

TEXAS REGISTER

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How to Use the Texas Register

Information Available: The 10 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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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.

Open Meetings - notices of open meetings.

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

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

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

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

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

Texas Administrative Code

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

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 22, April 16, July 13, and October 12, 1993). 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.

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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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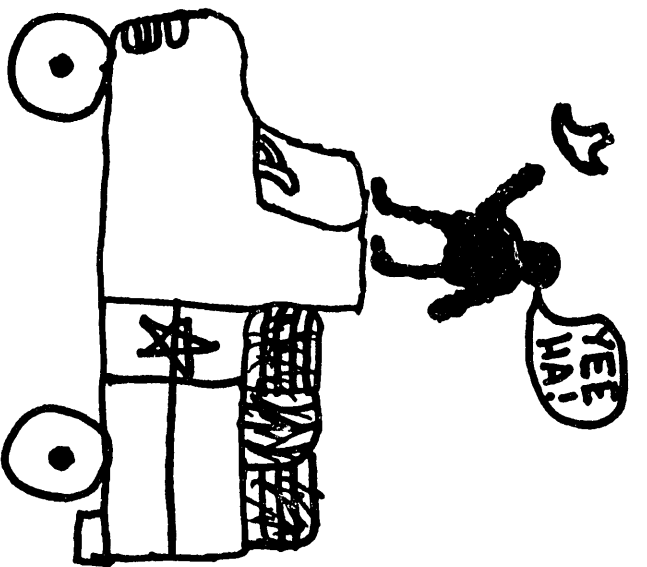
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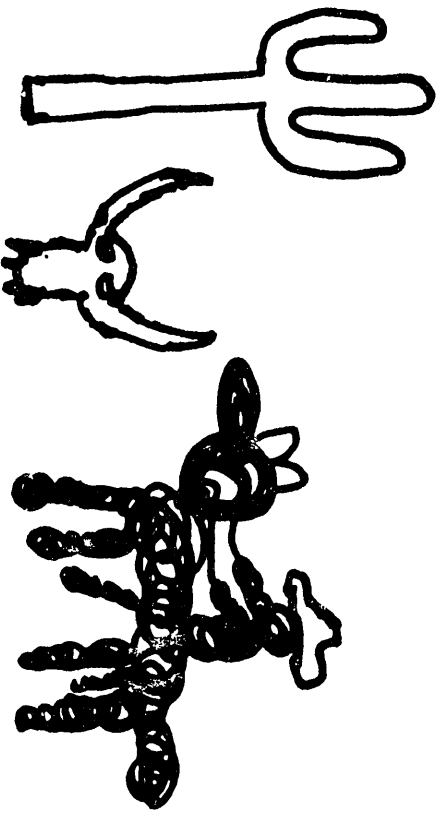
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Ann Clark
Age 10
Colony Bend
Elementary



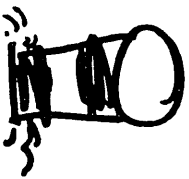
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Age 10
Colony Bend Elm.



Sherwin Hsu
Age 11
Colony Bend Elementary



Randi White
Age 11
Colony Bend
Elm.





Kim Rodgers

10 Colony Bend



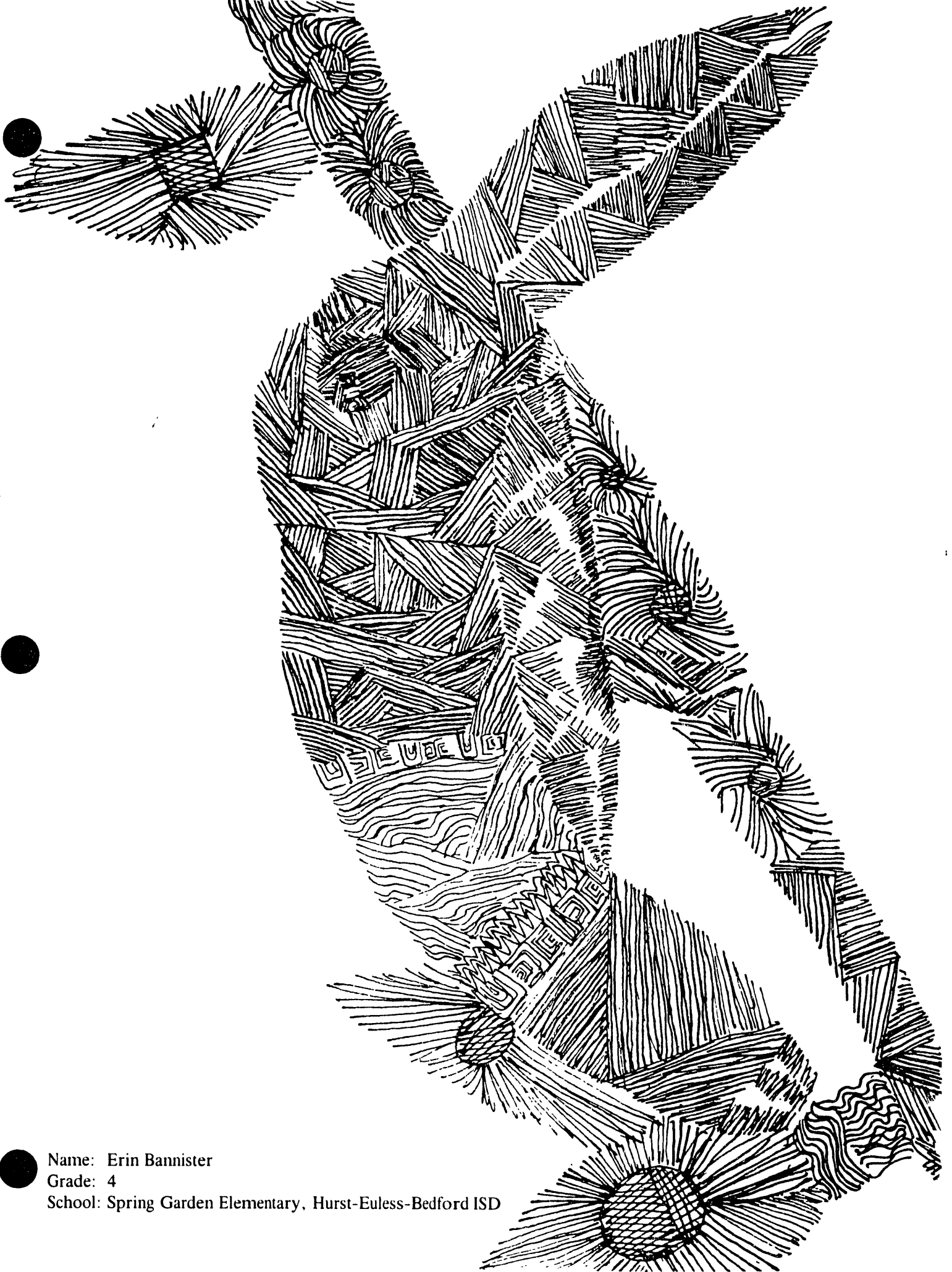
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Age-10
Colony Bend Elementary



Jim Kou
Age-10
Colony Bend
Elementary



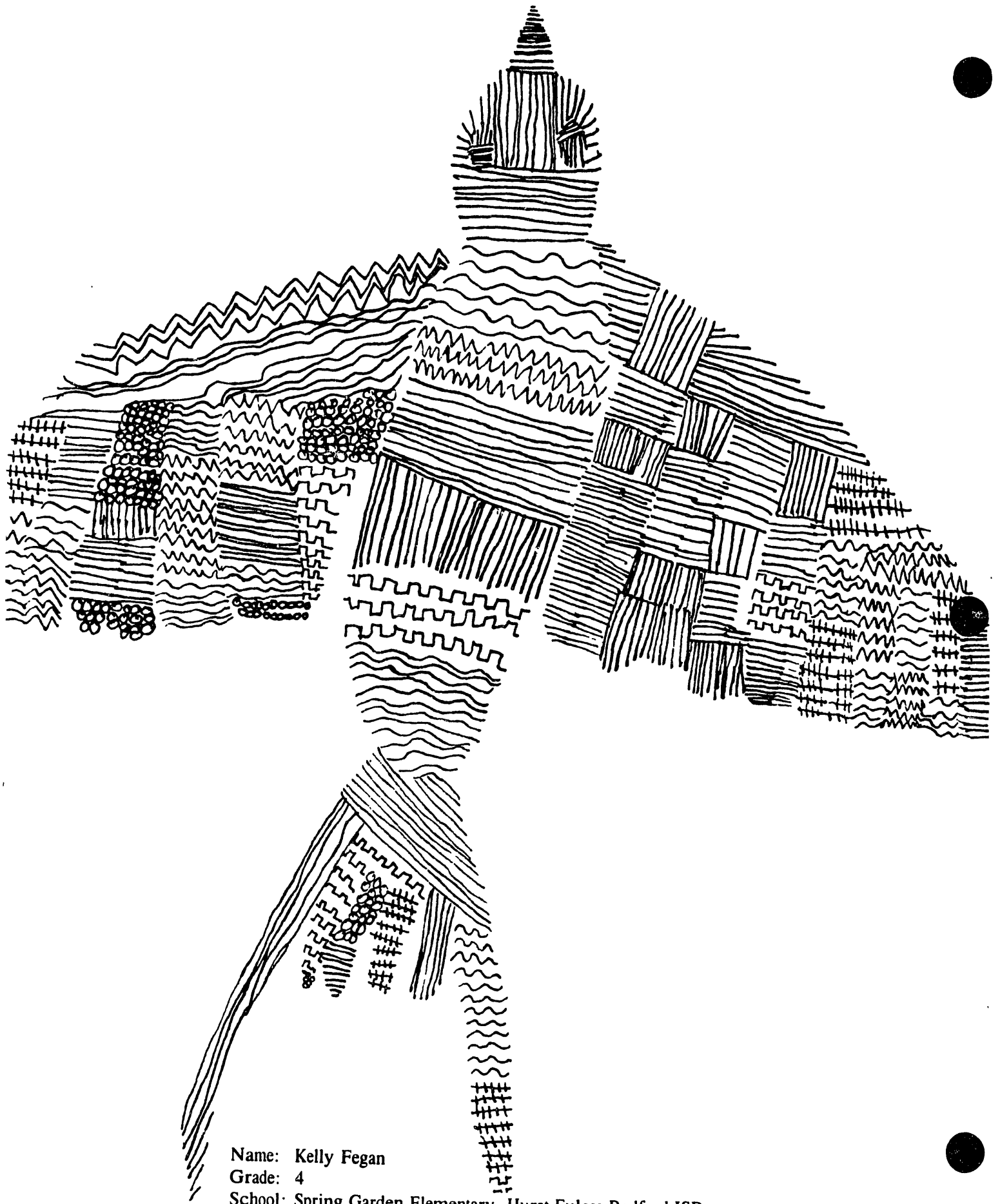
Name: Cindy Edgington
Grade: 4
School: Spring Garden Elementary, Hurst-Euless-Bedford ISD



Name: Erin Bannister

Grade: 4

School: Spring Garden Elementary, Hurst-Euless-Bedford ISD



Name: Kelly Fegan
Grade: 4
School: Spring Garden Elementary, Hurst-Euless-Bedford ISD

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 January 14, 1994

To be a member of the Texas Growth Fund Board of Trustees for a term to expire February 1, 1999: Daphne Ann Brown, 203 East Thornton, Houston, Texas 77022. Ms. Brown will be replacing Richard J. Hanschen of Dallas, whose term expired.

To be a member of the Guadalupe-Blanco River Authority Board of Directors for a term to expire February 1, 1997: Catherine Roberts McHaney, 110 Spokane, Victoria, Texas 77904. Ms. McHaney will be filling the unexpired term of Judge Pat Kelly of Victoria, who resigned.

Appointments Made January 18, 1994

To be a member of the Nueces River Authority Board of Directors for a term to expire February 1, 1999: Margaret Bowman, Route 4, Box 1, Spofford, Texas 78877. Ms. Bowman will be replacing Stevan Gallegos of Castroville, whose term expired.

To be a member of the Nueces River Authority Board of Directors for a term to expire February 1, 1999: Lucinda J. Garcia, P.O. Box 1967, Alice, Texas 78332. Ms. Garcia will be replacing Wayne Baldwin of Corpus Christi, whose term expired.

To be a member of the Nueces River Authority Board of Directors for a term to expire February 1, 1999: Susan C. Griffith, 540 North Getty, Uvalde, Texas 78801. Ms. Griffith will be replacing Eugene L. Ames, Jr. of San Antonio, who resigned.

To be a member of the Nueces River Authority Board of Directors for a term to expire February 1, 1997: Robert D. Johanson, P.O. Box 381, Three Rivers, Texas 78071-0381. Mr. Johanson will be replacing George Jambers, Jr. of Whitsett, whose term expired.

To be a member of the Nueces River Authority Board of Directors for a term to expire February 1, 1999: Mary Melissa Ramos, 1932 Bentwood Drive, Floresville, Texas 78114. Ms. Ramos will be replacing Kenneth Shackelford of Leakey, whose term expired.

To be a member of the Nueces River Authority Board of Directors for a term to expire February 1, 1995: Celina Solis, 200 West Gravis, San Diego, Texas 78384. Ms. Solis will be filling the unexpired term of Jay Kimbrough of Beeville, who resigned.

Appointments Made January 19, 1994

To be a member of the Early Childhood Intervention Advisory Committee for a term to expire February 1, 1999: Frank R.

Brown, III, Ph. D., M.D., 545 Begonia, Bellaire, Texas 77401. Dr. Brown will be replacing Dr. Julian Haber of Fort Worth, whose term expired.

To be a member of the Early Childhood Intervention Advisory Committee for a term to expire February 1, 1999: Lorenzo H. Aguilar Melancon, 7237 Tierra Alta, El Paso, Texas 79912. Mr. Melancon will be replacing Karen Douglas of San Antonio, whose term expired.

To be a member of the Early Childhood Intervention Advisory Committee for a term to expire February 1, 1999: Kathryn E. Moody, 3106 Fairmont Court, Sugar Land, Texas 77478. Ms. Moody is being reappointed.

To be a member of the Early Childhood Intervention Advisory Committee for a term to expire February 1, 1999: Zenitha Ann Rosales, 2402 Magnolia, Amarillo, Texas 79107. Ms. Rosales is being reappointed.

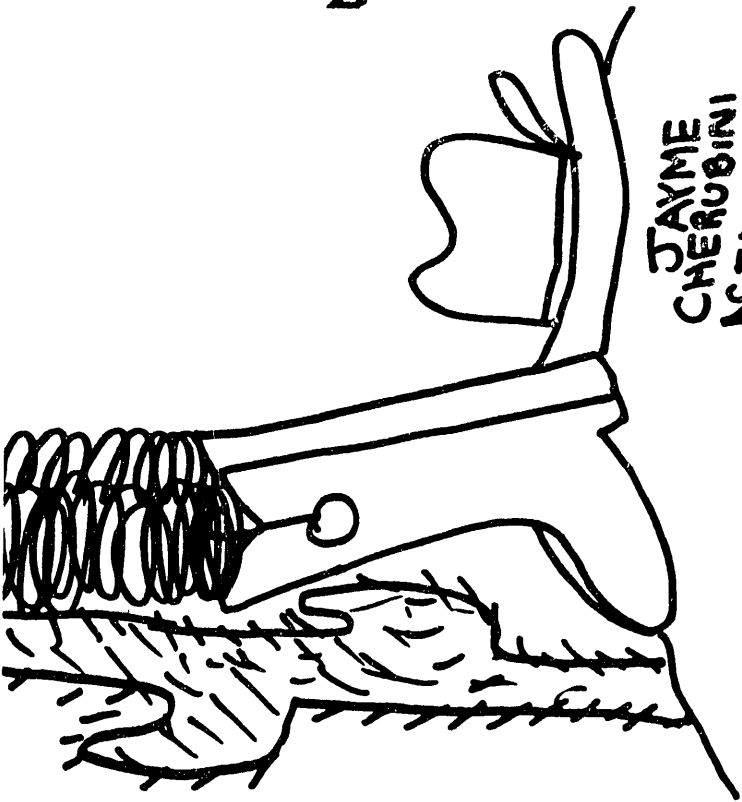
To be a member of the Early Childhood Intervention Advisory Committee for a term to expire February 1, 1999: Candice M. Sheehan, 759 Pelican Lane, Coppell, Texas 75019. Ms. Sheehan will be replacing Claudette W. Bryant of Dallas, whose term expired.

Issued in Austin, Texas, on January 18, 1994.

TRD-9434998

Ann W. Richards
Governor of Texas





JAYME
CHERUBINI
AGE 10
COLONY BEND ELM

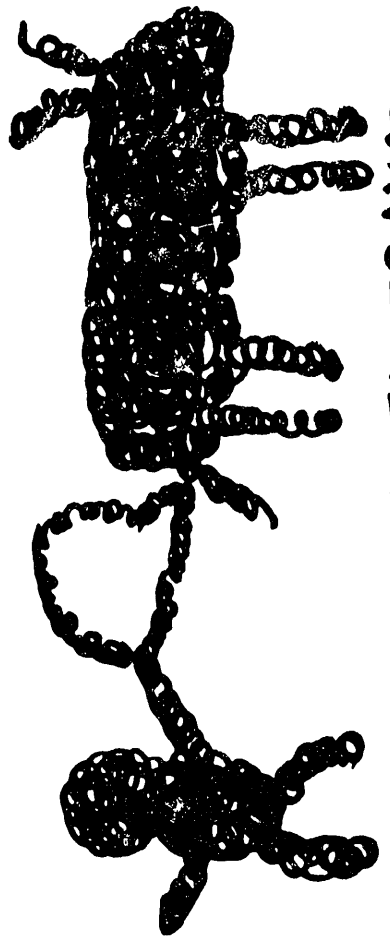


Katie Perryman Age 10
Colony Bend Elementary

Go TEXAS!



Cheryl Munsterman
Age 10
Ann Arbor, Mich.



LESLEY FRANCIS
AGE 10

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 A. Advisory Committees

• 25 TAC §401.23, §401.24

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts on an emergency basis new §401.23 and §401.24 of Chapter 401, Subchapter A, concerning advisory committees. The new sections adopted on an emergency basis are contemporaneously proposed for public comment in this issue of the *Texas Register*.

The purpose of the emergency adoption is to recognize two newly created advisory task forces concerning provider/authority roles and alternate uses for the Travis State School. The new sections outline the purpose, tasks, and duration of the committees, which are subject to all other requirements of the subchapter.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5(d), which provide emergency rulemaking powers, and under the Texas Health and Safety Code, §532.015 (Texas Civil Statutes, Article 5547-202, §2.11), which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§401.23. Advisory Committee on Provider/Authority Roles.

(a) The purpose of the Advisory Committee on Provider/Authority Roles is to explore the role of a state mental health and mental retardation authority and to recommend needed changes to ensure that TXMHMR can implement this role in a way which supports the department's vision for the future.

(b) Tasks of the Advisory Committee on Provider/Authority Roles include:

(1) studying the organization of the TXMHMR service delivery system to identify the key organizational principles which should underlie the role of state mental health or mental retardation organizations and identify issues inherent in implementing this role while simultaneously serving as a provider of services;

(2) exploring organizational models (other state MH/MR systems, other service systems) which address these issues;

(3) recommending to the Board strategies to delineate and separate these roles; and

(4) recommending necessary actions to implement these strategies, including legislation, administrative changes, communication mechanisms, organization of functions, and others.

(c) This advisory committee shall be abolished January 1, 1995, unless reauthorized.

§401.24. Advisory Committee on Alternate Uses for the Travis State School.

(a) The purpose of the Advisory Committee on Alternate Uses for the Travis State School is to develop for consideration by the TXMHMR Board recommendations for alternate use of the existing facilities and property at the Travis State School.

(b) Tasks of the Advisory Committee on Alternate Uses for the Travis State School include:

(1) determining if the proposed use(s) protects and serve the interests of the taxpayers of Texas;

(2) assessing the ability of the proposed use(s) to address the community's expressed needs and desires;

(3) considering the ability of the proposed use(s) to mitigate the economic impact of the closure upon the local community.

(4) assessing the ability of the proposed use(s) to provide the job opportunities for Travis State School employees affected by the closure;

(5) assessing the ability of the proposed use(s) to provide meaningful compensation to the department for the property and improvements at the Travis State School, and to enhance the value of any neighboring state-owned property; and

(6) addressing other relevant concerns.

(c) This advisory committee shall be abolished January 1, 1995, unless reauthorized.

Issued in Austin, Texas, on January 21, 1994.

TRD-9435059

Ann K Utley
Chairman
Texas Mental Health and
Mental Retardation

Effective date: January 21, 1994

Expiration date: May 22, 1994

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 93. General Provisions

Records, Reports and Forms

• 37 TAC §93.75

Texas Youth Commission (TYC) adopts on an emergency basis new §93.75, concerning population management.

This section is adopted on an emergency basis to allow for immediate movement of committed delinquent youth from the Texas Youth Commission maximum restriction facility to high restriction facilities to relieve overpopulation which creates a high possibility of danger to youth and staff.

The new section is adopted on an emergency basis under the Human Resources Code, §61.075, which provides the Texas Youth Commission authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

§93.75. *Population Management.* The Texas Youth Commission (TYC) manages resources to maximize available bed space and safety for youth and staff. When necessary to control population and/or manage available resources, the deputy executive director may approve the movement of violent offenders Type A and Type B from the TYC maximum restriction facility to TYC operated high restriction facilities.

Issued in Austin, Texas, on January 21, 1994.

TRD-9435034

Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 21, 1994

Expiration date: May 22, 1994

For further information, please call: (512)
483-5244

◆ ◆ ◆

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 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 1. Consumer Credit Commissioner

Subchapter B. Miscellaneous

• 7 TAC §1.305

The State Finance Commission proposes new §1.305, concerning procedures for requesting clarification of aspects of Title 79 from the Consumer Credit Commissioner.

Al Endsley, consumer credit commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Endsley 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 that the public will be advised through definitions contained in the rule of the distinctions between interpretations and advisory letters and the proper procedure for requesting and receiving clarification of Title 79 from the Consumer Credit Commissioner. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Al Endsley, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705.

The new rule is proposed under Texas Civil Statutes, Article 342-114A, which provides the State Finance Commission with the authority to prescribe such rules or procedure as may be necessary for supervising the Consumer Credit Commissioner and for ensuring compliance with Texas Civil Statutes, Title 79, Article 5069-1.01.

§1.305. Interpretations and Advisory Letters

(a) Definitions. The following words and terms, which used in this section,

shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advisory letter—A letter by the commissioner or a member of the staff of the Office of Consumer Credit Commissioner providing an informal advisory response to an inquiry concerning provisions of Title 79 and that is not an interpretation as defined in paragraph (3) of this subsection.

(2) Commissioner—The commissioner of the Office of the Consumer Credit Commissioner.

(3) Interpretation—A letter issued by the consumer credit commissioner and approved by the State Finance Commission pursuant to Texas Civil Statutes, Article 5069-§2.02A(10), interpreting a provision of Title 79 in light of certain relevant facts.

(b) Procedures for Finance Commission Interpretations. Any person may submit a request for an interpretation. All requests should be directed to the commissioner subject to the following guidelines.

(1) Explicitly state that an interpretation approved by the Finance Commission is desired.

(2) Provide a concise description of the contemplated transaction or activity contemplated, the legal issue raised, and all facts necessary to reach a conclusion in the matter.

(3) State whether or not, to the best of the requester's knowledge, the issue to be considered is an issue in pending litigation. Matters in litigation will not ordinarily be answered.

(4) Identify each provision of law involved, and indicate the writer's opinion of how the legal issues should be resolved, and the basis for that opinion, including an analysis of any relevant court decisions as well as all prior interpretations to which the request relates.

(5) A fee not to exceed \$300 will be charged for an interpretation to compensate the agency for the expense involved

in researching and answering the request. A payment \$300 should be submitted with the request. The commission shall determine and remit a partial refund if deemed applicable. The commission may waive the fee.

(6) Within ten days of receipt of a properly detailed request and the required fee, the request will be filed with the *Texas Register* for publication. Upon publication in the *Texas Register*, interested parties have 30 days to submit briefs and proposals pertaining to the issue under consideration. The commissioner will draft an interpretation or other response to the request and present it to the Finance Commission for their consideration. A response may be that the commissioner and the Finance Commission decline to answer the inquiry. Within ten days of the Finance Commission's approval of an interpretation or other response, a summary of the interpretation or other response will be filed with the *Texas Register* for publication.

(7) Copies of interpretations or other responses shall contain a notation of approval by the Finance Commission to include the date of Finance Commission action.

(c) Office of Consumer Credit Commissioner Advisory Letters. Each advisory letter shall contain a notation that it is not an interpretation approved by the Finance Commission pursuant to Texas Civil Statutes, Article 5069-2.02A(10) and does not grant a "safe harbor" as provided in Texas Civil Statutes, Article 5069-8.01(f).

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 January 24, 1994.

TRD-9435085

Al Endsley
Consumer Credit
Commissioner

Earliest possible date of adoption February 28, 1994

For further information, please call: (512) 479-1280

TITLE 22. EXAMINING BOARDS

Part XVII. Texas State Board of Podiatry Examiners

Chapter 376. Violations and Penalties

• 22 TAC §§376.1-376.7

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

The Texas State Board of Podiatry Examiners proposes the repeal of §§376.1-376.7, concerning Violations and Penalties. These rules are very vague and are being updated by the Board.

Robert A. Lansford, executive director, 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 Lansford 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 better clarity in the rules. 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 Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The repeals are proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

No other article of the statute is affected by these proposed repeals.

§376.1. Penalties.

§376.2. Probation of Penalty.

§376.3. Institution of Action by the Board.

§376.4. Board Discretion Regarding Penalties.

§376.5. Agreed Orders.

§376.6. Conditions of Suspension of License.

§376.7. Educational Courses.

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 January 21, 1994.

TRD-9435036

Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

Earliest possible date of adoption: February 28, 1994

For further information, please call: (512) 794-0145

• 22 TAC §§376.1-376.11

The Texas State Board of Podiatry Examiners proposes new sections §§376.1-376.11, concerning Violations and Penalties. These new rules regarding fine and penalties, administrative fines, complaint form, investigations of complaints filed with the Board and monitoring licensee compliance are needed to comply with Senate Bill 1080.

Robert A. Lansford, executive director 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 Lansford 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 better clarity in the rules. 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 the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The new sections are proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

No other article of the statute is affected by these proposed new sections.

§376.1. Penalties. Any podiatrist who violates any provision of these Rules, or any provision of the Podiatry Practice Act of Texas shall be, at the discretion of the Board, subject to the following penalties:

(1) suspension, revocation, or cancellation of his or her license to practice podiatry in the State of Texas; or

(2) a fine not to exceed \$10,000; or

(3) a reprimand by the Board which may be either public or private; or

(4) valid enrollment in and certified full and complete attendance at any medical educational course or courses, including any residency, or any course in ethics in practice, as deemed appropriate by the Board; or

(5) valid enrollment in and certified full and complete attendance at any rehabilitation program deemed appropriate by the Board; or

(6) administrative penalties; or

(7) any Combination of the penalties listed in this section.

§376.2. Administrative Fines and Penalties.

(a) The Board may impose an administrative penalty against any licensee who violates any provision of the Act or rule or order of the Board. The executive director may assess a penalty for each violation and present a report to the Board concerning the facts on which the determination was based and the amount of the penalty. The range of penalty is \$500 to \$2,500.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) Penalties imposed by the Board pursuant to subsections (a) and (b) of this section may be imposed for each violation subject to the following limitations.

(1) Imposition of an administrative penalty may not exceed \$2,500 for each violation;

(2) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(d) The provisions of subsections (a)-(c) of this section shall not be construed so as to prohibit other appropriate civil or criminal action and remedy and enforcement under other laws

(e) If the licensee does not agree with the imposition of the administrative penalty, the licensee may request a hearing before the State Office of Administrative Hearings as stated in §376.9 of this title (relating to Complaint Form)

(f) If the final order of the Board imposes an administrative penalty against a licensee, the licensee may pay the amount of the penalty, pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both, or the licensee may, without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both pursuant to Article 4567e

(g) Judicial review of the order of the Board

(1) is instituted by filing a petition as provided in the Administrative Procedure Act, §2001.171 in the Texas Government Code and subsequent amendments, and

(2) is under the substantial evidence rule

(h) All such penalties shall be made a permanent part of the licensee's record at the Texas State Board of Podiatry Examiner's office that are to be maintained according to the laws of the State of Texas and these rules and regulations

§376.3 Probation of Penalty A board order to revoke, cancel, or suspend a license may be probated in whole or in part at the discretion of the Board. The Board may revoke, in part or in whole, the probation of any suspension upon a showing of any violation of Statutes or Administrative Rules governing the practice of Podiatry, or any state or federal laws, upon hearing before the Board without the necessity of pre-hearing discovery, or informal conference provided the licensee is given reasonable notice and time to respond before the Board at said hearing

§376.4 Institution of Action by the Board. The Board may institute actions in its own name to enjoin a violation of any provision of the Podiatry Practice Act of Texas, Texas Civil Statutes, Article 4567B et seq. of the Rules of the Texas State Board of Podiatry Examiners, or any other laws applicable to licensed podiatrists in the State of Texas

§376.5 Board Discretion Regarding Penalties. The Board shall have complete discretion to impose penalties as are reasonable and fair and in accordance with due process in light of all the evidence adduced in each case, the difficulty or proof of elements of the case, the credibility of evidence or witnesses for the State or the licensee, the harm caused by the violation, and other similar considerations, including a comparison with the penalties previously assessed in similar cases and circumstances

§376.6 Agreed Orders. The Board may enter into negotiated Agreed Orders with negotiated penalties when, in the Board's discretion, full hearing of the case is impractical, unnecessary, or not in the best interest of the State due to such factors as difficulties in pursuing discovery, risk of obtaining adequate evidence or proof, or the length of time accrued since the alleged violation and the possibility of stale evidence, and other similar considerations

§376.7. Conditions of Suspension of License.

(a) Suspension of a license means that the office of the licensee is to be closed for the purposes of receiving, diagnosing, treating, or consulting with patients, and the licensee may not participate for income in any professional activity that is directly related to diagnosis or treatment of a patient. The licensee may refer his patients to another practitioner for treatment or consultation during the pendency of the suspension, but the licensee shall not derive any income from such referrals. The licensee may allow into his office another practitioner to see his patients during the pendency of the suspension, but the licensee shall derive no income from the other practitioner by way of refer-

ral fees, rent for the office space, or the like.

(b) The licensee's office may remain open for the purposes of administrative work, including making future appointments, arranging referrals, handling mail, processing accounts, billing, and insurance matters, and other similar matters not directly related to the diagnosis and treatment of patients.

(c) If the suspended licensee shares offices with another practitioner, the other practitioner shall be allowed to continue his practice normally, but the suspended licensee shall not share income with the other practitioner, including any income derived in any way from the diagnosis or treatment of patients that would see or normally see the licensee who is under suspension.

(d) If a license suspension is probated, the Board may require the licensee to:

(1) report regularly to the Board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the Board, or

(3) continue or review continuing professional education until the licensee attains a degree of skill satisfactory to the Board in those areas that are the basis of the probation.

§376.8. Educational Courses. The Board deems as approved any Continuing Medical Education Course approved by the American Podiatric Medical Association. The Board may also approve, by majority vote, substitution of a non-APMA-approved course when such is indicated by the record before the board.

§376.9. Complaint Form. The Board shall adopt the following form as its official complaint form. The form, along with a "Consumer Information" pamphlet explaining the Board's functions and complaint process, will be furnished to any person who wishes to file a complaint with the Board. The official complaint form is suggested for uniformity, however, any written communication that clearly advises the other party or parties of the information required shall be deemed sufficient.

TEXAS STATE BOARD OF PODIATRY EXAMINERS

COMPLAINT FORM

DATE: _____

It is very important that you fill out this form completely. Please use a typewriter or print in black ink. If we are unable to read your complaint, we will not be able to help you.

1.	COMPLAINANT'S FULL NAME (Print or Type)	COMPLAINANT'S ADDRESS (Street)	
	HOME TELEPHONE #: () - WORK TELEPHONE #: () -	(City, State, Zip)	
2.	PODIATRIST INVOLVED: (Print or Type)		
	ADDRESS	CITY, STATE, ZIP	
	OFFICE TELEPHONE #: () -		
3.	(Other Podiatry Opinions Received) NAME:	ADDRESS:	TELEPHONE: () -
	(Other cont.) NAME:	ADDRESS:	TELEPHONE: () -

4. **Nature of Complaint(s)**
 Clearly state the nature of your complaint and enclose copies of any records, or reports from a second podiatrist which will support your statement. **COMPLAINT FORM MUST BE SIGNED.** (Additional space on back. Attach Additional Pages if Necessary.)

Mail to:
TEXAS STATE BOARD OF PODIATRY EXAMINERS
3420 EXECUTIVE CENTER DRIVE, SUITE 305
AUSTIN, TEXAS 78731

SIGNATURE

DATE

THE CITIZEN COMPLAINT PROCESS

WHO MAY FILE A COMPLAINT?

Anyone may file a complaint with the Board of Podiatry Examiners against a podiatrist.

HOW DO I FILE A COMPLAINT?

A complaint must be submitted in writing. You may use this form for that purpose.

HOW ARE COMPLAINTS INVESTIGATED?

Trained professionals investigate the complaints. An investigator may contact you for additional information, to secure your written statement, or for written permission to obtain copies of your medical records.

A complaint involving physician competency may require a lengthy investigation by medical experts.

All investigative material (including medical records, investigator's reports, and reviews by board consultants) become part of the board's investigative files.

WILL I BE TOLD THE STATUS OF MY COMPLAINT?

You will receive a letter acknowledging receipt of your complaint.

If your complaint is within the board's jurisdiction, we will notify you of the status of your complaint approximately every 90 days, until final action is taken.

Should your complaint be outside the Board's jurisdiction, we will notify you.

WHAT COMPLAINTS DO NOT FALL WITHIN THE BOARD'S JURISDICTION?

Rudeness complaints. These issues can be directed to your local Podiatric Society.

Complaints against doctors who are not D.P.M.s and complaints regarding other health care providers or hospitals. Such complaints should be directed to the appropriate state licensing agency.

Complaints regarding the unlicensed practice of podiatry should be referred to your local police department, as this activity is a criminal misdemeanor.

WHAT COMPLAINTS ARE WITHIN THE BOARD'S JURISDICTION?

The most frequent types of consumer complaints are:

Non-therapeutic prescribing/administering of a drug or treatment;

Professional incompetency;

Inability to practice podiatry by reason of mental or physical impairment (alcohol or chemical abuse, mental or physical condition);

Unprofessional conduct which may endanger the public.

WHAT ACTION CAN THE BOARD TAKE?

If we lack sufficient evidence of a violation of the Podiatry Practice Act, then we will close the investigation and notify you.

If the investigation establishes that a podiatrist violated the Podiatry Practice Act, the board may order corrective procedures or disciplinary action ranging from a written reprimand to the most severe measure, revocation of license.

§376.10 *Investigations of Complaints Filed with the Board*

(a) Receipt of Complaint

(1) All written and signed complaints filed with the Board will be investigated. Anonymous written complaints will not be investigated, but will be logged and filed for information purposes only. Complainants who wish to complain by telephone will be advised that their complaints must be submitted in writing, must be signed by complainant, and that Board complaint forms will be mailed to them for their use and submission to the Board. A log will be maintained with names and addresses of complainants who telephone the Board offices and to whom complaint forms are mailed. The Board shall also maintain an information file for each complaint that contains a record of all persons contacted in relation to the complaints, summary of findings at each stage of complaint process, an explanation of legal basis and reason that a complaint was dismissed, and other relevant information.

(2) When a written complaint is received at the Board Offices, the complaint will be date-stamped immediately. The complaint will then be reviewed by the executive director. A complaint file will be created and the complaint will be assigned to an Investigative Liaison, who is a Board member and a licensed podiatrist.

(3) If an allegation is determined to be critical in nature, it will be assigned a high priority and the requirement for written and signed complaints will be waived temporarily, but will be obtained later in the investigative process.

(b) Investigation of Allegations

(1) Upon receipt of the written allegation and/or determination of a high priority issue, the executive director will assure that the complaint information is entered into the computer and given a file number. A letter of acknowledgment will be promptly mailed to the complainant. Case files will be reviewed every 30 days to insure cases comply with scheduling. Parties to a complaint will be contacted on at least a quarterly period.

(2) Depending on the type of allegations and/or violations at issue, the investigation of the complaint will usually be conducted in accordance with the following guidelines.

(A) After a signed and written complaint is received, the executive director may interview the complainant either in person or over the telephone so that the complainant has an opportunity to explain or elaborate upon the allegations made in the complaint. If the allegation is a misun-

derstanding and/or without merit, the executive director informs the complainant and submits a report to the Investigative Liaison recommending that the case be closed.

(B) After the complainant's statement has been obtained, and the executive director determines that a potential violation exists, the licensee is informed of the nature of the allegations in the complaint. All the records and files of the Texas State Board of Podiatry Examiners shall be public records and open to inspection at reasonable times, except the investigations files and records which are confidential and shall be divulged only to persons so investigated upon the completion of the investigation. Patient records may be requested to assist in the investigation. The licensee is given an opportunity to respond to the allegations either in an interview with the executive director or by giving a narrative statement via mail or FAX.

(C) At this time, further investigation may be necessary in the form of second or third opinions, obtaining supporting documents, interviewing other witnesses, etc., depending on the case at hand.

(D) If the case does not require the medical judgment of the Investigative Liaison, and the executive director concludes, after all elements have been investigated, that a violation probably exists, he or she will compose and mail to the licensee a conference letter inviting the licensee to a conference to discuss the allegations made against the licensee. If the executive director concludes that the complaint has no merit, the executive director will apprise the Investigative Liaison assigned to the case and authorize closing the case. The executive director will assure that the complainant and licensee are notified by letter explaining the action taken on the dismissed complaint.

(E) If the case does require the medical judgment of the Investigative Liaison, and the executive director concludes, after all relevant elements have been investigated, copies of pertinent documents, along with a cover letter to the Investigative Liaison, who will assist in determining whether the case should be closed, further investigation is warranted, or the licensee should be invited to respond to the allegations at a conference. If the case is closed, the complainant and the licensee will be notified by letter explaining the action taken on the dismissed complaint.

(F) If a conference is recommended, the executive director shall, by

certified mail, mail to the licensee a conference letter with a list of allegations. The conference is conducted in accordance with the Administrative Procedure Act, the Texas Government Code, §2001.054, former APTRA, Texas Civil Statutes, Article 6252-13a, §18 and is part of the investigatory process. The licensee is advised that he or she has the right to counsel. The allegations are presented to the licensee and the licensee is given every opportunity to present his or her side of the issue. The licensee shall also have the right to waive the conference, in which case the investigation shall proceed to the next step in the disciplinary process. In attendance at the conference are the executive director, the Investigative Liaison assigned to the case, and the Assistant Attorney General representing the Board, and the complainant if the complainant desires to attend.

(G) After the licensee responds to the allegations, the executive director, Investigative Liaison, and the Assistant Attorney General will review the file and licensee's response and recommend the disposition of the complaint. If it is determined that a violation has not occurred, the case will be dismissed and all parties to the allegations will be notified by letter explaining the action taken on the dismissed complaint. The executive director will advise the Board at each scheduled board meeting of the complaints dismissed since the last board meeting. The information furnished will consist of a summary of the allegations, investigation conducted, reasons for dismissal, and file number.

(H) If it is determined that a violation has occurred and a penalty/disciplinary action is warranted, within 14 days of the date of determination a Notice of Violation shall be mailed by certified mail to the licensee. The notice must include a brief summary of the alleged violation and a statement that the licensee has a right to a hearing on the occurrence of the violation, the amount of the penalty/disciplinary action, or both the occurrence of the violation and the amount of the penalty.

(I) Within 20 days after the date the licensee received the notice, the licensee may, in writing, accept the determination and recommended penalty/disciplinary action of the executive director or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty/disciplinary action or both the occurrence of the violation and the amount of the penalty.

(J) If the licensee accepts the determination and recommended penal-

ty/disciplinary action of the executive director, the board by order shall approve the determination and impose the recommended penalty/disciplinary action.

(c) Docketed Complaint and Hearing.

(1) If the licensee declines the determination and recommended penalty/disciplinary action and requests a hearing or if the licensee fails to respond timely to the notice, a docketed complaint will be drawn and assigned a docket number. The complaint is reviewed by the Assistant Attorney General who then returns it to the agency where corrections are made, if indicated. The date the executive director signs the complaint is the official date of filing the docketed complaint with the Board. The docketed complaint is then served on the respondent by certified mail or personal service at least ten days prior to a scheduled hearing.

(2) The executive director shall request a hearing and give notice of the hearing to the licensee. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of the proposed penalty. Based on findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred, impose a penalty, impose disciplinary action, or may find that no violation occurred. The complainant shall be promptly advised by letter of the final disposition of the complaint.

(3) The notice of the board's order given to the licensee under the Administrative Procedure Act, Chapter 20001 et seq of the Texas Government Code and its subsequent amendments must include a statement of the right of the licensee to judicial review of the order.

(d) Licensee's Record. All actions taken by the Board against a licensee shall be made a permanent part of the licensee's record at the Texas State Board of Podiatry Examiner's offices which is to be maintained according to the laws of the State of Texas and these rules and regulations.

(e) Use of Private Investigators. Private investigators may be utilized in any case filed with the Board. Private investigators will be employed only when it is economically advantageous to the Board or when it is not practical for agency staff to travel to a distant destination or to another state. Private investigators will be utilized in accordance with existing State purchasing rules of the General Services Commission and will be utilized with the approval

of the executive director and Investigative Liaison.

§376.11. Monitoring Licensee Compliance.

(a) The Board shall conduct a compliance monitoring program in which podiatric practices are inspected on an unannounced basis to insure that licensees are complying with the requirements of the applicable statutes and rules. Those items to be inspected include, but are not limited to, display of licenses; compliance with required consumer information; continuing education requirements; sanitation; patient record completion; drug security; drug accountability; and compliance with other state and federal laws.

(b) Inspection reports will be completed by the executive director and/or office staff in duplicate. One copy will be processed and filed in the licensee's personal file when all deficiencies have been corrected by the licensee. The second copy will be left with the licensee.

(c) Licensees will normally be given 45 days to correct deficiencies. Licensees who are delinquent will be contacted by certified mail, requesting them to answer within 15 days of receipt of letter. If no response is received within that time period, the status of "inspection" will be changed to "investigation" and the formal investigative procedure will be followed.

(d) After an initial inspection, the executive director may close a compliance inspection discrepancy to "voluntary compliance" within the spirit and intent of the program, with the following exception when a violation is identified involving flagrant disregard of the law, including allowing illegal practice; use of prescription drugs; failure to account for drugs dispensed or administered; drug diversion and/or abuse; and fraud, the compliance inspection shall be terminated and an investigation will be opened. In this situation, "voluntary compliance" is not an option available for the licensee and all matters must be referred to the executive director for review as a complaint.

(e) When a licensee is inspected some time after an initial inspection and the licensee is found to have failed to correct those deficiencies noted in the prior inspection, the executive director will advise the licensee that the licensee has continued to violate the statute and/or rules and that those violations will be submitted to the Board for whatever penalty/disciplinary action it deems appropriate.

(f) Licensees who are ordered by the Board to perform certain acts may be inspected on an unannounced basis to verify that the licensee has performed the required acts. Licensees who are subject to a Board

Order may also be requested to appear before the Board at a Board meeting to discuss compliance with the requirements of the Board Order. If the licensee is found to have refused or failed to comply with the Board Order, the executive director will advise the licensee that a report will be prepared documenting the failure to comply and that the report will be submitted to the Board for consideration of disciplinary action.

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 January 21, 1994

TRD-9435037

Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

Earliest possible date of adoption February 28, 1994

For further information, please call. (512) 794-0145

◆ ◆ ◆
TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter A. Advisory Committees

• 25 TAC §401.23, §401.24

(Editor's Note: The Texas Department of Mental Health and Mental Retardation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §401.23 and §401.24 of Chapter 401, Subchapter A, concerning advisory committees. The new sections are proposed contemporaneously with their emergency adoption in this issue of the Texas Register. The proposal affects Texas Civil Statutes, Article 6252-33.

In keeping with provisions of Senate Bill 383 (73rd Legislature), the proposed new section recognizes two newly created advisory committees concerning provider/authority roles and alternate uses for the Travis State School. The new sections outline the purpose, tasks, and duration of the committees, which are subject to all other requirements of Chapter 401, Subchapter A, concerning advisory committees.

Leilani Rose, director, Office of Financial Services, has determined that there will be no

significant fiscal implications for state or local government as a result of administering the sections as proposed. Local economic impact is anticipated to be insignificant.

Dennis Jones, commissioner, has determined that the public benefit is the creation of an advisory committee which will review and recommend means of creating a new authority structure for the TXMHMR system which promotes efforts to create a more person-centered system, as well as the creation of an advisory committee which will review and recommend the most appropriate alternate use for the Travis State School upon its closure. There will be no effect on small businesses. There is no anticipated cost to persons required to comply with the proposed new sections.

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 Board of Mental Health and Mental Retardation with rulemaking powers.

Cross reference to statute-Texas Civil Statutes, Article 6252-33.

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 January 21, 1994.

TRD 9435058

Ann K Utley
Chairman
Texas Mental Health and
Mental Retardation

Earliest possible date of adoption February 28, 1994.

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

◆ ◆ ◆ TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 291. Water Rates

Subchapter D. Records and Reports

• 30 TAC §291.76

The Texas Natural Resource Conservation Commission (Commission) proposes new §291.76, concerning regulatory assessment. The Water Code, §5 235(n), authorizes the Commission to collect a regulatory assessment from utility service providers. House Bill 2605, Acts of the 73rd Legislature, 1993, amended the Water Code, §5 235, by deleting specific procedural requirements for assessing and collecting fees and authorized

the Commission to establish such procedures by rule. New §291.76 is proposed for the purpose of incorporating into rule the existing procedural requirements related to the collection of regulatory assessments. The rule also establishes a mechanism for enforcement of the collection and remittance provisions. House Bill 2605 also authorizes the Commission to establish by rule interest penalties for late payment of fees consistent with those authorized under the Tax Code for delinquent taxes.

Stephen Minick, Budget and Planning Division, has determined that for the first five-year period this section will be in effect there will be no fiscal implications for state or local government as a result of enforcement and administration of the section. This section incorporates existing procedures into rule with only minor changes related to interest penalty provisions. These changes will have no significant impact on any party subject to this section.

Mr. Minick also has determined that for each year of the first five years this section is in effect the public benefit anticipated as a result of enforcement of and compliance with the section will be maintenance of existing regulatory and technical assistance programs for water utility service providers and improved consistency of Commission regulations and statutory authority related to water utilities.

Written comments on this proposal may be submitted to Dean Robbins, P E, Director, Water Utilities Division, Texas Natural Resource Conservation Commission, P O Box 13087, Austin, Texas 78711, (512) 463-8227. The deadline for submission of written comments will be at 5:00 p.m. 30 days after the date of publication of this proposal in the *Texas Register*. A public hearing on this proposal will be held on February 22, 1994 at 9:00 a.m. in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin.

The new section is proposed under the Water Code, §5 235(n), which authorizes the Texas Natural Resource Conservation Commission to collect regulatory assessments, §5 230 which authorizes the enforcement of permits certified filing, and the Water Code §5 102 and §5 105, which provides the Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, and to establish and approve all general policy of the Commission.

The proposed new sections implement no other statutes.

§291.76 Regulatory Assessment.

(a) For the purpose of this section, utility service provider means a public utility, water supply corporation or sewer service corporation as defined in the Water Code, §13 002, or a district as defined in the Water Code, §50.001.

(b) Except as otherwise provided, a utility service provider which provides potable water or sewer utility service shall collect a regulatory assessment from each

retail customer and remit such fee to the commission under the provisions of this section.

(c) A utility service provider is prohibited from collecting a regulatory assessment from the state or a state agency or institution.

(d) Amounts payable to the commission shall be based on the following:

(1) for a public utility as defined in the Water Code, §13.002, 1.0% of the charge for retail water and sewer service;

(2) for a water supply or sewer service corporation as defined in the Water Code, §13.002, 0.5% of the charge for retail water and sewer service;

(3) for a water district as defined in the Water Code, §50.001, 0.5% of the charge for retail water and sewer service.

(e) The amount payable to the commission shall be based on the amounts actually collected by the utility service provider during the payment period.

(f) The amount payable shall be based on water and sewer service charges to retail customers only, and shall not be based on:

(1) associated delinquent, penalty or interest charges;

(2) tap fees, standby fees, impact fees, extension fees, capital improvement surcharges, itemized solid waste collection fees or other unrelated charges; or

(3) wholesale charges from one utility service provider to another.

(g) The utility service provider may include the assessment as a separate line item on a customer's bill or include it in the retail charge.

(h) The utility service provider shall be responsible for keeping proper records of the annual charges and assessment collections for retail water and sewer service and provide such records to the commission upon request.

(i) The amount payable may be remitted to the commission on a quarterly basis or on an annual basis. If payments are made on a quarterly basis and submitted to the commission not later than January 30th, April 30th, July 30th, and October 30th, the utility service provider may retain 10% of the total amount collected to cover administrative costs incurred in collecting and remitting the assessment. If payments are remitted annually, the full amount collected is due by January 30th of the following year.

(j) The utility service provider shall pursue collection of the assessment from the

customer in the same manner and with the same diligence that it pursues collection of other service charges.

(k) If assessments remitted on an annual basis are not received by the commission by January 30th following the year in which they are collected, the utility service provider shall be assessed a penalty of 5.0% of the amount due, and if the fees are not paid within 30 days after the day on which the fees are due, an additional 5.0% penalty shall be imposed. An annual interest rate of 12%, compounded monthly, shall be imposed on delinquent fees beginning 60 days from the date on which the fee is due.

(l) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption

(m) A utility service provider is exempt from the provisions of this section if such provider:

(1) does not own and has no responsibility for operation and maintenance of the facilities necessary in providing water and sewer utility service, including distribution and collection systems;

(2) does not maintain a security interest in the facilities necessary in providing water and sewer utility service.

(3) has no authority to set the retail customer's rates, and

(4) does not make policy decisions regarding water and sewer services

(n) If it appears that utility service provider has violated this section, the commission may request a civil suit to be brought in a court of competent jurisdiction for injunctive or other appropriate relief

(1) At the request of the commission the attorney general shall bring and conduct the suit in the name of the state

(2) The suit may be brought in Travis County or in the county in which the defendant resides

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 January 24, 1994.

TRD-9435099

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption February 28, 1994

For further information, please call: (512) 463-8069

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IV. School Land Board

Chapter 9. Exploration and Leasing of Oil and Gas

• 31 TAC §9.7

The School Land Board proposes an amendment to §9.7, concerning the potential reduction of penalty and interest. This amendment establishes standards by which the School Land Board may reduce an assessment of penalty and interest. The amendment is designed to encourage the payment of underpaid or delinquent royalties owed to the Permanent School Fund. It is anticipated that this rule change will increase the aggregate amount of revenue collected.

Della Pearson, deputy, Energy Resources Program Area, General Land Office, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section

Ms Pearson 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 provide a standard for the School Land Board to reduce penalty or interest assessed on outstanding royalty sums due and owing the General Land Office in order to encourage the payment of underpaid or delinquent royalties and associated penalties and interest. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to Katherine Minter Cary, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495.

The amendment is proposed under the Texas Natural Resources Code, Title 2, Subtitle D, §52 131(j), which provides the School Land Board the authority to provide procedures and standards for reduction of penalties and interest assessed by the Commissioner relating to unpaid or delinquent royalties.

§9.7. *Royalty and Reporting Obligations to the State.*

- (a) (No change)
- (b) Monetary royalties and reports.
 - (1)-(2) (No change.)
 - (3) Penalties and interest.

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

(E) Reduction of Penalty and/or Interest. The School Land Board may reduce penalties and/or interest that have been assessed by the Commissioner in the following circumstances:

(i) When a lessee brings a deficiency to the General Land Office's attention voluntarily; and/or

(ii) When a lessee and the General Land Office have reached an agreement regarding the reduction as part of a resolution of an outstanding audit issue.

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

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

Issued in Austin, Texas, on January 19, 1994

TRD-9435001

Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption February 28, 1994

For further information, please call (512) 463-5009

Chapter 10. Exploration and Development of State Minerals Other Than Oil and Gas

• 31 TAC §10.8

The School Land Board proposes an amendment to §10.8, concerning the potential reduction of penalty and interest. This amendment establishes standards by which the School Land Board may reduce an assessment of penalty and interest

Della Pearson, deputy, Energy Resources Program Area, General Land Office, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The amendment is designed to encourage the payment of underpaid or delinquent royalties owed to the Permanent School Fund. It is anticipated that this rule change will increase the aggregate amount of revenue collected

Ms. Pearson also has determined that there will be no fiscal implications to units of state or local government as a result of enforcing the rule. For the first five year period the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing the rule will be a standard for the School Land Board to reduce penalty or interest assessed on outstanding royalty sums due and owing the General Land Office in order to encourage the payment of underpaid or delinquent royalties and associated penalties and interest.

Comments on the proposed amendment may be submitted to Katherine Minter Cary, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495.

The amendment is proposed under the Texas Natural Resources Code, Title 2, Subtitle D, §53.024 and §53.078, which provide the School Land Board with authority to provide procedures and standards for reduction of penalties and interest assessed by the Commissioner relating to unpaid or delinquent royalties.

§10.8. Assignments Releases, Reports, Royalty Payments, Inspections, Forfeitures, and Reinstatements.

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

(e) **Reduction of Penalty and/or Interest.** The School Land Board may reduce penalties and/or interest that have been assessed by the Commissioner in the following circumstances:

(1) when a lessee brings a deficiency to the General Land Office's attention voluntarily, and/or

(2) when a lessee and the General Land Office have reached an agreement regarding the reduction as part of a resolution of an outstanding audit issue.

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 January 21, 1994

TRD-9435000 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption. February 28, 1994

For further information, please call: (512) 463-5009

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Title 34. PUBLIC FINANCE
Part I. Comptroller of Public Accounts
Chapter 3. Tax Administration
Subchapter F. Motor Vehicle Sales Tax
• 34 TAC §3.94

The Comptroller of Public Accounts proposes new §3.94, concerning filing motor vehicle reports. The new section is necessary to inform certain sellers of their reporting responsibilities which were established by recent legislative changes

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no

significant revenue impact on state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the new section may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The new section implements the Tax Code, §152.047.

