

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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 21, April 15, July 12, and October 11, 1994). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

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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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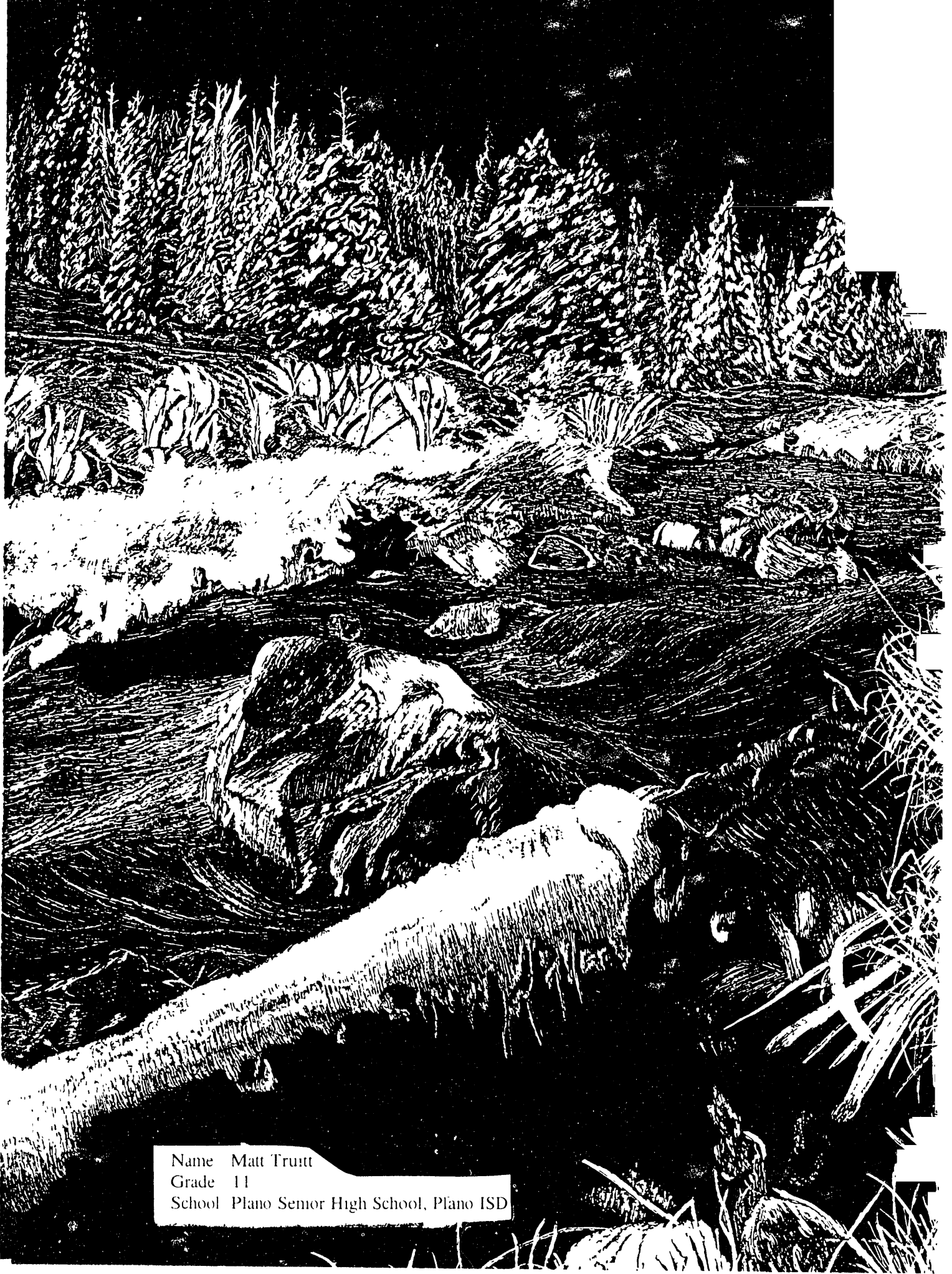
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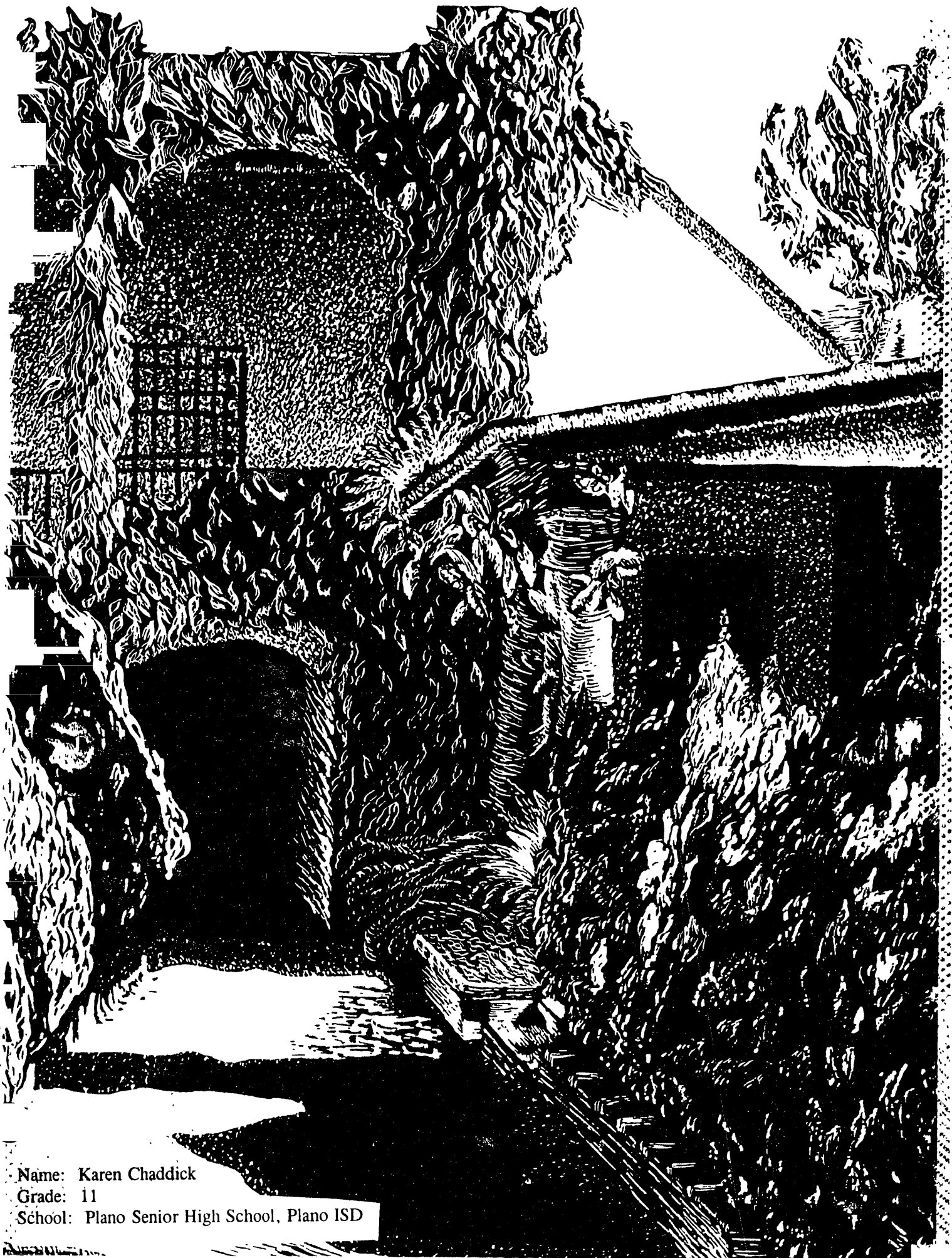
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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 71. Office of the Secretary of State

Private Use of the State Seal of Texas

• 1 TAC §71.50

The Office of the Secretary of State proposes an amendment to §71.50, concerning the private use of the state seal of Texas. The proposed amendment designates the standard design for the reverse of the state seal and assigns paragraph numbers to the de-

signs of the state seal, the reverse side of the state seal and the state arms, for easier reference

Guy Joyner, staff attorney, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section

Mr. Joyner 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 individuals and companies with an official illustration of the reverse of the state seal

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

Comments on the proposal may be submitted to Guy Joyner, Chief, Legal Support Unit,

Statutory Documents Sections, Office of the Secretary of State, P O Box 12887, Austin, Texas 78711-2887

The amendment is proposed under the Government Code, §2001.004(1) and the Business and Commerce Code, §17.08, which provide the secretary of state with the authority to prescribe and adopt rules

The amendment implements Texas Civil Statutes, Article 6139(d), and affects the Business and Commerce Code, §17.08

§71.50 Standard Designs The following illustrations depict the standard designs for the state seal, the reverse of the state seal, and the state arms.

(1) State Seal.



(2) Reverse of the State Seal.



(3) State Arms.



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

Issued in Austin, Texas, on March 30, 1994

TRD-9438357

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

Earliest possible date of adoption: May 6, 1994

Part V. General Services Commission

Chapter 113. Central Purchasing Division

Cooperative Purchasing Program

- 1 TAC §§113.81, 113.83, 113.85, 113.87

The General Services Commission proposes amendments to §§113.81, 113.83, 113.85, and 113.87, concerning the allowance of assistance organizations and mental health and mental retardation community centers to purchase goods through the General Services Commission Cooperative Purchasing Program. The amendments also include catalogue purchasing procedures for cooperative purchasing participants. The amendments update rules to conform to Texas Civil Statutes, Article 601b, §3.04, enacted by the 73rd Legislature

Pat Martin, director, Purchasing Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Martin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the allowance of certain service organizations and mental health and mental retardation centers to enjoy the savings offered by participation in the Cooperative Purchasing Program. There will be no effect on small businesses. The anticipated economic costs to persons who choose to take advantage of cooperative buying will be only the yearly fee which will be well outweighed by the savings provided through the program.

Comments on the proposal may be submitted to Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the section.

§113.81. General.

(a) The [Pursuant to Texas Civil Statutes, Article 601b, Article 3, the] commission has instituted and maintains an effective and economical system for purchasing supplies, materials, services, and equipment for State of Texas agencies subject to biennium general appropriations acts.

(b) It shall be the policy of the commission to perform purchasing services for qualified entities [local governments] when the commission considers it feasible. The program to provide purchasing services for qualified entities [local governments] shall be known as the Cooperative Purchasing Program and may include

(1) the extension of [state automated] term contract prices [to participating local governments];

(2) solicitation of bids on the open market or schedule for items desired [by a local government]; [and]

(3) provision of information and technical assistance; and [to local governments about the purchasing program]

(4) the availability of information regarding catalogue purchase procedure for automated information systems.

(c) The commission shall charge a participating qualified entity [local government] an amount not to exceed the costs incurred by the commission in providing purchasing services [to the local government] under this program. The fees shall be reviewed periodically and adjusted as required to ensure [insure] recovery of costs incurred to operate the program

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

Agent of record—An employee or official designated by a qualified entity [local government] as the individual responsible to represent the qualified entity [local government] in all matters relating to the program.

Cooperative purchasing program—A program to provide purchasing services to qualified entities [local governments].

List of approved equipment—Items available for purchase under term contracts entered into by the commission that may be purchased through the commission by school districts pursuant to Texas Education Code, §21.901.

[Local government—A county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the state.]

Qualified entity—an entity that qualifies for participation in the cooperative purchasing program:

(A) Local government—a county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the state;

(B) Mental health and mental retardation community centers—as

defined in Texas Civil Statutes, Article 601b, §3.04, that receive grants-in-aid under the provisions of the Texas Mental Health and Mental Retardation Act, Article 4;

(C) Assistance organizations as defined in Texas Civil Statutes, Article 601b, §9.01, that receive any state funds.

Resolution—Document of legal intent adopted by the governing body of a qualified entity [local government] that evidences the qualified entity's [local government's] participation in the cooperative purchasing program.

§113.85. Participation in Cooperative Purchasing.

(a) Qualified entity [Local government] participation in the cooperative purchasing program is on a voluntary basis and to the extent the commission deems feasible. The director for purchasing shall determine the feasibility of participation based on availability of resources to perform the required purchasing services. A qualified entity [local government] may be enrolled in the program only after submission of a resolution. The resolution must specify the agent of record, acknowledgment of obligation to pay participation fees established by the commission, and be signed by the chairman of the governing body.

(b) Enrollment in the program will be in effect from the day of receipt by the commission of a complete resolution, until notification is received from the qualified entity [local government] to discontinue its participation in the cooperative purchasing program. Any change in the resolution of a jurisdiction or participation status must be made in writing by the agent of record or chairman of the governing body.

(c) Requests for purchase on the open market or schedule may be made in writing to the director for purchasing. The director for purchasing or his designee will determine the feasibility of accomplishing the purchase on a case-by-case basis, and will advise the qualified entity [local government] of the determination within a reasonable period of time.

§113.87. Responsibilities of Qualified Entities [Local Governments].

(a) A qualified entity [local government] participating in the cooperative purchasing program must:

(1) submit a resolution evidencing its intent to participate in the cooperative purchasing program and pay costs associated therewith;

(2) send automated term contract and schedule requisitions to the commission for processing, send a copy of all non-automated contract purchase orders to the commission for data collection [and forwarding to the contract vendor],

(3) pay the vendor under each contract directly; and

(4) be responsible for the vendor's compliance with all terms and conditions of performance under the contract

(b) A qualified entity [local government] that purchases an item from a state contract satisfies any state law requiring the qualified entity [local government] to seek competitive bids for the purchase

(c) A qualified entity that utilizes the catalogue purchase procedure satisfies any requirements of Texas Civil Statutes, Article 601b, §3.081 and §113.19 of this title (relating to Catalogue Purchase Procedure for Automated Information Systems).

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

Issued in Austin, Texas, on March 29, 1994

TRD-9438300

Rose-Michel Munguia
Legal Counsel
General Services
Commission

Earliest possible date of adoption: May 6, 1994

For further information, please call (512) 463-3583

◆ ◆ ◆
Chapter 123. Facilities
Planning and Construction
Division

Building Construction Administration

• 1 TAC §123.23

The General Services Commission proposes new §123.23, concerning a Small Contractor Participation Assistance Program (the "SCPAP"). The new section will implement provisions of House Bill 2626, §32, §5.37, Acts of the 73rd Legislature, 1993

John E. Hodges, director, Design, Construction, and Leasing Division, has determined that for the first five-year period the new section is in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the section

Mr. Hodges also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of administering the SCPAP will be the increased participation of small contractors in public works construction projects and savings of project cost generated by combined

insurance purchases for public works projects. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed.

Comments on the proposed new section may be submitted to Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 601b, §5.37, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Article 5.

§123.41 Small Contractor Participation Assistance Program

(a) The commission shall establish the Small Contractor Participation Assistance Program as set forth in this section.

(b) Assistance under the program shall be available on projects performed by the commission for construction, alteration, or repair of public buildings for which the estimated cost exceeds \$20 million. In determining the estimated cost of a project, all work financed under a single bond issue or schedule of appropriated projects may be aggregated.

(c) To be eligible for assistance under the program, a contractor must be eligible for assistance from the United States Small Business Administration.

(d) The commission shall establish a technical assistance plan, set forth as follows:

(1) The commission may contract with one or more entities to provide technical assistance to aid small contractors to develop the skills necessary to participate in the program.

(2) The technical assistance plan shall include information and assistance in:

(A) estimating bids, the bidding process, scheduling, and understanding bid documents,

(B) reading construction drawings and other analogous documents;

(C) business accounting, bonds, and bond requirements;

(D) negotiations with general contractors,

(E) safety training; and

(F) any other technical and

administrative assistance considered appropriate and necessary given the complexity and scope of the particular public works project.

(3) In awarding contracts for technical assistance, the commission may use a competitive bid process, a competitive proposal process, or may negotiate directly with service providers. If the commission negotiates directly with service providers, it shall:

(A) select a qualified provider of the services on the basis of demonstrated competence and qualifications; and

(B) then attempt to negotiate a contract at a fair and reasonable rate.

(e) The commission shall establish a financing assistance plan, set forth as follows:

(1) The commission may contract with one or more entities to provide financing assistance to small contractors. Financing assistance shall not include loans, grants, loan guarantees, or other forms of direct financial aid. Financing assistance shall include assistance in identifying and obtaining financing arrangements from other sources.

(2) In awarding financing assistance contracts, the commission may use a competitive bid process or a competitive proposal process, as may be appropriate to the project in question.

(f) Any party awarded a contract to provide technical or financing assistance shall be an independent advisor and not a representative of the commission, and none of such party's advice or assistance shall necessarily be the position of the commission on any matter in question. Whenever a technical or financing assistance provider gives advice or assistance to a small contractor, the provider shall, in writing, inform the small contractor that the provider's advice and services are those of the provider and do not necessarily set forth the position of the commission on any given issue.

(g) The commission shall establish a public outreach plan, set forth as follows:

(1) The commission shall publish notices annually in five newspapers of general circulation describing the program and giving the names, addresses, and telephone numbers of the technical and financing assistance providers.

(2) For each project covered by the program, the names, addresses, and telephone numbers of the technical and financing assistance providers shall be published in the specifications, together with a description of the program.

(3) All advertisements and notices concerning projects covered by the program shall include the names, addresses, and telephone numbers of the technical and financing assistance providers.

(4) In each project covered by the program, the general contractor shall be required, as a term of the contract with the state, to provide to all subcontractors the names, addresses, and telephone numbers of the technical financing assistance providers.

(h) The commission shall provide for centralized purchasing of required insurance and bond coverage, set forth as follows:

(1) For each project under the program, the commission shall make centralized purchases of.

(A) workers' compensation insurance coverage;

(B) employers' liability insurance coverage;

(C) commercial general and excess liability coverage;

(D) payment and performance bonds; and

(E) any other analogous coverage the commission considers necessary and reasonable for the particular project.

(2) Such centrally purchased coverages shall be incorporated into the contract with the state, and any contractor who enters into a contract with the state under a project covered by the program shall be required to pay premiums and fees as set forth in the central purchase contracts.

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

Issued in Austin, Texas, on March 29, 1994.

TRD-9438301 David R Brown
Legal Counsel
General Services
Commission

Earliest possible date of adoption May 6, 1994

For further information, please call (512) 463-3583

Prevailing Wage Rate Determination

• 1 TAC §123.32

The General Services Commission proposes an amendment to §123.32, concerning pre-

valuing wage rate determinations. The amendment provides for establishment of prevailing wage rates by adoption of rates from U.S. Department of Labor surveys under the Davis-Bacon Act, in accordance with Texas Civil Statutes, Article 5159a. The amendment clarifies the procedure for using wage rate information from outside the survey area in instances where the survey area does not provide sufficient data.

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

Ms Porras 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 increased economy and accuracy in determination of prevailing wage rates. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed.

Comments on the proposal may be submitted to Judith M. Porras, General Counsel, General Services Commission, P O Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the Article.

§123.32. Data Gathering Procedures

(a) The commission shall conduct a survey of contractors, labor organizations and any other interested parties in the locality in which the work is performed to determine the wages paid to various classifications of workers and the number of workers receiving that wage. Rather than conduct a survey, the commission may adopt the prevailing wage rates for the locality as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act, if the survey on which the Davis-Bacon Act rate was founded was conducted within three years before the project in question was bid.

(b) The survey shall be conducted in the city, county, council of governments, or other political subdivision of the state that most closely corresponds to the location of the work to be performed. If, in such political subdivision, there is insufficient data to establish the prevailing wage rates for certain types of work, the commission may look to a larger political subdivision or to a nearby political subdivision for the limited purpose of acquiring data necessary to establish the prevailing wage rates for those types of work. [If information is presented to the

commission indicating that a survey in a particular county is not sufficiently representative due to the lack of construction projects of comparable size in that county or, in the judgment of the commission, survey data is in some other way insufficient, the commission may extend the area of a survey to contiguous counties. If the data is still insufficient, the commission may survey the service region, established under Chapter 19, Article V, §120, Acts, 72nd Legislature, F.C.S. (1991), in which the county of the project is located.]

(c)-(d) (No change)

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

Issued in Austin, Texas, on March 29, 1994.

