §15.75 of this title (relating to Department Action), the commission will approve or disapprove the application within 120 days of the date that re-submitted complete application has been received by the department.

Issued in Austin, Texas, on July 31, 1995.

TRD-9509495

Robert E Shaddock
General Counsel
Texas Department of
Transportation

Effective date: July 31, 1995

Expiration date: November 28, 1995

For further information, please call: (512) 463-8630

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 IV. Office of the Secretary of State

Chapter 81. Elections

Voter Registration

• 1 TAC §§81.11-81.29

The Office of the Secretary of State proposes the repeal of §81.11 and new §§81.11-81.29, concerning disbursement of funds under the Texas Election Code, Chapter 19. These new rules will allow for a more efficient operation of the Chapter 19 fund for both the county voter registrar and the Office of the Secretary of State. These rules designate which goods and services are payable with Chapter 19 funds and outline procedures to be followed by county voter registrars to obtain such funding.

Clark Kent Ervin, Assistant Secretary of State, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Ervin 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 better use of the Chapter 19 funds and a more efficient disbursement processing procedure. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on these proposed rules may be submitted to the Office of the Secretary of State, Bill Bilyeu, Program Administrator for Elections Funds Management, P.O. Box 12060, Austin, Texas 78711

• 1 TAC §§81.11-81.29

The new rules are proposed under the Texas Election Code, §31.003 and §19.002(b), which provides the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws, and in performing such duties, to prepare detailed and comprehensive written directives and instructions

based on such laws, and to adopt rules consistent with the Election Code.

The Texas Election Code, Chapter 19, §19.002(b) is affected by this proposed amendment

§81.11. Definitions. The following words and terms, when used herein, shall have the following meanings, unless the context clearly indicates otherwise.

Agency—The Office of the Secretary of State.

Chapter 19—Texas Election Code Annotated, Chapter 19 (Vernon 1986 and Supplement 1995).

Chapter 19 funds—Funding available to a county voter registrar pursuant to Texas Election Code Annotated, §19.002 (Vernon 1986 and Supplement 1995).

Travel Guide—State of Texas Travel Allowance Guide issued by the Texas State Comptroller.

Mileage Guide—Official State Mileage Guide published by Statistical Research Service and adopted by the State Comptroller.

NVRA—(National Voter Registration Act) House Bill 127, Chapter 797, 74th Legislature, 1995.

Rule—A rule adopted under Chapter 81 of the Texas Administrative Code.

Section—A section of Texas Election Code Annotated (Vernon 1986 and Supplement 1995)

§81.12. Applicable Sections of the Texas Election Code.

(a) Chapter 19 provides, in pertinent part, as follows:

(1) The Commissioners Court may not consider the availability of state funds under this chapter in adopting the county budget for the office of voter registrar (§19.006);

(2) State funds disbursed under this chapter may be used only to defray expenses of the voter registrar's office in connection with voter registration (§19.004).

(b) The Secretary of State has interpreted §19.006 to mean that the county must provide for the normal operation of the voter registrar's office. The Secretary of State has interpreted §19.004 to mean that Chapter 19 funds shall be expended on items intended to be used exclusively for voter registration, unless the cost is prorated.

§81.13. Allowable Uses of Chapter 19 Funds. Chapter 19 funds may be used to pay for any item or service designed to increase the number of registered voters in the state, maintain and report an accurate list of the number of registered voters, and/or increase the efficiency of the voter registration office. All Chapter 19 funding requests submitted to the Agency must state which of these purposes the requested item(s) or service(s) will further. If there is a question regarding whether an item or service is payable from Chapter 19 funds, a written request should be submitted to the Agency detailing the estimated cost, projected payment date, purpose of item or service, and how it relates to the aforesaid purposes. The Agency will respond to this request in writing within 14 business days.

§81.14. "Normal Day-to-Day Operation" Defined. Consistent with the intent of §81.12 of this title (relating to Applicable Sections of the Texas Election Code) funds may not be used to fund the normal day-to-day operation of the voter registrar's office. The normal day-to-day operation of the voter registrar's office must be funded by the Commissioners Court when adopting the budget for voter registration in their county. "Normal day-to-day operation" that must be funded by the county means any duty required to be performed by counties under the Texas Election Code. Examples of such statutory duties include, but are not limited to, the physical acceptance and processing of voter registration certificates and renewals under Chapter 13, notices and corrections made under Chapter 15 and Chapter 16 and the processing and cost of supplying voter lists under §18.001. Exam-

ples of items which are considered expenses incurred in the normal day-to-day operation of voter registrars' offices and not payable with Chapter 19 funds include, but are not limited to, office furniture, including file cabinets, office supplies, equipment leases, any phone line not dedicated to a computer modem, the repair and warranty of office equipment, printing of voter registration cards, and normal postage costs. The Agency has the sole authority to determine whether a requested item or service is a day-to-day expense and thus not payable with Chapter 19 funds

§81.15 Funding Period. Chapter 19 funding requests for items and services must be received within 30 days of the vendor's invoice date. Travel expense reimbursement requests must be submitted within 30 days of the completion of travel. Temporary employee funding requests may not cover longer than a 12-week period and must be submitted within 30 days of the end of the subject work period.

§81.16. Chapter 19 Purchase Voucher Required for Payment. The Agency shall prescribe a Chapter 19 Purchase Voucher Form for use by each county voter registrar. In addition to any supporting documentation required by this chapter, the voter registrar must submit an originally and manually signed Chapter 19 Purchase Voucher Form for each payee. If a Chapter 19 Purchase Voucher Form is received by the Agency seeking funding which is not allowable under the Texas Election Code, Chapter 19, these rules, and Agency directives, the Agency shall so notify the voter registrar in writing within 14 business days of receipt of such form. All requests must be mailed to: Office of the Secretary of State, Attention: Elections Funds Management, P. O. Box 12060, Austin, Texas 78711-2060.

§81.17. Competitive Bidding Generally Required. Except for the purchase of voter registration advertising, the voter registrar shall submit bids for the purchase of items or services to be paid for with Chapter 19 funds according to the following guidelines.

(1) No competitive bids for individual purchases of less than \$500 are required. However, the voter registrar shall take the steps necessary to insure that all charges are reasonable and competitive relative to the local market.

(2) Request for funding for individual purchases of \$500 but less than \$10,000 must be accompanied by three written bids from three different vendors stating the vendor's name, complete mailing address, telephone number, and the amount of the bid. Copies of all bids received will be forwarded to the Agency.

(3) Any request for funding for a purchase of \$10,000 or greater must have received the prior written approval of the Agency. Upon receipt of such approval, the voter registrar will advertise for bids in the manner dictated by county regulations. Copies of all bids received will be forwarded to the Agency.

(4) If a purchase is handled by a county's purchasing department, the voter registrar may use county purchasing guidelines instead of those set by paragraphs (1) and (2) of this section. However, a copy of the bids, a copy of the county guidelines and signed recommendation of the county purchasing department must be submitted with the Chapter 19 Purchase Voucher Form.

(5) Sole source vendor purchases and situations when the lowest bid is not accepted are discouraged. In rare instances when this type of purchase is required, a waiver request, stating a justification, must be submitted and signed by the voter registrar. If the item to be purchased is greater than \$1,000, the waiver request must also be signed by the person responsible for county purchases. Only when a sole source vendor purchase or the acceptance of a bid higher than the lowest bid is required by county guidelines may such purchases be paid for with Chapter 19 funds and then, only upon receipt of the waiver request described above.

§81.18. Approval Requirements for the Secretary of State. A Chapter 19 Purchase Voucher Form shall not be processed for payment without the written approval of the Deputy Assistant Secretary of State for Elections. Chapter 19 Purchase Voucher Forms in excess of \$1,000 shall not be processed for payment without the written approval of the Assistant Secretary of State. Chapter 19 Purchase Voucher Forms in excess of \$5,000 shall not be processed for payment without the written approval of the Secretary of State.

§81.19. Method of Payment. Except for travel advances provided by §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized), all payments made from Chapter 19 funds will be made only after the goods or services have been received. An invoice from the vendor must be submitted with all Chapter 19 Purchase Voucher Forms. The signed timesheet required by §81.22 of this title (relating to Use of Chapter 19 Funds for Temporary Employees) will be considered a "vendor's invoice" for purposes of this rule. Warrants issued by the State Comptroller of Public Accounts will be payable to the county, county employees for travel reimbursements, or to third party vendors or providers of goods or services, as the case may be.

Except for travel expenses authorized by Rule 81.23, no cash payments may be made from Chapter 19 funds. All disbursements of Chapter 19 funds must be made by check or warrant.

§81.20. Ownership of Equipment Purchased with Chapter 19 Funds. Items and equipment purchased with Chapter 19 funds are the property of the county. The county is responsible for the maintenance and repair of such items and equipment. If items or equipment that were purchased with Chapter 19 funds are no longer needed or useful for voter registration purposes, the items or equipment may be transferred, with the voter registrar's approval, to other county uses. If the items or equipment are no longer needed by the county, they may be disposed of in the manner set by county guidelines. Proceeds received from the sale of items or equipment purchased with Chapter 19 funds may be used only for voter registration purposes in a manner consistent with these rules.

§81.21. The Agency Required to Mail Semi-Annual Reports. The Agency will submit semi-annual reports to each voter registrar and to each county financial officer reflecting the activity and available balances in each county's Chapter 19 fund account. The voter registrar will promptly notify the Agency if discrepancies are noted between the records of the voter registrar and such semi-annual report.

§81.22. Use of Chapter 19 Funds for Temporary Employees. The Commissioners Court must budget for the adequate staffing of the voter registrar's office. In those instances when an unpredicted and unpredictable workload cannot be handled by the permanent voter registration staff, the Agency may approve, on a case-by-case basis, the use of Chapter 19 funds for the employment of temporary personnel in the voter registration office. In order to receive Chapter 19 funding for this purpose, the voter registrar must submit an originally and manually signed Chapter 19 Purchase Voucher Form, timesheet signed by both the temporary employee and his/her supervisor, and a description of duties performed by the temporary employee(s). These temporary personnel may be used only for special projects related to voter registration and not for the replacement of permanent full-time or part-time employees. Permanent full-time and part-time county employees may not be compensated with Chapter 19 funds. The voter registrar may have Chapter 19 funded temporary staffing a maximum of any 26 weeks out of the 52 week state fiscal year (September 1 through August 31). For example, if Employee A works one week and Employee B works the next week, the

county is allowed only 24 more weeks of Chapter 19 funded temporary personnel. However, if the county employs 15 temporaries in the same week, this would count as only one week of the 26-week allowance. For tracking purposes, working one day of one week counts the same as working an entire week. For example, if Employee C works Monday only, it will count as one week of the 26-week Chapter 19 allowance. The Agency does not issue tax forms to temporary employees funded with Chapter 19 funds. For this reason, the Agency recommends that temporary employment agencies be used if available. The voter registrar should discuss the tax implications of using temporary personnel with the county auditor. The fee or rate of pay to be paid to temporary employees must reflect the fee or rate prevailing in the locale for the same or similar services. Work related injuries to temporary personnel hired with Chapter 19 funds are not the liability of the Agency.

§81.23. Travel Using Chapter 19 Funds Authorized.

(a) Chapter 19 funds may be used to pay travel expenses incurred by the voter registrar and permanent full-time voter registration staffers to attend voter registration seminars and demonstrations. Chapter 19 funds cannot be used to reimburse fully a trip by the voter registrar, unless the purpose of the trip is exclusively related to voter registration. If a voter registrar wishes to travel to a seminar or meeting of which voter registration is not the only topic, the Agency will determine the appropriate portion of the trip expenses that is reimbursable pursuant to Chapter 19 and reimburse the registrar accordingly.

(b) All voter registrars who seek reimbursement from Chapter 19 funds should plan their travel to achieve maximum economy and efficiency. All trips which include reimbursable travel must receive prior written approval from the Agency. A written travel request must state the purpose of the trip, itinerary, mode of transportation, and estimated expenses. A Chapter 19 Travel Form, prescribed by the Agency, and Chapter 19 Purchase Voucher Form must be submitted for each traveler within 30 days of the completion of travel. Travel reimbursement requests must include receipts for airfare, rental cars, lodging, seminar registration fees, and miscellaneous expenses. Travel advances will be approved, if at all, on a case-by-case basis. Travel advance funding will not be made for meals or miscellaneous expenses. Travel advance requests must include a Chapter 19 Travel Form and Chapter 19 Purchase Voucher Form for each traveler. No further Chapter 19 Purchase Voucher Forms will be processed until the final accounting of any advanced travel is received.

(c) Chapter 19 travelers must obtain the lowest cost airfare. Under no circumstances will the amount of a first class ticket be paid with Chapter 19 funds. Voter registrars are to share rental cars whenever practicable. The Agency must give prior approval for the use of a rental car and the voter registrar must make a proper deduction or reimbursement whenever there is personal use of a rental car. The rental of luxury cars will be disallowed, except in special circumstances requiring the use of large cars, i.e., several employees traveling together. Travel by personal car is reimbursable at the rate set in the Travel Guide per mile with mileage computed using the originating county seat as the departure point and computing final mileage using the Mileage Guide. If more than one person is traveling to the same destination by personally owned automobile, the travelers are to ride together in a single automobile if practicable.

(d) Voter registrars who seek reimbursement from Chapter 19 funds for a trip with a final destination within Texas will receive the actual cost of lodging and meals, but such rates may not exceed the rates set by the Travel Guide. Voter registrars who seek reimbursement from Chapter 19 funds for a trip with a final destination outside Texas will receive the actual cost of lodging and meals not to exceed the out-of-state meals and lodging rates set by the Travel Guide for that location. The out-of-state rate for a city is available from the State Comptroller of Public Accounts or the Agency. The voter registrar must be away from his or her home county for at least six consecutive hours to qualify for the partial per diem allowed by the Guide. When requesting Chapter 19 reimbursement, the voter registrar must submit receipts for lodging, airfare, and miscellaneous expenses with the Chapter 19 Purchase Voucher Form and Chapter 19 Travel Form. Amounts in excess of the maximum amounts allowed by the Travel Guide will not be reimbursed. A Meal Itemization Worksheet, prescribed by the Agency, must be completed showing actual costs of meals and signed by each traveler requesting reimbursement. Receipts for such meal costs are not required to be attached. The State Appropriations Act, General Act, 73rd Legislature, Regular Session, Chapter 1051, Article V, §13(12), 1993 Texas Session Law Serv. 4251, 5340 (Vernon), prohibits reimbursement for the purchase of alcoholic beverages, gratuities, and tips.

§81.24. Membership Dues Detailed. Membership dues to groups or associations are payable with Chapter 19 funds only if voter registration is the sole or primary purpose of the group or association.

§81.25. Voter Registration Drives Encouraged. Pursuant to §81.12 of this title (relating to Applicable Sections of the Texas Election Code), efforts to increase the number of registered voters in the county are payable with Chapter 19 funds. Voter registration drive efforts include, but are not limited to, mailouts of applications to households, insertion of applications into newspapers, distributing applications at public locations, and other forms of advertising. "Promotional items" are not payable with Chapter 19 funds. Examples of non-payable promotional items include, but are not limited to, hats, drink coolers, t-shirts, weepuls, pens, pencils, jackets, frisbees, emory boards, fans, dominoes, windshield shades, change purses, and other such novelties or items of nominal value. Items purchased with Chapter 19 funds may include only the county and title of the voter registrar's office. Names of specific individuals may not be included on such materials. Chapter 19 funded voter registration drives must not promote a particular party, candidate, or issue. Chapter 19 funds may not be used for food and drink purchases, except for travel expenses allowed under §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized).

§81.26. Technology Purchases Encouraged. Chapter 19 funds may be used for the purchase and initial installation of technological improvements for the voter registration office. "Technological improvements" include, but are not limited to, computer hardware, printers, and computer training. Computer programs and software that are necessary for the operation of the voter registration office are payable with Chapter 19 funds. However, as stated in Rule 81.22, the county may not be reimbursed for the compensation of full or part-time county employees and programmers. The cost of providing the information required by §18.063 of the Texas Election Code is specifically payable with Chapter 19 funds. Pursuant to §81.20 of this title (relating to Ownership of Equipment Purchased with Chapter 19 Funds), the upkeep and maintenance of items purchased with Chapter 19 funds is the responsibility of the county. Pursuant to §81.12 of this title (relating to Applicable Sections of the Texas Election Code), the voter registrar must prorate the cost between the county and Chapter 19 funds, if the purchased item is not entirely related to voter registration.

§81.27. Electronic Office Equipment Purchases Encouraged. Chapter 19 funds may be used for the purchase of electronic office equipment. Examples of "electronic office equipment" include, but are not limited to, copiers, fax machines, optical imaging systems and typewriters. Office furniture is required for the normal day-to-

day operation of the voter registrar's office and, accordingly, is not payable with Chapter 19 funds. Examples of such office furniture include, but are not limited to, desks, chairs and file cabinets. Pursuant to §81.20 of this title (relating to Ownership of Equipment Purchased with Chapter 19 Funds), the upkeep and maintenance of items purchased with Chapter 19 funds is the responsibility of the county. Pursuant to §81.12 of this title (relating to Applicable Sections of the Texas Election Code), the voter registrar must prorate the cost between the county and Chapter 19 funds if the purchased item is not entirely related to voter registration.

§81.28. "NVRA" Expenses Payable. The NVRA amends the Texas Election Code, §19.004 to allow expenses incurred by the voter registrar in implementing and conducting the duties required by this act to be payable with Chapter 19 funds. Examples of payable expenses under the NVRA include, but are not limited to, computer programming changes required by §15.081 and the printing and mailing of confirmation notices required by §§13.146, 14.023, 16.0921

§81.29. Adherence to Rules Required. Failure to adhere to these rules may result in the denial of funding from Chapter 19 funds.

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 July 28, 1995.

TRD-9509441 Clark Kent Ervin
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: September 4, 1995

For further information, please call: (512) 463-5701

◆ ◆ ◆
• 1 TAC §81.11

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

The repeal is proposed under the Texas Election Code, §31.003 and §19.002(b), which provides the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws, and in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code.

The Texas Election Code, Chapter 19, §19.002(b) is affected by this proposed repeal.

§81.11. Disbursement of Funds under the Texas Election Code, Chapter 17.

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 July 28, 1995.

TRD-9509440 Clark Kent Ervin
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: September 4, 1995

For further information, please call: (512) 463-5701

◆ ◆ ◆
**TITLE 16. ECONOMIC
REGULATION**
**Part VI. Texas Motor
Vehicle Commission**
**Chapter 109. Lessors and
Lease Facilitators**

• 16 TAC §§109.1-109.11

The Motor Vehicle Board of the Texas Department of Transportation proposes to adopt new §§109.1-109.11, concerning regulation of motor vehicle lessors and lease facilitators. The new sections are required pursuant to action taken by the 74th Legislative Session, Senate Bill 921, which, effective June 8, 1995, mandates regulation of lessors and lease facilitators by the Motor Vehicle Board. The new sections concern requirements for licensing and business practices and cause for cancellation of license.

Brett Bray, Director, Motor Vehicle 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. There will be no significant impact on local economies or overall employment as a result of enforcing or administering the sections.

Mr. Bray also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as result of enforcing the sections will be compliance with statutory changes enacted by the 74th Legislature requiring regulation of the motor vehicle leasing industry and providing a forum for complaints against lessors and lease facilitators engaging in illegal activities. There will be no effect on small businesses. The anticipated economic costs to businesses or persons who are required to comply with the rules as proposed will be the effort of assembling the information necessary to qualify for a license and the license fee.

Comments on the proposed rules (six copies) may be submitted to Brett Bray, Director, Motor Vehicle Division, P.O. Box 2283, Austin, Texas, 78768. The Texas Motor Vehicle Board will consider final adoption of the proposed rules at its meeting on September 7, 1995. The deadline for receipt of comments on the proposed new sections will be 5:00 p.m. on August 31, 1995.

The new sections are proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules necessary and convenient to effectuate the provisions of the act and to govern practice and procedure before the agency.

Motor Vehicle Commission Code, §§4.01, 5.03A, and 5.03B are affected by the proposed new sections.

§109.1. Objective. The objective of these rules is to implement the intent of the legislature as declared in the Texas Motor Vehicle Commission Code, §5.03A and §5.03B, by prescribing rules to regulate the business of leasing motor vehicles in this state.

§109.2. Definitions. The following words and terms, when used in the sections under this Section, shall have the following meanings, unless the context clearly indicates otherwise.

Director—The Director of the Motor Vehicle Division, Texas Department of Transportation.

Department—The Texas Department of Transportation.

§109.3. License. No person may engage in business as a lessor or a lease facilitator unless that person has a currently valid license assigned by the Department. Lease facilitators must be licensed separately for each business location.

§109.4. Application for a License. Application for a lessor's or lease facilitator's license, or a renewal thereof, shall be on a form prescribed by the director, properly completed by the applicant, and shall be submitted with supporting documentation showing all information requested. The supporting documentation shall include:

(1) a letter of appointment from each lessor or lease facilitator;

(2) a verification that each owner and officer of the applicant has not been convicted of any felony;

(3) the fee for the license as prescribed by law for each type of license required;

(4) photographs clearly depicting the overall appearance of the interior and exterior of the applicant's office;

(5) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;

(6) a copy of the Certificate of Incorporation on file with the Secretary of State, if a corporation;

(7) a sample copy of the agreement between the lessor or lease facilitator and a lessee; and

(8) a list of all lessors, including names and addresses, with which any lease facilitator executes leases. This list must be updated in writing upon renewal of a license, and within ten days of the addition of any lessor to this list.

§109.5. Sanctions.

(a) Revocation/Denial. The Motor Vehicle Board may cancel a lessor or lease facilitator's license if that lessor or lease facilitator:

(1) fails to maintain an established and permanent place of business conforming to the Department's regulations under §109.7 of this title (relating to Lessors and Lease Facilitator Licensing, Established and Permanent Place of Business);

(2) refuses to permit or fails to comply with a request by a representative of the department to examine, during normal working hours, the current and previous years' leasing records and ownership papers for vehicles owned, leased, or under that lessor or lease facilitator's control, and evidence of ownership or lease agreement for the property upon which the business is located;

(3) fails to notify the department of a change of address within ten days after such change;

(4) fails to notify the department of a change of lessor/lease facilitator's name or ownership within ten days after such a change;

(5) fails to observe the fee restrictions as described in §5.03A and §5.03B of the Motor Vehicle Commission Code;

(6) fails to maintain leasing and/or advertisement records as described in these rules;

(7) fails to remain regularly and actively engaged in the business of leasing or facilitating the leasing of vehicles as the person's license is issued;

(8) violates any law relating to the sale, distribution or insuring of motor vehicles;

(9) uses or allows use of a leasing or lease facilitating license for the purpose of avoiding any provisions of the Motor Vehicle Commission Code;

(10) makes a material misrepresentation in any application or other information filed with the department;

(11) fails to update in writing the list of lessors, including names and addresses, with which any lease facilitator executes leases within ten days of any changes to this list and upon renewal of the license;

(12) violates any state or federal law relating to the leasing of new motor vehicles.

(b) Referral fees prohibited. A lessor or lease facilitator may not, directly or indirectly, accept a fee from a dealer for referring customers who purchase or consider purchasing vehicles.

§109.6. Off-Site Leasing. Unless otherwise authorized by statute, a lessor or lease facilitator is not permitted to lease or offer to lease from a location other than an established and permanent place of business which has been approved by the department.

§109.7. Established and Permanent Place of Business. A lessor or lease facilitator must meet the following requirements at each location where vehicles are leased or offered for lease.

(1) Office requirements.

(A) A lessor or lease facilitator must be open to the public during normal working hours. The lessor or lease facilitator's business hours for each day of the week must be posted at the main entrance of the office, and the owner or a bona fide employee of the lessor or lease facilitator must be at the location during the posted business hours for the purpose of leasing vehicles. In the event the owner or a bona fide employee is not available to conduct business during the posted business hours, a separate sign must be posted indicating the date and time such owner or a bona fide employee will resume leasing operations. The structure must be of sufficient size to accommodate and must be equipped with a desk and chairs from which the lessor or lease facilitator transacts his business and be equipped with a working telephone instrument listed in the name under which the lessor or lease facilitator does business.

(B) If a licensee's office is located in a residential structure, the office must be completely separated from the residential quarters and be in compliance with all applicable local zoning ordinances and deed restrictions. Such an office shall not be used as a part of the living quarters and must be readily accessible to the public

without having to pass into or through any part of the living quarters.

(C) Portable-type office structures may qualify, provided they meet the minimum requirements as set forth herein.

(D) In those instances when two or more lessors or lease facilitators occupy the same business locations and conduct their respective leasing operations under different names, one office structure for all lessors or lease facilitator operating from such location will be acceptable; provided, however, each lessor or lease facilitator must have:

(i) a separate desk from which that lessor or lease facilitator transacts business;

(ii) a separate working telephone instrument and listing in the lessor or lease facilitator's name; and

(iii) a separate right of occupancy meeting the requirements of this section.

(2) Sign requirements

(A) A lessor or lease facilitator shall display a conspicuous sign showing the name under which the lessor or lease facilitator conducts business. Outdoor signs must contain letters no smaller than six inches in height.

(B) Such sign must be readable from the address listed on the application for the lessor or lease facilitator license.

(3) Lease requirements. If the premises from which a lessor or lease facilitator conducts business are not owned by the licensee dealer, such licensee shall maintain a lease continuous for a period of one year, and such lease agreement shall be on a properly executed form containing, but not limited to the following information:

(A) the names of the lessor and lessee;

(B) the legal description of the property or street address; and

(C) the period of time for which the lease is valid.

(4) Independence. A lessor or lease facilitator shall be independent of financial institutions and dealerships in location and in business activities unless that lessor or lease facilitator is an employee of such an institution or dealership.

§109 8. *Refund of Fees.* No refund of the fees will be made when a lessor or lease facilitator's license is cancelled.

§109 9. *Records of Leasing.*

(a) Purchase and leasing records. Lessors and lease facilitators must maintain a separate and complete lease file for each transaction in their business office readily available and subject to inspection during regular business hours upon request by a Department representative containing the following information on each lease transaction for a period of at least three years after the expiration of the lease.

(b) Content of records. As used in this subsection, a complete lease file shall include the following things:

(1) names, addresses and telephone numbers of the lessor of the vehicle in the transaction;

(2) names, addresses and telephone numbers of the lessee of the vehicle in the transaction;

(3) names, addresses, telephone numbers and license numbers of the lease facilitator of the vehicle in the transaction;

(4) name, home address, and telephone number of employee of lease facilitator who handled the transaction;

(5) complete description of the vehicle involved in the transaction, including its Vehicle Identification Number (VIN);

(6) name, address, telephone number and General Distinguishing Number of the Dealer selling the vehicle, as well as the franchise license number of the dealer if the vehicle in the transaction is a new motor vehicle;

(7) amount of fee received by or paid to the lease facilitator;

(8) copies of the buyers order and sales contract for the vehicle;

(9) copy of the lease contract;

(10) copies of all other contracts, agreements or disclosures between the lease facilitator and the consumer lessee; and

(11) copies of the front and back of Manufacturer's Statement/Certificate of Origin or the title of the vehicle involved in the transaction.

(c) Records of advertising. A lessor or lease facilitator must maintain copies of all advertisements, brochures, scripts or electronically reproduced copies, in whatever medium appropriate, of promotional materials for a period of at least 18 months, subject to inspection upon request by a de-

partment representative at the business of the licensee during regular business hours

(1) All advertisements by lessors or lease facilitator must be in accordance with the Motor Vehicle Board Advertising Rules.

(2) Lessors and lease facilitator may not state or infer, either directly or indirectly, in any manner such as advertisements, stationery or business cards that their business involves the sale of motor vehicles.

(d) Title assignments. All certificates of title, manufacturer's certificates of origin, or other evidence of ownership for vehicles which have been acquired by a lessor for lease must be properly assigned from the selling dealer into the lessor's name.

§109.10. *Change of Lessor or Lease Facilitator Status.*

(a) Change of ownership. A lessor or lease facilitator shall notify the department in writing within ten days if there is any change of ownership. Upon notification of a change of the majority ownership interest, the department shall cancel the existing license and the new licensee must qualify under this section.

(b) Change of operating status of business location. A licensee shall notify the department in writing within ten days of the opening, closing or relocation of any licensed business location. Each new location must meet all applicable regulations under the Texas Motor Vehicle Commission Code and these rules.

§109.11. *Required Notice to Lessees.* Lessors and lease facilitators shall provide notice of the complaint procedures provided by §3.08(i) and §6.07 of the Texas Motor Vehicle Commission Code to each lessee of a new motor vehicle with whom they transact a lease.

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 July 27, 1995.

TRD-9509387

Brett Bray
Director, Motor Vehicle
Division
Texas Department of
Transportation

Proposed date of adoption: September 7, 1995

For further information, please call: (512) 463-8630

Chapter 111. General Distinguishing Numbers

• 16 TAC §§111.1-111.16

The Motor Vehicle Board of the Texas Department of Transportation proposes to adopt new §§111.1-111.16, concerning the obligations of motor vehicle dealers and manufacturers regarding registration and business operations under the Transportation Code, §§503.001 et seq (formerly Texas Civil Statutes, Article 6686) and the Texas Motor Vehicle Commission Code (Texas Civil Statutes, Article 4413(36)). These new sections are required pursuant to action taken by the 74th Legislative Session, Senate Bill 1446, effective June 9, 1995, and Senate Bill 1139, effective June 8, 1995, which transfer regulatory and rulemaking authority regarding such obligations from the Texas Transportation Commission to the Texas Motor Vehicle Board. New §111.1 states the objective of these rules. New §111.2 provides definitions. New §111.3 prohibits any person from engaging in business as a motor vehicle dealer without a license. New §111.4 defines house trailer and travel trailer for the purposes of this chapter. New §111.5 prescribes requirements for motor vehicle dealers operating from more than one location. New §111.6 prohibits motor vehicle dealers from selling vehicles at locations that are not licensed by the department. New §111.7 describes the security requirements for motor vehicle dealers. New §111.8 describes the size requirements for the design of temporary cardboard tags. New §111.9 describes the requirements for placement of temporary cardboard tags and metal dealer license plates. New §111.10 sets forth the requirements for a motor vehicle dealer's established and permanent place of business. New §111.11 describes the sanctions and grounds for bringing a sanctions action against a licensee. New §111.12 describes the procedure for bringing a sanctions action against a licensee. New §111.13 states that after cancellation of a dealer's general distinguishing number and license plates, there will be no refund of fees. New §111.14 describes the purposes for which manufacturer's license plates may be used. New §111.15 describes the records that must be kept by all motor vehicle dealers. New §111.16 describes the requirements for motor vehicle dealers who change their original status.

Brett Bray, Director, Motor Vehicle 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 these sections.

Mr. Bray 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 to combine the similar functions of the Motor Vehicle Division with those of the Vehicle Title and Registration Division of the Texas Department of Transportation, thereby streamlining the licensing and enforcement processes for all motor vehicle dealers. There will be no effect on small businesses. There is no additional anticipated cost to persons required to comply with these sections as proposed.

Comments on the proposal (six copies) may be submitted to Brett Bray, Director, Motor Vehicle Division, P.O. Box 2293, Austin, Texas 78768, (512) 476-3587. The Motor Vehicle Board will consider final adoption of the proposed rules at its meeting on September 7, 1995. The deadline for receipt of comments on the proposed new sections will be 5:00 p.m. on August 31, 1995.

The new sections are proposed under the Texas Motor Vehicle Commission Code, §3.06 which provides the Board with authority to adopt rules necessary and convenient to effectuate the provisions of the act and to govern practice and procedure before the agency.

Motor Vehicle Commission Code, §3 01(a) is affected by the proposed new sections.

§111.1 Objective. The objective of these rules is to implement the intent of the legislature as declared in the Transportation Code, §§503.001 et seq (formerly Texas Civil Statutes, Article 6686) and Texas Civil Statutes, Article 4413 (Texas Motor Vehicle Commission Code), by prescribing rules to regulate businesses requiring General Distinguishing Numbers.

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

Barrier—A material object or set of objects.

Board—The Motor Vehicle Board of the Texas Department of Transportation.

Charitable Organization—An organization that is established and exists for the purpose of relieving poverty, the advancement of education, religion, or science, the promotion of health, governmental, or municipal purposes, or other purposes beneficial to the community without financial gain.

Commission—Texas Transportation Commission.

Consignment Sale—The sale of a vehicle by a person other than the owner, under the terms of a written authorization from the owner.

Dealer—Any person who is regularly and actively engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, motor homes, house trailers, or trailers or semitrailers as defined in the Transportation Code, §§502.001 et seq (formerly the Registration Law, Texas Civil Statutes, Article 6675a-1), or the Transportation Code, §§502.002, et seq (formerly the Certificate of Title Law, Texas Civil Statutes, Article 6687-1), at either wholesale or retail, either directly, indirectly, or by consignment.

Department—Texas Department of Transportation.

Director—Director, Motor Vehicle Division, Texas Department of Transportation.

License—A dealer's general distinguishing number assigned by the Texas Department of Transportation for the location from which the person engages in business.

Person—Any individual, firm, partnership, corporation, or other legal entity.

Sale—With regard to a specific vehicle, the transfer of possession of that vehicle from a dealer to a purchaser for consideration.

Temporary Cardboard Tag—A buyer tag, a dealer tag, or a charitable organization tag.

Wholesale Dealer—A licensed dealer who only sells or exchanges vehicles with other licensed dealers.

§111.3. General Distinguishing Number.

(a) No person may engage in business as a dealer unless that person has a currently valid general distinguishing number assigned by the department for each location from which the person engages in business. If a dealer consigns more than five vehicles in a calendar year for sale from a location other than the location for which the dealer holds a general distinguishing number, the dealer must also hold a general distinguishing number for the consignment location.

(b) The provisions of subsection (a) of this section do not apply to:

(1) a person who sells or offers for sale less than five vehicles of the same type as herein described in a calendar year and such vehicles are owned by him and registered and titled in his name;

(2) a person who sells or offers to sell a vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the provisions of the Transportation Code, §§503.001 et seq (formerly Texas Civil Statutes, Article 6686), and the sections under this chapter;

(3) an agency of the United States, this state, or local government;

(4) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(5) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(6) an insurance company selling a vehicle acquired from the owner as the result of paying an insurance claim;

(7) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in the

Transportation Code, §683.077 (formerly the Texas Litter Abatement Act, Texas Civil Statutes, Article 4477-9a), if the special interest vehicle is at least 12 years old;

(8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding another provision of the Transportation Code, §§503.001, et seq (formerly Texas Civil Statutes, Article 6686), and sections under this chapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a general distinguishing number, the auction may be conducted only at a location for which a general distinguishing number has been issued to that person or at a location approved by the department as provided in §111.4 of this title (relating to More Than One Location); and

(9) a person who is a domiciliary of another state and who holds a valid dealer license and bond, if applicable, issued by an agency of that state, when the person buys a vehicle from, sells a vehicle to, or exchanges vehicles with a person who:

(A) holds a current valid general distinguishing number issued by the department, if the transaction is not intended to avoid the terms of the Transportation Code, §§503.001, et seq (formerly Texas Civil Statutes, Article 6686); or

(B) is a domiciliary of another state if the person holds a valid dealer license and bond, if applicable, issued by that state, and if the transaction is not intended to avoid the terms of the Transportation Code, §§503.001, et seq (formerly Texas Civil Statutes, Article 6686).

(c) Application for a general distinguishing number shall be on a form prescribed by the director properly completed by the applicant showing all information requested thereon and shall be submitted to the director accompanied by the following:

(1) a \$25,000 surety bond as provided in §111.6 of this title (relating to Bond Requirements), or acceptable security as cited in §111.6 of this title (relating to Assignment of Security and Letter of Credit), in the name of the applicant;

(2) a one-year lease as cited in §111.9 of this title (relating to Established and Permanent Place of Business), or deed for the dealer's location in the name of the applicant;

(3) the fee for the general distinguishing number as prescribed by law for each type of license requested;

(4) the fee as prescribed by law for each dealer metal plate requested and the license plate reflectorization fee as prescribed by law;

(5) photographs clearly showing:

(A) the interior of the dealer's office;

(B) the exterior of the dealer's office;

(C) the dealer's sign, and

(D) the vehicle display area; and

(6) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the secretary of state or county clerk.

(d) A person who applies for a general distinguishing number and will operate as a dealer under a name other than the name of that person shall use the name under which that person is authorized to do business, as filed with the secretary of state or county clerk, and the assumed name of such legal entity shall be recorded on the application using the letters "DBA." A separate license and bond shall be required for each location the person will operate under a different assumed name, except, a location which is licensed by the Texas Motor Vehicle Commission shall not require a bond.

(e) If the general distinguishing number is issued to a corporation, the dealer's name, as it appears on file with the secretary of state, shall be recorded on the application. The corporation must provide verification that all corporate franchise taxes required under Texas Business Corporation Act, Article 2.45, have been paid.

(f) A licensed wholesale dealer who elects to buy, sell to, or exchange vehicles with persons other than licensed dealers, must satisfy the display space requirements of §111.9 of this title (relating to Established and Permanent Place of Business) and exchange the wholesale dealer license for a general distinguishing number which is appropriate for the type of vehicles the dealer wishes to buy, sell, or exchange.

(g) An application for a general distinguishing number may be denied if an applicant for such license has committed any act that could result in license cancellation or revocation under the Transportation Code, §§503.001, et seq (formerly Texas Civil Statutes, Article 6686 §(a)(1)(1-A) viii).

(h) All general distinguishing numbers expiring on March 31, 1996, when renewed, will expire on the last day of randomly assigned calendar months of the next calendar year. Thereafter, each license will be issued for a period of one year from the date of issuance of the license. The entire yearly license fee will be due at that time.

(1) The license fee for each general distinguishing number issued during 1996 for a period of less than one year shall be prorated and only that portion of the license fee allocable to the number of months for which the license is issued shall be payable by the licensee. The amount of such license fees will be rounded off to the nearest dollar.

(2) The surety bond or other surety required for dealers by the Department pursuant to the Transportation Code, §503.033 (formerly Texas Civil Statutes, Article 6686(a)(1-A)(vii)) must be effective, at a minimum, for the period for which the general distinguishing number will be valid.

(3) All dealer metal plates issued to a licensed dealer shall expire on the same date as the expiration of the dealer's general distinguishing number.

§111.4. *House Trailer; Travel Trailer.* The term house trailer/travel trailer for the purpose of the sections under this chapter shall mean a vehicle without automotive power design for human habitation and for carrying persons and property upon its own structure and for being drawn by a motor vehicle if that vehicle is less than eight body feet in width and less than 40 body feet in length, excluding the hitch, or the vehicle shall be 400 square feet or less when measured at the largest horizontal projections.

§111.5. *More Than One Location.*

(a) A dealer holding a general distinguishing number for a particular type of vehicle may operate from more than one location within the limits of a city, provided each such location is operated by the same legal entity and meets the requirements of §111.9 of this title (relating to Established and Permanent Place of Business).

(b) Additional locations which are not located within the limits of the same city are required to obtain a separate license, and each such location must be bonded unless the location is exempt by statute.

§111.6. *Off-site Sales.* Unless otherwise authorized by statute, a dealer is not permitted under the Transportation Code, §§503.001, et seq (formerly Texas Civil Statutes, Article 6686) to sell or offer for

sale vehicles from a location other than an established and permanent place of business which has been approved by the department.

§111.7. *Security Requirements.*

(a) A franchised motor vehicle dealer or franchised motorcycle dealer who is not licensed by the Texas Motor Vehicle Board of the Texas Department of Transportation shall have a \$25,000 bond conditioned on the dealer's payment of all valid bank drafts drawn by the dealer for the purchase of motor vehicles and the dealer's transfer of good title to each motor vehicle the dealer offers for sale. The bond must be valid for the same period of time as the dealer's license and is subject to the following.

(1) The bond shall be on a form which is prescribed by the director and approved by the attorney general and issued by a company duly authorized to do business in the state of Texas.

(2) The name of all owners shall be shown on the bond along with the name in which the dealer's license is issued.

(3) A bond executed by an agent who represents a bonding company or surety must be supported by an original power of attorney from the bonding company or surety.

(b) In lieu of a surety bond, the department will accept an assignment of security or an irrevocable letter of credit on forms approved by the attorney general. An assignment of security or an irrevocable letter of credit must be executed by a bank, savings and loan institution, credit union, or other financial institution insured by an agency of the United States government and authorized to do business in the State of Texas.

(c) Recovery against the bond or acceptable security may be made by any person who obtains a court judgment assessing damages and attorneys fees for an act or omission on which the bond is conditioned.

(d) The provisions of subsections (a) and (b) of this section do not apply to:

(1) a franchised motor vehicle dealer who is licensed by the Texas Motor Vehicle Board of the Texas Department of Transportation;

(2) a franchised motorcycle dealer who is licensed by the Texas Motor Vehicle Board of the Texas Department of Transportation;

(3) a house trailer or travel trailer dealer, or

- (4) a trailer/semitrailer dealer.

§111.8. *Temporary Cardboard Tags.*

(a) Motor vehicle, travel trailer, and trailer/semitrailer tags shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7-inch centers and vertically punched on 4 1/2-inch centers and the numerals and letters in the dealer number shall not be less than 2 inches high. Motorcycle tags shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 5 3/4-inch centers and vertically punched on 2 3/4-inch centers and the numerals and letters shall not be less than 1-inch high. Homemade cardboard tags or cardboard tags which have buyer's tag information printed on one side and dealer's tag information printed on the other side are not acceptable.