§3.94 Filing Reports. (Texas Tax Code, §§151.401, 151.402, 151.406, 151.409, 152.047).

(a) **Definition of place of sale.** Place of sale means the county in which the application for certificate of title is filed

(b) **Monthly filing.** The motor vehicle sales taxes on amounts received on seller-financed sales and rentals are due and payable on or before the 20th day of the month following the end of each calendar month. Returns must be filed on a monthly basis unless a taxpayer qualifies as a quarterly filer or prepays tax on a quarterly basis. See subsections (c) and (d)(3) of this section.

(c) **Quarterly filing.** A taxpayer who owes less than \$1,500 in tax for any calendar quarter is required to file a return and pay the tax on or before the 20th day of the month following the end of the calendar quarter.

(d) **Filing the return.**

(1) The return for each reporting period must reflect the total receipts and taxable receipts for each county in which sales occurred. The 0.5% discount for timely filing and payment may be claimed on the return for each reporting period and computed on the amount timely reported and paid with that return.

(2) The comptroller will make forms available to all persons required to file returns. The failure of a taxpayer to obtain the forms will not relieve the taxpayer from the requirement to file and remit the tax timely.

(3) Prepayments may be made by taxpayers who file monthly or quarterly returns. The amount of the prepayment must be a reasonable estimate of the state

and local tax liability for the entire reporting period. "Reasonable estimate" means at least 90% of the total amount due or an amount equal to the actual net tax liability due and paid for the same reporting period of the immediately preceding year.

(A) The monthly prepayment is due on or before the 15th day of the month for which the prepayment is made. Prepayments earn an additional 1.25% discount.

(B) The quarterly prepayment is due on or before the 15th day of the second month of the quarter for which the tax is due. Prepayments earn an additional 1.25% discount each quarter.

(4) A remittance that is less than a reasonable estimate as required by paragraph (3) of this subsection will not be regarded as a prepayment. The 1.25% discount will not be allowed. If the taxpayer owes more than \$1,500 in a calendar quarter, the taxpayer will be regarded as a monthly filer. All monthly reports not filed because of the invalid prepayment will be subject to late filing penalty and interest.

(5) Filing late payments or filing late returns will cause all discounts to be disallowed and penalties for late filing or payment will be imposed. Reports filed late will result in disallowance of the prepayment discount.

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 January 20, 1994.

TRD-9434945 Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption. February 28, 1994

For further information, please call: (512) 463-4028

◆ ◆ ◆
Chapter 5. Funds Management (Fiscal Affairs)
Uniform Statewide Accounting System
• 34 TAC §5.200

The Comptroller of Public Accounts proposes new §5.200, concerning the state property accounting system. The new section is necessary because of the recent implementation of the state property accounting system as the personal property fixed asset component of the uniform statewide accounting system.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on state agencies.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the benefit anticipated for state agencies as a result of enforcing the rule will be in providing new information regarding their accounting responsibilities. There will be no significant fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Stephanie Muller, Assistant Director of the Uniform Statewide Accounting System, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Texas Government Code, §403.271(b), which requires the comptroller to adopt necessary rules for the implementation of the state property accounting system. The new section implements the Government Code, §§403.271-403.278.

§5.200 State Property Accounting System (Government Code, §§403.271-403.278).

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

(1) Annual physical inventory—The physical inventory that a state agency must conduct once each year in accordance with this section.

(2) Betterment of personal property—An improvement of personal property that materially increases its serviceability or useful life, or both.

(3) Capital asset—A possession of the state that has a value of at least \$1,000 and an estimated useful life of more than one year. The term does not include real property, improvements to real property, or infrastructure.

(4) Capital lease—A lease of personal property under which the lessee substantially assumes the risks and benefits of ownership as specified under generally accepted accounting principles.

(5) Comptroller—The comptroller of public accounts for the State of Texas.

(6) Controlled asset—A possession of the state that a state agency has determined must be secured and tracked because of the nature of the possession. The term does not include a capital asset, real property, an improvement to real property, or infrastructure.

(7) Fiduciary fund—A fund held by a state agency as trustee of the fund. The term includes pension funds and non-expendable trust funds.

(8) Include—A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(9) May not—A prohibition. The term does not mean "might not" or its equivalents.

(10) Personal property—A capital asset or a controlled asset.

(11) Proprietary fund—A self-supporting fund whose resources are generated through user charges. The term includes enterprise and internal service funds.

(12) Reassignable personal property—Personal property that retains usage value for the state, continues to be functionally capable of serving a state agency, and is not surplus personal property.

(13) Replacement of personal property—A replacement of an internal or external part of personal property that allows it to complete its normal useful life.

(14) Salvage personal property—Personal property that no longer serves its original purpose because it is depleted, worn out, damaged, consumed, outdated, or obsolete. The term does not include personal property that has a remaining useful life.

(15) State agency—A state governmental entity that manages, administers, or controls personal property.

(16) State employee—An officer or employee of a state agency.

(17) State property accounting system—The personal property fixed asset component of the uniform statewide accounting system.

(18) Supplemental physical inventories—The optional physical inventories that a state agency conducts in addition to the required annual physical inventory.

(19) Surplus personal property—Personal property in the possession of a state agency that is not currently needed by the agency and is not required for the agency's foreseeable needs. The term does not include salvage personal property.

(20) Trust property—Property not owned by the state that a state agency temporarily holds on behalf of the owner.

(b) Controlled assets. The state agency that manages, administers, or controls a possession of the state should use good business practices when determining whether the possession is a controlled asset.

(c) Exemptions.

(1) Equipment and supplies purchased through programs, contracts, or

grants with the Texas Department of Health.

(A) An item of equipment or a supply is exempt from the requirements of subsections (b) and (d)-(s) of this section if it is:

(i) used to promote and maintain public health;

(ii) is purchased by or for a qualified entity; and

(iii) is purchased through a program, contract, or grant with the Texas Department of Health.

(B) The exemption ends if the item or supply is returned to the Texas Department of Health upon the termination of the applicable program, contract, or grant. When the exemption ends, the formerly exempt equipment or supply must be reported to the state property accounting system in accordance with the comptroller's requirements.

(C) A state agency that purchases an exempt item of equipment or a supply shall develop and maintain internal control procedures for keeping a complete and accurate inventory of the items exempt under subparagraph (A) of this paragraph.

(D) In this paragraph, "qualified entity" includes an individual, a corporation, a local unit of government, and a state agency.

(2) The Texas Rehabilitation Commission and the Texas Commission for the Blind.

(A) A material, tool, book, or other necessary apparatus provided to a client by the Texas Rehabilitation Commission or the Texas Commission for the Blind is exempt from subsections (b) and (d)-(s) of this section.

(B) The Texas Rehabilitation Commission and the Texas Commission for the Blind shall each develop and maintain internal control procedures for keeping a complete and accurate inventory of the items that are exempt under subparagraph (A) of this paragraph.

(C) The state auditor may request to review an inventory required by subparagraph (B) of this paragraph at any time.

(D) An item that no longer qualifies for an exemption under subparagraph (A) of this paragraph must be

added to the state property accounting system.

(3) Items provided to clients of state agencies.

(A) The comptroller may exempt from the reporting requirements of this section a material, tool, book, or other necessary apparatus if the item is provided to a client by a qualifying state agency.

(B) The appropriate state agency shall develop and maintain internal control procedures for keeping a complete and accurate inventory of the items that are exempt under subparagraph (A) of this paragraph.

(C) The state auditor may request to review an inventory required by subparagraph (B) of this paragraph at any time.

(D) An item that no longer qualifies for an exemption under subparagraph (A) of this paragraph must be added to the state property accounting system

(d) Certification of internal state agencies and reporting state agencies.

(1) General requirement. A state agency must be certified as an internal state agency or a reporting state agency.

(2) Initial certification. A state agency that has not been certified before the effective date of this section must properly complete and submit to the comptroller the form required by the comptroller. The agency must specify on the form whether the agency wants certification as an internal state agency or a reporting state agency. The comptroller shall review the form and consider the agency's ability to comply with this section before certifying the agency.

(3) State agency requests for changes in certification.

(A) A reporting state agency may change its certification to an internal state agency by:

(i) properly completing the form required by the comptroller, and

(ii) obtaining the comptroller's approval of the change.

(B) An internal state agency may change its certification to a reporting state agency by:

(i) properly completing the form required by the comptroller; and

(ii) obtaining the comptroller's approval of the change.

(C) When considering whether to approve or disapprove a state agency's request for a certification change, the comptroller shall:

(i) consider the agency's history of complying or not complying with this section's requirements for the agency's current certification; and

(ii) determine the agency's capability to comply with this section's requirements for the agency's requested certification.

(D) This subparagraph applies if the comptroller receives a state agency's request for a certification change not later than the 30th day before the start of the next fiscal year. If the comptroller approves the change, then the change is effective on the later of:

(i) the first day of the fiscal year following the fiscal year during which the comptroller approves the change; or

(ii) the date the state property accounting system receives a full and accurate reporting from the agency of its property balances as of the end of the fiscal year during which the comptroller approves the change.

(E) This subparagraph applies if the comptroller receives a state agency's request for a certification change during the last 29 days of a fiscal year. If the comptroller approves the change, then the change is effective on the later of:

(i) the first day of the second fiscal year following the fiscal year during which the comptroller receives the request; or

(ii) the date the state property accounting system receives a full and accurate reporting from the agency of its property balances as of the end of the fiscal year following the fiscal year in which the comptroller receives the request.

(4) Certification changes initiated by the comptroller.

(A) The comptroller may change a state agency's certification from a reporting state agency to an internal state agency or vice versa anytime the comptroller determines the change is needed.

(B) If the comptroller changes a state agency's certification under

subparagraph (A) of this paragraph, then the change is effective on the date specified by the comptroller.

(5) Criteria for certification as an internal state agency. A state agency may be an internal state agency only if:

(A) the agency determines that it will use the state property accounting system as its own property accounting system; and

(B) the agency agrees to maintain a perpetual inventory.

(6) Criteria for certification as a reporting state agency.

(A) A state agency is a reporting state agency if it:

(i) is not exempt from this section; and

(ii) is not an internal state agency.

(B) A reporting state agency shall modify its personal property accounting system to comply with the comptroller's reporting requirements, as periodically amended.

(C) A reporting state agency shall demonstrate to the comptroller's satisfaction that the agency has disaster recovery capability.

(e) Physical inventories.

(1) Frequency and timing of physical inventories.

(A) Except as provided by subsection (n) of this section, a state agency shall conduct an annual physical inventory of the personal property and trust property in the agency's possession. The agency may choose the date of the inventory.

(B) The comptroller encourages a state agency to conduct each year one or more supplemental physical inventories of the personal property and trust property in the agency's possession.

(2) Requirements for annual physical inventories.

(A) When a state agency conducts an annual physical inventory of the personal property and trust property in the agency's possession, the agency shall:

(i) ensure that each property item is still within the agency's possession;

(ii) determine whether the person who has custody of each property item as indicated on the agency's records still has custody of the item; and

(iii) determine the condition of each property item.

(B) A state agency may use any method for conducting an annual physical inventory that is acceptable to the comptroller.

(C) If the results of a state agency's annual physical inventory vary from the records on the state property accounting system, then the agency shall immediately report the discrepancies to the comptroller through the system. The report must provide a reason for each discrepancy.

(3) Reports to the comptroller about annual physical inventories.

(A) The head of a state agency shall send a report to the comptroller about the agency's annual physical inventory.

(B) The report must contain.

(i) a copy of the results of the inventory; and

(ii) a signed statement that.

(I) provides the date the inventory was conducted;

(II) identifies the individuals who conducted the inventory;

(III) describes the methods used to conduct the inventory.

(IV) summarizes the values received from the inventory, and

(V) contains the other information required by the comptroller

(C) Deadline for reports. The head of a state agency shall ensure that the comptroller receives a copy of the results of the agency's inventory and the signed statement not later than the earliest of.

(i) the 45th day after the date the inventory is conducted; or

(ii) the 20th day after the end of the fiscal year for which the inventory is conducted.

(4) Requirements for supplemental physical inventories.

(A) A state agency may use any method for conducting a supplemental physical inventory that is acceptable to the comptroller. Statistical sampling and dollar unit sampling techniques are acceptable if they are properly used and comply with the comptroller's requirements.

(B) A state agency shall maintain in its records the results of each supplemental physical inventory.

(C) If the results of a state agency's supplemental physical inventory vary from the records on the state property accounting system, then the agency should consider the immediate conducting of an annual physical inventory.

(5) Loaned personal property. Personal property that a state agency has loaned to another state agency is the responsibility of the lending state agency for the purpose of this subsection.

(6) Transferred personal property. Personal property, including reassignable personal property, that a state agency has transferred to another state agency is the responsibility of the transferring state agency until the transfer has been completed in accordance with the comptroller's requirements.

(7) Missing, stolen, salvage, or surplus personal property. A state agency must include in a physical inventory the agency's missing, stolen, salvage, or surplus personal property until it has been deleted from the state property accounting system in accordance with this section.

(f) Records and reporting.

(1) Internal state agencies.

(A) An internal state agency shall maintain a perpetual inventory. The agency shall record personal property and trust property on the state property accounting system at the time of acquisition. The information must be recorded in accordance with the comptroller's requirements.

(B) The comptroller shall maintain an internal agency's property records on the state property accounting system.

(2) Reporting state agencies.

(A) A reporting state agency shall report information to the state property accounting system in accordance with the comptroller's schedules, procedures, and classification system. The comptroller may require a reporting state agency to submit information at any time. The comptroller

shall notify reporting state agencies in writing about the required frequency of the agencies' reports.

(B) A reporting state agency shall maintain its property records in the manner and format required by this section and the comptroller. The agency shall ensure that its property accounting system is always capable of providing the information required by the state property accounting system

(3) Group and unit tracking of personal property.

(A) A state agency shall track personal property on a unit basis.

(B) Possessions of the state other than personal property may be tracked on a group basis only if the requirements of subparagraphs (C) and (D) of this paragraph are satisfied.

(C) A state agency may track possessions of the state on a group basis only if all the possessions in the group:

(i) have the same characteristics,

(ii) have the same purchase and in-service dates;

(iii) have the same class code;

(iv) are visually identifiable as logically belonging to the group; and

(v) may be depreciated using the same methods.

(D) Notwithstanding anything in this paragraph, possessions of the state that are purchased with debt financing by the Texas Public Finance Authority may be tracked on a group basis only if all the possessions in the group are included in the same lease supplement.

(4) Missing, stolen, damaged, or destroyed personal property.

(A) Upon receiving a report about stolen, damaged, or destroyed personal property from a head of agency under subsection (g)(1)(C) or (D) of this section or from a property manager under subsection (h)(2)(B) or (C) of this section, the comptroller shall forward necessary records about the property to the state auditor and the attorney general.

(B) The attorney general may investigate and take appropriate legal action to recover the value of stolen, dam-

aged, or destroyed personal property. The attorney general shall determine the value of the property to be recovered based on the market value of the property and the degree of responsibility of the person who was entrusted with the property.

(C) A state agency may not delete missing personal property from the state property accounting system before three annual physical inventories have been conducted or three calendar years have elapsed since it was determined to be missing.

(D) A state agency may delete missing, stolen, damaged, or destroyed personal property from the state property accounting system only in accordance with the comptroller's procedures.

(g) Responsibilities of heads of state agencies.

(1) Care, custody, and control of personal property.

(A) The head of a state agency is responsible for the custody and care of personal property and trust property in the agency's possession. This responsibility does not end when a property manager is designated.

(B) The head of a state agency is responsible for ensuring that the agency maintains adequate inventory controls on personal property and trust property. Upon request, the state auditor may advise and make recommendations to the agency about those controls.

(C) If the head of a state agency has reasonable cause to believe that the agency's personal property or trust property is missing, damaged, or destroyed because of a state employee's negligence, then the head of agency shall file a report with the comptroller, the state auditor, and the attorney general.

(i) A report to the comptroller must be made immediately and by entering the appropriate disposal code into the state property accounting system.

(ii) A report to the state auditor must be made through a deletion request entered into the state property accounting system. A head of agency should transmit to the state auditor by facsimile the appropriate form within 24 hours after entering the deletion request.

(iii) A report to the attorney general must include the appropriate form. The form must be transmitted to the attorney general by facsimile. The report must be made not later than the fifth work-

ing day after reasonable cause for the belief arises.

(D) If the head of a state agency has reasonable cause to believe that the agency's personal property or trust property has been stolen, then the head of agency shall inform the comptroller, the state auditor, the attorney general, and law enforcement personnel.

(i) A report to the comptroller must be made immediately and by entering the appropriate disposal code into the state property accounting system.

(ii) A report to the state auditor must be made through a deletion request entered into the state property accounting system. A head of agency should transmit to the state auditor by facsimile the appropriate form and police report within 24 hours after entering the deletion request.

(iii) A report to the attorney general must include the appropriate form. The form must be transmitted to the attorney general by facsimile. The report must be made not later than the fifth working day after reasonable cause for the belief arises.

(iv) A report to law enforcement personnel must be made not later than the 48th hour after reasonable cause for the belief arises.

(2) Designation, supervision, and training of property managers.

(A) The head of a state agency shall:

(i) designate a property manager for the agency;

(ii) inform the comptroller of the designation by properly completing and submitting the form required by the comptroller, and

(iii) ensure that the property manager receives training about this section and the state property accounting system.

(B) The head of a state agency may designate more than one property manager for the agency only if the comptroller approves.

(C) The head of a state agency may designate one or more alternate property managers for the agency. The head of agency shall inform the comptroller of the designation by properly completing and submitting the form required by the comptroller.

(D) If a state agency's property manager or alternate property manager changes, then the head of the agency shall inform the comptroller of the change by

properly completing and submitting the form required by the comptroller.

(E) The head of a state agency shall ensure that the property manager for the agency properly carries out the property manager's duties as required by this section.

(3) Providing receipts. The head of a state agency shall provide the receipt required by subsection (h)(4) of this section if the head of agency is entrusted with personal property or trust property.

(4) Use of personal property or trust property. The head of a state agency may use personal property and trust property only for state purposes.

(5) Change in the head of a state agency.

(A) When the head of a state agency changes, the outgoing head of agency shall complete the form required by the comptroller and deliver the form to the incoming head of agency.

(B) After verifying and signing the form, the incoming head of agency shall send copies of the form to the comptroller and the state auditor.

(6) Liability. The head of a state agency is financially liable for the loss sustained by the state if the head of agency is entrusted with personal property or trust property and:

(A) the property disappears because the head of agency fails to exercise reasonable care for its safekeeping;

(B) the property deteriorates because the head of agency fails to exercise reasonable care to maintain and service it; or

(C) the property is damaged or destroyed because of the head of agency's negligent or intentional wrongful act.

(h) Responsibilities of property managers.

(1) Determining the responsibilities of alternate property managers. The property manager of a state agency shall determine the responsibilities of the agency's alternate property managers. The property manager shall ensure that the alternate property managers properly fulfill their responsibilities.

(2) Custody of personal property and trust property.

(A) The property manager of a state agency is the custodian of all personal property and trust property possessed by the agency

(B) If a property manager has reasonable cause to believe that personal property or trust property is missing, damaged, or destroyed because of a state employee's negligence, then the property manager shall inform the comptroller, the state auditor, and the attorney general. A report to the comptroller must be made in the form and manner required by the comptroller

(i) A report to the comptroller must be made immediately and by entering the appropriate disposal code into the state property accounting system.

(ii) A report to the state auditor must be made through a deletion request entered into the state property accounting system. A property manager should transmit to the state auditor by facsimile the appropriate form within 24 hours after entering the deletion request.

(iii) A report to the attorney general must include the appropriate form. The form must be transmitted to the attorney general by facsimile. The report must be made not later than the fifth working day after reasonable cause for the belief arises

(C) If a property manager has reasonable cause to believe that the agency's personal property or trust property has been stolen, then the property manager shall inform the comptroller, the state auditor, the attorney general, and law enforcement personnel.

(i) A report to the comptroller must be made immediately and by entering the appropriate disposal code into the state property accounting system

(ii) A report to the state auditor must be made through a deletion request entered into the state property accounting system. A property manager should transmit to the state auditor by facsimile the appropriate form and police report within 24 hours after entering the deletion request

(iii) A report to the attorney general must include the appropriate form. The form must be transmitted to the attorney general by facsimile. The report must be made not later than the fifth working day after reasonable cause for the belief arises

(iv) A report to law enforcement personnel must be made not later than the 48th hour after reasonable cause for the belief arises.

(3) Maintaining records. The property manager of a state agency shall maintain the records required by the comptroller and this section.

(4) Entrusting personal property or trust property to other persons.

(A) A property manager may not entrust personal property or trust property to a person unless the person provides a signed, written, and dated receipt to the property manager

(B) The receipt must contain a statement similar to the following "I understand that I am financially liable to the state for the disappearance of the personal property or trust property if I fail to exercise reasonable care for its safekeeping, the deterioration of the property if I fail to exercise reasonable care to maintain and service it; and the damage or destruction of my property if it occurs because of my negligent or intentional wrongful act "

(C) A property manager may not entrust personal property or trust property to a person if the property manager knows or reasonably should know that the person will use the property for other than state purposes.

(5) Use of personal property and trust property. A property manager may use personal property and trust property only for state purposes.

(6) Changes in property managers

(A) When a property manager changes, the outgoing property manager shall complete the form required by the comptroller and deliver the form to the incoming property manager.

(B) After verifying and signing the form, the incoming property manager shall send copies of the form to the comptroller and the state auditor

(7) Liability. A property manager is financially liable for the loss sustained by the state if the property manager is entrusted with personal property or trust property and

(A) the property disappears because the property manager fails to exercise reasonable care for its safekeeping,

(B) the property deteriorates because the property manager fails to exercise reasonable care to maintain and service it, or

(C) the property is damaged or destroyed because of the property manager's negligent or intentional wrongful act.

(i) Responsibilities of state employees

(1) Providing receipts. A state employee shall provide the receipt required by subsection (h)(4) of this section if the employee is entrusted with personal property or trust property

(2) Use of personal property and trust property. A state employee may use personal property and trust property only for state purposes

(3) Liability. A state employee is financially liable for the loss sustained by the state if the employee is entrusted with personal property or trust property and.

(A) the property disappears because the employee fails to exercise reasonable care for its safekeeping;

(B) the property deteriorates because the employee fails to exercise reasonable care to maintain and service it, or

(C) the property is damaged or destroyed because of the employee's negligent or intentional wrongful act.

(j) Valuation of personal property.

(1) General provision. This subsection governs the valuation of personal property as reported to the state property accounting system.

(2) Newly acquired personal property. The value of newly acquired personal property must be equal to the sum of

(A) the cost of the property, and

(B) the costs required to place the property into service

(3) Donated personal property

(A) The value of personal property acquired through donation must be equal to its fair market value on the date of donation

(B) The fair market value of donated personal property must be determined through a reasonable market study

(C) A state agency that conducts a market study shall fully document the methods used to conduct the study. The agency shall keep the documentation in the agency's records in accordance with the comptroller's requirements. The agency

shall send a copy of the documentation to the state property accounting system.

(4) Personal property manufactured by the state. The value of personal property manufactured by the state must be equal to the total cost of labor and materials. Overhead costs may be included in the value if the manufacturing state agency determines it would be cost-effective.

(5) Betterments and replacements of personal property.

(A) A state agency shall determine the value of a betterment or replacement of personal property.

(i) immediately following the completion of the betterment or replacement; or

(ii) at the agency's earliest opportunity as deemed appropriate by the agency and the comptroller.

(B) The value of a betterment of personal property must be expensed unless the betterment increases the value or useful life of the property by at least 25%. If a betterment is not expensed, then the value of the property must be increased on the state property accounting system in accordance with the comptroller's requirements.

(C) The value of a replacement of personal property is equal to the cost of the replacement less the original cost of the part being replaced. The value of the replacement must be expensed unless the replacement materially increases the value or estimated useful life of the property. If a replacement is not expensed, then the value of the property must be increased on the state property accounting system in accordance with the comptroller's requirements.

(D) If a state agency is required to increase the value of personal property on the state property accounting system because of a betterment or replacement, then the agency shall keep documentation in its records that supports the amount of the increase. The agency shall make the documentation available for inspection upon request. The agency may destroy the documentation only in accordance with the comptroller's requirements.

(6) Debt financed personal property.

(A) In this paragraph, the total principal of debt financed personal property is equal to the purchase price of the property plus the applicable service charge imposed by the Texas Public Finance Authority.

(B) The acquisition cost of debt financed personal property other than manufactured items must reflect the total principal of the property and the costs required to place the property into service.

(C) The acquisition cost of debt financed personal property that has been manufactured should be equal to the total cost of acquiring the property plus the cost of placing the property into service. This includes the principal, interest, finance charges, costs of issuance, and administrative fees.

(7) Leased personal property.

(A) Personal property that a state agency has leased under a capital lease must be valued in accordance with this paragraph.

(B) Subject to subparagraph (C) of this paragraph, the cost of leased personal property is equal to the present value of the minimum lease payments plus the cost of placing the property into service. The cost of the property does not include any costs not paid by the agency.

(C) The cost of leased personal property may not exceed the property's fair market value.

(8) Trade-ins. If a state agency is authorized to trade personal property for other personal property, then the agency must report the trade to the state property accounting system in accordance with the comptroller's requirements.

(9) Condition of personal property. When a state agency reports reassignable, surplus, or salvage personal property to the state property accounting system, the agency must include the condition of the property in the report. The agency should use the categories adopted by the comptroller when reporting the condition of personal property.

(10) Previously depreciated personal property. If a state agency obtains ownership of personal property that was previously purchased with federal funds and depreciated for federal reporting purposes, then the agency shall value the property at its original cost. The previous depreciation has no effect on the value of the personal property for the purposes of the state property accounting system.

(k) Accounting practices.

(1) Depreciation of personal property.

(A) The depreciable personal property of proprietary and fiduciary funds

must be depreciated in accordance with generally accepted accounting principles.

(B) An internal state agency shall depreciate personal property that is a general fixed asset by using the straight line method. The depreciation must be recorded on the state property accounting system on a memorandum basis unless generally accepted accounting principles require depreciation. Regardless of how the depreciation is recorded, it shall be recorded at the end of each fiscal year unless the comptroller specifies otherwise.

(C) The amount that personal property depreciates over a fiscal year by using the straight line method is equal to:

(i) the difference between the property's acquisition cost and its salvage value; divided by

(ii) the estimated useful life of the property expressed in years.

(D) A state agency shall use the state property accounting system's default value for the estimated useful life of personal property unless the agency documents a different value based on the agency's experience. This subparagraph applies only when a state agency is calculating depreciation for the purpose of recording it on the state property accounting system.

(2) Transfer of personal property between funds.

(A) If a state agency transfers personal property from a proprietary fund to a governmental fund, then a new cost basis must be established for the property in the governmental fund. The new cost basis must be based on the acquisition cost of the property as recorded in the proprietary fund less any accumulated depreciation earned on the property. There is no requirement for the agency to modify the estimated useful life of the property.

(B) If a state agency transfers personal property from a governmental fund to a proprietary or fiduciary fund, then the acquisition cost of the property must be recorded in the proprietary or fiduciary fund. The acquisition cost as recorded in the proprietary or fiduciary fund must be equal to the acquisition cost as recorded in the governmental fund. The estimated useful life of the property must be adjusted to reflect the best estimate of useful life available to the proprietary or fiduciary fund.

(C) If a state agency transfers personal property from a governmental fund to another governmental fund, then the

acquisition cost of the property as recorded in the new fund must be the same as the cost recorded in the old fund.

(3) Reporting and reconciliation of personal property inventory balances.

(A) A state agency shall:

(i) report to the state property accounting system general ledger information using generally accepted accounting principles;

(ii) track beginning balances at the beginning of each year, and

(iii) report additions, deletions, and adjustments in personal property throughout the year so that year end balances can be determined.

(B) An internal state agency should reconcile its general ledger balances for personal property to the supporting financial detail in the state property accounting system. The agency should accomplish the reconciliation on a monthly basis at the month-end closing. All adjustments made during the reconciliation should be supported and documented. The agency may destroy the documentation only in accordance with the comptroller's requirements.

(C) A reporting state agency should reconcile its corresponding balances to the detail reported to the state property accounting system on a quarterly basis. Adjustments should be entered not later than the 20th day after the end of the quarter. All adjustments should be supported and documented. The agency may destroy the documentation only in accordance with the comptroller's requirements.

(l) Maintaining records

(1) Forms. A state agency shall use the forms prescribed by the comptroller when taking any action authorized or required by this section. The comptroller may adopt and modify forms as the comptroller deems necessary.

(2) Loans of personal property.

(A) A state agency that loans personal property to another state agency shall document the loan as required by the comptroller

(B) A state agency that loans personal property to another state agency does not suspend or eliminate its responsibilities toward the property under this section and applicable law.

(3) Transfers of personal property

(A) A state agency that transfers personal property to another state agency shall comply with the procedures and requirements adopted by the comptroller.

(B) A state agency that receives personal property from another state agency shall comply with the procedures and requirements adopted by the comptroller.

(C) Personal property that is transferred from one state agency to another is in the possession of the transferring agency until the receiving agency properly enters its receipt of the property in the state property accounting system.

(D) A state agency may not transfer property purchased through the master lease financing program administered by the Texas Public Finance Authority unless the authority provides advance approval of the transfer in accordance with the authority's requirements.

(4) Reassignable personal property.

(A) A state agency that has possession of reassignable personal property shall identify the property to the state property accounting system. The system shall then advertise the availability of the property to other state agencies.

(B) A state agency that transfers reassignable personal property to another state agency and the state agency that receives the property shall comply with the comptroller's procedures for the transfer.

(C) This subparagraph applies if a state agency transfers to at least two state agencies reassignable personal property that is tracked on a group basis on the state property accounting system. The transferring state agency shall identify to the system the property that is transferred to each state agency. Each receiving state agency shall record its receipt of the property on the state property accounting system in accordance with subsection (f) of this section.

(5) Surplus and salvage personal property

(A) A state agency shall comply with applicable law and rules when transferring, selling, or disposing of its surplus or salvage personal property.

(B) When a state agency determines that it possesses surplus or salvage

personal property, the agency shall notify the state property accounting system in accordance with the comptroller's requirements.

(C) The notification provided under subparagraph (B) of this paragraph constitutes official notice to the General Services Commission that the surplus or salvage personal property is available for sale or other disposition.

(D) A state agency may delete surplus or salvage personal property from the state property accounting system only by requesting the comptroller's approval. An approval request must comply with the comptroller's procedures.

(E) Surplus personal property that has not been reported to the state property accounting system must be added to the system before the property may be deleted from the system.

(F) Salvage personal property shall be removed from the state property accounting system in accordance with the comptroller's requirements.

(G) Each house of the legislature is exempt from the surplus property provisions of the State Purchasing and General Services Act, Article 9, if the rules and regulations of the administration committee of the house has adopted a system for disposing of the property.

(H) Subparagraphs (A)-(F) of this paragraph do not apply to products and by-products of research, forestry, agriculture, livestock, and industrial enterprises that exceed the quantity required for consumption by the producing state agency if the agency has a continuing and adequate system of marketing research and sales. The deletion of those products and by-products from the state property accounting system must comply with the comptroller's requirements.

(I) State eleemosynary institutions and institutions and agencies of higher learning are exempt from the provisions in the State Purchasing and General Services Act, Article 9, that relate to the disposition of surplus or salvage property.

(m) Inventory control.

(1) Marking of personal property. A state agency shall permanently mark each item of personal property in the agency's possession as property of the State of Texas. The marking is permanent for the purpose of this paragraph if the marking can

be removed only through considerable or intentional means. The marking shall be highly visible so that conducting a physical inventory is facilitated.

(2) Property inventory numbers.

(A) A state agency shall assign a unique property inventory number to each item of personal property that is tracked on a unit basis. The number shall be printed on a label. The label shall be attached to the item in a highly visible location so that conducting a physical inventory is facilitated.

(B) A property inventory number may not be reused, even if property has been deleted from the state property accounting system.

(3) Responsibility for securing and tracking personal property. A state agency is responsible for ensuring that its personal property and trust property are tracked and secured in the manner that is most likely to prevent damage to and the theft, loss, or misuse of the property.

(4) Locating personal property. A state agency must know where all of its personal property and trust property is located at all times.

(n) Abolished state agencies.

(1) Application of this subsection. This subsection applies to an abolished state agency only to the extent this section is consistent with the law that abolishes the agency.

(2) Responsibilities of the head of an abolished state agency.

(A) The head of an abolished state agency shall:

(i) conduct a complete and accurate physical inventory of the agency's possessions in accordance with the comptroller's requirements;

(ii) furnish a copy of the inventory to the General Services Commission not later than the effective date of the abolition; and

(iii) transfer all personal property of the agency to the General Services Commission in accordance with the comptroller's requirements.

(B) The physical inventory required by subparagraph (A)(i) of this paragraph is in addition to the annual physical inventory required by subsection (e) of this section.

(3) Responsibilities of the General Services Commission. The General Services Commission shall care for the per-

sonal property transferred to the commission under paragraph (2) of this subsection until the commission distributes or sells the property in accordance with applicable law.

(o) Real property.

(1) Using the state property accounting system to track real property. A state agency may use the state property accounting system to track real property if the agency:

(A) establishes its own coding and accounting structures; and

(B) complies with the comptroller's requirements.

(2) Submitting information to the General Land Office. A state agency may not use the state property accounting system to track real property instead of submitting information about the property to the General Land Office.

(p) Access to the state property accounting system. An individual may have access to the state property accounting system only in accordance with the procedures and security limitations prescribed by the comptroller.

(q) Consequences of violating this section. The comptroller may refuse to draw warrants or initiate electronic funds transfers on behalf of a state agency that fails to comply with this section.

(r) Conflict with federal laws or regulations. If a federal law or regulation conflicts with this section, then the law or regulation prevails over this section to the extent necessary to avoid the conflict.

(s) Transition.

(1) Application of this subsection. This subsection applies to personal property of a state agency only if:

(A) the agency was not required to report the property to the General Services Commission by the State Purchasing and General Services Act, Article 8; and

(B) this section requires the agency to report the property to the state property accounting system.

(2) Deadline for initial reporting of personal property. Notwithstanding anything in subsections (a)-(r) of this section, a state agency shall complete its initial reporting of personal property to the state property accounting system not later than August 31, 1994.

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 January 20, 1994.

TRD-9434941

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: February 28, 1994

For further information, please call: (512) 463-4028

**TITLE 37. PUBLIC
SAFETY AND CORREC-
TIONS**

**Part III. Texas Youth
Commission**

**Chapter 91. Discipline and
Control**

Control

• 37 TAC §§91.51, 91.59, 91.63

The Texas Youth Commission (TYC) proposes amendments to §§91.51, 91.59, and 91.63, concerning facility security, use of force, and mechanical restraint equipment. The amendment to §91.51 allows firearms in a TYC facility or on TYC grounds when there is an emergency and law enforcement has been called, and amendments to §91.59 and §91.63 allow TYC staff to use plastic cuffs on TYC youth only when they are involved in a riot at a TYC facility and a sufficient number of metal cuffs are not available.

John Franks, director, Fiscal Affairs, 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. Franks 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 safer environment for TYC youth and staff. 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 the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements Human Resources Code, §61.034.

§91.51. Facility Security.

(a) Policy. Texas Youth Commission (TYC) provides for safety and security of its staff and youth.

(b) Rules.

(1) Firearms are not permitted in any TYC facility or on any facility grounds **except in emergencies when law enforcement has been called.** Firearms are permitted in the personal residence of staff who live adjacent to the campus.

(2)-(5) (No change)

(6) Facilities have access to the necessary equipment to maintain essential light and a[s] system of communication within the facility and between the facility and the community for use in an emergency.

(7) All facilities have written emergency plans including **procedures for response to natural disaster, fire, riot, hostage taking, medical emergency, hunger strike, and, evacuation [and natural disasters].** Plans are made available to all personnel and are reviewed and updated annually.

(8)-(10) (No change.)

§91.59 Use of Force.

(a) Policy. The Texas Youth Commission (TYC) prohibits the use of physical force as punishment and sanctions its use only as a control measure to ensure the safety and welfare of youth and staff. Physical force is to be used as a last resort and only for purposes justified under this policy. Isolation and full body restraint may be employed only in TYC institutions. Also see GOP.67.13, §91.63 [67. 13] of this title (relating to Mechanical Restraint Equipment). Allegations of unjustified force are reported and investigated in compliance with GOP.61.15, §89.15 of this title (relating to Alleged Mistreatment Rules and Definitions).

(b) Rules

(1) Explanation of Terms Used

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

(C) Escort [Compel Movement]-The physical force used to cause the movement of a person from one location to another.

(D)-(E) (No change)

(2) (No change)

(3) Restrictions.

(A) Physical force is justified only as a last resort and only in instances listed in paragraph (2) of this subsection. Criteria for Use. Last resort indicates that the staff has engaged in measured, progressively intense action to assist an out-of-control youth to regain self-control prior to considering use of force. When use of physical force is necessary, it should be measured and progressive in nature; however, the amount and type of force necessary to control violence should be used. Physical force is considered progressive as listed in clauses (i)-(v) of this subparagraph.

(i) Escort [Compel movement];

(ii)-(v) (No change.)

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

(E) Only restraint equipment approved by TYC may be used See GOP.67.13, §91.63 [67 13] of this title (relating to Mechanical Restraint Equipment).

(F)-(G) (No change)

(4) Conditions and Documentation of Restraint Except Full Body Restraint.

(A) (No change.)

(B) A restraint, other than during a riot, physical or mechanical, shall be terminated within 15 minutes unless the youth is exhibiting or threatening to continue behaviors which justify the use of restraint. If continued restraint is justified, restraint must be terminated when the youth's behavior ceases to pose a threat or, if used during transportation, when the destination is reached.

(C) Plastic cuffs may be used only in riot circumstances and only in compliance with GOP.67.25, §91.75 of this title (relating to Riot Control).

(D)[(C)] Use of restraint except during transportation shall not be employed for more than 30 minutes without the approval of the program administrator or his designee. The program administrator or his designee must document a justification for continued restraint every 30 minutes until termination of restraint.

(E)[(D)] All incidents involving the use of force are reported on the Incident Report, CCF-225, which must be completed by the employee using force no later than the conclusion of the shift. The facility administrator reviews the restraint

report section of the Incident Report of all incidents involving the use of force

(5) (No change.)

§91.63. Mechanical Restraint Equipment

(a) (No change.)

(b) Rules.

(1)-(2) (No change)

(3) Approved Equipment. The following restraint devices are approved for use by TYC staff. All other devices are specifically disapproved.

(A) Handcuffs-Metal [(not plastic)] devices fastened around the wrist to: restrain free movement of the hands and arms.

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

(E) Plastic Cuffs-Plastic devices fastened around the wrist or legs to restrain free movement of hands, arms or legs. Use is authorized only in case of riot. See GOP.67.25, §91.75 of this title (relating to Riot Control).

(F)[(E)] Belts-A cloth or leather band fastened around the waist. The belt is used to secure the arms to the sides of the body

(G)[(F)] Padlocks or Key Locks-Locks used to secure handcuffs, wristlets, anklets and ankle cuffs.

(H)[(G)] Mittens-A cloth, plastic, foam rubber, or leather hand covering fastened around the wrist or lower arm. Acceptable fasteners include elastic, Velcro, ties, paper tape, pull strings.

(I)[(H)] Helmets-A plastic, foam rubber, or leather head covering. If appropriate, a face guard may be attached to the helmet. The device must be proper size for the youth, and the chin strap should not be so tight as to interfere with circulation.

(J)[(I)] Shield-A plastic shield normally identified as riot shields equipped with handles or holding straps.

(J) Emergency Response Belt-An approved cloth strap used to restrain some portion of the body. It may not be used around the head from the rear. Only those certified in its use may use the belt.]

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 January 18, 1994.

TRD-9434904

Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: February 28, 1994

For further information, please call: (512) 483-5244

◆ ◆ ◆
• 37 TAC §91.67

The Texas Youth Commission (TYC) proposes an amendment to §91.67, concerning isolation. The amendment allows physical removal of a youth from a regular institutional or Evins Regional Juvenile Center program or from contact with other youth by confinement alone when the youth is out of control and is a serious and immediate physical danger to himself or herself or others.

John Franks, director, Fiscal Affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a safer environment for TYC youth and staff. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements Human Resource Code, §1.034.

§91.67. *Isolation [in Security].*

(a) Policy. Isolation refers to any physical removal of a youth from the regular institutional or Evins Regional Juvenile Center [security] program or from contact with other youth by confinement alone in a locked room or cubicle in a security unit prior to admission or in a location other than the security unit. Isolation does not include the period of time during normal sleeping hours when doors are normally locked.

(b) Rules.

(1) Admission

(A) A youth confined in an institution or Evins Regional Juvenile Center may be confined in isolation [in the

security unit.] in cases when the youth is out of control and is a serious and immediate physical danger to himself or herself or others, and only after less restrictive methods of restraint have failed.

(B) Isolation may be imposed only with the approval of the superintendent, or the Evins Regional Juvenile Center Facility Administrator, or the administrative duty officer [or acting superintendent].

(2) Release.

(A) A youth placed in isolation is released within three hours or is referred to the security unit [joined by a staff member who remains with the youth, even during normal sleeping hours, until he is released from isolation.]

(B) As soon as a youth is sufficiently under control so as to no longer pose a serious and immediate danger to himself or others, he is released from isolation immediately.

[(3) Extended Stay. The extended stay in security hearing described in the security policy must be held in order to keep a youth in isolation longer than 24 hours, including normal sleeping hours, and held again every 24-hour period thereafter.]

(3)[(4) Isolation Requirements.

(A) Youth placed in isolation [security] who are on suicide alert are visually checked by staff in accordance with recommendations by the mental health professional placing the youth on suicide alert and in any case, no less frequently than every ten minutes. All other youth in isolation [security] are visually checked by staff at least every 15 minutes. [All services and administrative requirements listed in GOP.67.15 (§91.65(b)(4) of this title (relating to Security Unit) are afforded youth placed in isolation except for educational services and daily large muscle exercise.]

[(B) Youth in security are visited at least once each day by the superintendent or acting superintendent and by personnel from the psychology and medical departments.]

(B)[(C) During isolation [any period of time in which youth are locked in their rooms in security during normal sleeping hours,] a supervisor visits the youth [security area] at least once each hour (unless exceptional and unusual duties

prohibit such visits) and shall make an entry into the daily dorm log recording each such visit.

(C)[(D)] Youth in isolation [security] receive appropriate psychological and medical services.

(D)[(E)] On release, youth in isolation [security] receive the same food including snacks prepared in the same manner as for other youth except as special diets may be prescribed on an individual basis by medical personnel.

[(F) Youth in security receive educational services. Academic assignments are expected to be completed on all school days by youth enrolled in academic classes; any youth not enrolled in an educational program or only involved in vocational shop activities may be given leisure reading or letter writing assignments in lieu of completing academic class assignments.]

[(G) Youth in security receive two periods of supervised large muscle activity daily.]

(4)[(5)] Documentation. Permanent log(s) are maintained stating the name of the person who authorized confinement [or security, the superintendent or acting superintendent's daily approval of the placement,] the names and times of the persons who visited the youth while so confined, and the date and time of the youth's placement into [security or] isolation and release from isolation. [All documentation requirements described in GOP.67.15 (§91.65 of this title (relating to Security Unit)) documentation section apply for youth placed in isolation.]

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 January 18, 1994.

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Steve Robinson
Executive Director
Texas Youth Commission

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For further information, please call: (512) 483-5244

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Part VI. Texas Department of Criminal Justice

Chapter 152. General Allocation Provisions

Subchapter C. Maximum Capacity of the Institutional Division

• 37 TAC §152.12

The Texas Department of Criminal Justice proposes an amendment to §152.12, concerning the maximum unit capacity of the Institutional Division. The amendment is permitted by Chapter 499, Subchapter E, Government Code, and by the Final Judgment in *Ruiz v Collins* CN H-78-987 (Southern District of Texas, Houston Division), which appeared in Volume 17, *Texas Register* page 8269 (November 27, 1992).

The effect of the proposed amendment is to allow the Institutional Division to increase unit capacities by constructing permanent additions to the units as set out in Section XIII.D.5 of the Final Judgment. Section XIII.D.5 is referenced in the existing rule, §152.12(b), but that reference would only allow increases in the population at the units listed in the subsection. The proposed amendment will allow increases at newer facilities by adding a new subsection (h).

Staff finds and recommendations under Chapter 499, Subchapter E, Government Code, were initiated by staff and, when completed, will be published in a supplemental posting, as will the cost determination of the Legislative Budget Board under the Government Code, §499.102(b). The staff recommendation will also lead to notice to inmates and opportunity for comment under the Government Code, §499.103.

David P. McNutt, assistant director for budget and management services of the Department of Criminal Justice, has determined that the effect on state government for the first five-year period of operations will be as follows: The amendment would allow a maximum increase in prison beds of 10,800, with an estimated combined cost for construction and start-up of \$151,920,000, to be funded through a combination of general obligation bonds and existing general revenue. Operational costs for the next five-year period are as follows: \$0 in 1994, \$78,137,610 in 1995, \$80,361,510 in 1996, \$80,361,510 in 1997, and \$80,361,510 in 1998.

Mr. McNutt has further determined that the effect on local government for the next five-year period cannot be determined with certainty. While the increased in population in the institutional division will reduce the number of inmates awaiting transfer held in county jails, the magnitude and duration of the impact cannot be accurately ascertained, given the importance of parole releases to the population dynamics of the system. Savings to the state in payments to counties, therefore, cannot be accurately ascertained either.

Mr. McNutt has further determined that the implementation of this amendment will have

no effect on small businesses, as they will not have to comply with the rule.

Mr. McNutt also has determined that compliance with this amendment will not impose any economic costs on individuals, as no individuals have a duty to comply. David P. McNutt has further determined that benefit to the general public for the last four years of the next five-year period, when the facilities are operational, will be the public safety benefit of continued confinement of felony offenders in facilities operated by the state.

Comments should be directed to Carl V. Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposed amendment.

The amendment is proposed under Chapter 499, Subchapter E, Government Code. In conformity with that statute, the proposed amendment cannot be adopted by the Board of Criminal Justice without the approval of the governor and the attorney general.

§152.12 Methodology for Changing the Maximum System Population

(a)-(g) (No change.)

(h) Increases in the population of existing units and units under construction may be accomplished in conformity with the requirements of Section XIII.D.5. of the Final Judgment. The total increase in beds under this subsection shall be limited to 10,800 beds, and the maximum increase at individual units shall be: 600 beds at 2,250-bed prototype units; and 300 beds at 1,000-bed prototype units. This subsection applies only to units other than those listed in subsection (b) of this section.

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

Issued in Austin, Texas, on January 20, 1994

TRD-9435052

Carl Reynolds
General Counsel
Texas Board of Criminal
Justice

Earliest possible date of adoption: February 28, 1994

For further information, please call (512) 475-9693



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 90. Nursing Facilities and Related Institutions

Subchapter C. Standards for Licensure

• 40 TAC §90.42

The Texas Department of Human Services (DHS) proposes an amendment to §90.42, concerning standards for facilities serving persons with mental retardation or related conditions, in its Nursing Facilities and Related Institutions rule chapter. The purpose for the amendment is to comply with the Health and Safety Code, Title 4, Chapter 250, which bars persons from employment in most facilities and agencies providing care to the aged and persons with disabilities if those persons have been convicted of certain crimes. Effective September 1, 1993, DHS assumed responsibility for conducting background checks on persons who would be employed in activities requiring direct contact with consumers of the facility.

Burton F. Raiford, commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Raiford 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 an effective means of screening potential employees of facilities serving the aged and persons with disabilities to ensure they are not barred from employment because of certain criminal offenses. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Maxine Tomlinson at (512) 450-3169 in DHS's Institutional Policy Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-335, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license long-term care nursing facilities, under Texas Civil Statutes, Article 4413 (502), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services, and the Health and Safety Code, Title 4, Chapter

250, which requires the department to perform criminal history checks on persons employed by certain types of facilities.

The amendment implement the Health and Safety Code, Title 4, Chapter 250.

§90.42. Standards for Facilities Serving Persons with Mental Retardation or Related Conditions.

(a)-(c) (No change.)

(d) Precertification training conference for new providers of service. Each new provider must attend the precertification/prelicensure training conference prior to licensing by the Texas Department of Human Services (DHS) [Texas Department of Health (department)]. The purpose of the training is to assure that providers of services are familiar with the licensing requirements and to facilitate the delivery of quality services to residents in facilities serving persons with mental retardation or related conditions.

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

(3) Each new provider will be given a training schedule. DHS [The department] will schedule training sessions, and the date, time, and location of the training will be indicated on the schedule.

(c) Additional requirements.

(1) The facility must develop and implement policies and procedures regarding injuries, accidents, and unusual incidents which involve or affect residents. These policies and procedures shall include the following provisions.

(A) An investigation and report shall be completed which describes the circumstances of the injury, accident, or incident and its cause, the results of the investigation, and recommended actions. Serious injuries, accidents, or unusual incidents shall be reported to the resident's responsible parties and to DHS [the department].

(B) (No change.)

(C) In the area of criminal history checks, the provider or facility must comply with the Health and Safety Code, Title 4, Chapter 250, which requires DHS to perform criminal history checks on persons employed by certain types of facilities.

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

(6) In the area of administration of medication, the following applies.

(A) Medications may be administered only by physicians, licensed

nursing personnel, permitted medication aides, or persons who are exempt from licensure or permit requirements pursuant to the Health and Safety Code, §242.1511. These persons must function in accordance with the memorandum of understanding (MOU) between DHS [the Texas Department of Health] and the Board of Nurse Examiners and/or Board of Vocational Nurse Examiners. DHS [The department] adopts the MOU by reference and copies are available for review at DHS's [the department's] Long-Term Care Regulatory, 8407 Wall Street, Austin, Texas 78754.

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

(B)-(C) (No change.)

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

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

Issued in Austin, Texas, on January 24, 1994.

TRD-9435091

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

Proposed date of adoption: April 1, 1994

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

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WITHDRAWN RULES

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

TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 1. Consumer Credit Commissioner

Subchapter B. Miscellaneous

• 7 TAC §1.305

The State Finance Commission has withdrawn from consideration for permanent adoption a proposed new §1.305, which appeared in the August 6, 1993, issue of the *Texas Register* (18 TexReg 5190). The effective date of this withdrawal is January 24, 1994.

Issued in Austin, Texas, on January 24, 1994

TRD-9435086 Al Endsley
 Consumer Credit
 Commissioner
 State Finance Commission

Effective date January 24, 1994

For further information, please call: (512) 479-1280



TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter A. Advisory Committee

• 25 TAC §401.23

The Texas Department of Mental Health and Mental Retardation has withdrawn from consideration for permanent adoption a proposed new §401.23, which appeared in the September 17, 1993, issue of the *Texas Register* (18 TexReg 6255). The effective date of this withdrawal is January 21, 1994.

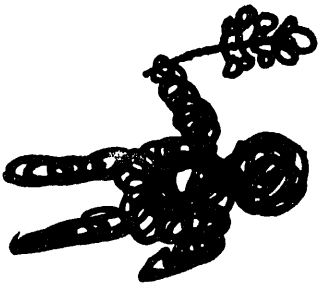
Issued in Austin, Texas, on January 21, 1994.

TRD-9435172 Ann K Utley
 Chair
 Texas Department of
 Mental Health and
 Mental Retardation

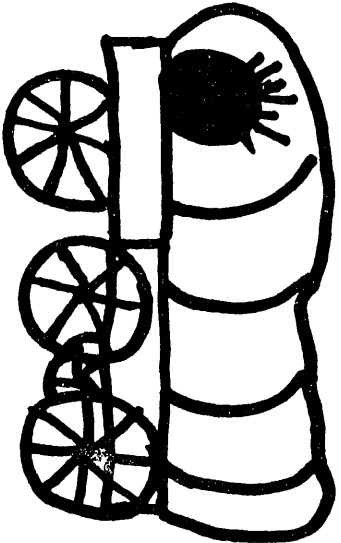
Effective date January 21, 1994

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

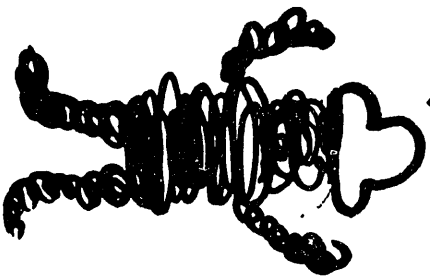




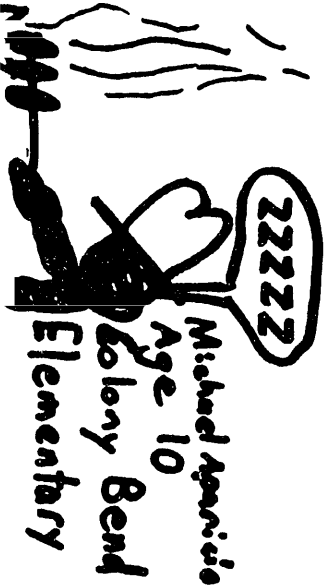
Manuel Gonzalez
Grade 5
Colony Bend Elementary



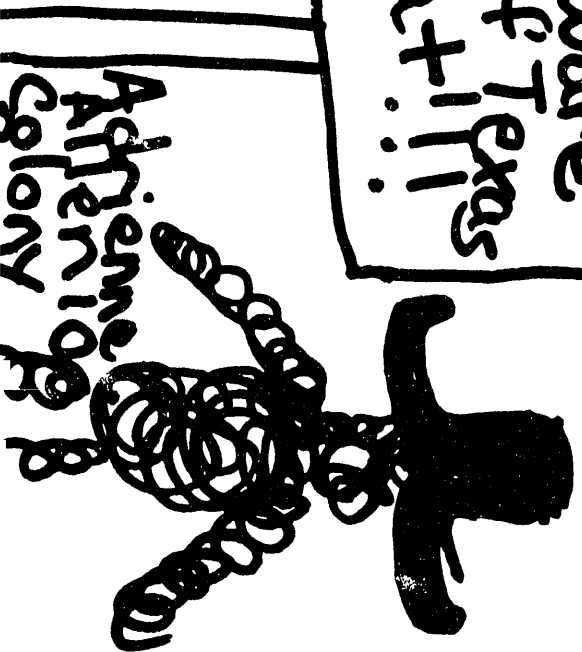
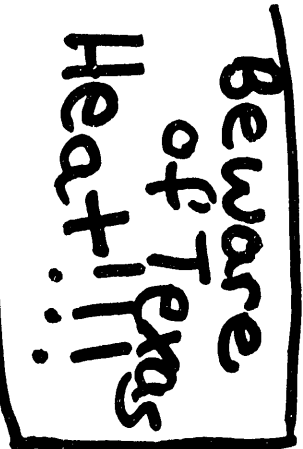
Katie Love
Age-10
Colony Bend Elementary



yea-hai!