TRD-9438302 David Brown
Legal Counsel
General Services
Commission

Earliest possible date of adoption May 6, 1994

For further information, please call (512) 463-3583

TITLE 22. EXAMINING BOARDS Part VIII. Texas Appraiser Licensing and Certification Board

Chapter 153. Provision of the Texas Appraiser Licensing and Certification Act

• 22 TAC §§153.5, 153.9, 153.20

The Texas Appraiser Licensing and Certification Board proposes amendments to §153.5, concerning to fees, §153.9, concerning to applications, and §153.20, concerning to guidelines for revocation and suspension, investigations.

The proposed amendment to §153.5(a) will provide for the collection of a fee for a returned check. The size of the fee will be equal to that charged for a returned check by the Texas Real Estate Commission. The Texas Real Estate Commission provides administrative support, including collection of fees and fee processing for the Texas Appraiser Licensing and Certification Board. The proposed amendment to §153.5(b) eliminates the cashier's check or money order requirement for fee submission. It would also require future fees paid by those who have not made good on a returned check to be in the form of a cashier's check or money order. The proposed amendments to §153.9 would remove terminology from various applications and other forms that specify that fees must be submitted in the form of a cashier's check or money order.

The proposed amendment to §153.20 would

add failure to make good on a returned check within 30 days to those causes for which a license or certification could be suspended or revoked.

Renil C. Liner, commissioner, has determined that for the first five years the amendments are in effect there will be an additional cost to state government as a result of enforcing and administering the proposed amendments of approximately \$1,200-\$1,500 per year.

Mr. Liner also has determined that of each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the section will be a reduction in time and cost for purchasing cashier's checks or money orders for submission of fees to the Board

No fiscal implications are involved for local government

There will be no effect on small businesses as a result of enforcing the sections. There will be no local employment impact

The anticipated reduction in cost to persons who are required to comply with the proposed amendment is projected to be approximately \$1 to \$10 for each fee submitted

Comments may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188

The amendments are proposed under the Texas Appraiser Licensing and Certification Act (Texas Civil Statutes, Article 6573a.2, §5), which provide the Texas Appraiser Licensing and Certification Board with authority to adopt rules for the licensing and certification of real estate appraisers.

§153.5 Fees.

(a) (No change.)

(1)-(9) (No change.)

(10) a fee for an addition or termination of sponsorship of an appraiser trainee of \$20; [and]

(11) a fee for replacing a lost or destroyed certificate of \$15; and [.]

(12) a fee for a returned check equal to that charged for a returned check by the Texas Real Estate Commission.

(b) Fees must be submitted [in the form of a cashier's check or money order] payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a check which has been returned, and who have not made good on that check within 30 days, for whatever reason, shall submit all future fees in the form of a cashier's check or money order.

(c) (No change.)

§153.9. Applications.

(a) (No change.)

(b) The Texas Appraiser Licensing and Certification Board adopts by reference the following forms approved by the board in 1991 and published and available from the board, P.O. Box 12188, Austin, Texas 78711-2188:

(1) TALCB Form 1.3 [1.2], Application for Appraiser Certification or Licensing;

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

(4) TALCB Form 4.4 [4.3], Application for Approval as an Appraiser Trainee.

(5) (No change.)

(6) TALCB Form 6. 2 [6.1], Temporary Non-Resident Appraiser Registration,

(7) TALCB Form 8.1 [8.0], Change of Office Address [by a Licensed or Certified Appraiser],

(8) TALCB Form 9.1 [9.0], Addition or Termination of Appraiser Trainee Sponsorship.

(9) TALCB Form 10. 1 [10.0], Supplement to Application for Appraiser Certification or Licensing by Reciprocity

(c)-(g) (No change.)

§153.20. Guidelines for Revocation and Suspension; Investigation.

(a) (No change.)

(1)-(13) (No change.)

(14) has failed to make good a check issued to the board within 30 days after the board has mailed a request for payment by certified mail to the licensee's last known business address as reflected by the board's records.

(b)-(n) (No change.)

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

Issued in Austin, Texas, on March 29, 1994.

TRD-9438287

Renil C. Liner
Commissioner
Texas Appraiser Licensing
and Certification Board

Earliest possible date of adoption: May 6, 1994

For further information, please call: (512) 465-3950



Part XI. Board of Nurse Examiners

Chapter 217. Licensure and Practice

• 22 TAC §§217.3-217.6

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

The Board of Nurse Examiners proposes to repeal §§217.3-217.6, concerning Candidate with a Disability, Temporary License and Endorsement, Requirements for Licensure of Nurses Not Eligible for Temporary Licensure or Endorsement Under §217.4, and Temporary Permits. The proposed repeal will permit the adoption of new, more current rules.

Louise Waddill, Ph.D., R.N., 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.

Ms. Waddill 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 clarification by omission. 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 Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, Box 140466, Austin, Texas 78714.

The repeals are proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

§217.3. Candidate with a Disability.

§217.4. Temporary License and Endorsement.

§217.5. Requirements for Licensure of Nurses Not Eligible for Temporary Licensure or Endorsement Under §217.4.

§217.6. Temporary Permits.

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

Issued in Austin, Texas, on March 25, 1994.

TRD-9438249

Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Earliest possible date of adoption: May 6, 1994

For further information, please call (512) 835-8650

◆ ◆ ◆
• 22 TAC §§217.3-217.6

The Board of Nurse Examiners proposes new §§217.3-217.6, concerning Temporary Permits, Accustomation Course, Temporary License and Endorsement, and Requirements for Licensure of Nurses Not Eligible for Temporary Licensure or Endorsement under §217.5. §217.3, temporary permits, is being proposed to clarify the rules in relation to individuals eligible for permits in Texas based on the implementation of Computer Adaptive Testing beginning April 1, 1994. §217.4, Accustomation Course, is offered as a separate section, previously included in the permit section §217.5 and §217.6 are being renumbered.

Louise Waddill, Ph.D., R.N., 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.

Ms. Waddill also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section* will be to ensure that only individuals eligible for licensure in Texas receive temporary permits while awaiting results of the NCLEX-RN. 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 Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, Box 140466, Austin, Texas 78714.

The new sections are proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

§217.3. Temporary Permit.

(a) United States and Canadian candidates eligible for temporary permits

(1) New graduates of accredited nursing programs in the United States or Canada who are applying for initial licensure in Texas will be issued a temporary permit after they have been determined eligible.

(2) The permit, which is not renewable, is valid for 60 days from the date of eligibility or until NCLEX-RN results are received.

(3) The permit holder must work under the direct supervision of a registered professional nurse who is working on the same unit and is readily available to the GN for consultation and assistance. The GN shall not be placed in a charge position or work in independent practice settings.

(b) Foreign candidates eligible for temporary permits

(1) Graduates of accredited nursing programs located outside of the United States or Canada will be issued a temporary permit if the following conditions are met.

(A) the candidate has never written the SBTPE, NCLEX-RN or CNATSE,

(B) has passed CGFNSE;
and

(C) is enrolled in a board-approved nursing accustomation course.

(2) The candidate must satisfactorily complete the accustomation course in order to be determined eligible to take the NCLEX-RN.

(3) The permit, which is not renewable, is valid for 60 days following successful completion of the accustomation course or until the NCLEX-RN results are received

(4) The permit holder must work under the direct supervision of a registered professional nurse who is working on the same unit and is readily available to the GN for consultation and assistance. The GN shall not be placed in a charge position or work in independent practice settings.

(c) Registered nurses with inactive or delinquent licenses A registered nurse who has not practiced nursing for four or more years may be issued a temporary permit for the limited purpose of completing a refresher course, extensive orientation to the practice of professional nursing or academic course. The permit is valid for six months and is nonrenewable.

(d) Registered nurses with a suspended, revoked, or surrendered license. A registered nurse whose license has been suspended, revoked, or surrendered through action by the board, may be issued a temporary permit for the limited purpose of meeting any requirement(s) imposed by the board in order for the nurse's license to be reissued. The permit is valid for six months and is nonrenewable.

§217.4. Accustomation Course.

(a) Within two examination years after the accustomation course is approved, at least 75% of the permitted foreign educated nurses must pass the NCLEX-RN on the first writing

(b) In subsequent examination years the pass rate of permitted foreign educated nurses must remain at least 75% in

a specific accustomation course in order for said course to maintain board approval.

§217.5. Temporary License and Endorsement.

(a) The requirements to obtain a temporary license which is valid for 12 weeks and is not renewable, are as follows:

(1) graduation from an accredited/approved nursing program in a professional school of nursing (general) of at least two academic years in length in a jurisdiction in which the academic requirements are equivalent to Texas.

(2) satisfactorily completing the licensure examination as follows.

(A) Candidates taking the SBTPE prior to July 1982 must make a minimum score of 350 on each of the five parts of the SBTPE.

(B) Candidates taking the NCLEX-RN prior to February 1989, must make a minimum score of 1,600.

(C) Candidates taking the NCLEX-RN February 1989 and thereafter must achieve a passing report.

(D) Candidates taking the CNATSE prior to August 1980 must make a minimum score of 350 on each of the five parts of the CNATSE.

(E) Effective with the August 1980 CNATSE, a score of 400 is required for licensure;

(3) licensure in another jurisdiction which has requirements equivalent to Texas.

(4) filing of a notarized application for temporary licensure containing the following:

(A) personal and background data;

(B) certification of graduation from an accredited/approved school;

(C) identification of all licensing authorities and jurisdictions where the applicant is licensed;

(D) attestation that the applicant meets current Texas licensure requirements and has never had disciplinary action taken by any licensing authority or jurisdiction in which the applicant holds, or has held licensure;

(E) evidence of English proficiency by Canadian applicants who took the CNATSE in French,

(F) a recent, fade-proof identification photograph, properly identified, and

(G) the required licensure fee, which is not refundable,

(5) any applicant applying for temporary licensure who has taken or is scheduled to take both the NCLEX-RN and the CNATSE will be licensed based on the results of the NCLEX-RN;

(6) nurses who have not practiced professional nursing within the four years immediately preceding the request for temporary licensure, shall meet the requirements as stated in §217.8 of this title (relating to Inactive Status);

(7) nurses who have had disciplinary action at any time by any licensing authority are not eligible for temporary licensure.

(b) An applicant for permanent licensure by endorsement must meet the requirements of §217.5(a)(1)-(6) of this title (relating to Temporary License and Endorsement) and must provide the following

(1) verification of academic and professional credentials from each licensing authority which includes the results of examination, seal of each licensing authority, and signature of each executive officer or designee,

(2) a written statement of good standing from each licensing authority or jurisdiction in which the applicant is licensed-verification of meeting other requirements set by statute; and

(3) if disciplined by any other licensing authority, the nurse must provide proof of fitness to practice professional nursing in Texas.

§217.6 Requirements for Licensure of Nurses Not Eligible for Temporary Licensure or Endorsement Under §217.5.

(a) An applicant applying for licensure under this section must provide evidence of graduation from a governmentally accredited/approved nursing program in a professional school of nursing (general) of at least two academic years in length in which the academic requirements are equivalent to those of Texas.

(b) An application applying for licensure under this section must file a notarized application for registration containing the following:

(1) personal and background data,

(2) certification of graduation from an accredited/approved school;

(3) verification of the application by the licensing authority of the country where the applicant was originally licensed, which includes the results of the examination, seal of the licensing authority, and signature of the executive officer or designee;

(4) identification of all licensing authorities and jurisdictions where the applicant is or has been licensed and an attestation as to the applicant's licensure status with each licensing authority;

(5) a recent fade-proof identification photograph, properly identified,

(6) except for Canadian graduates, evidence of passing the Commission on Graduates of Foreign Nursing Schools examination or its equivalent,

(7) evidence of English proficiency by Canadian applicants who took the CNATSE in French;

(8) required licensure fee and, when applicable, temporary permit fee; and

(9) a written statement of the applicant's licensure status from each licensing authority and jurisdiction in which the applicant is or has been licensed, which includes the seal of each licensing authority and signature of each executive officer or designee.

(c) Admission to the NCLEX-RN is contingent upon evidence of satisfactory completion of a board approved accustomation course as specified in §217.3(2) of this title (relating to Temporary Permit), if the applicant holds a temporary permit

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

Issued in Austin, Texas, on March 25, 1994

TRD-9438250 Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Earliest possible date of adoption: May 6, 1994

For further information, please call: (512) 835-8650



Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

General Provisions

• 22 TAC §501.2

The Texas State Board of Public Accountancy proposes an amendment to §501.2, concerning Definitions. The proposed amendment deletes the definition of "solicitation" which is no longer necessary because the board repealed the rule on solicitation.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule

Mr Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be the absence of an unnecessary definition. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J Randel (Jerry) General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §21 which contains the disciplinary procedures for actions and omissions by licensees.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §21.

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

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

Issued in Austin, Texas, on March 17, 1994.

TRD-9438221 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: May 6, 1994

For further information, please call: (512) 505-5566



• 22 TAC §501.4

The Texas State Board of Public Accountancy proposes an amendment to §501.4,

concerning Practice of Public Accountancy. The proposed amendment recognizes that some licenses may be valid for periods of time shorter or longer than a calendar year.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be more flexibility in issuing licenses with varying expiration dates. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §9 which authorizes the Board to issue licenses.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §9.

§501.4. Practice of Public Accountancy. A certificate or registration holder may not practice public accountancy (as defined in §501.2 of this title (relating to Definitions)) unless he or she holds a valid license issued by the board. A license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the period for which it is issued.

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

Issued in Austin, Texas, on March 17, 1994

TRD-9438220
William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: May 6, 1994

For further information, please call (512) 505-5566

Other Responsibilities and Practices

• 22 TAC §501.43

The Texas State Board of Public Accountancy proposes an amendment to §501.43, concerning Advertising. The proposed amendment replaces "solicitation" with "communication" since the board rule on solicitation has been repealed and communication is a more appropriate word. The amendment

also adds the phrase "for at least 36 months" to subsection (f).

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be a more accurately worded rule and a definite time limit for the retention of advertising records. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§501.43 Advertising

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

(e) Subsection (d) of this section does not apply to persons when

(1) the communication is made to a person who is at that time a client of the certificate or registration holder,

(2) the communication is invited by the person to whom it was made; or

(3) the communication is made to a person seeking to secure the performance of professional services currently not being provided by another certificate or registration holder.

(f) In the case of radio and television broadcasting, the broadcast shall be recorded and the certificate or registration holder shall retain a recording of the actual transmission for at least 36 months.

(g) (No change.)

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

Issued in Austin, Texas, on March 17, 1994

TRD-9438218
William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: May 6, 1994

For further information, please call (512) 505-5566

Chapter 505. The Board

• 22 TAC §505.10

The Texas State Board of Public Accountancy proposes an amendment to §505.10, concerning Board Committees. The proposed amendment removes the Committee on Relations with the National Association of State Boards of Accountancy (NASBA) from the Board's list of Committees and renumbers the remaining sections.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be a rule correctly reflecting the board's committees. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§505.10 Board Committees.

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

(e) Standing committee structure and charge to committees. The standing committees shall consist of the following individuals and shall be charged with the following responsibilities.

(1)-(9) (No change.)

(10) The committee on board rule changes shall comprise at least one board member, one of whom shall serve as chairman, assisted by any number of nonboard members who shall serve in advisory capacity. The committee shall make recommendations to the board regarding board rules defined by the board chairman as requiring action.

(11) The regulatory compliance committee shall comprise at least two board members, one of whom shall serve as chairman, assisted by any number of nonboard members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding legislative oversight, including, but not limited to, budget, performance measures, proposed changes in legislation affecting the board, and computer utilization.

(12) The major case enforcement committee shall comprise at least two board members, one of whom shall serve as chairman. At least one committee member shall be a public member of the board. The committee shall make recommendations to the board regarding legal matters on litigation or potential litigation, and other major cases to which the board is a party. The committee shall have the authority to act on behalf of the board in instances where disclosure of facts to the full board could cause the board's objectivity to be jeopardized, subject to final approval by the board. The board shall have sole authority to determine whether cases shall be heard by the major case enforcement committee or other enforcement committee.

(13) The peer assistance oversight committee shall be comprised of at least two board members, one of whom shall serve as chairman. The committee shall oversee the peer assistance program administered by the Texas Society of Certified Public Accountants as required under the Texas Health and Safety Code, Chapter 467.001(B), and insure that the minimum criteria as set out by the Texas Commission on Alcohol and Drug Abuse are met. It shall make recommendations to the board and the TSCPA regarding modifications to the program and, if warranted, refer cases to other board committees for consideration of disciplinary or remedial action by the board. The committee shall report to the board on a quarterly basis, by case number, on the status of the program.

(f)-(h) (No change)

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

Issued in Austin, Texas, on March 17, 1994.

TRD-9438225 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: May 6, 1994

For further information, please call: (512) 505-5566

◆ ◆ ◆
Chapter 511. Certification as CPAs

Certification

• 22 TAC §511.164

The Texas State Board of Public Accountancy proposes an amendment to §511.164, concerning Names on Certificates. The proposed amendment would allow, under certain conditions, licensees to have annual licenses issued in a name other than the name on the Certificate

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be allowing married and divorced licensees to have the name they are currently using on their annual license. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §9 which authorizes the Board to issue licenses

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §9.

§511.164. Names on Certificates.

(a) The certificate of a certified public accountant shall be issued under the legal name of the candidate as it appears on the birth certificate or as changed by court order, marriage license, or divorce decree.

(b) The license of a certified public accountant may be issued in the name of the licensee as it appears on the birth certificate or as changed by court order, marriage license or divorce decree even if such name is different from the name on the certificate.

(c) At the candidate's option, words or abbreviations such as "Jr." or "III" do not have to appear on the certificate, license or the board's records even though such words or abbreviations are part of the candidate's legal name.

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

Issued in Austin, Texas, on March 17, 1994.

TRD-9438226 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: May 6, 1994

For further information, please call: (512) 505-5566

Certification

• 22 TAC §511.168

The Texas State Board of Public Accountancy proposes an amendment to §511.168, concerning Reinstatement of a Certificate. The proposed amendment would allow, under certain conditions, former licensees to have their Certificate reinstated without having to pay the annual license fees for all of the previous years.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule

Mr Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be an assessment of license fees which is fairer to former licensees. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §9 which authorizes the Board to issue licenses and to charge fees.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §9.

§511.168. Reinstatement of a Certificate.

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

(d) An individual who has practiced and resided outside of Texas and who meets all the following requirements may be reinstated:

(1) The primary state of certification is a state other than Texas.

(2) No certificate held by the individual was revoked either voluntarily or involuntarily as a result of a disciplinary investigation or proceeding, except for non-payment of license fees while the individual was a non-resident of Texas.

(3) The individual has not practiced or resided in Texas for three consecutive years.

(4) The individual presents to the Board satisfactory documentation of the status of certificate and residency and practice requirements stated in this subsection.

(5) The individual pays the current year's fees and provides the Board satisfactory evidence of successful completion of 40 hours of continuing professional

education in technical courses obtained within 12 months of the application for reinstatement.

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

Issued in Austin, Texas, on March 17, 1994.

TRD-9438219 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: May 6, 1994

For further information, please call: (512) 505-5566

Chapter 513. Registration

Registration of Partnerships

• 22 TAC §513.24

The Texas State Board of Public Accountancy proposes an amendment to §513.24, concerning Restrictions. The proposed amendment allows professional corporations and partnerships to be partners in another partnership.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be more flexibility in the creation of partnerships. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §20 which allows corporations to practice public accountancy.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §20.

§513.24. Restrictions. All partners in any partnership registered in this state must be certified public accountants and/or a professional corporation of certified public accountants.

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

Issued in Austin, Texas, on March 17, 1994.

TRD-9438227 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: May 6, 1994

For further information, please call: (512) 505-5566

Registration of Corporations

• 22 TAC §513.47

The Texas State Board of Public Accountancy proposes an amendment to §513.47, concerning Affidavit of Firm. The proposed amendment changes the reporting period from biennially to annually.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be a shorter reporting period and earlier enforcement and regulatory action by the Board. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §21 and §21D which authorize the Board to regulate the practice of accountancy and to take appropriate action against licensees.

The rule implements Texas Civil Statutes, Article 41a-1, §§6, 21 and 21D.

§513.47. Affidavit of Firm.

(a) The board may require at the time of a firm's initial registration with the board, and annually thereafter, an affidavit on a form provided by the board certifying whether the firm and/or its partners, officers, directors, and/or shareholders have been defendant(s) in legal proceedings and/or administrative proceedings relating to professional accounting services performed within the State of Texas during the three-year period immediately preceding the date of the affidavit and the disposition of each lawsuit.