(b) The following appendices indicate the design and the instructions for printing and use of each of the respective temporary tags:

(1) Appendix A-1-Dealer (design); Appendix A-2-Dealer (instructions); Figure 1: 16 TAC §111.8(b)(1)

(2) Appendix B-1-Buyer (design); Appendix B-2-Buyer (instructions); and Figure 2: 16 TAC §111.8(b)(2)

(3) Appendix C-1-Charitable (design); Appendix C-2-Charitable (instructions). Figure 3: 16 TAC §111.8(b)(3)

§111.9. *Metal Dealer License Plates and Temporary Cardboard Tags.*

(a) Metal dealer license plates shall be attached to the rear license plate holder of vehicles on which such plates are to be displayed. If the vehicle on which a metal dealer plate is to be attached displays Texas multi-year plates that have not been validated for the current registration period, such multi-year plates shall be removed and safeguarded. The multi-year plates should be placed back onto the vehicle when it is sold or if the metal dealer plate is removed from the vehicle.

(b) Temporary cardboard tags may be displayed either in the rear window or on the rear license plate holder of unregistered vehicles. When displayed in the rear window, the tag shall be attached in such a manner that it is clearly visible and legible when viewed from the rear of the vehicle. If the vehicle on which a temporary cardboard tag is to be attached displays Texas multi-year license plates that have not been validated for the current registration period, the temporary cardboard tag may be displayed in the rear window as prescribed in this

subsection or placed over the rear license plate. The multi-year plates should not be removed from the vehicle.

(c) Metal dealer license plates and temporary cardboard tags may not be displayed on laden commercial vehicles being operated or moved upon the public streets or highways or on the dealer's service or work vehicles.

(1) Examples of vehicles considered as service or work vehicles are:

(A) vehicles used for towing or transporting other vehicles;

(B) vehicles, including light trucks used in connection with the operation of the dealer's shops or parts department;

(C) courtesy cars on which courtesy car signs are displayed;

(D) rental and lease vehicles;

(E) dealer-owned vehicles loaned to schools; and

(F) any boat trailer owned by a dealer or manufacturer which is used to transport more than one boat.

(2) A light truck is not considered to be a laden commercial vehicle:

(A) when mounted with a camper unit; or

(B) when towing a trailer for recreational purposes.

(3) As used in this subsection, light truck shall have the same meaning as defined in the Uniform Act Regulating Traffic on Highways, Texas Civil Statutes, Article 6701d, §2.

(d) Each unregistered vehicle being conveyed utilizing the full mount method, the saddle mount method, the tow bar method, or any combination thereof in accordance with the Transportation Code, §§503.029, et seq (formerly Texas Civil Statutes, Article 6686(a), §6), shall have a dealer's temporary cardboard tag or a buyer's temporary cardboard tag, whichever is applicable, affixed to that vehicle. If the vehicle being transported is of a type which is prohibited from operating upon the public streets and highway (i.e., off-highway vehicle or self-propelled machine) and, thus, cannot qualify for registration, a cardboard tag shall be displayed thereon, and such tag shall be marked in bold letters with the notation "For Off Highway Use Only."

(e) Metal dealer license plates and temporary cardboard tags may be displayed only on the type of vehicle for which the general distinguishing number is issued and for which a dealer is licensed to sell. Non-franchised dealers may not display metal plates on new motor vehicles.

(f) A buyer's temporary cardboard tag may not be displayed on any vehicle being operated upon the public streets and highways for which a sale has not been consummated.

(g) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove his dealer's temporary cardboard tag. In such instances, the selling dealer may attach his buyer's temporary cardboard tag to the vehicle; or the purchasing dealer may display his dealer's temporary cardboard tag or metal dealer plate on the vehicle. In the event a vehicle is consigned from one dealer to another, the vehicle shall display the temporary cardboard tag of the dealer to which such vehicle was consigned.

(h) A dealer shall maintain a record of all dealer metal plates issued to that dealer and as to each vehicle such record shall consist of:

(1) the assigned metal plate number;

(2) the make;

(3) the vehicle identification number; and

(4) the name of the person in control.

(i) The dealer's record as referenced in subsection (h) of this section, shall be available at the dealer's location during normal working hours for review by a representative of the department. Dealer metal plates which cannot be accounted for shall no longer be valid for use and shall be voided.

(j) A charitable organization tag is valid for a period of 30 days from the date of issuance.

§111.10. *Established and Permanent Place of Business.* A dealer must meet the following requirements at each location where vehicles are sold or offered for sale.

(1) Office requirements.

(A) A dealer's office facility must be open to the public during normal working hours. The dealer's business hours for each day of the week must be posted at the main entrance of the dealer's office, and the owner or a bona fide employee of the dealer must be at the dealer's location during the posted business hours for the purpose of buying, selling, exchanging, or

leasing vehicles. In the event the owner or a bona fide employee is not available to conduct business during the dealer's posted business hours, a separate sign must be posted indicating the date and time such owner or a bona fide employee will resume dealer operations. The structure must be of sufficient size to accommodate the usual office furniture and equipment, such as a desk, file cabinet, chairs, etc. As a minimum, the office must be equipped with a desk and chairs from which the dealer transacts his business and be equipped with a working telephone instrument listed in the name under which the dealer does business.

(B) If a dealer's office is located in a residential structure, the office must be completely separated from and have no direct access into the residential quarters and be in compliance with all applicable local zoning ordinances and deed restrictions. Such an office shall not be used as a part of the living quarters and must be readily accessible to the public without having to pass into or through any part of the living quarters.

(C) Portable-type office structures may qualify, provided they meet the minimum requirements as set forth herein.

(D) If a dealer conducts business in conjunction with another business owned by the same person, the same telephone instrument may be used for both businesses. However, if the name of the dealer differs from that of the other business, a separate telephone listing for the dealer is required.

(E) If a dealer conducts business in conjunction with another business not owned by the same person, the same telephone number may be used by both businesses; however, the dealer shall have a separate desk, a separate working telephone instrument, and a separate telephone listing in the name of the dealer. The dealer must either own the property or have a separate lease agreement from the owner meeting the requirements of paragraph (4) of this section.

(F) In those instances when two or more dealers occupy the same business locations and conduct their respective dealer operations under different names, one office structure for all dealers operating from such location will be acceptable; provided, however, each dealer must, in addition to having a qualifying dealer's sign conspicuously displayed on the premises, have:

(i) a separate desk from which that dealer transacts business;

(ii) a separate working telephone instrument and listing in the dealer's name;

(iii) a separate display space meeting the requirements of paragraph (3) of this section; and

(iv) a separate lease agreement meeting the requirements of paragraph (4) of this section

(2) Sign requirements.

(A) A dealer shall display a conspicuous sign with letters at least six inches in height showing the name under which the dealer conducts business.

(B) Such sign must be readable from the address listed on the application for the dealer license.

(3) Display space requirements.

(A) A dealer other than a wholesale dealer shall have an off-street display area sufficient to display at least five vehicles of the type for which the general distinguishing number was issued.

(B) The display area may not be on a public easement, right-of-way, or driveway, unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents to such use; provided, however, that if the easement, right-of-way, or driveway is a part of the state highway system, such use may only be authorized by a lease agreement entered under the Transportation Code, §202.052 (formerly Texas Civil Statutes, Article 6673a-3). Such area shall be located at the dealer's address or contiguous with the dealer's address. The display area must be owned or leased for the exclusive use by the dealer for a continuous term of not less than one year. If the display area is in conjunction with other parking facilities, such area shall be separated by use of barriers under the control of the dealer so as to prevent its use for any purpose other than a display area. Subject to approval by the department, the display area may be located within a building.

(4) Lease requirements. If the premises from which a dealer conducts business is not owned by the licensed dealer, such dealer shall maintain a lease continuous for a period of one year, and such lease agreement shall be on a properly executed form containing, but not limited to, the following information:

(A) the names of the lessor and lessee;

(B) the legal description of the property or street address; and

(C) the period of time for which the lease is valid.

§111.11 Sanctions.

(a) Cancellation. The director may cancel a dealer's license (general distinguishing number) if that dealer:

(1) fails to maintain a good and sufficient bond in the amount of \$25,000 or to be currently licensed as a franchised dealer by the Texas Motor Vehicle Board of the Texas Department of Transportation;

(2) fails to maintain an established and permanent place of business conforming to the department's regulations pertaining to office, sign, and display space requirements;

(3) refuses to permit or fails to comply with a request by a representative of the department to examine, during normal working hours, the current and previous years' sales records and ownership papers for vehicles owned by that dealer or under that dealer's control, and evidence of ownership or lease agreement on the property upon which the dealer's business is located;

(4) holds a wholesale dealer license and, without notifying the department and meeting the vehicle display space requirements of §111.9 of this title (relating to Established and Permanent Place of Business), is found to be selling a vehicle to someone other than a licensed dealer;

(5) holds a travel trailer dealer license or a trailer/semitrailer dealer license and is found to be selling a motor vehicle or a motorcycle;

(6) fails to notify the department of a change of address within ten days after such change;

(7) fails to notify the department of a dealer's name change or ownership within ten days after such change;

(8) issues more than one buyer's temporary cardboard tag for the purpose of extending the purchaser's operating privileges for more than 20 days;

(9) fails to remove out-of-state license plates from a vehicle which is displayed for sale;

(10) misuses a metal dealer license plate or a temporary cardboard tag;

(11) fails to display dealer license plates or cardboard tags in a manner

conforming to the department's regulations pertaining to the display of such plates and cardboard tags on unregistered vehicles;

(12) fails to satisfy the notification requirements of §111.14 of this title (relating to Record of Sales and Inventory);

(13) holds open titles or fails to take assignment of all certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles acquired by the dealer or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for vehicles sold. (All certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles owned by a dealer must be properly executed showing transfer of ownership into the name of the dealer.);

(14) fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the general distinguishing number is issued;

(15) violates any of the provisions of the Transportation Code, §§503.001, et seq (formerly Texas Civil Statutes, Article 6686), Texas Civil Statutes, Article 4413(36) (Texas Motor Vehicle Commission Code), or any rule or regulation of the department, including advertising rules set out in Chapter 105 of this title (relating to Advertising);

(16) has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

(17) files a false or forged title or tax document, including sales tax affidavit or affidavit making application for a certified copy of a title;

(18) uses or allows use of that dealer's license or location for the purpose of avoiding the provisions of the dealer law or other laws;

(19) makes a material misrepresentation in any application or other information filed with the department;

(20) fails to remit payment for civil penalties assessed by the department;

(21) sells new motor vehicles without a franchise license issued by the Texas Motor Vehicle Board of the Texas Department of Transportation; or

(22) utilizes a temporary cardboard tag that fails to meet department specifications as cited in §111.7 of this title (relating to Temporary Cardboard Tags).

(b) Civil penalties. The director may assess a civil penalty of not less than \$50 nor more than \$1,000 against a person who violates any provision of subsection (a) of this section, and in determining the amount of any such penalty may consider the relevant circumstances.

(c) Pre-sanction citation. In lieu of imposing sanctions under subsection (a) or (b) of this section, the director may issue a pre-sanction citation to a person notifying that person of the nature of the violation, and specifying the date by which corrective action is to be completed and full compliance is to be met; provided, however, that the director may not utilize this procedure in more than three subsequent violations of the same or similar nature by that person in the same calendar year.

§111.12. Notice and Appeal.

(a) Notice of hearing and complaint. A hearing shall be conducted in all contested cases, as defined in the Texas Administrative Code, which arise in connection with the violation of any law, order or rule of the Commission. Upon determination that a person had violated or is likely to violate any law, commission rule, order or decision, the director shall mail a notice of hearing and complaint by certified mail to the last known address of that person. All hearings shall be conducted in accordance with the procedure as described in the Texas Motor Vehicle Commission Code, §3.08.

(b) Date, time, and place of hearing. Notice of a hearing shall describe in summary form the purpose of the hearing and its date, time, and place.

(c) Administrative hearing. The department may initiate a formal administrative hearing pursuant to the Motor Vehicle Commission Code, Texas Civil Statutes, Article 4413(36), §3.03(b) and conducted in accordance with the procedural rules found in §§101.5-101.14 and §§101.41-101.64 of this title (relating to Practice and Procedure), which relate to contested cases before the Texas Motor Vehicle Board, to determine the amount of the civil penalty to be assessed, if any, from not less than \$50 up to \$1,000 for each alleged violation of the provisions of §111.10 of this title (relating to Sanctions), and to determine whether the dealer's license should be canceled. For purposes of assessing civil penalties under this subsection, each act in violation of those provisions is a separate violation, and each day of a continuing violation is a separate violation.

(d) Notice of contested case hearing. Notice of a contested case hearing shall be deemed to have been received by any person if notice of the hearing was mailed to the last known address of any person known to have legal rights, duties, or privileges that could be determined at the hearing, not less than ten days before the hearing requested. Notice may be given to any officer, agent, employee, legal representative, or attorney of any person. Notice of any hearing may be waived by any person.

§111.13. Refund of Fees. When a dealer's general distinguishing number and license plates are cancelled no refund of the fees will be made.

§111.14. Manufacturers License Plates.

(a) Manufacturers that distribute, manufacture, or assemble new vehicles may apply for and secure manufacturers license plates for display on unregistered vehicles.

(b) Manufacturers license plates must be used exclusively for the purpose of testing such vehicles or loaning a vehicle to a consumer in accordance with Texas Motor Vehicle Commission Code, Texas Civil Statutes, Article 4413 (36), §6.07, and may not be used in conjunction with other business activities such as displayed on a vehicle operated by a representative of the manufacturer who uses the vehicle to contact dealers.

§111.15. Record of Sales and Inventory.

(a) Purchase and sales records. A dealer must keep a complete record of all vehicle purchases and sales for a minimum period of 13 months, and such record must be available for inspection by a representative of the department at the dealer's location.

(b) Content of records. As used in this subsection, a complete record of vehicle purchases and sales shall include the:

- (1) date of purchase;
- (2) date of sale;
- (3) vehicle identification number;
- (4) name and address of person selling to the dealer;
- (5) name and address of person purchasing from the dealer;
- (6) name and address of selling dealer if vehicles offered for sale by consignment;
- (7) except in a purchase or sale by a wholesale dealer, number and filing date of the Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax, Form 31; and
- (8) copies of any and all documents, forms, and agreements applicable to a particular sale, including, but not limited to title applications, work-up sheets, Manufacturer's Certificates of Origin, factory invoices, sales contracts, retail installment agreements, buyer's orders, bills of sale, waivers, or other agreements between the seller and purchaser.

(c) Title assignments. All certificates of title, manufacturer's certificates, or

other evidence of ownership for vehicles offered for sale or which have been acquired by a dealer must be properly assigned into the dealer's name. A dealer must provide assigned ownership documents in favor of the purchaser when the vehicle is sold or furnish the purchaser with the receipt for application for certificate of the title issued by the county tax assessor-collector within 20 working days of the date of sale.

(d) Notification to the department. Notification of vehicle sales, as required by the Transportation Code, §§503.005, et seq (formerly Texas Civil Statutes, Article 6086, §d), shall be an application for certificate of title in the name of the retail purchaser filed with the appropriate county tax assessor-collector. When a sales transaction involves a full cash payment, or the vehicle is to be transferred out of state, or the documents will be filed by the lienholder, the dealer may, in lieu of filing the application for certificate of title for the purchaser, deliver the properly assigned evidence of ownership to the purchaser. In such instance, a photocopy of such evidence, including all assignments, shall be documented on a form prescribed by the director, and maintained on file at the dealer's business location.

(e) Consignment sales. A dealer offering a vehicle for sale by consignment shall have a written consignment agreement for the vehicle or a power of attorney covering the vehicle and shall maintain a record of each such vehicle by vehicle identification number and owner of each such vehicle handled on consignment for a minimum of 13 months.

§111.16. Change of Dealer's Status.

(a) Dealer name change. A dealer's name change shall require a new bond or a rider to the existing bond reflecting the new dealer name. The dealer may retain the same general distinguishing number.

(b) Change of ownership. A dealer shall notify the department in writing within ten days if there is any change of ownership. Upon notification of a change of the majority ownership interest, the department shall cancel the existing dealer's license and the new owner must qualify for a new general distinguishing number.

(c) Change of operating status of a dealer location. A dealer shall notify the department in writing within ten days of the opening, closing, or relocation of any dealer location. Each new location must meet the statutory requirements and requirements as specified in the sections of this chapter.

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 July 31, 1995

TRD-9509497

Brett Bray
Director, Motor Vehicle
Division
Texas Motor Vehicle
Commission

Proposed date of adoption: September 7, 1995

For further information, please call: (512) 463-8630

TITLE 22. EXAMINING BOARDS

Part IV. Texas Cosmetology Commission

Chapter 89. General Rules and Regulations

• 22 TAC §89.5, §89.73

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

The Texas Cosmetology Commission proposes the repeal of §89.5, concerning specialty instructor on duty; and §89.73, concerning fashion photography salon requirements. The repeals are proposed to comply with Senate Bill 1502, 74th Texas Legislature, Regular Session.

Dick Strader, Executive Director, Texas Cosmetology Commission, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Strader also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to ensure that all certificate holders and licensees comply with the requirements of the rules of the commission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Dick Strader, Texas Cosmetology Commission, P.O. Box 26700, Austin, Texas 78755-0700.

The repeals are proposed under Texas Civil Statutes, Article 8451a, §4(a), which provide the Texas Cosmetology Commission with the authority to "issue rules consistent with this Act after a public hearing", to protect the public's health and welfare.

Article 8451a, is affected by these proposed repeals.

§89.5. Specialty Instructor on Duty.

§89.73. Fashion Photography Salon Requirements.

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 July 28, 1995.

TRD-9509429

Dick G Strader
Executive Director
Texas Cosmetology
Commission

Proposed date of adoption: September 9, 1995

For further information, please call: (512) 454-4674

TITLE 25. HEALTH SER- VICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 408. Standards and Quality Assurance

Subchapter B. Mental Health Community Services Stan- dards

• 25 TAC §§408.21-408.25

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new Chapter 408, Subchapter B, concerning mental health community services standards. The 1995 Mental Health Community Services Standards are the latest product of an ongoing process to ensure that consumers of mental health services in Texas receive high quality services and that outcomes are used to evaluate services. The standards are used to determine whether community-based services purchased by TDMHMR are being delivered as required under contract. Existing standards, currently adopted by reference in Chapter 408, Subchapter A of this title, will be proposed for repeal in a subsequent issue of the *Texas Register*.

Outcomes were first incorporated into the standards regulating mental health community services in 1991. Central office and community center staff, consumers, advocates, and family members participated in the process. The commissioner appointed members of this group to serve on the Quality Services Council (QSC), which has functioned as a clearinghouse for issues related to the standards. The QSC began work on the proposed standards in 1994. Their charge was to ensure that the standards reflected TDMHMR's movement toward a managed care model of service delivery and continued emphasis on outcome measurement.

The primary changes in the standards are shorter timeframes for the completion of clinical activities and increased accountability to TDMHMR, consumers, family and communities for the quality of services provided. Examples of required activities with shortened timeframes are assessments (from 30 to 14

days) and plan reviews (from six to three months). With regard to increased accountability, local authorities are required to conduct self-assessments and forward the results to TDMHMR. Each local authority's provider network will be involved in the process and closely monitored. Local authorities and all providers must provide outcome data to TDMHMR using standardized mechanisms.

The proposal of the revised standards occurs at the same time that the contract for services as well as Medicaid and other community-based service arrays are being reconceptualized to reflect an emphasis on managed care concepts of acute and long-term care in areas of assessment, treatment, training, and support. The new approach is intended to coincide with the new fiscal year and biennium.

Don Green, chief financial officer, has determined that for the first five years the new sections are in effect, there are no significant fiscal implications to state or local government or small businesses as a result of administering the sections as proposed. Although implementing the standards as proposed will require a shift in staff time from administrative to clinical functions, the mental health authorities should be able to make these changes within the current range in staffing. There is no anticipated local economic impact.

Sue Dillard, director, Standards and Quality Assurance, has determined that the public benefit is the way in which the standards promote the critical evaluation of the effects that mental health services have on people receiving services. Through this assessment, the department can better determine and further define best practices in care so that only effective and necessary services that clearly meet the mental health needs of individuals and the community are purchased with state dollars. There is no cost to persons required to comply with the subchapter as proposed.

A public hearing will be held on August 21, 1995, at 1.30 p.m., in the TDMHMR Central Office auditorium at 909 West 45th Street, Austin. Persons requiring an interpreter for the hearing impaired should notify Laura Thomas, Office of Policy Development, within 24 hours prior to the hearing.

Written comments on the proposal may be submitted to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The new sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers, and §534.052, which gives the board rulemaking authority for community-based mental health and mental retardation services provided by community centers and other contract providers.

The proposal affects the Health and Safety Code, §534.052.

§408.21. Purpose. The purpose of this subchapter is to define the requisite, organizational, and services standards for community-based mental health services funded by the Texas Department of Mental Health and Mental Retardation (TDMHMR).

Figure 1: 25 TAC §408.21

§408.22. Application. The provisions of this subchapter apply to all local authorities and providers of community-based mental health services receiving TDMHMR funds.

§408.23. Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Agent—An individual who is not an employee of the local authority or provider but who is working under the auspices of the local authority or provider, such as a consultant, volunteer, student, etc.

Department—The Texas Department of Mental Health and Mental Retardation.

Local authority—An entity to which the Texas Board of Mental Health and Mental Retardation delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to persons with mental illness in one or more local service areas.

Provider—

(A) Any organization or entity, associated by a contract in a working alliance with a local authority or the department to provide community-based services, including employees or agents; or

(B) that part of a local authority directly providing programs and services to persons with mental illness or mental retardation, including employees or agents of the programs or services.

§408.24. Responsibilities of Local Authority.

(a) Through its contract with the department, the local authority shall assure its compliance with the provisions of this subchapter.

(b) Through its contract with each provider, the local authority shall require compliance with the provisions of this subchapter.

(c) The provider shall comply with the applicable provisions of this subchapter.

§408.25. Distribution.

(a) This subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; executive, management, and program staff of Central Office; chairpersons of boards and chief executive officers (CEOs) of local authorities; and interested advocacy organizations.

(b) The CEO of the local authority shall be responsible for disseminating copies of this subchapter to:

(1) appropriate staff;

(2) providers;

(3) agents; and

(4) any person served, employee, or other person desiring a copy.

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 July 31, 1995

TRD-9509498

Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Earliest possible date of adoption: September 4, 1995

For further information, please call: (512) 206-4516

◆ ◆ ◆
**Part VI. Statewide Health
Coordinating Council**
**Chapter 571. Health Planning
and Resource Development**

The Statewide Health Coordinating Council (SHCC) proposes the repeal of §§571.1 and 571.41-571.51, and new §§571.1-571.7, concerning the Texas Statewide Health Coordinating Council and the State Health Plan. Specifically, the repealed sections cover the State Health Plan, introduction, purpose and functions, organization and structure, officers, meetings, committees, ad hoc advisory groups, conflict of interest, general considerations, amendments, and dissolution of the Statewide Health Coordinating Council. The new sections cover purpose, general provisions, officers, meetings, committees, the State Health Plan, and plan implementation.

The SHCC is a 15-member advisory council appointed by the governor which is charged with developing and revising the Texas State Health Plan. The new rules are being proposed to incorporate changes in federal and state law, including the repeal of the National Health Planning and Resources Development Act and amendments to the Texas Health and Safety Code, Chapter 104 enacted by the 73rd Texas Legislature. The new rules define the purpose and functions of the SHCC and establish procedures for the development and implementation of the State Health Plan.

Dora McDonald, chief, Bureau of State Health Data, Texas Department of Health, 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 McDonald 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 the establishment of procedures for public participation in the development of the state health plan. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No effect on local employment is anticipated.

Comments on the proposal may be submitted to Trish O'Day, Texas Department of Health, Bureau of State Health Data and Policy Analysis, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. Comments will be accepted for 30 days following the date of publication in the *Texas Register*.

State Health Plan

• 25 TAC §571.1

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

The repeal is proposed under the Health and Safety Code, §104.012, which requires the SHCC to adopt rules governing the development and implementation of the state health plan.

The repeal affects the Texas Health and Safety Code, Chapter 104.

§571.1. State Health Plan for Texas.

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 July 28, 1995.

TRD-9509474

Susan K Steeg
General Counsel
Statewide Health
Coordinating Council

Earliest possible date of adoption: September 4, 1995

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

• 25 TAC §§571.1-571.7

The new sections are proposed under the Health and Safety Code, §104.012, which requires the SHCC to adopt rules governing the development and implementation of the state health plan.

The new sections affect the Texas Health and Safety Code, Chapter 104.

§571.1. *Purpose.* The purpose of Statewide Health Coordinating Council (council) is to review and assess major statewide health concerns and the availability and use of the state's health resources, including higher education resources, for addressing these issues in order to provide direction for the state's legislative and executive policy making processes.

§571.2. General Provisions.

(a) Fiscal year. For all fiscal and administrative purposes, the reporting year of the Statewide Health Coordinating Council (council) shall be identical to that of the Texas Department of Health (department).

(b) Conflict of interest.

(1) Prior to taking his or her position on the council, each member shall submit in writing to the chair a list of all business or other organizations of which he or she is an officer, director, trustee, member, owner (either as a sole proprietor or partner), shareholder with a 5% or greater interest in all outstanding voting shares, employee, or agent, if said relationship might reasonably result in a conflict of interest involving issues considered by the council. The members' written statements will be resubmitted with any necessary changes each year. Each year the chair shall provide all members' written statements to council members.

(2) When any matter before the council raises the question of a conflict of interest, the affected member shall make known the potential conflict, whether previously disclosed by his or her written statement or not, and after answering any questions council members may have, shall withdraw from the discussion for so long as the matter remains under discussion, but may remain in the room. If the affected member fails to withdraw during the discussion and/or the vote on the matter, the chair may require that the member withdraw. If the conflict affects the chair, the vice chair may require that the chair withdraw from the meeting in the same manner.

§571.3. Officers.

(a) Selection and appointment. At its first annual meeting on or after September 1 of each year, the council shall elect a chair, unless the chair has been appointed by the governor, a first vice chair, a second vice chair, and a secretary from among its members. The chair shall appoint a parliamentarian from among the members.

(b) Duties. The chair shall preside at all meetings, and appoint such standing and ad hoc committees as are authorized by the council. The first vice chair and the second vice chair, in that order, shall assume the authority and duties of the chair

when the chair is absent. The parliamentarian shall advise the chair and the council on parliamentary procedure upon the request of the chair or any member of the council. The secretary shall authenticate the minutes of all council meetings and perform such other duties as may be assigned by the chair or the council.

(c) Elections. In addition to considering the slate submitted by the nominating committee, the chair shall also accept nominations from the floor. Officers so elected shall serve two-year terms, or until their successors are elected, and shall assume office immediately upon election, excluding partial terms.

(d) Vacancies. Vacancies in offices shall be filled by a majority vote of members present and voting at the next regularly scheduled meeting of the council. Officers so elected shall serve the unexpired term of their predecessor.

§571.4. Meetings.

(a) Parliamentary procedure. All council, committee, and advisory group meetings shall be conducted in accordance with parliamentary procedure as described in the most recent edition of Robert's Rules of Order.

(b) Minutes. Department staff shall prepare and transmit minutes of each council meeting to the members for review prior to the next meeting.

(c) Attendance. Department staff shall maintain a record of each member's attendance at council meetings. If any member fails to attend two consecutive regular meetings without authorization from the chair, a motion to notify the member officially of such absences shall be voted on by the council. If approved, a copy of the notification shall also be forwarded to the governor with a request for appropriate action.

(d) Quorum. A majority of the council shall be defined as more than one-half the voting members of the council. A majority of the council shall constitute a quorum for the transaction of business at any meeting.

(e) Voting. The council may act only by majority vote of its members present and voting, with each member entitled to one vote unless a conflict of interest has arisen. No member may vote by proxy for another member.

(f) Presiding officer. In the absence of the chair, first vice chair, and the second vice chair, a presiding officer shall be chosen by a majority of the council members present.

(g) Frequency of meetings. The council shall meet not less than two times

per year at times and places designated by the chair.

(h) Meetings of the council may be called by the chair and one other officer, or at the request of any eight members.

§571.5. Committees.

(a) Designation. The committees of the council shall be standing and ad hoc Committees shall be appointed from the membership by the chair with such powers and responsibilities as shall be delegated to them by the chair and as authorized by the council. A majority of the members of a committee shall constitute a quorum for the transaction of business. Each member shall be entitled to one vote. No member may vote by proxy for another member. A majority vote of members present at a meeting at which a quorum is present shall be required for approval of any action by the committee.

(b) Plan development committee. The plan development committee shall include all members who wish to serve, but no fewer than eight members who serve two-year terms. The committee shall provide guidance to the department during the development of the proposed state health plan.

(c) Legislative committee. The legislative committee is a committee of no fewer than seven members who shall serve two-year terms. The legislative committee shall make recommendations to the council regarding the following.

(1) state and federal legislation as it relates to health planning and health program implementation activities;

(2) the budgets of other state agencies and programs affecting state health plan implementation strategies;

(3) the adequacy and application of health and health-related appropriation requests; and

(4) the council's statutory statewide implementation responsibilities, including proposals for legislative or administrative action or rules required by the state health plan.

(d) Nominating committee. The chair shall appoint a nominating committee of five members prior to each meeting at which an election is scheduled. The nominating committee shall consist of five members. The nominating committee shall submit its nominations to the chair in time to allow the chair to provide the list of nominees to each member of the council. Each nominating committee shall dissolve itself upon completion of its purpose each year.

(e) Ad hoc advisory committees. With the authorization of the council, the chair may appoint ad hoc advisory groups to perform such tasks of limited scope or duration as may be appropriate.

§571.6. State Health Plan.

(a) Proposed state health plan. The department, in consultation with the Health and Human Services Commission and other state agencies, and in cooperation with the state health plan development committee, after conducting a systematic process for gathering local, regional and statewide perspectives, shall prepare a proposed state health plan every six years and a proposed revision of the plan at least biennially. The department shall submit the proposed state health plan to the council for review and approval

(b) Periodic issue papers. The council may direct the department to prepare periodic issue papers analyzing important issues within the scope of the Health and Safety Code, §104.022, for the purpose of informing other governmental entities and the public regarding health concerns facing the state and options for addressing them

(c) Recommendations. On the basis of periodic issue papers and other information gathered by the council, the council shall prepare recommendations that will be part of the state health plan.

(d) Public comment. The council shall give priority to soliciting public comment from throughout the state on the proposed plan and shall direct the department to prepare and make such revisions to the plan as it considers appropriate.

§571.7. Plan Implementation.

(a) The council shall develop and direct strategies for presentation of appropriate sections of the state health plan to the legislature.

(b) The legislative committee shall develop and submit to the council proposals and strategies for implementing the plan

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 July 28, 1995.

TRD-9509475 Susan K Steeg
General Counsel
Statewide Health
Coordinating Council

Earliest possible date of adoption: September 4, 1995

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

Procedures and Bylaws

• 25 TAC §§571.41-571.51

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

The repeals are proposed under the Health and Safety Code, §104.012, which requires the SHCC to adopt rules governing the development and implementation of the state health plan

The repeals affect the Texas Health and Safety Code, Chapter 104

§571.41. Introduction.

§571.42. Purpose and Functions

§571.43. Organization and Structure

§571.44. Officers.

§571.45. Meetings

§571.46. Committees.

§571.47 Ad Hoc Advisory Groups.

§571.48. Conflict of Interest.

§571.49. General Considerations

§571.50. Amendments to these Sections.

§571.51. Dissolution of the Council.

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 July 28, 1995.

TRD-9509473 Susan K Steeg
General Counsel
Statewide Health
Coordinating Council

Earliest possible date of adoption: September 4, 1995

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 294. Underground Water Management Area

Subchapter D. Ogallala Aquifer

• 30 TAC §§294.30-294.32

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §§294.30-294.32, concerning underground water management areas. These new sections are proposed in response to a landowner petition submitted on August 4, 1993, in accordance with Texas Water Code, §52.024 and will expand the boundaries of Subdivision Number 4 of the Underground Water Reservoir in the Ogallala Formation, South of the Canadian River.

Prior to 1989, predecessor agencies to the TNRCC designated underground water management areas by issuing agency orders. The Board of Water Engineers designated Subdivision Number 2 and Subdivision Number 4 of the Underground Water Reservoir in the Ogallala Formation, South of the Canadian River, in Orders dated March 20, 1951 and May 8, 1956. Subdivision Number 2 was delineated in a portion of the area lying in Martin County and Subdivision Number 4 was delineated in a portion of the area lying in Andrews, Cochran, Dawson, Gaines, Lynn, Terry, and Yoakum counties. The Water Code, §52.024(c) (§35.004(c) effective September 1, 1995) provides that the "Commission may alter the boundaries of designated management areas as required by future conditions and as justified by factual data." Pursuant to legislation passed in 1989, the Water Code, §52.024(e) (§35.004(d) effective September 1, 1995) further requires the Commission to use the procedures applicable to rulemaking for any designation of underground management areas. The proposed rule will expand the boundaries of Subdivision Number 4 to include all of the area lying in Andrews, Dawson, Gaines, Martin, Terry, and Yoakum counties; to include the portion of the area overlying the Ogallala aquifer in Borden, Ector, Howard, and Midland counties; and to eliminate the area previously delineated by Board Order in Cochran and Lynn counties. The proposed rule will effectively consolidate Subdivision Number 2, as designated by the Board of Water Engineers, into Subdivision Number 4. Upon issuance, the rule designating the new boundaries of Subdivision Number 4 will supersede the two Board Orders.

The Water Code, §52.024(a) (§35.004(a) effective September 1, 1995) provides that "To the extent feasible, the management area shall coincide with the boundaries of an underground water reservoir or a subdivision of an underground water reservoir. However, the commission also may consider other factors, including the boundaries of political sub-

divisions." The proposed rule is a combination of political subdivision and aquifer boundaries.

New §294.30 defines certain words and terms used within the subchapter.

New §294.31 designates Subdivision Number 4 of the Underground Water Reservoir in the Ogallala Formation, South of the Canadian River, as an underground water management area.

New §294.32 describes the boundaries of Subdivision Number 4 of the Underground Water Reservoir in the Ogallala Formation, South of the Canadian River.

Stephen Minick, Strategic Planning and Appropriations 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.

Mr Minick 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 improvement in the consistency of state regulations and statutory authority and the opportunity for more cost-effective and comprehensive management of limited groundwater resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

A public hearing on the proposal will be held on August 23, 1995, at 10:00 a.m. in the Mesa Underground Conservation District Building, 212 North Avenue G, Lamesa, Texas 79331. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

The rule and a map of the proposed boundaries are available for examination in several locations in the affected area, as well as in the Office of the Commission's Executive Director in Austin. For more information on the locations of the rule and map, please contact Steve Musick, Water Planning and Assessment Division, (512) 239-4514. Written comments on the proposal should mention Log Number 95128-294-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640.

Written comments must be received by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. For further information or questions concerning this proposal, please contact Steve Musick, Water Planning and Assessments Division, (512) 239-4514.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing

should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The new sections are proposed under the Texas Water Code (Vernon 1992), §5.103, which provides the TNRCC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state.

There are no other rules, codes, or statutes that will be affected by these new sections.

The new sections are proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission. Specifically, the Texas Water Code, §52.024 (§35.004 effective September 1, 1995) grants the commission the authority to designate underground water management areas.

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

Ogallala Aquifer—The groundwater reservoir which consists primarily of the Ogallala Formation located in the High Plains of the Texas Panhandle and extending north, west, and east into adjacent states. The boundary of the formation is mapped along the eastern High Plains escarpment and along the Canadian River Valley where the formation outcrop is in contact with the underlying formations of the Cretaceous, Triassic, or Permian age. The southern extent of the aquifer is placed at the estimated formation pinchout. The aquifer also includes any water that occurs in overlying younger sediments consisting of windblown sand and silt, alluvium, and playa lake deposits.

Underground Water Management Area—An area suitable for management of underground water resources.

§294.31. Designation of Subdivision Number 4 of the Underground Water Reservoir in the Ogallala Formation, South of the Canadian River. Subdivision Number 4 of the Underground Water Reservoir in the Ogallala Formation, South of the Canadian River, as identified in §294.32 of this title (relating to Description of Boundaries), is designated as an underground water management area. This designation supersedes two Orders of the Board of Water Engineers, dated March 20, 1951 and May 8, 1956, designating Subdivision Number 2 and Subdivision Number 4 of the Underground Water Reservoir in the Ogallala Formation, South of the Canadian River, as underground water management areas. The surface boundaries of Subdivision Number

4 are described generally as follows: the southern boundary follows the southern county line of Andrews County to the point of intersection with the southern extent of the Ogallala aquifer, follows the southern extent of the Ogallala aquifer through northern Ector and central Midland counties to the eastern Midland County line, and extends north to the Midland-Martin County line and east to the outcrop of the Ogallala Formation on the Howard-Glasscock County line; the eastern boundary generally follows the eastern outcrop of the Ogallala Formation through central Howard and western Borden counties; the northern boundary follows the northern county lines of Dawson, Terry, and Yoakum counties; and the western boundary follows the western county lines of Yoakum, Gaines, and Andrews counties. The area encompassed by Subdivision Number 4 includes all of the area in Andrews, Dawson, Gaines, Martin, Terry, and Yoakum counties, and all of the area overlying the Ogallala aquifer in Borden, Ector, Howard, and Midland counties.

§294.32. *Description of Boundaries.* The description of the boundaries of Subdivision Number 4 of the Underground Water Reservoir in the Ogallala Formation, South of the Canadian River, is as follows:

(1) Beginning at the southwest (SW) corner of Andrews County at the Texas-New Mexico state line, proceed east along the Andrews-Ector County line, to the point where the Andrews-Ector County line intersects the northwest (NW) corner of Section 4, Block 43, Township (TWP) 1-N of the T&P Railroad Company Survey in Ector County taken from the landowners maps produced by the Southwest Mapping Company (note: all remaining reference points are taken from Southwest Mapping Company landowner maps and are from the T&P RR Co. surveys unless otherwise noted);

(2) Thence southeast into Ector County, to the midpoint of the northern boundary of Section 22, Block 43, TWP 1-N;

(3) Thence southeast to the NW corner of Section 27, Block 43, TWP 1-N;

(4) Thence southeast to the midpoint of the western boundary of Section 25, Block 43, TWP 1-N;

(5) Thence southeast to the NW corner of Section 48, Block 42, TWP 1-N;

(6) Thence southeast to the midpoint of the southern boundary of Section 33, Block 42, TWP 1-N;

(7) Thence southeast to the NW corner of Section 9, Block 42, TWP 1-S;

(8) Thence southeast to the NW corner of Section 22, Block 42, TWP 1-S;

(9) Thence southeast to the NW corner of Section 35, Block 42, TWP 1-S;

(10) Thence south to the SW corner of Section 35, Block 42 TWP 1-S;

(11) Thence southeast to the southeast (SE) corner of Section 38, Block 42, TWP 1-S;

(12) Thence southeast to the SE corner of Section 48, Block 42, TWP 1-S;

(13) Thence southwest to the SW corner of Section 1, Block 42, TWP 2-S;

(14) Thence southwest to the northeast (NE) corner of Section 17, Block 42, TWP 2-S;

(15) Thence southwest to the NW corner of Section 19, Block 42, TWP 2-S;

(16) Thence south to the SW corner of Section 31, Block 42, TWP 2-S;

(17) Thence southeast to the midpoint of the southern boundary of Section 42, Block 42, TWP 2-S;

(18) Thence southwest to the SW corner of Section 6, Block 42, TWP 3-S;

(19) Thence east to the SE corner of Section 6, Block 42, TWP 3-S;

(20) Thence southeast to the midpoint of the southern boundary of Section 8, Block 42, TWP 3-S;

(21) Thence south to the midpoint of the southern boundary of Section 20, Block 42, TWP 3-S;

(22) Thence east to the point where the southern boundary of Section 19, Block 41, TWP 3-S, intersects the Ector-Midland County line;

(23) Thence northeast into Midland County, to the midpoint of the western boundary of Section 13, Block 41, TWP 3-S;

(24) Thence east to the SE corner of Section 10, Block 40, TWP 3-S;

(25) Thence northeast to the NE corner of Section 48, Block 39, TWP 3-S;

(26) Thence east to the NE corner of Section 14, Block 39, TWP 3-S;

(27) Thence northeast to the midpoint of the eastern boundary of Section 2, Block 39, TWP 3-S;

(28) Thence east to the midpoint of the eastern boundary of Section 5, Block 38, TWP 3-S;

(29) Thence north to the NE corner of Section 35, Block 38, TWP 2-S;

(30) Thence northeast to the midpoint of the eastern boundary of Section 27, Block 38, TWP 2-S;

(31) Thence southeast to the SE corner of Section 33, Block 38, TWP 2-S;

(32) Thence east to the SE corner of Section 31, Block 38, TWP 2-S;

(33) Thence southeast to the NE corner of Section 22, Block 37, TWP 3-S;

(34) Thence southeast to the midpoint of the eastern boundary of Section 24, Block 37, TWP 3-S;

(35) Thence southeast to the Midland-Glasscock County line where it intersects Section 30, Block 41, TWP 3-S;

(36) Thence north along the Midland-Glasscock County line to the junction of Midland, Glasscock and Martin counties;

(37) Thence east along the Glasscock-Howard County line to the point where it intersects the eastern boundary of Section 8, Block 33, TWP 2-S;

(38) Thence northwest into Howard County to the NE corner of Section 5, Block 33, TWP 2-S;

(39) Thence northeast to the midpoint of the northern boundary of Section 38, Block 33, TWP 1-S;

(40) Thence northwest to the midpoint of the southern boundary of Section 24, Block 33, TWP 1-S;

(41) Thence northeast to the SE corner of Section 13, Block 33, TWP 1-S;

(42) Thence northeast to the SE corner of Section 7, Block 32, TWP 1-S;

(43) Thence northeast to the SE corner of Section 3, Block 32, TWP 1-S;

(44) Thence east to the SE corner of Section 2, Block 31, TWP 1-S;

(45) Thence northeast to the NE corner of Section 42, Block 30, TWP 1-N;

(46) Thence northwest to the SE corner of Section 13, Block 31, TWP 1-N;

(47) Thence northwest to the SE corner of Section 9, Block 31, TWP 1-N;

(48) Thence northwest to the SW corner of Section 32, Block 31, TWP 2-N;

(49) Thence east to the SE corner of Section 42, Block 27 of the Houston and Texas Central Railroad Company survey (H&T RR Co.);

(50) Thence north to the SW corner of Section 27 of the H&T RR Co. survey;

(51) Thence west to the NW corner of Section 40, Block 27 of the H&T RR Co. survey;

(52) Thence north to the SW corner of Section 21, Block 27 of the H&T RR Co. survey;

(53) Thence east to the SE corner of Section 22, Block 27 of the H&T RR Co. survey;

(54) Thence north to the Howard-Borden County line where it intersects the eastern boundary of Section 15, Block 27 of the H&T RR Co. survey;

(55) Thence west along the Howard-Borden County line until it intersects the eastern boundary of Section 21, Block 33, TWP 3-N;

(56) Thence northwest to the Borden-Dawson County line where it inter-

sects the northern boundary of Section 20, Block 33, TWP 4-N;

(57) Thence north along the Borden-Dawson County line to the point where it intersects the northern boundary of Section 25, Block 1, TWP 6-N;

(58) Thence southeast to the SE corner of Section 44, Block 32 of the EL and RR Railroad Company survey (EL & RR Co.) for Borden County;

(59) Thence east to the SE corner of Section 48, Block 32 of the EL & RR Co. survey;

(60) Thence northeast to the NE corner of Section 43, Block 31, TWP 6-N;

(61) Thence north to the NE corner of Section 31, Block 31, TWP 6-N;

(62) Thence northwest to the NW corner of Section 19, Block 31, TWP 6-N;

(63) Thence northeast to the SE corner of Section 24, Block 10, EL & RR Co. survey;

(64) Thence north along the eastern boundary of Block 10, EL & RR Co. survey, to its intersection with the Borden-Lynn County line;

(65) Thence west to the junction of Terry, Lynn and Dawson counties;

(66) Thence north along the Terry-Lynn County line to the junction of Terry, Lynn, Hockley and Lubbock counties;

(67) Thence west along the Terry-Hockley County line, continuing west along the Yoakum-Cochran County line to the NW corner of Yoakum County at the Texas-New Mexico state line;

(68) Thence south along the Texas-New Mexico state line to the point of origin at the SW corner of Andrews County.