Michael Aparicio
Age 10
Colony Bend
Elementary



Adrienne
Allen 10 8
Colony Bend

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 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 80. Unincorporated Business Entities

• 1 TAC §§80.1-80.4

The Office of the Secretary of State adopts amendments to §§80.1-80.4, without changes to the proposed text as published in the December 14, 1993, issue of the *Texas Register* (18 TexReg 9249).

The amendments are necessary to implement legislative changes contained in House Bill Number 273, 73rd Legislature, Session, Regular Session, which adopted the Texas Revised Partnership Act, Texas Civil Statutes, Article 6132a. That bill, effective January 1, 1994, set forth in §3.08 the requirements and procedures under which a limited liability partnership may register with the secretary of state.

The amendments will implement §3.08 of the Texas Revised Partnership Act which provides that partnerships may register with the secretary of state to become registered limited liability partnerships.

No comments were received regarding adoption of the sections.

The amendments are adopted under Texas Civil Statutes, Article 6252-13, and the Government Code, §405.031, which give the secretary of state authority to adopt rules of practice reasonably necessary to carry out the ministerial duties of the office.

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 January 19, 1994.

TRD-9434908

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: February 9, 1994

Proposal publication date: December 14, 1993

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

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Property Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms necessary to carry out the provisions 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 January 20, 1994.

TRD-9435032

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: February 11, 1994

Proposal publication date: December 7, 1993

For further information, please call: (512) 465-3900

TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 543. Rules Relating to the Provisions of the Texas Timeshare Act

• 22 TAC §543.4

The Texas Real Estate Commission adopts an amendment to §543.4, concerning forms used to register or amend the registration of a timeshare property, without changes to the proposed text as published in the December 7, 1993, issue of the *Texas Register* (18 TexReg 9044).

The amendment adopts by reference revised forms used by timeshare developers to register or amend the registration of a timeshare property. Adoption of the amendment is necessary for the Texas Real Estate Commission to obtain additional information about timeshare properties and their developers and to make the developers aware of state laws governing promotional offerings.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

(Editor's Note: Chapter 15, §107, Acts of the 72nd Legislature, First Called Session, 1991, as amended by Chapter 747, §2, Acts of the 73rd Legislature, Regular Session, 1993, provided for the transfer of certain programs from the Texas Department of Human Services to the Texas Department of Health effective September 1, 1993.

The Texas Register is administratively transferring the following rules listed in the table below from Title 40, Part 1 Texas Department of Human Services to Title 25, Part 1 Texas Department of Health. The Table lists the old rule number and the new rule number that corresponds to them.)

Texas Department of Health

Rules

Previously rules from Texas Department of Human Services

Chapter 41. Utilization Review

Chapter 41. Utilization Review

Old Numbers

New Numbers

Waiver for Utilization Review

Waiver for Utilization Review

§§41.101 - 41.113

§§41.101 - 41.113

Chapter 43. Utilization Control

Chapter 43. Utilization Control

Program Review

Program Review

§§43.22 - 43.25

§§43.22 - 43.25

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter A. Advisory Committees

• 25 TAC §§401.1-401.22, 401.40

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§401.1-401.22 and 401.40. Sections 401.5-401.7 are adopted with changes to the proposed text as published in the September 17, 1993, issue of the *Texas Register* (18 TexReg 6252). Sections 401.1-401.4, 401.8-401.22, and 401.40 are adopted without changes and will not be republished. Section 401.23 is being withdrawn in this issue.

The new subchapter implements provisions of Senate Bill 383 (73rd Legislature), which requires the department to outline in rule form the purpose, tasks, and duration of each of its advisory committees. In addition to referencing the various committees, the new subchapter outlines reporting and membership requirements for the advisory committees.

The term "medical" has been replaced with "health care" in §401.5 to better reflect the committee's purpose. The title of §401.6 has been changed to "Mental Health Planning and Advisory Council" to reflect the correct title of the advisory group, and corresponding changes have been made throughout the section. The title of §401.7 has been changed to "Mental Retardation Planning and Advisory Council" to reflect the correct title of the advisory group, and corresponding changes have been made throughout the section.

Comments on the proposed subchapter were received from TEXAMI and a private citizen.

One commenter suggested that the transfer of the department's abuse investigation function to the Texas Department of Protective and Regulatory Services (TDPRS) significantly reduced the responsibilities of the public responsibility committee. The commenter suggested that the committee should be abolished.

The department responds that the Persons with Mental Retardation Act (Texas Health and Safety Code, Title 7, Subtitle D) mandates the existence of public responsibility committees in mental retardation facilities, and the department has elected to extend this mandate to mental health facilities. In addition to its work with TDPRS in investigating allegations of abuse and neglect, the committee has numerous additional responsibilities which preclude its abolition.

Another commenter noted that the "Mental Health Planning Advisory Committee" refer-

ence in §401.7 was actually called the "Mental Health Planning and Advisory Council." The department agrees, and appropriate changes have been made.

The new sections are adopted under the Texas Health and Safety Code, §532.015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

§401.5 Medical Advisory Committee

(a) The purpose of the Medical Advisory Committee is to aid, counsel, and assist the board regarding health care issues.

(b) Tasks of the Medical Advisory Committee include:

(1) making suggestions to the board concerning the health care needs of individuals receiving mental health and mental retardation services;

(2) making suggestions and recommendations to the board concerning the overall quality of care for individuals receiving mental health and mental retardation services;

(3) responding to specific requests from the board for help and information;

(4) alerting the board to problems and developments throughout the state.

and facilitating communications and cooperation among agencies, organizations, professions, and the public.

(c) This advisory committee shall be abolished on January 1, 1997, unless reauthorized.

§401.6. Mental Health Planning and Advisory Council.

(a) The purpose of the Mental Health Planning and Advisory Council is to provide advice on issues and initiatives regarding mental health services.

(b) Tasks of the Mental Health Planning and Advisory Council include:

(1) submitting recommendations for strategic planning;

(2) developing recommendations for improved services; and

(3) developing recommendations for policy revisions.

(c) This advisory committee shall be abolished on January 1, 1997, unless reauthorized.

§401.7 Mental Retardation Planning and Advisory Council.

(a) The purpose of the Mental Retardation Planning and Advisory Council is to provide advice on issues and initiatives regarding mental retardation services.

(b) Tasks of the Mental Retardation Planning and Advisory Council include

(1) submitting recommendations for strategic planning;

(2) developing recommendations for improved services, and

(3) developing recommendations for policy revisions

(c) This advisory committee shall be abolished on January 1, 1997, unless reauthorized.

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 January 21, 1994

TRD-9435057

Ann K Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date February 11, 1994

Proposal publication date: September 17, 1993

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

Subchapter G. Community Mental Health and Mental Retardation Centers

• 25 TAC §401.464

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §401.464 of Chapter 401, Subchapter G, concerning community mental health and mental retardation centers, with changes to the proposed text as published in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8757) with an editor's note in the November 26, 1993, issue

Language is changed throughout the section to clarify the related responsibilities between the local MHMR authority and its contractors. Language is added to subsection (e) clarifying that the written notification refers to that mentioned in subsection (d). Language is added to subsection (g) (3) allowing the review to be conducted by more than one individual. Language is added to subsection (h) clarifying that a written response is required and a verbal explanation is encouraged.

Written comments were received from Denton County MHMR Center, Denton, MHMR Services for the Concho Valley, San Angelo, and a private citizen.

One commenter suggested including a list of circumstances which would result in the involuntary reduction or termination of services but would not be appealable (e.g., the grant or source of funding of the service had run out and replacement funding was not available to continue the service; the center had been unsuccessful in recruiting qualified staff necessary to provide the service; or the department canceled its contract with the center). The department responds that any of the circumstances the commenter mentioned are acceptable reasons for denying, involuntarily reducing, or terminating services and, following a review, the local MHMR authority could decide to uphold the original decision. However, all situations are appealable and, if appealed, subject to review.

One commenter emphasized that all communication should be in writing and not permit a loophole which would allow only a telephone call. The department responds that the rule requires all decisions to be made in writing; a verbal explanation is also encouraged. Language has been modified for clarification.

The same commenter mentioned that there was no allowance for interested parties to receive copies of statistical numbers of complaints made. The department responds that while it might be of interest to have statistics on the number of complaints, the primary purpose of the rule is to provide a complaint process.

The commenter expressed concern that "unless you are very much a savvy consumer, you will not know who to make your complaint to. There are just too many ways to make a complaint in the TXMHMR system." The commenter wrote that he and his fellow consumers are "never told that if we do not agree with that resolution, if we do not agree with how it is solved, that we have the right to appeal it to another level and get maybe a

different hearing or a different viewpoint on it." The commenter felt that the appeal process is very difficult for the consumer to access and requested that it be made easier to access. The department responds that subsection (a) requires local MHMR authorities and their contractors to take steps to assure that consumers have a method to express their concerns or dissatisfaction, are assisted to do so in a constructive way, and have their concerns or dissatisfaction addressed through a review process. Additionally, subsection (c)(1) requires consumers to be provided notification of an "easily understood" process for requesting a review, which would logically include information about how to make a complaint and who would accept the complaint. Also, subsection (c) requires the local MHMR authority to notify its consumers in writing of its policy for addressing consumers' concerns or dissatisfaction upon admission into services and annually thereafter. In subsection (a)(2) the local MHMR authority is required to assist consumers in expressing their concerns or dissatisfaction in a constructive way. This would make the appeals process easy to access. Before this rule became effective, complaints were generally made through the client rights officer or the public responsibility committee. A local MHMR authority may still utilize those avenues provided its process is in compliance with this rule and is adequately communicated to all of its consumers.

The same consumer also requested that suitable timeframes be required for the appeals process. The department responds that subsection (g) outlines the required time constraints for acting on the appeal and for notifying the consumer of the resolution decision.

The commenter wanted to know what the penalty was when a local MHMR authority did not comply with the rule. The department responds that a "penalty" for non-compliance is not included in the rule, however, general rule compliance is monitored through routine visits by department staff, a plan of improvement is required and monitored when deficiencies are identified.

One commenter felt that subsections (a)-(c) were already mandated in the community services standards and other rules, and are being addressed via the role and responsibilities of the consumer rights officer and the public responsibility committee. The commenter also mentioned that the rules failed to clearly differentiate a complaint regarding quality of service from a complaint regarding type or dose of service. The department responds that while subsections (a)-(c) may be vaguely similar to information contained in other rules this rule does not preclude the client rights officer or the public responsibility committee from performing the duties of the appeals process. It was never the intent to differentiate between complaints of quality and those of type or dose of service, all concerns and dissatisfaction should be reviewed through this appeals process.

The same commenter wanted to know if subsection (c)(1)-(4) was the same as subsection (e)(1)-(4). The department responds that subsection (c)(1)-(4) relates to the written notific-

cation of the local MHMR authority's policy upon admission and annually thereafter, while subsection (e)(1)-(4) relates to the written notification described in subsection (d). Clarifying language is added.

The same commenter expressed concern that the rule appeared to encompass decisions regarding denial of services due to the consumer's ineligibility for inclusion as a member of a priority population and/or ineligibility for a particular service (i.e., case management). The commenter felt that if that was the intent of the rule then his organization would be "gridlocked" because there were virtually no alternative, low cost public sector services in the area. The department responds that it is not the intent of the rule to provide written notification to persons who were denied services because they were not in the priority population. However, if a person is believed to be in the priority population and then at the conclusion of an eligibility assessment the person is denied services because he/she is found to not be in the priority population, then that person should receive written notification of denial of services. It would seem that if there is enough time to conduct an assessment of the person then there should be enough time to provide that person with written notification of denial of services.

The same commenter felt that the rule appeared to ignore or overrule decisions arrived at by IDT service planning, which normally includes the consumer and parent (guardian) and which are typically consensus-based decisions. The commenter wrote that the rule injects an unnecessary level of adversarial formality into a process which was explicitly designed to be a partnership. The department responds that if true consensus is reached, then no complaint, concern, or dissatisfaction would result. If consensus is not reached, then this rule provides the consumer an opportunity to request a review.

The same commenter felt the rule made sense from a client rights perspective, but at the same time assumed that the local MHMR authority had a deep bench of persons who were not privy to the original decision and who would thereby be appropriate persons to conduct a review. The commenter also wrote that the net effect of the rule would disempower treatment teams and providers from making difficult or controversial decisions out of fear that they will be overruled by a supervisor on appeal, thus robbing the team of its effectiveness. The department understands that for small MHMR authorities, having enough individuals who are not involved in the initial decision to conduct reviews could be a potential problem, however, in the interest of fairness and to follow acceptable steps of due process, this procedure is necessary to effectively address complaints, concerns, and dissatisfaction. This rule does not preclude the client rights officer or the public responsibility committee from performing the duties of the appeals process. It is not the intent of the rule to question the judgment of the IDT, if an IDT is functioning effectively, appeals or overturned decisions should be few in number. A review should include all information relevant to the matter. It is the local MHMR authority's responsibility

to develop procedures which ensure that appropriate and qualified individuals conduct reviews and that reviews include the consideration of all relevant information.

The new section is 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.

§401.464 Notification and Appeals Process

(a) The TXMHMR service system is dedicated to providing mental health and mental retardation services/supports which are viewed as satisfactory by persons receiving those services/supports. Therefore, local MHMR authorities and their contractors shall take steps to assure that these persons

(1) have a method to express their concerns or dissatisfaction,

(2) are assisted to do so in a constructive way, and

(3) have their concerns or dissatisfaction addressed through a review process.

(b) A request to review decisions described in this section may be made by the person requesting or receiving services/supports, the person's legal representative, or any other individual with the person's consent.

(c) At the time of admission into services and on an annual basis thereafter, the local MHMR authority and its contractors shall provide to persons who receive services/supports written notification of the local MHMR authority or its contractor's policy for addressing concerns or dissatisfaction with services/supports. The notification shall explain

(1) an easily understood process for persons to request a review of their concerns or dissatisfaction by the local MHMR authority or its contractor, whichever is appropriate,

(2) how the person may receive assistance in requesting the review,

(3) the timeframes for the review, and

(4) the method by which the person is informed of the outcome of that review.

(d) Local MHMR authorities and their contractors shall notify persons in writing of the following decisions and of the process to appeal by requesting a review of those decisions:

(1) a decision to deny the person services/supports at the conclusion of a local MHMR authority's procedure which determines whether the person meets the criteria for the priority population, and

(2) a decision to terminate services/supports and follow-along from the local MHMR authority or its contractor, if appropriate.

(e) The written notification referred to in subsection (d) of this section must

(1) be given or mailed to the person within ten working days of the date the decision was made,

(2) state the reason for the decision,

(3) explain that the person may contact either the local MHMR authority or its contractor, whichever is appropriate, within 30 days of receipt of notification if dissatisfied with the decision and request that the decision be reviewed in accordance with subsection (g) of this section, and

(4) include name(s), phone number(s) and address(es) of one or more accessible staff to contact during office hours.

(f) If a person believes that the local MHMR authority or its contractor has made a decision to involuntarily reduce services by changing the amount, duration, or scope of services/supports provided and is dissatisfied with that decision, then the person may request in writing that the decision be reviewed in accordance with subsection (g) of this section.

(g) The review by the local MHMR authority or its contractor shall

(1) begin within ten working days of receipt of the request for a review and be completed within ten working days of the time it begins unless an extension is granted by the CEO of the local MHMR authority or its contractor, whichever is appropriate,

(2) begin immediately upon receipt of the request and be completed within five working days if the decision is related to a crisis service,

(3) be conducted by an individual(s) who was not involved in the initial decision,

(4) include a review of the original decision which led to the person's dissatisfaction,

(5) result in a decision to uphold, reverse, or modify the original decision, and

(6) provide the person an opportunity to express his or her concerns in person or by telephone to the individual reviewing the decision. The review shall also allow the person to

(A) have a representative talk with the reviewer, or

(B) submit his or her concerns in writing, on tape, or in some other fashion.

(h) Following a review, either the local MHMR authority or its contractor, whichever is appropriate, shall explain to the person in writing and also in person or by telephone, if requested, the action it will take or, if no action will be taken, why it will not change the decision or believes such action would not be in the person's best interest. This is the final step in the review process

(i) The notification and review process described in this section

(1) is applicable only to services/supports funded by TXMHMR and provided or contracted for by its local MHMR authorities.

(2) does not preclude a person's right to reviews, appeals, or other actions that accompany other funds administered through a local MHMR authority or its contractors, or to other appeals processes provided for by other state and federal laws, e.g., Texas Health and Safety Code, Title 7, Chapter 593 (Persons with Mental Retardation Act), 42 United States Code, §1396 (Medicaid statute), and Texas Human Resources Code, Chapter 73 (Texas Administrative Code, Title 25, Chapter 621), Early Childhood Intervention programs as funded by the Texas Interagency Council for Early Childhood Intervention

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 January 21, 1994

TRD-9435065

Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date February 11, 1994

Proposal publication date November 26, 1993

For further information, please call (512) 206-4670

Subchapter H Designation as Single Portal Authority

• 25 TAC §§401.501-401.511

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §§401.501-401.511 of this title, concerning the designation as single portal authority without changes to the proposed text as published in the December 7, 1993, issue of the *Texas Register* (18 TexReg 9081)

Senate Bill 160 of the 73rd Texas Legislature deleted the requirement for a Single Portal

Review Committee, but retained the concept of single portal. The procedure for designating a mental health authority as a single portal authority has been included in the adoption of Chapter 402, Subchapter A of this title, concerning admissions, transfers, absences, and discharges mental health facilities, which is contemporaneously adopted in this issue of the *Texas Register*

No comments were received regarding adoption of the repeals

The repeals 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

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 January 21, 1994

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Ann K Utley
Chairman
Texas Department of
Mental Health and
Mental Retardation

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For further information, please call (512) 206-4670

Subchapter J. Licensure of Private Psychiatric Hospitals

• 25 TAC §§401.581-401.593

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§401.581-401.593, concerning licensure of private psychiatric hospitals

The purpose of the repeals is to allow for the contemporaneous adoption of a new subchapter which implements the provisions of Senate Bills 205, 207, and 210 of the 73rd Texas Legislature. The new subchapter updates and clarifies requirements relating to standards of care and treatment in psychiatric hospitals

No comments were received regarding adoption of the repeals

The repeals are adopted under the Texas Health and Safety Code, §532.015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers

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

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Anne K Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date February 11, 1994

Proposal publication date December 10, 1993

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

Subchapter J. Standards of Care and Treatment in Psychiatric Hospitals

• 25 TAC §§401.581-401.583, 401.587-401.590, 401.592, 401.593

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new 401.581-401.583, 401.587-401.590, 401.592, and 401.593, concerning standards of care and treatment in psychiatric hospitals. Sections 401.582, 401.583, 401.587, and 401.588 are adopted with changes to the proposed text as published in the December 10, 1993, issue of the *Texas Register* (18 TexReg 9162). Sections 401.581, 401.589, 401.590, 401.592, and 401.593 are adopted without changes and will not be republished. The new sections are published contemporaneously in this issue of the *Texas Register* with the adoption of the repeal of §§401.581-401.593, which the new sections replace

The new sections implement the provisions of Senate Bills 205, 207, and 210 of the 73rd Texas Legislature. Senate Bill 205 mandates requirements concerning intake, assessment, and admission, transfer, and advertising and marketing activities. Senate Bill 207 describes requirements for obtaining informed consent to treatment with psychoactive medication and the confidential communication of patient records. Senate Bill 210 transfers licensure authority for private psychiatric hospitals to the Texas Department of Health, at the same time, it expands TXMHMR's regulatory authority to include not only private psychiatric hospitals licensed under Chapter 577 of the Texas Health and Safety Code, but also hospitals providing inpatient mental health services that are licensed by the Texas Department of Health under Chapter 241 of the Texas Health and Safety Code. Senate Bill 210 also mandates that standards of care and treatment in private psychiatric facilities not be less restrictive than those in public mental hospitals

Section 401.582(3) is revised to clarify that persons contracting with or otherwise providing services at psychiatric hospitals must comply with the subchapter if they provide services to inpatients

The definition of "psychiatric hospital" has been modified to add the term "generally" to the phrase "for use beyond 24 hours." The definition of "qualified mental health professional" has been revised to delete chemical dependency counselors and licensed marriage and family therapist. The definition of "special treatment procedures" has been modified to delete reference to "maintenance drugs with abuse potential"

Section 401.587(b) has been revised on adoption to include language that clarifies that when laws and rules conflict with standards,

laws and rules prevail Paragraph (1) of the same subsection has been revised on adoption by the addition of reference to standards contained in the Accreditation Manual for Mental Health, Chemical Dependency, Mental Retardation/Developmental Disabilities Services governing therapeutic environment. The standards in this chapter address important areas of patient care and treatment such as handicapped access, family/visitor access, privacy, adequate environment, and mail and other privileges. These issues are not covered in the Accreditation Manual for Hospitals. Paragraph (2) has been revised on adoption to reference the governing body procedures of the Accreditation Manual for Hospitals This issue is not addressed in the Accreditation Manual for Mental Health, Chemical Dependency, Mental Retardation/Developmental Disabilities Services.

Minor clarifying language is added in §401.587(c)(2), (c)(2)(B), and (c) (3)(A)(iii)(II) Clause (c)(3)(B)(i) has been modified to indicate that the head of the facility may designate a staff person to accept patients for emergency detention

Section 401.587(c)(5) has been revised on adoption to delete the word "defined" as redundant as it pertains to laws and rules governing reportable conduct Reportable conduct described in laws and rules would be defined in the laws and rules. Language is added that emphasizes that psychiatric hospitals are required to post a notice concerning duty to report reportable conduct as required in the Health and Safety Code, Chapter 161 Language has been added as subparagraph (C) of the same paragraph that states the requirement contained in the Health and Safety Code, Chapter 161, for psychiatric hospitals to post notice that employees and non-employees shall not be subject to discrimination or to retaliatory action for reporting violations of applicable laws and rules The language further makes a distinction between good faith and spurious allegations.

Section 401.587(c)(6) has been revised on adoption to clarify that the physician is not solely responsible for the development and delivery of the continuing care plan; language provides that the physician is ultimately responsible, but allows for other members of the treatment team to participate in the creation of the continuing care plan

Language in §401.587(c)(7) has been expanded to clarify a number of questions related to the transfer of patients.

Section 401.587(c)(8)(B) has been revised on adoption to delete reference to "other professionally recognized and accepted standards of care" and to specific areas of patient care and treatment. Reference is made to the requirement for psychiatric hospitals to adopt policies and procedures that are not less restrictive than those of the department in areas of patient care and treatment A list of rules is provided in Exhibit A.

Minor wording changes were made to §401.587(c)(9).

In §401.588, subsections (c)-(g) have been redesignated as (b)-(f) to correct a typographical error.

Section 401.588(c)(2)(now designated as §401.588(b)(2)) has been revised to delete reference to a standard format approved by the department The department deems the required information listed in subparagraphs (A)-(F) of that section to be the required format for information.

At a public hearing on December 17, 1993, in Austin, Texas, written and/or oral testimony concerning the new sections was provided by representatives of the National Association of Psychiatric Survivors, Austin, Scott and White Hospital, Temple, Citizens Commission on Human Rights, Austin; Texas Association of Mental Health Consumers, and the Texas Nurses Association. Written comments were received from Shoal Creek Hospital, Austin; Charter Behavioral Healthcare Systems of Austin; the Pavilion, Amarillo, and a physician.

A commenter noted that compatibility between requirements of the Texas Commission on Alcohol and Drug Abuse (TCADA) and the TXMHMR would facilitate effective and efficient provision of services at hospitals providing a full range of mental health and chemical dependency programs The department agrees that compatibility between TXMHMR and TCADA requirements would be helpful, and notes that basic requirements outlined in Senate Bills 205, 207, and 210 generally promote such compatibility. However, the fact that each agency adopts separate rules will, inevitably, result in some variation. The department suggests that the commenter identify specific instances where rule changes would be appropriate and submit those recommendations to the appropriate agency for consideration in future rule actions

The same commenter also noted that any assistance in administering programs as mandated would be appreciated. The commenter suggested translations of key documents as an example. The department agrees, and has developed a version of the Patient's Bill of Rights in Spanish for distribution Additional translations and other means of assistance will be developed as appropriate

With reference to §401.503, concerning the definition of "mental health services provider," a commenter requested that registered nurses be included in the listing of professions meeting this definition. The commenter noted that RNs provide the types of services described in the rules, and that RNs who do engage in sexual exploitation should be reportable like any other health care professional. The commenter noted that people are more likely to read the rules than to read the laws, e.g., the Nurse Practice Act, and for this reason it would be additionally helpful. The department agrees, and registered nurses have been added to the list of professionals in the definition for "mental health services provider"

Concerning the definition of "psychoactive medication," a commenter recommended revising the definition to delete reference to "psychosis or other severe" mental disorder, to read, "A medication prescribed for the treatment of symptoms of mental or emotional disorders" The department responds

that the definition is taken directly from Senate Bill 207 (73rd Legislature).

Concerning the definition of "sexual exploitation" in the same section, a commenter suggested that obtaining the sexual history of a patient within the standards of accepted practice would occur before it was known that there was a sexual or marital dysfunction or problem. The commenter expressed concern that the mental health provider would therefore be in violation of the law if there were no sexual or marital dysfunction. The commenter suggested deleting the phrase, "while treating a sexual or marital dysfunction." The department responds that the definition is taken directly from Senate Bill 210 of the 73rd Texas Legislature.

Concerning the same section, a commenter recommended that the phrase, "while treating a sexual or marital dysfunction" be revised to "while treating a suspected sexual or marital dysfunction." The department responds that the addition of the word "suspected" is consistent with legislative intent, and language has been revised.

Regarding §401.587(c)(3)(A)(i), which requires a physician's signed order for admission of a patient, a commenter questioned whether this requirement is realistic. The commenter posed the same question concerning the requirement for a written statement in the patient's record by a physician for individuals admitted pursuant to emergency detention, as described in §401.587(c)(3)(B). The department responds that the requirements are based on statutory requirements.

Also with reference to the requirement for a physician to be involved in the admission of patients, a physician commenter expressed support for this provision.

Concerning §401.587(b)(1), a commenter requested that qualifying terms be added to the sentence, "For purposes of licensure, psychiatric hospitals, other than those operated by community centers, shall be in substantial compliance with inpatient standards set forth by the Joint Commission on Accreditation of Healthcare Organizations; that is, the standards for inpatient settings in the current edition of the Accreditation Manual for Hospitals." The commenter suggested that the statement be qualified as follows, "and shall not be less restrictive than standards promulgated by TXMHMR for state facilities in accordance with S.B. 205. Departmental standards shall apply to;

(A) special treatment procedures...." The same commenter requested similar clarification for subsection (b)(2) of the section. The department responds that general language has been added to the section to indicate that services in psychiatric hospitals shall be provided in compliance with standards that are not less restrictive than those required for patient care and treatment in state hospitals under the rules of the department.

With reference to §401.587(c)(3)(A)(ii) and (B)(i), a commenter requested clarification around an apparent difference in procedure, i.e., that the rules provide that the head of the facility may appoint a designee to accept voluntary patients, but that no provision is made

for the head of the facility to appoint a designee to accept patients on an emergency detention basis. The department responds that language has been added permitting the head of the facility to appoint a designee for purposes of accepting patients on emergency detention.

Concerning subsection (c)(3)(A)(iii) of the same section, a commenter requested that the following language be added: "If a person requests release from a facility during the 72-hour assessment period, that person shall be released or proceedings begun for involuntary commitment within 24 hours of the request for release in accordance with other provisions of law." The department responds that the 72-hour period is not intended to describe a maximum "assessment period," but to indicate that the physician examination and other assessment must be relatively current. A patient who has not been admitted for inpatient services is free to leave the premises of the hospital at any time. After a patient has been admitted to a hospital on a voluntary basis, that person must be released within four (not 24) hours of request unless the physician has reason to believe and can demonstrate that the person meets the criteria for involuntary commitment.

In the same section, concerning subsection (c)(5) on allegations of sexual exploitation, a commenter noted that while reporting patient allegations to the prosecuting attorney would seem appropriate, it does not seem reasonable that state licensing boards should be contacted at the allegation stage of an investigation. The commenter suggested that it would be more appropriate to report allegations to licensing boards if and when the allegation is confirmed. The department responds that the requirement to report allegations is statutory and is found in Senate Bill 210 of the 73rd Texas Legislature.

Also concerning subsection (c)(5)(B)(i), a commenter noted that the process seems overly involved. The department responds that the process is statutorily mandated.

Concerning subsection (c)(5) generally, a commenter suggested that the requirement to report allegations of sexual exploitation to the prosecuting attorney should be expanded to include all forms of conduct referenced in the paragraph. The commenter also suggested requiring that the allegation be reported to the district attorney and the county attorney. The department responds that the reporting requirements as identified in the rule reflect statutory requirements.

Two commenters called for the addition of provisions that enact the sections of Senate Bill 210 dealing with whistleblower protection. The department responds that language has been added.

Also in the section, concerning subsection (c)(6) on continuing care plans, a commenter questioned whether it is reasonable, in an era of team treatment, to specifically require that the treating physician "prepare the continuing care plan for a patient to be discharged." The commenter noted that, even more unrealistic, the rule requires that "the physician shall deliver the plan to a community center or other provider in the county where the patient re-

sides." The commenter suggested that if these requirements are to be met under the general supervision of the physician, the rule should state this explicitly. The department has clarified the language to more accurately reflect the role of the physician.

Another commenter asked for clarification about the continuing care plan. The department responds that reference is made in §401.587(c)(8)(B) to the requirement for psychiatric hospitals to adopt policies and procedures that are not less restrictive than those of the department in areas of patient care and treatment. A list of rules is provided in Exhibit A, which includes reference to §402.59 of Chapter 402, Subchapter B (concerning Continuity of Services—Mental Health). This section includes guidelines addressing information to be included in a continuing care plan.

A commenter noted that §401.587(c)(8)(B) is considered vague by medical staff of one psychiatric hospital and should be deleted because it does not say anything, or alternatively, the language should be made more specific. Two other commenters also objected to the provision (i.e., reference to "other professionally recognized and accepted standards of care") because it could be interpreted to say that the standards of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) could be followed in lieu of TXMHMR rules. Given that TXMHMR rules are more stringent in certain areas of practice, such as those dealing with special treatment procedures (including ECT), the commenters were concerned that hospitals could elect to follow a less restrictive standard of care. The department responds that in terms of compliance, hospitals are bound by federal and state law as well as administrative law (rules) and that in the event of any conflict with the standards of JCAHO, law prevails. Language in this section has been extensively rewritten in response to a number of comments.

Concerning the same paragraph, two commenters suggested that the department state that the policies and procedures of the hospital be no less restrictive than those found in TXMHMR rules governing the same matters. One commenter suggested that the department reference the provisions of Senate Bill 210 as it affects both rules and emergency rules promulgated by the department (i.e., that standards of care in psychiatric hospitals be not less restrictive than standards for state hospitals). One commenter noted the civil rights implications and the clear legislative intent of Senate Bill 210 require that there be an equivalent standard of care in public and private settings. The department responds that language has been revised.

A commenter requested that the department add a reference to its rules governing behavior therapy for application in psychiatric hospitals. The commenter noted that aversive treatments should be required to be approved by a behavior therapy committee. The department responds that language in the subsection has been rewritten to take into account all areas of patient care and treatment, including behavior therapy.

A commenter requested that the department change the reference to Chapter 405, Subchapter FF at §401.587(c)(8)(A)(iii) so

that psychiatric hospitals are required to fully comply with the rules. The department responds that §401.588 is devoted to the treatment of this issue in psychiatric hospitals. Senate Bill 207, on which the requirements are based, does not provide patients who are not funded by the state access to the judicial order process. The outlining of this process is the most significant difference between Chapter 405, Subchapter FF, and §401.588.

As an example for the potential for confusion between rules and standards, three commenters noted that JCAHO provides standards related to psychosurgery, yet TXMHMR apparently does not permit psychosurgery, the commenter called for an explicit prohibition of psychosurgery to avert any confusion. The department responds that this procedure is reportable on the ECT form and is the type of treatment that would be appropriately considered by the Treatment Methods Advisory Committee appointed by the board pursuant to Senate Bill 210.

Concerning §401.587(c)(10) of the section, which requires hospitals to comply with the Treatment Facilities Marketing Practices Act, a commenter requested that language be added referencing the requirement of Senate Bill 210 that standards for care and treatment in psychiatric hospitals be not less restrictive than those in state hospitals. The department does not intend to adopt rules governing fair marketing practices for state hospitals because the related provisions of Senate Bill 205 do not apply in this setting.

Also concerning subsection (c)(10) of this section, a commenter noted that Senate Bill 210 also provides an exemption for hospital districts. The department agrees, and language has been revised.

With reference to §401.588, relating to informed consent to treatment with psychoactive medication, a commenter called for the department to cite a reputable medical guide to medications, such as U.S. Pharmacopoeia Dispensing Index or synopsis, to be used as the basis for the information given in the consent process. The department responds that a task force appointed pursuant to Senate Bill 210 is making recommendations to the Texas Board of Mental Health and Mental Retardation concerning information to be given to patients. Psychiatric hospitals will be notified of the board action with respect to the recommendations and will be required to comply with the policy the board adopts.

A commenter noted that §401.588 did not include a subsection (b), and asked if a section was missing. The department responds that the lack of a subsection (b) is a typographical error, sections (c)-(g) have been redesignated (b)-(f) to remedy the situation.

With regard to subsections (c)(2)-(g) (redesignated as subsections (b)(2)-(f)) of §401.588, concerning consent to treatment with psychoactive medication, a commenter questioned reference to the "standard format" for obtaining consent. The commenter questioned whether the format is available and whether the format is needed. The department responds the requirement has been deleted as unnecessary. Psychiatric hospitals will be required to provide information as re-

quired in this section and as recommended by the board-appointed task force on information to be given to patients about prescription medications

With reference to §401.588(a)(4), a commenter requested that the right to seek a judicial order to require patients who refuse medication to receive medication without consent be extended to psychiatric hospital patients under the "not less restrictive than" language of Senate Bill 210. The department responds that the judicial order is not available to individuals in psychiatric hospitals unless they are committed under the Mental Health Code and their care is funded by the state directly or indirectly through contract. The general "not less restrictive than" language of Senate Bill 210 does not apply in this specific context; the provisions of §401.588 very closely track the provisions of Senate Bill 207, which address consent to treatment issues in all settings, including those that are not state hospitals.

Regarding subsection (c)(2)(D) (redesignated as subsection (b)(2)(D)), which addresses probable clinically significant side effects and risks associated with psychoactive medication, a commenter requested that the provision of the rule require warnings on tardive dyskinesia as recommended by the American Psychiatric Association task force on tardive dyskinesia. The department responds that side effects and risks will be addressed in keeping with the recommendations of the board-appointed task force on prescriptions medications that was constituted in response to Senate Bill 210.

Concerning the same provisions of the rule, a commenter objected to provisions that appear to provide regulatory "cookbook medicine," citing in particular §401.587(f)(1) (redesignated as subsection (e)(1)). Another commenter noted that the language in both §401.587(f)(1) and (2) (redesignated as subsections (e)(1) and (2)) is too prescriptive. One commenter stated that staff consider this a violation of the Medical Practice Act because it attempts to define how to prescribe medications. The department responds that the language of the rule closely follows the language of Senate Bill 207.

With regard to §401.588(c)(4) (redesignated as subsection (b)(4)), a commenter suggested that it be clarified that consent must be written. The department responds that subsection (c)(2) redesignated as subsection (b)(2)), which on proposal stated that consent information would be provided to the patient in a standard format prescribed by the department, has been deleted on adoption. Senate Bill 207 does not require written informed consent to psychoactive medications in psychiatric hospitals.

A commenter also noted that subsection (d) (redesignated as subsection (c)) of the same section seemed redundant. The commenter asked if the physician must confirm the consent process, should not the physician also be required to confirm every other behavior of nurses and others, such as the taking of blood pressure. The department responds that the language of the rule closely follows the language of Senate Bill 207.

The sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§401.582. *Application.* The provisions of this subchapter apply to:

(1) persons operating psychiatric hospitals in Texas under of the Texas Health and Safety Code, Chapter 241 or Chapter 577;

(2) applicants for licensure to operate a psychiatric hospital in Texas; and

(3) persons contracting with or otherwise providing services to inpatients in a psychiatric hospital in Texas.

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

Admission—The formal acceptance of a prospective patient to a facility

Assessment—The administrative process a facility uses to gather information from a prospective patient, including a medical history and the problem for which the patient is seeking treatment, to determine whether a prospective patient should be examined by a physician to determine if admission is clinically justified.

Community center—A community mental health center or a community mental health and mental retardation center administered by a board of trustees pursuant to the Texas Health and Safety Code, Chapter 534 et seq.

Department—The Texas Department of Health.

Emergency situation—A situation in which it is immediately necessary to administer medication to a patient to prevent:

(A) imminent probable death or substantial bodily harm to the patient because the patient:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to others because of threats, attempts, or other acts the patient overtly or continually makes or commits.

Hospital—A general or special hospital as defined in the Health and Safety Code, §241.003(4) and (11) that includes an identifiable part of the hospital for the provision of mental health services.

Intake—The administrative process for gathering information about a prospective patient and giving the prospective patient information about the facility and the facility's treatment and services.

License—The permission granted to a person by the department to operate a private psychiatric hospital as defined in this subchapter.

Mental health services—Includes all services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate mentally disordered and disabled persons, including persons mentally disordered and disabled from alcoholism and drug addiction.

Mental health services provider—An individual, licensed or unlicensed, who performs or purports to perform mental health services (alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction; understanding conscious or subconscious motivations; resolving emotional, attitudinal, or relationship conflicts; or modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning), including a:

(A) certified social worker as defined by Human Resources Code, §50.001;

(B) chemical dependency counselor as defined by Acts of the 72nd Legislature, Regular Session, 1991, Chapter 635, §I, Texas Civil Statutes, Article 4512o;

(C) licensed professional counselor as defined by Texas Civil Statutes, Article 4512(g) (Licensed Professional Counselors Act, §2);

(D) licensed marriage and family therapist as defined by Texas Civil Statutes, Article 4512-1 (Licensed Marriage and Family Practice Act, §2);

(E) member of the clergy;

(F) physician who is "practicing medicine" as defined by Texas Civil Statutes, Article 4495b (Medical Practice Act, §1.03) or a person employed by any agency of the United States having a license to practice medicine in any state of the United States;

(G) psychologist offering "psychological services" as defined by Texas Civil Statutes, Article 4512c (Psychologists' Certification and Licensing Act, §2); and

(H) registered nurse as defined in law.

Person—Any individual, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or similar representative of these interests. Unless the context clearly indicates otherwise, the term also includes a political subdivision.

Physician—A person licensed to practice medicine in the State of Texas or a person employed by any agency of the United States having a license to practice medicine in any state of the United States.

Psychiatric hospital—

(A) An establishment licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 577 offering inpatient services, including treatment, facilities, and beds generally for use beyond 24 hours, for the primary purpose of providing psychiatric assessment and diagnostic services and psychiatric inpatient care and treatment for mental illness. Such services must be more intensive than room, board, personal services, and general medical and nursing care. Although substance abuse services may be offered, 51% of beds must be dedicated to the treatment of mental illness in adults and/or children; or

(B) that identifiable part of a hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 241.

Psychoactive medication—A medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness, and may include:

- (A) antipsychotics or neuroleptics;
- (B) antidepressants;
- (C) agents for the control of mania or depression;
- (D) antianxiety agents;
- (E) sedatives, hypnotics, or other sleep-promoting drugs; and
- (F) psychomotor stimulants.

Qualified mental health professional—A person acting within the scope of his or her training and licensure or certification, who is a:

(A) certified or licensed social worker as defined by Human Resources Code, §50.001;

(B) licensed professional counselor as defined by Texas Civil Statutes, Article 4512g (Licensed Professional Counselor Act, §2);

(C) physician who is "practicing medicine" as defined by Texas Civil Statutes, Article 4495b, (Medical Practice Act, §1.03); or a person employed by any agency of the United States having a license to practice medicine in any state of the United States;

(D) registered nurse as defined in law; or

(E) psychologist offering "psychological services" as defined by (Article 4512c, Vernon's Texas Civil Statutes, Article 4512c, Psychologists' Certification and Licensing Act, §2).

Sexual exploitation—A 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 practice while treating a suspected sexual or marital dysfunction.

Special treatment procedures—Those procedures which include the use of any of the following: restraint; seclusion; electroconvulsive therapy; psychosurgery; behavior modification; unusual, investigational, and experimental drugs or therapy; and research projects that involve inconvenience or risk to the patient.

Threat—Actions in response to a request for discharge that are illegal or unjustified by the patient's condition.

§401.587. Patient Care Requirements for Licensure.

(a) In order to be eligible for licensure as a psychiatric hospital, a proposed facility must:

(1) meet the definition of a psychiatric hospital as delineated in §401.583 of this title (relating to Definitions);

(2) be in substantial compliance with the standards of care and treatment as described in this subchapter, and applicable state and federal laws.

(b) Each psychiatric hospital shall provide overall operations, a physical plant, and all services and treatment in a manner consistent with recognized hospital standards. All psychiatric hospitals shall provide services in conformance with standards of care and treatment that are not less restrictive than those required for state hospitals. In any case in which applicable federal and/or state law or rules are in conflict with the standards of the Joint Commission on Accreditation of Healthcare Organizations, the federal and/or state law or rule shall prevail.

(1) For purposes of licensure, psychiatric hospitals, other than those operated by community centers, shall be in substantial compliance with inpatient standards set forth by the Joint Commission on Accreditation of Healthcare Organizations; that is, the standards for inpatient settings in the current edition of the Accreditation Manual for Hospitals. Additionally, such hospitals shall comply with standards set forth by the Joint Commission on Accreditation of Healthcare Organizations in the current edition of the Accreditation Manual for Mental Health, Chemical Dependency, Mental Retardation/Developmental Disabilities Services for:

- (A) special treatment procedures;
- (B) patient rights;
- (C) patient management;
- (D) adult mental health services;
- (E) child and adolescent services;
- (F) services in residential settings, partial-hospitalization settings and outpatient settings; and
- (G) therapeutic environment.

(2) In keeping with accreditation policies currently set forth by the Joint Commission on Accreditation of Healthcare Organizations for inpatient programs of community centers, private psychiatric hospitals operated by community centers shall be in substantial compliance with inpatient standards set forth by the Joint Commission on Accreditation of Healthcare Organizations in the current edition of the Accreditation Manual for Mental Health, Chemical Dependency, Mental Retardation/Developmental Disabilities Services. Additionally, such hospitals shall provide nursing, medi-

cal, and pharmacy services and governing body procedures in accordance with standards set forth in the current edition of the Accreditation Manual for Hospitals.

(c) The following provisions are requisite to obtaining and maintaining licensure by the Texas Department of Health:

(1) Intake. The psychiatric hospital shall:

(A) review with the prospective patient the patient's finances and insurance benefits;

(B) explain to a prospective patient the patient's rights; and

(C) explain to a prospective patient the facility's services and treatment process.

(2) Assessment. An assessment for admission shall be conducted by a qualified mental health professional (QMHP) as limited by the following.

(A) As of September 1, 1994, and annually thereafter, the QMHP must have completed eight hours of inservice training or continuing education relevant to intake and assessment procedures.

(B) The QMHP may conduct assessments and make recommendations concerning the need for physician evaluation for inpatient admission only as consistent with the scope of their training and licensure or certification.

(3) Admissions. All admissions, voluntary or involuntary, must be ordered and clinically justified by a physician.

(A) Voluntary admissions. A voluntary patient cannot be admitted for treatment unless:

(i) the facility has a physician's signed order admitting the patient;

(ii) the facility administrator or designee has signed a statement indicating that the patient has been accepted for admission; and

(iii) within 72 hours prior to admission of a patient on a voluntary basis;

(I) an in-person medical examination has been conducted by a physician; and

(II) an in-person assessment may have been conducted by a

qualified mental health professional consistent with the QMHP's scope of training and licensure or certification; however, the need for psychiatric hospitalization must be determined and ordered by a physician.

(B) Admission pursuant to emergency detention. No person shall be admitted to the hospital for emergency detention unless such admission is supported by a written statement in the patient record by a physician who has conducted a preliminary examination of the person and who has determined that the person meets the criteria for admission outlined in the Texas Health and Safety Code, §573.022.

(i) A person cannot be taken to a psychiatric hospital for emergency detention unless the head of the facility or designee agrees in advance to accept the individual. A facility shall only accept such patients when a physician is available to immediately evaluate the person to determine whether the person meets the criteria for emergency detention outlined in the Texas Health and Safety Code, §573.022. Upon arrival at the hospital, the rights of persons apprehended for emergency detention, as required under Chapter 404, Subchapter E, of this title (relating to Rights of Persons Receiving Mental Health Services), must be provided and explained to the patient by hospital staff.

(ii) Submission of an application for voluntary admission after the person has been apprehended for emergency detention but before the preliminary evaluation for admission for emergency detention has been conducted does not negate the requirements for the preliminary evaluation for emergency detention under the Texas Health and Safety Code, §573.022 (Mental Health Code, Article 5547-27).

(4) Treatment. The hospital must ensure that each patient's treatment is carried out by appropriately credentialed and privileged professionals. Patient evaluation and treatment planning and implementation are the responsibility of all participating professionals. Each patient will have a treating physician, who shall have final authority for care and treatment.

(5) Reportable conduct. Allegations concerning potential abuse, neglect, sexual exploitation, unprofessional conduct, or unethical conduct shall be reported and actions taken, both in accordance with applicable state laws and the administrative rules of the Texas Department of Health and the Department of Protective and Regulatory Services, including the requirements of the Health and Safety Code, Chapter 161, concerning posting of notice of duty to report.

(A) For purposes of this subchapter, threats, coercion, or restrictive actions intended to influence the treatment

decisions of a patient shall also be considered abuse.

(i) Coercive or restrictive actions that are illegal shall be investigated as possible abuse under this section.

(ii) Coercive or restrictive actions that are not justified by the person's condition, and that are in response to a person's request for discharge or refusal of medication, therapy, or treatment, or otherwise inquire into or use a right provided by law, shall be investigated as possible abuse under this section.

(iii) Substantiated allegations may be grounds for hospital licensure review and possible revocation and other penalties as provided by law.

(B) Allegation of sexual exploitation shall additionally be reported as required in Civil Practice and Remedies Code, Title 4, Chapter 81

(i) If a mental health services provider or the employer of a mental health services provider has reasonable cause to suspect that a patient has been the victim of sexual exploitation by a mental health services provider during the course of treatment, or if a patient alleges sexual exploitation by a mental health services provider during the course of treatment, the mental health services provider or the employer shall report the alleged conduct not later than the 30th day after the date the person became aware of the conduct or the allegations to:

(I) the prosecuting attorney in the county in which the alleged sexual exploitation occurred; and

(II) any state licensing board that has responsibility for the mental health services provider's licensing

(ii) Before making a report under this section, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous

(C) Subject to the provisions of the Health and Safety Code, Chapter 161, employees and non-employees of psychiatric hospitals shall not be subjected to discrimination or retaliatory action for reporting violations of applicable laws and rules to authorities. This does not preclude disciplinary action being taken against an employee who intentionally makes a malicious or spurious allegation. Psychiatric hospitals shall post notice of protection from discrimination and retaliation as required under law.

(6) Continuing care plan. The physician responsible for the patient's treatment shall be responsible for ensuring the preparation of a continuing care plan for a patient to be discharged unless the patient does not require continuing care, refuses to participate in continuing care, or is not available to participate in continuing care. The physician responsible for preparing the plan shall ensure that consultation occurs with the patient and mental health authority in the area in which the patient will reside before preparing the plan. The mental health authority is not required to participate in the development of a plan for a patient leaving a psychiatric hospital that is not owned or operated by a community center.

(A) The physician shall be responsible for ensuring the delivery of the plan to a community center or other provider in the county where the patient will reside and that has been designated by the commissioner of the Texas Department of Mental Health and Mental Retardation to provide continuing care services, or to any other provider that agrees to accept the patient, provided that the provision of care by the center or provider is appropriate.

(B) A physician who believes that a patient does not need a continuing care plan shall document the reasons for this determination in the patient's clinical record.

(7) Transfer or referral from any services of a psychiatric hospital to the inpatient services of an inpatient mental health facility, including a state hospital. Prior to transferring a patient to the inpatient services of another inpatient mental health facility, the psychiatric hospital shall:

(A) take necessary steps within the hospital's capability to stabilize the patient;

(B) provide notice to the receiving facility of the intent to transfer a patient;

(C) provide the receiving facility with information pertinent to the patient's diagnosis and condition;

(D) receive verification from the receiving facility that there is space, personnel and services necessary to provide appropriate care for the patient;

(E) transfer the patient using an appropriate method of transport; and

(F) upon transfer of the patient, send the original or copies of the patient's appropriate clinical records to the receiving facility.

(8) Each psychiatric hospital shall adopt policies and procedures establishing professionally recognized and accepted standards of care.

(A) In developing such policies and procedures, each psychiatric hospital shall comply with the following rules of the Texas Department of Mental Health and Mental Retardation:

(i) Chapter 404, Subchapter E, of this title, (relating to Rights of Persons Receiving Mental Health Services);

(ii) Chapter 405, Subchapter E, of this title, (relating to Electroconvulsive Therapy); and

(iii) Chapter 405, Subchapter FF, of this title (relating to Consent to Treatment with Psychoactive Medication) for those psychiatric hospitals operated by community centers and for those patients for whom a state mental hospital or community center is contracting for services with a psychiatric hospital. See §401.588 of this title (relating to Consent to Treatment with Psychoactive Medication) for rules governing all other patients in psychiatric hospitals.

(B) Each psychiatric hospital shall adopt policies and procedures that are not less restrictive than departmental rules in areas of patient care and treatment as described in Exhibit A (see Rules of the Texas Department of Mental Health and Mental Retardation relating to Care and Treatment of Individuals Served.)

(9) Confidential communications or records disclosure must be in compliance with the Texas Health and Safety Code, §§611.004, 611.0045, and 576.006.

(10) With the exception of state hospitals and state centers, federal hospitals, hospital districts, community centers, and psychiatric hospitals operated by community centers, psychiatric hospitals shall comply with the provisions of the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code, §164.001, et seq.

§401.588. *Consent to Treatment with Psychoactive Medication.*

(a) A person may not administer a psychoactive medication to a patient receiving voluntary or involuntary mental health services who does not consent to the administration unless:

(1) the patient is in an emergency situation;

(2) the patient is younger than 16 years of age and the patient's parent, managing conservator, or guardian consents to the administration on behalf of the patient;

(3) the patient does not have the capacity to consent and the patient's representative authorized by law to consent on behalf of the patient has consented to the administration; or

(4) the administration of the medication regardless of the patient's refusal is authorized by a judicial order issued under the Texas Health and Safety Code, §574.106; except that the use of the paragraph and the right to a judicial determination on whether a person may be required to take medication against their will is available only to a person in a psychiatric hospital operated or funded by the Texas Department of Mental Health and Mental Retardation (TDMHMR), including:

(A) state facilities;

(B) psychiatric hospitals owned or operated by a community center; or

(C) any psychiatric hospital contracting with or otherwise receiving funds from the Texas Department of Mental Health and Mental Retardation or a community center, for those patients in contracted or funded beds.

(b) Consent given by a patient or by a person authorized by law to consent on behalf of the patient to the administration of psychoactive medication is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the treating physician, licensed nurse, physician's assistant, or registered pharmacist provided the following information to the patient and, if applicable, to the patient's representative authorized by law to consent on behalf of the patient:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health and mental health consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication;

(E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected, and

(F) the proposed course of the medication;

(3) the patient and, if appropriate, the patient's representative authorized by law to consent on behalf of the patient is informed in writing that consent may be revoked, and

(4) the consent is evidenced in the patient's clinical record by a signed form or by a statement of the treating physician, licensed nurse, physician's assistant, or registered pharmacist that documents that consent meeting the requirements of this section was given by the appropriate person and the circumstances under which the consent was obtained

(c) If a person other than the treating physician provides the information under subsection (b) of this section, then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the patient and, if appropriate, the patient's representative who provided the consent, to review the information and answer any questions. The physician must document confirmation of the consent in the patient's clinical record

(d) A patient's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the patient's clinical record

(e) In prescribing psychoactive medication, a treating physician shall

(1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically, and

(2) administer the smallest therapeutically acceptable dosages of medication for the patient's condition

(f) If a physician issues an order to administer psychoactive medication to a patient without the patient's consent because the patient is having a medication-related emergency

(1) the physician shall document in the patient's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less-intrusive forms of treatment, if any, and

(2) treatment of the patient with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the patient's personal liberty.

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 January 21, 1994

TRD-9435063 Anne K Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date February 11, 1994

Proposal publication date December 10, 1993

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

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Chapter 402. Client
Assignment and Continuity
of Services

Subchapter A. Admissions,
Transfers, Absences, and
Discharges—Mental Health
Facilities

• 25 TAC §§402.1-402.44

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§402.1-402.44 of Chapter 402, Subchapter A, concerning admissions, transfers, absences, and discharges-mental health services, without changes to the proposed text as published in the November 9, 1993 issue of *Texas Register* (18 TexReg 8127). The sections will be replaced by new §§402.1-402.5 and 402.7-402.30 on the same topic which are adopted contemporaneously in this issue of *Texas Register*.

The repeal permits the adoption of new sections which comply with provisions of Senate Bill 160, which mandated changes relevant to single portal authorities (SPAs); Senate Bill 834, which required that persons with a single diagnosis of chemical dependency are to be admitted to facilities designated by the Texas Commission on Alcohol and Drug Abuse (TCADA); Senate Bill 205, which mandated changes concerning the admission of minors and procedures for intake, admission, assessment, and transfer; Senate Bill 1067, which required a defendant to be transferred to the nearest appropriate mental health facility if the county sheriff provides evidence that the defendant is a person with mental illness or mental retardation and may constitute danger to self or others; and House Bill 771, which mandated changes relevant to the transportation of persons receiving services.