(b)-(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 17, 1994.

TRD-9438228 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption May 6, 1994

For further information, please call: (512) 505-5566

Chapter 515. Licenses

• 22 TAC §515.1

The Texas State Board of Public Accountancy proposes an amendment to §515.1, concerning License. The proposed amendment changes the licensing period from biennial to annual.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be a shorter licensing and reporting period. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §9, which authorizes the Board to issue licenses.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §9.

§515.1. [Biennial] License.

(a) Individuals certified or registered by this board must obtain a license for each 12-month interval.

(b) Firms registered with this board must obtain an annual license for each practice unit associated with the firm. [With the exception of an individual who is practicing public accountancy in Texas on a temporary basis incident to his regular practice outside the state, all individuals certified by this board, and all individuals and practice units registered with the board must obtain a license to practice public accountancy and must renew that license biennially on or before December 31 of each calendar year.]

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

Issued in Austin, Texas, on March 17, 1994

TRD-9438229

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption May 6, 1994

For further information, please call (512) 505-5566



• 22 TAC §515.2

The Texas State Board of Public Accountancy proposes an amendment to §515.2, concerning Initial License. The proposed amendment changes the licensing period from biennially to annually and re-writes the rule for clarity and easier understanding.

William Treacy, executive director, 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. Treacy 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 rule that is easier to understand. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §9, which authorizes the Board to issue licenses.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §9.

§515.2 Initial License

(a) An initial license is the first license issued to an individual who has been certified or registered under the Public Accountancy Act. The board will prorate the initial license fee for an individual who is licensed for less than a full year.

(b) The board will not prorate the initial license fee for a firm's practice unit whose license is less than one year. The firm's practice unit license shall not be issued until such time as the sole proprietorship, all partners, officers, directors, members, or shareholders of the firm who reside in Texas have obtained a license. [Each individual or practice unit

which is certified or registered after the effective date of the Public Accountancy Act of 1991 shall, upon approval of his application for certification or registration, pay the biennial license fee for the year in which certification or registration is granted. The initial license of a firm's practice unit shall not be issued until such time as the sole proprietorship, all partners, officers, directors, or shareholders of the firm who reside in Texas are certified or registered and have obtained a biennial license. The initial license will expire on the 31st day of December of the applicable year or on such date or dates as set by the board.]

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

Issued in Austin, Texas, on March 17, 1994

TRD-9438230

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption May 6, 1994

For further information, please call (512) 505-5566



• 22 TAC §515.3

The Texas State Board of Public Accountancy proposes an amendment to §515.3, concerning License Renewal for Individuals and Practice Units. The proposed amendment changes the licensing period for licensees from biennially to annually and changes the expiration date to the licensee's birth month.

William Treacy, executive director, 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. Treacy 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 leveling of the work effort required to renew and issue licenses and registrations. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §9, which authorizes the Board to issue licenses.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §9.

§515.3 License Renewal for Individuals and Practice Units.

(a) Licenses for individuals will have staggered expiration dates based on the last day of the individuals' birth months. The license will be issued for a 12-month period.

(b) At least 30 days before the expiration of an individual's license, the board shall send written notice of the impending license expiration to the individual at the last known address according to board records.

(c) The expiration date of a practice unit's license is December 31. The license will be issued for a 12-month period.

(d) At least 30 days before the expiration of a practice unit's license, the board shall send written notice of the impending license expiration to the main office of the firm at the last known address according to the records of the board.

(e) A practice unit's license shall not be renewed unless the sole proprietor, each partner, officer, director, or shareholder of the firm who is listed as a member of the firm and who is certified or registered under the Act has a current individual license.

[(a) The board shall provide that half of the licenses subject to this subsection expire in each even-numbered year and that the other half expire in each odd-numbered year. The board shall prorate the license fee for an individual whose license term is less than two years. The board will not prorate the license fee for a firm's practice unit whose license term is less than two years.]

[(b) At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the board.]

[(c) A person may renew an unexpired license by paying the required renewal to the board before the expiration date of the license.]

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

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TRD-9438231

William Treacy
Executive Director
Texas State Board of
Public Accountancy

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For further information, please call (512) 505-5566



• 22 TAC §515.4

The Texas State Board of Public Accountancy proposes an amendment to §515.4, concerning License Cancellation. The proposed amendment significantly shortens and clarifies the rule.

William Treacy, executive director, 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. Treacy 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 rule that is shorter and easier to understand. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, §9, which authorizes the Board to issue licenses; and §21 and §21D, which authorize the Board to take action against licenses

The rule implements Texas Civil Statutes, Article 41a-1, §§6, 9, 21, and 21D

§515.4. [Renewal of] License Cancellation [of Firm]. The individual or practice unit shall return the renewal fee and appropriate documents to the board on or before the license expiration date. Failure to do so will automatically cancel the license. [At the same time that renewal notices are mailed to individuals certified or registered under the Public Accountancy Act of 1991 (the Act), the executive director shall mail to each firm registered under the Act a biennial renewal form for each practice unit associated with the firm, stating the appropriate renewal fee. The firms shall return the renewal fee and the appropriate documents to the executive director on or before December 31 of that year, and failure to do so shall automatically cancel the license of the firm. The biennial license of a firm shall not be renewed until such time as all partners, officers, directors, or shareholders of the firm who reside in Texas and are certified or registered under this Act shall have renewed their individual licenses.]

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

Issued in Austin, Texas, on March 17, 1994.

TRD-9438232 William Treacy Executive Director Texas State Board of Public Accountancy

Earliest possible date of adoption: May 6, 1994

For further information, please call: (512) 505-5566

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• 22 TAC §515.5

The Texas State Board of Public Accountancy proposes an amendment to §515.5, concerning Reinstatement. The proposed amendment re-writes the rule for clarity and changes the licensing period to annually.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be a rule consistent with the changed licensing period. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and Section 9 which authorizes the Board to issue licenses.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §9.

§515.5. Reinstatement.

(a) If the payment of the license fee is 12 months late but not 24 months late, a licensee whose license has been canceled for failure to pay the renewal fee may secure reinstatement of the license upon payment of the delinquent license fee, together with a penalty as set forth in the Public Accountancy Act of 1991, §9(c).

(b) If the payment of the license fee is at least 24 months late, a licensee whose license has been canceled may secure reinstatement of the license only upon application and examination on the Rules of Professional Conduct which is satisfactory to the board together with the payment of delinquent fees and a penalty to be assessed by the board. An application for reinstatement shall be made under oath and shall state that the licensee has never been charged or convicted by any court or other body of any crime, misdemeanor, or discreditable act of which the board has not been notified.

The application shall also include a statement explaining why the licensee failed to timely renew the license.

(c) Prior to reinstatement of the certificate all previous and current fees and penalties must be paid in full and the applicant must show proof of completion of all required continuing professional education courses.

[(a) A licensee whose biennial license has been canceled for failure to pay the biennial renewal fee on or before December 31 may secure reinstatement of the license at any time within the next calendar year upon payment of the delinquent license fee, together with a penalty as set forth in the Public Accountancy Act of 1991, §9(c).]

[(b) After expiration of the next calendar year, a licensee whose license has been canceled for failure to timely pay the biennial renewal fee may secure reinstatement of a license only upon application and examination satisfactory to the board together with the payment of delinquent fees and a penalty to be assessed by the board. An application for reinstatement shall be made under oath and shall state that the licensee has never been charged or convicted by any court or other body of any crime, misdemeanor, or discreditable act of which the board has not been notified. The application shall also include a statement explaining why the licensee failed to timely obtain a biennial license.]

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

Issued in Austin, Texas, on March 17, 1994.

TRD-9438233 William Treacy Executive Director Texas State Board of Public Accountancy

Earliest possible date of adoption: May 6, 1994

For further information, please call: (512) 505-5566

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• 22 TAC §515.8

The Texas State Board of Public Accountancy proposes an amendment to §515.8, concerning Retirement Status or Permanent Disability. The proposed amendment changes the licensing fee amount to correspond with a changed licensing period and was re-written for clarity.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of

enforcing or administering the rule will be an accurate licensing fee and a rule that is easier to read. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 3942

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §9 which authorizes the Board to adopt rules pertaining to reduced license fees for retired and disabled licensees

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §9.

§5158. Retirement Status or Permanent Disability

(a) Retired Status.

(1) An individual who holds a current license issued by the board who is 60 years old and has timely filed a request on a form prescribed by the board which indicates the licensee is no longer employed may be granted a retired status at the time of license renewal.

(2) A fee of \$10 shall be payable to the board in lieu of the regular license fee.

(3) A licensee who has been granted retired status and who becomes employed must:

(A) pay the license fee established by the board;

(B) complete the form prescribed by the board for renewal of a license;

(C) meet the continuing professional education requirements; and

(D) surrender the retired status.

(4) All board rules and all provisions of the Public Accountancy Act apply to a licensee in either an active or retired status unless specifically exempt by board rule or the Act.

(b) Permanent disability status.

(1) Permanent disability status may be granted to a licensee with a notarized affidavit from the licensee's physician which states that the licensee is unable to work and clearly details the disability. Such status may only be granted at the time of license renewal.

(2) A fee of \$10 shall be payable to the board in lieu of the regular license fee.

(3) A licensee who has been granted permanent disability status and who becomes employed must:

(A) pay the license fee established by the board;

(B) complete the form prescribed by the board for renewal of a license;

(C) meet the continuing education requirements; and

(D) surrender permanent disability status.

(4) All board rules and all provisions of the Public Accountancy Act apply to a licensee in permanent disability status unless specifically exempted by board rule or the Act.

[(a) Retired status

[(1) An individual who has reached his/her 60th birthday who holds a current license issued by the board may be granted a retired status. A biennial fee of \$20 shall be payable to the board in lieu of the regular license fee

[(2) The licensee who is requesting retired status must timely file a request on a form prescribed by the board which indicates that the individual is no longer employed

[(3) Retired status becomes effective on January 1 only.

[(4) An individual who has been granted retired status and who becomes employed must adhere to the following

[(A) pay the biennial license fee established by the board;

[(B) complete the form prescribed by the board for renewal of biennial license;

[(C) meet the continuing education requirements, and

[(D) surrender the retired status

[(5) All board rules and all provisions of the Public Accountancy Act apply to a licensee in either an active or retired status unless specifically exempt by board rule or the Act

[(b) Permanent disability status

[(1) An individual who holds a current license issued by the board, who has a permanent disability, may be granted permanent disability status. A biennial fee of \$20 shall be payable to the board in lieu of the regular license fee.

[(2) The licensee who is requesting permanent disability status must file a request with an affidavit which provides documentation from a physician that clearly details the disability and that the individual is no longer able to work. The affidavit must be notarized.

[(3) Permanent disability status becomes effective on January 1 only.

[(4) An individual who has been granted a disability status who becomes employed must adhere to the following:

[(A) pay the biennial license fee established by the board;

[(B) complete the form prescribed by the board for renewal of a biennial license,

[(C) meet the continuing education requirements, and

[(D) surrender the permanent disability status

[(5) All board rules and all provisions of the Public Accountancy Act of 1991 (the Act) apply to a licensee in permanent disability status unless specifically exempt by board rule or the Act.]

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

Issued in Austin, Texas, on March 17, 1994

TRD-9438234 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption. May 6, 1994

For further information, please call. (512) 505-5566

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Chapter 521. License Fees
• 22 TAC §521.1

The Texas State Board of Public Accountancy proposes an amendment to §521.1, concerning License Fees. The proposed amendment changes the license fee to correspond with the changed licensing period.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be an accurate licensing fee. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; §9 which authorizes the Board to charge fees; §9A which requires the Board to collect a professional occupation fee; and §32 which requires the Board to collect fees for a scholarship fund.

The rule implements Texas Civil Statutes, Article 41a-1, §§6, 9, 9A, and 32.

§521.1. License Fees.

(a) The [biennial] fee for a license issued to an individual not in retired or disabled status shall be \$30 for the license fee, \$10 for the Scholarship Fund and \$200 for the professional fee [\$120]; however, the initial license fee shall be prorated [at \$5 per month] for those months during which the license is valid.

(b) (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.

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TRD-9438235 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption. May 6, 1994

For further information, please call (512) 505-5566

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Chapter 523. Continuing Professional Education

Continuing Professional Education Programs

• 22 TAC §523.2

The Texas State Board of Public Accountancy proposes an amendment to §523.2, concerning Standards for CPE Program De-

velopment. The proposed amendment adds foreign languages as acceptable continuing professional education subjects.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be some licensees will be better able to serve their clients. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law

The rule implements Texas Civil Statutes, Article 41a-1, §6

§523.2. Standards for CPE Program Development

(a) (No change)

(b) Courses which are considered by the board as increasing the licensee's professional competence include

(1) (No change)

(2) non-technical courses such as communications, advanced courses in foreign languages relating to accounting, ethics, behavioral science, and practice management which are of benefit to a licensee or a licensee's employer(s) Refer to §523.30 of this title (relating to Limitation for Non-technical 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 March 17, 1994

TRD-9438236 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption May 6, 1994

For further information, please call (512) 505-5566

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Mandatory Continuing Professional Education (CPE) Program

• 22 TAC §523.62

The Texas State Board of Public Accountancy proposes an amendment to §523.62, concerning Mandatory CPE Reporting. The

proposed amendment re-writes and clarifies subsection (b) addressing reporting of CPE and warns licensees that blanks on the reporting form will be read as zeros.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be a rule that is easier to read and more accurate reporting of continuing professional education. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §15A, which authorizes the Board to issue rules on reporting of continuing professional education

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §15A

§523.62 Mandatory CPE Reporting

(a) To receive a license, a licensee shall report CPE credit hours accrued during the applicable reporting period

(b) A licensee shall report CPE credit hours accrued during the reporting period on the license renewal form. Appropriate instructions shall accompany the license renewal form. [A licensee shall report CPE credit hours accrued on the license renewal form. The license renewal form shall contain a space for reporting the total number of CPE credit hours accrued during the reporting period, and a space for entering information relating to the CPE credit hours claimed. Appropriate instructions shall accompany the notices.]

(c) The board may not grant exemptions from the requirement to report CPE credit hours accrued. A licensee must report CPE credit hours on the license renewal form, even if the number reported is zero. A blank on the reporting form will be interpreted as a zero.

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

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TRD-9438237

William Treacy
Executive Director
Texas State Board of
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For further information, please call: (512) 505-5566

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 29. Purchased Health Services

Subchapter CC. Lone Star Select Contracting Program

• 25 TAC §29.2801

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits proposed new §29.2801, concerning the Lone Star Select Contracting Program process for hospital inpatient services.

The new section is proposed to implement Senate Bill 79, 73rd Texas Legislature, 1993, which mandates medical assistance selective contracting for non-emergency inpatient hospital services.

Generally, the proposed new section will enable the department to contract selectively with hospitals for non-emergency inpatient services for Medicaid recipients, thereby improving the department's ability to act as a prudent purchaser of services and manage the program in a more effective and efficient manner. Specifically, the section includes its purpose, definition, and the department's requirements associated with the general design, proposal process for selective provider agreements, evaluation criteria and methodology, and the execution of provider agreements used in the selective contracting process.

Gary Bego, budget director, Health Care Financing, has determined that for each year of the first two years the section, as proposed, is in effect, there will be fiscal implications as a result of enforcing and administering the section. The effect on state government will be an estimated reduction in general revenue costs of between \$2 million-\$5 million for fiscal year 1994 and between \$30 million-\$35 million each year for fiscal years 1995, 1996, 1997 and 1998. There could possibly be costs to local governments with hospital districts. As the department will be negotiating with individual hospitals; the impact, if any, to local governments is undeterminable at this time.

Steve Svadlenak, bureau chief, Purchased Health Services, and Mr. Bego also have determined that for each year of the two-year period the section, as proposed, is in effect, the public benefit anticipated as a result of

enforcing the proposed section will be the increased ability of the department to assure adequate access to appropriate, high quality, cost effective services for all medical assistance beneficiaries; containment of overall expenditures for hospital inpatient services reimbursed by the Medical Assistance Program; and the facilitation of an orderly transition to a Medical Assistance Program design philosophy using an approach emphasizing primary care to minimize unnecessary use of hospital care. There is no anticipated impact on small businesses. There is no expected economic cost to persons who are required to comply with the proposed section and no anticipated impact on local employment.

Written comments on the proposed section may be submitted to Larry Fisher, Program Specialist, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168, (512) 794-6894. Mr. Fisher will accept comments for 30 days after publication of the proposed section in the *Texas Register*. In addition, a public hearing will be held in the Lecture Hall of the Texas Department of Health, 1100 West 49th Street, Austin, on April 18, 1994, beginning at 2:00 p.m.

The new section is proposed under the Human Resources Code, §32.027, which provides authority for the adoption of rules on selective contracting; the Human Resources Code, §32.021, and Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate purchased health services programs and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991). The proposed section will affect the Human Resources Code, Chapter 32, and Texas Civil Statutes, Article 4413 (502).

§29.2801. Lone Star Select Contracting Process for Inpatient Hospital Services

(a) Introduction This section implements the provisions of Senate Bill 79, 73rd Texas Legislature, Regular Session, 1993, mandating selective contracting for non-emergency inpatient hospital services.

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

(1) Market area—A geographic subdivision of the State of Texas defined as a group of geographically contiguous counties in which the Texas Department of Health (department) determines that hospitals will be invited to apply for selective contracting agreements. In general, each Metropolitan Statistical Area (MSA) in the State will be considered for designation as a market area. Where warranted by historical patient migration patterns, the department may designate certain non-MSA counties that are geographically contiguous to an

MSA to be included with MSA counties within a market area.

(2) Effective service area—For each hospital in a market area, the geographic area, as defined on a zip code basis, in which the hospital has historically provided inpatient hospital services to Medicaid patients. For purposes of subsection (f) of this section, the effective service area will be determined based on historical Medicaid inpatient claims data.

(3) Executive Oversight Committee—The executive committee established by the department to direct the selective contracting initiative and to approve the provider agreements.

(4) Hospital capacity to provide specialized service offerings—The presence or absence of specific hospital services, including but not limited to, trauma centers, burn units, neonatal intensive care unit services, and adult psychiatric services, that are required to be available in the market to ensure adequate access to quality care.

(5) Potential network—Any combination of applicant hospitals (whether the result of a joint bid or determined by the department) that offer a

(A) combined effective service area that provides geographic coverage of the market area to the same extent that coverage is provided under current practice;

(B) combined service capacity equal to at least 115% of the most recently available historic service volume experience for the market area; and

(C) combination of specialized services available within the market area that is at least as broad as the range of specialized services presently available to Medicaid beneficiaries in that market area.

(6) Selective contracting—A method of contracting, granted through waivers of certain provisions of the Social Security Act, that allows the department to contract selectively with hospitals or non-emergency inpatient services, thereby improving its ability to act as a prudent purchaser of services and to manage the Medical Assistance Program in a more effective and efficient manner.

(7) Selective contracting agreement—An agreement which includes an amendment to a hospital's existing provider agreement with the department and involves selective contracting.

(8) Disproportionate share hospital—A hospital participating in the Medicaid program that, according to state Medicaid criteria, meets the conditions of participation and serves a disproportionate

share of indigent patients. Additional requirements for disproportionate share hospitals are specified in §29.609 of this title (relating to Additional Reimbursement to Disproportionate Share Hospitals) and §29.610 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology for State-Owned Teaching Hospitals).

(9) Health care provider—Any hospital that is eligible to provide inpatient hospital services to Medicaid recipients.

(10) Optional volume management activities—Those activities that hospitals may propose to furnish to Medicaid beneficiaries in a market area to expand access to primary care services and ensure more appropriate use of hospital facilities. Such activities may include, but not be limited to, furnishing ambulatory primary care clinic services to Medicaid beneficiaries, and furnishing nurse hot lines which beneficiaries may call to receive professional advice about the most appropriate means to obtain medical care.

(c) General design. The department shall select that subset of market areas that appears to indicate the most effective competition for selective provider agreements to serve Medicaid patients. The market areas shall be divided into two groups of solicitations that will avoid an overlap of contract evaluation and negotiation of solicitations.