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 July 31, 1995.

TRD-9509489

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

Earliest possible date of adoption: September 4, 1995

For further information, please call: (512) 239-4640

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Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note. As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.)

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

The Commissioner of Insurance, at a public hearing under Docket Number 2163 scheduled for 1:30 p.m., September 7, 1995, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a petition filed by Blake Bailey to delete the "intra-family tort exclusion" contained in the Texas Homeowners Policy-Form B. The deletion was proposed in a petition filed on May 23, 1992. The portion of Mr. Bailey's petition seeking deletion of the intra-family tort exclusion in the Texas automobile insurance po-

lices will not be considered.

Homeowners coverage is currently subject to the following exclusion contained in Section II-Exclusions, 2(e): "Coverage C (Personal Liability) does not apply to bodily injury to you or an insured within the meaning of part a. or part b. of insured as defined." This exclusion precludes liability coverage for bodily injury for an insured or a family member of the same household. Mr. Bailey's petition proposes to delete the exclusion in its entirety, thus allowing an insured family member injured on the insured property to file a claim under the homeowners policy, including an injury caused by the actions of another insured family member.

Mr. Bailey's petition was filed with the Department of Insurance on May 23, 1992. The petition was abated pending a resolution of the Twyman vs. Twyman and Boyles vs. Kerr cases then pending before the Texas Supreme Court. The Texas Supreme Court rendered its decisions in Twyman vs. Twyman and Boyles vs. Kerr on May 5, 1995.

A copy of the petition is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147

(Please refer to Reference Number P-0795-19.)

Written comments to the proposed amendment should be submitted prior to the public hearing on September 7, 1995. The written comments should be directed to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-1C, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code

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 July 28, 1995.

TRD-9509424

Alicia M. Fecthel
General Counsel and Chief
Clerk
Texas Department of
Insurance

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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 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 43. Tuberculosis

Subchapter C. Eradication of Tuberculosis in Cervidae

• 4 TAC §§43.20-43.23

The Texas Animal Health Commission adopts amendments to Chapter 43, Tuberculosis, by adding a new subsection dealing with Cervidae, entitled C. Eradication of Tuberculosis in Cervidae, which includes §43.20, Definitions, §43.21, General Requirements, §43.22, Herd Status Plans for Cervidae, and §43.23, Requirements for Entry into Texas, with changes to the proposed text as published in the May 5, 1995, issue of the *Texas Register* (20 TexReg 3289).

Those changes include: adding two new definitions in §43.20 (Elisa Test, and Surveyed Herd); rewording §43.21(a)-(b); adding §43.21(c)(5) (Elisa Test); and adding §43.22(d) (Surveyed Herd).

The new sections are necessary to provide a Texas program for TB eradication in Cervidae. Included are: §43.20 provides new definitions; §43.21 offers general requirements in testing and classification procedures and provides guidelines for dealing with animals responding to tests including the issuance and release of quarantines; §43.22 outlines plans to establish cervidae herds as accredited, monitored, qualified, and surveyed; and §43.23 lists requirements for cervidae to meet when entering Texas.

Comments were received from: Gladys Porter Zoo, Tyler Exotic Dome, Rancho Pegaso, Dos Pesos Ranch, Horlock Land and Cattle, Texas Senate Natural Resources Committee, Committee on Agriculture and Livestock, Lone Star Branch of North American Deer Farmers Association, Dallas Zoo, The Tiemann Companies, and Exotic Wildlife Association. All were in opposition to adopting the interstate change of ownership testing listed under §43.21(a), General Requirements. In response to these comments, the Commission made modifications to the proposal that would: (1) eliminate the need for intrastate change of ownership testing if sufficient blood samples are submitted prior to September 1, 1996, to allow an epidemiologi-

cal evaluation of the presence of tuberculosis to be made; and (2) exempt surveyed herds from intrastate change of ownership testing, if implemented.

The new sections are adopted under the Texas Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the Commission with the authority to adopt rules and sets forth the duty of this commission to control disease.

The new sections implement the Texas Agriculture Code, §161.041, which authorizes the Commission to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, or domestic animals.

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

Accredited Herd—A herd that has passed at least three consecutive official tuberculosis tests of all eligible animals conducted at 10-14 month intervals, has no evidence of bovine tuberculosis, and meets the requirements of the UM&R.

Affected Herd—A herd that contains or has recently contained one or more animals infected with *Mycobacterium bovis* and has not passed the required tests for release from quarantine.

Approved Laboratory—A State/Federal Veterinary Diagnostic laboratory. The primary laboratory for tuberculosis histopathology and bacteriology culture shall be the National Veterinary Services Laboratory, Ames, Iowa. Food Safety Inspection Service, Field Service Laboratories, may be utilized for histopathology.

Blood Tuberculosis Test (BTB)—The BTB test is a supplemental test for bovine tuberculosis in Cervidae. The BTB test may be used, at no expense to the Commission, as a supplemental test to establish the disease status of a herd or to retest suspects. Samples for this test shall only be collected by State, Federal, or accredited veterinarians.

Cervidae—All species of deer, elk, and moose raised under agricultural conditions for the production of meat, the production of other agricultural products, sport, or exhibition.

Commission—The Texas Animal Health Commission

Comparative Cervical Tuberculin (CCT) Test—The intradermal injection of biologically balanced bovine PPD tuberculin and avian PPD tuberculin at separate sites in the mid-cervical area to determine the probable presence of bovine tuberculosis (*Mycobacterium bovis*) by comparing the response of the two tuberculin 72 hours (plus or minus six hours) following injection. This test may be used for retesting suspects and shall be administered only by an approved State or Federal veterinarian.

Designated Accredited Veterinarian—An accredited veterinarian trained and approved to conduct the Single Cervical Test for tuberculosis on Cervids.

Direct shipment to slaughter—The shipment of tuberculosis reactors and suspects and tuberculosis-exposed cervids from the premises of origin, by permit, directly to a slaughtering establishment operating under state or federal inspection, without diversion to assembly points of any type.

Elisa Test—The enzyme linked immunosorbant assay component of the BTB Test is recognized as a presumptive test for Bovine Tuberculosis in Cervidae. The Elisa test may be used to meet intrastate change of ownership test requirements, and for serological surveys of hunter/harvests in surveyed herds.

Herd—A group of cervids and other hoof stock maintained on common ground or two or more groups of cervids and other hoof stock under common ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status. (A group is construed to mean one or more animals).

Monitored Herd—A herd raised under range conditions on which identification records are maintained on animals over one year of age slaughtered and inspected for tuberculosis at an approved State/Federal slaughter facility or an approved laboratory. A monitored herd must identify these animals at slaughter, evenly distributed over a three-year period, at a rate to detect infection at a 2.0% prevalence level with 95% confidence. This rate would require a maximum number of 148 animals.

Negative animals—Cervids that show no response to a tuberculosis test and have been classified negative by the testing veterinarian based upon history, supplemental tests, examination of carcasses or laboratory results

No Gross Lesion (NGL) Animals—Cervids that do not reveal a lesion(s) of bovine tuberculosis upon necropsy.

Official Eartag—An identification eartag that provides unique identification for each individual animal by conforming to the alpha-numeric National Uniform Eartagging System.

Official Tuberculosis Test—A test for bovine tuberculosis applied and reported by approved personnel. The official tests for cervidae are the single cervical test, the comparative cervical test, and the blood tuberculosis test.

Permit—An official document issued by a representative of the Commission, USDA APHIS-VS, or an accredited veterinarian that is required to accompany reactor, suspect or exposed cervids to slaughter. The permit will list the reactor tag number or official eartag number in the case of suspect and exposed cervids; the owner's name and address; origin and destination; number of cervids included; and the purpose of the movement. If a change in destination becomes necessary, a new permit must be issued by authorized personnel. No diversion from the destination of the permit is allowed.

Qualified herd—A cervid herd that has undergone at least one complete official negative test of all eligible animals within the past 12 months and is not classified as an accredited herd, has no evidence of bovine tuberculosis, and meets the standards of the UM&R's.

Reactor—Any cervid that shows a response to an official tuberculosis test and is classified a reactor by the testing veterinarian.

Single Cervical Tuberculin Test (SCT)—The intradermal injection of 0.1 mL (5,000 tuberculin units) of USDA PPD Bovis tuberculin in the mid-cervical region with reading by visual observation and palpation in 72 hours (plus or minus six hours) following injection. This test shall be administered only by a State, Federal, or designated accredited veterinarian.

Surveyed Herd—A cervid herd in which harvest records are maintained on all animals over one year of age that are surveyed for evidence of bovine tuberculosis by routine post mortem inspection at an approved state/federal slaughter facility, or approved diagnostic laboratory, or by serologic surveys conducted on non-native cervidae in hunter/harvest operations.

Suspect—Any cervid that shows a response to the single cervical tuberculin test and is not classified a reactor, or is classified suspect by a supplemental tuberculosis test.

Tuberculin—A product that is approved by and produced under USDA license for the intradermal injection of cervids for the purpose of detecting bovine tuberculosis.

Tuberculosis—A disease in Cervidae caused by *Mycobacterium bovis* (*M. bovis*).

§43.21. General Requirements.

(a) Change of ownership requirements effective September 1, 1996, unless prior to that date sufficient information is obtained pursuant to §43.22(d)(1) to allow an epidemiological evaluation as to the necessity for change of ownership testing.

(1) Animal identification. All animals shall be individually identified by an official eartag or other approved identification device.

(2) Testing. All cervidae sold through auction markets shall be tested negative to a tuberculosis test within 90 days prior to sale, except:

(A) Animals originating from an accredited, qualified, monitored or surveyed herd.

(B) Animals consigned to an approved state/federal inspected slaughter facility.

(3) Record keeping requirements. Records documenting the sale of animals shall be maintained by the seller for a minimum period of five years.

(b) Reporting of Tests. All cervidae tested shall be individually identified by an official eartag at the time of an official test. A report of all tuberculosis tests—including the identification of each animal by eartag number, age, sex, and breed—and a record of the size of the response, where indicated, and test interpretation shall be submitted in accordance with the requirements of the cooperating State and Federal officials.

(c) Classification of Cervidae Tested.

(1) Single cervical tuberculin test.

(A) Herds of unknown status. All responses shall be recorded and the animals classified as suspects and quarantined for retest with the CCT or BTB, unless in the judgment of the testing veterinarian the reactor classification is indicated.

(B) Known infected herds. All responses shall be recorded and the animals classified as reactors.

(2) Comparative cervical test—All responses are to be measured to the nearest 0.5mm.

(A) Animals having a response to bovine PPD of less than 1mm should be classified negative.

(B) Animals having a response to bovine PPD from 1mm through 2mm, that is equal to or greater than the avian PPD response shall be classified as suspects.

(C) Animals having a response to bovine PPD greater than 2.0mm but equal to the avian response shall be classified as suspects, except when in the judgment of the testing veterinarian the reactor classification is indicated.

(D) Animals meeting the criteria for suspect classification on two successive CCT's shall be classified as reactors.

(E) Animals having a response to bovine PPD which is greater than 2.0mm and is 0.5mm greater than the avian PPD response shall be classified as reactors.

(3) Suspect cervids may be retested by either the CCT or the BTB. The CCT may be applied within ten days following the SCT injection or after 90 days. If the CCT is applied within ten days of the SCT, the opposite side of the neck shall be used. The sample for the BTB shall be taken 13-30 days after the SCT injection. Animals positive to the CCT or the BTB shall be classified as reactors.

(4) Suspects may be necropsied in lieu of retesting, and, if found without evidence of *M. bovis* infection by histopathology and culture (including selected NGL specimens submitted from animals having no gross lesions indicative of tuberculosis), shall be considered negative for tuberculosis.

(5) Elisa Test—Animals positive to the Elisa test shall be classified as suspects and quarantined for retest with an official TB test.

(d) Disposition of Tuberculin-Responding Cervidae.

(1) Reactors shall remain on the premises where they were disclosed until a State or Federal permit for movement has been obtained. Movement for immediate slaughter will be within 15 days of classification directly to a slaughter establishment where approved State or Federal inspection is maintained. Alternatively, the animals may be destroyed and necropsy conducted by or under the supervision of a State or

Federal regulatory veterinarian that has been trained in tuberculosis necropsy procedures.

(2) Herds containing suspects to the SCT shall be quarantined until the suspect animals are:

(A) Retested by the CCT within ten days of the SCT injection; or

(B) Retested by the CCT after 90 days; or

(C) Retested by the BTB test between 13 and 30 days after the SCT injection; or

(D) Shipped under permit directly to a slaughter facility under State or Federal inspection, or necropsied. If such animals are found without evidence of *M. bovis* infection by histopathology and culture (including selected NGL specimens submitted from animals having no gross lesions indicative of tuberculosis), they shall be considered negative for tuberculosis.

(3) Suspects to the comparative cervical test or equivocal to the BTB shall remain under quarantine until:

(A) Comparative cervical suspects are retested by the CCT after 90 days; or

(B) BTB equivocal are retested by the BTB test after 30 and before 60 days following the SCT injection; or

(C) Such animals are shipped under permit directly to a slaughter facility under State or Federal inspection, or necropsied. If such animals are found without evidence of *M. bovis* infection by histopathology and culture (including selected NGL specimens submitted from animals having no gross lesions indicative of tuberculosis), they shall be considered negative for tuberculosis.

(4) An animal meeting the suspect criteria on two successive CCT or BTB will be classified as a reactor and be identified as such. The testing veterinarian must justify exceptions in writing and have the concurrence of State or Federal animal health personnel.

(e) Identification of Reactors. Reactor cervids shall be identified by branding with the letter "T" on the left jaw, not less than two inches nor more than three inches high, and by tagging with an official eartag bearing a serial number and inscription "U.S. Reactor" attached to the left ear of each reactor animal.

(f) Quarantine procedures.

(1) All herds in which reactor animals are disclosed shall be quarantined. Exposed animals must remain on the premises where disclosed unless a State or Federal permit for movement to slaughter has been obtained. Movement for immediate slaughter must be directly to a slaughter establishment where approved State or Federal inspection is administered. Animals must be identified by official eartag. Use of "S" brand is required, or animals must be shipped in a official sealed vehicle. The "S" brand shall be applied to either the left jaw or the tailhead.

(2) Cervidae herds in which *M. bovis* is confirmed shall remain under quarantine if not depopulated, and must pass three consecutive official tuberculosis tests of all animals. The first test must be conducted 90 days or more after the last test yielding a positive animal, with two additional tests at 180-day minimum intervals. Five annual complete herd tests of all animals shall be given following the release from quarantine.

(3) Cervidae herds that have had a test of all eligible animals with NGL reactors only and no evidence of tuberculosis infection is found by histopathology and culture of *M. bovis* (including selected NGL specimens submitted from animals having no gross lesions indicative of tuberculosis), may be released without further restrictions.

(4) Cervidae herds in which compatible or suggestive lesions are found by histopathology without the isolation of *M. bovis*, may be released from quarantine following a negative 90-day petest of the entire herd, provided there is no known association with *M. bovis*.

(5) Cervidae herds that exhibit NGL reactors in which no evidence of tuberculosis infection is found by histopathology and culture of *M. bovis* and are unable to conduct a test of all eligible animals, shall be evaluated by the State and/or regional tuberculosis epidemiologist for possible release of quarantine.

(g) Procedures in Affected Herds. Disclosure of tuberculosis in any herd shall be followed by a complete epidemiological investigation. All cervids in herds from which tuberculosis animals originate, and all cervids that are known to have associated with affected cervids or other affected animals, shall be tested promptly. These procedures shall apply to adjacent and contact herds as well as to the evaluation and testing of possible source herds for the affected herd. Herds that have received exposed animals shall be tested following the slaughter or testing of the exposed animals. Every effort shall be made to ensure the

immediate elimination of the disease from all species of animals on the premises. The herd shall be handled as outlined under subsection (e), Quarantine Procedures.

(h) Retest Schedules for High-Risk Herds.

(1) In herds with a history of lesions compatible or suggestive for tuberculosis by histopathology, two complete annual herd tests shall be given after release from quarantine. Herds with a bacteriologic isolation of a *Mycobacteria* species other than *M. bovis* should be considered negative for bovine tuberculosis with no further testing requirements.

(2) In a newly assembled herd on premises where a tuberculosis herd has been depopulated, two annual herd tests shall be applied to all animals. The first test must be approximately six months after assembly of the new herd. If the premises are vacated for over one year, these requirements may be waived.

(3) Exposed animals previously sold from known infected herds shall be depopulated if possible, or tested with the SCT by State or Federal veterinarians. The BTB test may be used simultaneously with the SCT as an additional diagnostic test. All animals positive to either test shall be classified as reactors.

(A) If bovine tuberculosis is confirmed in the exposed animal(s), the remainder of the receiving herd shall be tested with the SCT by State or Federal veterinarians. The BTB test may be used, provided it is used simultaneously with a whole herd SCT. All animals positive to either test shall be classified as reactors.

(B) If negative to the test, the exposed animal(s) will subsequently be handled as if a part of the infected herd of origin for purposes of testing, quarantine release, and the five annual high-risk tests. Also, the remainder of the herd shall be retested in one year with the SCT. Supplemental diagnostic tests may be used if needed.

(4) Herds indicated as the source(s) of animals in slaughter traceback investigations shall be placed under quarantine within 30 days of notification to the area office, and a herd test scheduled. Testing of source herds of slaughter animals having lesions of tuberculosis shall be done by State or Federal regulatory veterinarians using the SCT.

(A) If the herd of origin is positively identified and *M. bovis* has been confirmed by bacterial isolation from the slaughter animal, all animals responding to the SCT shall be classified as reactors. In

all other cases, supplemental diagnostic tests may be used

(B) In herds identified as the source of culture negative lesioned animals, responding animals may be classified as reactors or suspects. If classified as suspects, they may be retested by supplemental diagnostic tests

(i) Cleaning and Disinfection of Premises, Conveyances, and Materials. All premises—including all structures, holding facilities, conveyances, and materials—that are determined by program officials to constitute a health hazard to humans or animals because of tuberculosis, shall be properly cleaned and disinfected. This shall be done within 15 days after the removal of tuberculosis-affected or exposed cervids in accordance with approved procedures. However, these officials may extend the time limit for disinfection to 30 days when a request for such extension is received prior to the expiration date of the original 15-day period allowed.

§43.22 Herd Status Plans for Cervidae

(a) Accredited Herd Plan

(1) Animals to be tested. Testing of herds for accreditation or reaccreditation shall include all Cervidae and all other hoof stock over six months of age and animals under six months of age that are not natural additions.

(2) Qualifying Standards. To meet the requirements for accredited herd status, the herd must pass at least three consecutive official tests for tuberculosis conducted at 10-14 month intervals with no evidence of bovine tuberculosis disclosed. Herds meeting these standards shall be issued a certificate by the Commission.

(3) Additions. Herd additions must originate directly from one of the following and have no exposure to cervids from herds of lower status:

(A) An Accredited Herd

(B) A Qualified or Monitored Herd. Provided, the individual animals for addition were negative to an official tuberculosis test conducted within 90 days prior to entry and isolated from members of the accredited herd until negative to an official tuberculosis test conducted at least 90 days following entry.

(C) A herd not meeting the requirements of subparagraph (A) or (B) in this section. Individual animals for addition must be isolated from all other members of the herd of origin, and pass two negative official tests for tuberculosis conducted at

least 90 days apart, with the second test conducted within 90 days prior to movement to the premises of the accredited herd. The additions must be kept in isolation from members of the accredited herd until negative to an official tuberculosis test conducted at least 90 days following the date of entry

(D) Animals added under this subparagraph and subparagraph (B) of this paragraph shall not receive accredited herd status for sale or movement purposes until they are negative on a retest 90 days after entry.

(4) Reaccreditation. To qualify for reaccreditation, the herd must pass a test within a period of 22-26 months of the anniversary date. The accreditation period will be 24 months (730 days) from the anniversary date (not 24 months from the date of the reaccreditation test)

(b) Monitored Herd Plan.

(1) Requirements. Identification records must be maintained on animals over one year of age slaughtered, inspected, and found negative for tuberculosis at an approved slaughter facility or at an approved diagnostic laboratory. A monitored herd must identify animals at slaughter at a rate to detect infection at a 2.0% prevalence level with 95% confidence evenly distributed over a three-year period. This rate would require a maximum of 148 animals.

(2) Maintenance of Monitored Herd Status. For monitored herd status to be renewed, an annual report shall be submitted by the person, firm, or corporation responsible for the management of the herd to the Commission prior to the anniversary date. This report shall give the number of animals currently in the herd and the number of animals over one year of age, identified and slaughtered at a State/Federal approved slaughter facility during the preceding year. The number of slaughter inspections reported in any given year must be at least 25% of the number required to initially qualify a herd of this size for monitored herd status, provided, however, that during each consecutive three-year period, 100% of the initial qualifying total shall be achieved.

(3) Additions. Herd additions must originate directly from one of the following:

(A) An Accredited Herd.

(B) A Qualified or Monitored Herd. Provided, the individual animals for addition were negative to a tuberculosis test conducted within 90 days prior to entry.

(C) A Herd not meeting the requirements of subparagraph (A) or (B) of this paragraph. Individual animals for addition must be isolated from other members of the herd of origin, and pass two negative official tests for tuberculosis, conducted at least 90 days apart, provided that the second test was conducted within 90 days prior to movement to the premises of the monitored herd. The additions must be kept in isolation from all members of the monitored herd until negative to an official tuberculosis test conducted at least 90 days following the date of entry. Animals added under this paragraph shall not receive monitored herd status for sale purposes until they are negative to a retest 90 days after entry.

(c) Qualified Herd Plan for Cervidae.

(1) Animals to be tested. Testing of herds for qualification shall include all cervidae over six months of age and any animals under six months of age that are not natural additions. All natural additions shall be individually identified by official eartag, and recorded on the test charts as members of the herd at the time of the herd test.

(2) Qualifying Standards. To meet the requirements for qualified herd status, the herd must pass one official test for tuberculosis with no evidence of bovine tuberculosis disclosed. The qualified herd status remains in effect for 12 months following the qualifying test.

(3) Additions. Herd additions must meet the criteria outlined in subsection (b)(3) of this section.

(4) Animals added under subsection (b)(3)(C) of this section shall not receive qualified herd status for sale or movement purposes until they are negative to a retest 90 days after entry

(d) Surveyed Herd.

(1) Requirements—Harvest records must be maintained on all animals over one year of age harvested and inspected or serologically surveyed without evidence of bovine tuberculosis:

(A) At an approved slaughter facility with state/federal meat inspection, and/or

(B) At an approved veterinary diagnostic laboratory and/or

(C) At an approved hunter/harvest operation with routine collection of blood samples on all animals harvested and submitted to an approved laboratory for screening with the Elisa component of the BTB test.

(2) A surveyed herd must identify animals at a rate to detect infection at a 2.0% prevalence level with 95% confidence. This rate would require an annual survey of a minimum of 1/3 of the total number of animals prescribed in appendix 1 for each specified herd size.

(3) Qualification and maintenance of surveyed herd status. An annual report shall be submitted by the person, firm, or corporation responsible for management of the herd to the Commission at the time of qualifying and prior to each anniversary date. The report shall include the estimated number of breeding age animals currently in the herd and the number of animals over one year of age surveyed during the preceding year.

§43.23. Requirements for Entry into Texas.

(a) Cervids that originate from Accredited-free herds may enter without further tuberculosis testing provided they are accompanied by a certificate stating such cervids originated from an Accredited-Free herd.

(b) Cervids not known to be affected with or exposed to tuberculosis that originate from Qualified herds may enter if they are accompanied by a certificate stating that such cervids originate from a qualified herd and have been classified negative to an official tuberculosis test, which was conducted within 90 days prior to the date of movement. If the qualifying herd test was administered within 90 days of movement, the animal(s) do not require an additional test.

(c) Cervids not known to be affected with or exposed to tuberculosis that originate from Monitored herds may enter if they are accompanied by a certificate stating that such cervids originate from a monitored herd and have been classified negative to an official tuberculosis test, which was conducted within 90 days prior to the date of movement.

(d) Cervids not known to be affected with or exposed to tuberculosis that originate from all other herds may enter if they are accompanied by a certificate stating that such cervids have been classified negative to two official tuberculosis tests, which were conducted no less than 90 days apart; that the second test was conducted within 90 days prior to the date of movement; and that the animals were isolated from all other members of the herd during the testing period.

(e) No animal with a response to any tuberculosis test is eligible for entry unless that animal is subsequently classified "negative for tuberculosis" based upon an official tuberculosis test, or is consigned directly to slaughter.

(f) Institutional members of the American Association of Zoological Parks and Aquariums (AAZPA) must comply with these requirements when movement is between or from member facilities.

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 July 27, 1995.

TRD-9509392

Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Effective date: August 31, 1995

Proposal publication date: May 5, 1995

For further information, please call: (512) 719-0714

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 231. Administration

Definitions

• 22 TAC §231.1

The Board of Vocational Nurse Examiners adopts an amendment to §231.1, relating to definitions of language, with changes to the proposed text as published in the June 30, 1995, issue of the *Texas Register* (20 TexReg 4672).

The rule is amended to remove the reference to deadline under Hardship, to delete the definition of Sponsorship as it is no longer required and to identify and define the national examination.

The change is in the definition National Council Licensure Examination for Practical Nurses (NCLEX-PN). There were two typographical errors. The first letter of "Nursing" should have been capitalized and the first letter of "used" should not have been capitalized.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(h), 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.

§231.1. Definitions. The following words and terms, when used throughout this manual, shall have the following meanings, unless the context clearly indicates otherwise.

Hardship—A circumstance which results in failure to meet board requirements for examination due to natural disaster, personal illness, injury, or medical emergency

of self or immediate family, death in immediate family or other extraordinary circumstances.

Sponsorship—Delete National Council Licensure Examination for Practical Nurses.

(NCLEX-PN)—The practical/vocational nurse licensure examination developed by the National Council of State Boards of Nursing, Inc., and used for licensure by those jurisdictions whose boards of nursing are National Council members.

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 July 31, 1995.

TRD-9509477

Marjorie A Bronk, RN
Executive Director
Board of Vocational Nurse
Examiners

Effective date: September 1, 1995

Proposal publication date: June 30, 1995

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

Chapter 233. Education

Definitions

• 22 TAC §233.1

The Board of Vocational Nurse Examiners adopts an amendment to §233.1, relating to Definitions of language, with changes to the proposed text as published in the June 30, 1995, issue of the *Texas Register* (20 TexReg 4673).

This rule is being adopted to address and clarify essential competencies.

The change is in the definition for Essential Competencies. The word "the" should be inserted prior to the publication title and the title of the publication addressed in this definition should be underlined.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(h), 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.

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

Entry-level Competencies—Describe the desirable behaviors exhibited by graduates of vocational nursing programs and are in accord with statutes governing nursing care and are based on the Essential Competencies.

Essential Competencies—The expected educational outcomes to be demonstrated by nursing students at the time of

graduation, as published in the Nursing Education Advisory Committee, Report Volume I: Essential Competencies of Texas Graduates of Education Programs in Nursing, March 1993, as amended.

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 July 31, 1995.

TRD-9509478 Marjorie A Bronk, R.N.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: September 1, 1995

Proposal publication date: June 30, 1995

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

Operation of a Vocational Nursing Program

• 22 TAC §233.12, §233.21

The Board of Vocational Nurse Examiners adopts amendments to §233.12, relating to Controlling Agency and §233.21, relating to Director, with changes to the proposed text as published in the June 30, 1995, issue of the *Texas Register* (20 TexReg 4673).

The amendment of §233.12 is proposed for consistency and to specify the two state education agencies that are involved with credentialing director/faculty. The amendment of §233.21 reflects the January 1995 change in agency procedure requiring program directors to issue temporary permits to eligible graduates of Texas VN programs.

The changes occur in §233.12(3): The word "nurse" should appear after registered and before director and the word "will" should appear between who and meet, and §233.21(6)(C) and (9). Section 233.21(6)(c) should have the word "educational" inserted between equivalent and credentials and the word "Text" should be changed to "Test", and in paragraph (9) the word "agency" should read "agent".

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4528c, §5(h), 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.

§233.12. *Controlling Agency.* The controlling agency shall:

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

(3) Select and appoint a qualified registered nurse director for the program who will meet the requirements of the board and appropriate state education accrediting agencies (Texas Education

Agency or Texas Higher Education Coordinating Board).

(4)-(7) (No change.)

§233.21. *Director.*

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

(c) Responsibilities-The director shall:

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

(5) distribute the Application for Licensure and Application for Examination forms to students.

(6) have sole responsibility for certifying on a Director Affidavit, provided by the Board, that each graduate who is an applicant for licensure by examination has:

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

(C) holds a high school diploma issued by an accredited secondary school or equivalent educational credentials as established by the General Education Development Equivalency Test (GED).

(D) (No change.)

(7)-(8) (No change.)

(9) as agent for the board, issues temporary permits to eligible graduates upon program completion.

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 July 31, 1995.

TRD-9509479 Marjorie A Bronk, R.N.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: September 1, 1995

Proposal publication date: June 30, 1995

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

Approval of Programs

• 22 TAC §233.42

The Board of Vocational Nurse Examiners adopts an amendment to §233.42, relating to Factors Jeopardizing School Approval, with-out changes to the proposed text as published in the June 30, 1995, issue of the *Texas Register* (20 TexReg 4673).

The rule is adopted as the term "writers" is obsolete since the paper and pencil examination was discontinued in April 1994 and the NCLEX-PN computer adaptive examination is now given.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(h), 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 July 31, 1995.

TRD-9509480 Marjorie A Bronk, R.N.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: September 1, 1995

Proposal publication date: June 30, 1995

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

Vocational Nursing Education Standards

• 22 TAC §233.58

The Board of Vocational Nurse Examiners adopts an amendment to §233.58, relating to Curriculum Requirements, with changes to the proposed text as published in the June 30, 1995, issue of the *Texas Register* (20 TexReg 4674).

The amendment is made to encompass the essential competencies.

The changes in the text are contained in subsection (b) and are typographical errors. The word educational should be education and objective should be objectives.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(h), 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.

§233.58. *Curriculum Requirements.*

(a) (No change.)

(b) Framework. The philosophy shall be the basis for curriculum development and shall reflect the purpose of the organization, faculty beliefs, and educational concepts. Terminal learning objectives derived from the philosophy shall be representative of the Essential Competencies for preparation of a vocational nurse graduate. Level and course objectives shall be stated in behavioral terms and shall serve as the mechanism for student progression. The conceptual framework shall define the internal and external influences impacting vocational nursing education and shall identify the education method and focus.

(c) Design and Implementation. The curriculum shall be designed and im-

plemented to prepare students to demonstrate the Essential Competencies. The curriculum design shall allow for flexibility to incorporate current nursing education theories and the implications of current developments in health care and health care delivery to assist graduates in meeting professional, legal, and societal expectations. Educational mobility shall also be a consideration in curriculum design.

(d)-(i) (No change.)

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 July 31, 1995.

TRD-9509481 Marjorie A Bronk, R.N.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: September 1, 1995

Proposal publication date: June 30, 1995

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

Chapter 235. Licensing

Application for Licensure

- 22 TAC §§235.3, 235.6, 235.8, 235.9, 235.14, 235.15, 235.17, 235.18

The Board of Vocational Nurse Examiners adopts the amendments to §§235.3, 235.6, 235.8, 235.9, 235.14, 235.15, 235.17, and 235.18, relating to application for licensure. Section 235.8 and §235.17 are adopted with changes to the proposed text as published in the June 30, 1995, issue of the *Texas Register* (20 TexReg 4675). Sections 235.3, 235.6, 235.9, 235.14, 235.15, and 235.18 are adopted without changes and will not be republished.

Section 235.3 is adopted to reflect the 1995 change in statutory requirement for high school diploma or GED to apply for the examination. Section 235.6 is amended for consistency with §235.17(d)(1)(D). Section 235.8 is amended to clarify the name of the U.S. Army program. Section 235.9 is amended because with implementation of the computer adaptive examination, applications and fees are not required to be submitted for any specified length of time prior to examination date. Section 235.14 is amended so that the one year rule applies to all applicants. Section 235.15 is amended to accurately reflect curriculum components needed to apply for licensure by examination in Texas. Section 235.17 is amended to resequence and to reflect 1995 legislative change in statute. Section 235.18 is amended to remove the requirement of submitting application at least 30 days prior to examination.

The title of §235.8 should read Military Programs Acceptable for Licensure by Examination. Section 235.17 should reflect a change in subsection (c)(1)(D) to read active and current instead of active/current.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4528c, §5(h), 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.

§235.8. *Military Programs Acceptable for Licensure by Examination.* The U.S. Army Practical Nurse Course (formerly the 91C Clinical Specialist Course is the only military program acceptable for licensure by examination.

§235.17. *Temporary Permits.*

(a) Graduates of approved vocational nursing programs in this state, another state, or the District of Columbia.

(1) A permit will be issued for the first scheduled examination only.

(2) A permit will not be issued to an applicant who has previously failed an examination administered by the Board or by another state.

(3) The temporary permit will expire on the applicant's receipt of a license or on receipt of notification of examination failure.

(4) (No change.)

(b) Professional Nursing Education Applicants.

(1) (No change.)

(2) Temporary permits will expire on the applicant's receipt of a license or on receipt of notification of examination failure.

(c) Endorsement applicants.

(1) Temporary permits shall be issued to endorsement applicants who:

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

(D) hold active and current licenses to practice vocational/practical nursing in another state; and

(E) (No change.)

(2) (No change.)

(d) Restrictions on Temporary Permits.

(1) Holders of temporary permits must practice under the direct supervision of a registered nurse, licensed vocational nurse, or a licensed physician.

(2) Temporary permits will not be issued to any examination or endorsement applicant under investigation.

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 July 31, 1995.

TRD-9509482 Marjorie A Bronk, R.N.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: September 1, 1995

Proposal publication date: June 30, 1995

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

Examination

- 22 TAC §235.31, §235.32

The Board of Vocational Nurse Examiners adopts an amendment to §235.31, relating to the examination and new §235.32, relating to notification of exam results, without changes to the proposed text as published in the June 30, 1995, issue of the *Texas Register* (20 TexReg 4676).

The amendment of §235.31 reflects changes in the examination process since the advent of computerized adaptive testing. New §235.32 is proposed to reflect 1995 legislative change in statutory requirement.

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

The amendment and new rule are adopted under Texas Civil Statutes, Article 4528c, §5(h), 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 July 31, 1995.

TRD-9509483 Marjorie A. Bronk, R.N.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: September 1, 1995

Proposal publication date: June 30, 1995

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

Issuance of Licenses

- 22 TAC §235.41, §235.51

The Board of Vocational Nurse Examiners adopts an amendment to §235.41, relative to issuance of certificate of licensure and new §235.51, relative to traveling nurses, without changes to the proposed text as published in the June 30, 1995, issue of the *Texas Register* (20 TexReg 4676.)

The amendment of §235.41 is due to the licensure examination results are now reported as pass/fail only and no longer re-

ported in numerical scores. New §235.51 is proposed to reflect 1995 legislative changes in the statute.

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

The amendment and new rule are adopted under Texas Civil Statutes, Article 4528c, §5(h), 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 July 31, 1995.

TRD-9509484 Marjorie A Bronk, RN
Executive Director
Board of Vocational Nurse Examiners

Effective date: September 1, 1995

Proposal publication date: June 30, 1995

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

Part XXVIII. Executive Council of Physical Therapy and Occupational Therapy Examiners

Chapter 651. Fees

• 22 TAC §651.1

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts the repeal of §651.1, concerning Occupational Therapy Board Fees, without changes to the proposed text as published in the May 26, 1995, issue of the *Texas Register* (20 TexReg 3885). The section will be replaced by one which clarifies fees for services provided by the Texas Board of Occupational Therapy Examiners.

The repeal is being adopted to allow the council to clarify fees for services provided by the Texas Board of Occupational Therapy Examiners.

The repeal allows the council to establish the exact schedule for fees to be paid by applicants and licensees.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4512e-1, which provide the Executive Council of Physical Therapy and Occupational 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 July 28, 1995.

TRD-9509460 John P. Malline
Executive Director
Executive Council of
Physical Therapy and
Occupational Therapy
Examiners

Effective date: August 18, 1995

Proposal publication date: May 26, 1995

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

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts new §651.1, concerning Occupational Therapy Board Fees, with changes to the proposed text as published in the May 26, 1995, issue of the *Texas Register* (20 TexReg 3885). The change clarifies the length of time the license renewal fees cover.

The new section is being adopted to clarify fees for services provided by the Texas Board of Occupational Therapy Examiners.

The new section establishes the exact fee schedule for applicants and licensees to follow.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4512e-1, which provide the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§651.1. Occupational Therapy Board Fees.

(a) Application Fees:

(1) Provisional:

(A) OTR-\$15;

(B) COTA-\$15.

(2) Temporary or Regular:

(A) OT or OTR-\$10;

(B) OTA or COTA-\$10.

(b) License Fees:

(1) Temporary or Regular, Pro-rated Cost Per Month:

(A) OT or OTR-\$9.00;

(B) OTA or COTA-\$7.00.

(2) Provisional:

(A) OTR-\$27;

(B) COTA-\$21.

Status: (3) Active to Inactive/Retiree

(A) OTR-\$25;

(B) COTA-\$25.

Status: (4) Inactive/Retiree to Active

(A) OTR-\$50;

(B) COTA-\$25;

(c) License Renewal Fees Per Year (on-time):

(1) Regular License:

(A) OTR-\$100;

(B) COTA-\$75.

(2) Inactive/Retiree:

(A) OTR-\$0;

(B) COTA-\$0.

(d) License Renewal Fees (late):

(1) Regular License:

(A) Late 90 days or less-Regular fee plus late fee which is equal to one-half of the certification examination fee;

(B) Late more than 90 days but less than one year-Regular fee plus late fee which is equal to the certification examination fee.

(2) Inactive/Retiree Renewal Fees, OTR or COTA (late):

(A) Late 90 days or less-\$12;

(B) Late more than 90 days but less than one year-\$25.

(e) Registration Fees-Facilities:

(1) Registration of First Facility-\$300;

(2) Registration of Each Additional Facility-\$100.

(f) Renewal Fees-Facilities (on-time):

(1) Renewal of Registration of First Facility-\$300;

(2) Renewal of Registration of Each Additional Site-\$100.

- (g) Restoration Fees—First Facility:
- (1) Late 90 days or less—\$150;
 - (2) Late more than 90 days but less than one year—\$300;
 - (3) Late one year or more—\$600

(h) Restoration Fees—Each Additional Site:

- (1) Late 90 days or less—\$50,
- (2) Late more than 90 days but less than one year—\$100,
- (3) Late one year or more—\$200.

(i) Administrative Fees:

- (1) Verification of Licensure—\$40;
- (2) Duplicate/Replacement License—\$25,
- (3) Duplicate Renewal Certificate/Wallet Card—\$25;
- (4) Duplicate of Facility Registration Certificate—\$25

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 July 28, 1995.