A public hearing was held on December 1, 1993, to accept testimony on the repeal of the sections. No testimony was presented. No written comments were received.

The repeals adopted are repealed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking authority.

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

Issued in Austin, Texas, on January 21, 1994.

TRD-9435066 Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date February 11, 1994

Proposal publication date November 9, 1993

For further information, please call. (512) 206-4670

◆ ◆ ◆
Chapter 402. Client
Assignment and Continuity
of Services

Subchapter A. Admissions,
Transfers, Absences, and
Discharges—Mental Health
Facilities

• 25 TAC §§402.1-402.5,
402.7-402.30

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§402.1-402.5 and 402.7-402.30 of Chapter 402, Subchapter A, concerning admissions, transfers, absences, and discharges-mental health services. Sections 402.3-402.5 and 402.8-402.16, 402.18-402.20, 402.22, and 402.24-402.28 are adopted with changes to the proposed text as published in the November 9, 1993, issue of *Texas Register* (18 TexReg 8128). Sections 402.2, 402.7, 402.17, 402.21, 402.23, 402.29-402.30 are adopted without changes. The new sections would replace §§402.1-402.44 of existing Chapter 402, Subchapter A governing admissions, transfers, absences, and discharges-mental health facilities which are repealed contemporaneously in this issue of *Texas Register*.

The new sections comply with provisions of Senate Bill 160, which mandated changes relevant to single portal authorities (SPAs); Senate Bill 834, which required that persons with a single diagnosis of chemical dependency are to be admitted to facilities designated by the Texas Commission on Alcohol and Drug Abuse (TCADA); Senate Bill 205, which mandated changes concerning the admission of minors and procedures for intake, admission, assessment, and transfer; Senate Bill 1067, which required a defendant to be transferred to the nearest appropriate mental health facility if the county sheriff provides evidence that the defendant is a person with mental illness or mental retardation and may constitute danger to self or others; and House Bill 771, which mandated changes relevant to

the transportation of persons receiving services.

Consistent with department usage, following an initial reference to single portal authority, additional references throughout the sections now utilize the abbreviation "SPA."

In §402.3, the definition of "absence" has been modified to be consistent with the term as defined in related rules governing continuity of services. In addition, throughout the sections the term "absence" is used exclusively in place of "furlough," this is consistent with current department usage, although "furlough" is a term used in the Texas Health and Safety Code "Absence," when used with various CARE codes, is considered to more accurately reflect the status of a person receiving services. The definitions of "MHA (mental health authority)" and "MRA (mental retardation authority)" are revised to be consistent with the Texas Health and Safety Code, §533.035. The definition of "psychiatric hospital" is revised to specify that the licensing agency is the Texas Department of Health.

In §402.4(b), the "shall" has been replaced by "may" to clarify that the decision to request designation as a SPA for a local service is at the discretion of the MHA for that service area. In subsection (e) of that same section, language has been revised to specify that when a MHA is not designated as the SPA for that service area, court commitments for inpatient mental health services are to be made to the mental health facility serving that area. Subsequent references throughout the sections to SPA responsibilities are modified accordingly.

A grammatical error has been corrected in §402.5(a) resulting in the addition of new paragraph (4) incorporating existing language from paragraph (3). In subsection (c) of that section, paragraph (2) has been deleted because it is confusing and unnecessary. Subsection (d) has been rewritten for clarification. Subsection (e) has been modified to clarify that it is the mental health facility which refuses admission.

Clarifying language has been added in §402.9(b) and (d) referencing discharge procedures which are described in department rules governing rights of persons receiving mental health services. In addition, language has been added to subsection (d) specifying the conditions under which an application for court-ordered mental health services can be filed for persons receiving voluntary inpatient services.

In §402.10(a), paragraph (3) has been deleted because it was determined to be confusing and unnecessary. Subsection (b) has been rewritten to specify that the provisions of subsection (a) do not preclude the involvement of the SPA as described elsewhere in the subchapter. In subsection (d), a grammatical error is corrected with the insertion of "by" and the correct section (§574.045 rather than §574.024) of the Texas Health and Safety Code has been referenced.

For the sake of clarity and to be consistent with the rest of the subchapter, in §402.11(c) reference has been made to a "mental health"

facility instead of just "facility." Language in subsection (e) has been clarified to indicate that if the SPA or mental health facility finds apparent irregularities with an order for temporary or extended mental health services, the court shall be notified immediately.

Language in §402.12 has been revised to acknowledge amendments to the Texas Health and Safety Code, §574.045, contained in House Bill 771 of the 73rd Legislature regarding the transportation of persons receiving court-ordered mental health services. In addition, reference has been made to the specific section relating to the issue in the department's rules governing rights of persons receiving mental health services.

The provision regarding liability protection in §402.15(d) has been deleted because it simply restates a statutory provision without adding clarification regarding implementation.

In §402.16, language has been added in subsection (a) specifying that the department's rules concerning continuity of services for persons with mental retardation are to be followed when the person being discharged from a mental health facility has mental retardation. As a result, subsections (c)-(e) have been deleted. In the interests of clarity, the term "mental health facility" replaces "department" in subsection (b).

In §402.20(a)(8), language has been added to reference the provisions of an earlier section regarding transportation.

Language in §402.25(d) has been more clearly written to specify that the mental health facility shall notify the SPA when a person is transferred from the Texas Department of Criminal Justice. In addition, the title of the section has been corrected to reference the Texas Department of Criminal Justice.

A public hearing was held on December 1, 1993, to accept testimony on the new subchapter as proposed. Oral testimony was provided by Texas Mental Health Consumers and by an advocate who read a written statement from a residential client facing discharge from a state facility. Written comments from the public concerning the proposal were provided by a county judge, an individual from Katy, Texas, Advocacy, Inc., the Texas Alliance for the Mentally Ill, Golden Triangle Alliance for the Mentally Ill, the Texas Council of Community Mental Health and Mental Retardation Centers, Inc., Life Management Center for MH/MR Services, Tropical Texas Center for Mental Health and Mental Retardation, and MHMR Services for the Concho Valley.

One commenter suggested that the single portal authority concept be dropped, reasoning that those responsibilities could and should be handled by the mental health authority (MHA) for an area. The department responds that single portal authorities are mandated by law in the Texas Health and Safety Code, §533.014, as amended by Senate Bill 160 of the 73rd Legislature, for the purpose of managing the entry into inpatient mental health services at state facilities of persons who are court-committed. The same commenter questioned whether a MHA could

request to be designated a SPA for adults only and, if so, what will be done where the service system is inadequate to meet the needs of the committing courts. The department responds that a single portal designation cannot be limited to only adult commitments and that the reasons for the inadequacy of the service system will be discussed with the commenter by the appropriate contract manager.

A commenter stated that many state hospitals seem to have an unwritten policy against voluntary admissions for inpatient mental health services and noted that forcing individuals who are seeking help to be court-committed is stigmatizing and unnecessarily traumatic. The commenter requested that the rule be modified to ensure that the court system is not the single port of entry into the state system for inpatient mental health services. The department responds that the court system is not intended to be the entry point to the public mental health service and the process described in this subchapter is designed specifically to avoid unnecessary court-commitments.

Two commenters requested that the department reevaluate its conclusion that the implementation of the subchapter's provisions would result in no significant fiscal impact on MHAs. The department stands by the fiscal note included in the preamble to the proposal and responds that if the cost of a state hospital stay is a part of the MHA's total resource base, the cost of someone staying in the hospital due to inadequate continuity activities far exceeds the cost of those activities.

A commenter requested that the department define "mental health authority" consistent with the language in the Texas Health and Safety Code, §533.035. The department agrees and has modified the definition accordingly.

A commenter noted that language in §402.4(a) and (b) is contradictory as to whether an MHA must submit a request to be designated the SPA for that area. The department responds that an MHA may choose not to request the designation and has modified language in subsection (b) accordingly. The same commenter requested that subsection (b) be further modified to require the delivery of services in the "least restrictive environment as consistent with available funding" rather than the "most appropriate setting." The department declines to make the revision, noting that "most appropriate setting" is the language used in Texas Health and Safety Code, §533.014, as amended by Senate Bill 160, concerning single portal authorities.

Regarding subsection (a) of the same section, two commenters asked what the criteria were for defining "an appropriate array of services" and who was responsible for developing the criteria. The department responds that Central Office staff in Mental Health Services are developing the criteria but not for inclusion in this subchapter, that degree of detail is considered inappropriate for inclusion in department rules. The same commenters asked what criteria determine whether a MHA serves its priority population and who determines to what extent services need to be

provided the priority population. The department responds that the contract manager tracks this information as an aspect of contract compliance. Additionally, the commenters questioned what the criteria were for determining when the MHA "is in compliance with the terms of its performance contract and who makes that determination. The department responds that the contract manager is responsible for making that determination. In addition, the department notes that Central Office staff in Mental Health Services will communicate with the commenter directly concerning specifics on the criteria in response to all three points.

Regarding the plan required in subsection (b) of the same section, a commenter noted that many MHAs fall short in providing required services and that the department historically has experienced difficulties obtaining compliance by MHAs with plans of correction. The commenter recommended the creation of committees in each service area to include consumers, family members, advocates, community members, and professionals to assist in monitoring activities. The department responds that while this issue is beyond the scope of this rule, the Quality Services Council was created to accomplish exactly what the commenter suggested. The commenter noted also that while the department has always said that a service contract could be pulled from an MHA for failure to comply with the provisions of the contract, this has never happened. The commenter recommended that a contingency plan should exist for each service area to provide for the provision of services in the event of a contract suspension. The department responds that the prospect of "pulling" all or part of a contract is not taken lightly, should such a drastic step become necessary, no generic contingency plan would suitably address the complexities of such a situation.

Three commenters questioned the provision in §402.4(e) that would permit an adjoining MHA to function as the SPA for a service area in which the authorized MHA either did not request designation as the SPA or was not so designated by the Board. The department agrees that the provision would be inappropriate and has modified the subsection to require that persons who are court-committed from a service area in which no SPA has been designated shall be committed to the mental health facility serving the area.

A commenter questioned whether courts will commit directly "to" a SPA or "through" the SPA to the state facility, and suggested that if the answer is the former then state law must be changed. The department responds that all court-commitments from a service area for which a SPA has been designated will be directly to that SPA, and notes that recent changes in the state law (Senate Bill 160 of the 73rd Legislature as it amended the Texas Health and Safety Code, §533.014) were the critical factor behind the proposal of this new subchapter.

A commenter stated concerning §402.5(b) that the written consent of a parent, conservator, or guardian should be sufficient for voluntary admission of a minor and should never lead to the hospital seeking an involun-

tary commitment. The department notes that nothing in the provision cited by the commenter says otherwise, but adds that there may be instances when the SPA or facility, as appropriate, would find it necessary to proceed with a court-commitment should consent be withdrawn and the individual meets the criteria for continued inpatient services. Concerning the same subsection, another commenter questioned whether the department really wanted to require that minors must also consent to admission when the guardian or managing conservator is an employee or agent of a governmental body, the commenter acknowledged that the provision was consistent with state law (the Texas Health and Safety Code, §572.001(c)). The department responds that it cannot by rule negate a provision of state law.

A commenter questioned what would happen if a facility determines that a person to be committed has a "psychiatric condition which the MH facility is not equipped to treat" as stated in §402.5(b). The commenter further questioned what criteria would be used to make such a determination and what would become of the person? The department responds first that the listing of contraindications for admission to a facility applies whether the person is seeking voluntary admission or is court-committed. The department further responds that the person would be referred to the MHA for that service area if voluntary services were sought, or back to the SPA if the person were court-committed. Under the new subchapter, the later instance would have occurred because the SPA would not recommend commitment to that facility to the court unless the facility was equipped to provide the necessary treatment.

Regarding subsection (d) of the same section, a commenter questioned whether the department was saying that admissions personnel at a facility could take the place of the judiciary by making a determination that an order of commitment was invalid on its face. The department responds that the provision has been rewritten for clarity.

A commenter questioned what the SPA would be able to do for a person whose admission was refused as provided in §402.5(e). The department responds that if the admission was court-ordered, the SPA would be responsible for providing the needed services in an appropriate setting. The language has been revised to clarify that the SPA should be notified, if appropriate, since it would not be involved if the person was seeking voluntary admission.

A commenter questioned whether the "or" after §402.9(a)(1) should be "and." The department responds that the language is correct as proposed. Three commenters requested that subsection (d) of that section be clarified as the intent was unclear. The department agrees that the provision is unclear and misleading and has revised the language accordingly.

A commenter noted that the language in §402.10(b) is not clear regarding who is responsible for transporting the individual and for the cost of transportation. The department agrees and has revised the language. A commenter requested clarification in subsec-

tion (e) of that same section regarding who is to perform and be responsible for the costs of the medical examination necessary to support the application for an Order of Protective Custody when the person is under emergency detention and an application for court-ordered treatment has been filed. The department responds that such arrangements are usually negotiated in advance between an MHA and the state facility in the form of a memorandum of agreement. Responsibility for conducting such evaluations are not inconsistent with current requirements of the TXMHMR Mental Health Community Services Standards.

A commenter questioned whether a court order considered to be invalid by a facility as described in §402.11(e) shouldn't be returned to the committing court. The department responds that the section has been rewritten to so indicate.

A commenter asked what the effect on the responsibility for service delivery would be if the executive director or designee named as required in §402.13 is no longer employed. The department responds that the responsibility would be assumed by the new person in that position. In addition, the department that the provision for a specific person to be named is required by the Texas Health and Safety Code, §574.037.

A commenter noted that the use of both "executive director of the single portal authority" and "head of the facility" in §402.14 is confusing. Regarding that same section, another commenter requested clarification as to who was to perform the medical examination required in paragraph (2). The department agrees with both comments and has modified the language to clarify.

A commenter commended the department for referencing "orderly discharge planning" in §402.15(a) and expressed hope that this, in conjunction with proposed new provisions in other department rules would end short notice discharges from state facilities. The department acknowledges the commendation, but notes that the language in question is contained in current department rules governing this topic. The same commenter questioned whether the protection against liability contained in subsection (d) of that section could be extended to the MHA and SPA. The department reviewed the provision as proposed in the subchapter, as well as the relevant statute (Texas Health and Safety Code, §571.019) and determined that the statute does afford this protection. It was additionally determined that the language as proposed did not add any information or procedural information beyond that of the statute; the subsection has been deleted.

A commenter expressed concern with provisions in §402.16 related to the adequacy of discharge and aftercare planning for persons with mental retardation being served on the multiple-disability units of state hospitals. The department concurs and has revised the section to reference department rules governing the continuity of services for persons with mental retardation. New rules on that subject are expected to be effective within several months of the effective date of this subchapter.

Regarding §402.17(a)(3), one commenter acknowledged the inability to recommend a good solution but predicted that conflicts between "orderly discharge planning" and "immediate release" will occur with some regularity. The department agrees with the commenter's assessment.

A commenter stated that one example of embedded costs for MHAs is found in §402.18(b) which requires the SPA to conduct evaluations of court-committed persons who meet discharge requirements but wish to remain in the facility for voluntary mental health services. The department responds that such evaluations would normally take place in the context of reviews of the individualized treatment plan. Further, if the MHA decided to continue to support the use of this resource for that individual, such an evaluation could be deferred.

The new sections are adopted under the Texas Health and Safety Code, §533.014, as amended by Senate Bill 160 of the 73rd Texas Legislature, and the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking authority.

§402.1 Purpose The purpose of this subchapter is to establish criteria and guidelines:

(1) to govern admissions, transfers, absences, and discharges of persons served by mental health facilities of the department, and

(2) for designation by the Texas Mental Health and Mental Retardation Board of a mental health authority as a single portal authority (SPA) pursuant to the Texas Health and Safety Code, §533.014.

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

Absence—When a person is physically away from a campus-based location (ward or dorm). A person may be absent for hospitalization, a home visit, a special activity, transfer to another component, unauthorized departure, other reasons, or trial placement (formerly referred to as furlough). In the event of an absence of more than 72 hours for a person who is involuntarily committed to the court which issued the order, the order must be notified. Specific absence codes are used for tracking by Client Assignment and Registration (CARE).

Board—The Texas Mental Health and Mental Retardation Board.

CARE—The TXMHMR computerized database which contains assignment and treatment information about persons receiving services.

Commissioner—The commissioner of the department.

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

Executive director—The executive director of a mental health authority (MHA).

DSM—The Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Head of the facility—The superintendent or director of a mental health facility or a mental retardation facility of the department.

Legal holiday—A state holiday specified in Texas Civil Statutes, Article 4591, or an officially declared county holiday that applies to a court in which proceedings under this subchapter are held.

MHA (mental health authority)—An agency designated by the commissioner to plan, facilitate, coordinate, and provide services to persons with mental illness or with a dual diagnosis of mental illness and chemical dependency as are required to be performed at the local level by state law and by the department.

Mental health facility—A state hospital or state center that provides mental health services.

MRA (mental retardation authority)—An agency designated by the commissioner to plan, facilitate, coordinate, and provide services to persons with mental retardation as are required to be performed at the local level by state law and by the department.

Mental retardation facility—A facility of the department that provides mental retardation services.

Psychiatric hospital—As defined in Chapter 401, Subchapter J of this title (relating to Standards of Care and Treatment in Psychiatric Hospitals):

(A) an establishment licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 577 offering inpatient services, including treatment, facilities, and beds generally for use beyond 24 hours, for the primary purpose of providing psychiatric assessment and diagnostic services and psychiatric inpatient care and treatment for mental illness. Such services must be more intensive than room, board, personal services, and general medical and nursing care. Although substance abuse services may be offered, a majority of beds (51%) must be dedicated to the treatment of mental illness in adults and/or children. Services other than those of an inpatient nature are not licensed or regulated by the Texas Department of Health and are considered only to the extent that they affect the stated resources for the inpatient components; or

(B) that identifiable part of a hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 241.

Single portal authority (SPA)—A mental health authority which has been designated by the board to serve as the agency with responsibility for coordinating and facilitating the delivery of mental health services to court committed persons in its local service area.

§402.4. Designation and Responsibilities of a Single Portal Authority.

(a) A MHA may request designation by the board as a single portal authority (SPA) pursuant to the Texas Health and Safety Code, §533.014, if it:

(1) provides or contracts for an appropriate array of core services;

(2) serves its priority population; and

(3) is in compliance with the terms of its performance contract with the department.

(b) If the MHA satisfies the criteria listed in subsection (a) of this section, it may submit a written plan to the deputy commissioner for mental health services which describes:

(1) the responsibilities the MHA will assume for ensuring persons who are court committed receive mental health services in the most appropriate setting;

(2) the involvement of local officials; and

(3) the processes which will enable implementation.

(c) The deputy commissioner for mental health services shall review and evaluate the MHA's plan and then confer with the commissioner, who shall make recommendations to the board regarding the designation of the MHA as a SPA.

(d) If the board determines the MHA's plan can appropriately, effectively, and efficiently provide mental health services to court committed persons, then the board shall designate the MHA as a SPA. Upon designation of a SPA:

(1) the written plan shall become an addendum to the MHA's performance contract with the department;

(2) the designation shall extend for the duration of the performance contract; and

(3) the written plan shall be re-evaluated during the performance contract review.

(e) In absence of a MHA's request to be designated as a SPA, or when the board does not designate a MHA as a SPA, all court commitments for that area shall be made to the mental health facility serving the area.

(f) Following designation of a SPA the department shall notify each judge who has probate jurisdiction in the service area and any other person the SPA considers necessary of the designation and the new procedures required in the area.

(g) All commitments pursuant to the Texas Health and Safety Code, Chapter 574, shall be made to the SPA which serves the area, or the appropriate mental health facility as described in subsection (e) of this section, with the exception of:

(1) commitments to psychiatric hospitals under the Texas Health and Safety Code, §574.042,

(2) commitments to federal facilities under the Texas Health and Safety Code, §574.043,

(3) commitments to facilities of the institutional division of the Texas Department of Criminal Justice under the Texas Health and Safety Code, §574.044, and

(4) evaluations and commitments under the Texas Code of Criminal Procedure, Articles 46.02 and 46.03

(h) The SPA shall file a recommendation for treatment with the court prior to the commitment hearing date pursuant to the provisions of the Texas Health and Safety Code, §574.012

(i) Inpatient mental health facilities operated by the department shall admit a court committed person on an emergency basis when obtaining approval from a SPA to which the person should have been committed could result in a delay which might endanger the person or others.

(j) The SPA and the department's facility, if necessary, shall cooperate to ensure services to court committed persons in the most appropriate location as soon after admission as possible.

(k) The board shall revoke or suspend the designation of SPA if it finds that there has been a substantial failure by the MHA to comply with the rules of the department

§402.5. General Provisions for Admission

(a) For a person to be considered for admission to a mental health facility, there must be a reasonable presumption of mental impairment. This does not, in and of itself, justify admission, but if the mental impairment is present in certain types or in certain degrees of severity or in combination with any of the following social conditions, the admission may be considered as appropriate. The social conditions include:

(1) ideational or behavioral indications of dangerousness to self or others,

(2) impairment of social, familial, or occupational functioning of sufficient severity to require the structure or safety of inpatient psychiatric services;

(3) inability to meet own basic life and health needs; and/or

(4) social support and/or familial support which is inadequate or detrimental

(b) The written consent of the parent, managing conservator, or guardian is required for voluntary admission of persons under 16 years of age.

(1) If the guardian or managing conservator is an employee or agent of the State of Texas or a political subdivision thereof and is acting in an official capacity, the minor also must consent

(2) A minor of any age may apply for and receive services for psychiatric problems arising from child abuse or neglect, or suicidal ideation without the consent of any other party

(c) The following are contraindications to admission to mental health facilities

(1) a medical or psychiatric condition which the mental health facility is not equipped to treat,

(2) a diagnosis of mental retardation, epilepsy, or senility, unless the applicant also has a mental illness and meets the admission criteria,

(3) antisocial behavior not resulting from mental illness;

(4) for an applicant under age 16, failure or refusal of the parent, guardian, or managing conservator to sign the application, or failure or refusal of the applicant to sign the consent when request for admission is made by a person or agency appointed as a guardian or managing conservator in its capacity as an employee or agent of the State of Texas or a political subdivision thereof; and

(5) failure or refusal of a minor 16 years of age or older to sign consent.

(d) If the SPA or mental health facility, as appropriate, detects what appear to be serious irregularities with an order of commitment, the court shall be notified immediately

(e) Whenever an admission is refused by a mental health facility, an alternate disposition shall be recommended with regard to the needs of the applicant, and the responsible SPA or MHA, as appropriate, must be contacted and advised of the recommendation within 24 hours

§402.8 Special Criteria for Waco Center For Youth

(a) A resident of Texas who applies for services provided by the Waco Center for Youth shall be considered for admission provided that the applicant:

(1) is 10 through 17 years of age; (Age at admission must allow adequate time for treatment programming prior to reaching age 18)

(2) is diagnosed as emotionally and/or behaviorally disturbed and is not acutely psychotic, suicidal, homicidal, or seriously violent,

(3) is either in the managing conservatorship of the Texas Department of Protective and Regulatory Services (PRS) or is served by a mental health facility or a MHA;

(4) displays a history of behavior adjustment problems;

(5) is clinically determined not to have mental retardation as defined in the latest edition of the DSM, and

(6) needs a structured treatment program in a residential facility or a transitional program following discharge from intensive inpatient care in a mental health facility

(b) No emotionally disturbed juvenile who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under the Texas Family Code, Title 3 shall be admitted to the Waco Center for Youth

(c) All referrals shall be reviewed by the admission committee of the Waco Center, including the PRS liaison worker as required. Notification of acceptance or rejection shall be made directly to the referring agency prior to initiating the admissions process. The Waco Center shall review referrals for admission of children and adolescents who meet the eligibility criteria and who:

(1) are under the managing conservatorship of PRS, or

(2) have been discharged from a mental health facility and are referred directly to the Waco Center by the SPA serving the area where the person resides.

(d) Persons under the managing conservatorship of PRS as described in subsection (c)(1) of this section shall be referred directly by that agency to the PRS liaison worker stationed at the Waco Center. Other individuals served by PRS may be referred to the local MHA for mental health services and for possible referral to the Waco Center

(e) In all other regards, admissions to the Waco Center shall be pursuant to the provisions of the Texas Health and Safety Code, Title 7, Subtitle C

§402.9. Voluntary Inpatient Mental Health Services

(a) A written application for admission to a mental health facility for voluntary inpatient services shall be filed with the MHA serving the area in which the applicant resides. The application shall be signed

(1) by the person to be served if the person is 16 years of age or older, or

(2) as described in §402.5(b) of this title (relating to General Provisions for Admission) if the person is under 16

(b) The application shall state that the person agrees to remain voluntarily in the mental health facility as an inpatient and that the person consents to the diagnosis, observation, care, and treatment to be provided until discharged, or until the expiration of four hours after written request for release is filed with the head of the facility by the person or the individual responsible for the person's admission. Discharge of the person shall be accomplished as described in §404.157 (relating to Rights of Persons Voluntarily Admitted to Inpatient Services) of Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services)

(c) The MHA shall screen applicants for inpatient services as described in Chapter 402, Subchapter B of this title (relating to Continuity of Services—Mental Health)

(d) An application for court-ordered mental health services may be filed by the mental health facility, in coordination with the appropriate SPA for a person receiving voluntary inpatient care, provided the provisions of §404.157 (relating to Rights of Persons Voluntarily Admitted to Inpatient Services) of Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services) are followed. The person must have

(1) filed a request for release,

(2) been absent without authorization, or

(3) refused or been unable to consent to appropriate and necessary psychiatric treatment

(e) Prior to admission, the person for whom voluntary inpatient services is sought must be informed of the rights that person has as described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services)

§402.10. Emergency Detention

(a) The department shall neither admit nor detain any person for emergency observation and treatment unless

(1) a warrant has been obtained from a magistrate pursuant to the Texas Health and Safety Code, Chapter 573, Subchapter B, or

(2) an application by a peace officer for emergency detention has been presented pursuant to the Texas Health and Safety Code, Chapter 573, Subchapter A.

(b) Neither paragraph (1) or (2) of subsection (a) precludes the involvement of the SPA as described in §402.4 of this chapter (relating to Designation and Responsibilities of a Single Portal Authority.)

(c) Within 24 hours following apprehension of the person, an examining physician acceptable to the SPA for that area, or the mental health facility, if appropriate, shall prepare a specific and detailed written statement in compliance with the provisions of the Health and Safety Code, §573.022. The person shall not be detained if the person has

(1) mental retardation but not a mental illness, or

(2) mental retardation and a mental illness but does not meet the criteria for emergency admission

(d) If, during the period of emergency detention, any of the conditions described in the statement required by subsection (c) of this section are determined to no longer apply, the person shall be released and transportation arrangements made as required in the Texas Health and Safety Code, §574.045

(e) If, during the period of emergency detention, a determination is made that the person requires further treatment, the appropriate SPA shall be notified. A written application for court-ordered treatment shall be filed by the SPA as required in the Health and Safety Code, §574.002, and an Order of Protective Custody shall be obtained under the Texas Health and Safety Code, §574.021

(f) A person admitted for emergency detention shall be advised of rights that person has as described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services)

§402.11. Admission of Persons Court-Ordered to Mental Health Services.

(a) The clerk of the county court which commits a person for mental health services shall provide a certified transcript of the commitment proceedings as required in the Texas Health and Safety Code, §574.047, to the SPA or the mental health facility, as appropriate. The SPA shall acknowledge the acceptance of the person and any personal property as required in the Texas Health and Safety Code, §574.048

(b) If a commitment order is valid on its face, but there exists a reason to believe that the requirements for a proper commitment have not been met, the person must be admitted and the court notified of suspected irregularities

(c) After the person has been admitted and a thorough psychiatric evaluation has been conducted, if one or more of the contraindications described in §402.5(c) of this title (relating to General Provisions for Admission) are present, the person shall be discharged in accordance with the Texas Health and Safety Code, §574.086 and §574.087. The mental health facility and the SPA shall consult with each other before the discharge is initiated.

(d) A person accepted under an order of protective custody pursuant to the Texas Health and Safety Code, §§574.021-474.023, must be provided a probable cause hearing within 72 hours of the time detention begins as described in the Texas Health and Safety Code, §574.025.

(e) An order for temporary mental health services under the Texas Health and Safety Code, §574.034, or extended mental health services under the Texas Health and Safety Code, §574.035, may be contraindicated if the person currently is charged with a Class A or Class B misdemeanor or a felony. The SPA or mental health facility, as appropriate, shall notify the court immediately of any such irregularities. An order of protective custody may be issued for a person charged with a criminal offense if the head of the facility designated to detain the person consents to the proposed custody

§402.12. Transportation of Persons Court-Ordered to Inpatient Services

(a) The transportation of a person court-ordered to inpatient services shall be handled as described in the Texas Health and Safety Code, §574.045.

(b) The rights of the person shall be protected while being transported as described in §404.154(29) (relating to Rights of All Persons Receiving Mental Health Services) of Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services).

(c) The costs of transportation shall be assumed by the committing county, if necessary.

§402.13. Admission of Persons Court-Ordered to Outpatient Mental Health Services.

(a) A court order for outpatient services through the department issued pursuant to the Texas Health and Safety Code, §574.037, must name the executive

director of the SPA or a designee as responsible for service delivery

(b) Pursuant to the Texas Health and Safety Code, §574.061, an order for inpatient services may be modified by the court to require outpatient services upon request by the SPA

§402.14 Reexamination of Persons Court-Ordered to Extended Mental Health Services The responsible court may, upon good cause, order a reexamination and rehearing for any person court-ordered to extended mental health services. When the SPA or the mental health facility, as appropriate, is notified of the need to reexamine a committed person, an examination shall be arranged in accord with the Texas Health and Safety Code, §574.066

(1) If the person no longer meets the criteria for court-ordered extended mental health services, the person shall be discharged

(2) If the SPA or mental health facility, as appropriate, determines that the criteria are still met, a certificate of medical examination (CME) may be filed with the court within 10 days after the request for reexamination and hearing is filed

§402.15 General Provisions for Discharges

(a) Any person who upon reexamination is found to have no mental impairment shall be discharged within the shortest possible time consistent with orderly discharge planning and the necessary coordination with the SPA and the court, if appropriate

(b) Continuity of care procedures established in Chapter 402, Subchapter B of this title (relating to Continuity of Services—Mental Health) shall be followed

(c) An individual filing a request for release of a person receiving services shall be notified that the individual assumes all responsibility for the person upon discharge. The notification shall be made even if the individual filing for release is the person receiving services

§402.16 Discharge of Persons with Mental Retardation

(a) If, for any reason, a person with mental retardation is admitted to a mental health facility as an inpatient under any type of commitment order pursuant to the Texas Health and Safety Code, Title 7, Subtitle C (the Texas Mental Health Code), and the person does not meet the criteria for such an order, that person shall be discharged as soon as the discharge can be appropriately arranged. The discharge shall be consistent with current department rules concerning

the continuity of services for persons with mental retardation who are discharged, transferred, or on trial placement from a mental health facility

(b) The mental health facility department shall give advance notice of such discharge to the local mental retardation authority (MRA) for the county of residence of the person and to the person or agency who originally delivered the person with mental retardation to the facility. In addition, the court that issued the order under which the admission was accomplished shall be notified

§402.18 Change of Admission Status from Commitment to Voluntary

(a) The court committed person who is found to have some mental impairment and who meets the discharge criteria stated in §402.17(a) of this title (relating to Discharges of Persons Court-Ordered to Inpatient and Outpatient Mental Health Services) may remain at the mental health facility after signing a voluntary application, provided

(1) the person has not been judicially declared incompetent and is otherwise competent to consent to the voluntary admission, and

(2) there is a reasonable expectation of further improvement which could not be expected or would be inordinately delayed in an alternate setting

(b) The SPA shall be responsible for evaluating the person

§402.19 Continued Inpatient Mental Health Services for Persons Served on Voluntary Basis Who Meet the Discharge Criteria

(a) A person voluntarily admitted who upon examination is found to have some mental impairment and who meets the discharge criteria stated in §402.17 of this title (relating to Discharges of Persons Court-Ordered to Inpatient and Outpatient Mental Health Services) may continue to receive inpatient services provided

(1) the person or a legally authorized representative gives consent, and

(2) there is a reasonable expectation of further improvement which could not be expected or would be inordinately delayed in an alternate setting

(b) The SPA shall be responsible for evaluating the person

§402.20 General Principles Relating to Transfers

(a) The need for transfer of a person from one facility or institution to another

is determined by circumstances which are highly specific to the individual case. The primary consideration is always the best interest of the person. The following general principles govern all transfers.

(1) The person, whether voluntarily admitted or court committed, shall be involved, to the maximum extent possible, in planning for the transfer.

(2) The person's family shall be consulted, if appropriate

(3) Transfers shall be by mutual agreement of the facilities and the MHAs involved and in accord with admission policies, except where otherwise provided by law

(4) If the head of the transferring facility has been notified by a prosecuting attorney that the person to be transferred has criminal charges pending, then the prosecutor shall be informed of the transfer by the transferring facility

(5) The medical record of the person must reflect the reasons for the transfer

(6) Copies of medical records or relevant portions, personal property, and trust fund accounts shall be transferred with the person. A psychiatric hospital or an agency of the United States is required to send the medical records of a person transferred to a mental health facility

(7) During transfers from one mental health facility to another, attending staff shall ensure that all appropriate physical care needs of the person are met and that the person's rights under departmental rules are preserved

(8) Transportation shall be arranged as described in §402.12 of this title (relating to Transportation of Persons Court-Ordered to Inpatient Services)

(b) The following types of transfers are permitted:

(1) Transfers between the Maximum Security Unit at Vernon State Hospital and a nonsecurity facility

(2) Transfers from one state mental health facility to another

(3) Transfers between mental retardation and mental health facilities

(4) Transfers between mental health facilities and psychiatric hospitals or hospitals operated by the United States

(5) Transfers from the Texas Department of Corrections or county jails to mental health facilities

(6) Transfers to a hospital for medical treatment

(c) Interstate transfers shall be handled as described in Chapter 403.

Subchapter H of this title (relating to Interstate Transfer)

§402.22. Transfers From One State Mental Health Facility to Another.

(a) Transfers from one state mental health facility to another may be made when deemed advisable by the head of the facility with the agreement of the receiving facility and the responsible SPA based on

- (1) geographic residence of the person,
- (2) program availability,
- (3) geographical proximity to family, and
- (4) condition and desires of person.

(b) If appropriate, the committing court shall be notified as a matter of courtesy

(c) The request for transfer to another mental health facility may be initiated by the person, the person's guardian, staff, or other interested persons

(d) The SPA shall evaluate the person being considered for transfer

(e) If the head of the transferring facility has been notified by a prosecuting attorney that the person to be transferred has criminal charges pending, then the prosecutor shall be informed of the transfer by the transferring facility

§402.24. Transfers Between Mental Health Facilities and Other Mental Health Facilities, Psychiatric Hospitals, or Hospitals Operated by the United States

(a) Upon giving notice to the committing court and the SPA, the head of a psychiatric hospital may, for any reason, transfer a court committed person to a mental health facility designated by the SPA pursuant to the Texas Health and Safety Code, §§575.011 and §575.014

(b) The transfer of a person court committed to an agency of the United States shall be made pursuant to the Texas Health and Safety Code, §575.015

(c) During transfers between mental health facilities, attending staff shall ensure that all appropriate physical care needs of the person are met and that the rights of the person under Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services) and other applicable rules of the department are preserved

(d) If the person has mental retardation as well as a mental illness, the commissioner or designee must first determine that space is available on a unit designed to provide appropriate services to that person

§402.25. Transfers From Texas Department of Criminal Justice or County Jail to Mental Health Facility

(a) Although the Code of Criminal Procedure, Article 46.01, authorizes the transfer of prisoners to a mental health facility with certification by a prison physician or county health officer, federal case law also requires provision of due process by the Texas Department of Criminal Justice (TDCJ) facility or county jail prior to transfer

(b) Following due process prior to transfer, the head of the mental health facility must also advise that resources are available and that the prisoner is eligible for treatment

(c) When a prisoner is to be transferred from a TDCJ facility or county jail to the Maximum Security Unit at Vernon State Hospital, staff at Vernon State Hospital shall request transmittal of the following to accompany the person at time of transfer

- (1) documentation of determination of mental illness in the form of the prison physician's report or the county medical examiner's certificate of examination,
- (2) street clothes, and
- (3) personal funds

(d) The mental health facility shall notify the appropriate SPA of the transfer

§402.26. Absence for Trial Placement General Principles

Absence for trial placement shall be used only when a person has reached an improved level of mental and social functioning that, in and of itself, does not justify discharge under the discharge criteria, but does indicate that trial placement outside an inpatient mental health setting is compatible with treatment goals. A justified use of ATP-absence for trial placement is to evaluate the adjustment of the person to home or an alternate placement setting

§402.27. Absence for Trial Placement. Special Provisions

(a) Justification of use of absence for trial placement (ATP) as opposed to discharge must be adequately documented in the person's record

(b) The absence shall not be for more than an initial period of 30 days

(c) Extension of the absence is to be considered only after a thorough review of the case and consultation with the referral source on the progress of the person. An extension is to be limited to a 30-day period. When additional time may be beneficial in implementing a specific plan of care for a person, the period may be ex-

tended beyond 60 days with the coordination and approval of executive director of the SPA. In no instance, however, shall the absence be extended beyond the ending date of commitment

(d) A person admitted voluntarily who is on trial placement who requires inpatient mental health services may be returned only with the person's consent. If there is a question of competency or of willingness to consent to return, the usual procedure for commitments must be followed in order to ensure the person's right to due process of law

(e) Continuity of care procedures established in Chapter 402, Subchapter B of this title (relating to Continuity of Services - Mental Health) shall be followed in granting authorizations for such absences

§402.28. Absence Under Court-Ordered Temporary or Extended Inpatient Mental Health Services

(a) The head of a facility may permit absences for persons under a court order for temporary or extended inpatient mental health services. The absence may be subject to specified conditions in coordination with SPA and the court must be notified of issuance of absences exceeding three days

(b) A person who is permitted to leave the facility on an absence may be detained and returned if conditions of the authorization are violated or if the person's condition deteriorates so that return as an inpatient to the mental health facility is necessary

(c) The head of the facility, a magistrate, or a peace or health officer may initiate the process of taking into custody, detaining, and returning the person who is under an order for temporary or extended inpatient mental health services

(d) Each head of a mental health facility shall designate one or more administrative hearing officers to conduct administrative hearings concerning revocation of an absence of more than three days. The hearing officer may be a mental health professional, but may not be directly involved in the treatment of the person

(e) An administrative hearing must be held within 72 hours of a person's return to the facility when the return is based upon the person violating the conditions of the absence or when the return is based upon the deterioration of the person to the extent that the person's continued absence from the facility is no longer appropriate. The reason for the return shall be documented in the person's record. The hearing shall be informal with both the facility staff and the person given the opportunity to present information and arguments. If the person desires, a member of the staff may act as advocate

(f) The hearing officer shall determine within 24 hours of the conclusion of the hearing whether the person has violated the conditions of the absence or whether the person's condition has deteriorated to the extent that continued absence from the facility is no longer appropriate. The hearing officer shall put his or her decision in writing and shall include an explanation of the reasons for the decision and the information relied upon. If the hearing officer determines that the absence shall be revoked, the decision shall be placed in the file of the person. If the hearing officer determines that the absence shall not be revoked, the person shall be permitted to leave the facility pursuant to the conditions of the absence.

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 January 21, 1994

TRD-9435051

Ann K Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date February 11, 1994

Proposal publication date November 9, 1993

For further information, please call (512) 206-4670

Subchapter B. Continuity of Services—Mental Health

• 25 TAC §§402.51-402.61

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§402.51-402.61, concerning continuity of services—mental health, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8136).

The purpose of the repeal is to allow for the contemporaneous adoption of a new subchapter which updates and clarifies procedures relating to continuity of services for persons receiving mental health services. In addition, the new subchapter implements provisions of House Bill 1713 and Senate Bills 160 and 252 (73rd Legislature).

No public comment was received on the proposed repeal.

The repeals are adopted under the Texas Health and Safety Code, §532.015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

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 January 21, 1994

TRD-9435061

Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date February 11, 1994

Proposal publication date November 9, 1993

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

• 25 TAC §§402.51-402.67

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§402.51-402.67. Sections 402.51, 402.53-402.57 and 402.59-402.66 are adopted with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8136-8142). Sections 402.52, 402.58, and 402.67 are adopted without changes and will not be republished. The new sections are adopted contemporaneously with the adoption of the repeal of the subchapter they replace, also known as Chapter 402, Subchapter B, relating to Continuity of Services—Mental Health.

The proposed new rules update and clarify continuity of care procedures for persons receiving mental health services. The new subchapter also articulates continuity of care procedures for individuals discharged to a county jail and includes a new section addressing special considerations for treatment plan reviews for minors.

Throughout the document, changes are incorporated to clarify the existence of one individualized treatment plan (ITP) for the person served. Although there are several identifiable phases in the evolution of that plan, it is illustrated that those phases require a review of the treatment plan with revisions made as appropriate to the current needs of the individual. As a result of this clarification, the definitions of "continuity of services," "individualized treatment plan (ITP)," and "interim plan for services" are revised in §402.53.

Also in §402.53, the definition of "absence" is revised to reflect the phasing-out of the terms "pass" and "furlough." The terms are deleted or replaced throughout the rest of the subchapter.

The definition of "continuity of services" is revised to clarify that continuity of services must also be addressed for individuals who move from the community to the state facility. Section 402.54(a) is similarly revised. Section 402.54(b) is revised to clarify the existence of a single treatment plan which evolves in several identifiable phases. Language is added to note that each MHA is required to follow procedures outlined in §401.164 (relating to Notification and Appeals Process) of Chapter 401, Subchapter G of this title (concerning Community Mental Health and Mental Retardation Centers), also adopted in this issue of the *Texas Register*.

Several revisions are made to §402.55 to clarify the existence of a single treatment plan. In addition, §402.55(e) is revised to reflect that the MHA in the area to which an individual being discharged to a county jail

will reside should be involved in the process of determining whether continued mental health services will be required for the individual.

Section 402.56 is revised to reflect the new section heading for §402.59. Additionally, reference to a written agreement between the MHA and the MRA is deleted from the section. Language referencing procedures in §402.11 of this title (relating to Admissions, Transfers, Absences, and Discharges) is deleted from §402.57.

Section 402.59 is retitled, "Transition Phase ITP Review and Revision" to clarify the discussion of a particular phase in the evolution of the single ITP. Section 402.59(a) is revised to reflect that the MHA's capacity to provide appropriate levels of treatment and care will be considered by the facility treatment team when determining whether to discharge/furlough an individual. The title of Exhibit D is revised to reflect its relation to the transition phase of continuity planning.

Section 402.59(d) is revised to clarify that the ITP will identify the safest, most appropriate living situation, and that more than one living situation may need to be explored until one which best meets the needs and desires of the individual is located. Language is added to §402.59(e) to reflect the need for involvement of the individual (and/or legal representative) in any telephone discussions between the facility treatment team/coordinator and the MHA representative which are conducted for the purpose of reaching consensus on revisions to the treatment plan. As noted on the document, it is clarified in §402.59(i) that the discharge summary must be mailed, faxed, or otherwise delivered to the facility within ten days of discharge/absence or trial placement.

Section 402.60 is retitled, "Special Considerations for ITP Reviews for Minors During the Transition Phase" to reflect the transition phase as one phase in the evolution of the treatment plan. Additional revisions are made throughout the section to further clarify this point.

Section 402.61 is retitled, "Absence for Trial Placement/Discharge and ITP Reviews During the Community Support Phase" to reflect the community support phase as one phase in the evolution of the treatment plan. Additional revisions are made throughout the section to further clarify this point.

Section 402.62 is revised to clarify that an ITP will be developed which is consistent with the basic elements of the previous ITP.

In addition to minor revisions clarifying the existence of a single treatment plan, §402.63 is revised to clarify the need to report any instance of mistreatment, abuse, neglect, or injuries of unknown origin. Section 402.64 is revised to clarify the existence of a single treatment plan which evolves in several phases. Exhibit D is retitled "Transition Plan" in §402.65.

A public hearing to accept oral testimony on the proposed sections was held December 3, 1993, in Austin, Texas, where testimony was accepted from Advocacy, Inc., Austin, Texas; Mental Health Consumers, Austin, and a pri-

vate citizen. Written comments were received from 13 individuals or organizations, including, Advocacy, Inc, Austin, Jack Aycok, Nolan County Judge, Sweetwater; Dallas County MHMR, Dallas, Deep East Texas Regional MHMR Services, Lufkin, Golden Triangle Alliance for the Mentally Ill, Beaumont; The Gulf Coast Center, Galveston; Harris County MHMRA, Houston, Helen Farabee Center, Wichita Falls, Life Management Center for MHMR Services, El Paso, MHMR Services for the Concho Valley, San Angelo, TEXAMI, Austin, Texas Council of Community MHMR Centers, Austin, and the Tropical Texas Center for Mental Health and Mental Retardation, Edinburg. All commenters offered recommendations for changes.

A commenter expressed general concern that appropriate aftercare planning for individuals being discharged was not conducted. The commenter noted that the subchapter should address the need for inpatient treatment facilities to provide for aftercare for issues other than medication. The commenter also requested that the subchapter address the need for aftercare planning to take into consideration the problems that lead to readmission to hospitals. The department responds that appropriate discharge planning should be conducted from a holistic approach. Furthermore, it is the responsibility of the facility and MHA representatives to locate the safest, most appropriate living situation for the individual after discharge. The subchapter clearly addresses the need for consideration of issues other than medication. Revisions have also been made to ensure the individual's participation in reaching consensus on the plan.

Another commenter noted that, "the trade-off of state hospital beds versus jails, nursing homes, and the streets, is no good trade." The department agrees, but notes that unfortunately, limited resources make it impossible to always provide ideal situations. An emphasis on planning for discharge and identifying stable living situations and support systems, however, should help to stretch resources and enhance the quality of life for individuals receiving services.

A commenter suggested the department re-evaluate its conclusion that there is no anticipated cost to comply with the proposed new sections. The commenter noted that the expectation that "the MHA will ensure continuity of services activities, including the assignment of a continuity of services staff person to each person served at admission to any TXMHMR service" carried with it a fiscal implication. The department responds that this requirement has been in place for many years, so there is no added fiscal implication.

A commenter suggested that the implementation of continuity of care policies and practices requires the opportunity for staff to ask questions, air concerns, and obtain consistent direction across the state. The commenter recommended an "implementation phase" which provides for sufficient, long-term technical assistance and review of the rule (with changes, as needed). The department responds that as with any rule, technical assistance will be available to anyone needing it. Recommendations for revisions are always

welcome, and will be addressed as necessary. In addition, the suggestion will be conveyed to the Mental Health Services division so that consideration may be given to additional training/assistance opportunities.

The same commenter suggested that the provision of models for memoranda of understanding recommended throughout the subchapter would enhance the probability that practices are consistent and well-understood across the state. The department agrees, and will attempt to identify (or develop) models and share them with interested parties at a later date.

Concerning §402.53, a commenter noted that a definition for "legal representative" was not included in the subchapter, and suggested such a definition might be a useful addition. The department agrees, and has included a definition.

Also concerning §402.53, a commenter noted that the definitions for "mental health authority" and "mental retardation authority" did not correspond with those in the Health and Safety Code, Chapter 7, §533.035. The department agrees, and the definitions have been appropriately revised.

Another commenter suggested that the definition of "individualized treatment plan" be revised to note that the "community support plan" would be based on the aftercare plan. The proposed language, the commenter noted, seemed to imply otherwise. The department agrees, but notes that revisions throughout the subchapter clarify the existence of only one treatment plan which evolves in several phases. The term "community support plan" has been deleted.

Concerning §402.55, a commenter wanted to know the criteria that would be used to determine if a good-faith effort has been made. The commenter also wondered how long a need specified in the individualized treatment plan could go unaddressed without some alternative plan of action. The department responds that specific criteria cannot be identified, rather, the contract manager and field coordinators will review documentation to ensure that a good-faith effort has been made as it relates to the specific conditions which exist in each area. Unmet needs will be prioritized and efforts made to ensure their provision as soon as possible, in addition, plan reviews present opportunities to update services and, if appropriate, reprioritize needs.

Concerning §402.53, a commenter asked that the phrase, "and as consistent with available resources," be added to the end of the definitions of MHA and MRA. The department responds that the definitions are taken from statute.

A commenter asked that the phrase, "any TXMHMR service" be revised to read, "any TXMHMR facility." The commenter noted that as written, the wording implied that the subchapter applied to all community center services programs. The department responds that the broader use of the term was intended.

A commenter requested that §402.55(b)(2) be revised to clarify when the 10 calendar

timeframe begins. The department agrees, and the phrase, "of discharge or absence for trial placement" is added.

Concerning §402.55(b)(4), a commenter noted that case management is a core service, and asked how the department could justify not making case management services available to those persons who qualify. The commenter questioned how long the department would find failure to provide those services acceptable, and suggested the department devise a method of tracking how many persons are denied case management services and documenting the justification for such denials. The department responds that unfortunately, a situation exists where there are more people requiring services than resources. Individuals found to require case management services who are not immediately assigned a case manager are placed on a waiting list with services provided as they become available. Information regarding those who are denied case management services (and justification) as well as information about those placed on waiting lists is entered into the CARE system and tracked in that manner.

Another commenter asked that language in §402.55(b)(5) be revised to state that the assessment is agreed to by both facility and center staff. The department responds that the collaborative approach to treatment planning and the need for consensus on the plan already implies the recommended language. The subchapter has been revised to promote enhanced collaboration.

With regard to §402.55(d), a commenter asked that the department emphasize efforts to look at more permanent and satisfactory discharge plans for individuals placed in personal care homes. The department responds that every effort is made to ensure that the individual resides in a living situation that is most appropriate to his or her needs and desires. Plan reviews (at minimum) present opportunities to review current conditions and consider and implement changes, including, if appropriate, locating more secure and permanent housing.

A commenter asked what guidelines or criteria would be used to make the determination of the need for continued mental health services in §402.55(e). The commenter asked that it be clarified that the MHA shall engage in aftercare planning and follow-up care for the person when he or she is released from jail. The department responds that specific criteria cannot be provided regarding the determination of the need for continued mental health services because each situation must be considered on an individual basis. The department is not able to mandate that a jail system allow an MHA to take part in aftercare planning, however, this subchapter does not preclude an MHA from making efforts to arrange for mental health services for an individual after discharge from jail.

Concerning the same section, a commenter noted that the Texas Commission on Jail Standards requires county jails to provide basic medical services, including mental health services, to inmates. The commenter requested that language be revised to clarify the jail's obligation. The department responds

that this subchapter is intended to outline continuity of care responsibilities for TXMHMR facilities and MHAs. It is not intended to outline the responsibilities of other parties.

With regard to §402 56(b)(2), a commenter suggested that the language provided no indication of what constitutes valid justification. The commenter noted that from the perspective of the client or person receiving services, the fact that the person needs services and has identified the MHA as appropriate to meet his/her needs should be sufficient and valid justification, but the commenter also noted that varying perspectives on the issue existed. The commenter asked that the department develop standards to provide guidance in this decision. The department responds that attempting to identify every situation would be an impossible task, and inevitably situations would be overlooked. The MHA must consider each situation on an individual basis.

The same commenter asked that "emergency mental health services" as used in §402 56(b)(3) be defined. The department responds that services required will vary depending on the emergency presenting itself.

The same commenter also asked that language from Exhibit C be added to §402 56(b)(5). The suggested language spells out specific instances in which the county of residence may not be able to be determined. The department responds that the purpose of Exhibit C is to provide additional information for MHAs in determining the county of residence. The general statement in the rule ("In cases where the county of residence cannot be determined ") is sufficient and encompassing.

Concerning the same section, a commenter speculated difficulties concerning individuals already assigned to an MHA who have not been served for some period of time by that MHA. The commenter noted that a small group of individuals already assigned to an MHA are extremely transient, and suggested that obtaining approval from the former MHA to redesignate the individuals with a new MHA would be time-consuming and difficult. The commenter suggested creating a "transient county designation" which would preclude this approval process. The department responds that the purpose of the approval process is to ensure that the new MHA receives relevant information about the individual so that continuity of care may be provided. A "transient county designation" would not benefit these individuals as it would preclude such continuity.

With regard to §402 57, a commenter asked that the subchapter be revised to clarify who has the authority to admit to a state facility and/or what will be done regarding disagreements about admissions. The department responds that the specifics of admissions to a state facility exceed the scope of this subchapter. Information about admissions is included in Chapter 402, Subchapter A (concerning Admissions, Transfers, Absences, and Discharges—Mental Health Facilities).

With regard to §402 57(b), a commenter suggested that there is a discrepancy between

the circumstances under which a preadmission screening by the MHA is required and the types of state facility admissions that are counted in community center performance and workload measures. The commenter noted that community centers are not consistently contacted to provide the screening when a person presents to a state facility and meets one of the criteria listed as an exception. The commenter asked that the section be revised to require the state facility to contact the community center to request the screening. The department responds that a facility must be able to provide emergency services to an individual requiring them, and is mandated to do so by law. Difficulties relating to exceptions to the preadmission screening should be addressed and worked out on a local level.

Concerning §402 57(e), a commenter noted the benefit of having the facility notify the MHA on the next working day if the patient is admitted after 5:00 p.m. or on weekends. The commenter also suggested it would be even better to have the facility contact the MHA if there is an MHA 24-hour phone line. The department responds that the means of providing this notification should be worked out on a local level between the MHA and the facility.

A commenter noted that the intent of §402 57(e) seemed to be to give priority to allowing the screening of the individual to take place, but suggested the language was not clear. The commenter suggested adding the phrase, "the receiving MHA will perform the screening regardless of county of residence and will immediately notify the MHA for the county of residence." The department responds that if an individual is presenting for services in an emergency situation, §402 56(b)(3) clearly states that the individual will receive the services in the county where the person is found to be in need of or requests services. However, if the individual requests services and it is not found to be an emergency situation, a referral to the appropriate MHA would be made.

A commenter suggested that the role of the continuity of services staff person as outlined in §402 58(b) appeared to be rather passive. The department responds that active participation in transition planning is clearly articulated in the section. "Passive" is not a term which is appropriately utilized when referring to an effective continuity of services staff person.

Concerning §402 56(b)(3), a commenter noted that this documentation was not currently a procedure at his MHA, and asked whether he should begin doing this. The department responds that this is a procedure which has been required for a considerable amount of time, and the individual should begin completing the documentation.