(1) The department shall implement selective contracting by executing amendments to each hospital's existing provider agreement with the department. Hospitals that were not parties to provider agreements before implementation of the department's selective contracting are eligible to apply; however, they must enter into a provider agreement that ensures they are subject to all terms and conditions of the Medical Assistance Program. The amendments to the provider agreements, and the process by which the department solicited, evaluated, negotiated, and executed the amended agreements with hospitals under selective contracting are not subject to the laws and regulations governing acquisition of goods and services by state agencies.

(2) Hospitals shall be required to apply for selective provider agreements on an individual basis. Proposals by combinations of hospitals under common ownership in a market area shall be considered as individual proposals if the hospitals elect to apply on that basis. Proposals by combinations of hospitals in a market area that are not under common ownership will also be considered, provided that each hospital that is a party to a joint application in a market area also submits an independent application for a selective contracting agreement in that market area; and each such hospital provides written assurances that the terms

of its individual proposal were arrived at independently without consultation with any other hospital or combination of hospitals, and have not been communicated to any competitor or group of competitors. The department does not intend any action by the State of Texas in the contracting process to require or sanction any form of communication or joint action by competitors in the market for inpatient hospital services (with respect to either individual or joint applications) that fails to comply with the provisions of this section.

(3) The department shall send solicitation packages, inviting proposals for selective provider agreements, to each health care provider serving residents of the counties selected for participation. Hospitals will be required at all times to be eligible to participate in the Medicare and Medicaid programs. Hospitals that are not sent solicitation packages for beneficiaries of a particular market will be able to request a package after demonstrating their intent to offer services to beneficiaries in those markets.

(d) Proposals for selective provider agreements. Hospitals seeking selective provider agreements shall be required to submit the following information in their proposals:

(1) a schedule of proposed payment rates to be applied to all covered hospital inpatient services during the term of the agreement;

(2) a proposed level of volume of services to Medicaid beneficiaries that the hospital would agree to serve during the contract period (this proposed level shall serve only as an estimate of services to assist the department in evaluating the availability of services within the relevant market area; it shall not serve as a limit on the amount of reimbursable services to be supplied by a contracting hospital),

(3) data to assist the department in evaluating the effective service area and specialized service offerings of the hospital;

(4) assurances and certifications required to ensure hospital compliance with the requirements of Federal and Texas law and regulations, and the requirements of the department's selective contracting process;

(5) a narrative description of the proposed plans (if any) of the hospital to furnish optional volume management programs for Medicaid beneficiaries; and

(6) evidence that the application of the hospital constitutes a binding quotation authorized by the corporate governance of the hospital.

(e) Evaluation of proposals for selective provider agreements. The department shall evaluate hospital proposals according to the following criteria

(1) Hospital proposals shall be due to the department within one month of the release of proposal packages. All hospital materials submitted to the department during the proposal process, and materials developed by the department or its contractors during the course of evaluation and negotiation, shall be confidential until all agreements are executed for all market areas in the state.

(2) The department shall evaluate hospital proposals on a market-by-market basis and determine a negotiation strategy to pursue in each market area following its evaluation of all market areas. Based on the application of pre-specified evaluation criteria for each market area, the department shall prepare a recommended strategy for contracting in each market area. Each market area strategy shall be subject to approval by the Executive Oversight Committee established by the department.

(3) The department shall retain the option to make awards without negotiation. In some circumstances, the department may accept the proposals offered by every hospital in the market area. In most cases, however, the department expects to enter into negotiations with those hospitals whose proposals, taken together, appear to represent the best combination of providers consistent with the overall objectives of the Medical Assistance Program. After negotiation, the department reserves the right not to award an agreement in a specific market area. In most cases, however, the department shall proceed to finalize and execute agreements with some subset of the hospital providers in each market area. In that event, coverage restrictions associated with the use of non-contracted hospitals by Medicaid beneficiaries shall apply.

(f) Evaluation criteria and methodology. The department's evaluation of proposals for selective provider agreements for each market area shall be conducted in two phases. Phase One shall include determining minimally acceptable network combinations and Phase Two shall include cost evaluation. A description of each phase follows.

(1) In Phase One, the department shall enter the information included in hospital proposals in each market area into a personal computer based (PC-based) microsimulation model designed to aid in the evaluation of the department's contracting options for each market. Data from hospital proposals shall be combined with data from the department's eligibility systems and claims processing records to construct the data base required for this phase of the evaluation. Each hospital's record in the data base shall contain information necessary to determine each hospital's

(A) effective service area for Medicaid beneficiaries in that market area, and

(B) capacity to provide specialized hospital services required by Medicaid beneficiaries in the market area

(2) The PC-based microsimulation model shall be used to test all possible combinations of hospitals applying for selective provider agreements to determine potential networks that shall meet the department's requirements for access to services for Medicaid patients. Where hospitals have submitted a joint proposal for selective provider agreements, the department shall evaluate the proposed provider network and the proposed network in all possible combinations with remaining hospitals that submitted proposals

(3) In Phase Two, each potential network shall be eligible for further consideration. If the Phase One evaluation fails to identify a potential network of applicant hospitals that meet the department's specified criteria, the department reserves the right to enter into direct negotiations with any hospital serving the market area. The purpose of these negotiations shall be to develop a minimally acceptable potential network, and allow the department to initiate negotiations with a hospital that failed to submit a proposal during the proposal period

(4) In Phase Two, each potential network identified in a market area in Phase One shall be evaluated to determine the estimated reduction in program costs that would result from entering into selective provider agreements with all of the hospitals in that potential network, while excluding all other hospitals from serving non-emergency cases. The department shall use the PC-based microsimulation model to produce an estimate of the total change in Medicaid program costs that would result by entering into agreements with those hospitals during the base contract period. The estimate by the department shall consider

(A) changes in unit prices to be paid to providers for inpatient services,

(B) changes in the distribution of service volumes (and case mix) across hospitals that would result from the reallocation of service volume from non-selected to selected providers, and

(C) savings in Medicaid program costs likely to result from the changes in service volumes induced by optional volume management activities proposed by hospitals, including both savings in aggregate hospital service use and offsetting increases in non-hospital service costs

(5) The result of the evaluation by the department will be a range of values for each potential network. The ranges shall be constructed using best case, worst case, and expected value assumptions about the distribution of service volumes across hospitals in the network

(6) Following the evaluation, the department shall prepare a recommendation to the Executive Oversight Committee that includes the outcome of both phases of the evaluation for each market area, as well as a proposed strategy for the department to meet the best interests of the Medical Assistance Program. Department options shall include.

(A) making an award without negotiations—including an award at the bid price schedules to all hospitals in the market,

(B) entering into negotiations with hospitals in a single potential network to improve proposed pricing, if possible, and to finalize an agreement about key program features, or

(C) entering into negotiations with one or more hospitals to influence the department's choice among multiple potential networks by lowering the pricing terms offered by individual hospitals. These negotiations may result in identifying a single potential network that would differ in its hospital composition from potential networks initially identified in Phase One

(g) Execution of selective provider agreements. The department shall execute selective provider agreements at the conclusion of negotiations by

(1) requesting applicants to submit a binding revised application including the terms and conditions agreed to during negotiations with the department. The best and final offer of each hospital shall be forwarded to the Executive Oversight Committee for approval. The provider agreements shall be executed following the approval of the committee, and

(2) structuring the agreements as one-year amendments to the provider agreement of each hospital, with an option to the department of extending the amendments for up to two option years. The effective date of the reimbursement rates under the amendments may, by mutual agreement, be made retroactive to a date before the date of execution. At the conclusion of the first year, the department may adjust its exercise of options on a market-by-market basis so as to place the system on a three-year rolling system of renegotiations. If the performance of any hospital under the contract is

considered unsatisfactory, however, the department may elect not to exercise any subsequent options, even if it exercised options with all other selected hospitals in the market.

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

Issued in Austin, Texas, on March 30, 1994.

TRD-9438359

Susan K Steeg
General Counsel
Texas Department of
Health

Earliest possible date of adoption: May 6, 1994

For further information, please call (512) 794-6894

◆ ◆ ◆
**Chapter 130. Code
Enforcement Registry**

The Texas Department of Health (department) proposes amendments to §§130 2, 130 3, 130 5-130 7, 130 9, 130 10, 130 12, repeal of existing §130 8; and new §§130 8 and 130.18, concerning the registration of code enforcement officers

The amendments alter the definitions; define committee duties, delete requirements under the expired grandfather clause, address renewal of a registration as a code enforcement officer in training, and add minor changes which clarify meaning without substantial change, improve grammar and style, and clarify inconsistencies in the rules. The repeal of existing §130 8 removes the examination procedures. The proposal of new §130.8 replaces the examination procedures with updated information concerning the examination process. The new §130.18 defines improper advertising as it is related to code enforcement officers by using the language from Texas Civil Statutes, Article 4512p, §4.

Becky Berryhill, program director, has determined that for the first five year period the proposed sections will be in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the sections.

Ms. Berryhill also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to assure the availability of qualified code enforcement officers within city, county, and state agency offices. There is no anticipated cost to small business. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There will be no impact on local employment.

Comments on the proposal may be submitted to Becky Berryhill, Program Director, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas, (512) 834-6659. Comments will be accepted for 30 days after the date of publication in the *Texas Register*

• 25 TAC §§130.2, 130.3,
130.5-130.10, 130.12, 130.18

The amendments and new section are proposed under Texas Civil Statutes, Article 4447bb, which provide the Texas Department of Health with authority to adopt rules concerning the registration of code enforcement officers; and Health and Safety Code, §12 001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the commissioner of health. These sections implement Texas Civil Statutes, Article 4447bb, relating to code enforcement officers.

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

Code enforcement officer—An agent of this state or a political subdivision of this state who engages in code enforcement. This term does not include an agent of an agency of the federal government.

§130.3 The Committee.

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

(1) The Texas Board of Health (board) [board] shall appoint Code Enforcement Advisory Committee (committee) [committee] members, who shall serve staggered terms of six years with two terms beginning September 1 of each odd-numbered year

- (2) (No change)
- (c)-(f) (No change)
- (g) Meetings

(1) The committee shall hold meetings as necessary at such designated date, place, and time as may be determined by the Texas Department of Health (department) [department] or a majority of the committee

- (2) (No change.)

(3) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Government Code, Chapter 551, [Texas Civil Statutes, Article 6252-17].

- (h) (No change)
- (i) Attendance

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

(3) The department [Texas Department of Health (department)] shall report to the board the attendance records of members

- (j)-(m) (No change)

- (n) Tasks and charge.

(1) The committee shall recommend to the board rules to implement the Texas Civil Statutes, Article 4447bb (Act).

(2) The committee shall prescribe application forms and registration fees through the recommended rules.

(3) The committee shall advise the board concerning rules relating to the definitions of "unprofessional conduct" and "misconduct".

(4) The committee shall advise the department concerning the course of instruction required for registration and examination guidelines.

(5) These tasks shall be performed with the assistance of the department.

(o) Statements or actions by individual committee members. The committee and the department shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuant of specific instructions of the committee or department.

§130.5. Application Procedures.

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

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official Texas Department of Health (department) [department] forms

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

(c) General application materials The application contains the following items:

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

(4) a statement that the applicant has read Texas Civil Statutes, Article 4447bb (Act) [Act] and this chapter and agrees to abide by them,

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

(d) Documents. The following documents shall be submitted

(1) a copy of the code enforcement certificate or certificates of course completion (notarized as a true and exact copy of an unaltered original) [if the training program is required],

- (2) (No change)

[(3) if applying under §130 6(d) of this title (relating to Registration Qualification Requirements)

[(A) an affidavit on an official form indicating at least one year of

residence in Texas before the date of application; and

[(B) an affidavit on an official form indicating employment as described in §130 6(d)(2) of this title (relating to Registration Qualification Requirements).]

(3)[(4)] a copy of a high school diploma, general equivalence diploma, or diploma (associate degree or bachelor degree) from an accredited college or university (notarized as a true and exact copy of an unaltered original), and

(4) [(5)] proof of the successful completion of the examination. [if already taken, and]

[(6) proof of one year full-time experience if applying under §130 6(a) of this title (relating to Registration Qualification Requirements)]

§130.6 Registration Qualification Requirements

- (a) (No change)

(b) An applicant who qualifies under Texas Civil Statutes, Article 4447bb, §6(a) (Act) must have

- (1) (No change)

(2) at least one year of full-time experience in the field of code enforcement meeting the following requirements:[.]

(A) experience which may include self-employment or independent contractor status,

(B) regularly-assigned duties which must have included code enforcement. The applicant need not have had the titles "code enforcement officer" or "code enforcement officer in training";

- (3) (4) (No change)

- (c) (No change)

[(d) An applicant who qualifies under the Act, §14, must have

[(1) been a resident of the state for at least one year before the date of the application,

[(2) been employed full-time as a code enforcement officer for at least three years for not less than 32 hours per week from September 1, 1988 to August 31, 1991

[(A) Employment includes self-employment or independent contractor status

[(B) The regularly-assigned duties must have included code enforcement. The applicant need not have had the title "code enforcement officer";

[(3) applied on or before September 1, 1993; and

[(4) filed the documents and application required by §130.5 of this title (relating to Application Procedures).]

(d)[(e)] On proper application, the Texas Department of Health [department] shall grant a certificate of registration to a licensee or registrant of another state, commonwealth, or territory of the United States that has requirements equivalent to or higher than those in effect in this state for the registration of a code enforcement officer or code enforcement officer in training.

§130.7. Educational Requirements.

(a) (No change.)

(b) Training program required. An applicant must complete a training program in code enforcement from an educational institution accredited or licensed by the central education agency or Texas Higher Education Coordinating Board [unless the applicant qualifies under Texas Civil Statutes, Article 4447bb, §14].

(c) (No change.)

§130.8. Examinations.

(a) Purpose. This section sets out provisions governing the administration, content, grading, and other procedures for examination for registration as a code enforcement officer and code enforcement officer in training.

(b) Examination. The examination shall consist of a written section.

(c) Application for examination.

(1) An applicant must file an application in accordance with §130.5 of this title (relating to Application Procedures).

(2) An applicant meeting the requirements of §130.6 of this title (relating to Registration Qualification Requirements) and §130.7 of this title (relating to Educational Requirements) shall be approved to take the exam. The Texas Department of Health (department) will notify the applicant of his or her eligibility for examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline. The notice shall include the examination registration form.

(3) An examination registration form must be completed and returned to the department by the applicant with the required examination fee on or before the deadline date set by the department.

(4) The examination will be conducted in the English language. Exceptions will be made when English is not the native or first language of the applicant. The exam may be taken in an individual's native language if the individual notifies the department at least 60 days in advance. The applicant will be responsible for any fee or consideration to be paid to an acceptable interpreter and/or translator whose services are necessary for the examination.

(5) An applicant with a disability must inform the department of special accommodations requested for examination. The documentation of disability shall be completed and signed by a professional familiar with the applicant's disability and, if possible, state the appropriate accommodations. The professional should be a physician, psychologist, rehabilitation counselor, or educator. Reasonable accommodations will be made for disabled applicants.

(d) Date and location. Examinations will be held on dates and in locations to be announced by the department.

(e) Grading. Examinations will be graded by the department.

(f) Notice. The department shall notify each examinee of the results of the examination within 30 days of the date of the examination.

(g) Failures.

(1) A person who fails the examination may retest twice after paying another examination fee. All retests must be completed no later than two years after the initial date of examination eligibility or the person's application will be voided.

(2) An applicant who fails the examination three times shall have his or her application denied unless the applicant furnishes the department proof that he or she has retaken the training course described in §130.7 of this title.

(3) An applicant who completes course work as described in paragraph (2) of this subsection must file a new application for registration with the application fee.

(h) Failure to apply. Any applicant who fails to apply for and take the examination within a period of one year after an examination approval notice is mailed to him or her by the department may have such approval voided by the department.

(i) Refunds. No refunds will be made to examination candidates who fail to appear for an examination.

(j) Examination review. Each applicant who fails the examination may request, in writing, within 21 days from the date of the notification of failure, an examination review.

(1) All reviews are subject to department security requirements.

(2) Textbooks and other references may not be used and persons other than the applicant and department representatives may not be present during the review.

(3) The department will set a date and hour within a reasonable time when the examination will be available for review. The appointment will be scheduled in the office of the Code Enforcement Registration Program during regular business hours.

§130.9. Determination of Eligibility.

(a) The Texas Department of Health (department) [department] shall receive and approve or disapprove all applications for registration as a code enforcement officer and code enforcement officer in training.

(b) (No change.)

(c) An application for a registration shall be disapproved if the person has:

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

(4) violated any provisions of the Texas Civil Statutes, Article 4447bb (Act) [Act] or this chapter;

(5) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a registered code enforcement officer or code enforcement officer in training as set out in §130.12 of this title (relating to Registration of Persons with Criminal Backgrounds); or

(6) (No change.)

(d) (No change.)

§130.10. Code Enforcement Officer in Training.

(a) Supervision. The purpose of this section is to set out the nature and the scope of the supervision provided for code enforcement officers in training.

(1) Supervision contract. A code enforcement officer in training must have a contract on department forms on file with the Texas Department of Health (department) [department].

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

(b) (No change.)

(c) Upgrading a code enforcement officer in training. The purpose of this subsection is to set out the procedure to upgrade a registration from a code enforcement officer in training to a code enforcement officer.

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

(3) The code enforcement officer in training shall surrender to the department the registration certificate and registration identification card and submit the registration fee and registration form for upgrade of a registration for a code enforcement officer in training to a code enforcement officer.

(4) (No change.)

(d) **Time limits.** A code enforcement officer in training registration is valid for one year from the date the registration is issued and may be renewed not more than once after September 1, 1994, by the procedures set out in §130.12 of this title (relating to Code Enforcement Registration Renewal).

§130.12. Code Enforcement Registration Renewal.

(a) (No change.)

(b) **General.**

(1) (No change.)

(2) Each registrant is responsible for renewing the registration before the expiration date and shall not be excused from paying the reinstatement fee. Failure to receive notification from the Texas Department of Health (department) [department] prior to the expiration date of the registration will not excuse failure to file for renewal or late renewal.

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

(c) **Registration renewal.**

(1) (No change.)

(2) The renewal form for all registrants shall require the provision of the preferred mailing address, primary employment address and telephone number, category of employment, and a statement of all misdemeanor and felony offenses for which the registrant has been convicted. The registration renewal form for code enforcement officers in training shall be accompanied by a current supervision contact on department forms complying with §130.6(c)(3) of this title (relating to Registration Qualification Requirements).

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

(d)-(f) (No change.)

§130.18. Advertising.

(a) A registrant shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representative likely to create an unjustified expectation about the results of a service or procedure;

(3) compares a professional's service with another professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or registration of a professional; or

(6) advertises or represents in the use of professional name, a title, or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) A registrant shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department by providing notification:

(1) on each written contract for services of a registrant;

(2) on a sign prominently displayed in the primary place of business of each registrant, or

(3) in a bill for services provided by a registrant to a client or third party.

(d) A registrant shall be subject to disciplinary action by the department if under the Crime Victims Compensation Act, Texas Civil Statutes, Article 8309-1, the registrant is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office.

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

Issued in Austin, Texas, on March 28, 1994

TRD-9438254

Susan K Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Earliest possible date of adoption: May 6, 1994

For further information, please call: (512) 834-6659

• 25 TAC §130.8

(Editor's note The text of the following section proposed for repeal will not be published The section may be examined in the offices of the

Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4447bb, which provide the Texas Department of Health with authority to adopt rules concerning the registration of code enforcement officers; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the commissioner of health. These sections implement Texas Civil Statutes, Article 4447bb, relating to code enforcement officers.

§130.8. Examination.

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

Issued in Austin, Texas, on March 28, 1994.

TRD-9438255

Susan K Steeg
General Counsel, Office of
General Counsel
Texas Department of
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For further information, please call: (512) 834-6659

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 403. Other Agencies and the Public

Subchapter O. Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases

• 25 TAC §§403.391-403.426

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

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes the repeal of §§403.391-403.426, concerning practice and procedure with respect to administrative hearings of the department in contested cases. The sections would be replaced by new §§403.451-403.486, concerning administrative hearings of the department in contested cases, which is contemporaneously proposed for public comment in this issue of the Texas Register. The proposal would affect the Administrative Procedure Act, Government Code, Chapter 2001.

The sections are proposed for repeal to allow for the proposal of new sections which reflect amendments to the Administrative Procedure Act, Government Code, Chapter 2001.