TRD-9509459

John P. Maline
Executive Director
Executive Council of
Physical Therapy and
Occupational Therapy
Examiners

Effective date: August 18, 1995

Proposal publication date: May 26, 1995

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

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 403. Other Agencies and the Public

Subchapter C. Determination of Rates for Support, Maintenance, and Treatment

• 25 TAC §§403.71-403.77

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §§403.71-403.77, concerning determination of rates for support, maintenance, and treatment, without changes to the proposed text as published in the February 28, 1995, issue of the *Texas Register* (20 TexReg 1390). The adoption of new

§§403.71-403.79, concerning charges for support, maintenance, and treatment, is published contemporaneously in this issue of the *Texas Register*

The repeal allows for the adoption of new sections which clarify the department's rate determination policies and procedures

No comments were received regarding adoption of the repeals

The new sections are repealed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers. The proposal would affect the Texas Health and Safety Code, Chapters 533, 552, and 593

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 July 28, 1995.

TRD-9509445

Ann K. Utley
Chairman
Texas Mental Health and
Mental Retardation
Board

Effective date: August 18, 1995

Proposal publication date: February 28, 1995

For further information, please call: (512) 206-4516

• 25 TAC §§403.71-403.79

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§403.71-403.79, concerning charges for support, maintenance, and treatment, with changes to the proposed text as published in the February 28, 1995, issue of the *Texas Register* (20 TexReg 1390). The repeal of existing §§403.71-403.77, concerning determination of rates for support, maintenance, and treatment, is published contemporaneously in this issue of the *Texas Register*.

The title of the subchapter is changed to be consistent with other subchapters that address similar issues. The name of §403.72 is changed from Applicability to Application. The new sections contain clarifying language, current terminology, and additional statutory references. Language is modified to differentiate between a facility's current maximum rate (i.e., the actual cost of support, maintenance, and treatment (SMT)) and the fee charged to a client, a client's spouse or parent, or a responsible entity for the client's SMT. A definition for "current maximum rate" is added with the term being used throughout the subchapter in place of "maximum rate." Information for obtaining a list of the current maximum rates is also added. Language is added explaining that a guardian's personal finances/assets are not considered in determining a fee for a client's SMT. The title of §403.74 is modified to reflect new terminology. Language is added describing the information provided to clients and/or family members upon admission and the action taken by the department when a calculation of charges is incorrect.

Public comment was received from the Texas Alliance for the Mentally Ill (TEXAMI), Austin; Texas Mental Health Consumers, Austin; and three private citizens.

One commenter requested explicit language be included stating that a guardian's personal finances/assets are not considered in determining a fee for a client's SMT. The department responds by adding the language requested. The commenter also questioned the absence of an income chart for spouses and responsible entities of clients in mental retardation facilities and asked what factors would be considered in determining a fee. The department explains that family income is not a factor used in determining a fee for clients in a mental retardation facility (as it is for clients in mental health facilities). The factors that pertain to a spouse or responsible entity are included in §403.74(b)(3).

The same commenter disagreed with the department's practice of collecting a portion of the work earnings of a client in a mental retardation facility to pay for that client's SMT, even though it could be considered "normalization." The department responds that the practice of charging clients in mental retardation facilities for a very small portion of their SMT based upon their work earnings satisfies many initiatives, one of which is normalization.

One commenter felt that the fee for parents of minor children seemed fair, but expressed concern about additional expenses a family might incur due to the minor child's illness such as costs for therapy, travel, and additional child care. The department responds that the expenses related to an illness and child care costs are deductible items. The fee chart for parents is based on net taxable income and these additional costs have been deducted before the chart is used.

Two commenters expressed concern that the income chart used for adult clients was used only as a guide and that there was no certainty that the fees charged would be similar to the fees on the chart or that the facilities were even required to use the charts. The department responds that the fees on the chart are used as a guide to assess a fee based solely on income, but that income is only one factor in determining a fee. After a figure on the fee side of the chart is identified, then that figure may be altered when consideration is given to the other factors listed in §403.74(b)(3)(A)-(E), which are "the ownership of real and personal property; expected duration of the client's stay in the facility; insurance coverage; benefits from governmental and nongovernmental agencies and institutions; and exceptional financial hardship." The person's fee is determined by all of these factors and a weighing of debts and assets along with the needs of the family. Regarding the issue of whether facilities are required to use the chart, §403.72 states that the provisions of the subchapter apply to all department facilities.

A commenter questioned the meaning of "consideration" when the rules refer to the consideration of assets. The department responds that "considered" means balancing debt against assets. The commenter also questioned the absence of a description of

assets that are exempt from consideration and requested such a list be developed that would parallel the lists used by Medicaid and SSI. The department responds that federal Medicaid and SSI regulations provide lists of assets that are exempt from consideration in determining a person's *income eligibility* into those programs (Income is not a factor for eligibility for services provided by a department facility.) There is no state statute that includes such a list for the department's use, therefore, all assets of a person or family are considered when determining a fee for SMT.

The same commenter questioned the use of the phrase "maximum rate which is currently applicable to the particular facility and to the type of care provided" without a definition, warning, or posting of what that maximum rate may be. The department responds that upon admission, or shortly afterward, staff provide the client and/or family member with information regarding the facility's current maximum rate, information on the department's policy for determining a fee based upon an ability to pay, and property/financial/expenses statement forms. Language regarding this procedure is added the subchapter.

Two commenters requested clarification of the terms "sufficient property" and "able to pay" as it appeared in §403.74(b)(1): "Clients and their spouses or other responsible entity who possess sufficient property to reimburse the state for the cost of the client's SMT and who are able to pay the cost shall be charged the maximum rate." One of the commenters asked if that meant someone with \$10,000 accumulated over ten years of rigorous saving would be considered to have sufficient assets and would be able to pay \$10,000 for the first month of care, if \$10,000 is the maximum rate? The department responds that "sufficient property" is that which can be used to pay for a portion or all of the client's SMT, "able to pay" means the client or family has the financial resources. In response to the commenter's example, what a person is charged depends on the person's income and other factors. A person who is able to pay the facility's current maximum rate will be charge the facility's current maximum rate.

A commenter expressed concern that there was no maximum percentage by which a person's estate could be depleted and suggested that the department not take more than 10% of a person's assets for six months of treatment. The department responds that an established maximum percentage by which a person's estate can be depleted is not provided for in state statute. State statute requires persons to reimburse the State of Texas for the cost of their care if they are able.

The same commenter questioned the absence of a deadline for the facility to determine a fee for SMT. The department responds that upon admission, or shortly afterward, staff provide the client and/or family member with information regarding the facility's current maximum rate, information on the department's policy for determining a fee based upon an ability to pay, and property/financial/expenses statement forms. Reimbursement managers determine fees and

notify the client or family as soon as possible after receipt of the completed property/financial/expenses statement forms. Any delays in determining a fee would almost always be due to difficulty in obtaining the necessary financial information.

The commenter felt the appeal process was almost non-existent, believing a hearing officer could arbitrarily deplete a family's finances without the remedy of a client being able to appeal to a higher panel. The commenter also thought it was difficult to understand that, on appeal, the hearing officer could *raise* the fee. The commenter believed that this was intended to ensure that appeals are rarely sought. The department responds that an appeal allows for an independent party to hear the case, review the evidence, and make a decision. The hearing officer decides the case on its merits and nothing else. The decision to *reduce*, sustain, or increase the fee will depend upon the facts presented.

The same commenter expressed concern over the absence of a statute of limitations, believing the department had the authority to file a lien if the client or family inherits property two or even 20 years following receipt of services. The department responds that the general limitations statutes in the Texas Civil Practice and Remedies Code does not include the State of Texas. A 1957 court case (*State v Morris* 303 S.W.2d 802), however, limits the state's authority to reimbursement to the person's financial status at the time services are provided.

The commenter thought there should be a grace period of minimal charges until the client or family is notified of fees. The commenter also thought the department should provide guidance to families regarding allocation of resources for the long-term care that will likely be required. The department responds that upon admission, or shortly afterward, staff provide the client and/or family member with information regarding the facility's current maximum rate, information on the department's policy for determining a fee based upon an ability to pay, and property/financial/expenses statement forms. Reimbursement managers determine fees and notify the client or family as soon as possible after receipt of the completed property/financial/expenses statement forms. If reimbursement managers are informed of financial difficulties in paying for SMT, they will coordinate with the client or family to establish a workable payment plan. Regarding allocation of resources for long term care, future care is generally speculative.

The commenter indicated "several serious problems with the \$50,000 trust exemptions" and provided examples. The first and second examples were of trusts with very specific purposes: education and supplemental (non-support) care. The third example cited trust provisions under the Omnibus Reconciliation Act of 1993 (found in 42 United States Code, 1396p d(4)(A)) that were adopted in the context of Medicaid assistance. The fourth example described clients who may be treated unfairly because they would have all of their assets subject to reimbursement simply because they had never heard of the \$50,000

trust exemption. The department responds that the first and second examples are of trusts designated for specific purposes and that the department is bound by trust law and could only charge against trusts when authorized to do so. The third example refers to a "Miller Trust," which is recognized by the department. (Federal statute provided for this type of trust as a way to temporarily defer a person's income so that it would not cause the person to become ineligible for Medicaid when he/she moved into the community.) Regarding the fourth example, the \$50,000 trust exemption originated in the late 1970s through the efforts of parents of clients in mental retardation facilities so that money would be available for the needs of the child after the death of the parents. The provision later became applicable to clients in mental health facilities as well. Self-funded trusts, such as the fourth example, are strictly construed and generally disallowed when created for the purpose of qualifying for a benefit or evading a creditor.

One commenter was concerned that the hearing officer, who ruled on appeals, was employed by the department, believing this to be not only a conflict of interest, but self-serving. The commenter suggested having an administrative law judge decide the case instead. Another commenter supported this comment and was of the opinion that a hearing officer in the employ of the department was ineffective. The department responds that the hearing officer is an administrative law judge who rules on a variety of appeals. The hearing officer's only job is that of judge, weighing the oral testimony or the written appeal and making a ruling. Administrative law judges rule solely on the evidence and support their decisions with findings of fact and conclusions of law.

The commenter expressed concern that the phrase "the maximum rate which is currently applicable to the particular facility" created confusion as to what that rate might be or where those rates would be published. The commenter felt the rules indicated that each facility had the blanket autonomy to develop its own maximum rate arbitrarily. The department responds that "the maximum rate which is currently applicable to the particular facility" is determined pursuant to state statute (Texas Health and Safety Code, Chapter 593, Subchapter D and Chapter 552, Subchapter B), which states that the department may use the projected cost of providing inpatient/residential services to establish the maximum rate or use one or a combination of the following: a statewide per capita, an individual facility per capita; or the type of service provided. The department may not establish a rate that exceeds the actual cost of providing inpatient/residential services. Upon admission, or shortly afterward, staff provide the client and/or family member with information regarding the facility's current maximum rate, information on the department's policy for determining a fee based upon an ability to pay, and property/financial/expenses statement forms. Language regarding this procedure is added to the subchapter in response to the commenter's concern.

The same commenter was surprised that a new fee may be determined each time the

reimbursement manager receives information indicating a change in property ownership or income. The department responds that fees should reflect the client or family's current financial situation

The commenter questioned if there were two meanings for the term "rate," one for the real cost of providing services and another for the fee charged to the client or family. The commenter also suggested adopting an established fee schedule such as the one used in the department's *Charges for Community Services Operating Instruction*. The department responds that there are two meanings to the term "rate:" one is the "current maximum rate," which is the cost as established by law to reflect the actual cost of the service, and the other is the fee charged to a client or family. Language is modified to differentiate between the two meanings. With regard to an established fee schedule such as the one used in the department's *Charges for Community Services Operating Instruction*, the figures used in that fee schedule are based solely on income. The fees for clients in department facilities are based on income, property ownership, and all of the other factors listed in the rule.

The commenter expressed concern that a person who is involuntarily committed to a state facility is required to pay for SMT and compared the situation to that of a criminal being "involuntarily committed" to a prison and not being required to reimburse the state. The department responds that state hospitals provide *medical treatment* to persons determined by doctors and a court of law to be a danger to themselves or others. State statute authorizes charging for that treatment

The same commenter felt the proposed rules indicated "Big Brother" at work taking care of you by providing SMT, then going after all of your assets to exact payment from some responsible entity. The department responds that it is required to provide SMT to indigent persons within the priority population without charge and to seek reimbursement from non-indigent persons whenever they are able to pay, even if it is only a fraction of the actual cost. The department is cognizant of the population it serves, looking at the client's entire financial picture, and determining a fee based on all of the factors. Reimbursement is first sought from third party payors. A majority of the clients served are indigent; however, some are able to pay a portion of their SMT and a few are able to pay for their entire cost of care. The department must seek that reimbursement to comply with state laws.

Another commenter appreciated the clarification that a guardian's personal assets are not considered in the determination of a fee for SMT. The commenter mentioned that removing the \$170 cap from the chart used by parents of minor clients was an inadequate revision and, since the chart had not been revised for over 20 years, suggested revising it to begin at \$10,000 rather than \$4,000, to reflect current earnings and inflation. The department responds that removing the cap from the chart was a recommendation of the Senate Finance Committee. The department agrees that the fees have been in effect for over 20 years without an increase even

though the cost of care has risen substantially, but notes that the fees are based on "net taxable income" so families are given full advantage of deductions for expenses before the fee is determined.

The same commenter felt the fee chart for adult clients at mental health facilities seemed high for today's income relative to the cost of living. The commenter also stated that applying the chart to a family with a stay-at-home mother results in a greater charge than if the mother worked outside the home and asked if that was fair and reasonable. The department responds that the \$400 deduction for income-producing members of a family reflects the fact that there are costs associated with working (i.e. clothes, transportation). A family with a stay-at-home mother would not have outside child care costs. Also, a \$100 deduction is allowed for nonincome-producing members. The department supports this formula as fair and reasonable

The commenter questioned whether charging parents of minor clients in mental retardation facilities is in conflict with Public Law 94-142 (Education for All Handicapped Children's Act). The department responds that the charge is for minor clients' support, maintenance and treatment, not their education.

A commenter also suggested having a representative group, including advocates, develop rates and a standard process for reviewing rates. The commenter indicated that this would ensure community involvement and that rates for facilities and the care they provide would be uniform and published. The commenter suggested that the Texas Board for MHMR would approve the rates and would ultimately be responsible for changes. The department responds that the methods for establishing the maximum rates are defined by law and because the figures used in their calculations are budgeted, so the outcome would be the same regardless of who calculated them. Persons interested in knowing what a facility's current maximum rate is may contact the department's Reimbursement and Revenue Enhancement office for that information at: TXMHMR, RRE, P.O. Box 12668, Austin, Texas 78701-2668 or by calling (512) 323-3171. Regarding a standard process for reviewing rate, the standard process for reviewing or appealing a fee is contained in this subchapter. Publication of the proposal of this subchapter in the *Texas Register* and soliciting public comment ensures community involvement.

The same commenter agreed that a person's ability to pay should govern how much the person is charged, but the commenter believed a person's property should not be considered, only his/her liquid assets. The commenter also felt that a fee should be determined based strictly on the person's *current* ability to pay. The commenter suggested that financial status be reviewed annually for persons who require long-term hospitalization. The department responds that state statute (Texas Health and Safety Code, §552.013) mandates that a nonindigent person's property be considered as a source for reimbursement for the costs of the person's SMT. The department assures the

commenter that fees are determined based upon the person's current ability to pay, with "current" meaning "while the person is receiving services." Regarding annual review of financial status for persons who require long-term hospitalization, adjusting the fee as soon as possible when there is a financial change, rather than annually, is more responsive.

The commenter requested that the proposed rules be withdrawn and a workgroup formed to consider facility rates. The department responds that withdrawing the proposed rule is unnecessary because the responsibility for establishing current maximum rates for facilities lies with the department and is based upon methods set forth in state statute.

The new sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§403.71. Purpose. The purpose of this subchapter is to provide basic rules and procedures to be followed by the Reimbursement and Revenue Enhancement personnel of the department in determining fees charged to a client, a client's spouse or parent, or a responsible entity for the client's inpatient or residential support, maintenance, and treatment (SMT) in a department facility. Fees are based upon an ability to pay and are determined in accordance with the Texas Health and Safety Code, Chapter 552, Subchapter B and Chapter 593, Subchapter D and in a manner that is fair and equitable to the client and to the state.

§403.72. Application. The provisions of this subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation that provide campus-based inpatient or residential services.

§403.73. Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

Appellant—The person appealing a determined fee.

Client—Any person who is admitted to a facility of the department and who is provided support, maintenance, and treatment as an inpatient or resident (i.e., a person to whom a bed is assigned) by the facility including any person who is admitted to a facility of the department for the purpose of receiving a determination of mental retardation pursuant to the Texas Health and Safety Code, §593.005.

Current maximum rate—The cost, as established by law, to reflect the actual cost of support, maintenance, and treatment per client for each facility. (For a list of the current maximum rates contact the department's Reimbursement and Revenue Enhancement Office at: TDMHMR, RRE,

P.O. Box 12668, Austin, Texas 78701-2668 or by calling (512) 323-3171.

Department—The Texas Department of Mental Health and Mental Retardation.

Facility—Any state hospital, state school, state center, or other entity which is now or hereafter made a part of the department.

Hearing officer—The attorney assigned by the department's Hearings Office to conduct the hearing for an appeal of a determined fee.

Person responsible for payment—The client, the client's spouse/parent, or other person legally responsible for paying the costs of support, maintenance, and treatment for the client, either individually, in a representative capacity, or other legal capacity.

Reimbursement manager—The person in charge of the Reimbursement Office at a facility.

Responsible entity—A client's guardianship (not the guardian), estate, or trust.

SMT—Support, maintenance, and treatment

§403.74 Determination and Notification of Fees

(a) Assessment of fees for services charged to parents of minor clients.

(1) The following fee computation chart is used as a guideline in determining fees charged to parents of minor clients for SMT provided by department mental retardation and mental health facilities, as authorized by the Texas Health and Safety Code, §§552.017 and §593.075: Figure 1: TAC 403.74(a)(1).

(2) A judgment in a divorce proceeding that provides for child support payments does not limit the fee that may be set, nor does the judgment exempt either parent from liability for SMT charges of the client.

(3) Failure of a parent to provide current income information may result in a determined fee equal to the facility's current maximum rate.

(4) A guardian's personal finances/assets are not considered in determining a fee for a minor client.

(b) Assessment of fees for services charged to adult clients and spouses of clients or other responsible entities

(1) Clients and their spouses or other responsible entity who possess sufficient property to reimburse the state for the cost of the client's SMT and who are able to pay the cost shall be charged the facility's current maximum rate. Clients and their spouses or other responsible entities whose property is not sufficient to reimburse the state for the cost of the client's SMT and who are not able to pay the cost shall be charged less than the facility's current maximum

rate, based upon their ability to pay as determined in accordance with this section.

(2) The following provisions apply to the determination of a fee for the SMT of a client who is a beneficiary of a trust or trusts.

(A) In accordance with the Texas Health and Safety Code, §§552.018 and §593.081, no portion of the corpus or income of a trust or trusts, with an aggregate principal amount not to exceed \$50,000, of which a client is the beneficiary, is considered to be the property of the client or the client's estate, and no portion of the corpus or income of the trust(s) is liable for the SMT of the client, regardless of the client's age.

(B) A trust or trusts established prior to January 1, 1978, for a person with mental retardation and which otherwise meet the requirements of the law and this section is deemed entitled to the benefit of this section in the same manner as if the trust(s) had been established on or after January 1, 1978. A trust or trusts established for a person with mental illness and which otherwise meets the requirements of the law and this section is deemed entitled to the benefit of this section for charges for services provided on and after September 1, 1989.

(C) The ascertainment of income and principal with respect to any trust(s) subject to this section and the apportionment of the receipts and expenses of the trust(s) is, unless otherwise legally directed, governed by the Texas Trust Act, Texas Property Code, §111.001, et seq.

(D) If a client is a beneficiary of a trust or trusts with an aggregate principal amount which exceeds \$50,000, then only that portion of the corpus of the trust(s) which exceeds \$50,000, and the income attributable to such excess corpus, is liable for the SMT of the client.

(i) If a client is a beneficiary of two or more trusts with an aggregate principal amount which exceeds \$50,000, then that portion of the corpus of the trust or trusts established first in time which equals \$50,000, and the income attributable to such corpus, is exempt from liability for the SMT of the client.

(ii) If a client is a beneficiary of a trust or trusts with an aggregate amount which increases from an amount which is equal to or less than \$50,000, to an amount which exceeds \$50,000, then that portion of the corpus of the trust(s) which exceeds \$50,000, and the income attribut-

able to that excess portion of the corpus, is liable for the SMT of the client from the date on which the aggregate principal amount of the trust(s) exceeds \$50,000 and continues to be liable for the SMT provided until the aggregate principal amount of the trust(s) does not exceed \$50,000.

(E) In order to qualify for the exemption granted by the Texas Health and Safety Code, §§552.018 and §593.081, a trust must be created by a written instrument and a copy of the trust instrument must be provided to the department. A trustee of the trust must, upon request, provide the department with a current financial statement which reflects the value of the trust estate.

(F) The following are not entitled to the exemption granted by statutes:

(i) a guardianship established pursuant to the Texas Probate Code;

(ii) a trust established pursuant to Chapter 142, Texas Property Code;

(iii) the facility custodial account established pursuant to the Texas Health and Safety Code, Chapter 551;

(iv) the provisions of a divorce decree or other court order relating to child support obligations;

(v) an administration of a decedent's estate; or

(vi) an arrangement whereby funds are held in the registry or by the clerk of a court.

(G) The collection of charges assessed against any portion of the corpus or income of a trust or trusts liable for the SMT of a client may be deferred in the discretion of the department when the deferral of the collection is deemed to be in the best interest of the State of Texas.

(3) In addition to income as described in paragraph (4) of this subsection, other factors considered in determining a fee are:

(A) the ownership of real and personal property;

(B) expected duration of the client's stay in the facility;

(C) insurance coverage;

(D) benefits from governmental and nongovernmental agencies and institutions; and

(E) exceptional financial hardship.

(4) Income is considered in the determination of fees.

(A) The following fee computation chart is used as a guide in determining fees for the SMT provided to clients in department mental health facilities:
Figure 2: TAC 403.74(b)(4)(A).

(B) The following fee computation chart is used as a guide in determining fees for the SMT provided to clients in department mental retardation facilities who receive work earnings:
Figure 3: TAC 403.74(b)(4)(B).

(5) A guardian's personal finances/assets are not considered in determining a fee for an adult client.

(c) Absences from facility. The day of admission, death, or return from an absence is considered a full day at the facility. The day of discharge, transfer, or departure for an absence is considered a full day away from the facility. Except when payment is prohibited by law or contract, charges continue:

(1) for the entire period of an absence when the client remains under the care, custody, and control of facility personnel;

(2) for the entire period when the client is absent from the facility for admission to an inpatient medical facility and charges for the medical services are not paid by a third-party payor; and

(3) for the first three days of any other absence from the facility from which a return is planned.

(d) Revision of fees. A new fee may be determined each time the reimbursement manager receives information indicating a change in property ownership or income.

(e) Information upon admission. Upon admission, or shortly afterward, the reimbursement manager or designee provides the client, family member, and/or person responsible for payment with:

(1) information regarding the facility's current maximum rate;

(2) information on the department's policy for determining a fee based upon an ability to pay; and

(3) the appropriate property/financial/expenses forms, referred to in §403.77 of this title (relating to Exhibits) as Exhibit A.

(f) Notification of fee. After a fee has been determined, the person responsible for payment is notified in writing. The no-

tice includes:

(1) the name of the client receiving SMT from the facility;

(2) the fee determined to be charged per month;

(3) the source of funds upon which the determined fee was based;

(4) the effective date of the fee;

(5) a statement of the recipient's right to appeal if the recipient disagrees with the fee and information on how to initiate an appeal;

(6) instructions to notify the facility's reimbursement manager if property ownership or income changes; and

(7) information on possible payments from a third party payor.

§403.75. Appeal Process.

(a) If the person responsible for payment disagrees with the fee determined, then the person may appeal the fee.

(b) A person intending to appeal the determined fee notifies the reimbursement manager at the facility which is providing SMT to the client of his/her intent to appeal. The reimbursement manager immediately supplies the person with:

(1) a copy of this subchapter with the areas relevant to the appeal process indicated;

(2) property/financial/expenses statement forms, referred to in §403.77 of this title (relating to Exhibits) as Exhibit A; and

(3) a Notice of Appeal form, referred to in §403.77 of this title (relating to Exhibits) as Exhibit B.

(c) A person initiates the appeal by completing, signing, and sending the forms (referred to in subsection (b) of this section) to: Hearings Office, TDMHMR, Box 12668, Austin, Texas 78711-2668.

(d) The hearing officer will set a hearing date no less than ten calendar days nor more than 30 calendar days following receipt of the completed forms by the Hearings Office and notifies the person appealing (the appellant) by certified mail of the hearing date.

(e) Appellants may appear on their own behalf, be represented by an attorney authorized to practice law in the State of Texas, or waive their right to appear in person or be represented. Staff from the department's Reimbursement and Revenue Enhancement Division represent the department in an appeal.

(f) The appellant may choose to have the hearing officer:

(1) conduct the hearing in Austin, Texas, with the appellant (and/or representative) and the department representative(s) present;

(2) conduct the hearing by telephone conference with the appellant (and/or representative) and the department representative(s); or

(3) make a decision based solely upon evidence provided by the appellant and the department representative(s), without the presence of anyone involved.

(g) The hearing officer shall:

(1) make findings of fact and conclusions of law, separately stated, in writing;

(2) sustain, reduce, or increase the fee under appeal; and

(3) notify in writing the appellant and the department representative(s) of this decision and the facts upon which the decision was made within 30 calendar days of the hearing.

(h) The decision of the hearing officer is final and is the last step in the appeal process.

§403.76. Filing Notice of Lien.

(a) Whenever a staff member of the department's Reimbursement and Revenue Enhancement Division proposes to file a notice of lien pursuant to the Texas Health and Safety Code, §533.004, the staff member will, 30 calendar days prior to filing the written notice of the lien with the county clerk, notify by certified mail the person responsible for payment of the intention to file a lien. The notice contains:

(1) a copy of the unpaid charges along with the statutory procedures regarding the filing of liens;

(2) a copy of this subchapter with the areas relevant to the appeal process indicated;

(3) property/financial/expenses statement forms, referred to in §403.77 of this title (relating to Exhibits) as Exhibit A;

(4) a Notice of Appeal form, referred to in §403.77 of this title (relating to Exhibits) as Exhibit B; and

(5) a statement that the recipient has exhausted his/her appeal process, if appropriate (i.e., the recipient had previously been granted a hearing to appeal the determined fee for which he/she has unpaid charges).

(b) If the person whom a lien is to be filed against had previously been granted a hearing to appeal the fee for which he/she has unpaid charges, then the person has exhausted his/her appeal process and the

department may proceed to file the notice of lien after 30 calendar days of initial notice of intent to file a lien as described in subsection (a) of this section.

(c) If the person whom a lien is to be filed against has not requested a hearing to appeal the fee for which there are unpaid charges, then the person may follow the procedures outlined in §403.75 of this title (relating to Appeal Process) to appeal the determined fee.

(1) An appeal must be initiated within 20 calendar days of receipt of the notice of lien to stay the filing of the lien.

(2) If the decision of the hearing officer in the appeal sustains the determined fee, then the department may proceed to file the notice of lien anytime following 30 calendar days after initial notice of intent to file a lien as described in subsection (a) of this section.

(d) If the person whom a lien is to be filed against believes the department has calculated the unpaid charges in error, then the person notifies the department staff member whose name appears on the notice of intent to file a lien. The person must provide documentation supporting his/her claim of error to the department's Reimbursement and Revenue Enhancement Division.

(1) If personnel of the department's Reimbursement and Revenue Enhancement Division demonstrate that the calculations are correct, then the department may proceed to file the notice of lien after 30 calendar days of initial notice of intent to file a lien as described in subsection (a) of this section.

(2) If personnel of the department's Reimbursement and Revenue Enhancement Division find that the calculations are incorrect, then the department will correct the calculations and send to the person responsible for payment:

(A) a copy of the correct calculations; and

(B) a statement that the department has withdrawn its intent to file a lien based upon the incorrect calculations.

§403.77. *Exhibits.* The following exhibits are referenced in this subchapter:

- (1) Exhibit A—property/financial/expenses statement forms; and
- (2) Exhibit B—Notice of Appeal form.

§403.78. *References.* Reference is made to the following statutes:

(1) Texas Health and Safety Code, Chapter 552, Subchapter B and Chapter 593, Subchapter D;

(2) Texas Health and Safety Code, §593.005;

(3) Texas Health and Safety Code, §552.017 and §593.075;

(4) Texas Health and Safety Code, §552.018 and §593.081;

(5) Texas Trust Act, Texas Property Code, §111.001, et seq;

(6) Texas Probate Code;

(7) Texas Property Code, Chapter 142;

(8) Texas Health and Safety Code, Chapter 551; and

(9) Texas Health and Safety Code, §533.004.

§403.79. *Distribution.* This subchapter shall be distributed to:

(1) all members of the Texas Board of Mental Health and Mental Retardation;

(2) management and program staff of Central Office;

(3) superintendents and directors of all state facilities; and

(4) advocacy organizations;

(5) upon request, to any client, a client's parent/spouse, person responsible for payment, or any interested party.

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 July 28, 1995.

TRD-9509446

Ann K. Utley
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: August 18, 1995

Proposal publication date: February 28, 1995

For further information, please call: (512) 208-4516

Chapter 404. Protection of Clients and Staff

Subchapter B. Abuse, Neglect, and Exploitation of People Served by Providers of Local Authorities

• 25 TAC §§404.41-404.55

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new

§§404.41, 404.42, 404.44, 404.46, 404.47, 404.51, 404.53, and 404.54, without changes to the proposed text as published in the June 9, 1995, issue of the *Texas Register* (20 TexReg 4198). Sections 404.43, 404.45, 404.48-404.50, 404.52, and 404.55 are adopted with changes. The new sections outline the responsibilities of local mental health and mental retardation authorities relating to allegations of abuse, neglect, and exploitation involving persons served by employees and agents of direct and contract providers.

Section 404.43 is revised on adoption to include a definition of "guardian." Section 404.45(a)(3) is revised to require the chief executive officer to promptly notify the treatment team or interdisciplinary team of the person receiving services when the person has been involved in an allegation of abuse, neglect, or exploitation. Section 404.48(a) is revised on adoption to delete unnecessary language, add minor clarifying language, and redesignate subsections. Section 404.49(c) is revised on adoption to clarify that local authorities are not responsible for ensuring criminal prosecution of employees who fail to report abuse, neglect, or exploitation or who falsify information related to allegations, but are responsible for seeking prosecution in certain cases. Section 405.50(a)(2) is revised to clarify that only providers who lack online access to the client abuse database should send copies of Form AN-1-A to the Office of Consumer Services and Rights Protection. Section 404.52(b) is revised on adoption to reflect the fact that the department's Office of Consumer Services and Rights Protection gathers, develops, and interprets statistical data and trends in cooperation with other state investigatory agencies. Section 405.55 is revised to add advocacy organizations to the distribution list.

A public hearing was held on June 26, 1995, at the TDMHMR Central Office, Austin. No testimony was given. Written comments were received from Advocacy, Inc., Austin; Burke Center, Lufkin; New Avenues of Hope, Inc., El Paso; Tropical Texas Center for Mental Health and Mental Retardation, Edinburg; the Texas Council of Community Mental Health and Mental Retardation Centers, Inc., Austin; and Evelyn Cherry, Garland.

A commenter noted that although the subchapter itself includes guardians in relevant sections, language in the preamble to the proposal failed to mention guardians. The department responds that the failure to include guardians was an oversight.

A commenter questioned the need for TDMHMR to promulgate rules governing these matters, stating that investigating bodies have rules. The commenter suggested that the only action necessary by the department would be to promulgate a standard or rule requiring community centers to comply with investigating agencies' rules. The commenter reiterated this same concern with reference to the statement of public benefit in the preamble to the proposal. The department responds that the Texas Department of Protective and Regulatory Services (TDPRS), which is the principal investigatory agency for community-based programs under the purview of local authorities, is an investigatory

agency, not a regulatory agency; it is authorized to address the responsibilities of its own employees but cannot regulate action by other entities. The TDPRS guidelines, which are being promulgated as rules later this year, generally govern the processes involved in investigations. As stated in the preamble to the proposal of this subchapter, TDMHMR has additional important concerns when an allegation of abuse, neglect, or exploitation of a person receiving services is made. These concerns include such things as to ensure that to the extent possible, abuse, neglect, and exploitation are prevented; when abuse, neglect, or exploitation occurs, the client is given immediate and appropriate medical/psychological care and protection; staff can identify abuse, neglect, and exploitation and know how to report it when it occurs; the family of the alleged victim, with his or her consent or the consent of the guardian, are notified and involved as appropriate; staff cooperate with investigatory agencies; appropriate disciplinary action is taken; retaliatory action is not tolerated; mechanisms are developed and implemented to handle related allegations; and data is collected that enables an assessment of individual authority and system performance.

A commenter questioned how authorities can "ensure" that a specific course of action, such as reporting, be followed by agents if an event is concealed. The commenter questioned how authorities can be made to "ensure" that certain actions are taken by non-agents, e.g., ensuring that prosecution takes place. The commenter noted that the rule exposes authorities to potential civil and criminal action based on the acts (or failure to act) of agents. The department responds that the use of the term "ensure" is consistent with enabling legislation that provides for local authorities to be delegated certain roles and responsibilities previously assigned to the state only. The use of the term "ensure" means that the department requires a good faith effort on the part of local authorities to develop and maintain appropriate oversight mechanisms to promote compliance with this subchapter.

A commenter questioned if some of the requirements exceed the authority of local authorities and gave two examples: ensuring that the district attorney prosecute, and providing training to all employees of the sheriff's department. The department responds that the rule addresses criminal prosecution in two places that may be relevant to the commenter's concerns. In §404.43, it does not require the local authority to ensure prosecution, the rule requires that local authorities ensure that allegations of sexual exploitation by mental health services providers are reported to the district attorney consistent with law. In §404.49, language has been added to clearly state that the local authority is responsible for ensuring appropriate action is taken, including seeking criminal prosecution, not ensuring that criminal prosecution occurs. Providing training to staff of the sheriff's department who are regularly involved in dealing with people who receive mental health and mental retardation services facilitates the delivery of quality services and does not require the development of special curricula.

A commenter noted that the rule would require both TDPRS and the Texas Department of Human Services (TDHS) to do the same work for every allegation involving a resident of an Intermediate Care Facility for the Mentally Retarded (ICF-MR), and suggested that not only is this a duplication of effort, but that it causes providers to lose valuable time providing services. The department responds that the current memorandum of understanding (MOU) for investigating allegations of abuse, neglect, and exploitation in ICFs-MR, which was executed between TDMHMR and the Texas Department of Health several years ago, is currently being revised. The revised MOU, which is between TDMHMR, TDPRS, and TDHS outlines procedures that are intended to minimize duplicative investigations to the extent possible under federal and state laws. It is of note that the objectives of the investigations by TDPRS and TDHS are not duplicative: TDPRS is charged with investigating allegations with specific reference to individuals who have allegedly been victimized; TDHS is responsible for investigating allegations as they relate to systemic issues affecting quality of care.

A commenter requested that a definition of "guardian" be added to the new subchapter in §404.43 (relating to Definitions). The department responds that a definition has been added.

Regarding the definition of "peer review" found in the same section and related provisions in §404.48 (relating to Peer Review), a commenter expressed concern that peer review does not allow for the full utilization of the professional review process and recommended that the department further discuss the issue prior to proceeding with the adoption of the subchapter. The department responds that its rules governing peer review for licensed physicians, registered nurses, and licensed vocational nurses are consistent with state laws and do not interfere with or otherwise affect the use of professional review processes. TDPRS and other investigatory agencies are required by law to investigate allegations of abuse, neglect, and exploitation, without regard to the professional identity of the alleged perpetrator. The only situation in which an allegation would not be investigated by TDPRS or another investigating agency would be when an allegation did not involve abuse, neglect, or exploitation. Professional review and peer review would occur when an allegation involves clinical practice issues, with or without components of alleged abuse, neglect, or exploitation. In this context, peer review could fall within the scope of professional review or it could function independently. The policy expressed in the rule ensures that allegations which may involve medical and nursing procedures, which in some cases can be invasive, are properly evaluated for conformance to community standards of care and in keeping with the practice acts of the involved professions. Distinctions between abuse, neglect, and exploitation and clinical practice can be more difficult in the fields of medicine and nursing. Currently TDPRS draft rules require that if the TDPRS investigator determines that an allegation against a licensed health professional does not constitute potential abuse, neglect,

or exploitation, the investigator will refer the allegation to the authority's chief executive officer for professional review or, if a professional review committee does not exist, will report the allegation to the appropriate licensing board.

Concerning the definition of "provider" found in §404.43 (relating to Definitions), a commenter noted that the language in subparagraph (A) could be interpreted to include all private sector ICF/MR programs which contract with the local authority to refer clients. The commenter expressed the belief that this provision is not consistent with law since providers are required to report allegations to TDHS. The department responds that reporting to TDHS is required by federal statute; state law does not exempt ICF-MR programs from reporting to TDPRS. The agencies are working together to eliminate duplicative work and processes for authorities, providers, and investigatory agency staff.

A commenter stated that if the investigator's finding is a recommendation and is not binding, then the TDMHMR rule should provide a mechanism by which the decision of the chief executive officer can be appealed, similar to the process provided in the Chapter 404, Subchapter A of Title 25, concerning abuse, neglect, and exploitation of persons receiving services at TDMHMR facilities. The department responds that the investigator's finding is final except when it is appealed to TDPRS, in which case the TDPRS determination on appeal is final. Unlike TDMHMR facilities, authorities are not mandated to tie specific types of disciplinary action to specific classes of confirmed abuse, neglect, or exploitation. A number of means exist for obtaining an administrative review or investigation of situations that allegedly compromise client rights, health, welfare, or safety, e.g., requesting review by the governing body, the TDMHMR contract manager, the public responsibility committee, the TDMHMR Office of Consumer Services and Rights Protection, and the licensing boards of professionals.

A commenter noted that there is no provision for the case manager and other treatment team members to be made aware of situations in which clients are the alleged victims of abuse, neglect, or exploitation so that appropriate counseling or care can be provided. The department responds that language in §404.45, the chief executive officer is required to provide immediate and ongoing medical and psychological attention to the victim and, as needed, the alleged perpetrator if a client. Language in §404.45(a)(3) has been revised on adoption to clarify the department's intent that the treatment team and case manager be involved.

A commenter noted that the rules governing TDMHMR facilities may more appropriately address the needs of individuals in community residential settings. The department responds the addition of language in §405.43(a)(3) is intended to provide the same level of protection as facility rules with regard to client health, welfare, and safety.

A commenter strongly supported §404.50 which provides for the classification of allegations. The commenter stated that the classification system should remain the same to the

extent possible to provide consistency throughout the system over time. The commenter noted that although the new subchapter does not mandate it, disciplinary action should continue in practice to be tied to the classification system. The department concurs.

A commenter questioned how abuse, neglect, and exploitation processes will function in the authority-provider structure and questioned how the local authority will ensure compliance with the provisions of the subchapter. The commenter suggested that a certain level of prescriptiveness in rules and contracts is necessary to ensure that the expectations of the TDMHMR Central Office are clearly articulated to both the provider and the local authority. The commenter noted that ultimate accountability will and should remain in the TDMHMR Central Office, and questioned the level of oversight that would be provided, including the level and frequency of scrutiny surrounding compliance issues, the nature of measures of compliance, and how these issues will be reflected in the contract. The commenter noted that TDMHMR cannot abdicate its authority or responsibility to provide services or ensure the care and treatment of customers. The department responds that in the reorganization of the department to a system of managed care, the means by which important client care issues are evaluated is paramount. Existing processes will continue unless and until replaced by other models; these processes involve such entities as the Office of Consumer Services and Rights Protection, the Office of Standards and Quality Assurance, the Quality System Oversight team, contract managers, and public responsibility committees in complaint investigation and administrative and program review roles. The commenter and other interested parties are invited to share their perspectives on how department policy can best ensure quality of care in the managed care environment by writing to Linda Logan, director, Office of Policy Development, P.O. Box 12668, Austin, Texas 78711-2668.

Concerning §404.52, a commenter requested that the language be revised to indicate that the effort to identify trends and patterns will occur through frequent and ongoing communications and analysis with TPRS. The department responds that language has been added.

A commenter requested that advocacy organizations be added to the list found in §404.455 (relating to Distribution). The department responds that a reference to advocacy organizations has been added.

The new sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers, and §534.052, which gives the board rulemaking authority for community-based mental health and mental retardation services provided by community centers and other contract providers.

§404.43. *Definitions.* The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Abuse—For purposes of reporting allegations, the term is defined by the appropriate agency with investigatory responsibility. For purposes of classifying incidents as part of the TDMHMR Client Abuse and Neglect Reporting System (CANRS), the definition is contained in Exhibit A of this subchapter, which is referred to in §404.53 of this title (relating to Exhibits).

Agent—An individual who is not an employee of a local authority or provider but who is working under the auspices of the local authority or provider, such as a consultant, volunteer, student, etc.

Allegation—A report by a person believing or having knowledge that a person receiving services has been or is in a state of abuse, exploitation, or neglect as defined by investigatory agencies or in Exhibit A, which is referred to in §404.53 of this title (relating to Exhibits).

Chief executive officer or CEO—The head of a local authority or provider or a staff member temporarily or permanently appointed to assume the designated responsibilities of the chief executive officer.