With regard to §402 59(a), a commenter asked how bed capping would impact the process. The department responds that enhanced collaboration between the MHA and the facility, which is promoted throughout this new subchapter, should serve to alleviate potential difficulties relating to bed capping.

Another commenter noted that maintaining the authority to discharge solely with the facility treatment team is inconsistent with the

system directions under discussion with respect to the concepts of "bed capping" and "single portal authority." The department responds that although the facility treatment team retains clinical authority, the decision to discharge is made with apt consideration of available community alternatives and the capacity of the MHA to provide appropriate levels of treatment and care. Furthermore, the collaborative approach to treatment plan reviews during the transition phase promoted throughout this subchapter leads to more cooperative decision making which is consistent with system directions.

Concerning the same section, a commenter expressed concern over the characterization of "appropriate levels of treatment and care" in the community as a "willingness of the MHA" issue. The commenter noted that alternatives are totally dependent upon the types and quantities of services contracted for by TXMHMR, the commenter noted that the availability of these things has nothing to do with the willingness of the MHA to serve consumers. The department responds that use of the term "willingness" was an inappropriate choice, the term has been replaced with "capacity."

With regard to §402 59(c), a commenter suggested specifying that the documents be delivered to the continuity of services staff of the appropriate MHA. The department responds that the current language does not preclude this.

Several commenters noted that the discharge summary referenced in §402 59(i) is an essential tool for the community center. The commenter asked that the 14-day timeframe for its submission to the community center be reduced. The department responds that the 14-day timeframe is presented as a maximum, every effort should be made to ensure provision of the form at an earlier date when possible. However, a significant portion of the information contained in the discharge summary should be exchanged between the facility and the MHA through plan reviews and revisions. Again, enhanced collaboration between the MHA and the facility should significantly reduce the dependence on a written summary to obtain information about the individual.

Several commenters took exception to language in §402 59(d), noting that it was not clear that more than one living situation might need to be explored with the individual prior to identifying the one that best meets the needs and desires of the individual. The department agrees, and language has been added to the section.

The same commenters expressed concern over the lack of the individual's involvement in any telephone conversations conducted for the purpose of obtaining consensus on the treatment plan between the facility treatment team/coordinator and the MHA representative. The department agrees, and a provision requiring the individual (and/or legal representative, as appropriate) to be invited to and involved in any such discussions.

A commenter suggested that §402 60 should be expanded to recommend inclusion of persons identified by the coordinator in each

community program in facility meetings pertinent to aftercare for minors. The department responds that as written, such involvement is not precluded.

A commenter asked that the term "should" be replaced with the term "shall" throughout §402.60. The department agrees, and language has been changed.

Concerning §402 61(a), a commenter noted that 24-hour notice of discharge is inadequate. The department responds that a collaborative planning approach should reduce the 24-hour notice to an administrative task.

A commenter noted that making the MHA responsible for "implementing community-based aspects of the aftercare plan" in §402 61(b) was not appropriate since the plan was developed by state facility staff. The commenter suggested the MHA should, at most, be responsible for "considering" as recommendations the state facility's community-based aftercare plan. The department responds that the MHA continuity of services staff person is expected to be actively involved in treatment plan reviews leading up to transition from the state facility to the community. Therefore, the MHA will be implementing a treatment plan that it helped to develop.

With regard to §402 61(c), several commenters noted that since the community support plan was developed within three weeks after discharge, a review of it 30 days after admission to community-based services was inappropriate. The commenter suggested holding the review 30 days after development of the community support plan instead. The department responds that the rule has been revised to clarify the existence of one ITP which evolves in several phases. As revised, that plan is to be reviewed within three weeks of discharge from the hospital to address any new issues that have arisen since discharge. The additional review at the 30-day point is intended to ensure that all issues have been addressed and that the provisions of the treatment plan are being implemented.

Another commenter suggested that the MHA should have 14 to 21 days to develop a community support plan after the individual attends his or her first appointment at the MHA. The commenter noted that in many cases, the consumer, shortly after discharge, is admitted to a local county hospital, jailed, or otherwise unable to be contacted. Based on revisions to the subchapter, the MHA is now required to conduct an ITP review within three weeks after discharge. Every effort should be made to attempt to contact the individual who misses the first appointment to ensure that services are provided.

The same commenter asked whether provisions of §402 61(c) were applicable to persons who are not currently admitted to center services but who will be admitted during the aftercare appointment or to all persons discharged from a state facility regardless of admission status with the center. The department responds that the provision applies to all persons discharged from a state facility.

Concerning §402 61(e), a commenter noted that requiring the MHA to include in the com-

munity support plan the "mental health and other health care services provided in the mental health facility" potentially obligates the outpatient services to provide hospital levels or near-hospital levels of service. The commenter suggested that the requirement places the state facility in a position to dictate professional practice to the MHA. The commenter suggested revising the section to delete the absolute requirement that the MHA include services identified by the state facility, but determined by the MHA to be inappropriate or unavailable. The department responds that the MHA is involved in treatment plan reviews and revisions leading up to transition from the facility to the community. The treatment planning process is collaborative, ensuring that the individual actually receives appropriate services.

A commenter noted that the same needs reflected in §402 61(e) should be considered and identified in subsection (f). The commenter also suggested that documentation should be provided identifying the need, the reason why the need cannot be addressed, the potential effects of not addressing the need, and a plan to revisit these issues and attempts to access the services in the future. The department responds that the information required in subsection (f) is in addition to that required in subsection (e), therefore, these needs are already identified as needing to be addressed. The purpose of ongoing reviews and revisions of the ITP is to ensure that needs which are not met early on are addressed at a later date, if still appropriate.

Also concerning §402 61(e), a commenter asked if the requirements of the community support plan should track the requirements of a service plan listed in the MH and MR Standards. The department responds that language referencing a community support plan has been deleted, instead, the ITP is reviewed and revised. Requirements of ITPs must be met.

A commenter asked for a definition of admission as used in §402 61(f) and (h). The department responds that admission is the point at which the individual is accepted to services at the MHA.

Concerning §402 62, a commenter asked that the aftercare plan, if it continues to be appropriate, may be deemed by the MHA as the interim plan. The department responds that the term "aftercare plan" is no longer utilized, rather, the ITP is revised at the transition phase. If this plan is readily available, the MHA is not precluded from using it as the interim plan.

The same commenter noted that timeframes for the transfer of patient information are different from MHA to MHA then they are between the facility and the MHA. The commenter noted that the issue is good clinical documentation readily available to the receiving treatment personnel. The department agrees, and has attempted to keep this in mind in establishing timeframes. However, the timeframes outlined are considered maximum, collaborative efforts should enhance the exchange of information.

Concerning §402 62(a)-(c), a commenter suggested that some dialogue should occur between the original MHA and the new MHA

before the case is closed at 90 days, with documentation included regarding the status of the individual seeking services at the new MHA. The commenter noted that an additional concern has to do with the implication that the individual might well be left with this issue not being addressed for 90 days. The department responds that closing the individual's record is an administrative task. If an MHA has not heard from the new MHA within 90 days, a call is generally made to the new MHA to confirm the transfer so that the case can be closed.

The same commenter asked that a timeframe for the development of the interim plan for services with the person requesting services be included. The department responds that the interim plan for services is required to be developed upon admission.

With regard to §402 63, a commenter asked if the MHA is still responsible for preparing a community support plan under §402 61 when the consumer is discharged to a nursing facility. The department responds that the development of a "community support plan" has been replaced with an ITP review and revision. According to §402 61, the MHA is required to conduct community support assessments and services for all such placements. This includes ITP reviews and revisions to ensure that the level of services provided to the individual meets their needs.

Concerning §402 63(a), a commenter suggested that the MOU should also address the provision of specialized services under PASARR, if appropriate. The department responds that these issues should be addressed as part of the treatment plan review process.

Concerning the same section, a commenter noted that his facility did not have any MOUs with nursing homes. The department responds that the adoption of MOUs is a recommendation, if the issues can be addressed and resolved in an alternative manner, that is highly appropriate.

Concerning §402 63(b)(3), a commenter noted that even if the patient consents to including the family member in the planning, the legal representative could deny the family's inclusion. The commenter suggested that no thought has been given to the patient who must return to the care of his/her family, in which case the inclusion of the family in the treatment planning is essential. The department responds that the family's involvement in the treatment planning is not precluded unless the individual or his/her legal representative objects. A definition of legal representative has been added to clarify its meaning.

Regarding §402 63(b)(4), a commenter wrote that unmet needs in the area of medication should only be addressed by nursing staff. The department responds that any staff should be able to determine if the individual who has been prescribed medication is out of that medication. Additionally, any staff should be able to contact the physician or nursing staff if the individual reports adverse effects.

A commenter recommended revision §402 63(b)(5) to note that attempts to remedy

the problem might include, "an offer to assist the individual to find an alternate placement in another facility." The department responds that the section has been revised to reflect that the community support worker shall report the situation, and that the MHA is responsible for developing and implementing a plan of action. The plan of action could include a number of things, many of which may be able to address the problem without disruption to the individual

The same commenter asked that §402.63(b)(5) be revised to reflect TDHS language addressing instances of mistreatment or injuries of unknown origin. The department agrees, and language has been added.

Another commenter suggested deleting §402.63 and §402.64 from the subchapter altogether. The commenter suggested that the sections create separate sub-components of a system which impede continuity of care. The department responds that the discharging individuals to nursing homes and the private sector create a different set of circumstances which require slightly different procedures. The sections need to remain.

Concerning §402.64, a commenter noted that the last sentence contained an incorrect reference. The department agrees, and the correct reference has been included.

Concerning §402.65, a commenter wrote to offer support for Exhibit C. The department appreciates the support.

Another commenter noted that Exhibit C does not provide a means to record that the person resides in another state. The department responds that individuals who reside in another state are dealt with through procedures outlined in Chapter 403, Subchapter H, concerning Interstate Transfer.

These sections are adopted under the Texas Health and Safety Code, §532.015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

§402.51 Purpose. The purpose of this subchapter is to outline uniform procedures to ensure continuity of services for persons with mental illness who:

(1) are admitted to mental health facilities of the Texas Department of Mental Health and Mental Retardation (TXMHMR),

(2) are absent for trial placement (formerly referred to as furlough) or discharged from TXMHMR mental health facilities to community-based mental health services, or

(3) transfer from one mental health authority to another.

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

Absence—When a person is physically away from a campus-based location (ward or dorm). A person may be absent for

hospitalization, a home visit, a special activity, transfer to another component, unauthorized departure, other reasons, or trial placement (formerly referred to as furlough). In the event of an absence of more than 72 hours for a person who is involuntarily committed, the court which issued the order must be notified. Specific absence codes are used for tracking by the Client Assignment and Registration (CARE) system.

Client Assignment and Registration System (CARE)—The TXMHMR computerized database which contains assignment and treatment information about persons served.

Community-based service (CBS)—Refers to services provided through community programs under the jurisdiction of the Texas Department of Mental Health and Mental Retardation, by community mental health and mental retardation centers, and by independent contract providers established pursuant to Texas Civil Statutes, Article 5547-202, et seq.

Continuity of services—The activities designed to ensure coordination of services to the person served, particularly between services within the TXMHMR system, to include: joint discharge planning, participation in treatment plan reviews and revisions during the transition phase, development of an interim plan for services (when necessary), designation of a continuity of services staff person for all individuals admitted to the MHA, planning/linking activities prior to transfer or addition of services, treatment plan review and revision during the community support phase, implementation of the treatment plan recommendations and revisions while the individual is in the community, obtaining adequate resources to meet the person's needs, and other activities as outlined in the TXMHMR MH Community Services Standards.

Continuity of services staff person—A staff person specifically designated by the mental health authority to conduct continuity of services activities, e.g., case-worker, case manager, liaison worker.

County of admission—The county where a person needs or requests services.

County of residence—The county where a person resides. County of residence is determined by the person's address with no minimum time being considered.

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

Discharge—The termination of treatment of a person served by a facility or a CBS which denotes the end of active treatment by the facility or CBS.

Individualized treatment plan (ITP)—The plans which an individual and his or her provider develop to address the problems, goals, and direction of service delivery. Throughout the process of hospitalization and transfer to the community the ITP evolves in several distinct phases, each

addressing the particular needs which are primary at that particular time. Those phases, listed here chronologically, are referred to as:

(A) **Inpatient phase.** The ITP is developed and/or reviewed and revised by the treatment team of the person served (of which the person served 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 patient's motivation and capacity to experience further growth in community-based treatment programs.

(B) **Transition phase.** The ITP is reviewed and revised jointly by the facility, mental health authority, person served, and other interested individuals prior to the absence for trial placement or discharge of a person served 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.

(C) **Community support phase.** The ITP is reviewed and revised by the mental health authority and the person served 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 issues that have arisen since discharge from the more intensive care provided in the state facility.

Interim plan for services—The initial treatment plan completed by the MHA and the consumer upon admission to services at a new MHA or upon transfer from one MHA to another. The plan should be written in clear, straightforward language which provides the person with necessary information and provides guidance for the staff. As outlined in §402.62 of this title (relating to Development of Interim Plan for Services for Individuals who Change MHAs) this plan serves as the foundation for the ITP.

Legal representative—The parent/conservator of a minor or the legal guardian of an individual, when applicable.

Local service area—A geographic area made up of one or more counties which serves to define and delimit the population of persons residing in the area, including the subpopulation of persons with mental illness and mental retardation, and the extent of the responsibilities of the local

mental health and mental retardation authorities for the area

Mental health authority (MHA)—The entity designated by the department to plan, facilitate, coordinate, and provide such services to persons with mental illness or with a dual diagnosis of mental illness and chemical dependency as are required to be performed at the local level by state law and by the department

Mental health facility All state hospitals and state centers providing mental health services and any other agency which is now or may hereafter be a facility of the Texas Department of Mental Health and Mental Retardation. The term includes the Harris County Psychiatric Center

Mental retardation authority (MRA)—The entity designated by the department to plan, facilitate, coordinate, and provide such services to persons with mental retardation as are required to be performed at the local level by state law and by the department

Personal care home—An establishment, including an establishment formerly known as a board and care home, that

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment,

(B) provides personal care services, and

(C) provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or services which meet some need beyond basic provision of food, shelter, and laundry

Planning-linking activities—Those activities which facilitate communication between the person served, CBS staff, facility staff, and others (as appropriate), to the end of assuring the coordination and delivery of services. Such activities may include, but are not limited to, visits by the person served to the program/placement under consideration for transfer/discharge, familiarizing the person with a program, and introducing the person to program staff.

Screening—A procedure to determine appropriateness and eligibility for admission to state mental health facilities or community-based services.

Service district—County or counties for which a facility has responsibility to provide inpatient services to individuals residing in that area.

State facility—Any state hospital, state school, state center, or other agency which is now or may hereafter be a facility of the Texas Department of Mental Health and Mental Retardation.

TXMHMR service system—All state facilities and all community mental health and mental retardation centers.

§402.54 General Principles Regarding Continuity of Services

(a) The concept of continuity of services is designed to ensure that individuals moving from the structured environment of the state facility to the community, from one MHA to another, or from the community to a state facility are provided every support available to enable a successful transition

(b) The individualized treatment plan (ITP) is a tool which is utilized to facilitate the transition process, and, as a result, is a dynamic document. As the individual's needs change throughout the transition process, the plan is reviewed and revised to reflect those changes. Key points in that comprehensive development process are identified throughout this subchapter as the transition phase and the community support phase (see definition of individualized treatment plan (ITP) in §405.53 of this title)

(c) Each MHA shall follow procedures outlined in §401.164 (relating to Notification and Appeals Process) of Chapter 401, Subchapter G, of this title (concerning Community Mental Health and Mental Retardation Centers)

§402.55 Areas of Responsibility

(a) The department has designated mental health authorities (MHAs) within each of the local service areas as responsible for effecting continuity of services for persons served by the department in their local service areas. The MHA will ensure continuity of services activities, including the assignment of a continuity of services staff person to each person served at admission to any TXMHMR service and at all times, regardless of transfer, until discharge from the TXMHMR service system.

(b) To facilitate continuity of services, the department shall have a contract or memorandum of understanding with each MHA which requires that the facility keep the MHA informed regarding plans, progress, and proposals for resumption of outpatient treatment, and which requires that the MHA provide:

(1) a good-faith effort to make available and accessible those services specified in the ITPs of those persons being discharged, placed on absence for trial placement, or transferred to the MHA, for as long as the MHA determines that the person needs services, with documentation of clinical justification for changing or discontinuing services in the person's record;

(2) documentation of personal or telephone contact within 10 calendar days of discharge or absence for trial placement (unless specified to be accomplished

earlier in the ITP), the scheduling of follow-up appointments for persons referred for community support, and documentation of the MHA's efforts to have persons served meet those appointments;

(3) documentation in records of persons served to reflect the MHA's efforts to extend services specified in the ITP to all persons served, including those who are hard to reach, i.e., who miss without re-scheduling one or more significant service contacts (such as an appointment with a physician, case manager, or caseworker, or another activity important to achieving the primary treatment goal) within 90 days of an absence for trial placement or discharge, unless the person expressly refuses the services offered, in which case the rejection of services should be documented in the record of persons admitted or in a log for persons not admitted to services;

(4) a good-faith effort to make available case management services to those persons who qualify according to TXMHMR criteria, with documentation of any exceptions,

(5) a good-faith effort to arrange for nonclinical support such as food, clothing, and shelter in cases in which the department's assessment indicates that long-term hospitalization, and chronicity of mental illness, justify such action. This provision will apply only in situations in which no other resources are available. Documentation of the assessment of each person's need for nonclinical support services will be filed in the plan of service using the "Non-Clinical Support Needs Assessment" form, which is referred to in §402.65 of this title (relating to Exhibits) as Exhibit A; and

(6) adherence to the timeframes contained in the "Nursing Facility Aftercare Assessment Schedule," which is referred to in §402.65 of this title (relating to Exhibits) as Exhibit B.

(c) Non-MHAs which contract with the department to provide community-based extended, transitional, or geriatric care must sign a memorandum of agreement with the local MHA outlining the responsibilities for continuity of services and monitoring.

(d) Placements to personal care homes will be made only to facilities licensed by the Texas Department of Human Services (TDHS). Facilities which appear to be operating as unlicensed personal care homes will be reported to TDHS. Facility/MHA staff who have questions should contact the TDHS Bureau of Long-Term Care at (512) 834-6697.

(e) In the event an individual is discharged to a county jail, the discharging mental health facility treatment team, in conjunction with the MHA in the area to which the individual is being discharged,

will determine if continued mental health services will be required. If ongoing mental health services are necessary, the mental health facility will coordinate with the MHA to determine whether the services will be provided by the county jail or the local MHA. If the local MHA is identified as the responsible agent, the provisions of this subchapter shall be followed. If the county jail will be providing ongoing mental health care, this will be documented by the mental health facility.

§402.56 Determining County of Residence

(a) The local MHA for each person served will generally be determined by the county of residence as established by completing the "Mental Health Services County of Residence Determination Worksheet," which is referred to in §402.65 of this title (relating to Exhibits) as Exhibit C.

(b) The local MHA will not be determined by the county of residence in the following situations:

(1) In cases in which a dually diagnosed person is receiving services from both an MHA and an MRA, the local authority with responsibility for the person will be the one at which the person receives priority services.

(2) Consideration will be given to a request for another MHA to assume responsibility for provision of services for individuals who have a valid justification to receive services outside of the county in which he or she resides. The determination to transfer responsibility will be made by the receiving MHA after giving due consideration to the needs and wishes of the consumer and family. In such instances, the continuity of services staff person at each MHA will ensure compliance with the requirements of this subchapter, consistent with §402.59 of this title (relating to Development of an Interim Plan for Services for Individuals who Change MHAs).

(3) Emergency mental health services will be provided to individuals by the MHA for the county where the person is found to be in need of or requests services.

(4) In cases in which an MHA assumes financial responsibility for a residential placement or support costs, it will remain the responsible MHA unless the MHA where the residential placement is located agrees to accept the responsibility.

(5) In cases where the county of residence cannot be determined, the MHA for the county of admission will be responsible.

(c) If a person who requires MHA community support services is discharged or is absent for trial placement from a facility into a private service system outside the

MHA's local service area, the MHA shall coordinate with the MHA serving the receiving local service area and determine whether transfer of MHA responsibilities is in the person's best interest to ensure provision of all needed services. Provisions of §402.64 of this title (relating to Entry into Private Treatment Program of a Person Served) are to be followed.

§402.57 Preadmission Screening, Referral, and Determination of the Least Restrictive Environment.

(a) Prior to a person's admission to a mental health facility, the appropriate MHA will be responsible for screening the person to determine the most appropriate placement in the least restrictive environment.

(b) Persons admitted to a mental health facility which is not designated as the MHA for the local service area must receive a preadmission screening by the MHA, except in situations in which:

(1) there is a memorandum of understanding between the mental health facility and the MHA where it is stated that the facility will perform the screening.

(2) there is an emergency admission, or

(3) a person is physically present at the mental health facility and contact with the MHA determines that appropriate community-based services are not readily available.

(c) The MHA must communicate information necessary for optimum treatment to the state facility prior to or at the time of admission, to include:

(1) identifying data, including address,

(2) legal status,

(3) pertinent medical and medication information,

(4) behavioral data, and

(5) other pertinent treatment information.

(d) If a person is admitted to a mental health facility on an emergency commitment or order of protective custody without being prescreened by the appropriate MHA, the facility will immediately notify the appropriate MHA.

(e) In instances where an MHA screens a person who resides in another county, the screening MHA will immediately notify the MHA for the county of residence.

§402.59 Transition Phase: ITP Review and Revision

(a) The decision to place a person on absence for trial placement or to dis-

charge the person from a mental health facility is the professional responsibility of the facility treatment team. Criteria for discharge have been outlined in Chapter 402, Subchapter A, of this title (relating to Admissions, Transfers, Absences, and Discharges—Mental Health Facilities). In making this decision, consideration should be given to available community alternatives and the capacity of the MHA to provide appropriate levels of treatment and care.

(b) Prior to the person being placed on absence for trial placement or discharge from a mental health facility, a treatment plan review focusing on transition issues should be conducted with participation from:

(1) the mental health facility treatment team/coordinator;

(2) the MHA representative,

(3) the person served and/or his/her legal representative;

(4) family members with the consent of the person served or his/her legal representative, and

(5) other appropriate individuals requested by the person served or his/her legal representative.

(c) The revised ITP must, at minimum, be accompanied by the "Transition Phase ITP Review Phase (MHRS 4-6 form), which is referred to in §402.65 of this title (relating to Exhibits) as Exhibit D; the "Referral Instructions" (MHRS 4-7 form), which is referred to in §402.65 of this title (relating to Exhibits) as Exhibit E, and copies of all available pertinent current summaries and assessments. Copies of these documents will be mailed, faxed, or otherwise delivered to the appropriate MHA within 24 hours of discharge or absence for trial placement.

(d) The revised ITP will identify the safest, most appropriate living situation that will be available to the person served if absent for trial placement or discharged. More than one living situation may need to be explored until one which best meets the needs and desires of the individual is located. Documentation in the person's record established by the MHA will reflect the discussion of the placement(s) with the person and indicate the person's reaction (acceptance or refusal) to the proposed placement(s).

(e) If circumstances preclude joint meetings between the facility treatment team/coordinator and the MHA representative, consensus on the plan should be achieved via telephone prior to absence for trial placement or discharge. Such consensus between the facility and the MHA shall be documented in the person's record, in-

cluding the names of the staff who developed the plan, by the MHA and documented in the revised treatment plan by the facility. The individual served (or legal representative, as appropriate) shall be invited to and involved in any such discussions.

(f) The person served or legal representative, as appropriate, shall sign the revised treatment plan, or documentation of the reason for failure to sign shall be made. The plan shall include a statement that persons signing the plan understand that it and supporting documents will be sent to the MHA.

(g) A person who is absent for trial placement is the responsibility of the MHA unless there is an interagency agreement which specifies services are to be provided by the facility.

(h) A transition phase treatment plan review and revision is not necessary for persons on unauthorized departures from facilities. For nursing facility placements, the "Initial Aftercare Form," which is referred to in §402.65 of this title (relating to Exhibits) as Exhibit F, should be completed.

(i) Within ten days of discharge or absence for trial placement, the facility shall mail, fax, or otherwise deliver a copy of the individual's discharge summary to the appropriate MHA.

§402.60 Special Considerations for ITP Reviews for Minors During the Transition Phase

(a) Every effort shall be made to ensure participation of the parents/conservator of the minor in ITP reviews during the transition phase. If the parents/conservator are unable to attend in person, arrangements for attendance via teleconference shall be pursued. Other means of keeping the individual(s) informed, such as weekly phone calls, as appropriate, shall be considered.

(b) Upon admission to services, an estimated length of stay shall be developed in order to ensure that sufficient time is permitted to complete transition planning for minors.

(c) Under no circumstances shall a minor be discharged or absent for trial placement without the identification of a specific location where the minor will be located for trial placement or discharge. Although the minor may, in some circumstances, be discharged/absent for trial placement in the custody of the state, the treatment plan may not simply identify the state agency as the location of trial placement or discharge.

(d) Minors age 16 and over who are voluntarily admitted to mental health ser-

vices and request discharge must be afforded the procedures outlined in §404.157 of this title (relating to Rights of Persons Voluntarily Admitted to Inpatient Services). However, every effort shall be made to ensure that the minor is released to a specific individual or location. The treatment planning process shall address the issue of procedures upon the minor's request for discharge early in the minor's stay.

§402.61 Absence for Trial Placement/Discharge and ITP Reviews During the Community Support Phase

(a) No later than 24 hours prior to an absence for trial placement or discharge, the facility will notify the MHA by telephone, fax, or written document of

- (1) identifying data, including address,
- (2) legal status,
- (3) when and where the person will be located for trial placement or discharged,
- (4) pertinent medical information,
- (5) current medications,
- (6) behavioral data, and
- (7) other pertinent treatment information, including the individualized treatment plan.

(b) The MHA, through its assigned continuity of services staff person, is responsible for implementing community-based aspects of the ITP from the time that absence for trial placement or discharge from the facility begins.

(c) An ITP review must be conducted by the MHA within three weeks after the person is absent for trial placement or discharged from the facility. The ITP review requires the participation of the MHA representative, the person served and/or legal representative and:

- (1) family members with the consent of the person served or his/her legal representative, and
- (2) other appropriate individuals requested by the person served or his/her legal representative.

(d) The ITP will be tailored according to treatment plan standards in the TXMHMR MH Community Services Standards and other applicable references.

(e) Mental health and other health care services provided in the mental health facility which are needed in the community by the person served will be addressed in the ITP review. The plan will also identify residential, vocational, educational, social, financial, and other supportive services in-

cluding case management, which are necessary and available to enhance or sustain the capacity of the person to function in the community. Involvement of family and/or community resources as support systems will be addressed.

(f) The ITP will contain the person's date of admission to community-based services and a description of any needs the person may have that cannot be addressed by present treatment.

(g) Should the person implicitly or explicitly refuse services, full documentation of this refusal must be made in the person's record to include staff actions to overcome the refusal and the person's response. The person's continuity of services staff person is responsible for ensuring that the person understands that continued services on an outpatient basis might prevent a relapse which may lead to readmission.

(h) Thirty days after admission of the person to community-based services, the designated continuity of services staff person from the MHA will conduct a follow-up review of the ITP and community adjustment. This review must include a summary of contacts, interventions implemented, and the response of the person served to problems/goals/objectives. The review should also address any interventions which have not been implemented and the reasons why. Subsequent reviews are to follow TXMHMR MH Community Services Standards and other applicable standards.

(i) As stipulated in recent negotiations and in the 1992 RAJ Settlement Agreement, the provision of community support services to persons discharged from a state hospital and reassigned to an MHA will self-monitor their community support services and provide a quarterly report to the RAJ coordinator.

§402.62 Development of an Interim Plan for Services for Individuals Who Change MHAs

(a) When a person relocates to another county and seeks services from the MHA without prior knowledge of the original MHA, the MHA where the person is seeking services will promptly notify the original MHA.

(1) The original MHA will forward information, including information outlined in TXMHMR MH Community Services Standards (standard 6.3.P), to the new MHA within 5 calendar days of notification. The original MHA will maintain the person's case in open status until notified that the person has been admitted to services at the new MHA, or for 90 days, whichever comes first.

(2) Upon admission, the new MHA arranges for the transfer of county of

residence in CARE by the original MHA and develops an interim plan for services with the person requesting services.

(3) Within 45 days following the development of the interim plan for services, an individualized treatment plan which is consistent with the basic elements of the previous ITP is developed

(b) When a person relocates to a new county with the knowledge of the original MHA, the original MHA maintains the person in open status until the new MHA admits to services, or for 90 days, whichever comes first. The following steps are followed to implement the transfer

(1) The assigned continuity of services staff person at the original MHA notifies the new MHA of the person's request for services, and discusses any clinically relevant information which might help the new MHA to meet the person's needs

(2) The assigned continuity of services staff person

(A) obtains an initial appointment with the new MHA,

(B) provides the person with sufficient medication until the initial appointment date at the new MHA, and

(C) forwards, within 5 calendar days, information pertinent to the person's treatment, including information outlined in TXMHMR MH Community Services Standards (standard 6.3.P.)

(3) Upon admission, the new MHA arranges for the transfer of county of residence in CARE by the original MHA and develops an interim plan for services with the person requesting services.

(4) Within 45 days following the development of the interim plan for services, an individualized treatment plan which is consistent with the basic elements of the previous ITP is developed.

(c) When an individual requests relocation while residing in a state facility, the original MHA maintains the person's case in open status until notified by the new MHA that the person is admitted to services, or for 90 days, whichever comes first. To implement admission relocation, the following steps are followed:

(1) Representatives from the original MHA and the MHA serving the county where the person wishes to reside meet with appropriate facility staff and the person prior to his or her release from the facility to develop a joint discharge plan. The meeting is documented in the person's record at the facility and at each affected MHA. The meeting may take place by

phone if distance prevents meeting in person, with arrangements documented in the person's record at the facility and at each affected MHA.

(2) All responsibilities for continuity of services and community support are assumed by the new MHA after the individual is admitted to services unless specified otherwise in a written agreement between the MHAs and the person

(3) Transfer of county of residence in CARE by the original MHA must be arranged for by the new MHA when the person is admitted to services

§402.63 Nursing Facility Placement/Community Support

(a) Prior to placement into a nursing facility it is recommended that representatives of the MHA and the nursing facility adopt a memorandum of understanding that establishes respective responsibilities for community support services. The MOU should address pertinent issues such as access to resident and records by MHA staff, frequency of contact, notification in the event of relocation, crisis, and/or death

(b) Community support assessments and services are required for all direct placements from mental health facilities into nursing facilities

(1) An initial community support assessment form shall be completed by mental health facility staff as a part of the ITP review within 24 hours of placement. A copy of the initial assessment form shall be forwarded to the MHA at the time of placement. Mental health facility staff should ensure and document that nursing facilities and MHAs involved in community support have received all critical clinical information at the time of placement. Mental health facility staff shall indicate in CARE that the individual is being discharged to or is absent for trial placement at a nursing facility.

(2) Following placement, minimal community support assessments are to be completed by the MHA in accordance with the schedule outlined in the "Nursing Facility Community Support Assessment Schedule," which is referred to in §402.65 of this title (relating to Exhibits) as Exhibit B. A community support assessment form is completed at the time of each assessment, and the MHA documents assessment date and type of contact (face-to-face or telephone) in CARE. When individuals are absent for trial placement it is the responsibility of the mental health facility to indicate discharges in CARE as they occur.

(3) In addition to conferring with the consumer and reviewing the nursing facility plan of care, the MHA may, in monitoring the nursing facility resident's

condition, confer with the facility administrator, the director of nursing, the activity director, the attending physician, the MHA physician, family members, and other appropriate knowledgeable and interested persons to evaluate the consumer's total functioning. Consent shall be obtained from the person served or his/her legal representative prior to contacting family members and other persons not directly responsible for the person's clinical care

(4) MHA staff should document any problems or unmet needs in the areas of medication, physical, independent functioning, and adherence to the treatment plan

(5) If during the course of community support assessment it is established that the nursing facility resident is receiving substandard care or if it appears that the nursing facility is not adequately providing for the care of the individual, the community support worker shall report the situation to his/her supervisor, document the existence of the situation, and develop, document, and implement a plan of action, which may include increased assessments and advocacy and/or provision of technical assistance to improve service. Severe, recurrent, or unaddressed problems in nursing facility care or any instance of mistreatment, abuse or neglect, or injuries of unknown origin shall be reported to the complaint hotline operated by the Texas Department of Human Services (1-800-458-9858)

(6) Community support services may be discontinued if the consumer meets MHA criteria for terminating services and they have been in placement a minimum of one year and have not been receiving psychoactive medication for a minimum of sixty days. When services are discontinued this action should be indicated in CARE

§402.64 Entry into Private Treatment Program of a Person Served. When a person is absent for trial placement or discharged to a private service system such as private inpatient care, private psychiatric services, private residential facility, or private intermediate care facility (e.g., nursing, ICF/MR), the MHA and facility staff shall review the ITP prior to the person's entry into the private treatment program. The review should also be conducted with the private provider's participation whenever practicable. After the person is discharged from the facility and enters the private treatment program, the MHA relinquishes its responsibility for community support services unless such services (e.g., outpatient services, psychosocial rehabilitation, case management, etc.) are negotiated in the ITP. If so, an additional ITP review shall be conducted in accord with §402.61 of this title (relating to Absence for Trial Placement/Discharge and ITP Reviews During the Community Support Phase).

§402.65. Exhibits Copies of the following exhibits are available from the Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, Texas 78711.

- (1) Exhibit A-Non-Clinical Support Needs Assessment
- (2) Exhibit B-Nursing Facility Community Support Assessment Schedule
- (3) Exhibit C-Mental Health Services County of Residence Determination Worksheet
- (4) Exhibit D-Transition Phase ITP Review Phase (MHRS 4-6 form)
- (5) Exhibit E-Referral Instructions (MHRS 4-7 form)
- (6) Exhibit F-Nursing Facility Community Support Assessment Form

§402.66. Reference Reference is made to the following

- (1) Texas Health and Safety Code, §571.001, et seq.
- (2) Texas Health and Safety Code, §531.001, et seq.
- (3) Texas Health and Safety Code, §591.001, et seq.
- (4) Texas Health and Safety Code, §§571.001-571.005.
- (5) 42 Code of Federal Regulations, Part 2.
- (6) Chapter 401, Subchapter G, of this title (relating to Community Mental Health and Mental Retardation Centers).
- (7) Chapter 402, Subchapter A of this title, relating to Admissions, Transfers, Absences, and Discharges-Mental Health Facilities.
- (8) Chapter 403, Subchapter K of this title, relating to Client-Identifying Information.
- (9) TXMHMR Mental Health Record System.
- (10) TXMHMR MH Community Services Standards, and
- (11) 1992 RAJ Settlement Agreement

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 January 21, 1994

TRD-9435060
Anne K Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date February 11, 1994

Proposal publication date: November 9, 1993
For further information, please call (512) 206-4516

◆ ◆ ◆
**Subchapter F. Continuity of
Services-Mental Retardation
Campus-based Components**

• 25 TAC §§402.214-402.216

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§402.214-402.216 of existing Chapter 402, Subchapter F governing continuity of services-mental retardation campus-based components, without changes to proposed text as published in the November 2, 1993, issue of the *Texas Register* (18 TexReg 7909) Sections 402.217-402.219, which also were proposed for repeal, will not be adopted at this time. The process and requirements described in repealed sections involving the movement of individuals with mental retardation from state facilities to settings in the community have been incorporated into new §§402.311-402.323 of Chapter 402, Subchapter I, concerning movement of individuals with mental retardation from department facilities which is adopted contemporaneously in this issue of *Texas Register*.

A public hearing was held on November 30, 1993. No testimony was offered. No written comments were received.

The repeals are adopted under Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation Board with rulemaking authority.

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

Issued in Austin, Texas, on January 21, 1994

TRD-9435054
Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date May 1, 1994

Proposal publication date: November 2, 1993

For further information, please call (512) 206-4670

◆ ◆ ◆
**Subchapter G. Determination
of Least Restrictive Environ-
ment-Mental Retardation
Services**

• 25 TAC §§402.241-402.249

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §402.241-402.249 concerning the determination of least restrictive environment-mental retardation services, without changes to the proposed text as published in

the December 17, 1993, issue of the *Texas Register* (18 TexReg 9696)

The repeal is a result of key provisions having been incorporated in the new Chapter 402, Subchapter I, concerning movement of individuals with mental retardation from department facilities, which is contemporaneously adopted in this issue of the *Texas Register*.

No public comment was received.

The repeals 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.

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 January 21, 1994

TRD 9435067
Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date February 11, 1994

Proposal publication date: November 9, 1993

For further information, please call (512) 206-4570

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**Subchapter I. Movement of In-
dividuals with Mental Retar-
dation from Department Fa-
cilities**

• 25 TAC §§402.311-402.323

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§402.311-402.323 of Chapter 402, Subchapter I, concerning movement of individuals with mental retardation from department facilities. Sections 402.311, 402.313-402.319, and 402.21 are adopted with changes to the text as published in the November 2, 1993, issue of *Texas Register* (18 TexReg 7910) Sections 402.312, 402.320, 402.322, and 402.323 are adopted without changes and will not be republished.

Both the proposal and the field review draft which preceded it were developed by a large task force which included representatives of private providers, MRAs, department facilities, and Central Office, and which met monthly for most of 1992. The task force also met in December 1993 to recommend revisions to the proposal in response to comment. The effective date of the subchapter will be delayed until May 1, 1994, to permit extensive training sessions which will be offered on a regional basis by Mental Retardation Services. In addition, MR Services plans to monitor the implementation of these provisions to collect data and information on whether the new processes described in the subchapter are working effectively and efficiently. If necessary, revisions to the subchapter will be recommended as a result of the monitoring.

Throughout the subchapter seemingly small but significant changes in language have been made which reflect the department's intent that the individual should be involved in all aspects of decision-making regarding residential services. Appropriate revisions have been made in §§402 313 (definition of community living profile), 402 315(a) and new (h), 402 317(a) and (i)(3), 402 318(g), and 402 219(a). Also throughout the subchapter the term "community program" has been substituted for "community provider" and "home" in §§402 315(a)(4), 402 317(a), and 402 318(a).

In §402 311, language has been modified to clarify that the subchapter addresses the role of the mental retardation authority (MRA) with respect to those residents of state facilities who have not been recommended for community living. The statutory authority which permits monitoring by MRAs of private providers serving individuals, furloughed or discharged from facilities has been referenced.

In §402 313 the definition of "actively involved" has been revised to delete a reference to "ability to communicate." The definition of "community program" has been revised to use "people first" language. A reference to The Accreditation Council has been corrected in the definition of "eligible provider." Clarifying language has been added to the definition of "interdisciplinary team" concerning the composition of the IDT. The definition of "MRA" has been modified to be consistent with the definition in the Texas Health and Safety Code §533.035.

In §402 314(b), the language has been revised to be more imperative. In subsection (c), the language has been modified to reflect that the department will provide consultation and support to the MRA which in turn will coordinate efforts with the provider to ensure continuing residential services. A new subsection (d) has been added to the section referencing a new notification and appeals process included in another department rule.

Provisions have been reordered in §402 315 with subsection (e) of the proposal becoming a new subsection (k) with a subsequent relettering of the other subsections. A sentence has been added to the relettered subsection (e) that requires the facility to provide certain information to the MRA.

In §402 316, subsections (c) and (d) have been reordered. A new paragraph (1) has been added to the new subsection (d) which clarifies the purpose of the community living profile. New language in renumbered paragraph (4) of that same subsection has been revised to clarify that either a determination of mental retardation or a comprehensive diagnosis and evaluation must have been performed, and that the date of assessment must be provided. To improve readability, portions of the stem in new subsection (d) have been deleted and the language incorporated into a new subsection (e). The remaining subsections have been relettered. Also in the interest of heightened readability, subsection (f) has been rewritten with the last phrase of the sentence being placed first. A sentence is added to subsection (f) which specifies that the community living profile is to be considered a referral only if it is specifically design-

ated as such. In subsection (g), language has been revised to clarify that the MRA is to keep the facility informed of which eligible providers receive the community living profile. In subsection (h), the word "written" is deleted to allow a provider to make an oral request for additional information. A revision to subsection (i) requires that eligible providers must indicate an interest in serving a specific individual rather than any individual who fits certain criteria. The term "eligible provider" is substituted for "home" in subsection (j)(2). In subsection (k)(8), "parent" is replaced by the more specific "any legally authorized representative."

Language has been added to §402 317(a) to clarify who may call an IDT meeting. In subsection (d), language has been added to clarify that participation in the IDT meeting by phone may be arranged if rescheduling is not feasible. A phrase has been added to subsection (i)(2) specifying that the MRA is responsible for necessary quality assurance activities including certification of the residence, if appropriate. A timeframe for completion of the arbitration process has been added elsewhere in subsection (i).

Timeframes also have been added in §§402 318(a) and (c), where timeframes already were given the time has been specified as working or calendar days. In subsection (f) the term "direct care staff" is more accurately rendered as "direct contact staff." Clarifying language has been added in the same subsection that specifies that only the relevant portions of the community living plan need to be communicated to the physician, direct contact staff, consultants, and others who will be providing services in the community.

A provision has been added in §402 319(a) specifying that case management activities will be provided in accordance with department policies and procedures. A grammatical error is corrected in paragraph (1) of the subsection. Clarification is provided in subsection (c) that a MRA staff person will conduct quarterly visits. In subsection (d), the MRA is charged with knowing a provider's certification or licensure status. A rewriting of subsection (e)(2) clarifies that "significant, unresolved problems" are to be reported by the MRA staff person to the appropriate certifying or licensing agency. In subsection (f), it is clarified that the progress note is to be included in the records of the MRA. The terms "screen" and "screening" are substituted for "assess" and "assessment" in subsection (i).

In §402 321, a parenthetical phrase has been added for the benefit of those not yet familiar with the recodification of legislation affecting the department, the phrase specifies that the referenced chapters in the Texas Health and Safety Code are commonly known as the Persons with Mental Retardation Act. A reference to the TXMHMR Case Management Operating Instructions, 401-2, has been included.

A public hearing was held on November 30, 1993. No testimony was offered. Written comments were received from the parent of a state school resident, the Parent Association for the Retarded of Texas, Austin-Travis County MHMR, Dallas County MHMR Center, MHMR Services for Concho Valley, Ad-

vocacy, Inc., The Texas Council of Community Mental Health and Mental Retardation Centers, Inc., Concept 6 of Austin, a service provider from the private sector, and Rock House Inc of Stephenville, also a service provider from the private sector.

A commenter noted that references to "parent" in the field review draft of the rule had been changed to "legally authorized representative" and questioned whether a parent who was unable to afford the cost of obtaining a guardianship would no longer be permitted to advocate for an adult child residing in a state school. The department responds that an actively involved parent would never be prevented from advocating for an adult child, however, but explains that only the parent who has been court appointed as the guardian of that adult child has the legal right to provide consent for that individual.

A commenter noted that the rule only mentions home and community based service (HCS) programs once and seems to emphasize the facility based model of providing community living settings. The commenter recommended the incorporation of language throughout the sections referencing both approaches. The department responds that language has been modified as requested in several instances.

A commenter suggested training was needed for the staff of state facilities, MRAs, and private providers on the requirements of the rule and also on the change in emphasis for case managers. The department responds that regional training sessions are being planned. To ensure consistency in the presentation of information a single team comprising department, MRA, and private sector staff will conduct each session. The effective date of the rule will be delayed until May 1, 1994, to accommodate the training.

A commenter suggested that the rule is designed to move all residents from state facilities, and that such a policy is not in the best interests of those residents, their families, or of the State of Texas. The department disagrees with this characterization of the purpose of the rule and stresses that the provisions are in compliance with the Texas Health and Safety Code, Title 7, §592.013, which requires the department to ensure that individuals it serves live in the least restrictive environment appropriate to the individual's needs and abilities, and §594.011 which requires the department to transfer, furlough, or discharge a resident for whom the facility no longer represents the least restrictive environment.

A commenter requested that the rule cite the statutory authority for the public sector monitoring of persons placed into a private sector service setting. The department responds that the appropriate citation has been added to §402 311. The same commenter recommended that the department continue to advocate for a "crisp process" for the movement of persons from the state schools to community-based settings so that service providers do not lose excessive revenue while holding a services "slot." Another commenter recommended that timelines should be established throughout the rule to ensure that unnecessary bureaucratic delays

do not occur. The department responds to both comments that Mental Retardation Services will be monitoring the implementation of this subchapter closely to ensure that unnecessary barriers do not occur in the process for those state school residents who will be moving into community service settings. In addition, timelines have been specified for crucial junctures in the movement process.

A commenter recommended the addition of a provision in the purpose section specifying that the subchapter discusses the role of the MRA with respect to residents of state schools who are not recommended for community living and with respect to the MRA's role on the facility IDT. Additionally, the commenter recommended the use of "coordinate" rather than "provide." A second commenter concurred with the latter suggestion. The department agrees and has made the revisions.

A commenter recommended the deletion of subparagraph (D) under the definition of "actively involved" in §402.313, noting that "ability to communicate" does not relate to active involvement and that the other items accurately capture the nature of the relationship. Another commenter recommended the inclusion of language specifying that facility or MRA staff should not be considered an advocate for the individual. The department agrees with the first suggestion and has revised the definition accordingly, but declines to make the second change since the issue of who may be considered to be "actively involved" is adequately addressed in §402.314.

A commenter recommended small but significant revisions in language in the definition of "community living plan" and "community program" (§402.313) and in several places throughout §402.315 and §§402.317-402.319 with the intention of emphasizing that the individual should be involved in all aspects of decision-making regarding living arrangements. The department agrees and has revised language accordingly.

A commenter questioned why monitoring was eliminated from the list in the definition of "continuity of service activities" in §402.313 and noted that parents consider this an important activity. The department responds that item subparagraph (E) in the definition refers to visits by MRA staff following the move to the community and that the purpose and expectations of these visits are described in §402.319. In addition, the department explains that the term "monitoring" deliberately has been avoided in this subchapter to avoid confusion with visits made by staff of the agency or agencies administering standards with which the community setting must comply.

Two commenters stated that foster homes, as listed in the definition of eligible provider, are not appropriate residential options for persons with mental retardation. The department disagrees and responds that foster homes may be viable options depending upon the specific needs of the individual being considered for movement to the community.

A commenter requested clarification on whether a provider would be considered to be "eligible" if the individual were a minor and

the provider only operated facilities for adults, or if the individual were female and the provider only served males. The department responds that the term is intended to delineate that group of providers who meet certain basic requirements and have entered into a memorandum of agreement (MOA) with the MRA. Determining whether the provider's services meet the needs of a specific individual is a separate issue which is only determined by the IDT, which will make the final recommendation based on all relevant factors.

A commenter suggested revisions to the definition of "interdisciplinary team" with an explanation that the current definition places too much emphasis on MR professionals. The commenter also suggested that "actively involved" persons be included as part of the IDT. The department declines to make the revisions as requested and responds that the core of the definition, which specifies the membership of professionals and paraprofessionals, is prescribed by statute and is included to avoid confusion. The listing in subparagraph (A)-(F) is included, as it has been in department rules for many years, to further delineate the disciplines which need to be represented by the professionals and paraprofessionals on the team. An "actively involved" person who is not a "legally authorized representative" can take part in discussions and provide information about the individual, but has no legal standing to provide consent.

A commenter questioned why the PRC is included as part of the IDT. The department responds that the option for the PRC's inclusion is mandated in the Texas Health and Safety Code, §596.008, in which the duties of the PRC are listed.

In commenting on the definition of "legally adequate consent," a commenter stated that it is imperative that an individual's capacity be determined and appropriate measures taken to ensure legal representation prior to a recommendation for community services. The department acknowledges that this is a continuing issue that cannot be resolved within the context of this subchapter but must be addressed through legislation.

A commenter requested that the department define "mental retardation authority" consistent with the language in the Texas Health and Safety Code, §533.035. The department agrees and has modified the definition accordingly.

A commenter recommended that "support services" be added to the definition of "mental retardation services." The department concurs with the suggestion and has revised the language accordingly.

In commenting on §402.314 governing philosophy and principles, a commenter noted that community-based ICF/MRs may utilize surrogate decision makers and questioned why state facilities could not do the same. The department responds that Senate Bill 1142 of the 73rd Legislature specifically excluded state facilities from accessing the surrogate decision-maker process established by the legislation.

Four commenters expressed concerns with §402.314(c). They described the provision variously as ambiguous and as inappropriately placing what should be shared responsibility for the continuity of residential services on the MRA. The department has modified the language to reflect the concerns.

A commenter questioned the meaning of "equal access" as used in §402.315(c) and requested the inclusion of detailed procedures to be used by the MRA. The commenter further noted that the provision is in conflict with the "individual choice" principle expressed elsewhere in the subchapter. The department responds that the provision is as clear as possible given that each individual is unique.

A commenter noted in conjunction with §402.315(d) that problems still exist with obtaining consent for those individuals unable to provide consent. The department acknowledges that this is a continuing issue that cannot be resolved within the context of this subchapter but must be addressed through legislation.

A commenter suggested a reordering of the provisions within §402.315 to enhance readability. The department concurs and has revised the section accordingly.

A commenter questioned the apparent assumption upon which old subsection (e) (2), now (k)(2), of §402.315 is based. Specifically, the commenter questioned why the appropriate living option for an individual should be presumed to involve moving from the facility, suggested that perhaps the individual should stay in the facility, and recommended that the reference to "identification . . . of services the individual would require to reside successfully in the community" should be deleted until a recommendation for community living has been made. The department responds that for many residents of state schools, the IDT does recommend remaining at the facility. This subchapter specifically addresses what should happen after a recommendation for movement has been made.

A commenter requested the IDT meeting in §402.315(e), formerly subsection (l), be identified as the annual IDT meeting. Additionally, the commenter requested that the facility be required to provide the MRA with information regarding the individual about whom the IDT will be meeting. The department declines to implement the first suggestion, noting that an interim meeting of the IDT might be called to consider placement issues. Regarding the second suggestion, the department concurs and has added the suggested language.

Regarding that same provision, another commenter stated that the IDT does not have the legal right to make a decision regarding a move to the community, but can only make recommendations. The department responds that the Texas Health and Safety Code, Title 7, §592.013, guarantees the right of an individual with mental retardation to live in the least restrictive environment appropriate to the individual's needs and abilities, and that §594.011 requires the department to transfer, furlough, or discharge a resident for whom the facility no longer represents the least restrictive environment.

Two commenters stated that a guardian has the legal right to determine whether or not the individual who lacks capacity is to be present at IDT meetings. The department responds that the individual is guaranteed the right to be involved in treatment planning and refers the commenters to the Texas Health and Safety Code, §§592.033-592.035.

A commenter disputed the concept of consensus recommendations by the IDT, stating that consensus is not necessary except in those cases where the individual lacks capacity and no legally authorized representative has been identified. The department responds that the IDT is responsible for making recommendations regarding treatment issues and that the Texas Health and Safety Code, §593.033, specifies that individualized plans are developed by appropriate specialists and that the individual and any legally authorized representative shall participate in the development of the plan.

Regarding §402.316, one commenter stated that the principles articulated in §402.314 are not reflected in the provisions of this section. The commenter charged that the department gives only lip service to those statements. The department responds the provisions of this and all other sections were crafted to comply with the statements of philosophy and principles included in §402.314.

A commenter questioned how the MRA is to assure that all eligible providers are included when community living options are reviewed as described in §402.316(c). The department responds that the eligible providers referenced are those with whom the MRA has a signed MOA and presumably knows how to contact. The commenter further suggested that "include" in the second sentence be changed to "discuss." The department responds that the suggested change would add nothing to the meaning of the sentence and declines to make the change. A third commenter recommended that the last sentence of the subsection be deleted since it requires involvement by the whole IDT although a previous subsection required designation of specific facility staff for that purpose. The department responds that the sentence is necessary but has revised the language to make reference to the designation of facility staff required in the previous subsection. Another commenter recommended adding a final sentence requiring the review process to occur within 14 days after the MRA receives the community living profile. The department responds that the review is a general recounting of the types of living options generally available and that this occurs at the time of the IDT meeting or shortly thereafter. At this point, the community living profile would not yet have been sent to the MRA.

A commenter stated that 14 days seemed an excessive length of time to document the limited information included in the community living profile and recommended seven days instead. The department responds that 14 days was recommended by the task force charged with developing the subchapter. The task force included representatives from MRAs, the private sector, and the department.

A commenter recommended that the MRA be required to distribute the community living profile to eligible providers within 21 days

after receipt. The department agrees that a timeframe is appropriate for this part of the process but, at the recommendation of the task force, has specified a 14 calendar day timeframe instead.

Another commenter suggested in §402.316(f) that the order of phrases in the sentence be reversed to emphasize the importance of obtaining consent for the release of information. The department agrees and has revised the language accordingly.

A commenter recommended revising the language in §402.316(g)(3) to specify that the MRA will keep the facility informed of which eligible providers are receiving profiles since the facility will not be distributing profiles on its own. The department concurs and has revised the language accordingly.

A commenter suggested that to assure a timely review of profiles, providers should not be required to submit requests for additional information in writing. The department concurs and has revised §402.316(h) accordingly.

A commenter stated that the process described in §402.316(k) is acceptable only if the individual desires the move from the facility, otherwise the process as described invalidates the principle of choice. The department recognizes that "choice" within the context of the IDT process of making decisions is not necessarily an absolute "choice" by an individual.

Regarding §402.317(a), a commenter requested the inclusion of a provision stating that when the individual has visited a setting and decides to move on the basis of that visit, a similar setting would be considered acceptable if the specific home was no longer available. The department declines to make the revision because "similar" is too open to interpretation. The individual must be permitted to decide which specific setting is the most desirable.

A commenter stated that requiring the MRA in §402.317(e) to "facilitate the development of a specific living arrangement not yet available" and to include such requests in the MRA's planning represents a significant fiscal implication. The department does not expect MRAs to develop programs without necessary financial resources. Unmet needs of consumers, however, must be considered in the MRA's short and long-range planning processes.

Two commenters recommended that when an eligible provider is in provisional status, the regional monitor (rather than the MRA) shall verify the existence of life safety provisions and the lack of environmental concerns. The department responds that the TXMHMR Community Standards for Mental Retardation require the MRA to accomplish this.