Leilani Rose, director, Financial Services, has determined that there will be no additional fiscal cost to state or local government or small businesses as a result of administering the repeals as proposed. There will be no significant local economic impact. There is no anticipated cost to persons required to comply with the proposed repeals.

Cathy Campbell, director, Legal Services, has determined that the public benefit is compliance with state law.

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

The repeals are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§403.391. Purpose

§403.392. Definitions

§403.393 Applicability and Scope of Rules.

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§403.423. Confidentiality.

§403.424. Judicial Review.

§403.425 Distribution.

§403.426. Effective Date.

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

Issued in Austin, Texas, on March 29, 1994.

TRD-9438280

Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption. May 6, 1994

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

Subchapter O. Administrative Hearings of the Department in Contested Cases

• 25 TAC §§403.451-403.486

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§403.451-403.486, concerning administrative hearings of the department in contested cases. The new sections are proposed contemporaneously with the proposed repeal of existing Chapter 403, Subchapter O, concerning practice and procedure with respect to administrative hearings of the department in contested cases, which the proposed new subchapter would replace. The proposal would affect the Administrative Procedure Act, Government Code, Chapter 2001.

The proposed new sections would reflect amendments to the Administrative Procedure Act, Government Code, Chapter 2001, and terminology and references would be updated.

Leilani Rose, director, Financial Services, has determined that there will be no additional fiscal cost to state or local government or small businesses as a result of administering the amendments as proposed. There will be no significant local economic impact. There is no anticipated cost to persons required to comply with the proposed new sections.

Cathy Campbell, director, Legal Services, has determined that the public benefit is compliance with state law.

Comments on the proposed new sections may be submitted to Linda Logan, Director, Policy Development, Texas Department 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, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§403.451. Purpose. The purpose of this subchapter governing practice and procedure with respect to all departmental administrative hearings involving contested cases is:

(1) to provide a simple, efficient, and uniform set of procedures for all departmental administrative hearings involving contested cases, as that term is hereinafter defined, which will adequately protect the rights of all parties involved and will be consistent with due process requirements of the Texas and federal constitutions;

(2) to provide and to insure uniform standards, practices, and procedures with respect to hearings held in connection with such administrative procedures; and

(3) to provide a procedure which will effect fair and expeditious determination of causes governed by this subchapter and adequately protect the procedural rights of all parties.

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

Commissioner—The commissioner of the Texas Department of Mental Health and Mental Retardation.

Contested case—A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the department after an opportunity for adjudicated hearing except in departmental personnel matters.

Department—The Texas Department of Mental Health and Mental Retardation (TXMHMR). When the context of a rule requires or permits action by the department, such action means action taken by the commissioner or the commissioner's duly authorized agent or representative.

Examiner—Any person designated or appointed by the commissioner as the commissioner's duly authorized agent or representative to conduct hearings provided for by rules of the department.

Party—Each person or agency named or admitted as a party, pursuant to department rules and statutes under which such hearings are requested or held.

Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the department.

Pleadings—Written statements filed by parties concerning their respective positions, claims, and rights in administrative hearings.

§403.453. Applicability and Scope of Rules.

(a) The provisions of this subchapter shall apply in all contested cases.

(b) The provisions of this subchapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the department or the substantive rights of any person.

(c) The provisions of this subchapter shall be given a liberal construction in order that a just, fair, equitable, and impartial adjudication of the rights of the parties under the established principles of substantive law, as determined by appropriate statutes or department rules, may be attained with expedition and dispatch at the least expense to the department and all parties.

§403.454. Filing of Documents. All petitions, complaints, motions, protests, replies, answers, notices, and other pleadings relating to any proceeding governed by this subchapter which is pending or to be instituted with the department shall be filed with the commissioner through the designated hearings office. They shall be deemed filed only when actually received by such office accompanied by the filing fee, if any, required by statute or department rules.

§403.455. Computation of Time; Extension.

(a) In computing any period of time prescribed or allowed by this subchapter, by the order of the commissioner, or by any applicable statute or substantive rule, the period shall begin on the day after the act, event, default, or controversy and conclude on the last day of such computed period, unless that day is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday.

(b) Unless otherwise provided by statute, by this subchapter, or substantive department rules, the time for the doing of any act under this subchapter may be extended by order of the commissioner, upon written motion duly filed with the commissioner through the commissioner's hearings office prior to the expiration of the applicable period of time for the doing of same, showing that there is good cause for such extension of time and that the need therefor is not caused by neglect, indifference, or lack of diligence of movant. A copy of such motion shall be served upon all other parties to the proceeding contemporaneously with the filing thereof.

§403.456. Agreements and Stipulations To Be in Writing. No stipulation or agreement between the parties, their attorneys or representatives, with regard to any matter involved in any proceeding before the department, shall be in force unless it has been reduced to writing and signed by the parties or their authorized representatives, or unless it has been dictated into the record by them during the course of a hearing or incorporated in an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this subchapter, unless precluded by law.

§403.457. Notice and Service in Proceedings.

(a) In a contested case all parties must be afforded an opportunity for hearing after reasonable notice of not less than ten days.

(b) Notice shall include:

(1) a statement of time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) reference to the particular sections of these statutes and rules involved; and

(4) a short and plain statement of the matters asserted.

(c) If any party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter on request by a party by written application, a more detailed and definite statement must be furnished within three days prior to the date set for hearing.

(d) In any case where personal service of the notice by department is required, the department shall mail same by certified or registered mail to the last known place of address of the person entitled to receive such notice.

(e) A copy of any protest, reply, answer, motion, or other pleadings filed by any party in any proceedings subsequent to the institution thereof shall be mailed or otherwise delivered by the party filing the same to every other party of record. If any party has appeared in the proceeding by attorney or other representative authorized under this subchapter to make appearances, service shall be made upon such attorney or other representative. The willful failure of any party to make such service shall be sufficient grounds for an entry of an order by the presiding examiner, striking a protest or reply, answer, motion, or other pleadings for the record.

(f) A certificate of the party, attorney, or representative who files the pleadings stating that it has been served on the other parties shall be prima facie evidence of such service. The following form of certificate shall be sufficient in this connection
I hereby certify that I have this _____ day _____ of _____, 19____ served copies of the foregoing upon all other parties to this proceeding by (here state the service).

(signature)

§403.458. Appearances Personally or by Representative. Any party may appear and be represented by an attorney at law authorized to practice law before the highest court of this state or by a lay representative of his/her choosing. Persons may appear on their own behalf. Such lay representative shall not be an employee who has provided direct service to a client who is a party in the contested case. A sole proprietor, corpo-

ration, partnership, or association may appear and be represented by any bona fide officer, employee, or partner of such person or entity.

§403.459. Classification of Pleadings and Contents of Record.

(a) Pleadings filed with the hearings office shall be applications, protests, petitions, complaints, answers, replies, motions for rehearing, and other motions and grievances. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

(b) The record under this subchapter includes:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on them;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing; and
- (7) all staff memoranda or data submitted to or considered by the hearing officer or the person involved in making the decision.

§403.460. Transcription of Proceedings Required under Certain Circumstances. Unless precluded by law, the parties to a contested case may agree upon a statement of facts, agree to use taped transcriptions as a statement of facts, or agree to the summarization of testimony before the hearing officer. Provided, however, that proceedings or any part of them must be transcribed on written request of any party. The department may pay the cost of the transcript or assess the cost to one or more parties. Nothing provided for in this section limits the department to a stenographic record of the proceedings.

§403.461 Form and Content of Pleadings.

(a) Pleadings shall be typewritten or printed upon paper 8 1/2 inches wide and 11 inches long with an inside margin of at least one inch wide and exhibits next thereto shall be folded to the same size. Reproductions are acceptable, provided all copies are clear and permanently legible.

(b) Pleadings shall state their object and contain a concise statement of facts in support of same and shall be signed by the

applicant or the applicant's authorized representative.

(c) The original of every pleading shall be signed in ink for the party filing the paper or by his/her authorized representative. Pleadings shall contain the address of the party filing the document and the name, telephone number, and business address of the representative of such party, if any.

(d) Pleadings for which no official form is prescribed shall state the following:

- (1) the name of the party bringing the hearing;
- (2) the names of any other known parties in interest;
- (3) a short, plain, and concise statement of the facts relied upon by the pleader;
- (4) the relief, action, or order sought by the pleader;
- (5) any matter required by the rules of the department or statute with respect to the subject matter before the hearing officer;
- (6) the certificate of service prescribed in §403.457(f) of this title (relating to Notice and Service in Proceedings).

§403.462. Deficient Pleadings. Upon the filing of any pleading with the hearing office, it shall be examined to determine its sufficiency under this subchapter. While a liberal construction is to be given to all pleadings and technical forms are not to be required, if the pleading does not comply with this subchapter, it shall be returned to the person filing same along with the statement of the hearing officer of the reason for rejecting same. A corrected pleading may then be filed if such correction will not unduly delay the hearing.

§403.463. Motions. Any motion relating to a pending proceeding governed by this subchapter shall, unless made during a hearing and dictated into the record, be written and shall set forth the relief sought, the specific reasons and grounds therefor, and shall be supported by affidavit if based upon matters which do not appear of record. Motions not made during a hearing shall be filed with the hearings office, who shall act upon it at the earliest practicable time.

§403.464. Amendments. Any pleading may be amended at any time upon motion, provided that a pleading upon which notice has been issued shall not be amended so as to broaden the scope thereof.

§403.465. Incorporation by Reference of Department Records. Any pleading may

adopt and incorporate by specific reference thereto any part of any document or entry in the official files and records of the department. This section shall not relieve any part of the necessity of alleging in detail, if required, facts necessary to sustain the burden of proof imposed by law.

§403.466. Docketing and Numbering of Causes; Hearing Date.

(a) Upon receipt of the document intended to institute a proceeding before the department under the applicable department rules and the statutes of the State of Texas or the United States, which complies with this subchapter as to form and content, the hearings office shall docket the same as a pending proceeding and serve notice thereon as required by this subchapter.

(b) The hearing office shall set a date on which the hearing on the proceedings will be held and shall assign a presiding examiner to preside over such hearing. Said date will be no sooner than 15 days nor later than 45 days after the initiating document is received by the hearings office, unless otherwise provided in department rules or state statutes. The presiding examiner may subsequently postpone or continue the hearing date until a later date if, in the presiding examiner's own sound judgment and discretion, good cause requires a later date. Good cause includes, but is not limited to, the consideration that a later date will result in a fairer and more just determination of the issues and that the welfare of any client of the department will not be substantially endangered by reason of the postponement. The presiding examiner is not precluded by this section or any other section from ordering a postponement or continuance of the hearing upon the showing of good cause.

§403.467. Prehearing Conference.

(a) In any proceeding governed by this subchapter, the presiding examiner to whom the proceeding has been assigned, on the presiding examiner's own motion or on the motion of any party, may direct the parties, their attorneys, or representatives to appear before the examiner at a specified time and place for a conference prior to hearing for the purpose of formulating issues and considering:

- (1) simplification of issues;
- (2) possibility of admissions of certain averments of fact or stipulations concerning the use by any party of matters of public record;
- (3) procedures to be used in the hearing;
- (4) limitation, where possible, of the number of witnesses;

(5) such other matters as may aid in the simplification of the proceedings and the disposition of the matters in controversy, including settlement of such issues as are in dispute; and

(6) the taking of depositions in accordance with the provisions of the Government Code, §§2001.094-2001.103.

(b) Actions taken at the conference shall be recorded in an order by the examiner unless the parties enter into a written agreement.

§403.468. Motions for Postponement, Continuance, Withdrawal, or Dismissal of Protest, or Other Matters before the Department.

(a) Motions for postponement, continuance, withdrawal or dismissal of protest, or other matters which have been duly set for hearing shall be:

(1) in writing;

(2) filed with the commissioner; and

(3) distributed to all interested parties under a certificate of service not less than five days prior to the designated date the matter is to be heard.

(b) Such motions shall set forth under oath the specific grounds upon which the moving parties seek such action and shall make reference to all prior motions of the same nature filed on the same proceeding. Failure to comply with the provisions of this section, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and, at the discretion of the examiner, may result in the dismissal of the protest or other matter in issue with prejudice to refiling. Once a proceeding has actually gone to a hearing pursuant to the notice issued thereon, no postponement or continuance shall be granted by the examiner without the consent of all parties involved.

§403.469. Joint Hearings. A motion for the consolidation of two or more protests or other proceedings shall be in writing, signed by the movant, the movant's attorney or representative, and filed with the examiner prior to the date set for hearing. No two or more protests or other proceedings shall be consolidated or heard jointly without the affirmative consent of all parties to such proceedings, unless the department shall find that the two or more proceedings involve common questions of law and fact, and shall further find that separate hearings would result in unwarranted expense, delay, or substantial injustice.

§403.470. Place and Nature of Hearings.

(a) All hearings conducted in any proceedings shall be opened to the public, but may be ordered to be closed upon a

finding of the presiding examiner of possible breach of the privacy of clients, employees, or their records. All hearings shall be held in Austin, Texas, in the case of proceedings arising out of actions, events, or omissions alleged to have occurred in the central office of TXMHMR; and at the location of each facility of the department, in the case of all other hearings at which the action, event, or omission complained of occurred, unless for good and sufficient cause, in which case the commissioner, in the commissioner's own sound judgment and discretion, shall designate another place of hearing in the interest of the public.

(b) All parties, witnesses, attorneys, or other representatives shall comport themselves in all proceedings governed by this subchapter with proper dignity, courtesy, and respect for the department, the commissioner, the examiner, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

§403.471. Presiding Examiner.

(a) Hearings will be conducted by an examiner as defined in §403.452 of this title (relating to Definitions) unless a different fact finder is required by statute or other department rules. The examiner and/or such fact finder is at all times referred to in this subchapter as the examiner or the presiding examiner. The presiding examiner shall have authority to administer oaths, to examine witnesses, and to rule upon the admissibility of evidence and amendments to pleadings. The presiding examiner shall have the authority to recess any hearing from day to day.

(b) If the presiding examiner dies, becomes disabled, or withdraws or is removed from employment or the case at any time before the final decision thereof, the department may appoint another presiding examiner who may perform any function remaining to be performed without the necessity of repeating the previous proceedings in the case.

(c) The commissioner may designate one or more employees of the department with particular expertise and experience who are knowledgeable in the subject matter of the hearing in question to assist the presiding examiner in the evaluation of evidence presented at the hearing.

§403.472. Rules of Evidence, Official Notice.

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded in all proceedings under this subchapter. The rules of evidence as applied in nonjury

civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. The rules of privilege recognized by the laws of the State of Texas shall be given effect. Objections to evidentiary offers shall be made and noted in the record. Subject to these requirements, if a hearing will be expedited and the interest of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(b) All testimony in a hearing by witnesses shall be taken under oath as prescribed in this subchapter.

(c) The department shall have the powers of subpoena granted under the Government Code, §2001.089, as well as the powers in such article for the issuance of commissions to take depositions. The department will, on its own motion or on the written request of any party to a contested case pending before it on a showing of good cause and on deposit of sums which will reasonably insure payment in the amounts estimated to accrue, issue a subpoena in accordance with such statute to require the attendance of witnesses and production of documents as may be necessary and proper for the purposes of the proceedings before it.

(d) Discovery

(1) Upon motion of any party showing good cause therefor and upon notice to all other parties, the examiner may order any party to comply with the following requirements, provided, however, that the examiner shall limit such orders as justice may require to protect any party or witness from undue annoyance, embarrassment, oppression, or expense. Subject to such limitation and any limitations provided for discovery under the Rules of Civil Procedure, any party may be required

(A) to produce and permit the inspection and copying or photographing by or on behalf of the moving party any of the following which are in his/her possession, custody, or control: any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain, or are reasonably calculated to lead to the discovery of, evidence material to any matter involved in the action, and

(B) to permit entry upon designated land or other property in his/her possession or control for the purpose of inspecting, measuring, surveying, or photo-

graphing the property or any designated object or operation thereon which may be material to any matter involved in the action.

(2) The order shall specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe such terms and conditions as are just.

(3) The identity and location of any potential party or witness may be obtained from any communication or other paper in the possession, custody, or control of a party, and any party may be required to produce and permit the inspection and copying of the reports, including factual observations and opinions of an expert who will be called as a witness, provided that the rights herein granted shall not extend to other written statements of witnesses or other written communications passing between agents or representatives or the employees of any party to the hearing or to other communications between any party and its agents, representatives, or other employees, where made subsequent to the occurrence or transaction upon which the proceeding is based, and made in connection with the prosecution, investigation, or defense of such claim or the circumstances out of which same has arisen.

(4) Any person, whether or not a party, shall be entitled to obtain, upon request, a copy of any statement he has previously made concerning the action or its subject matter and which is in the possession, custody, or control of any party. If the request is refused, the person may move for a departmental order under this paragraph. For purposes of this section, a statement previously made is:

(A) a written statement signed or otherwise adopted or approved by the person making it; or

(B) a stenographic, mechanical, electrical, or other recording or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(e) The taking of depositions shall be in accordance with the provisions of the Government Code, §§2001.094-2001.103.

(f) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties will be given an opportunity to compare the copy with the original.

(g) A party may conduct cross-examination required for a full and true disclosure of the facts.

(h) In connection with any hearing held in the provisions of this section, official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they must be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the department and its staff may be utilized in evaluating the evidence.

(i) The right to assistance or counsel granted under this subchapter may be expressly waived by the parties.

(j) If a party or subpoenaed witness in a contested case is deaf, the department shall provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. In this subsection, "person who is deaf" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

§403.473 Formal Exceptions Formal exceptions to rulings of the examiner during the hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the examiner the action which he desires.

§403.474. Decisions and Orders

(a) A final decision or order must be in writing or stated in the record. It must include the findings of fact and conclusions involved, separately stated. Findings of fact, as set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting such findings.

(b) Parties may submit proposed findings of fact, unless precluded by other rules or statute from so doing, and a decision shall include a ruling on each proposed finding.

(c) Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of this decision or order shall be delivered or mailed to any party and to his/her attorney of record.

(d) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing and is final and appealable on the date of rendition of the

order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If the examiner finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, the finding in a decision or order shall be recited as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as prerequisite for appeal. In cases involving the formality of decisions and actions to be taken pursuant thereto, governed by the provisions of the Persons with Mental Retardation Act, Texas Health and Safety Code, Subtitle D, the statutory provisions shall govern notwithstanding this section.

(e) Unless otherwise specifically stated by the statute, the final decision or order must be rendered within 60 days after the date the hearing is finally closed. The department may prescribe a longer period of time within which the final order or decision of the examiner shall be issued, but such extension, if so prescribed, shall be announced at the completion of the hearing.

(f) The final decision or order shall be rendered by the presiding examiner unless otherwise provided in this subchapter. If other rules provide for the decision to be made by someone other than the presiding examiner, such decision maker shall either hear the case or read the record.

(g) Except as otherwise provided in subsection (d) of this section, a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 20 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the hearing office within 30 days after the rendition of the final decision or order and action on the motion must be taken within 45 days after the rendition of the final decision or order. If action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The period of time for filing of motions and replies taking action may be extended by written order but such extension may not extend the period for action beyond 90 days after the date of rendition of the final decision or order. In the event of extension, the motion for rehearing is overruled by operation of law on the date affixed on the order, or in the absence of affixed date, 90 days after the date of the final decision or order.

(h) The parties may, by agreement with the approval of the examiner, provide for modification of the times provided in this section.

§403.475. *Dismissal without Hearing.* The examiner may entertain motions for dismissal without a hearing for any of the following reasons:

- (1) the failure to prosecute and go forward with the proceeding within a reasonable period of time;
- (2) unnecessary duplication of proceedings;
- (3) withdrawal;
- (4) moot questions or stale protest;
- (5) lack of jurisdiction.

§403.476. *Prepared Testimony.* In all contested cases and after service of copies upon all parties of record at such time as may be designated by the examiner, the prepared testimony of a witness upon direct examination, either in narrative or in question and answer form, may be incorporated in the records as if read or received as an exhibit, upon the witnesses being sworn and identifying same. Such witnesses shall be subject to cross-examination, and the prepared testimony shall be excepted from motion to strike in whole or in part.

§403.477. *Limitations on Number of Witnesses.* The examiner shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§403.478. *Exhibits.*

(a) The original of each exhibit offered shall be tendered for identification; one copy shall be furnished to the presiding examiner and one copy to each party of record or his/her attorney or representative.