Clinical practice—Relates to issues of potentially or allegedly unsafe nursing or medical practice or violations of the Nursing Practice Act, Licensed Vocational Nurse Title Act, or Medical Practice Act. These include acts or omissions of the physician or nurse which result from a lack of competence in the profession, impaired status, or failure to provide adequate medical or nursing care to an individual served.

Confirmed—Term used to describe a finding that an allegation of abuse, neglect, or exploitation is supported by the preponderance of the evidence.

Department—The Texas Department of Mental Health and Mental Retardation.

Employee—Any person hired for a specific job position or to be part of a "pool" for specific job positions, expected to work on a continuous basis, seasonally, or to perform work of a transitory nature or foreseeable end and meets certain minimum performance and time-on-job expectations, paid from a budgeted position in the salary schedule and through a payroll process. A person receiving payment as a "vocational trainee" in a properly authorized vocational training program is not considered to be an employee.

Exploitation—For purposes of reporting allegations, the term is defined by the appropriate agency with investigatory responsibility. For purposes of classifying incidents as part of the TDMHMR Client Abuse and Neglect Reporting System (CANRS), the definition is contained in Exhibit A of this subchapter, which is referred to in §404.53 of this title (relating to Exhibits).

Guardian—An individual appointed and qualified as a guardian of the person under Chapter 13 of the Probate Code.

Incitement—To spur to action or instigate into activity; implies responsibility for initiating another's actions.

Investigatory agency—An agency with statutory authority to investigate the abuse, neglect, or exploitation of a person served by a provider of a local mental health authority or a local mental retardation authority.

Local authority—An entity to which the Texas Board of Mental Health and Mental Retardation delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to persons with mental illness and/or mental retardation services to people with mental retardation in one or more local service areas.

Mental health services provider—An individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by the Human Resources Code, §50.001;

(B) chemical dependency counselor as defined by §1, Chapter 635, Acts of the 72nd Legislature, Regular Session, 1991 (Texas Civil Statutes, Article 4512o.);

(C) licensed professional counselor as defined by the Licensed Professional Counselor Act, §2, (Texas Civil Statutes, Article 4512g);

(D) licensed marriage and family therapist as defined by the Licensed Marriage and Family Therapist Act, §2, (Texas Civil Statutes, Article 4512c-1);

(E) member of the clergy;

(F) physician who is "practicing medicine" as defined by Medical Practice Act, §1.03, (Texas Civil Statutes, Article 4495b);

(G) psychologist offering "psychological services" as defined by the Psychologists' Certification and Licensing Act, §2, (Texas Civil Statutes, Article 4512c); and

(H) registered nurse as defined by law.

Neglect—For purposes of reporting allegations, the term is defined by the appropriate agency with investigatory responsibility. For purposes of classifying incidents as part of the TDMHMR Client

Abuse and Neglect Reporting System (CANRS), the definition is contained in Exhibit A of this subchapter, which is referred to in §404.53 of this title (relating to Exhibits).

Office of Consumer Services and Rights Protection—The office located at the Texas Department of Mental Health and Mental Retardation.

Peer review—A review of clinical and/or medical practice(s) by peer physicians or a review of clinical nursing practices by nurses.

Perpetrator—The person alleged to have committed an act of abuse, neglect, or exploitation.

Person served—Any person receiving services from a provider.

Prevention and Management of Aggressive Behavior (PMAB)—The Texas Department of Mental Health and Mental Retardation's proprietary risk management program which uses the least intrusive, most effective options to reduce the risk of injury for persons receiving services and for staff from acts or potential acts of aggression.

Provider—Any organization or entity, associated by a contract in a working alliance with a local authority or the department to provide community-based services, including employees or agents; or that part of a local authority directly providing programs and services to persons with mental illness or mental retardation, including employees or agents of the programs or services.

Retaliatory action—Any action intended to inflict emotional or physical harm or inconvenience on an employee, agent, or person served that is taken because he or she has reported abuse, neglect, or exploitation. This includes, but is not limited to, harassment, disciplinary measures, discrimination, reprimand, threat, and criticism.

Sexual abuse—Any sexual activity, including as defined in this subchapter or sexual assault as defined in §22.011 of the Texas Penal Code, involving a provider and a person served. Sexual activity includes, but is not limited to, kissing with sexual intent, hugging with sexual intent, stroking with sexual intent, or fondling with sexual intent; oral sex or sexual intercourse; request or suggestion or encouragement by staff for performance of sex with the employee him/herself or with another person served.

Sexual exploitation—A coercive, manipulative, or otherwise exploitative pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a patient's sexual history within standard accepted clinical practice.

§404.45. Reporting Abuse and Safeguarding Persons and Evidence.

(a) The local authority shall ensure that:

(1) provider and authority employees and agents who suspect or have knowledge of abuse, neglect, or exploitation of a person served:

(A) make an immediate verbal report to the appropriate investigatory agency in compliance with existing state laws and rules and this subchapter;

(B) safeguard the person served and secure the evidence; and

(C) as needed, assist another person in making the report when the person alleging abuse, neglect, or exploitation is not an employee or agent, e.g., a person receiving services, a guest, etc.;

(2) the provider CEO reports allegations of sexual exploitation by a mental health services provider consistent with the provisions of the Chapter 81, Civil Practice and Remedies Code;

(3) the provider CEO takes necessary action to provide immediate and ongoing medical and psychological attention to the victim and, as needed, to the alleged perpetrator if a person receiving services, including referring the allegation to the treatment team or interdisciplinary team (including the case manager) of the involved persons no later than the next working day;

(4) the provider CEO secures the safety of the person(s) served, e.g., restrict access by alleged perpetrator to the victim pending investigation; and

(5) actions to be taken by the provider if it is determined that a person served is responsible for abuse of another person served are made known employees and agents of the authority and provider.

(b) Failure to make reports of abuse, neglect, or exploitation immediately without sufficient justification or falsification of fact during an investigation shall be considered a violation of this section and make the employee or agent subject to disciplinary or other appropriate action and possible criminal prosecution.

(c) Any employee, agent, or person served who in good faith reports abuse, neglect, or exploitation shall not be subjected to retaliatory action by any employee or agent of the provider or authority or by any person affiliated with such employee or agent.

(1) The local authority shall provide written notification to providers that

any person who believes he or she is being subjected to retaliatory action upon making a report of abuse, neglect, or exploitation, or who believes a report has been ignored without cause, shall immediately contact the local authority CEO and may also contact:

(A) the Office of Consumer Services and Rights Protection, Central Office, at the toll free number 1-800-252-8154; and

(B) the Office of the Attorney General at (512) 463-2120 which, under the Whistleblower Act, Texas Civil Statutes, Article 6252-16a, may prosecute a supervisor who suspends or terminates a public employee for reporting a violation of law to law enforcement authorities.

(2) The local authority shall ensure that retaliatory action against a person served which might be considered abuse, neglect, or exploitation is reported to the investigatory agency.

(3) The local authority shall require and ensure that any employee or agent found guilty of retaliatory action will be subject to disciplinary or other appropriate action.

§404.48. Peer Review.

(a) If an allegation of abuse, neglect, or exploitation involves the actions of a physician, registered nurse, or licensed vocational nurse, the provider's CEO, in coordination with the agency investigator, and the provider's medical or nursing director, as appropriate to the discipline involved, will determine whether the allegation involves the clinical practice of a physician, registered nurse, or licensed vocational nurse.

(1) If the allegation does not involve clinical practice, the investigator will pursue an investigation. The agency responsible for the investigation reports allegations of abuse or neglect as required by law to the licensing authority for the discipline under review, e. g., to the Board of Medical Examiners for physicians, the Board of Nurse Examiners for registered nurses, and the Board of Vocational Nurse Examiners for licensed vocational nurses.

(2) If a determination is made that the allegation involves the clinical practice of a physician, registered nurse, or licensed vocational nurse, and the provider has a peer review process, the investigator shall turn the allegation over to the provider CEO, who shall immediately refer the allegation to the medical director or nursing director, as appropriate to the discipline involved, for peer review, if required by the practice act of the profession involved, or other action.

(3) If a determination is made that the allegation involves the clinical practice of a physician, registered nurse, or licensed vocational nurse, and the provider does not have a peer review process, the investigator shall report the allegation involving the clinical practice of physician, registered nurses, and licensed vocational nurses to the appropriate licensing board, if required by the practice act of the profession involved, or shall take other appropriate action

(b) The local authority shall ensure that if a peer review process is used, it is consistent with state law and the rules and practice and title acts of the licensing agencies for the professions involved. The peer review process may be based on the following guidelines:

(1) for allegations involving physicians, Operating Instruction 408-2, governing Investigative Medical Peer Review; and

(2) for allegations involving registered nurses and licensed vocational nurses, Operating Instruction 408-1, governing Professional Nursing Quality Assurance.

(c) The authority will ensure an impartial mechanism for peer review is used in cases in which the allegation is against the medical director or nursing director of the provider

§404.49. Disciplinary and Other Action.

(a) The local authority shall ensure that the provider takes appropriate disciplinary or other action in confirmed cases of abuse, neglect, and exploitation. If investigatory agency procedures include a process by which the provider CEO can request a review of the finding, the outcome of the review is final and forms the basis for disciplinary action

(b) Nothing in this subchapter shall preclude the provider CEO from taking disciplinary or other appropriate action pending investigation or peer review, including termination of employment, consistent with local authority policies and procedures. The provider CEO will notify the investigator that disciplinary action has been taken and the investigation will proceed.

(c) The local authority shall ensure that disciplinary or other appropriate action, including seeking criminal prosecution as appropriate, is taken when an employee or agent fails to make reports immediately without sufficient justification or an employee or agent is found to have made a false statement of fact during an investigation.

§404.50. Reporting Responsibilities.

(a) When the alleged perpetrator is an employee or agent of the provider or the perpetrator is unknown, the local authority is responsible for ensuring that the Client Abuse and Neglect Reporting Form AN-1-A is completed within 30 days of the receipt of the investigative report or final decision of an investigating agency using the definitions found in Exhibit A of this subchapter, which is referred to in §404.53 of this title (relating to Exhibits), and the classification system found in Exhibit B of this subchapter, which is referred to in §404.53 of this title (relating to Exhibits). The local authority is responsible for the classification and shall ensure that:

(1) the information is entered into the Client Abuse and Neglect Reporting System (CANRS); or

(2) for providers who do not have online access, a copy of the completed Form AN-1-A is forwarded to the Office of Consumer Services and Rights Protection for data entry.

(b) Abuse, neglect, or exploitation does not include:

(1) the proper use of restraints or seclusion, including PMAB, and the approved application of behavior management techniques, or other actions taken in accordance with written policies and procedures developed or approved by the local authority;

(2) other actions taken in accordance with the rules of the department; or

(3) such actions as an employee may reasonably believe to be immediately necessary to avoid imminent harm to self, persons served, or other individuals if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances. Such actions do not include acts of unnecessary force or the inappropriate use of restraints or seclusion, including PMAB; or

(4) complaints related to rights violations, theft of property, or daily administrative operations of a provider (e.g., staffing ratios). Such complaints shall be referred to the authority CEO for administrative action by the chief executive officer of the provider, the rights protection officer of the local authority, or other appropriate parties.

(c) Complaints concerning failure to carry out an appropriate individual program plan or treatment plan or involving the failure to maintain adequate numbers of appropriately trained staff which do not relate to a specific allegation of abuse or neglect will be investigated administratively by the authority. Complaints of this type are

not reported on the Abuse and Neglect Reporting Form AN-1-A but may be required to be reported by the local authority to the department as part of the contract renewal process.

§404.52. Departmental Oversight Responsibilities.

(a) The department shall ensure the compliance of local authorities with the provisions of this subchapter.

(b) The Office of Consumer Services and Rights Protection, in cooperation with investigating agencies, shall monitor and provide consultation concerning CANRS and be responsible for the maintenance of systems that provide statistical trends in abuse, neglect, and exploitation

§404.55. Distribution.

(a) This subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; members of the boards of agencies with investigatory responsibilities for community center programs; executive, management, and program staff of Central Office; chairpersons of boards and CEOs of local authorities; interested advocacy organizations; the Texas Board of Medical Examiners; the Texas Board of Nurse Examiners; and the Texas Board of Licensed Vocational Nurse Examiners.

(b) The CEO of the local authority shall be responsible for disseminating copies of this subchapter to:

- (1) appropriate staff;
- (2) providers;
- (3) agents;
- (4) advocacy organizations; and
- (5) any person served, employee, or other person desiring a copy.

(c) The CEO of the local authority shall be responsible for ensuring that copies of this subchapter are prominently displayed in providers' programs.

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 July 28, 1995

TRD-9509437

Ann Utley
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: September 1, 1995

Proposal publication date: June 9, 1995

For further information, please call: (512) 206-4516



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.

Figure 3: 16 TAC < * > 111.8(b)(3)

Appendix C-1

TEXAS DEALER

P-12345

JOHN DOE MOTORS

FOR USE ON MOTOR VEHICLE ONLY BY CHARITABLE ORGANIZATION

MAKE OF VEHICLE _____ CHARITABLE ORGANIZATION _____

MOTOR OR SERIAL NUMBER _____ ADDRESS _____

DATE ISSUED _____ AUSTIN, TEXAS

GOOD FOR 30 DAYS ONLY FROM DATE ISSUED
ALTERATIONS VOID THIS TAG

NOT VALID FOR COMMERCIAL VEHICLE CARRYING A LOAD

(COLOR PMS # 338)

(FACSIMILE NOT TO SCALE)

TEMPORARY CARDBOARD TAG FOR MOTOR VEHICLE

INSTRUCTIONS TO DEALER

You are authorized under the Transportation Code, §503.001 et seq., (formerly V.C.S. 6686) to provide each customer with one red cardboard buyer's tag to be used on unregistered new or used vehicles for a period not to exceed twenty (20) days from the date sold. You will note, however, as a dealer, it is your responsibility to see that the following information is placed on the tag:

- 1. Make of Vehicle
- 2. Buyer's Name
- 3. Motor or Serial Number
- 4. Date Vehicle Sold

If a buyer operates an unregistered vehicle without the above information being shown, both the dealer and the buyer may be subject to a fine.

Under no circumstances will a homemade tag be permitted to be used.

INSTRUCTIONS TO PRINTER

The cardboard buyer's tag is to be cut 6" X 11". The tag shown on the reverse side shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7" centers and vertically punched on 4-1/2" centers. The numerals and letters in the dealer number shall not be less than 2" high. All buyer's tags are to be printed with red numerals and letters on a white background. Printed matter on the plate must appear exactly as shown on the reverse side except that the dealer's number, name, and address shall be the same as that shown on the General Distinguishing Number License. When printing the dealer's number on the tags, the prefix letter shall be separated from the numerals by a dash (-).

Texas Department of Transportation - Motor Vehicle Division - Austin, Texas

Figure 2: 16 TAC <*>111.8(b)(2)

Appendix A-1

TEXAS DEALER

P-12345

JOHN DOE MOTORS
AUSTIN, TEXAS

USE ON MOTOR VEHICLE ONLY
FOR INTRANSIT, ROAD TESTING AND DEMONSTRATION

SAMPLE **SAMPLE**

TEMPORARY CARDBOARD TAG FOR MOTOR VEHICLE

INSTRUCTIONS TO DEALER

This dealer's temporary cardboard tag may be used by the dealer to demonstrate or cause to be demonstrated his/her unregistered vehicles to prospective buyers only for the purpose of sale.

This tag may also be used to convey or cause to be conveyed a dealer's unregistered vehicles from his/her place of business in one part of the state to his/her place of business in another part of the state, or from his/her place of business to a place to be repaired, reconditioned, or serviced, or from the point in this state where such vehicles are unloaded to his/her place of business, or to convey such vehicles from one dealer's place of business to another dealer's place of business or from the point of purchase of such vehicles by the dealer to the dealer's place of business, or for the purpose of road testing; and such vehicles displaying this tag while being so conveyed shall be exempt from the mechanical inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways.

The black and white dealer's temporary tag shall not be used to operate vehicles for the personal use of a dealer or his/her employees and shall not be used on commercial vehicles when carrying a load.

Under no circumstances will a homemade tag be permitted to be used.

INSTRUCTIONS TO PRINTER

The black and white dealer's temporary cardboard tags are to be cut 6" X 11". The tag shown on the reserve side shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7" centers and vertically punched on 4-1/2" centers. The numerals and letters in the dealer number shall not be less than 2" high. These tags are to be printed with black letters and numerals on a white background. Printed matter on the tag must appear exactly as shown on the reverse side except that the dealer's number, name, and address shall be the same as that shown on the General Distinguishing Number License. When printing the dealer's number on the tags, the prefix letter shall be separated from the numerals by a dash (-).

Texas Department of Transportation - Motor Vehicle Division - Austin, Texas

Figure 1: 16 TAC (*)111.8(b)(1)

Appendix B-1

SAMPLE

BUYER-TEXAS

P-12345

JOHN DOE MOTORS

USE ON MOTOR VEHICLE ONLY

MAKE OF VEHICLE _____ BUYER'S NAME _____

MOTOR OR SERIAL NUMBER _____

● DATE SOLD _____ AUSTIN, TEXAS ●

GOOD FOR 20 DAYS ONLY FROM THE DATE SOLD NOT VALID FOR COMMERCIAL VEHICLE CARRYING A LOAD

ALTERATIONS VOID THIS TAG

SAMPLE

TEMPORARY CARDBOARD TAG FOR CHARITABLE ORGANIZATION USE

INSTRUCTIONS TO DEALER

You are authorized under the Transportation Code, §503.001 et seq., (formerly V.C.S. 6686) to use or allow the use of an unregistered vehicle by a charitable organization. A charitable organization is defined under this statute as " . . . one that is organized for the purpose of relieving poverty, the advancement of education, religion or science, the promotion of health, governmental or municipal purposes, or other purposes beneficial to the community without financial gain."

As a dealer, it is your responsibility to see that the following information is shown on the front of the tag:

1. Make of Vehicle and Motor or Serial Number
2. Name and Address of Charitable Organization
3. Date Tag Issued

If a charitable organization operates an unregistered vehicle without the above information being shown, both the charitable organization and the dealer may be subject to a fine.

This tag may be used for a period not to exceed thirty (30) days from the date of issuance.

Under no circumstances will a homemade tag be permitted to be used.

INSTRUCTIONS TO PRINTER

The cardboard tag is to be cut 6" X 11". The tag shown on the reverse side shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7" centers and vertically punched on 4-1/2" centers. The numerals and letters in the dealer number shall not be less than 2" high. The tags are to be printed with green numbers and letters on a white background. Printed matter on the plate must appear exactly as shown on the reverse side except that the dealer's number, name, and address shall be the same as that shown on the General Distinguishing Number License. When printing the dealer's number on the tags, the prefix letter shall be separated from the numerals by a dash (-).

Figure 1: 25 TAC 403.74(a)(1) indicates that this material is located in rule 403.74 under subsection (a), paragraph (1).

The parents of a client who is under 18 years of age will pay, if able to do so, the portions of the cost of SMT for that client as may be applicable under the following formula:

If the amount shown as "Net Taxable Income" of the parents as reported on their latest current financial statement or on their latest federal income tax return, at the election of the parent, is:	The monthly fee per client shall be:
Less than \$4,000	\$ 0
4,000-4,999	10
5,000-5,999	20
6,000-6,999	30
7,000-7,999	40
8,000-8,999	50
9,000-9,999	60
For each additional \$1,000 of taxable income	Add \$10

Figure 2: 25 TAC 403.74(b)(4)(A) indicates that this material is located in rule 403.74 under subsection (b), paragraph (4), subparagraph (A).

Gross family monthly income: Less \$400 per month for each income producing member of the family, \$100 per month for each nonincome-producing member of the family (exclude client), except when a nonincome-producing member of the family is attending a college or university, \$200 per month may be deducted.

If the balance is between:	The monthly fee is between:
	As agreed, not to exceed \$25
\$ 0-249	25-75
250-499	75-125
500-749	125-175
750-999	175-225
1,000-1,249	225-275
1,250-1,499	275-325
1,500-1,749	325-375
1,750-1,999	375-425
2,000-2,249	425-475
2,250-2,499	475-525
2,500-2,749	525-575
2,750-2,999	
formula continues in increments of \$250	formula continues in increments of \$50

Figure 3: 25 TAC 403.74(b)(4)(B) indicates that this material is located in rule 403.74 under subsection (b), paragraph (4), subparagraph (B).

The following table is based solely upon projected monthly income from work earnings.

If the projected monthly income from work earnings is between:	The monthly fee charged against work earnings is:
\$0-65	\$ 0
66-75	5
76-85	10
86-95	15
96-110	25
111-125	35
126-140	45
141-160	60
161-180	75
181-200	90
For each additional \$20	Add \$15

Figure 1: 25 TAC 408.21 indicates that this material is located in rule 408.21.

MENTAL HEALTH COMMUNITY SERVICES STANDARDS

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PART I
REQUISITE STANDARDS

CHAPTER 1 - REQUISITE STANDARDS

Reference Code R — Requisite	Standard
1.1.R Abuse, Neglect, and Exploitation Procedures	The MHA implements written policies and procedures regarding client abuse, neglect, and exploitation which include prevention, reporting, and follow-up in accordance with Chapter 404, Subchapter A (relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities) and Subchapter B (relating to Abuse, Neglect, and Exploitation of Persons Served by Providers of Local Authorities).
1.2.R Protection of Rights	The MHA engages in procedures and practices which promote and protect the rights, dignity, and privacy of the individual. The MHA complies with Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services).
1.3.R Infection Control Plan	The MHA implements written policies and procedures addressing chronic/carrier state infections, life threatening infectious diseases and infectious diseases that may result in chronic carrier state infections, such as Hepatitis, HIV and TB and includes procedures for post-exposure management of infections. Procedures address the monitoring of food handlers for infectious diseases, prevention of bacterial contamination, and hygienic use of kitchen equipment and other applicable equipment.
1.4.R Safe Environment	The environment (facilities and vehicles) is safe and free from hazards. Appropriate safeguards exist with regard to hazardous equipment.
1.5.R Life Safety Code	The MHA complies with the most recent edition of the National Fire Protection Association's Life Safety Code. All waivers or exceptions granted by the state or local authority having jurisdiction are identified in writing and maintained in centrally located MHA files.
1.6.R Access to Emergency Services	The MHA has immediate access and demonstrates the ability to access emergency medical and psychiatric services, 24-hours-a-day, 365-days-a-year.
1.7.R First Aid/ CPR/Seizure Assessment Training/Side Effects	<ul style="list-style-type: none"> ▶ All direct care staff are trained and maintain competency in first aid, cardiopulmonary resuscitation (CPR), and seizure assessment within 60 days of hire date and maintain competency. ▶ There is at least one staff member fully trained in emergency procedure on duty at the program site at all times. ▶ After demonstrating competency, licensed physicians are exempt from first aid and seizure assessment training and licensed nurses are exempt from first aid training; although competency must be maintained. ▶ Within 60 days of employment and annually thereafter, direct care staff demonstrate competency in the recognition, reporting, and recording of side effects of psychotropic medications and interactions/contraindications with other medications.
1.8.R Suicide/Homicide Precautions & Training	The MHA implements written policies and procedures for suicide and homicide precautions. Procedures are approved by an MHA psychiatrist and include written criteria for placing or removing a person on suicide and homicide precautions. Programs that use suicide and homicide precautions train staff performing such procedures prior to assuming duty.

1.9.R Unusual Incident Reporting	Information regarding unusual incidents is reported by the provider to the MHA and appropriate follow-up action is taken.
1.10.R Screening and Crisis Access	The MHA provides a trained staffed telephone screening and crisis response system 24-hours-a-day, 365-days-a-year, available in all areas served by the MHA. Telephone service is available at no charge and is well publicized.
1.11.R Immediate QMHP Assessment	Individuals who are experiencing a behavioral/emotional crisis with the potential for life threatening behavior and/or an acute psychiatric crisis are immediately assessed face-to-face by a Qualified Mental Health Professional (QMHP) unless delay is clinically justified. The assessment is performed in the person's home community unless clinically contraindicated. The assessment is available 24 hours a day, 365 days a year unless clinically documented. The provider uses designated assessment instruments as determined by the MHA.
1.12.R Physician Assessment	If life threatening behavior and/or acute psychiatric crisis is confirmed by the QMHP, then the QMHP provides ongoing interventions and/or monitoring and the person is assessed face-to-face by a physician, preferably a MHA psychiatrist, as soon as possible, but within 24 hours. This assessment is documented by the physician.
1.13.R Staff Competencies	The MHA defines and assures ongoing competencies of staff in assessment, treatment planning, service delivery, accommodating special needs, and assisting individuals to access MHA services.
1.14.R Sufficient Staffing	Sufficient staffing is provided and documented to ensure safety and adequacy of programming.
1.15.R Separate Residential Settings	Children, adolescents, and adults are treated in separate residential program settings. If a single residential structure provides services for children, adolescents, and adults, there is physical separation of the populations. Exceptions are clinically justified and documented by a physician.
1.16.R Use of Restraint or Seclusion	Restraint or seclusion is used only when there is substantial risk of harm to self or others and after other intervention strategies have been attempted and failed, using only reasonable and necessary force. Restraint or seclusion is authorized by a physician's order prior to or as soon as possible, following implementation of the procedure. No PRN orders are used and a physician's order must be obtained prior to reinstatement. Physician orders specify the length of time the order is in effect, not to exceed 12 hours.

<p>1.17.R Restraint or Seclusion Implementation</p>	<p>During mechanical restraint, staff provide the individual with circulation checks at least every 15 minutes and the opportunity for motion or exercise during each hour of restraint. The individual is informed of stipulations for release initially and when clinically appropriate and given the opportunity to process the reason for restraint. The MHA implements procedures to ensure the proper management of individuals in restraint or seclusion during evacuation of facilities due to drills or actual disasters. People subject to restraint or seclusion are provided:</p> <ul style="list-style-type: none"> ▶ regular meals and fluids; ▶ regularly prescribed medications; ▶ use of toilet as needed or at least once every 2 hours; ▶ a bath at least once daily; ▶ safety; and ▶ privacy.
<p>1.18.R Designation as a QMHP</p>	<p>For all activities requiring a QMHP, the MHA implements policies and procedures to designate and insure initial and ongoing competency of QMHP staff.</p>
<p>1.19.R Certification/ Licensure or Registration of Services</p>	<p>Services provided in hospitals or crisis stabilization units are provided in facilities licensed by the Texas Department of Health. An MHA-operated/contracted pharmacy is licensed by the Texas Board of Pharmacy. All MHA-operated/ contracted residential facilities evidence applicable certification, registration, or licensure. Evidence of such licensure is maintained and verified by the MHA.</p>
<p>1.20.R Licensure/ Certification of Staff</p>	<p>Each physician, registered nurse, licensed vocational nurse, pharmacist and other licensed or certified staff maintain current licensure/certification according to state law.</p>
<p>1.21.R ADA Compliance</p>	<p>The MHA complies with current Americans Disabilities Act (ADA) requirements.</p>

PART II
ORGANIZATIONAL STANDARDS

CHAPTER 2 - RIGHTS & RESPONSIBILITIES

Reference Code O — Outcome P — Process	Standard
2.1.O Dignity and Rights Protection	Individuals report they are treated with respect and dignity and their rights are explained and protected.
2.2.O Due Process	Individuals report due process if their rights are limited.
2.3.P Mental Health Code	The MHA implements policies and procedures which address the rights of individuals in accordance with the Texas Mental Health Code, (Texas Health and Safety Code, Section 571.001 et. seq. 578.008).
2.4.P Rights Protection Rule	The MHA complies with Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services).
2.5.P Public Responsibility Committee	The MHA has a Public Responsibility Committee which functions in accordance with Chapter 410, Subchapter A (relating to Public Responsibility Committees).
2.6.P Confidentiality Rule	The MHA complies with the individual identifying information requirements specified in Chapter 403, Subchapter K (relating to Client-Identifying Information).
2.7.P Community Center Rule	The MHA is in compliance with Chapter 401, Subchapter G (relating to Community Mental Health and Mental Retardation Centers).
2.8.P Research	If the MHA conducts research, then the research is conducted in accordance with Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects).

CHAPTER 3 - INFORMATION & ACCESSIBILITY

Reference Code O -- Outcome P -- Process	Standard
3.1.O Satisfaction with Information and Accessibility	Customers (e.g. individuals, families, and referring agencies) report satisfaction with MHA service information, and service accessibility to individuals in the priority population as defined by TDMHMR.
3.2.P Prioritizing Access to Service	The MHA implements written procedures to ensure that individuals in the priority population, as defined by TDMHMR, receive the highest quality of services possible through the use of available resources and are the highest priority for determining access to services without regard to their ability to pay for services.
3.3.P Service Information	The MHA proactively provides information (forums, public meetings, media, education programs) in a format and language that is easily understandable to the individual/community about mental illness, programs and services that are available, and standards related to those services.
3.4.P Cultural Competency	Cultural barriers to accessing services are reduced through the provision of: <ul style="list-style-type: none"> ▶ interpretive services; ▶ translated materials; and ▶ use of native language and staff.
3.5.P Local Planning	The MHA engages in local planning which includes: <ul style="list-style-type: none"> ▶ the active and ongoing participation of individuals, family members, advocates and other providers or agencies; ▶ establishes local needs and priorities for MH services in the service area; ▶ defines the role of the state facility to support the local MH service delivery system; and ▶ provides input to the development of the TDMHMR Strategic Plan.
3.6.P Charges for Community Services	The MHA complies with Chapter 403, Subchapter B (relating to Charges for Community-Based Services).

CHAPTER 4 - RECORDS ADMINISTRATION

Reference Code P – Process	Standard
4.1.P Record System	The MHA implements a record system which is consistent with CARE, Medicaid, and Medicare requirements and other applicable legal and funding entities.
4.2.P Record Organization/Storage	The MHA implements a record system which maintains the integrity of the record, provides organization of content, storage of records, and use of secondary records.
4.3.P Designated Record Administrator	A record administrator is designated by the MHA. The record administrator is a credentialed medical record practitioner or receives consultation from a credentialed medical record practitioner on at least a quarterly basis.
4.4.P Records Committee	A records committee with representation from various disciplines, services, and record administration: <ul style="list-style-type: none">▶ reviews clinical records;▶ approves forms;▶ recommends modifications to MHA policy, procedure, and documentation practices; and▶ maintains documentation of follow-up actions taken.

CHAPTER 5 - HUMAN RESOURCES

Reference Code P — Process	Standard
5.1.P System to Ensure Competencies	The MHA implements an ongoing process to insure that all staff (including contract personnel) competencies are commensurate with specific job duties and comply with all relevant requirements.
5.2.P Job Description/ Performance Evaluation Requirements	Job descriptions and performance evaluations are competency based and maintained by the MHA.
5.3.P All Staff Pre-Service	Prior to providing services, staff will demonstrate competency, to be updated annually in: <ul style="list-style-type: none"> ▶ confidentiality; ▶ rights protection and reporting of violations; ▶ client abuse, neglect, and exploitation prevention and reporting; and ▶ MHA procedures for screening and crisis intervention.
5.4.P All Staff Within 60 Days	Within 60 days of employment, staff will demonstrate competency in: <ul style="list-style-type: none"> ▶ individual/family sensitivity which is provided on an ongoing basis by individuals and family members; ▶ basic information about mental illness including various rehabilitative approaches to services; ▶ intervention techniques for management of aggressive behavior; ▶ MHA policies and procedures; ▶ infection control issues including individual responsibilities in implementing the infection control plan and annual update training; and ▶ cultural awareness.
5.5.P Training For Consumers As Employees	When consumers are hired as employees, then reasonable accommodations, as specified in the Americans With Disabilities Act, are made.
5.6.P Student and Volunteer Training	Pre-service training and annual updates for volunteers and students are provided and documented to include: <ul style="list-style-type: none"> ▶ confidentiality; ▶ rights protection and reporting of violations; and ▶ client abuse, neglect, and exploitation prevention and reporting. <p>Within 60 days of assignment, students and volunteers are provided:</p> <ul style="list-style-type: none"> ▶ individual/family sensitivity which is provided on an ongoing basis by individuals and family members; ▶ orientation training as determined by the MHA; and ▶ any additional service area specific training as determined by the MHA. <p>Volunteers and students who have direct contact with individuals who receive medication are provided training in basic pharmacology including recognition, reporting, and recording of side effects of psychotropic and other medications. This training is provided to volunteers within 60 days of assignment and annually thereafter.</p>

CHAPTER 6 - QUALITY IMPROVEMENT

Reference Code O — Outcome P — Process	Standard
6.1.O Improved Quality of Life	The Quality Improvement Process results in improved quality of life for individuals and their families.
6.2.P Quality Improvement Data	The quality of service delivery is improved by valid data-driven decision making.
6.3.P Quality Improvement Plan	The MHA, in collaboration with individuals and family members, implements a Quality Improvement Plan including a self-assessment, which defines the processes that will be utilized in improving services.
6.4.P Contracts for Services	The Quality Improvement Process insures that written contracts between the MHA and contract entities specify: <ul style="list-style-type: none">▶ the chapter(s) or standard(s) from the MH Community Services Standards for which each contractor is responsible for compliance; and▶ contract monitoring procedures.

CHAPTER 7 - SPECIAL TREATMENT PROCEDURES

Reference Code P — Process	Standard
7.1.P Aversive or Highly Restrictive Procedures	Programs which utilize aversive or highly restrictive procedures must comply with Chapter 405, Subchapter G (relating to Behavior Therapy Programs (MH)).
7.2.P Seclusion & Mechanical Restraint	Seclusion and mechanical restraint are utilized only in psychiatric hospitals and crisis stabilization units. Seclusion and brief personal restraint may be used in child/adolescent day programs. Mechanical restraint will not be used in child/adolescent day programs.
7.3.P Behavior Management	The MHA assures that behavior management is conducted in a manner that assures safety and dignity of the individual. An MHA-operated/contracted crisis stabilization unit or psychiatric hospital complies with applicable department rules governing behavior management.
7.4.P ECT Rule	If a form of convulsive therapy is utilized, the MHA complies with Chapter 405, Subchapter E (relating to Electroconvulsive Therapy).

CHAPTER 8 - ENVIRONMENT

Reference Code O — Outcome P — Process	Standard
8.1.O Service Sites and Vehicles	The MHA service sites and vehicles are safe, attractive, comfortable, and appropriate to the needs of the individuals.
8.2.P RDA Requirements	When programs provide meals, menus are nutritionally adequate to meet Recommended Dietary Allowances (RDA) guidelines/requirements, are approved by a registered and/or licensed dietitian, and reflect individual food preference and special dietary needs.
8.3.P Special Diets	Special diets, dietary counseling, and follow-up care are prescribed by a physician in accordance with individual's needs. Special diet menus, dietary counseling, and follow-up are provided by a registered/licensed dietitian as prescribed and documented in the clinical record.
8.4.P Health Inspection	Provider programs which serve or prepare food for 10 or more individuals provide evidence of annual health department inspection. If such inspection cannot be provided by the health department, the MHA provides evidence that the dietitian conducts a comparable inspection.
8.5.P Infection Control Plan	<p>The MHA implements a provider-wide infection control plan approved by a physician which includes prevention, education, and management of significant infections. Components addressed in this plan include but are not limited to:</p> <ul style="list-style-type: none"> ▶ prevention and management of staff/provider/consumer in the service delivery environment; ▶ reporting of reportable diseases as defined and required by the Texas Department of Health; ▶ complying with the Human Immunodeficiency Virus Services Act (Texas Health & Safety Code, Section 85.001 et. seq.), the Texas Communicable Disease and Prevention & Control Act (Texas Health & Safety Code, Section 81.001 et. seq.), and other applicable laws (i.e., Americans with Disabilities Act of 1990, Rehabilitation Act of 1973); ▶ complying with relevant parts of Chapter 405, Subchapter L (relating to HIV Prevention, Testing & Treatment); ▶ isolation procedures for individuals with infections treated in provider residential settings; and ▶ identification of illness or conditions which will still allow safe participation in provider programs.

PART III
SERVICE STANDARDS

CHAPTER 9 - SCREENING AND CRISIS SERVICES

Screening and crisis services include:

- a) **Crisis Hotline** A continuously available staffed telephone service providing information, support, intervention, and referrals to callers.
- b) **Mobile Crisis Intervention** A crisis service that is delivered where and when the crisis occurs which assures that persons in crisis are served by mental health professionals.
- c) **Crisis Walk-in Services** Support and intervention offered at an identified location on an unscheduled basis for the purpose of stabilizing or resolving a potential crisis situation preventing the need for more restrictive services.
- d) **Crisis Support Services** Short-term treatment or support offered on a scheduled basis to assist individuals in successfully managing an identified crisis.
- e) **Hospital Services** Services provided in public, private, general, or psychiatric hospitals located in or available to the community.
- f) **Crisis Stabilization Units** A service provided by the MHA which is licensed by Texas Department of Health as an alternative to inpatient hospitalization.
- g) **Crisis Residential/
In-home Services** Crisis resolution in a residential setting such as an existing residential service, foster care, crisis hostel, or a person's home.

Reference Code O — Outcome P — Process	Standard
9.1.O Crisis Resolution	When crisis occurs, the individual's presenting problem is resolved or managed in a way in which the individual, family, and community are safe.
9.2.P Access to Services	Individuals experiencing a psychiatric crisis have immediate access to a continuum of crisis services that meet their needs, ensure their safety, and incorporate their treatment preferences.
9.3.P Follow-up to Referral	When the crisis intervention activity involves referral, follow-up by staff within agreed upon time frames is evidenced.
9.4.P Documentation of Services	Documentation of crisis services include: <ul style="list-style-type: none"> ▶ date, time, name (if given); ▶ presenting problem; ▶ services requested by the individual; ▶ disposition; ▶ staff involved; ▶ actions used by provider to address the problems presented; and ▶ individual/family response.

9.5.P Communication of Crisis Contacts	Crisis contacts by an individual currently receiving other MHA services are communicated to the continuity of services staff person within that same workday or immediately on the next work day.
9.6.P Service Coordination with Law Enforcement	Crisis staff coordinate services with law enforcement and other community entities that interface in crisis situations.

CHAPTER 10 - ASSESSMENT, TREATMENT AND GENERAL MEDICAL CARE

Assessment, treatment and general medical care includes:

- a) **Community-Based Assessment and Treatment Planning** Services for the purpose of prioritized comprehensive collaborative measurable treatment that reflects the needs and wishes of the individual and builds on the strengths of the individual.

- b) **Medication-related Services** Services for the purpose of prescribing, providing, delivering, storing, and administering medications. Services include medication monitoring and response to medications, assessment of symptoms, assessment of impact of medication for the individual and family, laboratory monitoring, pharmacy services, physical examinations and medication education.

- c) **Counseling Services** Interaction in which the focus is on the treatment of mental illness or emotional disturbance.

- d) **Medical and Dental Services** Provision of or referral for needed medical and/or dental care.

- e) **Partial Hospitalization** Adult structured programming during the day or evening for those who might otherwise require hospital care. Services provided are individual. Group activities and therapies are planned, goal-oriented, time-limited, and specified in an individualized treatment plan taking into consideration individual preferences. Education and training activities include mental health education, medication education, socialization, and daily living skills training.

Reference Code O — Outcome P — Process	Standard
10.1.O Satisfaction with Treatment	As a result of agreed-upon treatment, the individual's needs are addressed and problems are reduced or resolved to his/her satisfaction.
10.2.O Symptom Management	Individuals increase their coping skills and exhibit the ability to identify and manage symptoms of mental illness.
10.3.O Medication Efficacy	Medication regimens are effective in treating the targeted symptoms.
10.4.O Informed Medication Decision	Individuals understand, participate in, and consent to medication decisions.
10.5.P Prescribing of Medication Rule	The MHA complies with Chapter 405, Subchapter A (relating to Prescribing of Medications - Mental Health).

10.6.P Interim Plan	Upon admission, the MHA demonstrates that adequate planning and communication occurs with the individual to mutually develop a written interim plan. The plan includes follow-up instructions which facilitates, at a minimum, access to assessments and services. Individuals agree, sign, and receive a copy of the plan on the day of admission.
10.7.P Time Frame Assessment and Treatment Plan	Within 14 calendar days of admission, the QMHP assessment is completed and the results incorporated into the plan.
10.8.P QMHP Performed/ Approved Assessments	The MHA demonstrates that assessments are performed or approved by a credentialed QMHP. Assessments completed by state or private providers within one year prior to admission/readmission to the MHA are reviewed and updated by the MHA and approved by a QMHP.
10.9.P Assessment Documentation	<p>The written assessment includes:</p> <ul style="list-style-type: none"> ▶ identifying data; ▶ relevant history and present status including needs, educational and employment status, substance usage, legal, military, developmental and current available social and support systems; ▶ relevant past and current medical and psychiatric information and documented diagnosis based on all five DSM-IV axes; ▶ information regarding the individual's preferences for and objections to specific treatments; ▶ the needs and desires of the individual for family involvement in treatment and services; ▶ strengths and natural supports, unmet needs; ▶ eligibility for proposed services and recommendations; and ▶ conclusions regarding treatment needs. <p>Assessments must be updated as clinically indicated or at least every two years.</p>
10.10.P Case Management Screening	All individuals are screened for the need for case management services within 14 days of admission and when circumstances indicate the need for re-evaluation thereafter. If needed, case management services are provided.
10.11.P Treatment Plan	The treatment plan is based on assessments and is in accordance with the individual's wishes. The treatment plan includes measurable outcomes targeted to identified symptoms/needs, treatment intervention, time frames, and responsible staff. If the individual is discharged or absent with assignment from a state facility, then the treatment plan is reviewed and updated within 14 calendar days of the date of discharge or absent with assignment.
10.12.P Treatment Plan Reviews	The treatment plan is reviewed every 90 days or more often as clinically indicated. The plan must be revised as documented objectives are achieved or if there are changes in progress toward achievement of objectives.
10.13.P Progress Notes	There are progress notes which record progress towards outcomes in the treatment plan and other clinically significant activities or events.