Two commenters suggested that timeframes be established for the arbitration process described in §402.317(i). The department concurs and has added appropriate language. One of the commenters also suggested that if a non-county of residence MRA refuses to consider the movement by an individual from a facility into a community setting in its service area, the individual's freedom of choice

has been violated. The commenter suggested the move should take place and that arbitration should take place afterwards. The department responds that the issue of which MRA will handle the follow-along portion of continuity of services activities must be resolved before a move.

Regarding §402.318, a commenter requested that when a recommendation for a specific setting has been made, seven days be permitted for the IDT to complete the community living plan. The department concurs with the need for a timeframe and has added language requiring completion of the plan within 14 calendar days. Another commenter suggested that the community living plan should specify the proposed date of the move. The department concurs and has revised language accordingly.

Regarding subsection (c) of that same section, a commenter suggested that the regional monitor has no authority to approve or disapprove the setting except as required by provisions of the settlement agreement in *Lelsz vs Kavanagh*. The department responds that the provisions of the settlement agreement have been determined to apply in all cases where a resident of a state school is moving into a community setting.

A commenter stated that the requirement for a case manager in §402.319(a) replicates the responsibilities of other agencies. The department responds that subsection (d) of that section clarifies the role of the case manager by explicitly stating that the case manager is not responsible for monitoring for compliance with the certification standards of another agency. Another commenter commended the department on how well the case manager's responsibilities were clarified in subsection (d) but asked who was to be responsible for quality assurance. The department again refers to the language in (d) that clearly leaves responsibility for quality assurance monitoring to the certifying agency for that provider's facility.

A commenter suggested revised language for subsection (e)(2) acknowledging that the MRA cannot make judgments as to whether a problem is related to certification standards of another agency. The department concurs and has revised the language as suggested. Regarding the same provision, another commenter suggested that this implies the MRA could terminate its relationship with the provider. The department responds that the MOA between the MRA and the provider outlines the process which should be followed if the relationship should be terminated.

Two commenters stated that facility participation in the visits are duplicative and unnecessary. The department responds that facility participation is optional and would take place only if either the facility or MRA considered it to be in the best interests of the individual. Another commenter questioned where the progress note would be filed in the event of a joint visit. The department responds that the language has been revised to reflect that the MRA is to maintain the progress note.

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 Board with rulemaking authority

§402.311. Purpose. The purpose of this subchapter is to establish criteria and procedures for:

(1) mental retardation authorities (MRA) with respect to the individuals in facilities who are not recommended for community living and the role of the MRA staff with the facility interdisciplinary team,

(2) MRAs to develop and/or coordinate services for individuals residing at facilities of the Texas Department of Mental Health and Mental Retardation who are or may be recommended for community living; and

(3) ongoing monitoring of services provided to individuals with mental retardation who have moved into the community from department facilities consistent with the Texas Health and Safety Code, §592.011

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

Actively involved—Involvement with the individual which the IDT deems to be of a quality nature based on the following.

(A) observed interactions of the person with the individual,

(B) advocacy for the best interests of the individual,

(C) knowledge of and sensitivity to the individual's preferences, values and beliefs, and

(D) availability to the individual for assistance or support when needed

Capacity—A term consistent with provisions of the Texas Probate Code which is used to designate the ability of an individual with mental retardation to give legally adequate consent as determined by the interdisciplinary team

CARE—The department's Client Assignment and Registration System, an on-line data entry system developed to provide demographic and other data about individuals served by the department.

Community living profile—The first section of the community living plan which is completed at any IDT staffing when a recommendation is made for movement by the individual to community living. The profile provides descriptive information as well as a list of information, recommenda-

tions, and preferences that must be considered when searching for a community home

Community living plan—A plan developed by the individual's interdisciplinary team (IDT) which documents the reasons why the individual is recommended for community living and makes specific recommendations regarding the services, programs, treatment needs, and arrangements needed when the individual moves to community living. The plan is followed until an individual habilitation plan (IHP) or support plan is developed with the individual in the community

Community program—Any community-based program, including private or publicly owned community services, that provides supervision, support, habilitative services, and/or residential services in which programs are designed to meet the individual's goals for community integration.

Continuity of services activities—The activities designed to ensure coordination of services for an individual which include, but are not limited to

(A) development of the community living plan which addresses the individual's choices and needs,

(B) joint community living planning;

(C) exchange of information pertinent to service needs/training/support,

(D) implementation of services which address the individual's choices and needs, and

(E) visits to the individual following the move to the community

Department—The Texas Department of Mental Health and Mental Retardation

Deputy commissioner—The department's deputy commissioner for Mental Retardation Services

Eligible provider—For individuals moving from a facility, any provider of community-based residential mental retardation services or a home and community-based service (HCS) program located in the local service area of an MRA which has entered into a memorandum of agreement (MOA) with that MRA and which is.

(A) TXMHMR certified,

(B) deemed from certification by TXMHMR i.e. intermediate care facilities/mental retardation (ICF/MR), HCS, Texas Department of Protective and Regulatory Services (PRS) foster homes for

children, and The Accreditation Council, or

(C) in provisional status for such certification or licensure. The eligible provider requirements shall not apply to non-residential services except for HCS programs

Facility—Any state hospital, state school, or state center of the department which provides inpatient or residential services to individuals with mental retardation

Individual—A person with mental retardation who has received or is receiving inpatient or residential services provided by a facility and who has moved or is moving from a facility to a community program

Interdisciplinary team (IDT)—A group of mental retardation professionals and paraprofessionals who assess the individual's treatment, training, and habilitation needs and, with other concerned persons, make recommendations for services. This group functions as a facility team and includes

(A) the individual,

(B) the legally authorized representative of an individual who lacks capacity,

(C) as specified by the facility, persons who are professionally qualified, certified or both, in various professions with special training and experience in the diagnosis, management, needs, and treatment of individuals with mental retardation,

(D) persons who are directly involved in the delivery of mental retardation services to the individual,

(E) representative(s) of the appropriate MRA, and

(F) member(s) of the facility's public responsibility committee (PRC), if requested by the individual with capacity, a legally authorized representative, or the PRC.

Legally adequate consent—A term consistent with provisions of the Texas Health and Safety Code, Title 7, §591.006 concerning consent obtained from an individual with mental retardation which is legally adequate when each of the following conditions has been met.

(A) legal status. The individual giving the consent is of the minimum legal age and has not had a guardian appointed to manage personal affairs by an appropriate court of law;

(B) comprehension of information: The individual giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the individual with mental retardation; and

(C) voluntariness: The consent has been given voluntarily and free from coercion and undue influence.

Legally authorized representative—The parent of an individual who is a minor, the guardian of an individual who has been determined by a court to lack capacity, or the managing conservator of an individual.

Local service area—A geographic area composed of one or more Texas counties delimiting the population which may receive services from an MRA

MRA (mental retardation authority)—The entity designated by the commissioner to plan, facilitate, coordinate and provide services to individuals with mental retardation in a particular local service area of the state as are required to be performed at the local level by state law and the department Unless otherwise specified, this is the MRA serving the individual's county of residence

Mental retardation services—All services concerned with research, prevention, and the detection of mental retardation and all services related to the education, training, habilitation, support, care, treatment, and supervision of individuals with mental retardation, except the education of school-age individuals that the public educational system is authorized to provide

Parent—The natural or adoptive mother or father of the individual, but not a mother or father whose parent-child relationship has been legally terminated.

Regional monitor—An employee of TXMHMR Central Office who.

(A) is responsible for approving living situations for individuals moving from facilities to community programs.

(B) conducts periodic and follow-up reviews, and

(C) serves as a technical resource to MRAs.

TXMHMR service delivery system—All campus-based facilities and community-based services operated or contracted for by the department.

§402.314. Philosophy and Principles.

(a) Each individual receiving residential services through the TXMHMR service delivery system is entitled to choice

and decision-making authority. To make choice possible and relevant, the individual requires supports, experiences, and options. If an individual cannot communicate preferences related to activities and expectations or does not choose to communicate, the questions are asked of those actively involved persons (family members, guardians, friends, and/or those who provide personal support) who spend the most time with the individual and are sensitive to and aware of how the individual expresses likes and dislikes, choices, preferences, and desires.

(b) The following principles support choice and decision-making by the individual. Each facility and MRA is required to put these principles into practice as they carry out continuity of services activities.

(1) The choices, preferences, expectations, likes and dislikes of the individual and any legally authorized representative are the dominant force behind all decisions.

(2) Individuals making choices are entitled to training, counseling, and opportunities to experience and to try the options involved in making choices.

(3) The same range of options for residential and support services that are available to all people are made available for individuals receiving services from the TXMHMR service delivery system.

(4) Visits and interviews with the individual, a legally authorized representative, and other actively involved persons, as well as observations, are the primary basis for collecting data and information to determine if the individual's choices and needs are being met across time and services.

(c) The MRA, with consultation and support of the department, shall assume the responsibility to coordinate with the provider to ensure continuing residential services, if needed and requested, to any individual with mental retardation who was in a facility and who is discharged from a community home.

(d) Each MRA shall follow procedures outlined in §401.164 of this title (relating to Notification and Appeals Process).

§402.315. General Provisions.

(a) The department shall compile the following lists and provide them to the MRA.

(1) quarterly list of all individuals from the MRA's local service area who are diagnosed as having mental retardation and who are residing in facilities with each individual's level of care, I.Q., adaptive behavior level (ABL), mobility status, health status, behavior management status, hearing and vision status, and whether the

individual has been recommended for community living;

(2) quarterly list of all individuals from the MRA's local service who have moved to community living since August 7, 1991, with the location of the home;

(3) quarterly list of all individuals from other MRAs who have moved into the local service area of the MRA since August 7, 1991, with the location of the home; and

(4) twice annually a list of all TXMHMR certified or deemed status community program and those pending TXMHMR certification or deemed status.

(b) Before the initiation of movement activities or referrals to a residential community program not operated by the MRA, the MRA and the provider of residential community services shall enter into a memorandum of agreement (MOA) which is described in §402.322 of this title (relating to Exhibits) as Exhibit A. Those providers are eligible providers.

(1) A single MOA may cover more than one eligible provider operated by a company in the MRA's local service area.

(2) If the MRA chooses to use a substitute MOA, it must be approved by the deputy commissioner or designee.

(3) The MRA shall enter into an MOA with all providers which wish to provide services to individuals served by the MRA and which meet the requirements outlined in the MOA. Disputes as to whether the provider meets the requirements shall be submitted for arbitration to the deputy commissioner or designee.

(c) The MRA shall have procedures in place to ensure that all eligible providers have equal access to information about individuals recommended for community living.

(d) The MRA and facility shall have and implement procedures which ensure that the necessary consents for release of information to eligible providers and providers of non-residential community services are obtained as described in Chapter 403, Subchapter K of this title (relating to Client-Identifying Information).

(e) A staff person from the MRA shall be invited to attend the individual's IDT meetings. If the MRA staff person is unable to attend the meeting, the MRA shall ensure that the facility has the information needed to assist the IDT in making a decision regarding community living. The facility shall ensure that the MRA receives information regarding services the individual would need in the community and the individual's preferences and needs.

(f) The individual, regardless of capacity, always has the right to be present and to participate in IDT meetings and administrative hearings. The desires and aspirations of the individual, regardless of capacity, shall be the dominant factor considered when recommendations are made concerning movement.

(g) Communication devices and techniques (including the use of sign language) shall be utilized, as appropriate, to facilitate the individual's involvement in the process and to ensure that the individual is able to make those desires and aspirations known.

(h) The individual with capacity has the right to exclude a parent or other actively involved persons from participation in

(1) meetings of the interdisciplinary team (IDT) at which movement by the individual is to be discussed, and

(2) all review and appeal procedures.

(i) If the individual with capacity wishes to include a parent or other actively involved persons, facility staff shall encourage the attendance and participation by those persons. Every reasonable attempt shall be made to schedule meetings at a time that is convenient for those persons.

(j) When the IDT fails to reach consensus while meeting as described in §402.316 of this title (relating to Recommendation for Community Living or in §402.317 of this title (relating to Selecting a Community Living Option), the review and appeal processes described in Chapter 402, Subchapter H of this title (relating to Placement Appeals Procedures—Mental Retardation Services) shall be followed.

(k) The MRA and the facility shall have and implement procedures which ensure that necessary planning-linking activities between the MRA, facility, and involved community resources (both public and private) occur to assure that individuals residing in the facility move to an appropriate living option.

(1) For an individual not currently recommended for community living, planning-linking activities shall include:

(A) evidence that the MRA incorporates the individual's choices and needs into ongoing agency service planning for future consideration,

(B) identification by the facility interdisciplinary team (IDT) of services the individual would require to reside successfully in the community, and

(C) monitoring by the MRA of the status of such services, especially those being developed or yet to be developed.

(2) For an individual recommended for community living, a designated MRA staff person shall:

(A) obtain relevant information regarding the individual's status and progress through visits and interactions with the facility currently responsible for provision of services;

(B) communicate information regarding eligible providers, both public and private, and any other providers of appropriate non-residential community services to the facility IDT currently responsible for provision of services, and

(C) communicate relevant information to eligible providers.

§402.316 Recommendation for Community Living

(a) When the IDT makes a recommendation that an individual should move into the community, the recommendation shall be made:

(1) using information from the mental retardation authority (MRA) regarding all applicable community resources; and

(2) as described in the department's rules governing placement appeals procedures (Chapter 402, Subchapter H) in §402.286 of this title (relating to Placement Recommendation by Interdisciplinary Team) and in §402.287 of this title (relating to Appeal to the Placement Review Team).

(b) When a recommendation for community living is made, the IDT shall designate specific staff members at the facility and the MRA shall designate its own staff members. The staff members shall cooperate and coordinate in researching community living options and report their recommendations to the IDT.

(c) During the IDT meeting or immediately thereafter, the MRA shall solicit the thoughts, opinions, choices, and desires of the individual and any legally authorized representative when reviewing the various community living options. The review shall include all eligible providers which have contacted the MRA regarding available residential services and vacancies and any other providers of appropriate non-residential community services. The MRA also shall obtain input regarding all appropriate community resources from the facility staff designated as described in subsection (b) of this section.

(d) A community living profile, i.e. the first section of the community living plan which is described in this subchapter as Exhibit B, shall be completed by facility staff at the IDT meeting when a recommendation for community living is made. The community living profile shall:

(1) be used to determine which eligible providers are interested in providing services for the individual,

(2) outline any preferences the individual and any legally authorized representative has about community living (e.g., type of home, geographic preferences, vocational or habilitation services);

(3) outline any medical needs to be communicated to the physician who will be providing care in the community, and any other special needs to be communicated to community-based service providers; and

(4) indicate that either a determination of mental retardation has been conducted since September 1, 1993, as described in Chapter 405, Subchapter D of this title (relating to Determination of Mental Retardation and Appropriateness for Admission to Mental Retardation Services) and the date of such, or a comprehensive diagnosis and evaluation before September 1, 1993, and the date of such.

(e) The community living profile shall be forwarded to the MRA within 14 calendar days of the IDT meeting or placement review team meeting, whichever is appropriate. The placement review team process is described in §402.287 of this title (relating to Appeal to the Placement Review Team).

(f) Provided that the appropriate consents for release of information are obtained as described in Chapter 403, Subchapter K of this title (relating to Client Identifying Information), the MRA shall send the community living profile to all eligible providers and to any providers identified by the individual and any legally authorized representative within 14 calendar days of receipt of the community living profile from the facility IDT. Only if the individual, any legally authorized representative, and/or the IDT specifically designates the community living profile to be a referral shall it be treated as such.

(g) The MRA may send the community living profile to eligible providers and any other providers of appropriate non-residential community services in the local service areas of other MRAs if:

(1) appropriate services are not available in the MRA's local service area;

(2) the individual or any legally authorized representative desires services outside the MRA's local service area; and/or

(3) the MRA serving that area keeps the facility informed of which eligible providers are receiving the profiles.

(h) If additional information (e.g., assessments or a report from the annual planning meeting) is required, the community program provider shall submit a request to the facility. The facility shall compile the information and forward it to the community program provider.

(i) Eligible providers shall notify the MRA in writing if they are interested and are available to provide services to a specific individual.

(j) Once all community living options are known to the MRA, they shall be reviewed with the individual, any legally authorized representative, and designated facility staff.

(1) The individual with capacity or a legally authorized representative shall choose which community living options shall be considered in greater detail by the IDT as described in §402.317 of this title (relating to Selecting a Community Living Option). If needed, the regional monitor or other facility staff may assist the individual and any legally authorized representative to make the decision.

(2) The ability of the eligible provider to meet the needs of the individual shall provide the basis of the decision

(k) If the individual with capacity or a legally authorized representative does not make a choice of which options are to be considered in greater detail by the IDT, the staff designated by the IDT as described in subsection (b) of this section shall make the decision based on the following.

(1) characteristics of the home best suited for the individual;

(2) medical and health care needs,

(3) social relationships and support network;

(4) emotional and behavioral factors;

(5) transportation;

(6) financial;

(7) employment, vocational, and educational; and

(8) any other needs as outlined by the individual, any legally authorized representative, the IDT, and as identified by the MRA staff

(l) The MRA shall coordinate with the facility to assist the individual and any legally authorized representative in making arrangements for preselection visits to proposed homes

(1) If overnight visits are utilized, the facility first shall assure that staff

at the proposed home receive the following prior to or at the time of the preselection visit:

(A) identifying data;

(B) the individual's legal status;

(C) the individual's determined disability(ies);

(D) pertinent medical/medication information;

(E) adequate medication supply;

(F) behavioral data;

(G) fiscal resources;

(H) clothing, personal items, and adaptive equipment; and

(I) other pertinent treatment information.

(2) If a proposed home is outside the local service area of the individual's MRA, that MRA shall notify the appropriate MRA of the planned visit.

§402.317. Selecting a Community Living Option.

(a) An IDT meeting shall be scheduled to approve a community program with the individual as described in rules of the department governing placement appeals procedures in §402.288 of this title (relating to Specific Alternate Placement Recommendation by IDT).

(1) The meeting may be called by the individual with capacity, any legally authorized representative, a facility IDT staff member, the case manager, or other designated MRA staff person.

(2) If an MRA staff person, preferably a case manager, has not been assigned already by the MRA, this shall be done prior to scheduling the meeting.

(b) The following people shall be invited to the meeting:

(1) individual;

(2) any legally authorized representative;

(3) staff from the MRA serving the individual's county of residence;

(4) the MRA which serves the local service area where the individual may be moving, if different;

(5) staff of the program where the individual may be moving;

(6) facility IDT staff; and

(7) other actively involved persons.

(c) For school-aged individuals, a representative of the local independent school district in which the home is located shall be notified by the MRA of the meeting and encouraged to participate and to assist in coordinating educational services for the individual.

(d) If circumstances preclude attendance in person by any of those invited and it is not feasible to reschedule, that person or persons may participate via telephone.

(e) The individual with capacity or any legally authorized representative may:

(1) choose the proposed home;

(2) choose a home with no vacancies and be placed on a waiting list for that home if the provider agrees; or

(3) request the MRA to facilitate development of a specific living arrangement not yet available. Requests for alternatives not available shall be used in the MRA's planning processes to develop and/or expand services.

(f) If there is no consensus by the IDT concerning the choice made by the individual with capacity or any legally authorized representative as described in subsection (e) of this section, then the IDT shall notify the head of the facility within one working day of the need for an administrative hearing as described in Chapter 402, Subchapter H of this title (relating to Placement Appeals Procedures—Mental Retardation Services).

(g) If the provider of residential services is eligible but is in provisional status regarding certification or licensure the MRA shall verify that there are adequate life safety provisions and that there are no environmental concerns.

(h) The facility shall send the following to the regional monitor:

(1) report from the last annual planning meeting of the IDT;

(2) most recent psychological, social, medical, and vocational/educational assessments;

(3) report from any interim meetings of the IDT which addressed community living issues not addressed at the annual planning meeting; and

(4) the community living profile.

(i) If a home is being considered which is outside the local service area of the

individual's county of residence MRA, the following shall occur:

(1) The county of residence MRA shall inform the receiving MRA where the community home is proposed that the individual is considering moving into the area.

(2) The receiving MRA shall be asked to assume responsibilities for arranging the community living option, necessary quality assurance activities including certification of the residence where appropriate, monitoring, and case management. If the receiving MRA agrees then the county of residence designation shall be changed when the individual moves. If the change is time limited, a MOA shall be executed as described in §402.320 of this title (relating to Guidelines for Changing County of Residence).

(3) If the receiving MRA does not want to be a part of the community living option and the county of residence MRA wants to continue to seek movement by the individual to that location, the MRAs shall submit the issue to the deputy commissioner or designee for arbitration.

(A) Each MRA shall submit the reasons for its position in writing to the deputy commissioner with copies to the other MRA and to the individual and any legally authorized representative.

(B) The individual and any legally authorized representative shall be asked to submit their opinions to the deputy commissioner regarding the disagreement.

(C) The county of resident MRA shall inform the individual, any legally authorized representative, and the facility of the final agreement.

(D) The arbitration process shall be completed within 14 days of the issue being submitted to the deputy commissioner.

(j) The current facility shall inform any new facility that may serve the individual of staff experiences and recommendations regarding how best to serve the individual.

(k) All MRAs and facilities that are involved must be notified and invited to participate in any planning meeting(s) for the individual.

§402.318. Planning Moves Into the Community.

(a) When a recommendation of a specific community program for the individual in the community has been made as

described in rules of the department governing placement appeals procedures in §402.288 of this title (relating to Specific Alternate Placement Recommendation by IDT) or by the hearing officer as described in §402.293 of this title (relating to Final Decision), the facility IDT shall meet within 14 calendar days to complete the community living plan which shall include:

(1) a statement of the individual's choices and needs;

(2) a list of supports and services necessary for the individual to succeed in the chosen home and persons identified who will facilitate such;

(3) identification of the MRA case manager assigned to provide continuity of services activities as well as a facility contact person;

(4) all current physician orders and treatments, including rationale for all medications prescribed and dispensed by the facility, and amount dispensed which will be continued after movement;

(5) the name of the physician or health care entity that will become the individual's primary health care provider;

(6) documentation that the individual and any legally authorized representative has had an opportunity to participate in the development of the community living plan with notations concerning their reactions;

(7) statement that the individual and any legally authorized representative has been counseled on the relative advantages and disadvantages of the proposed home with concurrent documentation of their opinions, ideas, and suggestions;

(8) the reason for the move to a community home;

(9) a brief summary of findings, events, and progress during the period of service to the individual;

(10) current diagnoses;

(11) proposed date of the move to the home;

(12) any referrals made or instructions provided to and/or for the individual at reassignment, to include a copy of the community living plan, if applicable, naming the services and/or supports the individual requires in the new home and the agency(ies) responsible for provision; and

(13) the signatures of all participants.

(b) The facility shall send copies of the completed community living plan to the:

(1) regional monitor;

(2) MRA county of residence;

(3) provider; and

(4) the individual with capacity or any legally authorized representative.

(c) As soon as possible, but in no later than 14 calendar days after receiving the community living plan, the regional monitor shall visit the proposed setting, if necessary, and notify the MRA of any concerns and whether the home is approved.

(d) The MRA shall arrange for department funding, if applicable.

(e) The MRA shall notify the facility when the setting is approved. The facility shall ensure the following:

(1) a 30-day supply of prescribed medications has been provided;

(2) individual's personal belongings are prepared to accompany the individual;

(3) all necessary financial arrangements and agreements are addressed;

(4) appropriate special instructions for the individual or others are furnished in writing and orally prior to or at the time of departure;

(5) the records described in subsection (i) of this section shall accompany the individual unless the movement is to the individual's home; and

(6) the appropriate Social Security office has been notified of the individual's impending move.

(f) The MRA shall maintain evidence that the physician, direct contact staff, consultants, and others who will be delivering services to the individual are informed of the relevant portions of the individual's community living plan prior to provision of service.

(g) The MRA shall coordinate and ensure satisfactory transition by the individual to the community-based option through involvement of the facility staff in the process. The MRA shall assure that staff from the MRA and/or facility accompany the individual to the community home (if other than the family's home) and shall remain there for a period of time which is determined to be necessary for satisfactory transition. The case manager shall arrange to meet the individual at the home as soon as possible.

(h) If an individual on regular admission to a facility is placed in a setting outside the local service area of that facility, then 180 calendar days after moving to a community home the individual shall be reassigned to the facility serving that area. Written notification shall be sent by the original facility to the individual or legally authorized representative, case manager, and the facility serving the area.

(i) The following records, as applicable, shall be provided by the facility and shall accompany the individual:

(1) a copy of birth certificate, if required by the community services provider,

(2) copies of any legal documents, if required by the community-based facility,

(3) a copy of the individual's Social Security card,

(4) a photograph current within one year;

(5) a copy of the immunization record,

(6) a copy of the height and weight record,

(7) a copy of the seizure record;

(8) a copy of the treatment and diet record,

(9) a copy of the most recent medical and dental examination;

(10) copies of all laboratory tests conducted within the past 30 calendar days and any additional significant reports made within the past year (including, X-ray, EEG, and EKG),

(11) copies of the physician's progress reports,

(12) a copy of the social history and the most recent psychological examination; and

(13) copy of Medicaid, Medicare, or third-party insurance cards, if available,

(14) nursing care plan; and

(15) any other data requested by the community program.

(j) Prior to or at the time of movement, the facility physician shall prepare a letter summarizing the highly relevant medical information to be given to the new physician or health care entity that will be providing services to the individual in the community. Whenever possible, the facility physician shall communicate directly with the new physician

(k) The facility shall transmit the completed community living plan and any other necessary information regarding treatment needs to the physician who will provide care in the community. The MRA county of residence shall document that the information is sent.

(l) The MRA shall notify the regional monitor within three working days of the date of the move

(m) The individual shall be reassigned in CARE by the facility to the serv-

ing MRA. If necessary, the county of residence shall be changed at this time.

§402.319. Requirements for Continuity of Service Activities Following Movement.

(a) Case management will be provided in accordance with TXMHMR policy and procedures in the Case Management Operating Instructions. The MRA is responsible for assigning a case manager to maintain an ongoing relationship with the individual who moves into the community to determine if:

(1) there are factors which may preclude the successful attainment of the individual's choices and needs relative to quality of life;

(2) the individual's choices and needs that affect the placement are met in the community setting;

(3) the individual continues to be eligible for the setting; and

(4) the home continues to be appropriate for the individual.

(b) The MRA may request a case management waiver in accordance with TXMHMR procedures.

(c) The case manager shall visit the individual as frequently as needed, but no less frequently than monthly. If the individual has an approved waiver, the visits shall be made quarterly by the MRA staff person designated in the waiver request.

(d) The MRA shall use visits and interviews with the individual and others, as well as observations, as the primary basis for collecting data and information to determine if the individual's choices and needs are being met across time and services. It is not the MRA's responsibility to monitor the facility to see if it meets the certification standards of another agency; however, it is the MRA's responsibility to know a provider's status regarding certification or licensure.

(e) Visits shall be documented on progress notes by the MRA and pertinent information shall be shared with the provider and, if needed, the assigned facility and the MRA staff administratively responsible for community living activities.

(1) Significant problems not resolved during the visit shall become a part of the MRA's system for problem analysis and monitoring.

(2) The MRA shall maintain evidence of problem correction. Significant, unresolved problems related to the services for an individual shall be reported by the MRA to the appropriate certifying or licensing agency for resolution.

(3) Concerns regarding rights violations or abuse and neglect issues shall be reported in accordance with applicable laws and regulations.

(f) Visits shall be accomplished with the participation from the facility if considered by either party to be in the best interest of the individual. If the facility and the MRA accomplish this process together for the individual, it shall be a joint visit resulting in one progress note in MRA records and one reporting process.

(g) Facility staff shall be invited to participate in the 30-day staffing and shall be available for on-going consultation and information.

(h) The regional monitor shall conduct a 30-day review, a 90-day review, and annual reviews, with follow-up reviews as necessary.

(i) Annually the MRA shall screen the individual using the Case Management Screening format. The information shall be included in the individual's annual planning staffing.

§402.321. References Documents referenced in this subchapter include:

(1) Texas Health and Safety Code, Title 7, Chapters 591-596 (Persons with Mental Retardation Act);

(2) Texas Administrative Code, Title 40, Part I, Chapter 27, concerning Texas Intermediate Care Facility/Mental Retardation (ICF/MR) Standards for Participation (rules of the Texas Department of Human Services);

(3) Chapter 401, Subchapter G of this title (relating to Community Mental Health and Mental Retardation Centers);

(4) Chapter 402, Subchapter H of this title (relating to Placement Appeals Procedures—Mental Retardation Services);

(5) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);

(6) Chapter 405, Subchapter D of this title (relating to Determination of Mental Retardation and Appropriateness for Admission to Mental Retardation Services);

(7) Chapter 410, Subchapter A of this title (relating to Public Responsibility Committees); and

(8) TXMHMR Case Management Operating Instructions, 401-2.

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 January 21, 1994.

TRD-9435055

Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date May 1, 1994

Proposal publication date: November 2, 1993
For further information, please call: (512)
465-4670

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**Chapter 403. Other Agencies
and the Public**

**Subchapter G. Department Pro-
cedures for Outreach Pro-
grams**

• 25 TAC §§403.201-403.213

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §403.201-403.213, concerning the department procedures for outreach programs, without changes to the proposed as text published in the September 10, 1993, issue of the *Texas Register* (18 TexReg 6075).

The provisions of the subchapter are no longer applicable to the community-based services of departmental facilities.

No public comment was received.

The repeals 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.

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 January 21, 1994.

TRD-9435064 Ann K. Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: February 11, 1994

Proposal publication date: December 7, 1993

For further information, please call: (512)
206-4670

◆ ◆ ◆
**Chapter 407. Internal Facilities
Management**

Financial Services

• 25 TAC §407.21

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §407.21, concerning financial services without changes to the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7284)

The repeal deletes language associated with previously amended sections. No public comment was received.

The repeal is 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.

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 January 21, 1994.

TRD-9435066 Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: February 11, 1994

Proposal publication date: November 9, 1993

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

◆ ◆ ◆
**Chapter 409. Medicaid
Programs**

**Subchapter E. Home and
Community-based Ser-
vices-OBRA**

• 25 TAC §§409.156,
409.166-409.173

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts amendments to §409.156 and §409.166, and new §§409.167-409.172, concerning home and community-based services-OBRA (HCS-O), without changes to the proposed text as published in the December 7, 1993, issue of *Texas Register* (18 TexReg 9082). The amendments and new sections were adopted on an emergency basis in the September 17, 1993, issue of the *Texas Register* (18 TexReg 6276).

The amendments update financial eligibility criteria and spousal impoverishment provisions consistent with the provisions of the waiver; with the current Appropriation Act, Rider 14, Code of Federal Regulations, Part 441, §441.13, which requires the department to maximize collection of federal funds; and with the spousal impoverishment provisions of the Social Security Act, §1924, and as specified in the Medicaid State Plan. The new sections provide for corrective action and provider sanctions.

No written comments were received on the amendments and new sections as proposed.

The amendments and new are adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502) §16, which provide the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

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 January 21, 1994.

TRD-9435050 Ann K. Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: February 11, 1994

Proposal publication date: November 26, 1993

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

◆ ◆ ◆
**TITLE 31. NATURAL RE-
SOURCES AND CON-
SERVATION**

**Part X. Texas Water
Development Board**

**Chapter 353. Introductory
Provisions**

General Provisions

• 31 TAC §353.14

The Texas Water Development Board adopts new §353.14 concerning memorandum of understanding between Texas Water Development Board and Texas Antiquities Commission, without changes to the proposed text as published in the December 7, 1993, issue of the *Texas Register* (18 TexReg 9087).

The new section concerns the adoption by reference of a Memorandum of Understanding (MOU) between the board and the Texas Antiquities Committee, through the Department of Antiquities Protection. The MOU is adopted to allow the board to conduct surveys for archeological sites on lands which may be impacted by proposed public works projects that are funded in whole or in part by the board.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to the Texas Water Code, §6.101, which gives the board the authority to adopt rules necessary to carry out its powers and duties.

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 January 21, 1994.

TRD-9435029 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Effective date: February 11, 1994

Proposal publication date: December 7, 1993

For further information, please call: (512)
463-7847

◆ ◆ ◆
**Chapter 379. Advisory
Committee**

• 31 TAC §§379.1-379.7

The Texas Water Development Board adopts new §§379.1-379.7 concerning advisory committees, without changes to the proposed text

as published in the December 17, 1993, issue of the *Texas Register* (18 TexReg 9699).

The new rule defines the purpose and task, the membership, the method of reporting, and the expiration date of each of the advisory committees utilized by the Board.

No comments were received regarding adoption of the new sections.

The new sections adopted pursuant to the Texas Water Code, §6.101, which gives the board the authority to adopt rules necessary to carry out its powers and duties, and Texas Civil Statutes, Article 6252-33, which requires the board to adopt rules for advisory committees to the board

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

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

Issued in Austin, Texas, on January 21, 1994

TRD-9435028 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Effective date: February 11, 1994

Proposal publication date: December 17, 1993

For further information, please call. (512) 463-7847

Part XIX. Texas Alternative Fuels Council

Chapter 655. Administration

Subchapter A. Council Practices

- 31 TAC §§655.1, 655.5, 655.10, 655.15, 655.20, 655.25, 655.30, 655.35, 655.40, 655.45, 655.50, 655.55, 655.60, 655.65, 655.70, 655.75, 655.80, 655.85, 655.90, 655.95, 655.100, 655.105, 655.110

The Alternative Fuels Council adopts new §§655.1, 655.5, 655.10, 655.15, 655.20, 655.25, 655.30, 655.35, 655.40, 655.45, 655.50, 655.55, 655.60, 655.65, 655.70, 655.75, 655.80, 655.85, 655.90, 655.95, 655.100, 655.105 and 655.110, concerning the procedural functioning of the council and the application review and funding processes. Sections 655.5, 655.55, 655.65, 655.80, 655.85 and 655.100 are adopted with changes to the proposed text as published in the September 21, 1993, issue of the *Texas Register* (18 TexReg 6426). Sections 655.1, 655.10, 655.15, 655.20, 655.25, 655.30, 655.35, 655.40, 655.45, 655.50, 655.60, 655.70, 655.75, 655.90, 655.95, 655.105 and 655.110 are adopted without changes to the proposed text and will not be republished.

The Alternative Fuels Council was created by the 73rd Legislature by adding Subchapter J to Chapter 113 of the Texas Natural Re-

sources Code. The council is charged with the responsibility of coordinating a comprehensive statewide program to support the use of environmentally beneficial alternative fuels in vehicle fleets owned by state and local governments and political subdivisions. By exerting leadership in changing the composition of governmental fleets, the council can encourage and assist the shift to alternative fuels in private fleets. Changes in vehicle fleet composition are mandated for many fleets, especially those in Texas' major metropolitan areas, under both state and federal law. The council's programs are intended both to accelerate the transition to alternative fuels and to ease the financial impact of the transition on state and local governments. The availability of alternative fuels from Texas sources and the manufacturing capacity of Texas firms in the alternative fuel and vehicle fields enhance the broad goals of the council-to develop and diversify the state's economy, eliminate unemployment or underemployment, and develop and expand transportation and commerce in the state. This enumeration of public purposes is not intended to be an exclusive list of the public purposes served by the council.

The council, which is composed of the commissioner of the General Land Office, the three commissioners of the Railroad Commission of Texas, the chairman of the General Services Commission and the chairman of the Texas Natural Resources Conservation Commission, is to utilize the alternative fuels conversion fund to make loans or grants or otherwise finance activities supporting or encouraging the use of alternative fuels

New §§655.1, 655.5, and 655.10 specify the applicability of the rules, define the terms used, and define membership on the council. New §§655.15, 655.20, 655.25, 655.30 and 655.35 delineate the procedure for calling meetings of the council and the format of those meetings. New §§655.40, 655.45, 655.50, 655.55, 655.60, 655.65 and 655.70 set out operating details such as council employees, the fiscal year, the budget, the principal domicile and address and the official seal, computation of time, and conduct and decorum. Finally, new §§655.75, 655.80, 655.85, 655.90, 655.95, 655.100, 655.105 and 655.110 set forth the bases for consideration of funding of projects by the council, the operating details regarding the filing of applications, consideration of applications by the council, council decision-making, minimum contractual terms for loan and grant agreements, enforcement, and ability of the council to enter into contracts with other governmental entities and private entities

These rules do not address all issues related to funding provided through the bond issuance contemplated by Senate Bill 737, §4 and §5. Additional rules will be proposed and adopted prior to the issuance of the authorized bonds.

To implement the broad objectives of the legislation through its rules, the council developed and adopted the following policy guidelines: the distribution of funds must meet the requirement of federal and state law governing the use of the particular funds; priority should be given to projects that di-

rectly place alternative fuel vehicles on the road and/or develop refueling infrastructure; substantial funds should be directed to Texas non-attainment areas, taking into consideration both the non-attainment level and percentage of emissions contributed by mobile sources; consideration should also be given to borderline attainment areas and other areas where aggressive alternative fuel programs could help prevent the area's air quality from deteriorating to nonattainment levels for ozone, carbon monoxide or particulate matter; the availability of other funding options for projects should be determined and considered before the limited funds available to the council are committed; strong weight should be given in allocating funding to projects that are or can readily be coordinated with state, federal, and local alternative fuel and air quality programs, such as the proposed Presidential Clean Cities Initiative, the ability of recipients to leverage the grants, either with matching funds from their own revenues or from other sources such as private ventures, should be given significant weight, in placing grants, priority should be given to funding projects of local political subdivisions in order to supplement local tax revenues or general revenue funds; and in placing loans, additional consideration must be given to the ability of the applicants to repay, including a determination of what amount of repayment will come from fuel or other life-cycle savings or from operating revenues

One comment expressed concern that the authority of the council to fund private fleet owners as well as governmental entities is ambiguous. In response, the council affirms that private fleet owners are eligible to receive funds under this program, and has made the requested change to the language in the preamble

Another comment observed that because the definition of "bi-fuel vehicle" in §655.5 does not include information indicating that the use of the two fuels is measurable and definable and therefore subject to regulation, the definition implies that the council believes that bi-fuel vehicles have no value in the emissions reduction effort. The comment opined that it is unreasonable and unsound to insist on dedicated-fuel vehicles at the beginning of the movement away from gasoline, especially until the refueling infrastructure is more widespread. The council's preference is for dedicated vehicles due to the maximum emission reduction benefit achieved from those vehicles. The council recognizes bi-fuel vehicles as acceptable and creditable transitional vehicles. The council believes that the definition for bi-fuel vehicles is sufficient and that the suggested revision is unwarranted.

One comment proposed revising the definition of "conversion" in §655.5 to delete the phrase "specified percentages" in order to allow for greater flexibility concerning the transition to alternative fuels. The council agrees with this suggestion, and has made the change.

One comment pointed out that the definition of the term "joint venture" in §655.5 is too limiting because under the grant program, applicants may be a private person, company

or firm; a state agency or a political subdivision thereof; a local governmental entity; or any combination thereof. The council agrees that the definition should make it clear that a joint venture may comprise two or more governmental entities, and the rule has been so revised.

Another comment suggested that §655.75, which lists the methodology for prioritizing project applications, should give preference to funding those projects which place alternatively-fueled vehicles on the road and should clearly prohibit or deny funding for applications for promotional activity, research and development projects, or demonstration projects; the comment proffered specific language to be included in the rule. The council believes that §655.75 establishes funding priorities appropriately; that the council should retain the flexibility and discretion to fund promotional activities, research and development projects, or demonstration projects; and that the rule should not be changed.

One comment agreed with the language in §655.75(a)(6) giving priority to projects which can provide matching funds, and suggested that the rule be revised to make matching funds an absolute requirement. The council declines to make this recommended change, giving preference to projects with matching funds appropriately recognizes the importance of matching funds but does not hinder the council's flexibility in considering and/or funding a variety of projects.

Another comment observed that applicants in the private sector may well propose a project that under §655.80(f) would require disclosure of proprietary or other information, the possession of which could provide unfair advantage to a competitor, concluding that such information should not be freely available. This comment recommended that §655.80(f) be revised to provide that applications that include private participation be exempted from the provision that all applications and supporting documentation shall be available for inspection. In response, the council notes that it cannot by rule declare in advance that applications and supporting documentation filed by private entities are exempt from disclosure under the Open Records Act, Texas Government Code, Chapter 552. However, the council recognizes that the Open Records Act provides a mechanism for making that determination with respect to particular documents, and has revised the rule to advise applicants that the materials filed with the council are subject to the Open Records Act.

One comment recommended deleting the language in §655.85(a) which states that knowing concealment of material facts concerning the subject matter of the required information items shall be grounds for refusal to consider any further application submitted by the applicant or under which the applicant would participate or receive a direct financial or regulatory benefit, on the grounds that such a prohibition is overly broad and that the goal of prohibiting untrustworthy applicants can be achieved by awarding trustworthiness a priority in the selection process. The council disagrees that this language would be used to disqualify an applicant for such minor problems as mistakes, oversights, or changes in

other applicable rules which result in an erroneous submittal, and declines to make the proposed deletion.

Applicants must include a detailed discussion of other public and private funding options available to them, under §655.85(b)(3)(J). One comment stated that when an applicant is a governmental entity, it is reasonable to ask about other funding sources, but that when an applicant is a private business entity, the requirement loses its logical connection to the application process. The comment suggested adding language making the distinction between categories of applicants clear. The council disagrees that this requirement bears no logical connection to private entity applicants. The council must have this information from all applicants to ensure that grants are made in such a way as to get maximum benefit from each dollar granted.

Another comment suggested changing the language in §655.85(b)(3)(O) to require proof that a project will reduce emissions rather than proof of eligibility for SIP credits. The council agrees that a change in wording is necessary, but has made the change to emphasize that compliance with the SIP is a priority in nonattainment areas.

One comment suggested revising §655.85 to add two new subsections relating to historically underutilized businesses, and provided the proposed language. The new subsections would encourage applicants to use historically underutilized businesses for project-related services, and to develop a plan to define what programs will be taken by the applicant to recruit, hire, and retain minority and women employees. The council declines to make the suggested change in the rule, because the primary task of the council is to coordinate a comprehensive statewide program to support the use of environmentally beneficial alternative fuels in vehicle fleets owned by state and local governments and political subdivisions, and to encourage and assist the shift to alternative fuels in private fleets. The council's programs are intended both to accelerate the transition to alternative fuels and to ease the financial impact of the transition on state and local governments. However, the council agrees that greater use of historically underutilized businesses is an important goal, and strongly encourages applicants to employ historically underutilized businesses for project-related services, and to develop a plan to recruit, hire, and retain minority and women employees. The council has added language in §655.85(b)(3)(I) in support of use of historically underutilized businesses.

Section 655.95(b) allows the council to vary any and all provisions of its applications at any time prior to execution of a contract where the council deems such variances to be in the interest of the State of Texas. One comment suggested revising the rule to provide that application provisions may be changed at any time before applications are submitted, to avoid changing the rules in the middle of the process. The council must retain the flexibility and discretion to protect the interest of the State of Texas. An applicant may simply decline to execute a contract which has been changed. The council be-

lieves that the requested revision is not necessary.

Another comment opined that there may be items or data included in an application that should not and need not be made public, and suggested eliminating the requirement in §655.100(1) that a copy of the application and all supporting documentation be attached to the agreement and made a part of it, instead having a summary of the application attached to the agreement. In response, the council believes that it may be crucial to have the specifics of a particular project part of the agreement; in some instances, a summary may not suffice to reflect the intentions of the parties. The council also notes that it cannot by rule declare in advance that applications and supporting documentation from private entities are exempt from disclosure under the Open Records Act, Texas Government Code, Chapter 552. However, the council recognizes that the Open Records Act provides a mechanism for making that determination with respect to particular documents, and has revised the rule to advise applicants that the materials filed with the council are subject to the Open Records Act.

Finally, one general comment supported any reasonable initiative to research and develop alternative fuel technology using agricultural products and by-products, but did not suggest specific changes in the proposed rules.

The council has made additional changes in the adopted rules as follows: Institutions of higher education and health care facilities have been added to the definition of the term "applicant" in §655.5 because Senate Bill 737 specifies that these entities are eligible to apply for loans, grants or other disbursements. The council added to §655.5 a definition for the term "fuel system" because it is necessary in evaluating applications. Section 655.55 has been amended to show the correct office location and mailing address for the council. Section 655.65 has been amended to change the wording describing the computation of time to replace the phrase "runs until the end of" with "shall conclude on." Section 655.85(b)(2) has been amended to spell out the name of the Texas Natural Resources Conservation Commission instead of using the acronym "TNRCC." Sections 655.85(b)(3) and 655.100(3) have been amended so that the subparagraphs have grammatically parallel construction.

Comments were filed by Mesa, Inc.; Phillips Petroleum Company, the Texas Board of Criminal Justice; and the Texas Farm Bureau. The Texas Farm Bureau generally favored adoption of the sections; Mesa, Inc. generally favored adoption of the rules, but suggested specific changes. Phillips Petroleum Company and the Texas Board of Criminal Justice did not indicate favor or opposition, but suggested amendments to two sections.

The rules are proposed under Texas Natural Resources Code, §113.284(b), which grants the Alternative Fuels Council the authority to adopt rules necessary to achieve the purposes of Texas Natural Resources Code, Chapter 113, Subchapter J, through a comprehensive program in support of the use of environmentally beneficial alternative fuels

developed under §113.284 The rules implementing Texas Natural Resources Code, Chapter 113, Subchapter J

§6555 Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act-Texas Natural Resources Code, Chapter 113. Alternative fuel (also referred to as "environmentally beneficial fuel" and "clean-burning fuel")-This term means:

(A) natural gas,

(B) liquified petroleum gas,

(C) electricity,

(D) methanol or methanol/gasoline blends of 85% (M85) or greater;

(E) ethanol or ethanol/gasoline blend of 85% (E85), or greater; or

(F) hydrogen Alternative fuel vehicles (also referred to as "clean-fuel vehicles")-A vehicle

(A) capable of operating on an alternative fuel;

(B) approved by the Texas Natural Resources Conservation Commission (TNRCC) for emissions, and

(C) having a fuel system certified or approved by the Railroad Commission of Texas for safety, if applicable

Applicant-An individual, business, state agency, county, municipality, school district, institution of higher education, health care facility, or mass transit authority seeking to obtain a loan, grant or other disbursement from the council

Bi-Fuel Vehicle-A vehicle capable of operating on an alternative fuel or a conventional fuel but not on both at the same time.

Chairman-The chairman of the council

Council-The Alternative Fuels Council as established by Texas Natural Resources Code, Chapter 113.

Conversion-This term means

(A) the replacement of gasoline or diesel-powered fleet vehicles with alternative fuel vehicles to achieve greater alternative fuel vehicle composition in the fleet, or

(B) the retrofitting or upfitting of a gasoline or diesel-powered vehicle with an alternative fuel fueling system.

Designee-Individual employed by a council member's agency, board or commission designated by that council member to act on his or her behalf.

Dual-fueled vehicle-A vehicle capable of operating on two different fuels simultaneously, at least one of which is an alternative fuel.

Fuel system-Electrical or mechanical devices on board a vehicle for delivery of fuel to the vehicle engine, as defined by the Railroad Commission of Texas, where applicable.

Historically underutilized business-This term means:

(A) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons who have been historically underutilized because of their identification as women or as members of certain minority groups, including Black Americans, Hispanic Americans, Asian Pacific Americans, and Native Americans who have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(B) a sole proprietorship for the purpose of making profit that is 100% owned, operated and controlled by a person described in subparagraph (A) of this definition.

(C) a partnership for the purpose of making a profit in which at least 51% of the assets and interest in the partnership is owned by one or more persons described in subparagraph (A) of this definition. Those persons must have a proportionate interest in the control, operation and management of the partnership's affairs,

(D) a joint venture in which each entity in the joint venture is a historically underutilized business under this subsection; or

(E) a supplier contract between a historically underutilized business under this subsection and a prime contractor under which the historically underutilized business is directly and regularly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies.

Joint venture-An undertaking between a private person or firm and an agency of the State of Texas or political subdivision thereof or an undertaking be-

tween two or more agencies of the State of Texas or political subdivisions thereof entered into for the purpose of engaging in a specific alternative fuel related project or series of projects for mutual profit or benefit.

Member-A member of the council or his or her designee as provided by Texas Natural Resources Code, §113.283.

Minority-owned business-A historically underutilized business in which the underutilized person or persons is a member of a minority group.

Motor fuel system-A natural gas or liquid petroleum gas system, as defined by the Railroad Commission of Texas.

Nonattainment-A term used to define an area in which the ambient air quality does not meet an applicable National Ambient Air Quality Standard (NAAQS). NAAQS have been promulgated by the Environmental Protection Agency (EPA) establishing the maximum concentration of criteria pollutants in the ambient air.

Original Equipment Manufacturer (OEM)-A final stage manufacturer or the final assembler before the vehicle is delivered to the consumer. OEMs accept responsibility for vehicle warranty as required by federal and state laws and retain all liability for their product, after the sale, for meeting all vehicle validation and certification requirements.

OEM vehicle-A vehicle built by an OEM.

Person-Any natural person, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

Proceeding-All hearings and other matters conducted at the direction of the council on an application, from docketing of an application to final council decision on an application.

Refueling infrastructure-Refueling facilities (whether one or more) necessary to dispense alternative fuel to alternative fuel vehicles. A refueling facility is any depreciable property, including a building and its structural components, designed for the storage and dispensing of an alternative fuel into a fuel tank of a motor vehicle or for the purpose of recharging electric vehicles (EVs) at the point where recharging occurs. Refueling infrastructure does not include natural gas pipelines or distribution lines or electric distribution lines located outside the boundaries of the property on which a refueling facility is located.

State Implementation Plan (SIP)-A plan, or subsequent revisions thereto, promulgated by a state to implement the state's regulatory obligations under the Federal Clean Air Act, such as those related to attainment of the NAAQS.

Women-owned business-See definition for "Historically underutilized business."

§655.55. Principal Domicile and Address. The domicile and principal office of the council shall be at Austin, Texas. The council's offices are located at Room 104, Sam Houston State Office Building, Austin, Texas. Office hours are 8:00 a.m. to 5:00 p.m., Monday-Friday. The council's offices are closed on Saturday and Sundays and on state-observed holidays. The mailing address is Sam Houston State Office Building, Room 104, Austin, Texas 78701.

§655.65. Computation of Time. In computing any period of time prescribed or allowed by this chapter, by order of the council, or by any applicable statute, the period shall begin on the day after the act, event, or filing in question and it shall conclude on the last day of the designated period, unless it is a Saturday, Sunday, or state-observed holiday, in which event the period shall conclude on the next day which is neither a Saturday, Sunday, nor a state-observed holiday.

§655.80. Filing of Applications

(a) Applications filed with the council shall be on an application form promulgated by the council. Appropriate instructions and explanatory materials will be provided with the application

(b) Dates for the submission of applications shall be set and published by the council. If funds are available, application dates will be set not less than annually

(c) The deadline for receipt and consideration of an application for funding is the close of business (5:00 p.m.) on the submission date. An application is considered filed when actually received in the council offices or when postmarked showing the application was received and accepted by the United States Post Office, a common carrier or its equivalent, at least four calendar days prior to submission date. Metered mail is not acceptable unless it also includes a United States Postal Service postmark.

(d) Applicants shall pay, at the time of filing the application, a nonrefundable filing fee in an amount set by the council.

(e) All documents relating to an application shall be filed with the council. Each application will be marked with the date and time received in the offices of the council. The envelope or other wrapper in which an application received by mail or common carrier was enclosed shall be retained with the application.

(f) A copy of all applications and supporting documentation shall be maintained at the council's office. Applicants are advised that the council must comply with the Open Records Act, Texas Government

Code, Chapter 552, and therefore that the application and supporting documentation are subject to the Open Records Act.

(g) An application for a grant, loan, or other disbursement of funds shall be accompanied by all supporting documentation at the time the application is filed, except as provided in subsection (h) of this section.

(h) Upon receipt, an application will undergo an initial review by the council to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of the initial review shall be provided to the applicant. The applicant may correct any deficiencies within ten calendar days of the date of the notification of such deficiencies from the council. Upon determination that the application is complete, the application shall be forwarded to the executive committee for consideration.

(i) A technical review of all applications or of particular classes of applications may be required by the council. The technical review may include investigation into the economic and technical feasibility of the project for which funding is sought and the likelihood that the project, if implemented, will accomplish the objectives stated in the application or established by the council

(j) The council may require an investigation of the financial circumstances, business experience and background of applicants, the personnel identified by an applicant as being principally responsible for the project for which funding is sought, and the same information concerning specific suppliers of goods and/or services proposed to be acquired pursuant to the terms of the application

§655.85. Required Information in Applications.

(a) All applicants, whether requesting a loan or a grant, must provide the information described in this section. Failure to provide the information or failure to fully disclose any material fact concerning the subject matter of the required information items shall be grounds for rejection of the application. Knowing concealment of material facts concerning the subject matter of the required information items shall be grounds for refusal to consider any further application submitted by the applicant or under which the applicant would participate or receive a direct financial or regulatory benefit. Applicants may include additional information relevant to the subject matter of the application.

(b) Applicants shall include a statement that the proposed project complies with all applicable federal and state law, including in the statement the following:

(1) description of any federal, state and/or local air quality or alternative fuel related programs in place or planned for the area and reasonably anticipated to be initiated within three years of the application date;

(2) identification of the area's air quality status, as determined by the EPA and provided for in the 42 United States Code, §7407, Clean Air Act, §107. In the absence of an EPA designation of attainment or nonattainment, the Texas Natural Resource Conservation Commission may be used as a resource for determining the air quality of the area. This information should include a discussion of the mobile source contribution to the area's air quality problem;

(3) All applicants must articulate a "Statement of Project" including:

(A) detailed description of relevant qualifications of the project's key personnel;

(B) detailed description of applicant's past performance and experience with similar projects;

(C) detailed description of applicant's quality control/assurance plan;

(D) detailed description of applicant's proposed schedule for reporting the project's progress to the council;

(E) detailed project budget, including description of the source of all fuel, equipment, labor, and facilities;

(F) detailed description of equipment to be used and the method used to select the equipment;

(G) overview of pertinent local alternative fuel related activity, such as active gas utilities, vehicle conversion centers, university programs, and others;

(H) overview of existing and planned refueling infrastructure availability for the area;

(I) clear identification, whenever applicable, of the applicant as a historically underutilized business, individual with low income, health care facility, minority-owned business, or women-owned business, and, whenever applicable, identification of applicant's employment of historically underutilized business for project-related services,

(J) detailed discussion of other public and private funding options available to the applicant;

(K) discussion of the applicant's current fleet composition and proposed compliance with the requirements of applicable federal and state fleet composition requirements;

(L) identification of matching fund availability, from the applicant's own revenue or from other sources, including signed letters of intent;

(M) identification of the applicant as a local political subdivision whose other funding option would be local tax revenues or General Revenue funds;

(N) evidence of economic feasibility of the project including a demonstration of the ability to repay any loan principally from fuel savings, life-cycle savings, or other operating revenues;

(O) a statement of a project's eligibility for SIP credits. An entity subject to SIP requirements which requests funding for a project in a nonattainment area subject to SIP requirements must show eligibility for SIP credit for that project; and

(P) if an application is made for oil overcharge funds, a statement establishing the project's compliance with all applicable law relating to such funds.