(b) In the event an exhibit has been identified, objected to, and excluded, the examiner shall determine whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him/her. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, endorsed by the examiner with the examiner's own ruling, and included in the record for the purpose of preserving an exception.

(c) Unless specifically directed by the presiding examiner, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the examiner allows the exhibit to be filed after the completion of the hearing, copies of the late-filed exhibit shall be served on all parties of record.

§403.479. *Offer of Proof.* When testimony is excluded by ruling of the examiner, the

party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the department. The examiner may ask such questions of the witness as the examiner deems necessary to satisfy himself/herself that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

§403.480. *Oral Argument.* A party or a party's representative is entitled to present oral argument if that party has requested the opportunity to do so. A request for oral argument may be incorporated in exceptions, briefs or replies to exceptions, motions for rehearing, or separate pleadings. A request for opportunity to present oral argument must be made prior to the final determination of any proceeding. The examiner has the authority to limit the time and scope of any oral argument in the proceeding he is conducting.

§403.481. *Ex Parte Consultations.* Unless required for the disposition of ex parte matters authorized by law, the examiner and/or other persons assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate directly or indirectly in connection with any issue of fact or law with any party or his/her representative, except on notice and opportunity for all parties to participate. Any department decision-maker may communicate ex parte with other members of the department who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the department's staff in evaluating the evidence in accordance with the Government Code, §2001.061 and §403.472(h) of this title (relating to Rules of Evidence; Official Notice).

§403.482. *Participation by Legal Staff.* The legal staff of the department may participate in hearings governed by this subchapter.

§403.483. *Confidentiality.*

(a) In any hearing or other proceedings conducted by the department, the identity of an individual with mental illness or mental retardation shall not be revealed or made a matter of public record in any way unless the party or person desiring or attempting to reveal the identity of such individual:

(1) has secured from the individual with mental illness or mental retardation or the person legally authorized to give

consent for such individual written consent to reveal for the purposes of the hearing the identity of such individual, and the specific information to be revealed is set forth in such written consent, and such written consent has been filed with the commissioner; and

(2) has established to the satisfaction of the hearing examiner that the identity of the individual with mental illness or mental retardation is relevant and material to an issue in the hearing.

(b) Any attempt by a party to circumvent the requirements of subsection (a) of this section will be sufficient grounds for the hearing examiner to strike the party and any protest or pleading of the party from the hearing or to dismiss the hearing with prejudice.

§403.484. *Judicial Review.*

(a) Unless otherwise specifically provided by statute, a party who has exhausted all administrative remedies available within department rules and who is aggrieved by a final decision in a contested case is entitled to a judicial review. This section is cumulative of any other means of redress provided by statute and any statutory provision for specific judicial review shall govern notwithstanding this section.

(b) Proceedings for review are instituted by filing a petition within 30 days after the decision complained of is final and appealable. Unless otherwise provided by statute.

(1) the petition is filed in a district court of Travis County, Texas;

(2) a copy of the petition must be served on the department and all parties of record in the proceedings before the department; and

(3) the filing of the petition vacates a decision for which trial de novo is the manner of review authorized by law but does not affect the enforcement of a decision for which another manner of review is authorized. If the manner of the review authorized by law for the decision complained of is by trial de novo, the reviewing court shall try all issues of fact and law in a manner applicable to other civil suits in the state.

(c) If the manner of review authorized by law for the decision complained of is other than by trial de novo, in the absence of other specific statutory provisions, the provisions of the Government Code, §2001.175, shall be applicable.

§403.485. *Distribution.* This subchapter governing administrative hearings of the department in contested cases shall be distributed to:

- (1) members of the Texas Board of Mental Health and Mental Retardation;
- (2) deputy commissioners;
- (3) associate and assistant deputy commissioners;
- (4) management and program staff of the central office;
- (5) superintendents/directors of all department facilities;
- (6) persons designated as hearing examiners; and
- (7) upon request, any party to an administrative hearing conducted under this subchapter.

§403.486. *References.* Reference is made to the following statutes:

- (1) Government Code, §§2001.061, 2001.089, 2001.094-.103, and 2001.175;
- (2) Rules of Civil Procedure; and
- (3) Persons with Mental Retardation Act, Texas Health and Safety Code, Subtitle D.

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

Issued in Austin, Texas, on March 29, 1994.

TRD-9438281
Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: May 6, 1994

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

◆ ◆ ◆
Chapter 405. Client (Patient) Care

Subchapter E. Electroconvulsive Therapy

• 25 TAC §405.104

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes an amendment to §405.104, concerning general requirements.

The amendment to §405.104 would add subsection (f) to prohibit the use of regressive, or depatterning, ECT; it would also add subsection (g) to indicate that the use of multiple-monitored ECT requires consultation with another board-certified psychiatrist with training and experience in the use of ECT.

Leilani Rose, director, Office of Financial Services, has determined that there are no significant fiscal implications to state or local

government or small businesses as a result of administering the sections as proposed. There is no anticipated local economic impact.

William Reid, M.D., M.P.H., medical director, has determined the public benefit is the adoption of rules that update standards of care.

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

The sections are proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§405.104. *General Requirements.*

(a) Only a physician licensed to practice medicine in Texas may administer ECT and a physician may not delegate the act of administering the therapy. A nonphysician who administers ECT is considered to be practicing medicine in violation of the Medical Practice Act, Texas Civil Statutes, Article 4495b.

(b) No person under the age of 16 shall receive ECT.

(c) Prior to receiving ECT, every patient, voluntary or involuntary, competent or incompetent, shall be given full explanation of ECT consistent with the definition of ECT in §405.103 of this title (relating to definitions) and meeting the requirements of §405.108 of this title (relating to informed consent to electroconvulsive therapy).

(d) If any patient, without regard to competency, objects to ECT and there is an alternative method of treatment (that is not contraindicated and which has a reasonable potential for success) to which the patient does not object, the alternative method shall be considered and, if mutually acceptable to the patient or the guardian of the person of the patient and the treating physician, shall be used. It is not to be inferred, however, that ECT should be held as a treatment of "last resort." Full documentation of the factors considered in arriving at the decision to use ECT, the consent process, the treatment procedures, and patient response to treatment shall be entered into the patient's permanent medical record.

(e) The use of ECT for punishment, solely for control of behavior, for convenience of staff, in order to make patients more compliant, and the use of ECT in a discriminatory or abusive manner are explicitly prohibited.

(f) Consistent with prevailing standards of practice, and based on evidence of unacceptably high risks and hazards as reflected in biomedical literature, "regressive" or "depatterning" ECT is prohibited.

(g) A second opinion from a fully trained psychiatrist experienced in ECT is required before offering or providing multiple-monitored ECT. The opinion must be documented in the patient's medical record. When this technique is proposed, it is required that information describing the differences in benefits and risks of multiple-monitored ECT, compared to conventional ECT, be provided and documented as part of the informed consent process.

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

Issued in Austin, Texas, on March 30, 1994.

TRD-9438306
Ann K. Utley
Chair
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: May 6, 1994

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

◆ ◆ ◆
TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XIII. Texas Commission on Fire Protection

Chapter 531. Fire Alarm Rules

- 37 TAC §§531.7, 531.13, 531.14, 531.18-531.24 (*Editor's note: The Texas Commission on Fire Commission inadvertently filed incorrect language to these new sections in the March 15, 1994, issue of the Texas Register (19 TexReg 1783). The sections are being republished in this issue. The commission has extended the comment period on these rules to May 6, 1994.*)

The Texas Commission on Fire Protection proposes new §§531.7, 531.13, 531.14, 531.18-531.24, concerning regulation of the business of inspecting, planning, certifying, leasing, selling, servicing, testing, installing, monitoring, and maintaining fire alarm or fire detection devices and systems. The new §531.7 and §531.13 update NFPA Standard 12A to 1992, and NFPA Standards 12, 70, 72 and 90A to 1993; it also adopts UL 827 (1989), Standard for Central Stations for watchmen, fire alarm, and supervisory services. The new §531.14 makes the initial examination and reexamination fees non-refundable and non-transferable. Section 531.18 is a new section requiring inspections to be performed and documented by a li-

censed fire alarm technician or planner at certain times. The new §§531.19-531.24 renumber the remaining sections accordingly.

G. Mike Davis, interim state fire marshal, 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. Davis 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 more efficient regulation of these businesses, with a resulting improvement in the quality of protection afforded property and lives by fire alarm equipment.

Additionally, Mr. Davis has determined that for each year of the first five years the new §531.14 is in effect, the public benefit anticipated as a result of enforcing this section will be adequate testing space for all persons taking examinations qualifying them as fire protection licensees.

Comments on the proposal may be submitted to Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286

The new sections are proposed under Article 5.43-2, §§4, 4A, and 6, which provides the Texas Commission on Fire Protection with the authority to adopt rules necessary to its administration through the state fire marshal for the protection and preservation of life and property.

The Texas Insurance Code, Article 5.43-2, Rule numbers--§§531.7, 531.13, 531.14, 531.18-531.24 is affected by these proposed new sections:

§531.7. *Adopted Standards.*

(a) The commission adopts by reference those sections of the following copyrighted minimum standards, recommendations, and appendices concerning fire alarm, fire detection, or supervisory services or systems, except to the extent they are at variance to sections of this chapter, the Texas Insurance Code, Article 5.43-2, or other state statutes. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts.

(1) NFPA 11-1988, Standard on Low Expansion Foam and Combined Agent Systems.

(2) NFPA 11A-1988, Standard for Medium- and High-Expansion Foam Systems.

(3) NFPA 12-1993, Standard for Carbon Dioxide Extinguishing Systems

(4) NFPA 12A-1992, Standard on Halon 1301 Fire Extinguishing Systems

(5) NFPA 12B-1990, Standard on Halon 1211 Fire Extinguishing Systems

(6) NFPA 13-1991, Standard for the Installation of Sprinkler Systems

(7) NFPA 13A-1987, Recommended Practice for the Inspection, Testing, and Maintenance of Sprinkler Systems.

(8) NFPA 13D-1991, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Mobile Homes.

(9) NFPA 13R-1991, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to Four Stories in Height

(10) NFPA 15-1990, Standard for Water Spray Fixed Systems for Fire Protection

(11) NFPA 16-1991, Standard on Deluge Foam-Water Sprinkler and Foam-Water Spray Systems.

(12) NFPA 17-1990, Standard for Dry Chemical Extinguishing Systems

(13) NFPA 17A-1990, Standard on Wet Chemical Extinguishing Systems.

(14) NFPA 25-1992 Standard for Inspection, Testing and Maintenance of Water Based Extinguishing Systems

(15) NFPA 70-1993, National Electrical Code

(16) NFPA 72-1993, National Fire Alarm Code

(17) NFPA 90A-1993, Standard for the Installation of Air Conditioning and Ventilating Systems

(18) NFPA 101-1985 and later editions, Code for Safety to Life from Fire in Buildings and Structures (Life Safety Code), or a local jurisdiction may adopt one set of the model codes listed in subsection (b) of this section in lieu of NFPA 101

(19) UL 827 (1989), as amended through October 14, 1993, Standard for Central Stations for watchmen, fire alarm, and supervisory services.

(b) The acceptable alternative model code sets are.

(1) the Uniform Building Code-1985 and later editions, and the Uniform Fire Code-1985 and later editions, or

(2) the SBCCI Building Code-1985 and later editions, and the SBCCI Fire Code-1985 and later editions, or

(3) the BOCA Building Code-1985 and later editions, and the BOCA Fire Code-1985 and later editions

§531.13 *Applications*

(a) Certificates of registration

(1) Applications for certificates and branch office certificates must be submitted on forms provided by the state fire

marshal and be accompanied by all fees, documents, and information required by the Insurance Code, Article 5.43-2, and the sections of this chapter. An application will not be deemed complete until all required forms, fees, and documents have been received in the State Fire Marshal's office.

(2) Applications must be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Texas business and Commerce Code, Chapter 36. The application must also include written authorization by the applicant permitting the state fire marshal or his representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of the Insurance Code, Article 5.43-2, and the sections of this chapter.

(3) For corporations, the application must also include the name of each shareholder owning more than 25% of the shares issued by the corporation, the corporate taxpayer identification number, the charter number, a copy of the corporate charter of a Texas corporation, or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business, and a copy of the corporation's current franchise tax certificate of good standing issued by the State Comptroller's office

(4) Insurance required

(A) The state fire marshal will not issue a certificate of registration under these sections unless the applicant files with the State Fire Marshal's office evidence of an acceptable general liability insurance policy

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's office a certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name of the name of the corporation, partners, if any, or sole proprietor, if applicable

(5) Applicants for a certificate of registration who engage in monitoring must provide the specific business location(s) where monitoring will take place and the name and license number of the fire alarm licensee(s) at each business location. In addition the applicants must

(A) for a central station provide evidence of listing or certification as a

central station by a testing laboratory approved by the Texas Commission on Fire Protection and a statement that the monitoring service is in compliance with adopted NFPA 72; or

(B) for a remote station: provide evidence of listing or certification as a remote station by a testing laboratory approved by the Texas Commission on Fire Protection, and a statement that the monitoring service is in compliance with adopted NFPA 72.

(b) Fire alarm licenses.

(1) In order to be complete, applications for a fire alarm technician, residential fire alarm superintendent (single station), residential fire alarm superintendent, or fire alarm planning superintendent license from an employee or agent of a registered firm must be submitted on forms provided by the state fire marshal and be accompanied by all fees, documents, and information required by the Insurance Code, Article 5.43-2, and the sections of this chapter. Applications must be signed by the applicant and by a person authorized to sign on behalf of the registered firm. All applicants for any type of license must successfully complete a qualifying examination regarding Insurance Code, Article 5.43-2, and the Fire Alarm Rules to be conducted by the State Fire Marshal's office.

(2) Applicants for fire alarm technician licenses must:

(A) furnish notification from NICET confirming the applicant's successful completion of the examination requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying examination to be conducted by the State Fire Marshal's office.

(3) Applicants for a residential fire alarm superintendent (single station) license must successfully complete a technical qualifying examination to be conducted by the State Fire Marshal's office.

(4) Applicants for a residential fire alarm superintendent license must:

(A) furnish notification from NICET confirming the applicant's successful completion of the examination requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying examination to be conducted by the State Fire Marshal's office.

(5) Applications for a fire alarm planning superintendent license must be accompanied by one of the following documents as evidence of technical qualifications for a license:

(A) proof of registration in Texas as a professional engineer; or

(B) a copy of NICET's notification letter confirming the applicant's successful completion of the examination requirements for certification at Level II for fire alarm systems.

(6) Individuals applying for a fire alarm planning superintendent license on or before September 1, 1989, without completing the NICET examination requirements may be issued a license for one year. At the time of renewal of such license, the applicant must attach to the application a copy of NICET's notification letter confirming the applicant's successful completion of the examination requirements for certification at Level II for fire alarm systems.

(c) Renewal Applications.

(1) In order to be complete, renewal applications for certificates and licenses must be submitted on forms provided by the state fire marshal and be accompanied by all fees, documents, and information required by the Insurance Code, Article 5.43-2, and the sections of this chapter. A complete renewal application deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a postmark date which is before the expiration of the certificate or license being renewed.

(2) A license may not be renewed if the applicant is not currently an employee or an agent of a registered firm.

§531.14. Fees.

(a) Every fee required in accordance with the provisions of the Insurance Code, Article 5.43-2, and the sections of this chapter must be paid by cash, money order, or check. Money orders and checks must be made payable to the Texas Commission on Fire Protection.

(b) Fees must be paid at the Office of the State Fire Marshal in Austin, Texas, or mailed to an address specified by the state fire marshal.

(c) Fees are as follows.

(1) Fire alarm certificate of registration:

(A) initial fee-\$500;

(B) renewal fee (for two years)-\$1, 000;

(C) branch office initial fee-\$150; and

(D) renewal fee (for two years)-\$300.

(2) Fire alarm technician license:

(A) initial fee-\$100; and

(B) renewal fee (for two years) -\$200.

(3) Residential fire alarm superintendent (single station) license:

(A) initial fee-\$100; and

(B) renewal fee (for two years)-\$200.

(4) Residential fire alarm superintendent license:

(A) initial fee-\$100; and

(B) renewal fee (for two years) -\$200.

(5) Fire alarm planning superintendent license:

(A) initial fee-\$100; and

(B) renewal fee (for two years)-\$200.

(6) Duplicate or revised certificates or licenses or other requested changes to certificates or licenses-\$20

(7) Examination fee-\$20 (non-refundable/non-transferable). The fee is forfeited if the applicant does not appear for the scheduled examination.

(8) Reexamination fee-\$20 (non-refundable/non-transferable). The fee is forfeited if the applicant does not appear for the scheduled examination.

(d) Late fees are required of all certificate or license holders who fail to submit complete renewal applications before the expiration of the certificate or license except as provided in the Insurance Code, Article 5.43-2, §5C(c).

(e) Fees for certificates and licenses which have been expired for less than two years include both renewal and late fees and must be determined in accordance with the following schedule. Expired 1 day to 90 days:

	Renewal Fee	Late Fee	Total Fee
Certificate	\$1,000 (2 years)	\$125.00	\$1,125.00
Branch office certificate	300 (2 years)	37.50	337.50
Licenses			
(Technician)	200 (2 years)	25.00	225.00
(Residential Fire Alarm Superintendent (Single Station))	200 (2 years)	25.00	225.00
(Residential Fire Alarm Superintendent)	200 (2 years)	25.00	225.00
(Planning Superintendent)	200 (2 years)	25.00	225.00

Expired 91 days to 2 years:

	Renewal Fee	Late Fee	Total Fee
Certificate	\$1,000 (2 years)	\$500	\$1,500
Branch office certificate	300 (2 years)	150	450
Licenses			
(Technician)	200 (2 years)	100	300
(Residential Fire Alarm Superintendent (Single Station))	200 (2 years)	100	300
(Residential Fire Alarm Superintendent)	200 (2 years)	100	300
(Planning Superintendent)	200 (2 years)	100	300

§531.18. *Installation Inspections.* Inspections shall be performed by a licensed fire alarm technician or planner and be documented on the inspection form. The registered firm shall notify the authority having jurisdiction if initiation of corrective action does not take place within ten calendar days. The completed form shall be kept

on file at the licensed firm's office for a period of five years from the date of system certification. Inspections shall be performed by the licensed firm in order to assure proper installation techniques are followed; at the following stages of installation:

(1) at the completion of the device back-box installation but prior to the start of cable installation;

(2) at the completion of cable installation but prior to the start of device installation; and

(3) at the completion of device installation but prior to activating the fire alarm system. The Fire Alarm System Installation Inspection Form is as follows.

**FIRE ALARM SYSTEM
INSTALLATION INSPECTION FORM**

Project: _____
Address: _____

Licensed Firm: _____
ACR Number: _____

DEVICE BACK-BOX INSTALLATION

Name of Licensee: _____
License Number: _____
Signature: _____
Date: _____
Problems Noted: _____

CABLE INSTALLATION

Name of Licensee: _____
License Number: _____
Signature: _____
Date: _____
Problems Noted: _____

DEVICE INSTALLATION

Name of Licensee: _____
License Number: _____
Signature: _____
Date: _____
Problems Noted: _____

§531.19. Fire Alarm and Detection System Plans.

(a) Each fire alarm system or modification to an existing system must be planned by a person holding a fire alarm planning superintendent license or a Texas registered professional engineer.

(b) Plans showing details of system wiring, control panel terminal identification and device location, with functional infor-

mation and instructions on system operation, must be provided to the building owner or his representative. Subsequent modifications, additions, or alterations must be legibly noted on updated plans and provided to the owner or his representative.

(c) Plans must bear the name, signature, and license number of the licensed fire alarm planning superintendent or Texas registered professional engineer, the com-

pletion date and the name, address, and certificate number of the registered firm.

(d) A rubber stamp may be used by a licensed fire alarm planning superintendent to supply the information required by subsection (c) of this section, except that a stamped signature is prohibited. If a rubber stamp is used, it must produce an imprint at least two inches wide by one inch high, all in bold type and capital letters, and in the following format:

XXX ALARM SERVICE	
555 SPRING LANE	
HOMEVILLE, TEXAS 77777-7777	
ACR- (number)	
H. B. BROWN	
APS-0000	Date

§531.20. Installation and Service Labels.