10.14.P Collaboration in Treatment	<p>The treatment plan and subsequent reviews address the needs and choices of the individual, reflecting collaboration between the individual and service providers, and is signed by those involved, including the family and/or significant others as authorized by the individual.</p>
10.15.P Discharge Summary	<p>Within 30 calendar days following discharge from the MHA, a discharge summary is entered into the record. The discharge summary includes:</p> <ul style="list-style-type: none"> ▶ date of and reason for discharge; ▶ a detailed summary of MHA services received by the individual since last admission and the response to service(s) provided; ▶ discharge diagnosis by a physician on all five axes; and ▶ referrals made and/or instructions given to the individual/family at discharge.

CHAPTER 11 - SERVICES FOR CHILDREN AND ADOLESCENTS

Services for children and adolescents are services specifically designed for individuals under the age of 18 years. Common characteristics shared by all services for children and adolescents include: the provision of services in the home community, a focus on family strengths, preservation of the family whenever possible, strong linkage to the school and other involved agencies, sensitivity to the social, economic, cultural, and ethnic forces on youth development, and recognition of the necessity of offering a continuum of services.

- a) **Crisis In-home Services** Crisis-oriented services to children and families in their own home. Programs are committed to family preservation and include counseling, skill-building, referral, and evaluation. These short-term treatment and support services assist families in the management of an identified crisis and link them to other supportive services when the immediate crisis is resolved.

- b) **Crisis Services** 24-hour-a-day, 365-days-a-year, service for people in severe crisis provided by a 24-hour hotline, mobile unit, or walk-in clinic. Services include close supervision, medical/nursing services, psychiatric assessment, counseling, and referral.

- c) **Day Treatment** An integrated set of educational, counseling, and family interventions. Components include special education, counseling, parent training, vocational training, and skill building. This service may be provided in a variety of settings, including schools, community mental health centers, or hospitals.

- d) **Medication-related Services** Services for the purpose of prescribing, providing, delivering, storing, and administering medications. Services include medication monitoring and response to medications, assessment of symptoms, assessment of impact of medication for the individual and family, laboratory monitoring, pharmacy services, physical examinations, and medication education.

- e) **Family Support Services** Consultation with family members about the nature of severe emotional disturbance; services assist family members in increasing coping skills and include parent support groups, advocacy, and respite care. Respite care is a brief break from usual living situations and responsibilities to reduce or eliminate stress. Services are supportive in nature rather than treatment-oriented. Services may be provided by introducing respite staff into usual living situations, providing short-term residential placement, providing a place to go during the day, or other services which are considered to provide respite.

- f) **Case Management** An aggressive intervention to a limited caseload assuring that people have access to and receive all resources available.

System in which a single accountable individual performs activities in service of the individual, ensuring that the individual/family has access to and receives all resources which can help the individual/family maintain an optimal level of functioning.

- g) **Hospital Services/
Crisis Stabilization** Alternatives to long-term inpatient hospitalization; services are provided in crisis stabilization units, staffed residences, or beds in private or public hospitals.

- h) **Assessment Services** Professional determination of an individual/family's problems; may involve a wide range of tools including physical exams, psychological tests, or assessments of academic, social, family, or behavioral functioning.
- i) **Therapeutic Foster Care** 24-hour specialized living arrangements for children unable to live with their parents. Services provide a family living environment with foster parents specifically recruited and trained in treatment.
- j) **Psychosocial Rehabilitation** An array of programs to enhance the individual's network of social supports, improve independent living skills, and provide vocational development.
- k) **Substance Abuse Treatment** Outpatient services provided by a TCADA-licensed provider to mentally ill children and adolescents with substance abuse problems.
- l) **School-related Family Support** Family counseling, parent support groups, advocacy, and respite care provided by mental health staff placed in school settings primarily for the purpose of supporting families.
- m) **Counseling** Office-based services that focus on the treatment of emotional disturbances.
- n) **School-based Counseling** School-based services that focus on the treatment of emotional disturbance for children and adolescents who are part of the priority population.
- o) **School-based Substance Abuse Treatment** School-based services that focus on the treatment of substance abuse problems by a licensed TCADA provider. Services are delivered to children and adolescents who are a part of the priority population.
- p) **Foster Group Home** 24-hour specialized living arrangements for small groups of children unable to live with their parents. Services provide a family living environment with foster parents specifically recruited and trained in treatment.
- q) **Other Residential** Other 24-hour residential services such as residential treatment centers.
- r) **In-home Intervention Services** Multi-faceted outreach services in the individual's own home; committed to family preservation, caseloads permit active involvement, and comprehensive coordination of all needed services with family.
- s) **Prevention/Early Intervention Program** Preventive services provided to families and communities through specialized programs such as parenting programs, community forums, or other educational programs.

Reference Code O — Outcome	Standard
11.1.O Improved Behavioral Functioning	Children and adolescents improve in behavioral and emotional functioning.

11.2.O Improved School Functioning	Children and adolescents whose mental illness has contributed to problems at school improve in school functioning.
11.3.O Satisfaction with Services	As a result of agreed-upon treatment, the individual's needs are addressed and problems reduced or resolved to the satisfaction of the individual and his/her family.
11.4.O Satisfaction with Access	Individuals and families report satisfaction regarding the assistance provided by the MHA to access community resources.

CHAPTER 12 - SUPPORTS TO INDIVIDUALS

Supports to individuals include:

- a) **Consumer Advocacy Network** Peer support activities, facilitated by the MHA, to assist individuals in exercising their rights and making choices. Services include rights information within and outside the mental health service system, referral to community services such as self-help support groups, and self or peer advocacy training.
- b) **Peer Support Services** Voluntary, consumer-motivated and/or initiated and/or managed support activities provided between and among individuals who have common issues or needs.
- c) **Socialization Services** Activities designed to enhance social skills. Leisure time activities consistent with those of the general public are selected and planned by individuals. Activities include social interaction, relaxation, and fun.
- d) **Supported Housing** Services developed by individuals, families, and service providers to enable individuals to succeed in chosen housing situations.

Reference Code O — Outcome P — Process	Standard
12.1.O Advocacy Skills Improvement	Individuals participating in self-directed advocacy improve their ability to make their own choices and decisions.
12.2.O Peer Support Report of Benefits	Individuals report positive benefits from peer support activities.
12.3.O Socialization Skills Improvement	Individuals receiving socialization services demonstrate enhanced social and leisure skills.
12.4.P Program Support of Advocacy & Peer Support	Provider program provides ongoing encouragement and support of consumer advocacy and peer support activities. Support includes space for meetings, training opportunities, and sponsorship of consumer-run activities.
12.5.P Support Services for Living Environment of Choice	Individuals express satisfaction with supports that allow them to live in the environment of their choice.

CHAPTER 13 - SUPPORTS FOR FAMILIES

Supports for families includes:

- a) **Family Education and Training Services** Classes/workshops and individual consultations which provide information to families regarding the nature and effects of, and treatment options for, severe and persistent mental illness. This education and training is designed to increase family coping skills.

- b) **Respite Services** A brief break from the responsibilities of providing care or from the usual living situation to reduce stress. Services are supportive in nature rather than treatment-oriented and reflect family and individual choice. Service may be provided by introducing respite staff into usual living situations, providing short-term residential placement, providing a place to go during the day, or other services which are considered to provide respite to the care provider.

Reference Code O — Outcome P — Process	Standard
13.1.O Family Knowledge and Coping	Education/training increase families knowledge of mental illness, treatment options, and coping skills.
13.2.O Respite Services	Respite services reduce stress within the family system.
13.3.O Satisfaction With Support Facilitation	Families report satisfaction with the education/training and respite services they receive and the MHA's facilitation of their participation.
13.4.P Identification of Family Needs	The MHA implements a method of identifying families at both admission and throughout the course of service who need training, education, and support services and then ensures that these services are provided.
13.5.P Family Involvement and Input	Families are directly involved in the design and implementation of education/training, support, and respite services.

CHAPTER 14 - REHABILITATION SERVICES

Rehabilitation services includes:

- a) **Education Services** Provision of or assistance in accessing education services such as special education, basic literacy, GED (General Equivalency Diploma), training in the preparation and study for college, university and graduate degrees, technical education, or other courses.

- b) **Skills Training Services** Training of those skills in which the primary focus is to further an individual's independent living and community skills. Training such as interpersonal relationship skills, preparing meals, maintaining a household, budgeting, accessing public resources, etc. This training should occur within a natural setting whenever possible in order to further the skill acquisition and community inclusion.

- c) **Vocational Training** Any training in which the primary focus is to further an individual's employment goals. Services may include job development, placement, coaching, follow-along, and on-the-job skills training.

Reference Code O — Outcome	Standard
14.1.O Satisfaction with Skill Development Services	Individuals report satisfaction with the array and quality of services offered to achieve desired skills, vocational goals, and education.
14.2.O Skill Development	Individuals develop the skills needed to live in their chosen environment.
14.3.O Achievement of Work Skills	Individuals achieve the education and develop the skills needed to work in their chosen career.
14.4.O Adequate Support for Employment	Individuals secure and maintain the employment of their choice, with ongoing support as needed.

CHAPTER 15 - CONTINUITY OF SERVICES

Continuity of services includes:

- a) **Case Management Services** System in which a single accountable staff performs activities in service of the individual, ensuring that the individual has access to and receives, all resources which can help reach and maintain optimal level of functioning.
- b) **Care Coordination Services** Facilitation of access to and receipt of resources and services as needed and coordination as the individual moves between levels of care.
- c) **General Support Services for Families** A variety of MHA-coordinated activities to guide families through the MH service delivery system.

Reference Code O — Outcome P — Process	Standard
15.1.O Satisfaction with Coordination of Service	Individuals, families, and community agencies report satisfaction with the coordination of services.
15.2.O Education/Skills to Access Community	Individuals and families report that they receive the support, education, and skills training needed to access community resources.
15.3.O Quality of Life	Individuals and families report enhanced quality of life.
15.4.P Service Coordinator Assignment	Coordination of services is provided by a single continuity of services staff person responsible for each individual served across all programs as provided by the MHA. For individuals assigned to a case manager, the case manager serves as the continuity of services staff person.
15.5.P Treatment Planning	The continuity of services staff person facilitates the individual's treatment planning process and implementation including the involvement of the individual, all service providers and families.
15.6.P Information Transmittal	When the individual moves between services, continuity is ensured through planning-linking activities, support services, and information provided to all parties as authorized by the individual.
15.7.P Rules Compliance	The MHA complies with Chapter 402, Subchapter B (relating to Continuity of Services — Mental Health).
15.8.P Case Management Operating Instructions	The MHA complies with Case Management Operating Instructions (401-2).

CHAPTER 16 -HOUSING & RESIDENTIAL SERVICES

Housing and residential services include:

- a) Treatment Training Residences Living environments in which the focus is on brief treatment and training to facilitate residents in moving to their chosen environment.

- b) Assisted Living Services Safe living environments in which services provided are based on the needs and preferences of the individual.

Reference Code O – Outcome	Standard
16.1.O Support Services for Living Environment of Choice	Individuals express satisfaction with supports that allow them to live in the environment of their choice.
16.2.O Satisfaction/Living Environment of Choice	Individuals express satisfaction with the residential services which allow them to live in the environment of their choice.

PART IV
GLOSSARY

A

abuse	Any act or failure to act, done knowingly, recklessly, or intentionally, including incitement to act, which causes or may cause major or minor physical and/or emotional injury to a person receiving services from a TDMHMR facility or community MHMR center. This includes exploitation and sexual activity between an employee and the individual receiving services.
access	An individual's ability to obtain services to achieve the best possible outcomes. Barriers to access may be structural, financial, or personal. The ease of access is determined by components such as availability of services, their acceptability to individuals, transportation, hours of operation, language, and cultural competencies.
accreditation	Independent, third-party process for evaluation of the quality of an provider's services using nationally recognized standards. An example is the process by which health facilities are surveyed and approved by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).
adolescents	Persons aged 13 to the 18th birthday.
advocacy	The act of representing one's own or another's interests publicly (i.e., consumer advocate).
all staff	All categories of personnel (full-time, part-time, and contract employees, and if the MHA contracts with providers for a service, then the contract provider staff who deliver services to individuals).
assessment	The clinical process of obtaining and evaluating historical, social, functional psychiatric, developmental, or other information from the individual seeking services. This information is used to formulate recommendations for services and treatments.
aversive procedures	Procedures in which an undesirable behavior targeted for reduction or elimination is followed systematically by presentation of an aversive stimulus, placement in a time-out room, physical restraint, or requirement to engage in an effortful task.

B

behavior management	Interventions to increase socially adaptive behavior and to modify maladaptive or problem behaviors and replace them with behaviors and skills that are adaptive and socially productive.
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C

CARE (Client Assignment and Registration System)	TDMHMR's centralized, confidential client data base, that registers and tracks individuals receiving services throughout the service delivery system. CARE uses unique, statewide identification numbers to collect, maintain, and report information for each person served.
case management	Services that are provided to assist individuals with severe and persistent mental illness in gaining access to medical, social, educational, and other appropriate services which will help them achieve a quality of life and community participation acceptable to each individual.
case manager	A person who supports and assists an individual in achieving personal goals.
children	Persons aged 0 to the 13th birthday.
clinical record	The systematic, organized compilation of information relevant to the services provided to an admitted individual.
competency	Standards of measurement of the attitudes, knowledge, and skills of all staff.
consumer	An individual receiving services funded by TDMHMR and the individual's family are consumers. The individual who has received or is receiving services may be a primary consumer, while family members or friends of primary consumers who indirectly benefit from the delivery of services may be secondary consumers. Other terms used are "client," "patient," "person," "individual," and "person or individual receiving services."
consumer-managed or consumer-run alternatives	Services planned, administered, delivered, and evaluated by persons who have received or are receiving services. An example is a drop-in center which offers a variety of services such as crisis intervention, socialization, mutual support groups, and education.
continuity of services	Activities undertaken to ensure coordination of services to individuals between components in the TDMHMR service system and within each provider network. The process provides continuity over time among the assessment and diagnosis, planning, and treatment phases of services. The process provides for coordination at the time, referral, transfer, or discharge of the individual to another level of care, health professional(s), or setting(s), based on the individual's assessed needs.
continuity of services staff person	A staff person specifically designated by the MHA to conduct continuity of services activities, e.g., caseworker, case manager, liaison worker.
contract monitoring	The process of overseeing and regulating written agreements, enforceable by law, between local MHAs and providers. The local MHA ensures that providers are meeting all TDMHMR requirements.
contract personnel	See "all staff."

core services	<p>The Texas Mental Health and Mental Retardation Act (Texas Health and Safety Code, §534.053) requires TDMHMR to ensure the following services are available throughout the state:</p> <ul style="list-style-type: none"> ▶ community-based crisis residential services or hospitalization; ▶ 24-hour emergency screening and rapid crisis stabilization services; ▶ community-based assessment, including development of interdisciplinary treatment plans, diagnosis and evaluation services, and family support services, including respite care; ▶ medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; ▶ psychosocial rehabilitation programs, including social support activities, community living skills, and vocational training; and ▶ case management services.
credentialing	A process of review to approve a provider as adequately prepared to provide clinical services. Specific criteria and prerequisites are applied to determine initial and ongoing competency.
crisis stabilization unit (CSU)	A program provided directly or by contract with a MHA which offers 24-hour residential services that are usually short-term and are offered to persons who are demonstrating psychiatric crisis. CSUs are licensed by Texas Department of Health and must comply with the provisions of Chapter 401, Subchapter K (relating to Licensure of Crisis Stabilization Units).
cultural competency	A goal or developmental process in which professionals, agencies, and systems come together in order to provide effective and quality services to multicultural populations.

D

data-driven decision-making	Decision-making supported by analysis and interpretation of data.
direct care staff	Any employee (full-time, part-time, temporary, contract, or contract provider) whose primary role and function is to provide continuing contact with individuals receiving services.
discharge	The termination of treatment by a provider which denotes the end of active treatment.
DSM-IV-R (Diagnostic and Statistical Manual of Mental Disorders)	The American Psychiatric Association's official classification of mental disorders, revised in 1994.

F

face-to-face	In person.
Family Support Services	Services providing information, education, support, and counseling to family members through sponsoring advocacy meetings, self-help groups for family members, and counseling. All of these activities promote improved coping and problem-solving skills on the part of the family, strengthen constructive bonding within the family, and provide the opportunity for sharing of emotional support among families.

I

identifying data	The name, address, social security number, or any information by which the identity of an individual can be determined either directly or by reference to other publicly available information. The term includes, but is not limited to, medical records, graphs, or charts; statements made by the individual either orally or in writing while receiving services; videotapes, photographs, etc.; and any acknowledgement that an individual is receiving or has received services from a facility, community center, or other designated provider. The term does not include an identifying number assigned by a facility. The statutes, regulations, and rules requiring that identifying data be kept confidential apply regardless of the means or methods used to store and retrieve the information.
individual	See "consumer."
interim plan	The initial treatment plan completed by the MHA and the individual upon admission to services at a new MHA or upon transfer from one MHA to another. The plan is written in clear, straightforward language which provides the individual with necessary information and provides guidance for the staff.

M

mechanical restraint	The application of a physical device to restrict the movement of the whole or a portion of a person's body, except as part of a normal medical or dental procedure and for bodily support and positioning.
Mental Health and Mental Retardation Act	Texas Health and Safety Code, Part 1, Chapters 531-554, also known as "House Bill 3," the act that established the Texas Department of Mental Health and Mental Retardation. Portions of the act address organization of the agency, operation of facilities, establishment of community MHMR centers, and provision of community-based services.
mental health authority (MHA)	A mental health component designated by TDMHMR to carry out the legislative mandate to provide certain core mental health services and coordinate continuity of services to individuals who are members of TDMHMR's defined priority population. (See Texas Health and Safety Code, §532.001.) TDMHMR designates one MHA for each local service area.

mental illness	An illness with psychologic or behavioral manifestations and/or impairment in functioning due to a social, psychologic, genetic, physical/chemical or biologic disturbance.
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O

outcome	For people — results of supports and services that reflect the individuals desires and expectations. For organizations — results of processes that assist individuals in achieving their desires and expectations and reflect the funding sources and communities expectations.
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P

personal restraint	The application of physical pressure to a person's body in such a way as to restrict the movement of the whole or a portion of his or her body for a period in excess of five minutes, except as part of a normal medical or dental procedure.
planning-linking activities	Those activities which facilitate communication between the individual, the MHA, and providers, to assure the coordination and delivery of services.
Protection and Advocacy for Individuals with Mental Illness Act (PAIMI)	The Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. §10802) was enacted to guarantee the rights of individuals with mental illness in 24-hour residential facilities. Advocacy, Inc. assists such individuals in ensuring their legal and human rights through education and training programs, as well as monitoring several state hospitals and other residential facilities. Advocacy, Inc. works with various mental health organizations, consumer and family groups, and legislators to bring about systemic changes.
provider	Any individual or organization that provides a mental health care service.

<p>qualified mental health professional (QMHP)</p>	<p>An individual providing mental health services who has one of the following qualifications:</p> <ul style="list-style-type: none"> ▶ a physician, licensed by the Texas Board of Medical Examiners as defined in Texas Civil Statutes, §4495b. ▶ a licensed or certified psychologist, or psychological associate as defined in Texas Civil Statutes, §4512c. ▶ a licensed professional counselor as defined in Texas Civil Statutes, §4512g. ▶ an advanced clinical practitioner with or without private practice recognition, certified social worker, social worker, or social worker associate as defined in the Human Resources Code, Chapter 50. ▶ a registered nurse as defined in Texas Civil Statutes, §4518. ▶ for services provided to individuals with alcohol and other drug abuse disorders, a Certified Alcohol and Substance Abuse Counselor (CDAC), as defined by the Texas Association of Alcohol and Drug Abuse Counselors. ▶ an individual who is privileged by the MHA based on education, experience, and demonstrated competency, with a minimum of: <ul style="list-style-type: none"> • a bachelor's degree in a human services-related field, which includes psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human development, gerontology, and educational psychology. Human services-related field does not include criminal justice, education, business, and social science; • non-related bachelor's degree with 2 years experience in either mental health services or human services; • an associate degree in a human services-related field and three years experience in mental health services, including paid experience gained in a mental health service setting. Mental health experience must include assessment and plan of care development. Mental health experience does not include clerical positions in mental health setting, MR Aide, teacher's aide, etc.; • five years of mental health experience; or • combination of years of experience and education. One year of human services-related experience (includes professional, direct care experience gained in a recognized human service setting under professional supervision) may substitute for each year of the required education. Does not include teaching or law enforcement agencies unless the setting is serving special populations.
<p>Restrictions</p>	<p>Nothing in this definition should be construed to exempt any individual who qualifies as a "Mental Health Professional" from complying with licensing, certification, registration, or regulatory standards, administrative rules or standards that would otherwise apply to the individual.</p>
<p>quality improvement</p>	<p>A continuous process that identifies problems in mental health care delivery, tests solutions to those problems, and constantly monitors the solutions for improvement.</p>

R

rule	Any departmental statement filed with the <i>Texas Register</i> that implements, interprets, or prescribes law or policy, or described procedure or practice requirements that are in the public interest or that affect private rights or procedures. The term includes amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the department (directives) or required technical operating procedures (manuals) that do not affect private rights.
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S

seclusion	Confinement of the individual alone in a locked room or alone in another isolated area from which egress is prevented.
self-assessment for quality	A measurement of the degree the individual and organizational outcomes are achieved by ensuring reliability and validity of data collection and analysis and consideration of efficiency and effectiveness of assessing outcomes. Self-assessment should involve all stakeholders including individuals and occur with frequency.
sensitivity training	Training in the awareness of the needs and emotions of others.
staffing	A meeting among two or more interdisciplinary team members, the individual receiving services, and/or the individual's parents or guardian, when appropriate, to identify and/or review the needs of the individual and to develop or amend a plan for services (e.g., individual program plan) to meet those needs.
Support to Individual Services	A range of services which provide opportunities for advocacy, peer support socialization, and supported housing to the individual receiving services.
support services	Any service or activity which enable individuals to live as independently as possible.
supported employment	Services with the capacity to provide individualized assistance in choosing and obtaining employment, integrated work sites in regular community jobs, and long-term supports provided by identified staff who will assist in keeping employment and/or finding another job as necessary.
supported housing	Services with the capacity to provide individualized assistance in choosing and obtaining affordable housing in the community and long-term supports provided by identified staff that include, but are not limited to, case management and in-home rehabilitation services to assist individuals in maintaining stable housing.

<p>Texas Department of Mental Health and Mental Retardation (TDMHMR)</p>	<p>The agency established by the state legislature in 1965 to support, promote, and provide a variety of services to Texas citizens in the areas of mental health, mental illness, and mental retardation.</p>
<p>treatment plan</p>	<p>The plans which an individual and his/her provider develop to address the problems, goals, and direction of service delivery.</p> <p>Throughout the process of hospitalization and transfer to the community, the treatment plan evolves in several distinct phases, each addressing the particular needs which are primary at that particular time. Those phases are referred to as:</p> <ul style="list-style-type: none"> ▶ Inpatient phase — The treatment plan is developed and/or reviewed and revised by the treatment team of the individual (of which the individual is a member). The review generally focuses on addressing the alleviation of those symptoms of mental illness which have led to hospitalization and supporting the individual's motivation and capacity to experience further growth in community-based treatment programs. ▶ Transition phase — The treatment plan is reviewed and revised jointly by the facility, MHA, individuals, and others, as appropriate, prior to the absence for trial placement or discharge of the individual by a state facility to ensure linkage to an appropriate service delivery system. The needs addressed during the review are based on those identified during the inpatient phase, but generally focus on transition issues. In addition, the transition phase ensures the documentation of information about the individual's MHA liaison, follow-up appointments, and identification of a location to which the individual will be discharged/absent for trial placement. ▶ Community support phase — The treatment plan is reviewed and revised by the MHA and the individual within three weeks of his/her discharge or absence for trial placement. The needs addressed during the review are based on those identified during the transition phase, with consideration of any issue that has arisen since discharge.

PART VI
APPENDIX

**APPENDIX I
MH SERVICE ARRAY
ADDITIONAL SERVICE DEFINITIONS**

1. **Screening Services** — The initial point of contact, by telephone or in person, that an individual makes with an MHA or provider. Screening is a process designed to determine what is requested, the needed level of care, and eligibility for services or referral.
2. **Act or Assertive Community Treatment (ACT)** — Services which assume the full responsibility for comprehensive treatment for persons with severe and persistent mental illness and a history of multiple hospitalization, involvement with the Judicial system, homeless Shelters, or Community Residential Homes.
3. **Supported Employment** — Services containing the capacity to provide individualized assistance in choosing and getting employment, integrated work sites in regular community jobs, and long-term supports provided by identified staff who will assist in keeping employment and/or finding another job as necessary.
4. **In-Home and Family Support or TDMHMR In-Home and Family Support Program** — The program developed in response to House Bill 1154 and Appropriations Rider 33 of the 70th Texas Legislature, the purpose of which is to foster independent choice by individuals with a mental disability in the selection of services to be provided; to assist such individuals to be able to live independently in situations most like those experienced by persons without disabilities; to uphold the value of the family and the human dignity, pride, and independence of the individual; and to recognize the family as the primary mainstay for many individuals with mental disabilities. The program enables flexibility in service delivery; innovation in service provision; minimization of barriers to service accessibility; placement of accountability for quality in the control of the individual and/or family and the local provider; and non-duplication of services. The program does not serve individuals with developmental disabilities who do not otherwise meet the definition of "person with a mental disability," as defined in Chapter 401, Subchapter L (relating to TDMHMR In-Home and Family Support Program). Such persons may be eligible for services through the in-home and family support program of the Texas Department of Human Services (TDHS).

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 of Agriculture

Thursday, September 7, 1995, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 298B

Austin

Office of Hearings

AGENDA.

Alleged violation of Texas Agriculture Code, §76 116(a)(1) (Vernon 1995) and 4 Texas Administrative Code, §7.22, by Dayton Royal doing business as Hogg Flying Service.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: July 28, 1995, 2:11 p.m.

TRD-9509438

Texas Animal Health Commission

Friday, August 4, 1995, 10:00 a.m.

2105 Kramer Lane

Austin

Commissioners

AGENDA.

By telephone conference call pursuant to §2001.146(D)(2) of the Government Code:

Discussion of, and possible action on, motion for rehearing, in the matter of the appeal of a decision by the Texas Animal Health Commission by W. L. Churchwell, Jr., SOAH Docket Number 554-95-0564.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714

Filed: July 27, 1995, 3:10 p.m.

TRD-9509382

State Board of Barber Examiners

Tuesday, August 8, 1995, 9:00 a.m.

333 Guadalupe, William P. Hobby Building, Room 218

Austin

Board of Directors

AGENDA:

Opening of meeting; roll call; read and possibly approve minutes of June 6, 1995; new business: Discussion and possible action regarding the election of a vice chairman of the board, discussion regarding the National Association of Barber Board of America annual meeting in San Diego, September 17-21, 1995; discussion and possible action regarding the length of the practical exam and the written exam, discussion regarding the new national testing company; discussion and possible action regarding the use of credit cards to reserve board member hotel/motel rooms; discussion and possible

action regarding the executive director's job description; discussion and possible action regarding a \$1,100 achievement bonus for the executive director; discussion and possible action regarding the proposed personnel manual; the following individuals requested information about obtaining a permit to operate a barber college: June 1, 1995-Chris Biffle, 301 East California, Gainesville, Texas 76240; June 5, 1995-Robert Diaz, 1315 South Chadbourne, San Angelo, Texas 76903; June 6, 1995-Samuel Williams, 3330 Hatcher, Dallas, Texas 75215; June 8, 1995-Ron Robinson, 1400 College Dive, Waco, Texas 76708; June 12, 1995-Lori Dunn, 2501 Long Apartment #A, Bryan, Texas 77803; June 26, 1995-Delores Law, 9937 Homestead Road, Houston, Texas 77010; June 27, 1995-Tania Coleman, 2349 Cass Street, Fort Worth, Texas 76112; July 12, 1995-Steve Ackerman, Dallas County Sheriff's Department, 138 North Industrial, Dallas, Texas 75207, 4313 LB 31; July 12, 1995-Naim Abdullah, Box 451204, Houston, Texas 77245-1304; July 26, 1995-Erma Parker, 2611 Bowling Green Avenue, Dallas, Texas 75216; July 31, 1995-Albert Bryant, 4866 Clover, Houston, Texas 77033.

Contact: Alice Mora, 333 Guadalupe, Suite 2-110, Austin, Texas 78701, (512) 305-8475.

Filed: July 31, 1995, 3:48 p.m.

TRD-9509524

Texas Bond Review Board

Tuesday, August 8, 1995, 10:00 a.m.

300 West 15th Street, Committee Room #5,
Clements Building, Fifth Floor

Austin

Planning Session

AGENDA:

I. Call to order

II. Approval of minutes

III. Discussion of proposed issues

A. Texas Department of Human Services—lease purchase of computer network equipment

B. Texas Department of Housing and Community Affairs—lease purchase of modular furniture

C. Texas Water Development Board—Taxable Refunding Texas Water Development General Obligation Bonds

IV. Other business

Update on status of continuing disclosure

V. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: July 31, 1995, 2:50 p.m.

TRD-9509521

Conservatorship Board

Tuesday, August 1, 1995, 11:30 a.m.

710 Brazos, Perry Brooks Building

Austin

Emergency Meeting

AGENDA:

Call to order; meet in executive session to discuss personnel matters; reconvene; and adjournment.

Reason for emergency: Necessary for Conservatorship Board to meet in order meet statutory mandate

Contact: Tom Mann, 710 Brazos, Austin, Texas 78701, (512) 867-8809.

Filed: August 1, 1995, 9:03 a.m.

TRD-9509530

Texas Education Agency

Friday, August 11, 1995, 1:00 p.m.

Room D, Region XX Education Service Center, 1314 Hines Avenue

San Antonio

Investment Advisory Committee on the Permanent School Fund (PSF)

AGENDA:

The Investment Advisory Committee on the Permanent School Fund will meet to discuss the status of the PSF. This will involve a review of historical information relevant to the asset allocation decisions which have recently integrated external management. In addition, future trends will be discussed, particularly the possibility of privatizing the management of the fund.

Contact: Carlos Resendez, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9169.

Filed: August 1, 1995, 9:29 a.m.

TRD-9509533

Monday, August 28, 1995, 10:00 a.m.

Room 1.104, William B. Travis Building, 17th and Congress Avenue

Austin

Public Committee on Public Education Information (PCPEI)

AGENDA:

1. Call to order

2. Old business

Review of minutes from May meeting

Formation of the Texas Education Agency Data Approval Committee (TEADAC): Status report

Plan for information management and communication: Status report

3. New business

Open forum

Legislative/agency activities: Discussion

Texas Education Code re-write (Senate Bill 1)

Bulletin 742 review and Sunset process

Developing standards for facilitating access to public information resources: Discussion

New members: Discussion

Definition of the Public Education Information Management System (PEIMS): Discussion

Contact: Nancy Vaughan, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8110.

Filed: July 31, 1995, 10:10 a.m.

TRD-9509499

Texas Employment Commission

Tuesday, August 8, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; presentation by Don Balcer; 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 Dockets 32 and 32A; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: July 31, 1995, 3:43 p.m.

TRD-9509523

Texas Commission on Fire Protection

Tuesday, August 8, 1995, 9:00 a.m.

12675 North Research Boulevard

Austin

Fire Code Committee

AGENDA:

I. Discussion of committee's mission.

II. Discussion and possible action relating to the development of rules including standards to be enforced by the State Fire Marshal in conducting inspections under the authority of §417.008 of the Government Code.

III. Discussion and possible action on future meeting dates, agenda items, and locations.

Contact: Carol Menchu, 12675 North Research Boulevard, Austin, Texas 78759, (512) 918-7100.

Filed: July 27, 1995, 11:56 a.m.

TRD-9509367

General Services Commission

Thursday, August 10, 1995, 8:30 a.m.

Radisson Hotel, 111 East Cesar Chavez Street

Austin

Texas School Bus Committee Meeting

AGENDA:

The purpose of the meeting is to discuss school bus bodies, chassis, engines, options, safety items, various accessories, and the approved products list. For further information, please contact Ron Dyer, (512) 463-3412.

Notice of assistance at public meetings

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for per-

sons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Ron Dyer at (512) 463-3412 at least two work days prior to the meeting so that appropriate arrangements can be made.

Contact: David Ross Brown, 1711 San Jacinto, Austin, Texas 78701, (512) 463-3960.

Filed: July 27, 1995, 10:56 a.m.

TRD-9509366

◆ ◆ ◆
**Office of the Governor,
Criminal Justice Division**

Friday, August 10, 1995, 10:30 a.m.

University of Tyler School of Nursing,
1100 North Campbell

El Paso

AGENDA:

The Criminal Justice Division of the Office of the Governor will hold a town hall meeting during which Governor George W. Bush, and the public will comment on the topic "Seeking Solutions: On Gangs and Juvenile Violence." This meeting is intended to partially satisfy the federal requirement for public hearings on the Safe and Drug-Free Schools and Communities Act

I. Opening comments by Karen J. Greene, executive director, Criminal Justice Division, Office of the Governor.

II. Introductions by Karen J. Greene, executive director, Criminal Justice Division, Office of the Governor.

III. Comments by George W. Bush, Governor.

IV. Public comment.

V. Adjournment.

Contact: Karen Greene, P.O. Box 12428, Austin, Texas 78711, (512) 463-5706.

Filed: August 1, 1995, 9:05 a.m.

TRD-9509532

◆ ◆ ◆
Health Professions Council

Wednesday, August 9, 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 June 21, 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: August 1, 1995, 9:04 a.m.

TRD-9509531

◆ ◆ ◆
State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Tuesday, August 8, 1995, 1:00 p.m.

Doubletree Hotel, Dallas-Lincoln Center, Madison Room, 5410 LBJ Freeway

Dallas

Complaints Subcommittee

AGENDA:

The subcommittee will discuss and possibly act on the following complaints: FD-94-0006; FD-94-0019; FD-94-0025; FD-94-0029; FD-94-0041; FD-95-0012; FD-95-0013; FD-95-0014; FD-95-0015; FD-95-0017; FD-95-0023; FD-95-0024; FD-95-0026; and FD-95-0028.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. For ADA assistance, contact Richard Butler, (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 28, 1995, 11:27 a.m.

TRD-9509422

Tuesday, August 8, 1995, 4:00 p.m.

Doubletree Hotel, Dallas-Lincoln Center, Madison Room, 5410 LBJ Freeway

Dallas

Examination Subcommittee

AGENDA:

The subcommittee will discuss and possibly act on proposed examination from Applied Measurement Services, Inc

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. For ADA assistance, contact Richard Butler, (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 28, 1995, 11:27 a.m.

TRD-9509421

◆ ◆ ◆
Texas Department of Insurance

Monday, August 14, 1995, 10:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0724.C

To consider whether disciplinary action should be taken against John Michael Zaal, Dallas, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance (continued from July 10, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 1, 1995, 9:42 a.m.

TRD-9509535

Monday, August 14, 1995, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0830.C

To consider whether disciplinary action should be taken against John Henry Glenn, Dallas, Texas, who holds a Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 1, 1995, 9:42 a.m.

TRD-9509536

Tuesday, August 15, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0514.C

To consider whether disciplinary action should be taken against Richard Howard Fantroy, Duncanville, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and a Local Recording Agent's License issued by the Texas Department of Insurance (continued from July 25, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 1, 1995, 9:42 a.m.

TRD-9509537

Tuesday, August 15, 1995, 1:00 p.m.

State Office of Administrative Hearings,
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0512.C

To consider the application of Kenneth Brumfield, New Braunfels, Texas, for an Insurance Adjuster's License to be issued by the Texas Department of Insurance (continued from June 15, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 1, 1995, 9:42 a.m.

TRD-9509538

Wednesday, August 16, 1995, 9:00 a.m.

State Office of Administrative Hearings,
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0699.C

In the matter of Roger Gordon Wolf and Ricky D. Lewelling (continued from June 30, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 1, 1995, 9:42 a.m.

TRD-9509539

Wednesday, August 16, 1995, 9:00 a.m.

State Office of Administrative Hearings,
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0875.C

To consider the revocation of the Title Insurance Escrow Officer License issued by the Texas Department of Insurance to Bonney Lynn Jorgensen.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 1, 1995, 9:42 a.m.

TRD-9509540

Thursday, August 17, 1995, 9:00 a.m.

333 Guadalupe Street, Room 1264, Tower I
Austin

Texas Health Reinsurance System

AGENDA:

Board of Directors Meeting

1. Call to order
2. Public participation
3. Discuss and take possible action on the revised plan of operation
4. Report from the actuarial firm of Milliman & Robertson, Inc. concerning assessments, rates, terms of a contract with the system, statutory provisions and operations, and other general business
5. Report from TDI staff concerning statutory provisions and operations
6. Discuss and take possible action on the election of chairman, secretary, and vice-chairman for the system
7. Discussion on proposals and on the hiring of an administering carrier for the system, and take possible action on the hiring
8. Discuss and take possible action on an interim assessment
9. Any further business
10. Setting the agenda, date and location for next board meeting

11. Adjourn

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 1, 1995, 9:42 a.m.

TRD-9509541

Texas Department of Licensing and Regulation

Tuesday, August 8, 1995, 9:00 a.m.

920 Colorado, E.O. Thompson Building,
Fourth Floor

Austin

Inspections and Investigations, Property
Tax Consultants

AGENDA:

According to the complete agenda, the department will reconvene an administrative hearing for the limited purpose of allowing the respondent to offer evidence concerning a power of attorney relevant to this case and of permitting the department to respond thereto. This hearing was originally convened to consider possible assessment of an administrative penalty and denial, suspension or revocation of the license for David McCullough for violation of the Texas Civil Statutes, Article 8886 and Article 9100, 16 Texas Administrative Code (TAC) §66.20(a), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: July 27, 1995, 1:06 p.m.

TRD-9509369

Wednesday, August 16, 1995, 9:00 a.m.

920 Colorado, E.O. Thompson Building,
Fourth Floor

Austin

Inspections and Investigations, Manufactured Housing

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 Raymond Bogs doing business as Bog's Mobile Home Service for violation of the Texas Civil Statutes, Article 5221f and Article 9100, 16 Texas Administrative Code (TAC), Chapter 69, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: July 27, 1995, 1:07 p.m.

TRD-9509370

Monday, August 28, 1995, 9:00 a.m.

920 Colorado, E.O. Thompson Building,
Third Floor

Austin

Inspections and Investigations, Manufactured Housing

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 Thomas D. Clegg, Jr. for violation of the Texas Civil Statutes, Article 8700f and Article 9100, 16 Texas Administrative Code (TAC), Chapter 69, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: July 28, 1995, 5:39 p.m.

TRD-9509464

Texas State Board of Medical Examiners

Monday-Tuesday, August 7-8, 1995, 8:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Acupuncture Examiners, Grandfathering, Reciprocity, and Application Committee

AGENDA:

Monday, August 7, 1995

1. Call to order

2. Roll call

3. Executive session under the authority of The Open Meetings Act, §551.071 of the Government Code and Article 4495b, §2.07(b) and §2.09(o), Texas Civil Statutes for private consultation and advice of counsel concerning pending litigation relative to applications for licensure and licensee disciplinary actions.

4. Open session to review applicants for automatic licensure

9:00 a.m. Charles Johnson, Per Godsk Otte, Gary Stier, and Arthur Glen Minshew

10:00 a.m. Jackie Kopanski and Maria Pilar New

11:00 a.m. Yuly Zhang and Chunhui Lu

1:00 p.m. Reconvene

Allan J. Walling, Mostafa Bighamian, Yu-Zhi Li, and John Pascone

2:30 p.m. Elhadi Kareem and Asaya Kareem

Tuesday, August 8, 1995

5. 9:00 a.m. Reconvene

6. Executive session under the authority of The Open Meetings Act, §551.071 of the Government Code and Article 4495b, §2.07(b) and §2.09(o), Texas Civil Statutes for private consultation and advice of counsel concerning pending litigation relative to applications for licensure and licensee disciplinary actions.

7. Open session to review applicants for automatic licensure

9:00 a.m. Joe Santos, Mark Hogan, Ronald Shipman, Henrietta Rice Murayama, Ralph Britt, and Nelda English

Open session to review applicants for licensure by endorsement

Hsiao-Fen Chuo and Masaaki Nakano

8. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: July 28, 1995, 4:19 p.m.

TRD-9509456

Tuesday, August 8, 1995, 10:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Acupuncture Examiners Examination, Licensure and Fee Committee

AGENDA:

1. Call to order

2. Roll call

3. Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §2.07(b) and §2.09(o), Texas Civil Statutes for private consultation and advice of counsel concerning pending litigation relative to applications for licensure and licensee disciplinary actions.

4. Open session to review applicant for licensure by Examination

Edward Zarandin Saloma

5. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: July 28, 1995, 4:19 p.m.

TRD-9509457

Tuesday, August 8, 1995, 11:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Acupuncture Examiners

AGENDA:

1. Board meeting call to order

2. Roll call

3. Speakers on auricular acupuncture

4. Citizen communication: a maximum of 20 speakers will be allowed to speak to the board for up to three minutes each, on a "first-come, first-served" basis regarding acupuncture concerns.

5. Discussion, recommendations and possible action on auricular acupuncture.

6. Discussion, recommendations and possible action on rules related to licensure and acupuncture schools.

7. Discussion, recommendations and possible action on participation in the development of computer simulated point location exam of National Commission for the Certification of Acupuncturists.