(4) The council may require any additional information it deems appropriate.

§655.100. Grant and Loan Agreements. Minimum Terms and Compliance with Terms.

(1) Entities receiving grants or loans shall be required to execute an agreement in the form prescribed by the council setting out the terms and conditions of the grant or loan as approved by the council. A true and complete copy of the application made by the recipient and all additions or amendments thereto shall be attached to the agreement and made a part thereof. Applicants are advised that the council must comply with the Open Records Act, Texas Government Code, Chapter 552, and therefore that the application and supporting documentation are subject to the Open Records Act.

(2) Agreements shall be executed by the chairman and by the chief executive officer of the recipient or by such other officer authorized by the governing body of the entity to execute the agreement.

A certified copy of a resolution of the governing body of the recipient consenting to the terms and conditions of the agreement and authorizing the officer executing it to do so shall be attached to the agreement.

(3) The agreement shall contain at least the following terms and conditions, together with all such other terms and conditions prescribed by the council:

(A) performance under the grant shall strictly comply with the proposal submitted in the application, unless specifically modified by the council;

(B) all equipment purchased through the grant or loan shall be maintained and operated in compliance with manufacturer's warranty requirements, state and federal laws, and in conformance with the SIP. The recipient shall immediately report all citations by regulatory authorities for violations of such provisions to the council;

(C) the recipient shall assume all liability for the operation and maintenance of equipment purchased through the grant or loan and indemnify the council and the State of Texas from all liability arising therefrom, to the extent permitted by law;

(D) at the direction of the council, may provide for funding of purchases or construction, in stages, conditioned on delivery of equipment or completion and approval by the council or other appropriate authority of specified stages of construction;

(E) provide that further funding may terminate at the discretion of the council for the failure of the recipient to comply with the requirement of the grant or loan;

(F) provide that the agreement may be terminated by mutual agreement of the recipient and the council, and all unexpended funds returned to the council, in the event of either impossibility, including unavailability of equipment planned to be purchased with loan or grant funds, or the commercial unfeasibility of project;

(G) bind the recipient to refund to the council all funds expended by the recipient in violation of the terms of the agreement, together with all administrative costs, attorneys fees, expenses and court costs incurred by the council, and

(H) grant to the council the right to demand and receive reports of progress of the project at specified intervals,

the right to audit the recipient with respect to the project, and the right to perform inspections of the project at reasonable times.

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 January 21, 1994.

TRD-9435027

Garry Mauro
Chairman
Texas Alternative Fuels
Council

Effective date. February 11, 1994

Proposal publication date. September 21, 1993

For further information, please call: (512) 463-5007

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.292

The Comptroller of Public Accounts adopts an amendment to §3.292, concerning repair, remodeling, maintenance, and restoration of tangible personal property, without changes to the proposed text as published in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8339)

Amendments to the Tax Code, effective October 1, 1993, except the labor to repair tangible personal property damaged within a disaster area. References to remodeling motor vehicles were also added to the section.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendments implement the Texas Tax Code, §§151.0101, 151.151, 151.3111, 151.350.

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 January 20, 1994.

TRD-9434944

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date. February 10, 1994

Proposal publication date. November 12, 1993

For further information, please call. (512) 463-4028

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• 34 TAC §3.310

The Comptroller of Public Accounts adopts an amendment to §3.310, concerning laundry, cleaning, and garment services, without changes to the proposed text as published in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8341)

Amendments to the Tax Code, effective October 1, 1993, exempt the labor to repair tangible personal property damaged within a disaster area.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Texas Tax Code, §§151.0048, 151.057, 151.302, 151.350

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 January 20, 1994.

TRD-9434943 Martin E. Cherry
 Chief, General Law
 Section
 Comptroller of Public
 Accounts

Effective date: February 10, 1994

Proposal publication date: November 12, 1993

For further information, please call (512) 463-4028

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• 34 TAC §3.329

The Comptroller of Public Accounts adopts an amendment to §3.329, concerning enterprise projects, without changes to the proposed text as published in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8342)

The amendment reflects changes to the Tax Code, §151.429, that allows a sales tax refund for jobs retained, as well as jobs created, by an enterprise project

No comments were received regarding adoption of the amendment

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code §151.429

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 January 20, 1994.

TRD-9434942 Martin E. Cherry
 Chief, General Law
 Section
 Comptroller of Public
 Accounts

Effective date: February 10, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 462-4028

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Subchapter V. Franchise Tax

• 34 TAC §3.558

The Comptroller of Public Accounts adopts an amendment to §3.558, concerning officer and director compensation, without changes to the proposed text as published in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8343).

Amendments to this section resulted from the creation of limited banking associations by the 73rd Legislature, 1993. Some amendments were made to eliminate redundancy

No comments were received regarding adoption of the amendment

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendments implement the Texas Tax Code, §171.110.

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 January 20, 1994.

TRD-9434948 Martin E. Cherry
 Chief, General Law
 Section
 Comptroller of Public
 Accounts

Effective date February 10, 1994

Proposal publication date: November 12, 1993

For further information, please call (512) 463-4028

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• 34 TAC §3.562

The Comptroller of Public Accounts adopts new §3.562, concerning limited liability companies, without changes to the proposed text as published in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8346).

This new section contains guidelines for determining the taxable capital and earned surplus of limited liability companies. The section is a result of the creation of limited liability companies by the 72nd Legislature, 1991

No comments were received regarding adoption of the new section

This new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administra-

tion and enforcement of the provisions of the Tax Code, Title 2. The new section implements the Texas Tax Code, §171.001.

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 January 20, 1994.

TRD-9434947 Martin E. Cherry
 Chief, General Law
 Section
 Comptroller of Public
 Accounts

Effective date: February 10, 1994

Proposal publication date. November 12, 1993

For further information, please call: (512) 463-4028

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• 34 TAC §3.573

The Comptroller of Public Accounts adopts new §3.573, concerning provisional exemptions, without changes to the proposed text as published in the July 20, 1993, issue of the *Texas Register* (18 TexReg 4742).

The new section sets out the procedure for a corporation to obtain a temporary franchise tax exemption as referenced in Tax Code §171.063(d), while a corporation awaits its federal exemption from the Internal Revenue Service.

No comments were received regarding adoption of the new section.

This new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The new section implements the Tax Code §171.063.

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 January 20, 1994.

TRD-9434960 Martin E. Cherry
 Chief, General Law
 Section
 Comptroller of Public
 Accounts

Effective date. February 10, 1994

Proposal publication date: July 20, 1993

For further information, please call: (512) 463-4028

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Subchapter AA. Automotive
Oil Sales Fee

• 34 TAC §3.701

The Comptroller of Public Accounts adopts an amendment to §3.701, concerning the automotive oil sales fee, without changes to the proposed text as published in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8349).

The 73rd Legislature, 1993, amended the Health and Safety Code, Chapter 371, effective October 1, 1993, to clarify when an importer is liable for the fee and to change the state agency authorized to administer the used oil recycling fund.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Health and Safety Code, §371.062

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 January 20, 1994

TRD-9434946

Martin E Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date. February 10, 1994

Proposal publication date November 12, 1993

For further information, please call: (512) 463-4028

Part IX. Texas Bond Review Board

Chapter 190. Allocation of the State's Limit on Certain Private Activity Bonds

Subchapter A. Program Rules

• 34 TAC §190.3, §190.8

The Texas Bond Review Board adopts amendments to §190.3, §190.8, without changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8771)

The Texas Bond Review Board amends these sections to clarify the application process and allow sufficient time for compliance after closing. The Texas Bond Review Board amends these sections to facilitate maximum efficiency in the usage of allocation for private activity bonds.

The amendments clarify the application process and allow sufficient time for compliance after closing.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 5190 9a, which give the Texas Bond Review Board the authority to propose rules pertaining to the adoption, implementation and administration of the allocation of the state's ceiling on private activity bonds.

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 January 20, 1994.

TRD-9434995

Albert L. Bacarisse
Executive Director
Texas Bond Review Board

Effective date: February 10, 1994

Proposal publication date: November 26, 1993

For further information, please call: (512) 463-1741

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Placement Planning

• 37 TAC §85.23, §85.29

The Texas Youth Commission (TYC) adopts amendments to §85.23 and §85.29, concerning classification and program completion and movement, without changes to the proposed text as published in the December 14, 1993, issue of the *Texas Register* (18 TexReg 9274)

The justification for amending the section is to provide more efficient control of delinquent youth.

The amendments will allow staff to reclassify youth involved in a riot at a TYC facility and changes criteria by which a youth may be moved to a follow-up placement following the initial placement.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to confine youth under conditions it believes are in the best interest of the youth and of the public.

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 January 14, 1994

TRD-9434906

Steve Robinson
Executive Director
Texas Youth Commission

Effective date February 9, 1994

Proposal publication date December 14, 1993

For further information, please call: (512) 483-5244

Part VI. Texas Department of Criminal Justice

Chapter 159. Special Programs

Subchapter A. Substance Abuse Treatment

• 37 TAC §159.1

The Texas Board of Criminal Justice adopts new §159.1, concerning substance abuse felony punishment facilities eligibility criteria, with changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6947).

The adopted new §159.1 explains the eligibility criteria that preclude a defendant from being placed in a substance abuse felony punishment facility. The criteria are based on the ability of the defendant to participate without interruption in the program and on the ability of the program to meet the needs of defendants with special medical, psychological, or detoxification requirements. The changes in the proposed text remove an unnecessary reference to existing statutory criteria, and they clarify the intentions of the proposed criteria.

The adopted criteria will provide district judges and community supervision and corrections departments with criteria that preclude a defendant from being placed in a substance abuse felony punishment facility.

Four individuals submitted written comments on the proposed criteria to the Department of Criminal Justice. Two of the individuals expressed no major objections to the criteria, but they did propose changes to one of the criteria, which concerned the eligibility of defendants with a detainer or pending charges. These respondents proposed that the language regarding pending charges be deleted. The other two respondents also expressed concerns about the detainer criteria, and they recommended that jurisdictions be allowed to hold pending charges as a method of enhancing a defendant's participation in the substance abuse treatment program. One respondent further suggested that offenders with pending charges be eligible provided that the jurisdiction that has the pending charges agrees not to seek custody of the defendant until after the program and the aftercare requirements have been completed. Two individuals also expressed concern about the second and fourth criteria, and they requested more specific language for these medical and psychological criteria. One of the respondents recommended that the section on legal criteria be deleted since these were established by statute, and he requested clarification of the criterion concerning detoxification.

The only comments received for and against the section were from individuals.

The agency agrees with the comments and has made appropriate changes to the criteria to clarify the intention of the proposed text.

The new section is adopted under the Texas Government Code, §493.009(b), as amended by Senate Bill 532, Acts 1993, 73rd Legislature, which provides the Texas Board of

Criminal Justice with the authority to adopt criteria to determine the suitability of candidates for participation in the substance abuse felony punishment facility program.

§159.1. Substance Abuse Felony Punishment Facilities Eligibility Criteria.

(a) Defendants with a detainer or pending charges are not eligible to participate unless the jurisdiction that placed the detainer agrees not to seek custody of the defendant until after the program and continuum of care requirements have been completed.

(b) Persons must be physically and mentally capable of uninterrupted participation in a rigorous, stressful, and confrontational Therapeutic Community program. Defendants with special medical or psychological needs must meet the eligibility crite-

ria for the Special Needs SAFP as defined in CJAD Field Correspondence.

(c) Persons who have signs or symptoms of acute drug or alcohol withdrawal, or who require detoxification are not eligible to participate until they have been detoxified.

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 January 21, 1994.

TRD-9435053

Carl Reynolds
General Counsel
Texas Board of Criminal
Justice

Effective date: February 11, 1994

Proposal publication date: October 8, 1993

For further information, please call: (512) 463-9693



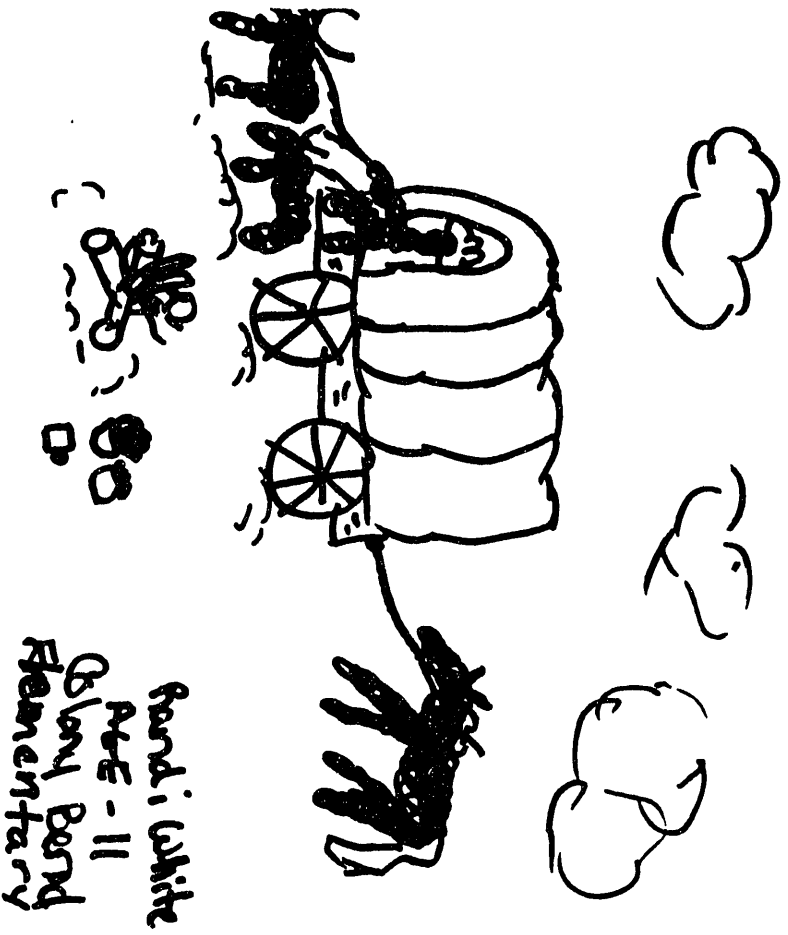
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

(Editor's Note: Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session, 1991, as amended by Chapter 747, §2, Acts of the 73rd Legislature, Regular Session, 1993, provided for the transfer of certain programs from the Texas Department of Human Services to the Texas Department of Health effective September 1, 1993)

The Texas Register is administratively transferring the following rules listed in the table published in this issue from Title 40., Part I. Texas Department of Human Services to Title 25 Part I. Texas Department of Health. The Table lists the old rule number and the new rule number that corresponds to them.)





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Coburn Beard
Elementary



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Age 10
Coburn Beard
Elementary

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department on Aging

Friday, January 28, 1994, 11:30 a.m.

1949 South IH-35, Third Floor, Large Conference Room

Austin

According to the complete agenda, the Ombudsman Advisory Committee will consider and possibly act on: call to order; approve minutes of October 28, 1993, Ombudsman Advisory Committee; receive public comments; program updates; report on the Institute of Medicine Study of the Ombudsman Program; report from the Texas Association of Regional Long Term Care Ombudsmen; status of rules/policies/procedures; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 79711, (512) 444-2727.

Filed: January 21, 1994, 3:42 p.m.

TRD-9435046

Texas Department of Agriculture

Monday, January 31, 1994, 9:00 a.m.

Sheraton Mockingbird Hotel, 1893 West Mockingbird Lane

Dallas

According to the agenda summary, the State Seed and Plant Board will discuss and act on: minutes of last meeting; applications for certification eligibility of new varieties un-

der the Texas Certification Program; appeal of decision to reject sorghum-sudangrass field; election of officers; inspectors approved for certification work during 1994; certified seed grower applicants; Agrigenetics, L.P. doing business as Mycogen Plant Sciences acknowledgement of name change; request for change of corn isolation requirements; and request for recertification of peanut varieties.

Contact: Charles Leamons, P.O. Box 629, Giddings, Texas 78942, (409) 542-3691.

Filed: January 21, 1994, 2:21 p.m.

TRD-9435030

Texas Commission on Alcohol and Drug Abuse

Tuesday, February 8, 1994, 8:30 a.m.

710 Brazos, Perry Brooks Building, Commission Meeting Room-Eighth Floor

Austin

According to the complete agenda, the Board of Commissioners will call to order; approval of December 14, 1993 minutes; public comments; action on motion for reconsideration of the commission's denial of chemical dependency counselor license; report on criminal justice activities; implementation of criminal justice in-prison therapeutic community program (ITC), substance abuse felony punishment facility program (SAFP), continuum of care (TTC), and treatment alternatives to incarceration

program (TAIP); report on development of juvenile justice initiative; report on Criminal Justice Committee activities; report from Texas Summit Committee on prevention issues; report on prevention services request for proposals; report on Grant and Contract Review Committee activities; report on prevention evaluation activities; action on adoption of proposed drug and alcohol driving awareness program rules; report on compliance activities; report on offenders credentialing committee activities; report on historically under utilized business activities; report on First Quarter Report on Measures; report Fiscal Year 1994 operating budget expenditure report; report on Audit Committee activities; report on strategic planning process; action on adoption of agency policies; information on federal categorical awards; action on approval of plan for commission field representatives; congressional update; meet in executive session to discuss employment matter pertaining to the executive director position; reconvene to hear interim executive director's report; chairman's report; and adjourn.

Contact: David P. Tatum, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8875.

Filed: January 20, 1994, 2:59 p.m.

TRD-9434964

The State Bar of Texas

Friday, January 21, 1994, 1:30 p.m.

Hyatt Regency-Hill Country Resort, Ballrooms A and B, 9800 Hyatt Resort Drive San Antonio

Emergency revised agenda

According to the complete agenda, the Board of Directors added: Item Number 10(G)-Report of the President. Consider approval of the resolution of the State Bar of Texas Board of Directors urging the Texas Attorney General and the State of Texas to appeal the United States District Court's decision in *Moore, et al v. Morales, et al* (the constitutional challenge to the Texas Barratry Law).

Reason for Emergency. This item requires action prior to the next meeting of the State Bar of Texas' Board of Directors.

Contact: Pat Hiller, P.O. Box 12487, Austin, Texas 78711, 1 (800) 204-2222

Filed: January 21, 1994, 11:23 a.m.

TRD-9435016

◆ ◆ ◆ Texas Cosmetology Commission

Friday, February 4, 1994, 5:00 p.m.

Lakeway Inn, 101 Lakeway Drive

Austin

According to the complete agenda, the Employee Training Planning Session will call to order, introductions; planning session for employee training, and adjourn

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: January 25, 1994, 9:44 a.m.

TRD-9435169

Saturday, February 5, 1994, 9:00 a.m.

Lakeway Inn, 101 Lakeway Drive

Austin

According to the complete agenda, the Employee Training Seminar will call to order; introductions; Douglas Cox-motivation presentation; strategic planning, budget proposals; discussion of reclassification, auditor's report; and discussion of policies and procedures. The Commission will go into Executive Session pursuant to Texas Government Code, §551.074, to discuss matters involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer, the Executive Director of the Commission, or to hear complaints or charges against the Executive Director. The Commission will reconvene in open session to vote on any matters necessary as a result of its executive session pursuant to Texas Government Code, §551.074; and adjourn.

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: January 25, 1994, 9:43 a.m.

TRD-9435168

Sunday, February 6, 1994, 9:00 a.m.

Lakeway Inn, 101 Lakeway Drive

Austin

According to the complete agenda, the Employee Training Seminar will call to order; introductions; strategic planning; budget proposals; discussion of reclassification; auditor's report; and discussion of policies and procedures. The Commission will go into Executive Session pursuant to Texas Government Code, §551.074, to discuss matters involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer, the Executive Director of the Commission, or to hear complaints or charges against the Executive Director. The Commission will reconvene in open session to vote on any matters necessary as a result of its executive session pursuant to Texas Government Code, §551.074; and adjourn.

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: January 25, 1994, 9:41 a.m.

TRD-9435167

Monday, February 7, 1994, 9:00 a.m.

Lakeway Inn, 101 Lakeway Drive

Austin

According to the agenda summary, the Commission will call to order; introductions; Donna Cordes, discussion of GSC rules for charges for public records; old hours, Linda Engel; discussion of new sanitary rules disinfectant solution; George Orsatti; discussion of school smoking areas; refund policy; Instructor Exam Committee report; Manicure Instructor Exam Committee report; Facial Exam Committee report; agreed orders; interagency contract with Attorney General. The Commission will go into Executive Session pursuant to Texas Government Code, §551.074, to discuss matters involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer, the Executive Director of the Commission, or to hear complaints or charges against the Executive Director. The Commission will reconvene in open session to vote on any matters necessary as a result of its executive session pursuant to Texas Government Code, §551.074; and adjourn.

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: January 25, 1994, 9:41 a.m.

TRD-9435166

◆ ◆ ◆

Texas State Board of Examiners of Professional Counselors

Friday, January 28, 1994, 9:00 a.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Rules Committee will discuss and possibly act on: comments on proposed amendments to 22 Texas Administrative Code (TAC), Chapter 681; changes to proposed amendments to 22 TAC, Chapter 681; final adoption of proposed rules to 22 TAC, Chapter 681; withdrawal of emergency rules to 22 TAC, Chapter 681; and the committee report.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 20, 1994, 3:54 p.m.

TRD-9434990

Friday, January 28, 1994, 1:00 p.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Testing and Continuing Education Committee will discuss and possibly act on: proposal submitted by the American Association of State Counseling Boards (AASCBS) concerning the Texas professional counselor licensing examination being used as a national exam; and a request by Tom Davis with the Ohio Counselors Licensing Board for Ohio to use the Texas professional counselor exam.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 20, 1994, 3:54 p.m.

TRD-9434989

Friday, January 28, 1994, 2:00 p.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the agenda summary, the Applications Committee will discuss and possibly act on: applications of Curtis Leo Lincoln, Donna Landers Schaefer, Marilyn K. Wright, Lisa Erwin Whittle, and others.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 20, 1994, 3:54 p.m.

TRD-9434988

Friday, January 28, 1994, 3:00 p.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Public and Professional Relations Committee will discuss and possibly act on: the next Examiner; and whether any existing committees currently need additional members that are non-board members.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 20, 1994, 3:54 p.m.

TRD-9434987

Friday, January 28, 1994, 3:30 p.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Administration and Finance Committee will discuss and possibly act on: the purchase of an automated attendant system; purchase of computer equipment; approval for Kathy Craft and Linda Smith to attend an investigator training program in Austin presented by the Council on Licensing Enforcement and Regulation (CLEAR); and financial report through December 31, 1993.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 20, 1994, 3:53 p.m.

TRD-9434986

Saturday, January 29, 1994, 9:00 a.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the board will discuss and approve the minutes of November 5, 1993, and discuss and possibly act on: persons wishing to appear before the board; executive session pursuant to the Open Meetings Act, §551.071 regarding pending litigation (G. Calwell, Texas

Psychological Association and D. Rettberg); publications by the Texas Christian Counselors Associations, Inc.; representative to attend the meetings of the multi-agency memorandum of understanding; annual report; rules committee (proposed amendments; final adoption; and withdrawal of emergency rules to 22 Texas Administrative Code, Chapter 681); testing and continuing education committee (American Association of State Counseling Boards (AASCB) proposal regarding the national examination; and request by the Ohio Counselors Licensing Board regarding examination); application committee (action concerning applications of: Curtis Leon Lincoln, Donna Landers Schaefer, Lisa Erwin Whittle, Marilyn K. Wright, and others); administrative and finance committee (purchase of automated attendant system and computer equipment; investigator training for board members; and financial report); public and professional relations (Examiner; and existing committee membership needs); whether certain practices are the practice of counseling; whether complaints filed against applicants should be reviewed by the complaint or the application committee; size of licensed professional counselors wall certificates; and setting of the next meeting date.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 20, 1994, 3:55 p.m.

TRD-9434991

Texas Court Reporters Certification Board

Saturday, January 29, 1994, 9:00 a.m.

Texas Law Center, 1414 Colorado, Suite 206

Austin

According to the complete agenda, the Court Reporting Curriculum Task Force will call the meeting to order; take attendance; consider minutes from last meeting on October 16, 1993; and will discuss and possibly act on: subcommittee reports; goals and timetables of the Task Force; and future meeting dates.

Contact: Peg Liedtke, P.O. Box 13131, Austin, Texas 78711-3131, (512) 463-1624.

Filed: January 21, 1994, 1:43 p.m.

TRD-9435022

Texas Education Agency

Friday-Saturday, January 28-29, 1994, 1:00 p.m. and 8:30 a.m. respectively.

Stouffer Austin Hotel, 9721 Arboretum Boulevard

Austin

According to the complete agenda, the Continuing Advisory Committee for Special Education will approve the minutes from the previous meeting; consider hearing officer decisions; and plan workshops to review the mission and purpose of the committee. On Saturday, the committee will develop goals and objectives and plan strategies; consider proposed amendments to Title 19, Chapter 89, Subchapter G, of the Texas Administrative Code, concerning special education; and develop an agenda for the next meeting.

Contact: Shirley Sanford, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9362.

Filed: January 20, 1994, 3:50 p.m.

TRD-9434978

Advisory Commission on State Emergency Communications

Thursday, January 27, 1994, 2:00 p.m.

1101 Capital of Texas Highway South, Suite B-100

Austin

Emergency meeting

According to the complete agenda, the Executive Committee called the meeting to order; recognized guests and heard public comment; Poison Control Program work session; and adjourned. Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Reason for Emergency: For discussion of program activities and direction prior to next scheduled Commission meetings.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

Filed: January 24, 1994, 4:33 p.m.

TRD-9435142

Wednesday, February 2, 1994, 10:00 a.m.

John Reagan Building, 15th Street and Congress Avenue

Austin

According to the agenda summary, the Poison Control Coordinating Committee will call the meeting to order; hear public com-

ment; discuss and consider reports from subcommittees on bylaws and on rules; hear reports from chairs of subcommittees on operations and medical management and protocols; consider approval of January meeting minutes; and adjourn. Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two work days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

Filed: January 24, 1994, 1:55 p.m.

TRD-9435120

Employees Retirement System of Texas

Friday, February 4, 1994, 9:30 a.m.

Texas Parks and Wildlife Department, 4200 Smith School Road

Austin

According to the agenda summary, the Group Benefits Advisory Committee will call to order; recognition of visitors and guests; approval of minutes from previous meeting; announcements/updates; ERS update; standing subcommittee reports; other related benefits business; and adjournment.

Contact: James W. Sarver, 18th and Brazos, Austin, Texas 78701, (512) 867-3217.

Filed: January 24, 1994, 9:05 a.m.

TRD-9435088

Texas Employment Commission

Tuesday, February 1, 1994, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

According to the agenda summary, the Texas Employment Commission will discuss prior meeting notes; executive session to consider Bernardino Gonzales, et al v. James Kaster, et al, and Advanced Temporaries, Inc. v. Texas Employment Commission; actions, if any, resulting from executive session; staff reports; internal procedures of Commission Appeals; consideration and action on higher level appeals in unemployment compensation cases listed in Commission Docket 5; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: January 24, 1994, 4:06 p.m.

TRD-9435139

General Land Office

Tuesday, February 1, 1994, 10:00 a.m.

Stephen F. Austin Building, Room 831, 1700 North Congress Avenue

Austin

According to the complete agenda, the School Land Board will discuss approval of previous board meeting minutes; lease suspension application, Laguna Madre, Kenedy County; pooling applications, Waha Field, Reeves County; Mt. Enterprise (Rodessa Hill) Field, Rusk County; Longwood (Goodland Lime), Marion and Harrison counties; consideration of nominations, terms, conditions and procedures for the April 5, 1994, oil, gas, and other minerals lease sale, Permanent School Fund lands, and Texas School for the Blind lands, Nolan County; applications to lease highway rights of way for oil and gas, Orange County; consideration of easement for the installation and operation of a cellular phone transmission tower and associated equipment facilities located on the Austin State School grounds, Texas MHMR lands, Travis County; coastal public lands, commercial lease applications, Corpus Christi Bay, Aransas County and Laguna Madre, Cameron County; easement application, Galveston Bay, Chambers County; structure (cabin) permit renewals, Espiritu Santo Bay, Calhoun County; Laguna Madre, Kenedy County; Laguna Madre, Kleberg County; San Antonio Bay, Calhoun County; briefing on development of Coastal Management Program and possible impact on the Texas General Land Office; Executive Session-pending and proposed litigation, including consideration of termination of coastal easement, Laguna Madre, Cameron County; and Open Session-consideration of termination of coastal easement, Laguna Madre, Cameron County.

Contact: Linda K. Fisher, Stephen F. Austin Building, Room 836, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5016.

Filed: January 24, 1994, 4:32 p.m.

TRD-9435141

Office of the Governor's

Friday, February 4, 1994, 4:00 p.m.

Reagan Building, Room 104

Austin

According to the agenda summary, the Office of Budget and Planning will hold a

statewide strategic planning-Natural Resources hearing; introductory comments; public comments; and adjournment.

Contact: Rebecca Martin, P.O. Box 12428, Austin, Texas 78711, (512) 463-1778.

Filed: January 21, 1994, 1:40 p.m.

TRD-9435021

Texas Department of Health

Friday, January 28, 1994, 8:00 a.m.

Auditorium, Tarrant County Hospital District, 1500 South Main Street

Fort Worth

According to the agenda summary, the Texas Board of Health, Regulatory Committee will discuss approval of the minutes from the December 16, 1993 meeting, and discuss and possibly act on: proposed amendments (regulation of medical physicist; certification of radiologic technologists; restroom facilities where the public congregates; and permitting of retail food establishments); repeal of existing and final adoption of new rules concerning the Hazard Communication Act; final adoption (Asbestos Health Protection Act addition of the National Emissions Standards for Hazardous Air Pollutants (NESHAP); Texas Regulations for Control of Radiation; minimum standards for licensure and regulation of tattoo studios; permitting and regulation of tanning facilities; food and drug rules concerning certificates of free sale and certificates of origin; meat inspection rules concerning the regulation of custom slaughterers and processors; hospital data collection; and cooperative agreements and certificates of public advantage for private psychiatric hospitals, and general and special hospitals); presentation of public input received on proposed emergency medical services certification rules; proposed bloodborne pathogen standard; and comments and announcements not requiring committee action.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 20, 1994, 3:52 p.m.

TRD-9434985

Friday, January 28, 1994, 10:30 a.m.

Auditorium, Tarrant County Hospital District, 1500 South Main Street

Fort Worth

According to the complete agenda, the Texas Board of Health, Strategic Management Committee will discuss approval of

the minutes from the December 17, 1993 meeting, and discuss and possibly act on: strategic planning overview; health reform update; and the monthly update on the department's budget.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 20, 1994 3:51 p.m.

TRD-9434984

Friday, January 28, 1994, 1:30 p.m.

Auditorium, Third Floor, Outpatient Building, Tarrant County Hospital District, 1500 South Main Street

Fort Worth

According to the agenda summary, the Texas Board of Health will discuss approval of the minutes from the December 17, 1993 meeting, and discuss and possibly act on: commissioner's report; resolution; rules (removing limitations on Early and Periodic Screening, Diagnosis and Treatment Comprehensive Care Program provider type reimbursement and removal of limitations on mental health benefits; adding private duty nursing through home health agencies; County Indigent Health Care Program; reimbursement for outpatient hospital services; Texas HIV Medication program; screening and treatment for tuberculosis in county jails and correctional facilities; control of communicable and sexually transmitted diseases; newborn screening; injury prevention; regulation of medical physicians; certification of medical radiologic technologists; restroom facilities where public congregates; permitting of retail food establishments; Hazard Communications Act; Asbestos Health Protection Act; Texas Regulations for Control of Radiation; licensure and regulation of tattoo studios; tanning facilities; certificates of free sale and origin; regulation of customer slaughterers and processors; hospital data collection; cooperative agreements and certificates of public advantage for private psychiatric, general, and special hospitals; and emergency medical services certification); committee reports (strategic management; health financing; health and clinical services; human resources; and regulatory); appointments (Midwifery Board); announcements and comments not requiring board action, and meeting dates for February, 1994.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 20, 1994, 3:51 p.m.

TRD-9434983

February 4, 1994, 10:00 a.m.

Rooms S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Respiratory Care Practitioners Advisory Board will discuss approval of the minutes of the July 23, 1993 meeting; and discuss and possibly act on: reports of chairpersons and program administrator; election of officers; proposed amendments to Title 25, Texas Administrative Code, Chapter 123 relating to respiratory care practitioners; presentation by Dale Bean concerning policy and procedures of California College for Health Sciences; letters from concerned individuals; other matters not requiring board action and setting of the next meeting date.

Contact: Jeanette A. Hilsabeck, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6632. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 25, 1994, 8:46 a.m.

TRD-9435161

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Hospital Licensing Advisory Council will discuss approval of the minutes of previous meeting and discuss and possibly act on: draft rules for Women's Services Center; final hospital rules; methods for recording meetings of the council; and announcements and discussion no requiring council action.

Contact: Maurice Shaw, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6645. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 25, 1994, 8:46 a.m.

TRD-9435160

Texas Health Benefits Purchasing Cooperative

Wednesday, January 26, 1994, 10:30 a.m.

1901 North Akard, Basement Conference Room

Dallas

Supplemental agenda

According to the supplemental agenda, this meeting had been previously scheduled to be located in the Bank and Trust Building on 1525 Elm Street, Dallas, Texas.

Reason for Supplemental Agenda: Not enough space for number of people attending at previous location.

Contact: Rebecca Lightsey, 1005 Congress Avenue, Suite 550, Austin, Texas 78701, (512) 472-3956.

Filed: January 21, 1994, 4:40 p.m.

TRD-9435069

Texas Commission on Human Rights

Thursday, February 3, 1994, 9:00 a.m.

John H. Reagan State Office Building, Room 106, 105 West 15th Street

Austin

According to the agenda summary, the Texas Commission on Human Rights agenda consists of: discussion and vote on agenda item(s) covered in Executive Session as necessary or required; welcoming of guests; minutes; administrative reports; contract between TCHR and the Office of the Attorney General; employ legal secretary; proposal for joint venture between the TCHR and the Texas Department of Housing and Community Affairs; draft proposal to be submitted for FHIP funding for education and outreach and administrative enforcement; HUD administrative enforcement project; fair housing summit; annual financial report; IAOHRA Southern Regional Conference; reorganization plan; EEO compliance training; draft of procedural rules for amendments to the TCHR Act; annual report; commissioner issues; and unfinished business.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

Filed: January 21, 1994, 2:42 p.m.

TRD-9435035

Texas Department of Human Services

Friday, February 4, 1994, 10:00 a.m.

701 West 51st Street, First Floor, West Tower, Board Room

Austin

According to the complete agenda, the Advisory Committee on Nursing Facility Affairs will call the roll; introduce visitors; approve committee minutes; present long term care director's update, unemployment compensation rules, and Lewin report on rate methodology; discuss committee/subcommittee organization, and subcommittee reports; discuss other items of interest; set meeting dates for Fiscal Year 1994 and agenda; and adjourn.

Contact: Mary Sidelnik, P.O. Box 149030, Austin, Texas 78714-9030. (512) 834-6770.

Filed: January 24, 1994, 1:11 p.m.

TRD-9435119

◆ ◆ ◆
Texas Incentive and Productivity Commission

Monday, February 7, 1994, 10:00 a.m.

Clements Building, Second Floor, Room #204B, 15th and Lavaca

Austin

According to the agenda summary, the Texas Incentive and Productivity Commission will call to order and members present, approval of minutes of previous meeting, consideration of adoption of revisions of state employee incentive program rules, consideration of proposed procedural rules regarding cost of copies of open records, consideration of employee suggestions for approval, consideration of 1994 productivity plans, report on administrative matters and adjournment.

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393

Filed: January 25, 1994, 8:47 a.m.

TRD-9435162

◆ ◆ ◆
Texas Department of Insurance

Wednesday, February 2, 1994, 9:00 a.m.

333 Guadalupe Street (See Lobby Monitor for More Information)

Austin

According to the agenda summary, the Texas Department of Insurance will consider whether disciplinary action should be taken against Charles James Gardner, Kingwood, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's license, a Group II, Insurance Agent's license and a Local Recording Agent's license issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: January 21, 1994, 3:42 p.m.

TRD-9435043

Thursday, February 3, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fourth Floor, Suite 408

Austin

According to the agenda summary, the Texas Department of Insurance will con-

sider the application of David Sulduna Moses, San Antonio, Texas for a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: January 21, 1994, 3:42 p.m.

TRD-9435044

Thursday, February 3, 1994, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Fourth Floor, Suite 408

Austin

According to the agenda summary, the Texas Department of Insurance will consider the application of John Wallace, Dallas, Texas for a Local Recording Agent's license to be issued by the Texas Department of Insurance; and consider the application of Mark Bomblatus, Plano, Texas, for a Local Recording Agent's license to be issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: January 21, 1994, 3:42 p.m.

TRD-9435045

◆ ◆ ◆
Commission on Jail Standards

Thursday, January 27, 1994, 2:00 p.m.

John H. Reagan Building, Room 103, Congress Avenue and West 15th Street

Austin

Emergency revised agenda

According to the agenda summary, the Commission on Jail Standards discussed director's report: announcement of personnel change.

Reason for Emergency: The resignation of the Deputy Director affects the day to day management of the Commission and requires the immediate attention of the Commission.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: January 21, 1994, 12:01 p.m.

TRD-9435019

Friday, January 28, 1994, 9:00 a.m.

John H. Reagan Building, Room 103, Congress Avenue and West 15th Street

Austin

Emergency revised agenda

According to the agenda summary, the Commission on Jail Standards discussed variances: Jackson County and Nueces County.

Reason for Emergency: Unexpected development requiring the immediate attention of the Commission.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: January 21, 1994, 12:00 p.m.

TRD-9435018

◆ ◆ ◆
Lamar University System Board of Regents

Friday, January 28, 1994, 1:00 p.m.

Scappin Valley (4.5 miles North of 255 Intersection Highway 87)

Jasper

According to the agenda summary, the Lamar University System Board of Regents will call to order, discuss what are the challenges and opportunities facing higher education at the end of the century, how should system management be organized, recess, organization of systems management (cont'd) and overnight recess.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304

Filed: January 25, 1994, 8:50 a.m.

TRD-9435164

Saturday, January 29, 1994, 8:15 a.m.

Scappin Valley (4.5 miles North of 255 Intersection Highway 87)

Jasper

According to the agenda summary, the Lamar University System Board of Regents meeting reconvenes in executive session for personnel items held under provisions of Vernon's Civil Statutes, Article 6252-17, open meeting reconvenes, what should be the chancellor's job description, what should be the president's job description, break, what are the boards' most advantageous strategies, summary comments and adjournment.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: January 25, 1994, 8:50 a.m.

TRD-9435163

Saturday, January 29, 1994, 8:15 a.m.

Scappin Valley (4.5 miles North of 255 Intersection Highway 87)

Jasper

Revised agenda

According to the agenda summary, the Lamar University System Board of Regents meeting reconvenes in executive session for personnel items held under provisions of

Vernon's Civil Statutes, Article 6252-17, open meeting reconvenes, consider appointment of Interim Associate Vice President and consider appointment of Interim Police Chief at Lamar University-Beaumont, discussion of procedure/appointment of Bond Adviser, what should be the chancellor's job description, what should be the president's job description, what are the boards' most advantageous strategies, summary comments and adjournment.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: January 25, 1994, 9:58 a.m.

TRD-9435170

Texas Department of Licensing and Regulation

Friday, February 4, 1994, 9:30 a.m.

E. O. Thompson Building, 920 Colorado, Room 1012

Austin

Revised agenda

According to the complete agenda, the Texas Commission of Licensing and Regulation will hold a regular meeting according to the following: call to order; roll call and certification of quorum; contested cases; agreed orders, motion for rehearing; rules submissions, staff reports; executive session; open session/public comments; strategic planning, discussion of date, time, and location of next Commission meeting; and adjournment

Contact: Phyllis Wilson, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3173.

Filed: January 21, 1994, 12:22 p.m.

TRD-9435020

Midwestern State University

Tuesday, January 25, 1994, 10:00 a.m.

3410 Taft Boulevard, Hardin Board Room
Wichita Falls

According to the complete agenda, the Board of Regents recommendation was made concerning the selection of an engineering firm to provide services for the Killingsworth Hall HVAC Project.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: January 20, 1994, 2:12 p.m.

TRD-9434954

Texas Natural Resource Conservation Commission

Wednesday, February 2, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Office Building, Room 118

Austin

According to the agenda summary, the Commission will consider approving the following matters on the contested agenda: water quality enforcement; solid waste enforcement; rules; executive session; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: January 21, 1994, 5:11 p.m.

TRD-9435077

Wednesday, February 2, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Office Building, Room 118

Austin

According to the agenda summary, the Commission will consider approving the following matters on the uncontested agenda: new water quality permit; amendment to water quality permit; water quality permit renewal, water utility matters; on-site sewage facilities; settled hearings, in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: January 21, 1994, 5:10 p.m.

TRD-9435075

Wednesday, February 2, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Office Building, Room 118

Austin

According to the agenda summary, the Commission will discuss addendum to contested agenda, motion for rehearing regarding Heatherwilde III, Limited and Bill Palmer Homes.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: January 24, 1994, 3:26 p.m.

TRD-9435134

Thursday, February 3, 1994, 9:00 a.m.

1001 Avenida de las Americas

Houston

According to the agenda summary, the Commission will hold a public meeting to discuss environmental programs and issues of regional interest that are within the jurisdiction of the Texas Natural Resource Conservation Commission. The Commission will accept comments from local citizens, officials, and environmental groups.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905

Filed: January 21, 1994, 5:10 p.m.

TRD-9435076

Thursday, February 3, 1994, 10:00 a.m.

Stephen F. Austin State Office Building, Room 1028, 1700 North Congress Avenue

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a public hearing on application for continuance of air quality permit numbers AQR-2580A and AQR-4146 by Phillips 66 Company, to consider whether the existing permits which authorize the production unit which emits sulfur dioxide and butadiene should be continued. Located near Borger at the Phlutex and Ryton Complex, about two miles north-east of Borger on State Spur 119.

Contact: Dana Poppa-Vermillion, P.O. Box 13087, Austin, Texas 78711, (512) 239-1280

Filed: January 21, 1994, 5:11 p.m.

TRD-9435078

Friday, February 4, 1994, 9:30 a.m.

6300 Ocean Drive, Texas A&M University
Corpus Christi, Blucher Institute, Second
Conference Room

Corpus Christi

According to the complete agenda, the Policy Committee of the Corpus Christi National Estuary Program will call to order, read and approve minutes for November 1, 1993 meeting; Program Director will give update of the estuary program, review the membership of each of the Advisory Committees; discuss the public kick-off ceremony to be held on April 23, 1994, in Corpus Christi; establish time, date, place, and agenda for next meeting, and adjourn.

Contact: Kelly J. Hutchison, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-6045.

Filed: January 24, 1994, 9:50 a.m.

TRD-9435098

Thursday, February 10, 1994, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Office Building, Room 1028A
Austin

According to the agenda summary, the Office of Hearing Examiners will hold a notice of public hearing on application for air quality permit Number 20498 by Department of Veterans Affairs Medical Center, to construct and operate an incinerator to be located at 6010 Amarillo Boulevard West, in Amarillo, Potter County, Texas.

Contact: Hank Curry, P.O. Box 13087, Austin, Texas 78711, (512) 239-1264.

Filed: January 24, 1994, 11:40 a.m.

TRD-9435117

Tuesday, February 22, 1994, 10:00 a.m.

Stephen F. Austin State Office Building, Room 211, 1700 North Congress Avenue
Austin

According to the agenda summary, the Office of Hearings Examiners will hold a hearing on Vernon Lay doing business as Paisano Water System's petition for authorization to discontinue water utility service to an area known as Paisano Addition, which is located approximately ten miles south of the City of Kingsville in Kleberg County, Texas. Docket Number 30204-Q.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: January 20, 1994, 4:50 p.m.

TRD-9434994

◆ ◆ ◆
Texas Board of Pardons and Paroles

Monday-Wednesday, January 31-February 2, 1994, 1:30 p.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: January 20, 1994, 3:27 p.m.

TRD-9434969

Monday-Friday, January 31-February 4, 1994, 1:30 p.m.

2503 Lake Road, Suite #2

Huntsville

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: January 20, 1994, 3:26 p.m.

TRD-9434967

Thursday, February 3, 1994, 9:30 a.m.

1212 North Velasco, Suite 201

Angleton

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: January 20, 1994, 3:27 p.m.

TRD-9434968

Thursday-Friday, February 3-4, 1994, 9:30 a.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: January 20, 1994, 3:27 p.m.

TRD-9434970

Thursday-Friday, February 3-4, 1994, 1:00 p.m. and 9:00 a.m. respectively.

Route 5, Box 258-A

Gatesville

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: January 20, 1994, 3:27 p.m.

TRD-9434971

◆ ◆ ◆
Texas Property and Casualty Insurance Guaranty Association

Thursday, January 27, 1994, 9:00 a.m.

9420 Research Boulevard, Echelon III, Suite 400

Austin

According to the complete agenda, the Board of Directors called the meeting to order; public participation; personnel update, introduction of new employees from Dallas Regional Office, discussed and possibly acted on 1994 TPCIGA budget; financial report update on the election of Board Members; discussed and possibly acted on ECC matters; executive session: conservator's report, draft of unpublished state auditor's report, attorneys' report, and personnel issues on claims; discussed and possibly acted on unpublished state auditor's report; discussed and possibly acted on attorneys' report; discussed and possibly acted on personnel issues on claims; confirmation of April 28, 1994, at 9:00 a.m. or action on the scheduling of an alternate date for the next regular meeting; and adjourned.

Contact: Al Belmarez, 9420 Research Boulevard, Echelon III, Suite 400, Austin, Texas 78759, (512) 345-9335.

Filed: January 21, 1994, 3:32 p.m.

TRD-9435042

Public Utility Commission of Texas

Wednesday, February 2, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Public Utility Commission of Texas will hold an open meeting on the "Overview of Environmental Protection Agency's Knowledge of the Environmental Implications of the North American Free Trade Agreement (NAFTA) as it Affects Power Production." This includes an overview of existing and new NAFTA related environmental organizations and policies and specifically addresses Carbon I-II Power Stations.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 21, 1994, 2:41 p.m.

TRD-9435033

Tuesday, February 15, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 11769-complaint of Charles A. Murray against Big Bend Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 20, 1994, 2:58 p.m.

TRD-9434961

Railroad Commission of Texas

Monday, January 31, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Commission will consider and act on the Personnel Division Director's report on division administrations, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel. The following matters will be taken up for consideration and/or decision by the commission; commission budget, fiscal, administrative or procedural matters, strategic planning; personnel and staffing, including restructuring or transferring the Oil Field Theft Division.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-6981.

Filed: January 21, 1994, 10:56 a.m.

TRD-9435008

Monday, January 31, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Commission will consider and act on the Surface Mining and Reclamation Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Melvin Hodgkiss, P.O. Box 12967, Austin, Texas 78701, (512) 463-6901.

Filed: January 21, 1994, 10:56 a.m.

TRD-9435009

Monday, January 31, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: January 21, 1994, 10:56 a.m.

TRD-9435010

Monday, January 31, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: January 21, 1994, 10:56 a.m.

TRD-9435011

Monday, January 31, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Commission will consider category determinations under §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Box 12967, Austin, Texas 78711, (512) 463-6755.

Filed: January 21, 1994, 10:56 a.m.

TRD-9435012

Monday, January 31, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: January 21, 1994, 10:57 a.m.

TRD-9435013

Monday, January 31, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Commission will consider and act on the Division Director's report on budget, personnel and policy matters related to operation of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: January 21, 1994, 10:57 a.m.

TRD-9435014

Monday, January 31, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the agenda summary, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

Filed: January 21, 1994, 10:57 a.m.

TRD-9435015

Tuesday, February 1, 1994, 8:30 a.m.

1701 North Congress Avenue, 12th Floor
Conference Room 12-126

Austin

According to the complete agenda, the Railroad Commission of Texas will consider Oral Argument, Docket Number 0201687, application of Kaiser-Francis Oil Company for an exception to SWR 37 and 38 for the Lohberger-Meadows Number 1013 Well, Buffalo Waller (A Chert) Zone and Wildcat Fields, Wheeler County, Texas. Action on Motion for Rehearing, Docket Numbers 7B-94,861, 7B-94,862, 7B-94,863, enforcement action against Bruce A. Clark for violation of statewide rules 8, 9, 13, 14, and 46 on the W.M. Franke "B" Lease, the W.M. Franke Lease, and the W.M. Franke "A" Lease, Callahan County Regular Field, Callahan County, Texas.

Contact: Dwight Martin, P.O. Box 12967,
Austin, Texas 78711-2967, (512) 463-6864

Filed: January 24, 1994, 2:53 p.m.

TRD-9435128

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**The Texas A&M University
System, Board of Regents**

Thursday, January 27, 1994, 9:00 a.m.

Facilities Planning and Construction Building, University Drive and Asbury, Conference Room 200, Texas A&M University College Station

According to the agenda summary, the Facilities Planning and Building Committee acted on bids for construction projects, approval of sites for construction projects, budget adjustments for construction projects, revised preliminary designs, appropriations for designs and preliminary designs, designation of an ecology and natural resource teaching area, resolution on private development of off-campus housing, acquisition, lease, exchange, disposition and value of real estate; reports from system and university administration, selection of architects/engineers, contract actions by the Chancellor/CEOs, construction project appropriations by the Chancellor

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600

Filed: January 20, 1994, 3:51 p.m.

TRD-9434981

Thursday-Friday, January 27-28, 1994,
2:00 p.m. and 8:00 a.m. respectively.

Texas A&M University, MSC Annex, Clark Street, Board of Regents Meeting Room
College Station

According to the agenda summary, the Board of Regents will discuss correction

and approval of minutes; resolutions; budget policy guidelines; oil, gas and sulphur lease, smoking policy; AUF endowment matching reserve; action on bids for construction projects; appointment of Dean of the College of Education and Fine Arts, TSU; approval of academic reorganization; appointments to the Board of Visitors; graduate tuition; policy on food services, approval of sites for construction projects; budget adjustments for construction projects, revised preliminary design; appropriations for designs and preliminary designs; designation of an ecology and natural resource teaching area; resolution on private development of off-campus housing; degree programs, license agreements, memorandums of agreement, acquisition, lease, exchange, disposition and value of real estate; reports from system and university administration, pending and threatened litigation, consult with system attorneys, personnel matters; naming of facilities, negotiated contracts for prospective gifts or donations; selection of architect/engineers; authorization for the formation of a University Co-Generation Corporation including appointment of directors, authorization to negotiate and execute the ground lease, easement agreement, energy services agreement, utility services agreement and additional agreements, contracts and other required documents, emeritus titles, appointments and promotions, terminations, contract actions by the Chancellor/CEOs, construction project appropriations by the Chancellor; appropriations from unappropriated sources, budget and fiscal transfers, and gifts and grants

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600

Filed: January 20, 1994, 3:50 p.m.

TRD-9434980

Friday, January 28, 1994, 3:15 p.m.

Texas A&M University, MSC Annex, Clark Street, Board of Regents Dining Room
College Station

According to the complete agenda, the Executive Committee will interview candidates for the position of General Counsel of the Texas A&M University System and consider any and all things leading to the selection of the General Counsel of the Texas A&M University System

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600

Filed: January 24, 1994, 3:25 p.m.

TRD-9435133

Texas Southern University

Thursday, February 3, 1994, 3:00 p.m.

3100 Cleburne Avenue, School of Pharmacy-Room 240

Houston

According to the complete agenda, the Board of Regents-Personnel, Student Services and Academic Affairs Committee will consider reports progress of academic activities and programs, and personnel actions.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 24, 1994, 2:16 p.m.

TRD-9435122

Thursday, February 3, 1994, 4:00 p.m.

3100 Cleburne Avenue, School of Pharmacy-Room 240

Houston

According to the complete agenda, the Board of Regents-Finance and Buildings and Grounds Committee will consider matters relating to financial reporting systems, and budgets, fiscal reports from the administration, investments; and informational items

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911

Filed: January 24, 1994, 2:16 p.m.

TRD-9435123

Friday, February 4, 1994, 8:30 a.m.

3100 Cleburne Avenue, University Library-Fifth Floor

Houston

According to the complete agenda, the Board of Regents will consider minutes; report of the president, report from standing committees, and executive session

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911

Filed: January 24, 1994, 2:16 p.m.

TRD-9435121

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Texas State Technical College System

Saturday, January 29, 1994, 8:00 a.m.

TSTC Harlingen Conference Center

Harlingen

Revised agenda

According to the agenda summary, the Board of Regents will add the following: approval of the settlement of the Ortega v. TSTC Harlingen suit; authorization of executive committee to negotiate with Chrysler and Higher Education Facilities Corporation or Industrial Development Corporation to issue tax-exempt revenue bonds to build hangars and do runway overlay in the development of the Texas State Technical College Waco Airport; and authorization of executive committee to negotiate with Chrysler to lease additional land for airport development and construction of hangars

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: January 21, 1994, 10:54 a.m.

TRD-9435005

Saturday, January 29, 1994, 8:00 a.m.

TSTC Harlingen Conference Center

Harlingen

Revised agenda

According to the agenda summary, the Board of Regents will add the following item: authorize the Executive Committee to organize a higher education facilities authority under the provisions of Chapter 53 of the Texas Education Code for Airport Development at Texas State Technical College Waco Airport; and resolution declaring intention to reimburse project expenditures.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: January 24, 1994, 2:53 p.m.

TRD-9435129

Saturday, January 29, 1994, 8:15 a.m.

TSTC Harlingen Conference Center

Harlingen

Revised agenda

According to the agenda summary, the Board of Regents Executive Session will add item to Executive Session agenda as following item: discussion concerning Texas State Technical College cooperation with Job Corp training facility proposed at Harlingen.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: January 21, 1994, 10:55 a.m.