(a) After an installation or modification has been completed, an installation label must be affixed to the inside of the control panel cover or, if the system has no panel, in a permanently visible location designated by the property owner. Installation labels must be four inches in height and four inches in width and must be of the gummed label type. Installation labels must

be white with black lettering. Installation labels must contain the following information in the format of the label shown in subsection (b) of this section:

(1) the inscription "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL-FIRE ALARM INSTALLATION RECORD" (all in capital letters, at least 10-point bold face type) ;

(2) the firm's name, address, and telephone number (either main office or branch office);

(3) the firm's certificate-of-registration number;

(4) the signature and license number of the certifying licensee (a stamped signature is prohibited);

(5) if required, the name and license number of the planning superintendent or Texas registered professional engineer; and

(6) the date of installation.

(b) Installation label:

DO NOT REMOVE	
BY ORDER OF	
THE STATE FIRE MARSHAL	
FIRE ALARM INSTALLATION RECORD	
CR No.	_____
Firm Name	_____
Firm Address	_____
City	_____
Telephone	_____

Signature of Licensee and License No.	

Planning Superintendent and License No.	
or Professional Engineer and License No.	
Installation Date	_____

(c) After any service, including testing in connection with initial installation, a fire alarm service label must be completed in detail and affixed to the inside of the control panel cover or, if the system has no panel, in a permanently visible location designated by the property owner. The signature of the licensee on the service label certifies that the service performed complies with requirements of law.

(d) A new service label must be affixed each time service is performed and must be green in color with black lettering.

(e) The label must be at least three inches in height and three inches in width and must be of the gummed label type that allows for label removal. Service labels must contain the following information in the format of the service label shown in subsection (f) of this section:

(1) the inscription "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL-SERVICE RECORD" (all in capital letters, at least 10-point bold face type);

(2) the firm's name, address, and telephone number (either main office or branch office);

(3) the firm's certificate-of-registration number;

(4) the signature and license number of the certifying licensee (a stamped signature is prohibited);

(5) the date of service performed; and

(6) the type of service performed.

(f) Service label:

DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL SERVICE RECORD	
XXX Alarm Service 555 Spring Lane Homeville, Texas 77777-7777	
555/333-3333	ACR- (number)
Date-Licensee Signature-License #	
List Services: _____	

(g) If a fire alarm system does not comply with applicable standards, has a fault condition, or is inoperable, the owner or his representative must be notified in writing by the registered firm of the conditions which cause the system to be out of compliance, to be in a fault condition, or to be inoperable. The registered firm must send a copy of this notice to the authority having jurisdiction and must comply with the requirements of this section and §531.21 of this title (relating to Red Labels).

§531.21. Yellow Labels.

(a) If a fire alarm system does not comply with applicable standards adopted at the time the system was installed or has a fault condition that does not render the system inoperable, a completed yellow label must be attached to the outside of the control panel cover or, if the system has no

panel, in a permanently visible location designated by the property owner to indicate that corrective action is necessary.

(b) The signature of the licensee on a yellow label certifies that the conditions listed on the label cause the system to be out of compliance with applicable standards.

(c) Yellow labels must be at least three inches in height and three inches in width and be of a gummed label type that allows for label removal. Labels must be printed with black lettering.

(d) Yellow labels must bear the following information in the format of the label shown in subsection (e) of this section:

(1) the inscription "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL-SYSTEM DOES NOT COMPLY WITH APPLICABLE STANDARDS AND/OR HAS A FAULT CONDITION" (all in capital letters, at least 10-point bold face type);

(2) the firm's name, address, and telephone number (either main office or branch office);

(3) the firm's certificate-of-registration number;

(4) the signature and license number of the certifying licensee (a stamped signature is prohibited);

(5) the date the label is affixed; and

(6) a list of the non-complying and/or fault conditions.

(e) A yellow label may be removed only by a licensed employee or agent of a registered firm that has corrected the conditions and certified the service.

(f) Yellow label:

DO NOT REMOVE
 BY ORDER OF THE STATE FIRE MARSHAL

SYSTEM DOES NOT COMPLY WITH
 APPLICABLE STANDARDS AND/OR
 HAS A FAULT CONDITION

XXX Alarm Service
 555 Spring Lane
 Homeville, Texas 77777-7777
 555/333-3333 ACR- (number)

Date-Licensee Signature-License #

List Conditions: _____

§531.22. Red Labels.

(a) If the system or any part thereof is inoperable, a completed red label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanently visible location designated by the property owner to indicate that corrective action or system replacement is necessary.

(b) The signature of the licensee on a red label certifies that the conditions listed on the label have caused the system to be inoperable.

(c) A completed service label must not be attached to the system by the licensee until the conditions are corrected and the fire alarm system:

- (1) is reinspected;
- (2) is in compliance with applicable standards adopted at the time of installation; and
- (3) is in good operating condition.
- (d) Red labels must be at least three inches in height and three inches in width and be of a gummed label type that allows for label removal. Labels must be printed with black lettering.
- (e) Red labels must bear the following information in the format of the label shown in subsection (g) of this section:

(1) the inscription "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL—SYSTEM IS INOPERA-

BLE" (all in capital letters, at least 10-point bold face type);

(2) the firm's name, address, and telephone number (either main office or branch office);

(3) the firm's certificate-of-registration number;

(4) the signature and license number of the certifying licensee (a stamped signature is prohibited);

(5) the date the label is affixed; and

(6) the list of conditions.

(f) A red label may be removed only by a licensed employee or agent of a registered firm who has corrected the conditions and certified the service.

(g) Red label:

DO NOT REMOVE
 BY ORDER OF THE STATE FIRE MARSHAL
 SYSTEM IS INOPERABLE
 XXX Alarm Service
 555 Spring Lane
 Homeville, Texas 77777-7777
 555/333-3333 ACR- (number)

Date-Licensee Signature-License #
 List Conditions: _____

§531.23. Enforcement.

(a) The State Fire Marshal, or his representative, may conduct investigations of registered firms to determine compliance with the Insurance Code, Article 5.43-2 and this chapter. An investigation may be initiated on the written complaint of any party or by the Texas Commission on Fire Protection on its own motion.

(b) When an investigation reveals non-compliance, the firm and any licensee responsible for the work shall be notified in writing of the non-compliance upon completion of the investigation report.

(c) The Texas Commission on Fire Protection, in its discretion, may require correction of the violations found, or it may initiate agency proceedings seeking appropriate sanctions pursuant to the Insurance Code, Article 1.10, §7(a) and Article 5.43-2, §10(b).

§531.24 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this chapter which can be given effect without the invalid provisions or application. To this end all provisions of the sections of this chapter are declared to be severable.

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

Issued in Austin, Texas, on March 2, 1994

TRD-9437072

Jack Woods
 General Counsel
 Texas Commission on Fire
 Protection

Earliest possible date of adoption: April 15, 1994

For further information, please call: (512) 873-1700

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

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

The Texas Department of Human Services (DHS) proposes the repeal of §19.218 and an amendment to §19.219, concerning incompetency and documentation for the delegation of long-term care resident's rights, in its Long-Term Care Nursing Facility Requirements rule chapter. The purpose of the proposal is to comply with Senate Bill 332, which provides a surrogate decision-making process for incompetent adults residing in nursing facilities.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposal will be in effect there will be no fiscal implications for state or local government as

a result of enforcing or administering the proposal

Mr. Raiford also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the proposal will be enhancement of the rights of nursing facility residents. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal

Questions about the content of the proposal may be directed to Maxcine 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-082, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter C, Resident Rights

• 40 TAC §19.218

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

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The repeal implements the Human Resources Code, §§32.001-32.042.

§19.218. *Incompetency.*

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

Issued in Austin, Texas on March 30, 1994.

TRD-9438324

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

Proposed date of adoption: June 1, 1994

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

◆ ◆ ◆
• 40 TAC §19.219

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendment implements the Human Resources Code, §§32. 001-32.042.

§19.219. *Documentation for the Delegation of Long-Term Care Resident's Rights.*

(a) The delegation of [the individual,] resident [and citizen] rights may occur in [any] three cases:

(1) when a competent individual chooses to allow another to act for him, such as with a Durable Power of Attorney;

(2) when the resident has been adjudicated to be incompetent by a court of law and a guardian has been appointed; or

(3) when the physician has determined that, for medical reasons, the resident is incapable of understanding and exercising such rights. The Health and Safety Code, Chapter 313, Consent to Medical Treatment, provides guidance under certain circumstances when a resident is comatose, incapacitated, or otherwise mentally or physically incapable of communication.

(b) In order to assure preservation of rights, the physician and the facility must [be aware of, must address, and must] document specific information concerning the incapability of the resident to understand and exercise his rights [even if the resident has been adjudicated incompetent and a guardian has been appointed or if there is an extant Durable Power of Attorney].

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(c) To ensure that the protection of a resident adjudicated incompetent or determined to be incapable of exercising his/her

rights and responsibilities for medical reasons, the administrator, the physician, and the resident care staff have specific responsibilities.]

(c)[(d)] Facility [Administrative] documentation must cover:

(1) the relationship of the resident to the person assuming his rights and responsibilities;

(2) the authority allowing [that] the responsible person to [can] act for the resident;

(3) resident assessments, care plans, and progress notes that address the resident's inability to exercise his rights and responsibilities; [the extent of a guardianship or Power of Attorney.]

(4) assurance that the resident who is mentally capable of understanding and exercising his rights, but physically incapable of doing so, receives interventions which facilitate the exercise of his rights.

(d)[(e)] Physician documentation must cover:

(1) resident's comatose state, incapacity, or other mental or physical inability to communicate [a statement that the resident is or is not capable of understanding and exercising his or her rights];

(2) proposed medical treatment or decision [specific causative and/or contributive medical diagnosis(es)];

◆ ◆ ◆
[(3) medical observations and test(s) which support the diagnosis; Examples: Alzheimer's Disease, Organic Brain Syndrome, confusion, short term memory loss, inability to attend to verbal input, disorientation as to time, place, or person, incoherent speech, inability to attend or converse or to answer questions (etc.);]

(3) [(4)] periodic assurance that there has been no essential change in the resident's mental function;

(4)[(5)] reevaluation whenever a significant change in resident status occurs or for orders that impact on resident rights (e.g. "No CPR").

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◆ ◆ ◆
(f) Facility staff documentation:

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◆ ◆ ◆
[(1) resident assessments, care plans and progress notes that address the resident's inability to exercise his rights and responsibilities and demonstrate that the facility encourages the resident to exercise his rights and responsibilities to his fullest capability;

◆ ◆ ◆
◆ ◆ ◆
[(2) assurance that the resident who is mentally capable of understanding and exercising his rights, but physically incapable of doing so, receives interventions which facilitate the exercise of his rights.]

◆ ◆ ◆
◆ ◆ ◆
[(g) The presence of such documentation does not guarantee the protection of a resident's rights and responsibilities, but forms the basis for compliance with the federal requirements for the delegation of a resident's rights. It is important because it increases the likelihood that the resident's care-givers and family will understand and be accountable for the resident's rights and responsibilities.]

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

Issued in Austin, Texas, on March 30, 1994

TRD-9438323

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

Proposed date of adoption: June 1, 1994

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

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◆ ◆ ◆
Chapter 90. Nursing Facilities
and Related Institutions

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◆ ◆ ◆
Subchapter C. Standards for
Licensure

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◆ ◆ ◆
• 40 TAC §90.41

The Texas Department of Human Services (DHS) proposes an amendment to §90.41, concerning standards for nursing facilities, in its Nursing Facilities and Related Institutions rule chapter. The purpose of the amendment is to comply with Senate Bill 332, which provides a surrogate decision-making process for incompetent adults residing in nursing facilities.

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

Mr. Raiford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be enhancement of the rights of nursing facility residents. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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Questions about the content of the proposal may be directed to Maxcine 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-082, 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 and under Texas Civil Statutes, Article 4413 (502), 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. The amendment implements the Health and Safety Code, §§242.001-242.186.

§90.41. Standards for Nursing Facilities.

(a) (No change.)

(b) Resident Rights.

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

[(16) Incompetency. If a resident has been adjudicated incompetent or has been found by the attending physician to be, for medical reasons, incapable of understanding these rights, the resident's rights are to be exercised as outlined in this subchapter. Documentation to support delegation of rights must be according to the provisions of paragraph (17) of this subsection.]

(16)[(17) Documentation for the delegation of long term care resident's rights.

(A) The delegation of [the individual,] resident [and citizen] rights may occur in [any one of the following] three cases:

(i) when a competent individual chooses to allow another to act for him[her], such as with a Durable Power of Attorney;

(ii) when the resident has been adjudicated to be incompetent by a court of law and a guardian has been appointed; or

(iii) when the physician has determined that, for medical reasons, the resident is incapable of understanding and exercising such rights. The Health and Safety Code, Chapter 313, Consent to Medical Treatment, provides guidance under certain circumstances when a resident is comatose, incapacitated, or otherwise mentally or physically incapable of communication.

(B) In order to assure preservation of rights, the physician and the facil-

ity must [be aware of, must address, and must] document specific information concerning the incapability of the resident to understand and exercise his[her] rights [even if the resident has been fully adjudicated incompetent and a guardian has been appointed or if there is an extant durable power of attorney].

[(C) To ensure that the protection of a resident adjudicated incompetent or determined to be incapable or exercising his/her rights and responsibilities for medical reasons, the administrator, the physician, and the resident care staff have specific responsibilities.]

(C)[(D)] Facility documentation must cover [Administrative documentation must exist covering]:

(i) the relationship of the resident to the person assuming his rights and responsibilities;

(ii) the authority allowing [evidence that] the responsible person to [can] act for the resident; [and]

(iii) resident assessments, care plans, and progress notes that address the resident's inability to exercise his rights and responsibilities; and [the extent of a guardianship or power of attorney.]

(iv) assurance that the resident who is mentally capable of understanding and exercising his rights, but physically incapable of doing so, receives interventions which facilitate the exercise of his rights.

(D) [(E)] Physician documentation must cover [exist covering]:

(i) resident's comatose state, incapacity, or other mental or physical inability to communicate [a statement that the resident is or not capable of understanding and exercising his/her rights];

(ii) proposed medical treatment or decision [specific causative and/or contributive medical diagnosis(es)];

[(iii) medical observation and test(s) which support the diagnosis; (examples include, but are not limited to, Alzheimer's Disease, Organic Brain Syn-

drome, confusion, short-term memory loss, inability to attend to verbal input, disorientation as to time, place, or person, incoherent speech, inability to attend or converse or to answer questions);]

(iii)[(iv)] periodic assurance that there has been no essential change in the resident's mental function;

(iv)[(v)] reevaluation whenever a significant change in resident status occurs or for orders that impact on resident rights (e.g. "No CPR").

[(F) Facility staff documentation must exist covering:

(i) resident assessments, care plans and progress notes that address the resident's inability to exercise his/her rights and responsibilities and demonstrate that the facility encourages the resident to exercise his/her rights and responsibilities to his/her fullest capability;

(ii) assurances that the resident who is mentally capable of understanding and exercising his/her rights, but physically incapable of doing so, receives interventions which facilitate the exercise of his/her rights.]

[(G) The presence of documentation in this paragraph does not guarantee the protection of a resident's rights and responsibilities, but forms the basis for compliance with the federal requirements for the delegation of a resident's rights. It is important because it increases the likelihood that the resident's care-givers and family will understand and be accountable for the resident's rights and responsibilities.]

(c)-(p) (No change.)

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

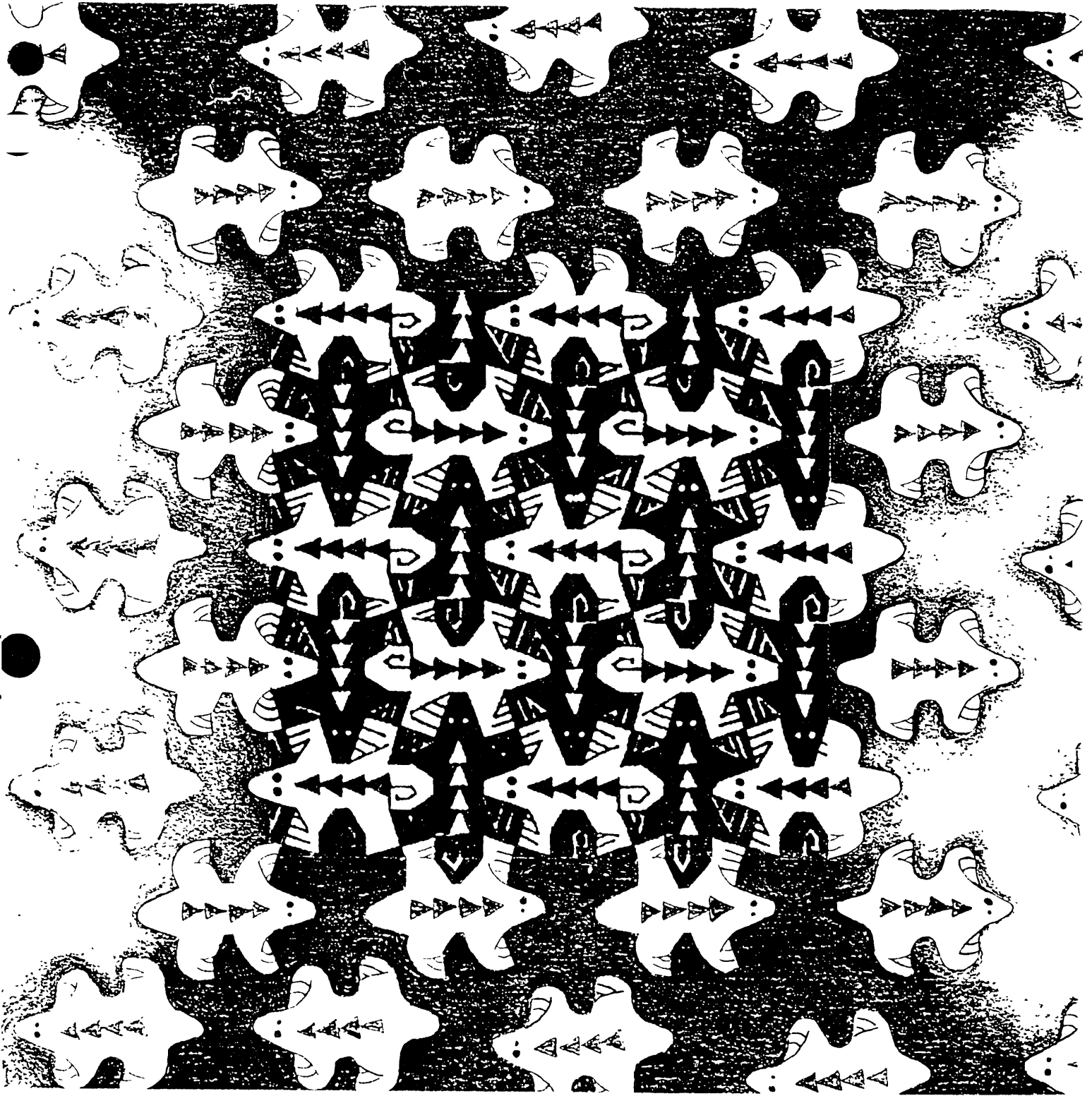
Issued in Austin, Texas, on March 30, 1994.