8. Approval of board meeting dates for 1996.

9. Approval of minutes

a. Approval of June 8-9, 1995 Grandfathering, Reciprocity, and Application

b. Approval of June 9, 1995 board meeting minutes

c. Approval of June 9, 1995 Education Committee meeting minutes

10. Presentation of reports from committee meetings on August 7-8, 1995.

a. Grandfathering, Reciprocity and Application Committee

b. Examination, Licensure and Fee Committee

11. Report from executive director, Bruce A. Levy, M.D., J.D.

12. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: July 28, 1995, 4:19 p.m.

TRD-9509458

Thursday-Friday, August 10-11, 1995, 2:00 p.m. and 9:00 a.m., respectively.

1812 Centre Creek Drive, Suite 300

Austin

Physician Assistant Advisory Council, Long Range Planning Committee

AGENDA:

Thursday, August 10, 1995, 2:00 p.m.

1. Call to order

2. Roll call

3. Discussion and action on proposed amendments to the physician assistant rules.

Friday, August 11, 1995, 9:00 a.m.

1. Call to order

2. Roll call

3. Representative from The Center for Rural Health Initiative will discuss rules for implementing loan repayment program.

4. Financial report

5. Executive director's report.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: July 28, 1995, 4:19 p.m.

TRD-9509453

Friday, August 11, 1995, 9:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Physician Assistant Advisory Council, Licensure Committee

AGENDA:

1. Call to order

2. Roll call

3. Review of licensure applicants referred to the Licensure Committee by the executive director for determinations of eligibility for

licensure.* Ken Washington, Kathleen Parkin-Paul, Tony Moreno, Clarence Moseley, Charles Scott, Lance Chmura, Susan McCormick, David Brewer

4. Review of Physician Assistant applications for permanent licensure.¹

5. Report by executive director regarding:

a. Withdrawal of applications after decision of Licensing Committee.

b. Requests for rehearing of applicants after decision of Licensing Committee.

c. Applicants with histories of substance abuse.

¹ Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, and Article 4495b-1, §4(h), Texas Civil Statutes and Title 22 of the Texas Administrative Code, §185.3(h).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: July 28, 1995, 4:19 p.m.

TRD-9509454

Friday, August 11, 1995, 2:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Physician Assistant Advisory Council

AGENDA:

1. Call to order

2. Roll call

3. Consideration of waiver requested by Big Bend Regional Medical Center to allow Clifton Pearce, M.D. to supervise more than two full-time physician assistants.

4. Approval of 1996 board meeting dates

5. Approval to change September 1995 meeting date from the 15th to the 22nd.

6. Executive director's report

7. Update on board member travel.

8. Report and recommendations from the Long Range Planning Committee.

9. Recommendation from the Licensure Committee related to approval of physician assistant applications for permanent licensure.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: July 28, 1995, 4:19 p.m.

TRD-9509455



Midwestern State University

Thursday, August 3, 1995, 3:00 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

AGENDA:

The Executive Committee will review and approve May 11, 1995 committee minutes and a recommendation will be made by a nominating committee for board officers for the 1996 and 1997 biennium. The committee will receive recommendations and discuss the Board of Regents meetings dates for 1995-1996, outside and general counsel agreements, the Information Systems Biennial Operating Plan for Fiscal Years 1996 and 1997, a landscaping contract for Pierce and Killingsworth Halls, a contract to repair the Fain Fine Arts Building roof, easement requests from the City of Wichita Falls, and modifications of the contract with Supreme Fitness.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: July 28, 1995, 8:51 a.m.

TRD-9509395

Thursday, August 3, 1995, 3:30 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Finance and Audit Committee

AGENDA:

The Finance Committee will review minutes of the committee meeting February 9, 1995, and will receive recommendations and discuss the use of an investment advisor, financial disclosure statements for the president, vice president for business affairs and controller, an internal audit plan for 1995-1996, an increase in the general use fee, a new international student advising fee, and an increase in the thesis binding fee. Additional recommendations will be received and discussed concerning non-resident tuition increase, senior citizen exemptions, Aid for Dependent Children tuition exemption, bond financial services, bond counsel, signatures required on university accounts, a budget transfer to fund the 1994-1995 budget, and ratification of items \$15,000 and under approved by president per board authorization. The committee will consider a proposed 1995-1996 operating budget and HEAF allocations for 1995-1996. Discussion concerning personnel and salary related matters in the operating budget will be discussed in executive session as legally justified in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: July 28, 1995, 8:51 a.m.

TRD-9509396

Thursday, August 3, 1995, 4:00 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Personnel and Curriculum Committee

AGENDA:

The Personnel and Curriculum Committee will review minutes of the committee meeting May 11, 1995. Information will be received concerning enrollment and small class reports in the first and second summer session 1995, and the last day enrollment report for the spring 1995 semester. The committee will receive recommendations and consider position changes in the fiscal year 1994-1995 budget, a legislated student assistance office, unit requirements for admission to MSU, auxiliary education sites for radiologic sciences, and possible cooperative doctoral program with the University of North Texas. Policy Manual revisions will be presented as follows: 2.31, Selection of Coaches; new policy 2.325, Recruitment of Student Athletes by Institutional Representatives; 2.37, Financial Aid Advisory Appeals Committee; 3.125, Standards for Promotion; 3.329, Social Security Benefits; 4.112, Alcoholic Beverages on Campus; 4.117, Clark Student Center Ballroom rental fees for off-campus groups; 4.152, Rollerblading and Rollerskating on Campus; and 4.183, Investment Policy. A recommendation concerning promotion of a faculty member and discussion of the university president's salary will be discussed in executive session as legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17, §2(g).

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: July 28, 1995, 8:51 a.m.

TRD-9509397

Thursday, August 3, 1995, 4:30 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Student Services Committee

AGENDA:

The Student Services Committee will review minutes of the committee meeting May 11, 1995 and will receive information concerning housing and residence hall summer renovations.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: July 28, 1995, 8:51 a.m.

TRD-9509398

Thursday, August 3, 1995, 5:00 p.m.

3410 Taft Boulevard, Hardin Board Room
Wichita Falls

Board of Regents University Development
Committee

AGENDA:

The University Development Committee will review minutes of the committee meeting May 11, 1995. Summaries of gifts, grants and pledges September 1, 1994 through July 6, 1995 will be presented for review of the board. Resolutions of appreciation will be presented for approval as necessary, including resolutions for the Priddy Foundation, the Wilson Foundation and Wichita General Hospital.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 589-4212.

Filed: July 28, 1995, 8:51 a.m.

TRD-9509399

Thursday, August 3, 1995, 5:15 p.m.

3410 Taft Boulevard, Hardin Board Room
Wichita Falls

Board of Regents Athletics Committee

AGENDA:

The Athletics Committee will review minutes of the committee meeting May 11, 1995 and will receive information and discuss the transition to NCAA Division II/Lone Star Conference and Title IX compliance review.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: July 28, 1995, 8:53 a.m.

TRD-9509400

Friday, August 4, 1995, 9:00 a.m.

3410 Taft Boulevard, Hardin Board Room
Wichita Falls

Board of Regents

AGENDA:

The Board of Regents will consider the minutes of the May 12, 1995 and July 11, 1995 Board of Regents meetings and review the financial reports for the months of April, May and June, 1995. The board will consider recommendations and receive information from the Executive, Finance, Personnel and Curriculum, Student Service, University Development and Athletics

Committee. Information will additionally be presented concerning information systems at MSU as well as an overall update by the president of the university. The Board of Regents of Midwestern State University reserves the right to discuss any items in executive session whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17 Recommendations for faculty promotion, personnel and salary matters relating to the MSU operating budget, and discussion of the university president's salary will be discussed in executive session as allowed by §2(g) of the Texas Open Meetings Act.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212

Filed: July 28, 1995, 8:53 a.m.

TRD-9509401

Texas Natural Resource Conservation Commission

Monday, August 21, 1995, 2:00 p.m.

Hampton Inn Conference Room, 11010 IH-10 West

San Antonio

AGENDA:

On an application by Waste Technologies, Inc., Proposed Registration Number MSW40085, to construct and operate a Type V liquid waste transfer facility. The proposed site contains approximately 0 809 acres, will accept up to 100, 000 gallons of grease trap waste per day, and will be located at 10360 U.S. Highway 90 West in the City of San Antonio, Bexar County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 239-6687 or (512) 239-4756.

Filed: July 28, 1995, 1:05 p.m.

TRD-9509433

Public Utility Commission of Texas

Tuesday, August 8, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference has been scheduled in Docket Number 14452-Complaint of Carolyn Arnold Communications Consultant, Inc. on behalf of Manor Downs

against Southwestern Bell Telephone Company

Contact: Amalija J. Hodgins, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 28, 1995, 2:10 p.m.

TRD-9509436

Tuesday, August 8, 1995, 10:15 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference has been scheduled in Docket Number 14453-Complaint of Carolyn Arnold Communications Consultant, Inc. on behalf of Turbomachinery Repair, Inc. against Southwestern Bell Telephone Company.

Contact: Amalija J. Hodgins, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 28, 1995, 2:10 p.m.

TRD-9509435

Thursday, August 10, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference will be held on the above date and time in Docket Number 14434: Complaint of Larry Wade against GTE Southwest, Inc., regarding Centranet Service.

Contact: Amalija J. Hodgins, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 1, 1995, 8:13 a.m.

TRD-9509528

Tuesday, October 31, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits has been scheduled in Docket Number 14374-Application of Sam Rayburn G&T Electric Cooperative, Inc. to reconcile rule expenses for the period March 1992 through February 1995.

Contact: Amalija J. Hodgins, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 31, 1995, 3:12 p.m.

TRD-9509522

Railroad Commission of Texas

Tuesday, August 8, 1995, 9:30 a.m.

1701 North Congress, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider an 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: July 28, 1995, 10:40 a.m.

TRD-9509413

Tuesday, August 8, 1995, 9:30 a.m.

1701 North Congress, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider an act on the Office of Information Services Director's report division administration, budget, procedures and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: July 28, 1995, 10:41 a.m.

TRD-9509414

Tuesday, August 8, 1995, 9:30 a.m.

1701 North Congress, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider an act on the Information Manager's report on information resource planning documents.

The Commission will consider and act on the Information Resource Manager's report on the administration, budget, procedures, equipment acquisitions, contracts, work schedules and quarterly updates associated with the Department of Energy-RRC Area of Review (AOR) Data Management Enhancements Grant Status Review.

Contact: Mel Mireles, P.O. Box 12967, Austin, Texas 78701, (512) 463-7249.

Filed: July 28, 1995, 10:41 a.m.

TRD-9509415

Tuesday, August 8, 1995, 9:30 a.m.

1701 North Congress, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider an act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: July 28, 1995, 10:42 a.m.

TRD-9509416

Tuesday, August 8, 1995, 9:30 a.m.

1701 North Congress, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider an act on the 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, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6981.

Filed: July 28, 1995, 10:40 a.m.

TRD-9509417

Tuesday, August 8, 1995, 9:30 a.m.

1701 North Congress, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider an 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: July 28, 1995, 10:43 a.m.

TRD-9509418

Tuesday, August 8, 1995, 9:30 a.m.

1701 North Congress, First Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified. 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 will 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: July 28, 1995, 10:44 a.m.

TRD-9509419

Tuesday, August 14, 1995, 9:30 a.m.

1701 North Congress, 12th Floor Conference Room 12-126

Austin

AGENDA:

The Railroad Commission of Texas will hear oral arguments and act accordingly on the following items:

Docket Number 04-0207250, Commission called hearing to give Valero Transmission, L.P., an opportunity to appear and show cause why they should not be found in violation of Statewide Rule 73 and to its 20" pipeline between Kelsey and Falfurrias, in Brooks County, Texas.

Rule 37 Cause Number 0206334, Enron Oil and Gas Company's application for an exception to Statewide Rule 37 for its Frank Reed 117 Lease, Well Number 17, Sawyer (Canyon) Field, Sutton County, Texas.

Contact: L. Borella, P.O. Box 12967, Austin, Texas 78711-6927, (512) 463-6924.

Filed: July 28, 1995, 10:39 a.m.

TRD-9509412

Texas Real Estate Commission

Monday, August 7, 1995, 8:00 a.m.

Conference Room 235, Second Floor, TREC Headquarters Office, 1101 Camino La Costa

Austin

AGENDA:

Call to order; demonstrations of alternative educational delivery methods; minutes of June 26, 1995 commission meeting; staff reports for June 1995; discussion and possible action to approve biennial operating plan for information resources; discussion and possible action to approve achievement bonuses for classified employees; discussion and possible action to propose repeal of 22 TAC §535.164 concerning disclosure of agency; consideration of request from Texas Real Estate Buyer Agent's Association relating to disclosure notice and appointment of task force; discussion and possible action to adopt proposed amendment to 22 TAC §535.13 concerning real estate license requirements to arrange for persons to occupy vacant residential property; dis-

discussion and possible action to adopt proposed amendments to 22 TAC §535.61, concerning acceptance of courses, §535.66, concerning proprietary schools, §535.71 concerning mandatory continuing education and 22 TAC §535.101 concerning fees; executive session to discuss pending litigation pursuant to Texas Government Code, §551.071 and appointments to the Texas Real Estate Broker-Lawyer Committee pursuant to Texas Government Code, §551.074; discussion and possible action to authorize payments from recovery funds; discussion and possible action to appoint members of the Texas Real Estate Broker-Lawyer Committee; discussion and possible action to approve education providers, courses or instructors; discussion of 22 TAC §535.61(aa) concerning ten-year limit on core course acceptance; consideration of complaint information concerning: Jeff M. Thompson Real Estate, Inc., and Victor Bianchi, Sr.; Fenwick and Associates, Inc., and William Cordell Harrington; John McAllister Stevenson, Jr.; J. Frank Powell; Wayne Brian Pickering; Louis Garfield Reese; Ruben Singleterry; Daniel Otis Tomlin; Frances Mary Morris; Betty Ann Filecia; and Roger Jones Conant; motion for rehearing in the matter of Joe Prado, Hearing Number 95-48-94029?; 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 12188, Austin, Texas 78711-2188, (512) 465-3000.

Filed: July 28, 1995, 10:54 a.m.

TRD-9509420

Stephen F. Austin State University

Monday, August 7, 1995, 1:30 p.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Board of Regents

AGENDA:

- I. Open session-Committee of the Whole
- II. Executive session
 - A. Report on pending litigation
 1. Report on all pending lawsuits
 2. Asbestos class action
 - B. Attorney-client advice
 1. Insurance Reserve Fund
- III. Open discussion of Tuesday board items

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: July 28, 1995, 4:57 p.m.

TRD-9509461

Tuesday, August 8, 1995, 9:00 a.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Board of Regents

AGENDA:

- I. Open session
- II. Approval of minutes
 - A. April 29, 1995
 - B. June 1, 1995
 - C. June 28, 1995
 - D. July 14, 1995
 - E. July 24, 1995
- III. Administration
 - A. Ethics policy
- IV. Personnel
 - A. Faculty and staff appointments for 1995-1996
 - B. Changes of status
 - C. Voluntary modification of employment 1995-1996
 - D. Retirement
 - E. Holiday schedule
 - V. Academic and student affairs
 - A. Last class day report
 - B. Underenrolled class report
 - C. Approval of Master of Arts in School Psychology and Behavior Analysis
 - D. Approval of Master of Science in Environmental Science
 - E. Sesquicentennial Scholars Program
 - F. Faculty evaluation, merit pay, promotion and tenure policy
 - G. Faculty development leave policy
 - H. Special item request for feed mill
 - I. Parking and traffic regulations
 - VI. Financial affairs
 - A. Approval of annual budget fiscal year 1996
 - B. Proposed bond sale auxiliary bonds
 - C. Approval for expansion of Utility Loop
 - D. Austin Building renovation
 - E. Selection of insurance carrier
 - F. Health Insurance Reserve Fund

G. Budget changes less than \$50,000

H. Authorization to sign vouchers and checks

I. Authorization to sign travel requests

J. Check verification service

K. Purchase of two shuttle buses

VII. Reports

A. Chair, Faculty Senate

B. President, Student Government Association

C. Vice President for University Advancement

D. Recruitment and retention

E. President

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: July 28, 1995, 5:40 p.m.

TRD-9509466

Texans' War on Drugs

Friday, July 28, 1995, 9:00 a.m.

Telephone Conference Call, 313 East Anderson Lane, Suite 101

Austin

Emergency Meeting

Board of Directors Emergency Meeting

AGENDA:

- 1) Roll call
- 2) Call to order
- 3) Establish quorum
- 4) Discussion of TCADA Task Force findings and suspension of funding
- 5) Executive session-Discuss personnel issues
- 6) Action on matters discussed in executive session
- 7) Other business
- 8) Adjourn

Reason for emergency: Suspension of funding by Texas Commission on Alcohol and Drug Abuse.

Contact: Janis Pittel, 313 East Anderson Lane, Suite 101, Austin, Texas, 78752-1222, (512) 452-0141.

Filed: July 28, 1995, 8:35 a.m.

TRD-9509394

Texas Southern University

Friday, August 4, 1995, 8:30 a.m.

3100 Cleburne/Hannah Hall, Room 111

Houston

Board of Regents

AGENDA:

Meeting to consider Minutes; report of the president; report from standing committees; executive session.

Contact: Everett O Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: July 27, 1995, 3:11 p.m.

TRD-9509386

Thursday, August 3, 1995, 10:00 a.m.

3100 Cleburne, Law School, Second Floor

Houston

Litigation Committee

AGENDA:

Meeting to consider a review of cases filed and pending against the university

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: July 27, 1995, 3:11 p.m.

TRD-9509384

Thursday, August 3, 1995, 11:30 a.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Finance and Buildings and Grounds Committee

AGENDA:

Meeting to consider: Matters relating in financial reporting systems, and budgets; fiscal reports from the administration; investments; contract awards; and informational items.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: July 27, 1995, 3:11 p.m.

TRD-9509385

Thursday, August 3, 1995, 1:30 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Personnel, Student Services and Academic Affairs Committee

AGENDA:

Meeting to consider: Progress reports of academic activities and programs; personnel actions.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: July 27, 1995, 3:11 p.m.

TRD-9509383

Texas Turnpike Authority

Thursday, August 10, 1995, 9:30 a.m.

3015 Raleigh Street

Dallas

Staff/Financial Advisor Selection Committee

AGENDA:

Roll call of committee members

Recognition of other directors and guests present

1. Review qualifications of applicants for in-house counsel position. Possible interviews.

2. Consider retaining executive search firm for staff positions. Discussion and possible action.

3. Executive session—Pursuant to Chapter 551, Subchapter D, Texas Government Code:

Subsection 551.074(a)—Deliberation over personnel matters related to employment of in-house counsel.

4. Discuss the need for, procedures for, and criteria for selection of financial advisor(s). Possible action.

Adjournment

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: August 1, 1995, 9:59 a.m.

TRD-9509543

University Interscholastic League

Monday, August 7, 1995, 9:00 a.m.

Thompson Conference Center, 26th at Red River

Austin

Waiver Review Board

AGENDA:

AA. Request for waiver of the Four Year Rule by Brian Brentheimer, Copperas Cove High School.

BB. Request for waiver of the Parent Residence Rule by Sam Richardson, Gorman High School.

CC. Request for retroactive waiver of the Parent Residence Rule by Rose Perez, Travis High School, Austin.

DD. Request for waiver of the Four Year Rule by Rafael Soliz, Memorial High School, McAllen.

EE. Request for waiver of the Four Year Rule by Judson McDonald, Megargel High School, Megargel.

FF. Request for waiver of the Four Year Rule by Carlos Lopez, Greenwood High School, Midland.

GG. Request for waiver of the Parent Residence Rule by Robert Williamson, Overton High School.

HH. Request for waiver of the Four Year Rule by Tony Taplin, A&M Consolidated, College Station.

Contact: Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: July 27, 1995, 2:38 p.m.

TRD-9509378

University of North Texas/University of North Texas Health Science Center

Thursday, August 3, 1995, 1:30 p.m.

Chestnut and Avenue C, Administration Building, Room 201

Denton

Board of Regents, Role and Scope Committee

AGENDA:

UNT: UNT Policy Manual; reorganization of the School of Community Service; tenure for new faculty appointees; personnel transactions; award of honorary degree; establishment of holidays for fiscal 1995-1996; briefing on PEW Roundtable

UNTHSC: Personnel transactions; quality assurance annual program review, Policy and Procedures Manual and JCAHO accreditation schedule; UNT Health Science Center manuals and policies; holiday schedule; briefing on institutional responses to change in health care

UNT/UNTHSC: Resolutions of appreciation for R. L. Crawford, Jr., and E. L. "Buddy" Langley

Contact: Jana Dean, P.O. Box 13737, Denton, Texas 76201, (817) 369-8515.

Filed: July 31, 1995, 12:06 p.m.

TRD-9509508

Thursday, August 3, 1995, 1:30 p.m.

Chestnut and Avenue C, Administration Building, Board Room, University of North Texas

Denton

Board of Regents, Budget and Finance Committee

AGENDA:

UNT: 1995-1996 budget recommendation; insurance reserve; internal audit plan for 1996 fiscal year; gift report; internal audit update; investment report; report of interest earnings

UNTHSC: 1995-1996 budget recommendation; internal audit plan for 1996 fiscal year; gift report; investment report; report of interest earnings

Contact: Jana Dean, P.O. Box 13737, Denton, Texas 76201, (817) 369-8515.

Filed: July 31, 1995, 12:07 p.m.

TRD-9509509

Thursday, August 3, 1995, 3:30 p.m.

Chestnut and Avenue C, Administration Building, Room 201, University of North Texas

Denton

Board of Regents, Facilities Committee

AGENDA:

UNT: Renovation of Physics Building; new building project; Advanced Learning and Student Services Center; project status report; update on Music and Fine Arts Education Building; update on thermal storage

UNTHSC: Addition to Seminary Drive Clinic; Health Science Education Building and Vivarium expansion

Contact: Jana Dean, P.O. Box 13737, Denton, Texas 76201, (817) 369-8515.

Filed: July 31, 1995, 12:07 p.m.

TRD-9509510

Thursday, August 3, 1995, 3:30 p.m.

Chestnut and Avenue C, Administration Building, Board Room, University of North Texas

Denton

Board of Regents, Advancement Committee

AGENDA:

UNT: Gift report-year to date; Capital campaign update; investment overview; athletic marketing initiatives; public affairs update; UNT Foundation Coordination

UNTHSC: Review of first quarter departmental goals and objectives; gift income report for Foundation; funding opportunities; UNTHSC/TCOM Foundation update; silver anniversary update

Contact: Jana Dean, P.O. Box 13737, Denton, Texas 76201, (817) 369-8515.

Filed: July 31, 1995, 12:07 p.m.

TRD-9509511

Friday, August 4, 1995, 8:00 a.m.

Diamond Eagle Suite, University Union, University of North Texas

Denton

Board of Regents

AGENDA:

UNT: Approval of minutes; address by State Representative Robert R. Alonzo; executive session (UNT/UNTHSC: Austin update; fiscal year budget updates. UNTHSC: Affiliations; lawsuits update. UNT: Athletic update; mathematics faculty issue; Insurance Reserve; Black Student Alliance update; Dallas Education Center; North Texas Research Institute; disposition of Charn Usawachoke gift; reorganization of Development Office; lawsuits update; management faculty issue; chancellor's evaluation). UNT: UNT Policy Manual; reorganization of the School of Community Service; tenure for new faculty appointees; personnel transactions; award of honorary degree; establishment of holidays for fiscal year 1995-1996; 1995-1996 budget recommendation; Insurance Reserve; internal audit plan for the 1996 fiscal year; gift report; renovation of Physics Building; new building project; Advanced Learning and Student Services Center; project status report; chancellor's update. UNTHSC: Approval of minutes; personnel transactions; quality assurance annual program review. Policy and Procedures Manual and JCAHO accreditation schedule; UNT Health Science Center manuals and policies; holiday schedule; 1995-1996 budget recommendation; internal audit plan for the 1996 fiscal year; gift report; addition to Seminary Drive Clinic; Health Science Education Building and Vivarium expansion; resolutions of appreciation for R. L. Crawford, Jr. and E. L. "Buddy" Langley; election of officers.

Contact: Jana Dean, P.O. Box 13737, Denton, Texas 76203, (817) 369-8515.

Filed: July 31, 1995, 12:06 p.m.

TRD-9509507

The University of Texas System

Thursday, August 10, 1995, 10:30 a.m.

Connally Conference Center and Classroom One, Third Floor, U.T. Institute of Texas Cultures, 801 South Bowie Street

San Antonio

Board of Regents and Standing Committees

AGENDA:

To consider Chancellor's Docket (submitted by System Administration); amendments to

Regents' Rules and Regulations; fiscal year 1996-2001 Capital Improvement Program; Capital Budget for fiscal year 1996 and 1997; operating budgets for fiscal year 1996; investment fee for all endowments and trusts; U. T. El Paso-proposed resident tuition rates for students residing in counties in New Mexico; proposed gifts policy guidelines; U.T. Pan American and U.T. Permian Basin-establishment of advisory councils; degree programs; buildings and grounds matters including approval of preliminary and final plans and appropriations; patent license agreement; acceptance of gifts, bequests and estates; potential litigation, real estate matters, and personnel matters.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701-2981, (512) 499-4402.

Filed: July 31, 1995, 11:26 a.m.

TRD-9509506

Texas Workers' Compensation Commission

Thursday, August 3, 1995, 9:00 a.m.

4000 South IH-35, Room 910-911, Southfield Building

Austin

Public Meeting

AGENDA:

1. Call to order
2. Approval of minutes for the public meeting of July 6, 1995
3. Discussion and possible action on proposal of new or amended rules: Rule 102.6, 120.2, 120.3, 124.1, 114.2, and 110.110
4. Discussion and possible action on proposal of repeal: Rule 102.6
5. Discussion and possible action on adoption of new and amended rules: Rule 126.10 and 130.6
6. Discussion and possible action on proposal of new rule: Rule 134.601
7. Discussion and possible action on proposal of repeal: Rule 134.600
8. Discussion and possible action on final grant or denial of requests for renewal of Certificate of Authority to Self-Insure
9. Executive session
10. Action on matters considered in executive session
11. Discussion and possible action on committee assignments
12. General reports and possible action on issues relating to commission activities

13 Confirmation of future public meetings and hearings

14. Adjournment

Contact: Todd K Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690

Filed: July 27, 1995, 3:57 p.m.

TRD-9509391

Regional Meetings

Meetings Filed July 27, 1995

The Bell County Tax Appraisal District Board of Directors met at 411 East Central Avenue, Belton, August 1, 1995, at 7:00 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513, (817) 939-5841. TRD-9509379.

The Education Service Center, Region XX Board of Directors met at 1314 Hines Avenue, San Antonio, August 3, 1995, at 10:00 a.m. Information may be obtained from Dr Judy M Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208-1899, (210) 299-2471. TRD-9509368.

The Garza Central Appraisal District Board of Directors will meet at 124 East Main, Post, August 10, 1995, at 9:00 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9509377.

The Gonzales County Appraisal District Agricultural Advisory Board met at 928 St Paul, Gonzales, August 2, 1995, at 7:30 p.m. Information may be obtained from Connie Barfield or Glenda Strackbein, 928 St Paul, Gonzales, Texas 78629, (210) 672-2879, Fax: (210) 672-8345. TRD-9509388.

Meetings Filed July 28, 1995

The Aqua Water Supply Corporation Board of Directors will meet at 305 Eskew, Bastrop, August 7, 1995, at 7:30 p.m. Information may be obtained from Adline Rathman, Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9509451.

The Bastrop Central Appraisal District Appraisal Review Board met at 1200 Cedar Street, Bastrop, August 1, 1995, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRD-9509432.

The Bastrop Central Appraisal District Appraisal Review Board met at 1200 Cedar Street, Bastrop, August 3, 1995, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRD-9509431.

The Creedmoor Maha Water Supply Corporation (Monthly Meeting) met at 1699 Laws Road, Mustang Ridge, August 2, 1995, at 7:30 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Buda, Texas (512) 243-2113 or (512) 243-1991. TRD-9509410.

The Dallas Area Rapid Transit Bylaws Ad Hoc Committee met in Conference Room B, 1401 Pacific, Dallas, August 1, 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-9509452.

The Denton Central Appraisal District Board of Directors will meet at 3911 Morse Street, Denton, August 7, 1995, at 4:00 p.m. Information may be obtained from Kathy Williams, P.O. Box 2816, Denton, Texas 76202-2816, (817) 566-0904. TRD-9509423.

The East Texas Council of Governments Executive Committee met at 3800 Stone Road, Kilgore, August 3, 1995, at 1:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9509402.

The Hays County Appraisal District Appraisal Review Board will meet at 21001 North IH-35, Kyle, August 15, 1995, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9509434.

The Jasper County Appraisal District Appraisal Review Board will meet at 137 North Main, Jasper, August 8-9, 1995, at 9:00 a.m. Information may be obtained from David W. Luther, 137 North Main, Jasper, Texas 75951, (409) 384-2544. TRD-9509389.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, August 7, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenka or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9509409.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, August 16, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenka or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9509408.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, August 17, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenka or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9509407.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, August 21, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenka or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9509406.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, August 22, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenka or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9509405.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, August 23, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenka or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9509404.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main at Boerne, August 24, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenka or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9509403.

The Panhandle Ground Water Conservation District Number 3 Board of Directors (Public Meeting) met at the District Office, 300 South Omohundro Street, White Deer, August 2, 1995, at 7:30 p.m. Information may be obtained from C. E. Williams, Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9509411.

The San Patricio Appraisal District Board of Directors will meet at 1146 East Market, Sinton, August 10, 1995, at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9509393.

Meetings Filed July 31, 1995

The Central Texas Area Consortium (Regular Meeting) met at 2 North Fifth Street, Temple, August 3, 1995, at 7:00 p.m. Information may be obtained from Michael B. Herring, P.O. Box 3303, Temple, Texas 76505-3303, (817) 791-9102. TRD-9509500.

The Central Texas Council of Governments Transportation Planning Policy Board met at 803 Central Texas Expressway, Park Inn, Killeen, August 2, 1995, at 10:00 a.m. Information may be obtained from Mike Morgan, P.O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD-9509516.

The Education Service Center, Region VI Board of Directors will meet at 1301 Sam Houston Avenue, Huntsville, August 10, 1995, at 5:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 299-9161. TRD-9509502.

The Education Service Center, Region IX Regional Advisory Committee will meet at 301 Loop 11, Wichita Falls, August 10, 1995, at 10:00 a. m. Information may be obtained from Jim O. Rogers, Ed.D., 301 Loop 11, Wichita Falls, Texas 76305, (817) 322-6928. TRD-9509503.

The Education Service Center, Region IX Board of Directors will meet at 301 Loop 11, Wichita Falls, August 10, 1995, at 12:30 p.m. Information may be obtained from Jim O. Rogers, Ed.D., 301 Loop 11, Wichita Falls, Texas 76305, (817) 322-6928. TRD-9509504.

The Edwards Central Appraisal District Board of Directors will meet at 408 Austin Street, County Annex Building, Rocksprings, August 4, 1995, at 10:00 a.m. Information may be obtained from Teresa Sweeten, P.O. Box 378, Rocksprings, Texas 78880, (210) 683-4189. TRD-9509518

The Edwards Central Appraisal District Appraisal Review Board will meet at 408 Austin Street, County Annex Building, Rocksprings, August 17, 1995, at 10 00 a.m. Information may be obtained from Teresa Sweeten, P.O. Box 378, Rocksprings, Texas 78880, (210) 683-4189. TRD-9509519

The Erath County Appraisal District Board of Directors will meet at 1390 Harbin Drive, Stephenville, August 8, 1995, at 7:00 a.m. Information may be obtained from Vicky Greenough, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9509501.

The Hunt County Appraisal District Appraisal Review Board will meet at 4801 King Street, Greenville, August 8, 1995, at 8:30 a.m. Information may be obtained from Shirley Gregory, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9509490.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Hallettsville, August 14, 1995, at 6:00 p. m. Information may be obtained from Diana Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9509517.

The Millersview-Doole Water Supply Corporation Board of Directors will meet one block west of FM Highway 765 and FM Highway 2134, Millersview, August 7, 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-9509520.

The Quality Work Force Planning, Region VIII Upper Rio Grande Quality Work Force Planning Committee will meet at Ysleta ISD, 9600 Sims, El Paso, August 4, 1995, at 11:30 a.m. Information may be obtained from Mark J. Walder, 1155 Westmoreland, El Paso, Texas 79925, (915) 799-6623. TRD-9509471.

The Stephens County Rural WSC Board (Regular Monthly Meeting) met at 301 West Elm Street, Breckenridge, August 3, 1995, at 7:30 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (817) 559-6180. TRD-9509505.

The Wood County Appraisal District Board of Directors will meet at 217 North Main, Quitman, August 8, 1995, at 1:30 p.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box

518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9509525.

The Wood County Appraisal District Appraisal Review Board will meet at 217 North Main, Quitman, August 11, 1995, at 9:00 a.m. Information may be obtained from W. Carson Wages or Lou Brooks, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9509526.

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Meetings Filed August 1, 1995

The Bell-Milam-Falls WSC Board will meet at the Office-FM 485 West, Cameron, August 8, 1995, at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9509534.

The Capital Area Planning Council Executive Committee will meet at 2520 IH-35 South, Suite 100, Austin, August 9, 1995, at Noon. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653. TRD-9509529.

The Concho Valley Quality Work Force Planning (Emergency Meeting) Executive Committee of the Concho Valley Quality Work Force Planning met at 5002 Knickerbocker Road, San Angelo, August 1, 1995, at 3:00 p.m. (Reason for emergency: Meeting called to order by request of fiscal agent to locate alternate sight to host Quality Work Force Planning for fiscal year 1995-1996.) Information may be obtained from Catherine Cordova, P.O. Box 61276, San Angelo, Texas 76906, (915) 944-9666. TRD-9509527.

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Name: Shona Copling
Grade: 10
School: Gainesville High School, Gainesville ISD

IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of the Attorney General Texas Clean Air Act Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. The Texas Health and Safety Code, §382.096 provides that before the State may settle a judicial enforcement action under the Clean Air Act, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act.

Nature of Defendant's Operations: Texas Municipal Power Agency (TMPA) operates a lignite fired power plant in Grimes County.

Nature of Lawsuit: The State of Texas alleged that TMPA did not maintain and operate emissions control equipment properly on two occasions in violation of permit conditions.

Proposed Agreed Judgment: The Agreed Final Judgment provides for the payment of \$12,000 in civil penalties, which is inclusive of \$500 in attorney's fees.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the judgment should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

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

TRD-9509264 Jerry Benedict
Assistant Attorney General
Office of the Attorney General

Filed: July 24, 1995

Office of Consumer Credit Commissioner

Interpretations-Request for Interpretation of Title 79

Under provisions of Title 79, Texas Civil Statutes, Article 2.02A, §(10) (Texas Civil Statutes, Article 5069-2.02A), the consumer credit commissioner may issue interpretations of Title 79, Texas Civil Statutes (Texas Civil Statutes, Article 5069-1.01 *et seq.*). The consumer credit commissioner has received the following request for an interpretation.

Request Number 95-1. Request from Stephanie Blucher; Liddell, Sapp, Zivley, Hill & LaBoon, L.L.P., inquiring whether a bank violates any state statute by accepting an unenforceable lien on the homestead in order to permit interest deductions by the borrower for federal income tax purposes.

Interested parties may submit briefs and proposals pertaining to the issue under consideration to Leslie L. Pettijohn, Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, until August 31, 1995.

Issued in Austin, Texas, on July 28, 1995.

TRD-9509430 Leslie J. Pettijohn
Consumer Credit Commissioner
Office of Consumer Credit Commissioner

Filed: July 28, 1995

Texas Environmental Awareness Network

Notice of Monthly Meeting

9:00 a.m.-Tuesday, August 8, 1995

NOTE: This date is different from our regular meeting date!!! We rescheduled the meetings to the second Tuesday of each month to accommodate the Eye on Earth production schedule.

TEAN will meet at its usual location, the Texas Parks and Wildlife Department, Wild Basin Preserve Offices, 805 South Capital of Texas Highway, Austin, Texas 78746.

Tentative agenda items include:

1. Introductions
2. Mailing List Update
3. "Eye on Earth" Program

Schedule for the 1995-1996 school year (October, November, December)

4 Environmental Education Conference Update

REMINDER: Registration for attendees extended to August 31st TEAN sponsorship of Thursday evening reception-report from Bob Murphy

5 Other announcements

For information about the meeting, or to place an item on the agenda, contact Sue Bumpous, TEAN Chair, by mail at P.O. Box 13087, Mail Code 194, Austin, Texas 78711; by phone at (512) 239-0049; or by fax at (512) 239-0055.

Issued in Austin, Texas, on July 31, 1995.

TRD-9509470 Sigrid Clift
Interim Secretary
Texas Environmental Awareness Network

Filed: July 31, 1995

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Texas Department of Health

Designation of Sites Serving A Medically Underserved Population

The Department of Health is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as sites serving a medically underserved population: Atascocita State Detention Unit, located at 2350 Atascocita Road, Humble (Harris County), Texas; and Telford State Detention Unit, located at Highway 98 South, New Boston (Bowie County), Texas. These units are offender detainee facilities of the Texas Department of Criminal Justice. South Waco Elementary and Community Clinic, located at 2104 Gurley Lane, Waco (McLennan County), Texas. Designations are based on proven eligibility as sites serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on these designations may be directed to Demetria Montgomery, M.D., Chief, Bureau of Community Oriented Primary Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; (512) 458-7771. Comments will be accepted for 30 days from the date of this notice.

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

TRD-9509376 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: July 27, 1995

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Kooney X-Ray, Inc. (licensee-L01074) of Barker. A penalty of \$4,500 is proposed to be assessed the licensee for violations of the Texas Regulations for Control of Radiation. The violations contributed to an accident that caused a potential threat to the health and safety of the public and the environment, and facilitated the possession of radioactive material by an individual not knowledgeable in radiation safety or authorized to possess the radioactive material.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

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

TRD-9509374 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: July 27, 1995

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Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Dyess-Peterson Testing Laboratory, Inc. (licensee-L01123) of Amarillo. A penalty of \$3,000 is proposed to be assessed the licensee for violations of the Texas Regulations for Control of Radiation. The violations contributed to an accident that caused a potential threat to the health and safety of the public and the environment, and facilitated the transfer of a licensable source of radioactive material to an individual not knowledgeable in radiation safety or authorized to possess the source.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

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

TRD-9509373 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: July 27, 1995

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Notice of Rescission of Orders

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following orders: Emergency Cease and Desist Order issued May 23, 1995, to Satellite Medical Center, 1845 Precinct Line Road, Hurst, Texas 76053, holder of Certificate of Registration Number (unregistered); Emergency Cease and Desist Order issued June 6, 1995, to Del Mar Clinic, Inc., 607 East Rio Grande Street, Eagle Pass, Texas 78852, holder of Certification of Mammography Systems Number (unregistered).

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

issued in Austin, Texas, on July 27, 1995.

TRD-9509375 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: July 27, 1995

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**Notice of Revocation of Radioactive
Material Licenses**

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following radioactive material licenses: Allied Clinical Laboratories, Inc., Hurst, L03759, July 17, 1995; Texas Chiropractic College, Pasadena, L03715, July 17, 1995.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

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

TRD-9509372 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: July 27, 1995

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**Texas Department of Housing and
Community Affairs
Housing Trust Fund Notice of Funding
Availability Announcement**

The Texas Department of Housing and Community Affairs is pleased to announce the 1995 awards of its Housing Trust Fund. On Friday, July 21, 1995, the TDHCA Board of Directors gave final approval to the seven listed projects who will receive loans through the Housing Trust:

Brentwood Economic Community Development of Houston \$300,000 Loan-40 units-Affordable Seniors Housing
CAC of Cass, Marion, & Morris Counties \$221,850
Loan-12 units-Affordable Housing

Alamo Area Mutual Housing of Kirby \$195,670 Loan-131
units-Affordable Housing

Quay Point Resident Council of Houston \$250,000
Loan-69 units-Affordable Housing

Lower Valley Housing Corporation of El Paso \$300,000
Loan-12 units-Single Family Homes

Mulshoe Public Housing Authority \$219,229 Loan-16
units-Affordable Seniors Housing

Hidalgo County Public Housing Authority \$248,750
Loan-246 units-Single Family Homes

The HTF remains the only state authorized and funded housing program. Awards for this funding cycle total more

than \$1.7 million dollars, creating 526 affordable housing units statewide. The next HTF funding cycle is expected to begin in early 1996. To receive additional information regarding the Housing Trust Fund please contact their TDHCA office at (512) 475-1458.

Issued in Austin, Texas, on July 31, 1995.

TRD-9509491 Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed: July 31, 1995

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**Low Income Housing Tax
Credits-Available Credit Ceiling for
1995B Allocations**

The Texas Department of Housing and Community Affairs (the Department) Low Income Housing Tax Credit Program announces the availability of the remaining 55% of the state's 1995 per capita low income housing tax credit ceiling in accordance with 10 TAC §50.3 of the Low Income Housing Tax Credit Rules-1995B (the Rules).

As of July 31, 1995, the Department has \$12,634,875 in housing credit ceiling available for the low income housing tax credit program year 1995.

Further, in accordance with §50.9(b) of the Rules, the Department has at this time issued commitments during calendar year 1995 in the amount of \$10,337,625. Such commitments were made pursuant to a forward commitment of 45% of the state's 1995 per capita credit ceiling to 1994 applicants under 10 TAC §49.15 of the Low Income Housing Tax Credit Rules-1995A.