TRD-9435006

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Texas Tech University

Tuesday, February 1, 1994, 10:30 a.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the complete agenda, the Board Investment Policy for Endowments Committee-Board of Regents will consider investment policy statement for endowment funds; and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: January 24, 1994, 5:08 p.m.

TRD-9435147

Tuesday, February 1, 1994, 1:30 p.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the complete agenda, the Academic and Student Affairs Committee-Board of Regents will approve December 16, 1993, committee meeting minutes; consider ratification of administrative actions related to academic and student affairs; leave of absence and commissioning of peace officers; and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: January 24, 1994, 5:08 p.m.

TRD-9435148

Tuesday, February 1, 1994, 1:30 p.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the complete agenda, the Finance and Administration Committee-Board of Regents will approve December 16, 1993, committee meeting minutes; consider approval and adoption of an investment policy statement for endowment funds; lease of 2,000 acres of ranch and farm land in Garza County, Texas; approval of the sale of the undivided 1/2 interest in the J. R. Boyd Estate farm; budget adjustments for the period November 1-30, 1993; and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: January 24, 1994, 5:08 p.m.

TRD-9435149

Tuesday, February 1, 1994, 1:30 p.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the complete agenda, the Campus and Building Committee-Board of Regents will approve December 16, 1993, committee meeting minutes; consider consideration of an agreement between the University and City of Lubbock to lease areas of the Texas Tech University International Cultural Center; authorization for the President to proceed with planning, establish a project budget, appoint a project engineer, approval of the schematic design and authorization to proceed with contract documents and the receipt of bids to construct an extension to the utility tunnel serving the Science Building; authorization for the President to proceed with planning, establish a project budget, appoint a project architect, approval of the schematic design and authorization to proceed with contract documents and the receipt of bids to replace the third floor roofs on the Business Administration Building; naming the Range and Wildlife Field Laboratory-Annex; and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: January 24, 1994, 5:08 p.m.

TRD-9435150

Tuesday, February 1, 1994, 1:30 p.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the complete agenda, the Research Committee-Board of Regents will consider reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161

Filed: January 24, 1994, 5:09 p.m.

TRD-9435151

Tuesday, February 1, 1994, 1:30 p.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the complete agenda, the Development Committee-Board of Regents will approve December 16, 1993, committee meeting minutes; and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: January 24, 1994, 5:09 p.m.

TRD-9435152

Wednesday, February 2, 1994, 9:00 a.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the agenda summary, the Board of Regents will discuss minutes, President's report; Academic and Student Affairs, Finance and Administration; Campus and Building; and Development

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161

Filed: January 24, 1994, 5 07 p.m

TRD-9435146

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Texas Tech University Health Sciences Center

Tuesday, February 1, 1994, 10:30 a.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the complete agenda, the Board Investment Policy for Endowments Committee-Board of Regents will consider investment policy statement for endowment funds, and reports

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161

Filed: January 24, 1994, 5 11 p.m

TRD-9435154

Tuesday, February 1, 1994, 1:30 p.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the complete agenda, the Academic Clinical and Student Affairs Committee-Board of Regents will approve December 16, 1993, committee meeting minutes, consider granting of academic tenure with appointment, approval to renew the contract between Texas Tech University Health Sciences Center and University Medical Center (Lubbock, Texas) to provide consultative, administrative and management functions for the Department of Pathology, ratification commissioning of peace officers, and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161

Filed: January 24, 1994, 5 11 p.m

TRD-9435155

Tuesday, February 1, 1994, 1:30 p.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the complete agenda, the Finance and Administration Committee-Board of Regents will approve December 16,

1993, committee meeting minutes; consider approval and adoption of an investment policy statement for endowment funds; budget adjustments for the period November 1-30, 1993; ratification of administrative actions relating to Finance: delegation of officers and/or employees to approve official travel reimbursements from appropriated funds, delegation of officers and/or employees to authorize and approve expenditures from appropriated funds, specification of officers and/or employees to sign checks, specification of officers and/or employees to sign cashier's checks only and delegation of officers and/or employees to approve and sign documents for the sale and transfer of securities owned or controlled by the Health Sciences Center, and reports

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: January 24, 1994, 5.11 p.m.

TRD-9435156

Tuesday, February 1, 1994, 1:30 p.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the complete agenda, the Campus and Building Committee-Board of Regents will approve December 16, 1993, committee meeting minutes; consider authorization for the President to proceed with planning, establish a project budget, appoint a project architect, approve the schematic design, authorization to proceed with contract documents and the receipt of bids, and authorization to award a construction contract, with the occurrence of the Chair of the Board and the Chair of the Campus and Building Committee, for the expansion of the Gross Anatomy Lab and relocation of the Electron Microscopy (EM) Center at the Health Sciences Center, Lubbock, Texas, and reports

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: January 24, 1994, 5:12 p.m.

TRD-9435157

Tuesday, February 1, 1994, 1:30 p.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the complete agenda, the Research Committee-Board of Regents will consider reports

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161

Filed: January 24, 1994, 5 12 p.m

TRD-9435158

Tuesday, February 1, 1994, 1:30 p.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the complete agenda, the Development Committee-Board of Regents will approve December 16, 1993, committee meeting minutes; and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: January 24, 1994, 5:12 p.m.

TRD-9435159

Wednesday, February 2, 1994, 9:40 a.m.

Room 2C 12, Odessa Regional Academic Health Center, 800 West Fourth Street

Odessa

According to the agenda summary, the Board of Regents will discuss minutes; Academic, Clinical and Student Affairs; Finance and Administration; Campus and Building; and Development.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: January 24, 1994, 5:11 p.m.

TRD-9435153

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University of Houston System

Tuesday, January 25, 1994, 2:00 p.m.

1600 Smith, 34th Floor, Conference Room One, University of Houston System Offices
Houston

According to the complete agenda, the Board of Regents, Facilities Planning and Building Committee discussed and/or selected architectural/engineering consultants for adaptive reuse of Developmental Arts Building-UH-Clear Lake.

Contact: Peggy Cervenka, 1600 Smith, 34th Floor, Houston, Texas 77002, (713) 754-7442.

Filed: January 20, 1994, 10:21 a.m.

TRD-9434951

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University Interscholastic League

Wednesday, January 26, 1994, 1:00 p.m.

Holiday Inn Town Lake, 20 North IH-35
Austin

According to the agenda summary, the State Executive Committee discussed alleged vio-

lation of Athletic Code by fan or fans of Fort Worth Diamond Hill-Jarvis High School; alleged violation of Athletic Code by fan or fans of Trinity High School; and appeal of automatic penalty by Ron Anders, Childress High School; Brad Chasteen, South Grand Prairie High School; and Chris Carter, Spurger High School.

Contact: C. Ray Daniel, 2622 Wichita Street, Austin, Texas 78705, (512) 471-5883.

Filed: January 20, 1994, 2:00 p.m.

TRD-9434953

The University of Texas at Austin

Monday, January 24, 1994, 11:00 a.m.

Ex-Students' Association, Moffett Library, 21st and San Jacinto Streets, University of Texas

Austin

According to the agenda summary, the Council for Intercollegiate Athletics for Women called to order; discussed approval of minutes of the previous meeting; old business; new business, announcements/information reports; and adjourned

Contact: Jody Conradt, UT Austin, 33800 BEL 718, Austin, Texas 78712, (512) 471-7693

Filed: January 20, 1994, 4:01 p.m.

TRD-9434992

Tuesday, January 25, 1994, 1:00 p.m.

Conference Room, Belmont Hall 232, 21st and San Jacinto Streets

Austin

According to the agenda summary, the Intercollegiate Athletics Council for Men convened into Open Session; recessed into Executive Session; reconvened into Open Session; approved minutes of October 26, 1993; items from Executive Session; development; awards; academics, schedule/schedule changes, tickets/ticket policy, new business; and old business.

Contact: Betty Corley, P.O. Box 7399, Austin, Texas 78713, (512) 471-5757.

Filed: January 20, 1994, 3:11 p.m.

TRD-9434965

Texas Board of Veterinary Medical Examiners

Wednesday-Thursday, February 2-3, 1994, 8:30 a.m.

Crystal B Room, Raddison Hotel, 815 Main Street

Fort Worth

According to the complete agenda, the Board will consider negotiated settlements in disciplinary cases; various petitions from licensees; Attorney General Opinions; and other business and reflected on the agenda. In addition, the Board will be reviewing both existing and new rules for proposal, as well as receiving public comment and considering for adoption, other rules as reflected on the agenda. These include Musculoskeletal Manipulation and Ultrasound Diagnosis and Therapy. The Board will hold an Executive Session to discuss pending litigation and duties of the Executive Director as authorized in Attorney General Opinion H-484, 1974. Agenda items may be taken out of order and where appropriate and permitted by law, executive sessions may be held on subjects listed on the agenda. Persons requiring reasonable accommodations are requested to contact Judy Smith, 1946 South IH-35, #306, Austin, Texas 78704, TDD 1 (800) 735-2989 with 72 hours of the meeting to make appropriate arrangements.

Contact: Ron Allen, 1946 South IH-35, #306, Austin, Texas 78704, (512) 446-1183.

Filed: January 21, 1994, 2:15 p.m.

TRD-9435025

Texans' War on Drugs

Friday, January 28, 1994, 10:00 a.m.

313 East Anderson Lane, Suite 101

Austin

Revised agenda

According to the complete agenda, the Board of Directors will discuss the following item during the President's report (Financial): engagement of CPA firm for fiscal 1993 agency audit.

Contact: Janis Pittel, 313 East Anderson Lane, Suite 101, Austin, Texas 78752, (512) 452-0141.

Filed: January 20, 1994, 3:51 p.m.

TRD-9434982

Texas Council on Workforce and Economic Competitiveness

Thursday, February 3, 1994, 8:30 a.m.

Doubletree Hotel, 6505 North IH-35

Austin

According to the complete agenda, the Worker Transition/Local Systems Committee will call to order, announcements, public comment; strategic plan discussion, final review of Part One, tasks and timelines, core measures; action items: JTPA Dislocated Worker Program Policy, break; briefing items: update on the NAFTA Worker Security Act, waivers of independent staffing and direct services requirements of Senate Bill 642, lunch, briefing item: planning grants for local workforce development boards and common eligibility systems; action item: assessing state agency plans for consistency with state strategic plan; policy briefing items: JTPA Title III state plan for employment and training assistance for dislocated workers, JTPA Title III local plan approval process, Wagner-Peyser state employment service plan, and adjourn. Convene with other committee members for council member briefing from the Five Region Task Force on recommendations regarding workforce development area designations to be considered at the full Council meeting.

NOTICE: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007 (or Relay Texas 1-(800) 735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 2241, Austin, Texas 78768, (512) 305-7007

Filed: January 21, 1994, 5:32 p.m.

TRD-9435079

Thursday, February 3, 1994, 8:30 a.m.

Doubletree Hotel, 6505 North IH-35

Austin

According to the complete agenda, the Career Foundation Committee will call to order, public comment, strategic plan discussion, final review of Part One, core measures, tasks and timelines, action items: assessing state agency plans for consistency with state strategic plan, briefing items: apprenticeship in Texas-TEA, Chapter 33 programs, THECB, community college programs, action item: contact-hour funding rate-recommended by the Apprenticeship and Training Technical Advisory Committee, break, briefing item: secondary overview of occupational and technical education, policy briefing item: state plan for vocational and applied technology education (secondary education), lunch, briefing item: post secondary overview of occupational and technical education, policy briefing items: state plan for vocational and applied technology education (post secondary education), split of Carl Perkins funds between secondary and post secondary (TEA,

THECB); and adjourn. Convene with other committee for council member briefing from the Five Region Task Force on recommendations regarding workforce development area designations to be considered at the full Council meeting.

NOTICE: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007 (or Relay Texas 1-(800) 735-2988), at least two days before this meeting so that appropriate arrangements can be made

Contact: Alexa Ray, P.O. Box 2241, Austin, Texas 78768, (512) 305-7007.

Filed: January 21, 1994, 5 33 p m

TRD-9435083

Thursday, February 3, 1994, 8:30 a.m.

Doubletree Hotel, 6505 North IH-35

Austin

According to the complete agenda, the Evaluation and Performance Committee will call to order, announcements, public comment, strategic plan discussion, final review of Part One, tasks and timelines, core measures, break, briefing item recent performance reports-Job Training Partnership Act, JOBS, Food Stamps Employment and Training Program, Adult Education (state and federal), Secondary and Post Secondary Vocational Education (state and federal), employment services; lunch; policy briefing item. JTPA performance standards and incentive policy, committee discussion, development of measures and standards (Part Two-strategic plan), and adjourn. Convene with other committee members for council member briefing from the Five Region Task Force on recommendations regarding workforce development area designations to be considered at the full Council meeting.

NOTICE: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007 (or Relay Texas 1-(800) 735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 2241, Austin, Texas 78768, (512) 305-7007.

Filed: January 21, 1994, 5.32 p.m.

TRD-9435082

Thursday, February 3, 1994, 8:30 a.m.

Doubletree Hotel, 6505 North IH-35

Austin

According to the complete agenda, the Intervention Committee will call to order, announcements, public comment; strategic plan discussion, final review of Part One, tasks and timelines, core measures; action items: assessing state agency plans for consistency with state strategic plan; policy briefing item: JTPA Governor's coordination and special services plan; break; policy briefing items: adult education state plan, state plan for JOBS training and support services; lunch; policy briefing items: JTPA Summer Youth Program local plan approval process, JTPA youth and adult local plan approval process; briefing item JTPA Older Individual Program; and adjourn. Convene with other committee members for council member briefing from the Five Region Task Force on recommendations regarding workforce development area designations to be considered at the full Council meeting.

NOTICE: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007 (or Relay Texas 1-(800) 735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 2241, Austin, Texas 78768, (512) 305-7007.

Filed: January 21, 1994, 5:32 p.m.

TRD-9435081

Friday, February 4, 1994, 8:30 a.m.

Doubletree Hotel, 6505 North IH-35

Austin

According to the complete agenda, the Council will call to order, approval of minutes, announcements; public comment; consent agenda. JTPA Dislocated Worker Program Policy (PY94), contact-hour funding rate for Apprenticeship Program, criteria for assessing state agency plans for consistency with strategic plan; action item: adoption of Part One of state strategic plan; break; action item. designation of remaining five workforce development areas; committee reports/discussion from committees; action item: authorization for interim committee action on plan approvals: Worker Transition/Local Systems Committee-JTPA Dislocated Workers State Program plan, Wagner-Peyser state employment service plan; Intervention Committee-JTPA Governor's coordination and special services plan, JTPA Summer Youth Program local plans; Career Foundation Committee-state plan for vocational education, split of Carl Perkins funds between secondary and post secondary; briefing items: School-to-Work opportunities and activities, regional prosperity plans, and adjourn.

NOTICE: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007 (or Relay Texas 1-(800) 735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 2241, Austin, Texas 78768, (512) 305-7007.

Filed: January 21, 1994, 5:32 p.m.

TRD-9435080

Regional Meetings

Meetings Filed January 20, 1994

The Bexar-Medina-Atascosa Counties Water Control and Improvement District Number One Board of Directors met at 226 Highway 132, Natalia, January 24, 1994, at 8:00 a.m. Information may be obtained from John W. Ward III, P.O. Box 170, Natalia, Texas 78059, (210) 663-2132. TRD-9434973.

The Bosque County Central Appraisal District (Revised agenda.) Board of Directors met at 202 South Highway 6, Meridian, January 27, 1994, at 7:00 p.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9434963.

The Brazos Valley Development Council Family Self-Sufficiency Coordinating Body met in the Council's Conference Room, 1706 East 29th Street, Bryan, January 26, 1994, at Noon. Information may be obtained from Laura Klesel, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9434974.

The Central Appraisal District of Johnson County Appraisal Review Board will meet at 109 North Main, Suite 201, Room 202, Cleburne, January 28 and 31, 1994, at 9:00 a.m. Information may be obtained from Jim Hudspeth, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9434957.

The Deep East Texas Council of Governments Grants Application Review Committee met at the San Augustine Civic and Tourism Center, 611 West Columbia, San Augustine, January 27, 1994, at 11:00 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9434975.

The Eastland County Appraisal District Board of Directors will meet in the Commissioners' Courtroom, Second Floor, Courthouse, Eastland, February 2, 1994, at 1:00 p.m. Information may be obtained from Steve Thomas, P.O. Box 914,

Eastland, Texas 76448, (817) 629-8597. TRD-9434972.

The Gulf Bend Center Board of Trustees met at 1404 Village Drive, Victoria, January 27, 1994, at Noon. Information may be obtained from Sharon Pratka, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611 TRD-9434955.

The Kempner Water Supply Corporation Board of Directors met at the Kempner Water Supply Corporation Office, Highway 190, Kempner, January 27, 1994, at 7:00 p m Information may be obtained from Doug Lavender or Alton Myers, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701 TRD-9434979

The Lampasas County Appraisal District (Emergency revised agenda.) Board of Directors met at 109 East Fifth, Lampasas, January 20, 1994, at 7:00 p m The emergency status was necessary due to (Award bid on sale of 36 computer equipment) accidentally left off agenda. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058 TRD-9434956

The Leon County Central Appraisal District (Revised agenda.) Board of Directors met at the Leon County Central Appraisal District Office Gresham Building, Centerville, January 24, 1994, at 7:00 p m. Information may be obtained from Donald G Gillum, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252 TRD-9434952

The South Plains Association of Governments Regional Review Committee met at the SPAG Offices, 1323 58th Street, Lubbock, January 25, 1994, at 9:30 a m Information may be obtained from Jerry D Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730, (806) 762-8721 TRD-9434976

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**Meetings Filed January 21,
1994**

The Andrews Center (Rescheduled from December 16, 1993.) Board of Trustees met at 2323 West Front Street, Room 208, Tyler, January 25, 1994, at 3:00 p m Information may be obtained from Richard J DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351 TRD-9435026

The Andrews Center Board of Trustees met at 2323 West Front Street, Room 208, Tyler, January 27, 1994, at 3:00 p m Information may be obtained from Richard J DeSanto, P.O. Box 4730, Tyler, Texas 75711, (903) 597-1351 TRD-9435072

The Atascosa County Appraisal District Board of Directors met at Fourth and Avenue J, Poteet, January 27, 1994, at 1:30 p m Information may be obtained from

Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9435047.

The Austin-Travis County MHMR Center Board of Trustees met at 1430 Collier Street, Board Room, Austin, January 27, 1994, at 8:00 a.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141 TRD-9435070.

The Comal Appraisal District Board of Directors met at 178 East Mill Street, #102, New Braunfels, January 24, 1994, at 5:30 p m Information may be obtained from Lynn E Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9435048

The Dallas Area Rapid Transit Audit Committee met at 1401 Pacific Avenue, DART Conference Room "C", First Floor, Dallas, January 25, 1994, at 11:00 a m Information may be obtained from Jacqueline Young, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3371. TRD-9435003.

The Dallas Area Rapid Transit Committee-of-the-Whole met at 1401 Pacific Avenue, DART Conference Room "C", First Floor, Dallas, January 25, 1994, at 1:00 p m Information may be obtained from Jacqueline Young, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3371 TRD-9435002

The Dallas Area Rapid Transit Board of Directors met at 1401 Pacific Avenue, DART Board Meeting Room, First Floor, Dallas, January 25, 1994, at 6:30 p m Information may be obtained from Jacqueline Young, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3371 TRD-9435004

The Deep East Texas Council of Governments Solid Waste Task Force met at the San Augustine Civic and Tourism Center, 611 West Columbia, San Augustine, January 27, 1994, at 9:30 a.m. Information may be obtained from Katie Bayliss, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704 TRD-9435031

The Ellis County Appraisal District Appraisal Review Board met at 406 Sycamore Street, Waxahachie, January 27, 1994, at 8:30 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552 TRD-9435073

The Ellis County Appraisal District Board of Directors met at 406 Sycamore Street, Waxahachie, January 27, 1994, at 7:00 p m Information may be obtained from R Richard Rhodes, Jr., P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552

The Ellis County Appraisal District Appraisal Review Board will meet at 406 Sycamore Street, Waxahachie, January 28,

1994, at 8:30 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552 TRD-9435074

The Golden Crescent Private Industry Council met at 2401 Houston Highway, Victoria, January 24, 1994, at 6:30 p m Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872 TRD-9435017

The Guadalupe-Blanco River Authority Board of Directors will meet at 933 East Court Street, Seguin, January 28, 1994, at 10:00 a.m. Information may be obtained from James E. Arnst, P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9435007

The Heart of Texas Region MHMR Center Board of Trustees met at 110 South 12th Street, Waco, January 25, 1994, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451, Ext 290 TRD-9434997

The Jasper County Appraisal District Board of Directors met at the Administrative Offices of Evadale Independent School District, Highway 105 at Highway 2246, Evadale, January 27, 1994, at 7:00 p m Information may be obtained from David W. Luther, 137 North Main, Jasper, Texas 75951, (409) 384-2544 TRD-9434999

The Lower Colorado River Authority Retirement Benefits Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, January 26, 1994, at 11:30 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283 TRD-9435039

The Lower Colorado River Authority Ad Hoc Committee on Community Resources and Development met at 3701 Lake Austin Boulevard, Hancock Building, Room H-402, Austin, January 27, 1994, at 10:30 a.m. Information may be obtained from Glen E Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283 TRD-9435040

The Sharon Water Supply Corporation Board of Directors met at the Office of Sharon Water Supply Corporation, Route 5, Box 50361, Winnsboro, January 24, 1994, at 7:00 p m Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, (903) 342-3525 TRD-9435071

The West Central Texas Municipal Water District met at 410 Hickory Street, Abilene, January 27, 1994, at 9:30 a.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254 TRD-9435038

**Meetings Filed January 24,
1994**

The Austin-Travis County MHMR Center Public Relations Committee will meet at 1430 Collier Street, Austin, February 2, 1994, at 12:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141 TRD-9435138

The Central Plains Center for MHMR and SA Board of Trustees met at 308 South Columbia, Plainview, January 27, 1994, at 6:00 p.m. Information may be obtained from Gail Davis, 2700 Yonkers, Plainview, Texas 79073, (806) 293-2636 TRD-9435137

The Coastal Bend Council of Governments Executive Board will meet at CBCOG Office, Conference Room, 2910 Leopard Street, Corpus Christi, January 28, 1994, at 11:00 a.m. TRD-9435101.

The Coastal Bend Council of Governments Membership will meet at CBCOG Office, Conference Room, 2910 Leopard Street, Corpus Christi, January 28, 1994, 2:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743 TRD-9435102

The Deep East Texas Regional MHMR Services (Emergency revised agenda.) Board of Trustees met in the Ward R. Burke Community Room-Administration Facility, 4101 South Medford Drive, Lufkin, January 25, 1994, at 2:30 p.m. The emergency status was necessary due to two items added to executive session agenda. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141 TRD-9435130

The Gray County Appraisal District Board of Directors met at 815 North Sumner, Pampa, January 27, 1994, 7:00 p.m. Information may be obtained from Sherrin Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 655-0791 TRD-9435144

The Hale County Appraisal District (Rescheduled from January 27, 1994.) Board of Directors will meet at 3314 Olton Road, Plainview, February 3, 1994, at 6:00 p.m.

Information may be obtained from Linda Jaynes, P.O. Box 29, Plainview, Texas 79072, (806) 293-4226. TRD-9435136.

The Lamb County Appraisal District Appraisal Review Board will meet at 331 LFD Drive, Littlefield, March 1, 1994, at 8:00 a.m. Information may be obtained from Vaughn E. McKee, P.O. Box 552, Littlefield, Texas 793390552, (806) 385-6474 TRD-9435132.

The North Central Texas Council of Governments (NCTCOG) Transportation Department and Texas Department of Transportation (TxDOT) will meet at Commissioners' Court, Dallas County Administration Building, 411 Elm Street, First Floor, Dallas, January 31, 1994, at 4:00 p.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9240. TRD-9435105

The North Central Texas Council of Governments (NCTCOG) Transportation Department and Texas Department of Transportation (TxDOT) will meet at 845 West Irving Boulevard, Irving City Council Chambers, Irving, February 1, 1994, 6:30 p.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9240. TRD-9435106.

The North Central Texas Council of Governments (NCTCOG) Transportation Department and Texas Department of Transportation (TxDOT) will meet at Fort Worth City Council Chambers, 1000 Throckmorton Street, Fort Worth, February 2, 1994, at 4:00 p.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9240. TRD-9435107.

The Palo Pinto Appraisal District Appraisal Review Board will meet at Palo Pinto County Courthouse, Palo Pinto, February 9, 1994, at 1:30 p.m. Information may be obtained from Carol Holmes, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1208. TRD-9435104.

The Parmer County Appraisal District Board of Directors will meet at 305 Third Street, Bovina, February 10, 1994, 7:00 p.m. Information may be obtained from Ronald E. Procter, Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9435103.

The South Texas Development Council Regional Review Committee met in the STDC Conference Room, 1718 East Calton Road, Laredo, January 27, 1994, at 1:30 p.m. Information may be obtained from Juan Vargas, P.O. Box 2187, Laredo, Texas 78044-2187, (512) 722-3995. TRD-9435118.

The Tax Appraisal District of Bell County (Emergency Meeting) Board of Directors met at the Tax Appraisal District building, 411 East Central Avenue, Belton, January 26, 1994, at 7:00 p.m. The emergency meeting was due to contract renewal is impending. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, Ext. 29. TRD-9435126

The San Antonio-Bexar County Metropolitan Planning Organization H.O.V. Oversight Committee will meet at 233 North Pecos-LaTrinidad, Vista Verde Building, Room 420, San Antonio, January 31, 1994, at 1:30 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9435145.

The Upper Leon River Municipal Water District Board of Directors met at the General Office of the Filter Plant, Lake Proctor, January 27, 1994, at 6:30 p.m. Information may be obtained from Gary D. Lacy, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9435143.

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**Meetings Filed January 25,
1994**

The Riceland Regional Mental Health Authority Board of Trustees Joint Committee Meeting will meet at 6410 Airport Boulevard, Rosenberg, January 31, 1994, at 9:30 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3098. TRD-9435171.

The Tarrant Appraisal District Tarrant Appraisal Review Board will meet at 2329 Gravel Road, Fort Worth, February 16-17, 1994, at 8:30 a.m. Information may be obtained from Suzanne Williams, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9435165.

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.

Texas Commission on Alcohol and Drug Abuse

Notice of Public Hearings

The Omnibus Reconciliation Act of 1981 (Public Law 97-35, as amended) requires annual public hearings on the intended use of federal funds allocated under the Substance Abuse Prevention and Treatment (SAPT) Block Grant. Additionally, the state, through Texas Civil Statutes, Article 6252-13e, mandates that agencies responsible for administering block grant funds must hold public hearings in four locations once every two years as a mechanism for public input on development of the agency's budget request for the next biennium. Consistent with these mandates, the Texas Commission on Alcohol and Drug Abuse (commission) is holding public hearings in February. The purpose of these hearings is to take testimony regarding the commission's intended use of SAPT funds for fiscal year 1995 and the commission's legislative appropriations request for the 1996-1997 biennium.

Specific comments will be solicited on the following issues: the intended use of public funds for substance abuse services and services for problem and compulsive gamblers, the magnitude of the substance abuse problem; and the current availability of and need for substance abuse services

At these hearings, preliminary reports of the intended use of funds for federal fiscal year 1995 (beginning October 1, 1994) will be provided.

Six public hearings have been scheduled as follows: February 11, 1994, Houston, 4:00 p.m.-6:00 p.m., Houston-Galveston Area Council, 3555 Timmons Lane, Suite 500; February 14, 1994, Wichita Falls, 9:30 a.m.-11:30 a.m., Nortex Regional Planning Commission, 4309 Jacksboro Highway; February 15, 1994, Bryan, 9:30 a.m.-11:30 a.m., Brazos Valley Development Council, 1706 East 29th Street; February 21, 1994, Harlingen, 9:00 a.m.-11:00 a.m., Texas State Technical College, Conference Center Building; February 23, 1994, Kilgore, 4:00 p.m.-6:00 p.m., East Texas Council of Governments, 3800 Stone Road; February 24, 1994, Midland, 10:00 a.m.-noon, City Council Chambers, 300 North Loraine.

Representatives from the Texas Commission on Alcohol and Drug Abuse will be present to explain the planning process and consult with and receive comments from interested citizens and affected groups. All written and oral comments will be considered in the preparation of the final plan and budgets.

Preliminary intended use reports can be obtained from all regional councils of government or by contacting the Texas Commission on Alcohol and Drug Abuse, 710

Brazos, Austin, Texas, 78701-2576, (512) 867-8700, contact person, Rebecca Davis. Written comments will be accepted through March 11, 1994

TCADA complies with the Americans with Disabilities Act. Spanish-language interpreters and interpreters for the hearing impaired will be provided upon request. Please contact Reagan Faulkner at (512) 867-8140 ten working days prior to the public hearing to request these services. If you are an individual with other disability and need a reasonable accommodation, please notify the commission ten days in advance of the hearing date to allow accommodations to be made.

Issued in Austin, Texas, on January 19, 1994

TRD-9434959

David P. Tatum
Interim Executive Director
Texas Commission on Alcohol and Drug
Abuse

Filed January 20, 1994

Summary of Public Comments on the Intended Use of Federal Funds

The Omnibus Reconciliation Act of 1981 (Public Law 97-35, as amended); and Texas Civil Statutes, Article 6252-13e, §5(f) requires public input into state plans on the intended use of federal funds allocated under the Substance Abuse Prevention and Treatment (SAPT) Block Grant. Consistent with these mandates, the Texas Commission on Alcohol and Drug Abuse (commission) held public hearings in March at the following locations: Laredo, Abilene, Corpus Christi, Lufkin, Arlington, and Lubbock. Testimony was heard regarding the commission's intended use of SAPT block grant funds for fiscal year 1994. Comments following will address the substance abuse block grant; the magnitude of the substance abuse problem; and, the current availability of and need for substance abuse services.

At these hearings, a preliminary summary of the intended use of funds for federal fiscal year 1994 (beginning October 1, 1993) was provided. Public comments were solicited for use in preparation of the final plans. All written and oral comments have been considered in preparation of the final fiscal year 1994 intended use report. A summary of the public comments follows:

Most comments pertaining to alcohol and drug abuse services centered around seven areas: expansion of prevention services, increased youth services, services for singly-diagnosed clients who were formerly served by state hospitals, increased services for adult treatment and reduction of waiting lists, increased services for women, increased

services to rural areas, and support for and expansion of services for persons in the criminal justice system

The first area of testimony centered on the need to increase prevention and intervention services, most specifically for youth. Requests were heard for more culturally-oriented prevention programs, for programs designed for earlier ages, and for more innovative programs for both in-school and after-school use. The need for more student assistance programs and for higher education prevention/intervention programs was also voiced, with one participant suggesting that one-third of the block grant for fiscal year 1994 be spent on prevention Set-asides for the block grant, however, are determined by the United States Congress and not by the commission.

In conjunction with the requests for increased prevention services came a second area of testimony involving youth treatment services. There is a tremendous need for treatment services for indigent youth, youth offenders, substance abusing gang members, and pregnant teenagers. The phenomenon of denial is extremely prevalent among youth, a problem that was cited by many professionals as critical to the increasing problem with youth substance abuse. Other programs for kids selling drugs, but not using them, are also greatly needed.

A third, critical matter of discussion centered on the closure of state mental hospitals to singly-diagnosed substance abusers, and the subsequent lack of detoxification facilities once these programs were discontinued. TCADA has in subsequent months, contracted with community-based providers to supply detoxification and intensive residential services in most of the affected areas.

Fourth, speakers in almost every city cited: a serious need for greater funding for both in-patient and outpatient treatment programs, the very serious problems that instability/inconsistency of funding creates; the serious problems in substance abuse and addiction that NAFTA may bring, as a result of more open borders, and that reimbursement rates are too low statewide.

A fifth area of concern involved the need for increased services for pregnant women, women with children, and women of child-bearing ages. Speakers indicated that although many such programs have been established, more are needed as services become better known and accepted.

Need for rural services, specifically youth services in rural areas, was a sixth concern. Texas is comprised of large metropolitan areas and enormous expanses of rural lands, much of which is sparsely inhabited. Substance abuse services are in short supply in rural areas, where the major drug of choice is still alcohol. Speakers representing all rural parts of Texas came to ask for increased services, particularly for youth.

The seventh area involved support for expansion of the Texas Criminal Justice Initiative, including recommendations for greater public/private partnerships and for additional training for licensed chemical dependency counselors who must handle the influx of criminal justice clients in aftercare settings. Considerable opposition, however, was voiced to the criminal justice initiative's receiving any portion of the block grant.

In conjunction with these hearings on the use of federal block grant funds, the commission presented an overview of the In-Prison Therapeutic Community Program (ITC) and the Substance Abuse Felony Punishment Facility Program (SAFP). Overviews of these programs are available

in writing the Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas, 78701-2576.

This summary of comments pertaining to the substance abuse portion of the SAPT Block Grant for fiscal year 1994 is published in response to the Omnibus Budget Reconciliation Act of 1991 (Public Law 97-35, as amended) and Texas Civil Statutes, Article 6252-13e, § 5(f).

Issued in Austin, Texas, on January 19, 1994.

TRD-9434958

David P. Tatum
Interim Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: January 20, 1994

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State Banking Board
Notice of Hearing

The State Banking Board has accepted a domicile change application from United Trust Company, Austin, Texas. The trust company proposes to relocate from 8515 Fathom Circle, Austin, Texas, to a new location at 2200 Market, Suite 1210, Galveston, Texas.

The hearing officer of the Board will conduct a public hearing on this application on February 21, 1994, in Austin, Texas. Anyone who desires to become a party to the application must file a written notice of intent to appear, including a brief statement of position, with the State Banking Board, 2601 North Lamar Boulevard, Austin, Texas 78705, no later than February 11, 1994. A copy of this notice and any other correspondence must be sent to the representative of the applicants, Larry E. Temple, Attorney, 400 West 15th Street, Suite 1510, Austin, Texas 78701. If no protest is timely filed, the Board may cancel the hearing and consider the application at its next scheduled meeting.

Issued in Austin, Texas, on January 14, 1994.

TRD-9434901

Lynda A. Drake
Director of Corporate Activities
Texas Department of Banking

Filed: January 19, 1994

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Comptroller of Public Accounts
Notices of Consultant Contract Award

In accordance with the provisions of the Texas Government Code, Chapter 2254, Subchapter B, the Comptroller of Public Accounts announces this notice of consultant contract award.

The consultant proposal request was published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8259).

The consultant will perform a management and performance review of the San Marcos Independent School District, and will produce periodic progress reports and a final report containing the consultant's conclusions and recommendations. These reports shall include analyses and recommendations to contain costs, improving management strategies, to promoting better education through school administration efficiency.

The contract is awarded to Neal and Associates, 4702 Fieldstone Drive, Austin, Texas 78735. The total dollar value of the contract is not to exceed \$75,000. The contract was executed January 21, 1994, and extends through August 31, 1995. Neal and Associates is to present a final report on or about July 5, 1994, on conclusions reached from the services performed under said contract.

Issued in Austin, Texas, on January 24, 1994.

TRD-9435089 Arthur F. Lorton
Senior Legal Counsel, General Law
Section
Comptroller of Public Accounts

Filed: January 24, 1994

In accordance with the provisions of the Texas Government Code, Chapter 2254, Subchapter B, the Comptroller of Public Accounts announces this notice of consultant contract award.

The consultant proposal request was published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8259).

The consultant will perform a management and performance review of the Brownsville Independent School District, and will produce periodic progress reports and a final report containing the consultant's conclusions and recommendations. These reports shall include analyses of any problems and opportunities encountered during the conduct of the review, and the final report shall include analyses and recommendations to contain costs, improve management strategies, and to promote better education through school administration efficiency.

The contract is awarded to MGT of America, Inc., doing business as/MGT Consultants, 100 Congress Avenue, Suite 2018, Austin, Texas 78701. The total dollar value of the contract is not to exceed \$250,000. The contract was executed January 20, 1994, and extends through August 31, 1995. MGT of America, Inc., is to present a final report on or about July 5, 1994, on conclusions reached from the services performed under said contract.

Issued in Austin, Texas, on January 24, 1994.

TRD-9435097 Arthur F. Lorton
Senior Legal Counsel, General Law
Section
Comptroller of Public Accounts

Filed: January 24, 1994

Office of Consumer Credit Commissioner

Interpretations

Under the provisions of Texas Civil Statutes, Article 5069-2.02A(10), the consumer credit commissioner has issued the following interpretation of Texas Civil Statutes, Title 79, which interpretation was approved by the Finance Commission of Texas on January 14, 1994.

Request Number 94-1. Request inquiring whether the dollar amount of a "unit property tax value" as established and defined in Senate Bill 878, Chapter 672, Acts of the 73rd Legislature, Regular Session, constitutes a tax and therefore is encompassed within the term "any taxes" as used in Texas Civil Statutes, Article 5069, Chapters 6 and 7.

Summary of Interpretation:

Based on the views expressed by Senator Montfort as to the legislative intent that the unit property tax value be considered a tax for all purposes and the concurrence of Comptroller Sharp, the commissioner found that the unit property tax value was encompassed in the term "any taxes" as used in Texas Civil Statutes, Article 5069, Chapters 6 and 7. The commissioner further found that the unit property tax value could be included in the cash price or shown as an itemized charge but that in either approach the amount should bear a clear and meaningful caption such as "Dealer's Inventory Tax."

Issued in Austin, Texas, on January 14, 1994.

TRD-9435087 Al Endsley
Consumer Credit Commissioner

Filed: January 24, 1994

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04 and 1.05, as amended (Texas Civil Statutes, Articles 5069-1.04 and 1.05).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	01/24/94-01/30/94	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	02/01/94-02/28/94	10.00%	10.00%

(1) Credit for personal, family or household use. (2) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on January 18, 1994

TRD-9434939 Al Endsley
Consumer Credit Commissioner

Filed: January 20, 1994

Texas Department of Criminal Justice Request for Proposal

The Texas Department of Criminal Justice (TDCJ) hereby requests all eligible interested parties to submit a proposal for the: location (in the state of Texas); design; construction and/or renovation; and the possible operation and

management for the Department 1,500 or up to 2,000 State Jail beds. The purpose of the envisioned facility(ies) will be to provide the Texas Department of Criminal Justice with facility(ies) to successfully house State Jail Felony inmates as referenced in the Texas Government Code, Chapter 507. Proposals can address various operational options. The proposing party will be expected to provide for site selection, site acquisition, facility design drawings, permitting, financing and construction/renovation. All proposing parties must be capable of providing facilities and stand alone services to the specified TDCJ population which will, at a minimum, comply with state jail standards. Each site should be close enough to a county with population of 100,000 or more to enable the Department and the confined population to have access to resources in those counties.

Sealed proposals will be received by the Texas Department of Criminal Justice until noon, February 18, 1994. Such proposals must be typed or printed on standard (8 1/2 x 11") paper, pages numbered, a table of contents included, in the required format and submitted to: William J. Barry, Director of Management Services, Texas Department of Criminal Justice, P.O. Box 99 (Spur 59), Room 208, Huntsville, Texas 77340, Attention: Correctional Facility Proposal.

No proposal will be accepted after the time set for receipt of proposals. A request for a copy of the request for proposal or questions relating to the request for proposal should be addressed to Bill Barry (409) 294-6451, Director of Management Services. The department may require that specific inquiries be submitted in writing.

The Texas Department of Criminal Justice reserves the right to reject any or all proposals or portions of proposals received in response to this request for proposal. Submission of proposal has the effect of waiving propriety rights or confidentiality. TDCJ reserves the right to use for its benefit, ideas contained in the proposals submitted. TDCJ is not liable for any costs incurred by applicants or prospective applicants in the preparation, formulation or presentation of proposals. In case of ambiguity or lack of clarity, the department may adopt such interpretations as may be most advantageous to the department. Upon review of all proposals submitted, the Texas Department of Criminal Justice may select the most qualified party(ies), in its judgement, with whom to negotiate a final contract. Such determination will be solely at the discretion of the board.

All TDCJ representations are subject to the availability and authorization of appropriations, are subject to change and do not represent an obligation on the state or TDCJ.

The elevation of proposals will be based upon, but not limited to, the needs of the Texas Department of Criminal Justice to include a review of logistical concerns, operational costs and considerations, regionalization needs, staff recruitment and retention, site suitability, inmate catchment areas, community resources, programs/services, facility design, cost to construct the facility, compliance with the Request for Proposal and public support for the correctional facility. However, no single factor will be responsible for the selection. Each proposer will be responsible for holding and conducting a public hearing in the community where the facility is being proposed in accordance with Code of Criminal Procedure, Article 42.13, §10. Following evaluation, a short list will be developed. The Texas Board of Criminal Justice will determine the final selection of vendor.

Issued in Austin, Texas, on January 24, 1994.

TRD-9435100

Carl Reynolds
General Counsel
Texas Board of Criminal Justice

Filed: January 24, 1994

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General Land Office
Consultant Proposal Request

The Texas General Land Office (GLO) previously contracted for consultant services to obtain professional and technical assistance for the development of a draft consistency review framework and process for the Texas Coastal Management Program (CMP) and for the development of options for the organizational structural necessary to implement the program. The GLO is now requesting offers of consultant services to provide guidance and assistance with the development of a federal consistency review process and to assist in the identification of the optimum organizational structure needed to implement the CMP, taking into account the state and federal consistency review processes.

Pursuant to §2254.021, et seq. Texas Government Code, the General Land Office is requesting offers of consulting services to assist with the development of a federal consistency review process and with the identification of the optimum organizational structure to implement the Texas Coastal Management Program. Consultant may also provide other related assistance, such as the review of draft CMP documents and environmental assessments, and regular telephone consultation, as needed by the CMP staff, through August 31, 1994.

The development of the federal consistency review process will include an analysis of the processes utilized by other states to integrate the Army Corps of Engineers §404 permitting process into the review process. Prior experience with the processes of other states is necessary for this analysis. The identification of the optimum organizational structure must include recommendations for staffing requirements for administrative, technical, and policy staff.

The requested consultant services will require an understanding of and the ability to build upon the work previously provided by Richard F. Delaney, a private consultant, under the provisions of GLO Contract Number 93-38R. It is the GLO's intent to award this contract to Mr. Delaney to obtain maximum benefit of the prior work unless a substantially better offer is submitted.

The closing date for the receipt of offers of these consulting services is 5:0 p.m., February 18, 1994. Further information can be obtained by contacting Sally S. Davenport at 1700 North Congress Avenue, Room 720, Austin, Texas 78701, (512) 463-5059.

The consultant selected must demonstrate extensive knowledge of the Texas Coastal Management Program, have knowledge and experience working with other federally designated Coastal Zone Management state programs, and maintain contracts within the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration.

Issued in Austin, Texas, on January 21, 1994

TRD-9435041

Garry Mauro
Commissioner
General Land Office

Filed: January 21, 1994

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Texas Department of Health
Notice of Emergency Cease and Desist
Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Robert M. Anderton, D.D.S. (registrant-R18968) of Carrollton to cease and desist using the Weber dental x-ray unit located in Room 4 of his facility until entrance exposure limits for intraoral x-ray procedures are brought within regulatory limits. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct this violation and others found during a recent inspection, and the methods used to prevent their recurrence.

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 January 24, 1994.

TRD-9435096 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: January 24, 1994

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Notice of Emergency Impoundment
Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Exwell Logging and Perforating, Inc. of Alice to immediately surrender to the bureau for impoundment all radioactive material in their possession in Texas. The order was issued because the company no longer possesses Texas radioactive material license L04447, but was storing licensable quantities of radioactive material in an unsecured manner at its facility. The order will remain in effect until the company is issued a radioactive material license authorizing such possession and use, or has arranged for the proper disposal or transfer of 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 January 24, 1994.

TRD-9435093 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: January 24, 1994

Notices of Revocation of Certificates of
Registration

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 certificates of registration: Lee Goodman, D.V.M., Denton, R16991, January 13, 1994; Gerald L. Glasscock, D.C., Hereford, R17796, January 13, 1994; Merle C. Ewton, D.D.S., Spring, R09339, January 13, 1994; Parkway Hospital, Houston, R01744, January 13, 1994; McKee Chiropractic Clinic, Tomball, R12750, January 13, 1994.

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 January 24, 1994.

TRD-9435094 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: January 24, 1994

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The Texas Department of Health, having duly filed a complaint pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code, §289.112), has revoked the following certificate of registration: Almeda Foot Clinic, Main Podiatry Group, Houston, R16094, January 12, 1994.

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 January 24, 1994.

TRD-9435092 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: January 24, 1994

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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: Research and Diagnostic Laboratories, Inc., Houston, G01556, January 13, 1994; Houston Inspection, Inc., Houston, L04255, January 13, 1994; Darco Supply, Inc., Houston, L04474, January 13, 1994.

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 January 24, 1994.

TRD-9435095 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: January 24, 1994

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**Texas Department of Human Services
Public Notice-Open Solicitation**

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for Crosby County, County 054, identified below, where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous, six-month period. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home

beds or hospital beds in the county identified in this public notice must submit a written reply (as described in 40 TAC §19.2004) to TDHS, Gary L. Allen, Provider Enrollment, and Billing Services, Long Term Care-Regulatory, Mail Code Y-976, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5:00 p.m. February 27, 1994, 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 in which the Texas Department of Health originally licensed the beds that are being proposed for Medicaid participation. The primary selection process will be completed on March 9, 1994. If there are insufficient available beds after the primary selection to reduce occupancy rates to less than 80%, 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	Number of Months					
			Jun	Jul	Aug	Sep	Oct	Nov
054	Crosby	6	91.2	94.3	94.8	95.2	95.3	94.0

Issued in Austin, Texas, on January 24, 1994.

TRD-9435090 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Filed: January 24, 1994

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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 Berkshire Hathaway Life Insurance Company of Nebraska, a foreign life, accident, and health company. The home office is in Omaha, Nebraska.

Application for name change in Texas for The Millers Mutual Fire Insurance Company of Texas, a domestic fire and casualty company. The proposed new name is Millers Mutual Fire Insurance Company. The home office is in Fort Worth, Texas.

Application for admission in Texas for National Fire and Indemnity Exchange, a foreign fire and casualty company. The home office is in St. Louis, Missouri.

Issued in Austin, Texas, on January 21, 1994

TRD-9435049 Linda K von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: January 21, 1994

**Texas Natural Resource Conservation
Commission**

**Notice of Opportunity to Comment on
Permitting Actions**

The following applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*. If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Request for a public hearing on this application should be submitted in writing to the Chief Clerk's Office, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Issuance of certificate of adjudication number 12-5492 to T. L. Smith Revocable Trust pursuant to an agreed final judgement and decree of the 21st Judicial District Court of Bastrop County, in Cause Number 18,1762A, **In Re: The adjudication of water rights in the Brazos IV Segment of the Brazos River Basin and the San Jacinto-Brazos Coastal Basin** dated August 12, 1992, authorizing an impoundment of 11,315 acre-feet of water in a natural lake known as Eagle Nest Lake on unnamed tributaries of Varner's Creek and authorization to divert and use not to exceed 1,800 acre-feet of water per annum from Eagle Nest Lake for the irrigation of 580 acres of land in Brazoria County, approximately 12.5 miles northwest of Angleton, Texas. Certificate owners are also authorized to use Eagle Nest Lake for recreation purposes.

Application Number 30185-S of Ha Van Nguyen doing business as Aqua Systems to purchase Austin Aqua Systems and obtain CCN in Burnet County, Texas.

Application Number 30201-C of Tarkington Water Supply Corporation to amend water certificate of convenience and necessity number 11448 in Liberty County, Texas.

Application Number 30303-C of Chalk Hill Special Utility District to transfer water CCN Number 11746 from Chalk Hill Water Supply Corporation in Rusk County, Texas.

Application Number 23-304B by Heartland Properties III, Inc., for an amendment to certificate of adjudication number 12-304, as amended, pursuant to TWC, §11.122. **For executive director's consideration.** Applicant is the owner of 118,225 acre-feet of Class "A" water rights authorizing by certificate of adjudication number 23-304, as amended, and 220 acre-feet of Class "A" water rights authorized by certificate of adjudication number 23-306, both on the Rio Grande and in Hidalgo County, Texas. The applicant seeks to combine these two rights into 23-304, as amended.

Application Number 14-1330B by J. Gordon McGill for an amendment to certificate of adjudication number 12-1330, as amended, pursuant to TWC, §11.122. **For executive director's consideration.** Applicant seeks to authorize the use of his 295 acre-feet of water under the referenced certificate to irrigate 300 acres of land on the south side of the Concho River out of four tracts totalling 1,036.04 acres of land approximately five miles east of San Angelo in Tom Green County. Applicant also seeks to authorize diversion of the water anywhere along the south bank of the Concho River between two specific survey corners at a rate of 4,000 gpm unless diversions are occurring under Certificate 14-1330A, at which time he would divert at a maximum rate of 1,600 gpm.

Application Number 23-837B by East Rio Hondo Water Supply Corporation to amend certificate of adjudication number 23-838, as amended **For executive director's consideration.** Applicant seeks an amendment to change the point of diversion on the Rio Grande to a point operated by Cameron County Irrigation District Number 2, and to change the purpose and place of use of 300 acre of Class "A" irrigation water rights to 375 acre-feet of municipal water rights in Cameron County, Rio Grande Basin, Texas

Application Number 14-5425A by Charles Trefnty to amend certificate of adjudication number 14-5425. **For**

executive director's consideration. Applicant seeks to change the place of use of the 76 acre-feet per annum of irrigation water rights to three tracts totaling 759.4 acres of land in Colorado County approximately 9.5 miles northwest of Columbus, Texas; and change the place of diversion from that now authorized on the Colorado River to three points on the Colorado River adjacent to the 759.4 acres of land in the Colorado River Basin.

Issued in Austin, Texas, on January 20, 1994

TRD-9434993

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: January 20, 1994

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The University of Texas System
The University of Texas Health Science
Center at Houston—Request for
Proposal

This request is submitted in accordance with the provisions of Texas Civil Statutes, Article 6252-11c, §6.

The University of Texas Health Science Center at Houston (UTHSC-H) hereby provides a notice of invitation for offers of consulting services. The Houston-Galveston area has been designated as a severe non-attainment area for ozone levels according to the Environmental Protection Agency (EPA) National Ambient Air Quality Control Standards. The Federal Clean Air Act Amendments of 1990 mandated the establishment of an Employer Trip Reduction Program (ETRP) in certain non-attainment areas including the Houston-Galveston area. The goal of the ETRP is to raise the average vehicle occupancy (AVO) rate for Houston to 1.47. To achieve this goal each Houston Employer with 100 or more employees at a single worksite must register each site with the Texas Natural Resource Conservation Commission (TNRCC) and select a Employee Transportation Coordinator (ETC) which must be certified by the TNRCC. Each worksite must also conduct a survey of current employee commute behavior (75% minimum response is required). These survey results will be utilized as the basis for formulating a trip reduction plan, which will include descriptions of the planned evaluation and tracking methodologies which must be submitted to the TNRCC by May 15, 1995. It is anticipated that the value of this required consulting service will exceed \$10,000.

For further information or to obtain a complete proposal package, contact Doug Bowerman, Procurement Officer, UTHSC-H, P.O. Box 20036, Houston, Texas 77225.

An original and four copies of the original proposal must be submitted to UTHSC-H prior to 3.00 p.m., on February 25, 1994. Proposals received thereafter will not be considered and will be returned unopened. Proposals should be sent to Doug Bowerman at the indicated address.

Selected respondents may be requested to conduct on-site presentations, at their expense, to clarify and expand upon items provided in their bid. The UTHSC-H will evaluate all offers of consulting services received prior to the closing date based on the ability to provide evidence of experience with surveys and plans designed to produce similar results in raising the average passenger occupancy rate for vehicles arriving at the workplace. Since the

survey and trip reduction plan are new requirements for Texas, there exists no record of prior experience in Texas for any consulting group. Therefore, experience in another state or states will be acceptable; however, preference will be given to a consultant whose principal place of business is within the State of Texas.

Issued in Austin, Texas, on January 20, 1994.

TRD-9434966 Arthur H. Dilly
Executive Secretary to the Board of
Regents
The University of Texas System

Filed: January 20, 1994



1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Tuesday, January 4	Wednesday, December 29	Thursday, December 30
2 Friday, January 7	Monday, January 3	Tuesday, January 4
3 Tuesday, January 11	Wednesday, January 5	Thursday, January 6
4 Friday, January 14	Monday, January 10	Tuesday, January 11
5 Tuesday, January 18	Wednesday, January 12	Thursday, January 13
Friday, January 21	1993 ANNUAL INDEX	
6 Tuesday, January 25	Wednesday, January 19	Thursday, January 20
7 Friday, January 28	Monday, January 24	Tuesday, January 25
8 Tuesday, February 1	Wednesday, January 26	Thursday, January 27
9 Friday, February 4	Monday, January 31	Tuesday, February 1
10 Tuesday, February 8	Wednesday, February 2	Thursday, February 3
11 Friday, February 11	Monday, February 7	Tuesday, February 8
12 Tuesday, February 15	Wednesday, February 9	Thursday, February 10
13 Friday, February 18	Monday, February 14	Tuesday, February 15
14 Tuesday, February 22	Wednesday, February 16	Thursday, February 17
15 *Friday, February 25	Friday, February 18	Tuesday, February 22
16 Tuesday, March 1	Wednesday, February 23	Thursday, February 24
17 Friday, March 4	Monday, February 28	Tuesday, March 1
18 Tuesday, March 8	Wednesday, March 2	Thursday, March 3
Friday, March 11	NO ISSUE PUBLISHED	
19 Tuesday, March 15	Wednesday, March 9	Thursday, March 10
20 Friday, March 18	Monday, March 14	Tuesday, March 15
21 Tuesday, March 23	Wednesday, March 16	Thursday, March 17
22 Friday, March 25	Monday, March 21	Tuesday, March 22
23 Tuesday, March 29	Wednesday, March 23	Thursday, March 24
24 Friday, April 1	Monday, March 28	Tuesday, March 29
25 Tuesday, April 5	Wednesday, March 30	Thursday, March 31
26 Friday, April 8	Monday, April 4	Tuesday, April 5
27 Tuesday, April 12	Wednesday, April 6	Thursday, April 7
Friday, April 15	FIRST QUARTERLY INDEX	
28 Tuesday, April 19	Wednesday, April 13	Thursday, April 14

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. Each copy is \$7 including postage. You may use your Mastercard or Visa. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, TX 78711-3824 or for more information, call (512) 463-5561.

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