Questions concerning the low income housing tax credit program should be directed to Chern Njie, Manager of Multifamily Programs at (512) 475-3340.

Issued in Austin, Texas, on July 31, 1995.

TRD-9509467 Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed: July 31, 1995

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**Low Income Housing Tax Credits-Notice
of Application Acceptance Period-
1995B**

The Texas Department of Housing and Community Affairs (the Department) Low Income Housing Tax Credit Program announces the Application Acceptance Period for low income housing tax credits, in accordance with 10 TAC §50.4 of the Low Income Housing Tax Credit Rules-1995B (the Rules).

The Application Acceptance Period for 1995B will be September 1, 1995 through September 29, 1995, with a bonus period extending to 5:00 p.m. on September 14, 1995, in accordance with 10 TAC §50.6(c)(9).

Persons interested in making application under the tax credit program are required to supply applications in accordance with the Rules on or before 5:00 p.m. on September 29, 1995.

Questions concerning the low income housing tax credit program should be directed to Cherno Njie, Manager of Multifamily Programs at (512) 475-3340.

Issued in Austin, Texas, on July 31, 1995.

TRD-9509468 Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed: July 31, 1995

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**Request for Proposal for the Master
Servicer for the Texas Department of
Housing and Community Affairs
Residential Mortgage Revenue Bond
Series 1995**

**I. BACKGROUND OF THE TEXAS DEPARTMENT
OF HOUSING AND COMMUNITY AFFAIRS**

A. PURPOSE

The Texas Department of Housing and Community Affairs (TDHCA) was created pursuant to Chapter 762, Acts of the 72nd Legislature of the State of Texas, Regular Session, 1991, as designated in Government Code, Chapter 2306, in part to increase the supply of affordable housing for low- and moderate-income Texans. The Housing Finance Division of TDHCA issues tax-exempt bonds to finance single family and multi-family housing.

Private sector financial institutions throughout the state originate and/or service loans for the Housing Finance Division of TDHCA on a fee for service basis.

B. BOARD OF DIRECTORS AND STAFF

TDHCA is governed by a nine-member Board appointed by the Governor with the advice and consent of the Senate serving staggered six-year terms with the terms of three directors expiring on January 31 of each odd-numbered year. Members may be reappointed.

The Governor appoints an Executive Director who is responsible for the overall administration of TDHCA and its programs directing the operations of TDHCA staff.

C. SINGLE FAMILY HOME PURCHASE PROGRAM

TDHCA's Single Family Home Purchase Program (the Program) channels low interest mortgage funds through participating lenders across the State to eligible families who are purchasing a home for the first time or have not owned a home in the past three years. During the last ten years, the program has helped more than 24,000 families achieve their goal of home ownership. In order to provide funds for the Program, TDHCA is planning to issue Series 1995 Single Family Mortgage Revenue Bonds in an amount estimated to be \$85.7 million. Revenues to retire the bonds will be derived solely from the repayment of the mortgage loans made with the bond proceeds. The bonds are not a general obligation debt of TDHCA or the State of Texas.

**II. SCOPE OF SERVICES TO BE PROVIDED BY
THE MASTER SERVICER**

A. GENERAL DESCRIPTION OF PROGRAM

The proceeds of all or a portion of the bonds are expected to be available on or about September 30, 1995, for the

purchase of GNMA and/or FNMA securities formed with qualifying mortgage loans (FHA, VA, FmHA) or for purchase of individual qualifying loans under a whole loan program. Seventy-five percent of bond proceeds will be allocated to qualifying lenders for an allocation fee as determined by the department, and 25% of proceeds will be allocated on a first-come first-served basis.

B. QUALIFICATIONS

The Master Servicer must be a qualified GNMA issuer/servicer, a FNMA approved seller/servicer, an FHA-approved mortgagee, a VA approved lender and a FmHA approved lender. The institution should also provide evidence of experience in administering and processing GNMA-secured, FNMA-secured, FHA-insured, FmHA and VA-guaranteed mortgage pool programs. The Master Servicer must also have an extensive background in servicing and administering tax-exempt mortgage revenue bond mortgage portfolios.

C. NATURE OF SERVICES REQUIRED

A sample Program Administration and Servicing Agreement (Servicing Agreement) and a Compliance Agreement (Compliance Agreement) may be obtained from TDHCA at the address indicated in Section III, C of this request for proposal if a respondent desires. Such sample documents are to be considered drafts only and are subject to modification by TDHCA.

The Master Servicer must service the mortgage loans in accordance with sound loan servicing practices and as required by the terms and conditions of the Servicing Agreement and Compliance Agreement (the Agreements). The Master Servicer shall provide, among other things, the services set forth in such proposed Agreements. The Master Servicer will be responsible for securing commitments from FNMA/GNMA, purchasing the loans from the loan originators, pooling and warehousing loans, servicing the loans, issuing FNMA/GNMA certificates, and selling the certificates to the Program's Bond Trustee. The Master Servicer will be required to assist TDHCA in establishing the necessary procedures and guidelines to facilitate efficient operation of the Program.

The Master Servicer is also hereby notified of TDHCA's intent to utilize funds from other TDHCA programs to make down payment assistance loans to eligible lower income borrowers. Such loans will be used to cover upfront costs of closing and will be serviced by TDHCA as part of its ongoing Down payment Assistance Program.

In addition to those specific duties outlined previously, the Master Servicer will also be required to:

1. Review all documents relating to the mortgage program and examine all loans to assure compliance with program guidelines as established by TDHCA and applicable Federal and State law.
2. Manage the reservation desk for that portion of bond proceeds which will be allocated on a first-come first-served basis and monitor the pre-allocations made to ensure that each lender does not exceed the approved allocation.
3. Assist in informational meetings for participating lenders. Provide a training workshop for participating lenders and provide program guidelines and informational materials to each lender. Sponsor additional meetings, workshops or conferences as directed by TDHCA (e.g. in the event of reallocation of funds or extension of the program term).

4. Supervise lenders to maintain compliance with program guidelines and expected level of service. The Master Servicer will report in writing to TDHCA any events or transactions relating to lenders which may adversely affect TDHCA or which are inappropriate and unprofessional.

5. (If a whole loan program) identify problem loans and notify TDHCA as to delinquencies and foreclosures. The Master Servicer is responsible for all foreclosure and REO activities.

6. Submit monthly reports detailing loan origination's, delinquency, and foreclosure data, and mortgage prepayments (payoffs) in a format and time frame prescribed by TDHCA.

7. Maintain program files, and prepare and present detailed monthly status reports to TDHCA and the Bond Trustee regarding Program performance including: the number and dollar amount of loans applied for, committed, closed, and purchased to date in Target and Non-Target areas including whether any loans qualified for the Contract for Deed exception; information on loans purchased through the Program (individual and averages) including purchase price, loan address, applicant income, address, household size, ethnicity, and type of home; a minimum of two audited program reports (semi-annual and final); and additional information or analysis deemed necessary by TDHCA. All information shall be submitted in a form and time frame designated by TDHCA.

8. Process borrowers' requests for assumption of loan, hardship requests, and other special requests by the borrower as allowed by the Program Guidelines and applicable Federal and State laws.

9. Perform all other duties as set forth in the Agreements.

D. RELATIONSHIP BETWEEN TDHCA AND THE MASTER SERVICER

The Master Servicer will be an independent contractor for TDHCA and not an employee of TDHCA. TDHCA reserves the right to assume any or all of the responsibilities of the Master Servicer pursuant to a default or as negotiated with the Master Servicer and included in the Mortgage Servicing Agreement.

E. CONFLICT OF INTEREST

To avoid all possibility of conflict of interest, the master servicer must certify that none of the owners, officers, or stockholders of the company and none of their families are related within the third degree of consanguinity or the second degree of affinity to any TDHCA employee or any member of the Board of Directors.

III. RFP INSTRUCTIONS

A. TIMETABLE

The deadline for submissions in response to this proposal is August 31, 1995. No proposal will be accepted after 4:00 p.m. on that date. Telephone and fax responses are not appropriate for this request.

B. INFORMATION TO BE INCLUDED

If your organization wishes to serve as Master Servicer for the TDHCA's 1995 Single Family bond program, please respond in writing with the following information:

1. State full name and address of your organization and identify the parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, the work to be

performed. Indicate whether you operate as a partnership, corporation, or sole proprietorship. You must submit evidence of authorization to do business or operate in Texas.

2. Evidence of qualifications and experience in GNMA/FNMA securitized programs, FHA, VA, and FmHA mortgages, and single-family programs funded with tax-exempt bonds. Include qualified FNMA and GNMA seller-servicer numbers.

3. Names, addresses and telephone numbers of three clients we can contact concerning your institutions performance as Master Servicer for single-family mortgage revenue bond programs. List of references for which you have acted as master servicer, currently or in the past, including name, address, telephone number, and contact person.

4. Names and brief resumes of all key personnel who will be assigned to this project and the primary responsibilities assigned to each person. Indicate knowledge each individual has regarding the Texas mortgage market, lending practices, and foreclosure laws.

5. Name, address, and telephone number for the contact person in your organization authorized to negotiate agreement terms and render binding decisions on contract matters.

6. Enclose a statement addressing the participation of women and minorities. The purpose of this section is to promote economic opportunity by affording equal access to the procurement of agreements for services connected with the financing of bonds by state issuers. Therefore, the following information about each participant must be included:

a) the degree of ownership and control of each participant firm by minorities and women;

b) the number and percentage of professionally employed women and minorities in each participant's firm; and

c) a brief description of the effort made by each participant to encourage and develop participation of women and minorities. Also, describe your company's degree of achievement of the affirmative action goals in the past 12 months and provide an employee profile showing the number and percentage of male, female, and minority employees by category, i.e., senior management, professional, technical and clerical.

7. Location of the office that will service loans and administer the program. Indicate whether there is a toll free phone number which will be available to Program Participants. Indicate the number of and identify the positions of personnel which will be available to answer questions during the mortgage loan origination period.

8. Describe your institution's efforts to identify and meet the credit needs of low/very low income families and individuals in Texas. Describe the specific steps your firm will take to increase home ownership opportunities for low/very low income families when developing procedures for and administering the Program.

9. Describe an additional efforts your organization will take to meet the needs of low/very low income families should it become Master Servicer.

10. Describe your institution's record at meeting the credit needs of residents of Texas (cite Home Mortgage Disclosure Act data where applicable). If your institution is subject to Community Reinvestment Act supervision, provide the last evaluation reflecting a rating.

11. What will be the process for preparing the lender manuals and how will updates on the manuals be prepared and distributed.

12. If your institution plans to subcontract any of the services required to be provided as Master Servicer, please indicate which, if any, will be subcontracted. Also provide which services will be subcontracted to minority or woman-owned businesses and indicate what percentage of total revenues these comprise. Please identify those firms with you will subcontract.

13. How will your organization process approval of lenders and what is the time frame in which that process will be completed? What will be your approach in organizing and communicating with the lenders to ensure a successful program?

14. Describe your institution's past experience and ability to work with Texas lenders.

15. For other existing or prior single-family bond programs, what is the average amount of time in which your institution has processed loans from the time a loan/reservation is received through the purchase and pooling process until the certificate is purchased by the Bond Trustee. Please give detailed information on specific programs which may be verified.

16. Current servicing portfolio and delinquency statistics for each category.

(a) Volume of all single-family mortgages.

(b) Volume of all single-family loans financed with tax-exempt bond proceeds.

(c) Volume of all FNMA securitized FHA, FmHA and VA loans.

(d) Volume of all GNMA securitized loans.

17. Please state the amount your firm is willing to pay TDHCA under two scenarios.

(a) FNMA/GNMA securitized program (indicate amounts by loan type e.g. FHA, VA, conventional, FmHA, etc.).

(b) Whole loan program.

For each scenario indicate the amount to be paid at the bond closing, the servicing release fee to originator, tax compliance fee and how it will be paid, ongoing servicing fee, and any other fee remittance to TDHCA you may suggest. For a whole loan structure, indicate additional fees which will be charged upon delinquency or foreclosure or in any other event and how those fees are expected to be paid. For a securitized program, indicate any amount to be paid upon issuance of GNMA/FNMA certificates.

18. The firm of Vinson & Elkins in Austin will prepare the lender documents. If your institution will need counsel for the Program, what is the name and location of the firm and how will they be compensated. If such counsel will be an expense of the Program, please estimate your counsel's fees and out-of-pocket expenses on a not to exceed basis and in what manner you anticipate payment will be made.

19. Please state, describe, and estimate any other fees the Master Servicer will require.

20. Will your institution also be a participating lender in the Program, and, if so, what is your estimate of the allocation you will be requesting.

21. The audited financial statements for the most recent fiscal year of the proposal for the master servicer, and parent company, if the proposal company is a subsidiary.

22. Include any other information which will be helpful to us in making a decision.

C. SUBMISSION DIRECTIONS

Please submit 15 written proposals to the address below, prior to 4:00 p.m., Austin, Texas Time, August 31, 1995.

Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 300, Austin, Texas 78711-3941, Attention: Lorie Mason-Bond Finance Officer.

D. RFP REVIEW

At a meeting of full Board, certain of the firms which have responded may be asked to make oral presentations. If so, those firms will be given not less than three business days notice along with the date, time and place for the oral presentation. TDHCA staff will assist by preparing summary profiles of each proposal submitted. The Board will make the final selection.

E. SELECTION CRITERIA

In accordance with law, TDHCA will make its selection based upon its perception of the need for a Master Servicer, the demonstrated competence, financial capability, experience, knowledge and qualifications, and on the reasonableness of the proposed fee for the services. All things being equal, TDHCA will give first consideration to firms whose principal place of business is located in Texas. By this RFP, however, TDHCA has not committed itself to employ a Master Servicer for any or all of the previously-described matters, nor does the suggested scope of services or term of Agreement require that the Master Servicer be employed for any of those purposes. TDHCA reserves the right to make those decisions after receipt of responses, and TDHCA's decision on these matters is final.

TDHCA reserves the right to negotiate all elements which comprise the proposal of the firm(s) to insure that the best possible consideration be afforded to all concerned. TDHCA reserves the right for any reason to reject any and all proposals and to re-solicit.

TDHCA reserves the right to select a firm(s) for specific purposes or for any combination of specific purposes and to defer the selection of any firm(s) to a time of TDHCA's choosing.

F. FURTHER INFORMATION

To obtain further information about TDHCA or this RFP, you may contact Lorie Mason at (512) 475-3856, Wiley Hopkins, Single Family Programs Manager, at (512) 475-2116, or David Long, Manager Loan Administrations, at (512) 475-3956.

IV. ADMINISTRATIVE INFORMATION

A. COST INCURRED IN RESPONDING

All costs directly or indirectly related to preparation of a proposal or any oral presentation required to supplement and/or clarify a proposal which may be required by TDHCA shall be the sole responsibility of and shall be borne by respondent.

B. PROPOSAL ACCEPTANCE PERIOD

All proposals must include a statement that they are valid for a period of 90 days subsequent to the closing date.

C. RELEASE OF PROPOSAL RESPONSE AND PROPRIETARY INFORMATION

If a respondent submits proprietary information in the proposal, and does not want it to be disclosed, all proprietary information must be identified and submitted concurrently with submission of the proposal. If the respondent fails to identify proprietary information, submission of the proposal shall cause all such data to be deemed non-proprietary and it will be made available upon public request pursuant to the Open Records Act after the review process has been completed.

D. REPORTING RESPONSIBILITIES

Master servicer shall provide all status reports deemed necessary by TDHCA.

E. PERIOD OF PERFORMANCE

The period of performance will be subject to the term of the loans in the program.

F. INDEMNIFICATION

The master servicer agrees to indemnify, defend and hold harmless TDHCA, the State of Texas, its officers, agents and employees from any and all claims and losses accruing or resulting from master servicer's performance.

G. FEDERAL, STATE, LOCAL REQUIREMENTS

Master servicer is responsible for both Federal and State Unemployment Insurance coverage and standard Workers' Compensation Insurance coverage. Master servicer must comply with all Federal and State tax laws and withholding requirements. The TDHCA will not be liable to the master servicer or its employees for any Unemployment or Workers' Compensation coverage or Federal and State tax withholding requirements. Master servicer shall indemnify TDHCA and pay to TDHCA any costs, penalties or loss whatsoever occasioned by master servicer's omission or breach of this section.

RESPONSES NOT RECEIVED BY August 31, 1995, 4:00 p.m., AT TDHCA OFFICES WILL NOT BE CONSIDERED!

Issued in Austin, Texas, on July 31, 1995.

TRD-9509476 Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed: July 31, 1995

Texas Department of Human Services Notice of Consultant Contract Amendment

In accordance with the Texas Government Code, Chapter 2254, Subchapter B, the Texas Department of Human Services (TDHS) publishes this notice of amendment to a consultant contract. The notice of award for the original contract was published in the October 28, 1994, issue of the *Texas Register* (19 TexReg 8642).

The contract was awarded to Step L, Incorporated, 12259 Saint James Road, Potomac, Maryland 20854-2164, under

which the contractor agrees to provide the analysis of TDHS's electronic data security procedures. The total dollar amount of the contract was \$130,000 and was effective from February 15, 1995, through June 15, 1995. TDHS intends to extend this contract through August 31, 1995, with no additional funds.

Issued in Austin, Texas, on July 28, 1995.

TRD-9509449 Nancy Murphy
Section Manager, Media and Policy
Services
Texas Department of Human Services

Filed: July 28, 1995

Public Notice of Closed Solicitation

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the March 31, 1995, issue of the *Texas Register* (20 TexReg 2443), the Texas Department of Human Services (TDHS) is closing the solicitation for new Medicaid beds in Crockett County, County Number 053, which appeared in the September 20, 1994, issue of the *Texas Register* (19 TexReg 7474). The solicitation is being closed effective the date of this public notice.

Issued in Austin, Texas, on July 28, 1995.

TRD-9509448 Nancy Murphy
Section Manager, Media and Policy
Services
Texas Department of Human Services

Filed: July 28, 1995

Public Notice of Open Solicitation

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the March 31, 1995, issue of the *Texas Register* (20 TexReg 2443), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of the following public notice, for Rockwall County #199, identified, where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous, December 1994-May 1995, six-month period. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Gary L. Allen, Certification, Provider Enrollment, & Billing Services, Long Term Care-Regulatory, Mail Code Y-976, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5:00 p.m. August 31, 1995, the last day of the open solicitation period. Potential contractors will be placed on a waiting list for the primary selection process in the order that the beds which were being proposed for Medicaid certification were initially licensed. The primary selection process will be completed on September 11, 1995. If there are insufficient available beds after the primary selection to reduce occupancy rates to less than 90%, TDHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for those individuals wishing to construct a facility.

County Number	County Name	Number of Months Over	DEC	JAN	FEB	MAR	APR	MAY
199	ROCKWALL	6	90.7	96.1	96.8	96.9	96.4	96.3

Issued in Austin, Texas, on July 28, 1995.

TRD-9509447 Nancy Murphy
Section Manager, Media and Policy
Services
Texas Department of Human Services

Filed: July 28, 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 Covenant Insurance Company, a foreign fire and casualty company. The home office is in Putnam, Connecticut.

Application for admission in Texas for Mid-South Title Insurance Corporation, a foreign title company. The home office is in Memphis, Tennessee.

Application for a name change in Texas for TCL Fire and Casualty Company, a domestic fire and casualty company. The proposed new name is International Surety and Casualty Company. The home office is in Dallas, Texas.

Application for a name change in Texas for Employers Casualty Company, a foreign fire and casualty company. The proposed new name is Acceptance Casualty Insurance Company. The home office is in Omaha, Nebraska.

Application for a name change in Texas for All West Insurance Company, a foreign fire and casualty company. The proposed new name is Employers First Insurance Company. The home office is in San Francisco, California.

Application for a name change in Texas for Jefferson-Pilot Fire and Casualty Company, a foreign fire and casualty company. The proposed new name is Southern Pilot Insurance Company. The home office is in Greensboro, North Carolina.

Application for a name change in Texas for Xerox Financial Services Life Insurance Company, a foreign life, accident and health company. The proposed new name is Cova Financial Services Life Insurance Company. The home office is in Jefferson City, Missouri.

Application for a name reservation in Texas for AMERICAID Texas, Inc., a domestic health maintenance organization. The home office is in Dallas, Texas.

Application for a name reservation in Texas for Texas Dental Maintenance Organization, Inc., a domestic health maintenance organization. The home office is in San Antonio, Texas.

Application for either admission, or incorporation, in Texas for UniCARE Life & Health Company, a life, accident and health company. The home office will be in Woodland Hills, California, or in Houston, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on July 28, 1995.

TRD-9509426 Alicia M. Fachtel
General Counsel and Chief Clerk
Texas Department of Insurance

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Notice of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket Number 2163 scheduled for 1:30 p.m., September 7, 1995, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a petition filed by Blake Bailey to delete the "intra-family tort exclusion" contained in the Texas Homeowners Policy-Form B. The deletion was proposed in a petition filed on May 23, 1992. The portion of Mr. Bailey's petition seeking deletion of the intra-family tort exclusion in the Texas automobile insurance policies will not be considered.

Homeowners coverage is currently subject to the following exclusion contained in Section II-Exclusions, 2(e): "Coverage C (Personal Liability) does not apply to bodily injury to you or an insured within the meaning of part a. or part b. of insured as defined." This exclusion precludes liability coverage for bodily injury for an insured or a family member of the same household. Mr. Bailey's petition proposes to delete the exclusion in its entirety, thus allowing an insured family member injured on the insured property to file a claim under the homeowners policy, including an injury caused by the actions of another insured family member.

Mr. Bailey's petition was filed with the Department of Insurance on May 23, 1992. The petition was abated pending a resolution of the Twyman vs. Twyman and Boyles vs. Kerr cases then pending before the Texas Supreme Court. The Texas Supreme Court rendered its decisions in Twyman vs. Twyman and Boyles vs. Kerr on May 5, 1995.

A copy of the petition is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147. (Please refer to Reference Number P-0795-19.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code.

Issued in Austin, Texas, on July 28, 1995.

TRD-9509427

Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: July 28, 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.

Application for admission to Texas of Acordia of Central Indiana, Inc., a foreign third party administrator. The home office is Greenwood, Indiana.

Application for admission to Texas of Wright and Company, a foreign third party administrator. The home office is Washington, D.C.

Application for admission to Texas of Dutcher Insurance Agency, Inc., (doing business under the assumed name of Dutcher Insurance Services), a foreign third party administrator. The home office is Stockton, California.

Application for incorporation in Texas of BLICO Administrators, Inc., a domestic third party administrator. The home office is Richardson, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on July 28, 1995.

TRD-9509425

Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission proposed new §§334.201-334.208. The rules appeared in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5154).

The Commission submitted a proposal to Chapter 334, Subchapters A-J, and L, concerning Underground and Aboveground Storage Tanks, which contained errors.

In Subchapter G, §334.203(1)(J)(vii), on page 5157, the range of "1 X 10⁻⁶ to 1 X 10⁻⁵" should be changed to "1x10⁻⁶ to 1x10⁻⁵". The clause should read as: "the individual and cumulative carcinogenic risk shall not exceed a range of 1 x 10⁻⁶ to 1 x 10⁻⁵ as required by the executive director".

In Subchapter G, §334.203(1)(O), on page 5157, a "." should follow the word "environment" and the word "or" should follow the "." to designate the option of criteria in paragraph 1 or paragraph 2. The subparagraph should read as: "Any necessary requirements as established by the

executive director to protect public health, safety, and the environment, or".

In Subchapter G, §334.205(1)(A), on page 5159, the value "1 X 10⁵" should be changed to "1x10⁵". The subparagraph should read: "the residential carcinogenic risk level exceeds 1x10⁵ for Class A and B carcinogens for residential use properties (child or adult)".

Also in Subchapter G, §334.205(1)(B), on page 5159, the value "1 X 10⁵" should be changed to "1x10⁵". The subparagraph should read: "the commercial/industrial carcinogenic risk level exceeds "1x10⁵ level for Class A and B carcinogens for commercial/industrial use properties".

Public Hearing Notice

Notice is hereby given that pursuant to the requirements of the Texas Water Code, §52.054 and 30 Texas Administrative Code §293.23, the Texas the Texas Natural Resource Conservation Commission (TNRCC or Commission) will conduct a public hearing to receive testimony concerning revisions to Chapter 294, Underground Water Management Areas.

The new sections are being proposed to expand the boundaries of Subdivision Number 4 of the Underground Water Reservoir in the Ogallala Formation, South of the Canadian River. These new sections are being proposed in response to a landowner petition, in accordance with the Texas Water Code, §52.054. Prior to 1989, predecessor agencies to the TNRCC designated underground water management areas by issuing agency orders. The Board of Water Engineers designated Subdivision Number 2 and Subdivision Number 4 of the Underground Water Reservoir in the Ogallala Formation, South of the Canadian River, in Orders dated March 20, 1951 and May 8, 1956. Subdivision Number 2 was delineated in a portion of the area lying in Martin County and Subdivision Number 4 was delineated in a portion of the area lying in Andrews, Cochran, Dawson, Gaines, Lynn, Terry, and Yoakum counties. The Water Code, §52.024(c) (§35.004(c) effective September 1, 1995) provides that the "Commission may alter the boundaries of designated management areas as required by future conditions and as justified by factual data." Pursuant to legislation passed in 1989, the Water Code, §52.024(e) (§35.004(d) effective September 1, 1995) further requires the Commission to use the procedures applicable to rulemaking for any designation of underground management areas. The proposed rule will expand the boundaries of Subdivision Number 4 to include all of the area lying in Andrews, Dawson, Gaines, Martin, Terry, and Yoakum counties; include the portion of the area overlying the Ogallala aquifer in Borden, Ector, Howard, and Midland counties; and eliminate the area previously delineated by Board Order in Cochran and Lynn counties. The proposed rule will effectively consolidate Subdivision Number 2, as designated by the Board of Water Engineers, into Subdivision Number 4. Upon issuance, the rule designating the new boundaries of Subdivision Number 4 will supersede the two Board Orders.

A public hearing on the proposal will be held August 23, 1995 at 10:00 a.m. at Mesa Underground Conservation District Building, 212 North Avenue G, LaMesa, Texas 79331. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not

occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing must be received by 5:00 p.m. 30 days from the date of publication of the proposal in the *Texas Register*. Written comments on the proposal should mention Log Number 95128-294-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. For further information or questions concerning this proposal, please contact Steve Musick at (512) 239-4514.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on July 31, 1995.

TRD-9509488 Lydia Gonzalez-Gromatzky
Acting Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed: July 31, 1995

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**Texas Department of Protective and
Regulatory Services**
Request for Proposal

The Texas Department of Protective and Regulatory Services is soliciting proposals for service contracts to be awarded under the Department's *Services to At-Risk Youth* program in the following counties: Aransas, Armstrong, Atascosa, Bee, Bexar, Blanco, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Carson, Castro, Cherokee, Childress, Collingsworth, Comanche, Cottle, Crockett, Culberson, Dallam, Dallas, Delta, De Witt, Donley, Eastland, Foard, Freestone, Frio, Goliad, Gray, Hall, Hansford, Hardeman, Hardin, Harris, Hartley, Haskell, Hemphill, Henderson, Hopkins, Houston, Hudspeth, Hutchinson, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Wells, Kenedy, Kent, Kimble, Kinney, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Marion, Mason, McClulloch, McLennan, McMullen, Medina, Menard, Moore, Nacogdoches, Newton, Ochiltree, Oldham, Orange, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Reeves, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Sherman, Smith, Somervell, Stephens, Stonewall, Sutton, Swisher, Terrell, Throckmorton, Trinity, Tyler, Uvalde, Val Verde, Van Zandt, Victoria, Washington, Wheeler, Wood, Young, and Zavala.

The goal of the *Servics to At-Risk Youth* program is to reduce and prevent the problems of runaway, truancy, family conflict and delinquency as well as reduce the risk of abuse and/or neglect by providing timely and appropriate short term services to eligible youths and their families. Services should be equally accessible to self-and family-referred youths and youths referred by agencies. Priority should be placed on supporting and strengthening the family unit. Consequently, services provided to the youth and the family while the youth remains in his/her home are preferred.

In order to meet these objectives, the Department is contracting for services which are provided in the form of crisis intervention services, counseling services, skills-based training, and short-term residential care.

These services must be made available to the following children and youths: youths 7-17 years of age who are in at-risk situations due to runaway behavior, truancy or family conflict; non adjudicated youths 10-16 years of age who are alleged to have committed misdemeanor or state jail felony offenses, and children 7-9 years of age who have committed a delinquent offense(s).

Eligible Applicants: Eligible offerors include: private, non-profit agencies; private, for profit agencies; partnerships; individuals; and governmental entities other than juvenile probation departments. Historically underutilized businesses are encouraged to submit proposals.

Limitations: Funding of the selected proposals will be dependent upon available federal and/or state appropriations. The Department reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of the Department.

Term: The effective dates of any contract awarded under this RFP will be January 1, 1996-August 31, 1996.

Deadline: All proposals to be considered for funding through this RFP must be received by 3:00 p.m. October 5, 1995. Proposals received after this deadline will not be accepted. Modifications to the original proposal must also be received prior to 3:00 p.m. October 5, 1995.

Evaluation and Selection: A panel will rank and score the proposals. The evaluation method and criteria will be specified in the RFP packet.

Considerations are: need, program services, staffing, community collaboration, and cost.

Contact Person: Potential offerors may obtain the RFP package beginning August 10, 1995. It is preferred that requests for the RFP be submitted in writing to: Thomas Chapmond (Mail Code E558); Texas Department of Protective and Regulatory Services; P.O. Box 149030, Austin, Texas 78714-9030.

Copies of the RFP packet may also be secured by contacting Lydia Rodriguez (512) 450-3311 or Thomas Chapmond (512) 450-3309.

Issued in Austin, Texas, on July 28, 1995.

TRD-9509450 Nancy Murphy
Section Manager, Media and Policy
Services
Texas Department of Protective and
Regulatory Services

Filed: July 28, 1995

◆ ◆ ◆
Public Utility Commission
Intent to File Pursuant to Public Utility
Commission Substantive Rule 23. 27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Tomball ISD, Tomball, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Tomball ISD pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14459.

The Application. Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for Tomball ISD. The geographic service market for this specific service is the Tomball, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

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

TRD-9509380 Amalja J. Hodgins
Secretary of the Commission
Public Utility Commission of Texas

Filed: July 27, 1995

◆ ◆ ◆
Texas Department of Transportation
Request for Proposals

Notice of Invitation. The Texas Department of Transportation (TxDOT) intends to engage an architect, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC, §§9.30-9.40, to provide the following services. The architect selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Contract #11-545P8004 for architectural services for the exterior restoration design, plans preparation and construction management of the Sabine County Courthouse Transportation Enhancement Project in Hemphill, Texas. The project will include restoring a metal roof and renovate configuration (replace dome), remove window air-conditioning units, remove miscellaneous conduits on outside of building, restore exterior grand staircase, remove metal fire escapes, fire shutters and brick guard rail, remove existing aluminum windows and replace with historically correct wood frame windows and miscellaneous supporting elements.

Deadline. A letter of interest notifying TxDOT of the provider's intent to submit a proposal shall be mailed to TxDOT Lufkin District Office, P.O. Box 280, Lufkin, Texas 75902-0280, or hand delivered to TxDOT Lufkin District Office, 1805 North Timberland Drive, Lufkin, Texas 75902-0280. Letters of interest will be received until 5:00 p.m. on Friday, August 11, 1995. The letter of interest must include the architect's name, address, telephone number, name of architect's contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued.

Pre-proposal Meeting. A pre-proposal meeting will be held on Wednesday, August 16, 1995, at 1:30 p.m., Sabine County Courthouse, Commissioners Courtroom, located at FM 83 and SH 184 in Hemphill. (TxDOT will not accept a proposal from an architect who has failed for any reason to attend the mandatory pre-proposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Tina

L. Walker, P.E., (409) 633-4329 at least two work days prior to the meeting so that appropriate arrangements can be made.

Proposal Submittal Deadline. Proposals for contract #11-545P8004 will be accepted until 5:00 p.m. on Friday, August 25, 1995, at the TxDOT, Lufkin District Office mentioned address.

Agency Contact. Requests for additional information regarding this notice of invitation should be addressed to Tina L. Walker, P.E., (409) 633-4329, FAX (409) 633-4378.

Issued in Austin, Texas, on July 31, 1995.

TRD-9509496 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: July 31, 1995

◆ ◆ ◆
Texas Water Development Board
Request for Proposals for Flood
Protection Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of proposals leading to the possible award of contracts to develop flood protection plans for areas in Texas from political subdivisions with the legal authority to plan for and abate flooding and which participate in the National Flood Insurance Program.

Flood protection planning applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. The purpose of the flood protection planning grant program is for the State to assist local governments to develop flood protection plans for entire major or minor watersheds (as opposed to local drainage areas) that provide protection from flooding through structural and non-structural measures as described in 31 TAC §355.2. Planning for flood protection will include studies and analyses to determine and describe problems resulting from or relating to flooding and the views and needs of the affected public relating to flooding problems. Potential solutions to flooding problems will be identified, and the benefits and costs of these solutions will be estimated. From the planning analysis, feasible solutions to flooding problems will be recommended. Solutions for localized drainage problems are not eligible for grant funding.

Description of Funding Consideration. Up to \$600,000 has been initially authorized for fiscal year 1996 assistance for flood protection planning from the Board's research and planning fund. Up to 50% funding may be provided to individual applicants, with up to 75% funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable proposals are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies of a complete flood protection planning grant application including the required attachments must be filed with the Board prior to

5:00 p.m., August 31, 1995. Proposals can be directed either in person to Phyllis Lightner-Gaynor, Room 447, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Phyllis Lightner-Gaynor, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5 and the evaluation criteria included in the Texas Water Development Board's Guidelines for Flood Protection Planning Grants. All potential applicants must contact the Board to obtain these guidelines. Requests for information, the Board's rules and guidelines covering the research and planning fund and detailed evaluation criteria may be directed to Phyllis Lightner-Gaynor at the preceding address or by calling (512) 463-3154.

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

TRD-9509442 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Filed: July 28, 1995

◆ ◆ ◆
**Request for Proposals for Regional
Water Supply and Wastewater
Planning**

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of regional planning proposals leading to the possible award of contracts to evaluate and determine the most feasible alternatives to meet water supply and wastewater facility needs, estimate the costs associated with implementing feasible water supply and wastewater facility alternatives, and identify institutional arrangements to provide regional water supply and wastewater services for areas in Texas. In order to receive a grant, the applicant must have the authority to plan, implement, and operate water supply and wastewater facilities.

Regional planning applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. The purpose of this program is for the State to assist local governments to prepare regional-level plans that document water supply and wastewater service needs, identify feasible regional alternatives to meet water supply and wastewater needs, and present estimates of costs associated with providing regional water supply facilities and distribution lines and regional wastewater treatment plants and collection systems. A water conservation plan and a drought management plan must be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need. The Board's population and water demand projections will be considered in preparing projections.

Discrete phases to implement regional water supply and wastewater facilities to meet projected needs will be identified. Cost estimates will be made for each respective implementation phase to determine the capital, operation, and maintenance requirements for a 30-year planning period. Separate cost estimates will be made for each regional water supply and wastewater system component, including the water conservation program.

Description of Funding Consideration. Up to \$600,000 has been initially authorized for fiscal year 1996 assistance for regional water supply and wastewater planning from the Board's research and planning fund. Up to 50% funding may be provided to individual applicants, with up to 75% funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable proposals are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies of a complete regional planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., August 31, 1995. Proposals can be directed either in person to Phyllis Lightner-Gaynor, Room 447, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Phyllis Lightner-Gaynor, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5 and the evaluation criteria included in the Texas Water Development Board's Guidelines for Regional Water Supply and Wastewater Planning Grants. All potential applicants must contact the Board to obtain these guidelines. Requests for information, the Board's rules and guidelines covering the research and planning fund and detailed evaluation criteria may be directed to Phyllis Lightner-Gaynor at the preceding address or by calling (512) 463-3154.

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

TRD-9509443 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Filed: July 28, 1995

◆ ◆ ◆
**Requests for Proposals for Water
Research**

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of water research proposals leading to the possible award of contracts for Fiscal Year 1996. Application guidelines for water research proposals will be supplied by the Board upon request.

Description of Planning Objectives. Interaction exists between surface water and ground water. Drought and pumping stresses by high capacity water wells and regional changes in ground-water levels can impact surface-water flow. Our present understanding is not sufficient to accurately identify and quantify such interactions. Research is needed that involves the hydrologic characterization and analysis of the interactive systems. This research should include the integration of an accepted numerical aquifer model with a numerical surface water hydrologic model. The combined model should be capable of predicting the impacts of ground-water pumping on surface water flow and the availability of surface water. The research, which could include field investigations, should be applied to a region of the State that is experiencing or could experience in the future significant changes in regional ground-water levels to quantify possible impacts on surface water availability.

Requests for Proposals for Water Research. Description of Funding Consideration. Up to \$150,000 has been ini-

tially authorized for water research assistance from the Board's research and planning fund for this research. Following the receipt and evaluation of all applications, the Board may adjust the amount of funding initially authorized for water research. Up to 100% funding may be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services. In the event that acceptable proposals are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies of a complete water research application including the required attachments must be filed with the Board prior to 5:00 p.m., August 31, 1995. Proposals should be limited to ten pages in length excluding qualifications of project staff. Proposals must be directed to Abu Sayeed, 1700 North Congress Avenue, P.O. Box 13231, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5 and the proposal rating form included in the Board's guidelines for water research grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants must contact the Board to obtain these guidelines. Requests for information, the Board's rules covering the research and planning fund, detailed evaluation criteria, and the application guidelines may be directed to Abu Sayeed at the preceding address or by calling (512) 463-7987.

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

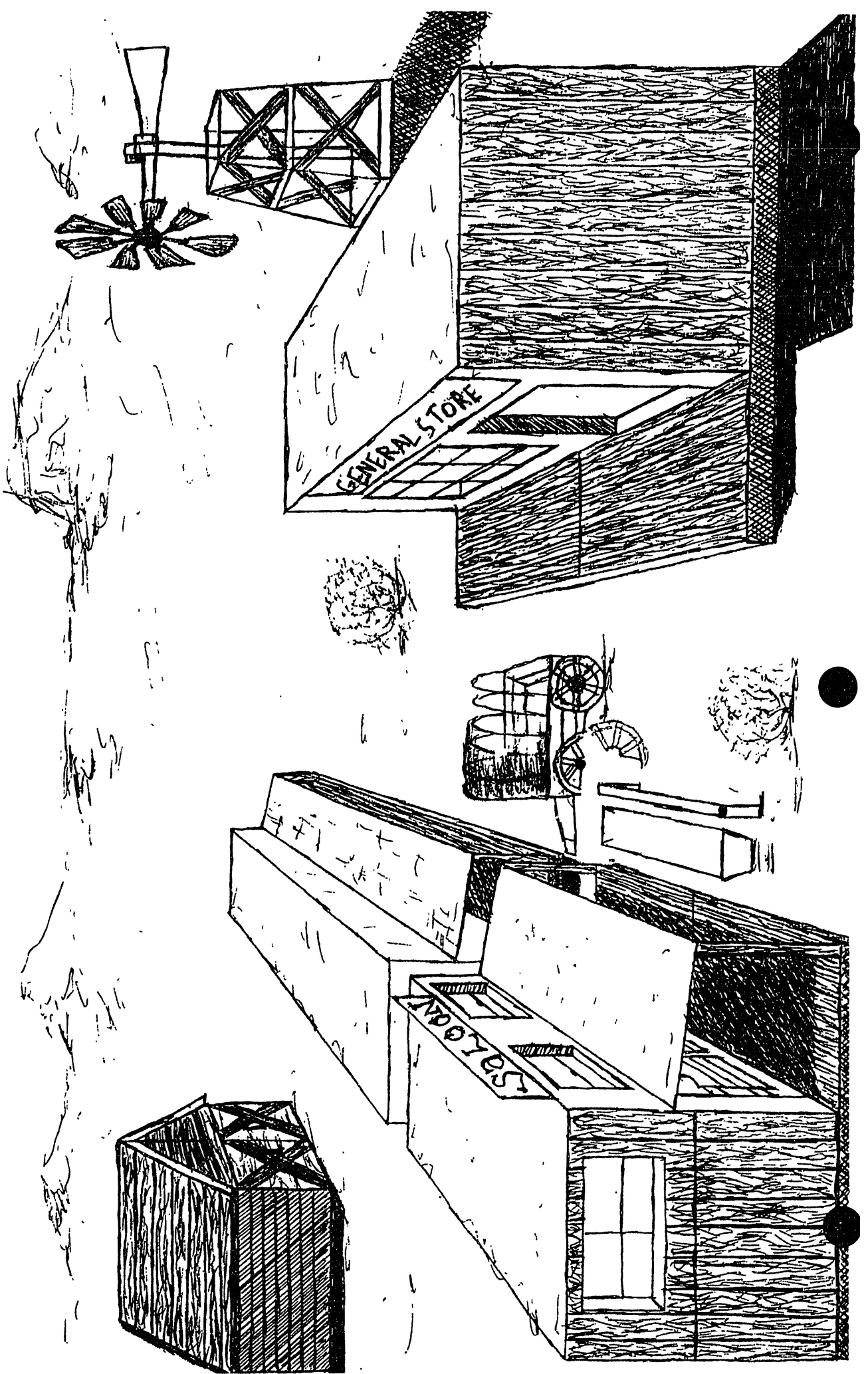
TRD-9509444

Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Filed: July 28, 1995

◆ ◆ ◆

Name: Scott Pulte
Grade: 12
School: Gainesville High School, Gainesville ISD



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