TRD-9438325

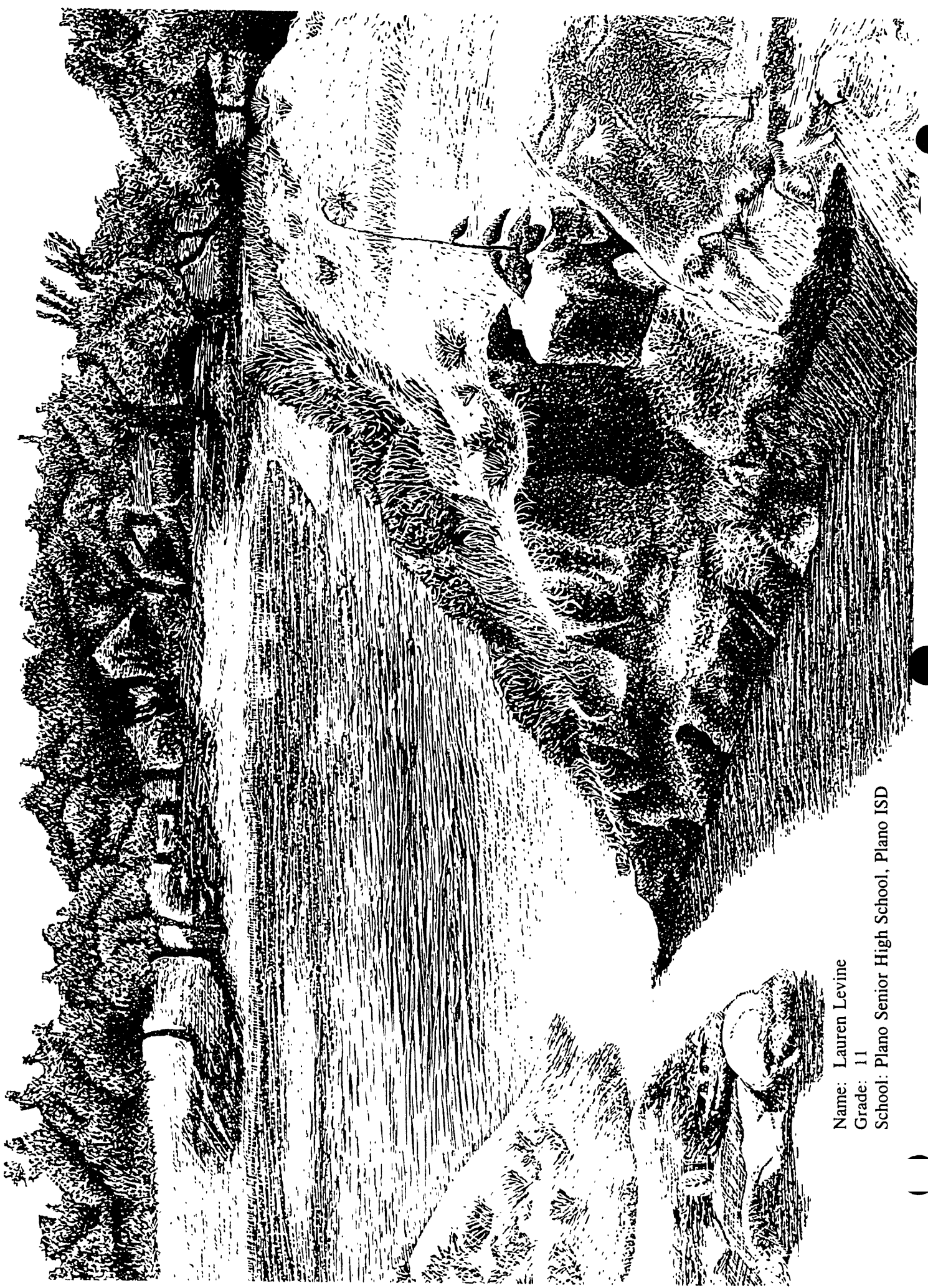
Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: June 1, 1994

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



Name Justin Wolack
Grade 12
School Plano Senior High School, Plano ISD



Name: Lauren Levine

Grade: 11

School: Plano Senior High School, Plano ISD

ADOPTED RULES

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

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

TITLE 1. ADMINISTRATION

Part II. Texas Ethics Commission

Chapter 20. Reporting Political Contributions and Expenditures

Subchapter C. Reporting Requirements for a Candidate

• 1 TAC §20.206

The Texas Ethics Commission (the commission) adopts new §20.206 without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 749).

This section provides guidelines to a candidate when transferring his or her appointment of campaign treasurer to another filing authority and provides for the automatic termination of a candidate's appointment of campaign treasurer with the former filing authority.

This section will govern the transfer of a campaign treasurer appointment from one filing authority to another when a candidate decides to seek a different office when requires that reports are to be filed with a different filing authority.

No comments were received regarding adoption of the rule.

The new section is adopted under Texas Government Code, Chapter 571, §571.062, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission, and by Texas Election Code, §252.010 (relating to Transfer of Appointment).

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

Issued in Austin, Texas, on March 25, 1994

TRD-9438318 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Effective date April 20, 1994

Proposal publication date February 4, 1994

For further information, please call (512) 463-5800

Chapter 34. Conduct of Lobbyists

Subchapter A. Restrictions on Lobby Expenditures

• 1 TAC §§34.7, 34.9, 34.11

The Texas Ethics Commission (the commission) adopts new §§34.7, 34.9, 34.11, without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 749).

These sections implement laws that regulate gifts of cash or loans by a lobbyist to a member of the legislative or executive branch of state government. These sections are renumbered from previous rules adopted and repealed by the commission. No substantive changes were made other than those needed to renumber these sections.

These sections set forth rules concerning gifts and loans to be followed by any person registered as a lobbyist under Chapter 305, Texas Government Code.

No comments were received regarding adoption of these rules.

These rules are adopted under Texas Government Code, Chapter 571, §571.062, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission, and by Texas Government Code, Chapter 305 (relating to Registration of Lobbyists), §305.024 (relating to Restrictions and Expenditures) and §305.025 (relating to Exceptions).

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

Issued in Austin, Texas, on March 25, 1994

TRD-9438319 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Effective date April 20, 1994

Proposal publication date February 4, 1994

For further information, please call (512) 463-5800

• 1 TAC §§34.9, 34.11, 34.13

The Texas Ethics Commission adopts the repeal of §§34.9, 34.11, and 34.13, concerning the conduct of those persons registered as lobbyists with the commission pursuant to Chapter 305 of the Government Code, without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 749).

These sections are being recodified under new section numbers.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Government Code, Chapter 571, §571.062, which provides the Texas Ethics Commission with the authority to promulgate rules to implement laws administered and enforced by the commission, and by Texas Government Code, §305.024 (relating to Restrictions and Expenditures) and §305.025 (relating to Exceptions).

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

Issued in Austin, Texas, on March 25, 1994

TRD-9438320 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Effective date April 20, 1994

Proposal publication date February 4, 1994

For further information, please call (512) 463-5800

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 65. Boiler Division

• 16 TAC §§65.20, 65.50, 65.65, 65.70, 65.80

The Texas Department of Licensing and Regulation adopts new §§65.65 and amendments to §§65.20, 65.50, 65.70, and 65.80 concerning the certification of boilers. Section 65.70

is adopted with changes to the proposed text as published in the February 11, 1994, issue of the *Texas Register* (19 TexReg 1004). Sections 65.20, 65.50, 65.65, and 65.80 are being adopted without changes and will not be republished.

These sections are being adopted in order to incorporate recommendations by the Board of Boiler Rules to increase the fee for a boiler certificate of operation when the boiler inspection is performed by an authorized inspector and to clarify the late renewal fee for a commission.

The change in §65.70 will enhance clarity and afford consistency with other sections

Section 65.20 will function by clarifying the time requirement for a boiler inspection; §65.50 will function by allowing for the acceptance of certain data to be electronically transmitted from inspection agencies to this department, §65.65 will function by defining the purpose, method of reporting, and reimbursement of expenses of the Boiler Board; §65.70 will function to clarify the time requirement for a boiler inspection; and §65.80 will function by providing for a boiler certificate of operation fee increase for boiler inspections performed by an authorized inspector and will clarify the commission late renewal fee

No comments were received regarding adoption of the rules.

The amendments and new section are adopted under the Health and Safety Code, Chapter 755, which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules in keeping with standard usage for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

§65.70. Responsibilities of the licensee/certificate holder/registrant.

(a) New installations

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

(3) New boilers, including reinstalled boilers, shall be installed in accordance with the requirements of the latest revision of the applicable section of the ASME code and these rules. These boilers shall be inspected within 30 days of the owner or operator notification

(4) (No change)

(b)-(e) (No change.)

(f) Clearance

(1) (No change)

(2) A minimum clearance of two feet shall be maintained on all sides of a boiler except portable boilers. A minimum of four feet shall be maintained between top of a boiler and roof joist. A minimum of one foot shall be maintained between the bottom of scotch-type boilers and the foundation or floor

(g)-(h) (No change.)

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

Issued in Austin, Texas, on March 28, 1994.

TRD-9438291

Jack W. Carlson
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: April 19, 1994

Proposal publication date: February 11, 1994

For further information, please call: (512) 463-2904

TITLE 19. EDUCATION
Part II. Texas Education Agency

Chapter 61. School Districts

Subchapter AA. Commissioner's Rules

• 19 TAC §61.1010

The Texas Education Agency (TEA) adopts new §61.1010, concerning standards that limit administrative cost expenditures by school districts, without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 755).

The rule is necessary to decrease expenditure of school district funds on administration, increase expenditure of district funds on instruction, or some combination of the two. The rule establishes standards against which districts' administrative-to-instructional cost ratios are compared. Districts with excess administrative expenditures can meet these standards by reducing administrative expenditures and/or increasing instructional expenditures.

One person commented in favor of the proposed new rule. The individual also expressed two concerns related to administrative costs. First, the cost information in the Academic Excellence Indicator System (AEIS) report should be coordinated with the information regarding administrative cost standards. Second, district residents need information on the allocation of district resources to administration in terms of staffing levels (for example, salaried and contracted administrative staff, full-time employees (FTE) per student and teaching FTEs per administrative FTE).

The new section is adopted under the Texas Education Code, §16.205, which authorizes the commissioner of education to adopt standards that limit school districts' administrative costs.

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

Issued in Austin, Texas, on March 28, 1994.

TRD-9438311

Cris Cloudt
Associate Commissioner,
Policy Planning and
Evaluation
Texas Education Agency

Effective date: April 20, 1994

Proposal publication date: February 4, 1994

For further information, please call: (512) 463-9701

Chapter 161. Advisory Committees

Subchapter AA. Commissioner's Rules

• 19 TAC §§161.1001-161.1003

The Texas Education Agency (TEA) adopts new §§161.1001-161.1003, concerning advisory committees. Section 161.1003 is adopted with changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 755). Section 161.1001 and §161.1002 are adopted without changes and will not be republished.

The rules are necessary to streamline management of public education advisory committees and disclose all information about advisory committees. The rules specify the procedures for establishing advisory committees and list all committees currently in effect.

The changes to §161.1003 amend the list of public education advisory committees currently in effect by deleting obsolete committees, adding new committees, and changing the names of two committees. The Texas Collaborative Transition Grant Advisory Committee is changed to the Texas Collaborative Transition Project Steering Committee. The Academic Excellence Indicator System (AEIS): Parent Report Card Advisory Committee is changed to the Academic Excellence Indicator System (AEIS): Parent/Family Report Card Advisory Committee.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Education Code, §11.954 and §11.957, which authorizes the commissioner of education to adopt rules concerning the purpose, task, reporting procedures, and abolishment of advisory committees.

§161.1003. Advisory Committees. The following public education advisory committees are in effect:

(1) Texas Commission on Braille Textbook Production;

(2) Committee of Practitioners for Career and Technology Education;

(3) State Committee of Practitioners—Chapter 1 Handicapped Program;

(4) Committee of Practitioners—Chapter 1;

(5) Chapter 2 Advisory Committee;

(6) Texas Collaborative Transition Project Steering Committee;

(7) Comprehensive System of Personnel Development Leadership Council;

(8) Task Force on the Education of Students with Disabilities;

(9) Texas Environmental Education Advisory Committee;

(10) Commissioner's Advisory Council on the Education of Gifted Students;

(11) Advisory Task Force on the Education of Homeless Children and Youth;

(12) Policy Committee on Public Education Information;

(13) State Parent Advisory Council for Migrant Education;

(14) Minority Recruitment Advisory Committee;

(15) Academic Excellence Indicator System (AEIS): Parent Report Card Advisory Committee;

(16) Investment Advisory Committee on the Permanent School Fund;

(17) Texas Education Program Manual Task Force;

(18) Roundtable on School Safety and Violence Prevention;

(19) Statewide Site-Based Decision Making Advisory Committee;

(20) Special Education Effectiveness Studies Project Advisory Committee;

(21) Continuing Advisory Committee for Special Education;

(22) Advisory Committee on Student Assessment;

(23) Committee on Student Learning;

(24) Texas Successful Schools Award System Advisory Committee;

(25) Committee on Teacher Appraisal/Assessment;

(26) Commission on Standards for the Teaching Profession;

(27) Educational Technology Advisory Committee; and

(28) State Textbook Committees for Proclamation 1992

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

Issued in Austin, Texas, on March 28, 1994

TRD-9438312

Cris Cloutt
Associate Commissioner,
Policy Planning and
Evaluation
Texas Education Agency

Effective date: April 20, 1994

Proposal publication date: February 4, 1994

For further information, please call: (512) 463-9701

TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

Professional Practices

• 22 TAC §501.11

The Texas State Board of Public Accountancy adopts an amendment to §501.11, concerning Independence, without changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 869)

The amendment allows the Board to correct an omission from the definition

The amendment will function by making it clearer that a CPA's parents could affect his independence

No comments were received regarding adoption of the amendment

The amendment is adopted under the Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purpose of the law

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

Issued in Austin, Texas, on March 17, 1994

TRD-9438222

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date April 18, 1994

Proposal publication date February 8, 1994

For further information, please call (512) 505-5566

Other Responsibilities and Practices

• 22 TAC §501.44

The Texas State Board of Public Accountancy adopts the repeal of §501.44, concern-

ing soliciting, without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 762)

The amendment removes a rule superseded by federal law.

The amendment will function by complying with *Edenfield et al v. Fane*, 113 Supreme Court 1792 (1993).

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purpose of the law, and §21, which lists those actions or omissions for which the Board may take disciplinary action against its licensees

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

Issued in Austin, Texas, on March 17, 1994

TRD-9438223

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date April 18, 1994

Proposal publication date February 4, 1994

For further information, please call (512) 505-5566

Chapter 513. Registration

Registration of CPAs of Other States and Persons holding Similar Titles in Foreign Countries

• 22 TAC §513.34

The Texas State Board of Public Accountancy adopts an amendment to §513.34 concerning Limited Liability Company, without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 762)

The amendment allows licensees to choose another form of entity for their practice

The amendment will function by allowing licensees to use a Professional Limited Liability Company for their practices

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 41a 1, §6, which provide the Texas State Board of Public Accountancy with the Authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §20 which allows CPAs to engage in public accountancy in corporate entities

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 17, 1994

TRD-9438224

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: April 18, 1994

Proposal publication date: February 4, 1994

For further information, please call: (512) 505-5566

TITLE 22. EXAMINING BOARDS

Part XXXV. Texas State Board of Examiners of Marriage and Family Therapists

Chapter 801. Licensure and Regulation of Marriage and Family Therapists

The Texas State Board of Examiners of Marriage and Family Therapists (board) adopts new §§801.1, 801.2, 801.11-801.20, 801.41-801.54, 801.71-801.73, 801.91-801.93, 801.111-801.114, 801.141-801.144, 801.171-801.174, 801.201-801.204, 801.231-801.237, 801.261-801.268, 801.291-801.298, 801.331, 801.332, 801.351, and 801.361-801.369 Sections 801.2, 801.113, 801.142, 801.143, 801.237, 801.291, 801.295, 801.332, 801.351, 801.362-801.365, and 801.367-801.369 are adopted with changes to the proposed text as published in the December 17, 1993, issue of the *Texas Register* (18 TexReg 9672). Sections 801.1, 801.11-801.20, 801.41-801.54, 801.71-801.73, 801.91-801.93, 801.111, 801.112, 801.114, 801.141, 801.144, 801.171-801.174, 801.201-801.204, 801.231-801.236, 801.261-801.268, 801.292-801.294, 801.296-801.298, 801.331, 801.361, and 801.366 are adopted without change and will not be published

The licensing of marriage and family therapists provided for in these rules will safeguard public health, safety, and welfare by providing a means by which the public can identify licensed marriage and family therapists that meet minimum standards of competence. The regulation of licensed marriage and family therapists will create a means to better serve the public.

The following comments were received during the comment period concerning the proposed sections. Comments were received in writing, as well as at two public hearings. During the comment period the board made minor editorial changes for clarification purposes or due to publication errors.

COMMENT: Concerning §801.2, the definition of "Administrative Law Judge (ALJ)" was added and the definition of "hearing examiner" has been removed in accordance with

Texas Civil Statutes, Article 4512c-1. In addition, the term "hearing examiner" has been replaced throughout the rules (§§801.2, 801.363-801.365, 801.367-801.369) by the term "Administrative Law Judge (ALJ)" for clarification purposes.

RESPONSE: The board made the changes throughout the sections.

COMMENT: Concerning §801.15, a commenter suggested that the term "sexual orientation" be added to sections concerning impartiality or discrimination.

RESPONSE: The board disagreed as there is no state or federal law that discusses sexual orientation in regards to impartiality or discrimination.

COMMENT: Concerning §801.113, proposed subsections (c) and (d) were deleted and moved to new §801.142(a) and (b) under experience requirements, as these requirements do pertain to experience for clarification purposes as suggested by the board.

RESPONSE: The board clarified the language.

COMMENT: Concerning §801.142(c)(2), several commenters wanted clarification of the word "primarily". The commenters wanted to know if the word "primarily" would allow for some percentage of the direct, face-to-face therapeutic services to be documented through other means such as over the telephone in a telephone therapy setting.

RESPONSE: The board clarified this section by deleting the word "primarily", thereby stating that 100% of the direct clinical service must be direct, face-to-face, therapeutic services.

COMMENT: Concerning §801.263, a commenter wanted clarification on how many hours of continuing education would be required.

RESPONSE: The board's response is that 20 hours of continuing education will be required annually as stated in the section.

COMMENT: Concerning §801.264, a commenter wanted clarification on the types of acceptable continuing education.

RESPONSE: The board's response is that providers from the various mental health disciplines are eligible to apply as a provider of continuing education.

COMMENT: Concerning §801.268, a commenter wanted clarification on how continuing education will be submitted.

RESPONSE: The board's response is that by stating that the requirements are set out in the section. An applicant would submit documentation of 20 hours of continuing education annually on one form prescribed by the board. The board will audit a random sample of the submittals each year.

None of the commenters were totally for or against the sections, but they had recommendations and suggestions regarding changes. Comments were received from Hardin-Simmons University, Hendrick Medical Center, Resources for Living, Licensed Marriage and Family Therapists and Marriage and Family Therapy Interns.

Subchapter A. Introduction

• 22 TAC §801.1, 801.2

The new sections are adopted under the Licensed Marriage and Family Therapist Act, Texas Civil Statutes, Article 4512c-1, §13(c), which provide the Texas State Board of Examiners of Marriage and Family Therapists the authority to adopt rules to determine the qualifications and fitness of applicants for licensure.

The sections will affect Vernon's Texas Civil Statutes, 4512c-1, §13(c).

§801.1 Purpose. The purpose of this chapter is to implement the provisions in the Licensed Marriage and Family Therapist Act, Texas Civil Statutes, Article 4512c-1, concerning the licensure and regulation of marriage and family therapists.

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

Act—The Licensed Marriage and Family Therapist Act relating to the licensing and regulation of marriage and family therapists, Texas Civil Statutes, Article 4512c-1.

Administrative Law Judge (ALJ)—A person within the State Office of Administrative Hearings who conducts hearings under this subchapter on behalf of the board.

APA—The Administrative Procedure Act, the Texas Government Code, Chapter 2001.

Board—The Texas State Board of Examiners of Marriage and Family Therapists.

Completed application—The official marriage and family therapy application form, fees and all supporting documentation which meets the criteria set out in §801.73 of this title (relating to Required Application Materials).

Contested case—A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

Department—The Texas Department of Health.

Family systems—An open, on going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its sociocultural and historic position in its larger environment.

Formal hearing—A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

Group supervision—Supervision that involves a minimum of three and no more than six marriage and family therapy supervisors in a clinical setting during the supervision hour. A supervision hour is 60 minutes.

Hearing examiner—An attorney duly designated and appointed by the chairperson of the board or the commissioner of health who conducts hearings under this chapter on behalf of the board.

Individual supervision—Supervision of no more than two marriage and family therapy supervisees in a clinical setting during the supervision hour. A supervision hour is 60 minutes.

Intern—See definition of marriage and family therapist intern.

Investigator—A professional complaint investigator employed by the Texas Department of Health.

License—A marriage and family therapist license, a temporary marriage and family therapist license, or a provisional marriage and therapist license.

Licensed Marriage and Family Therapist—An individual who offers to provide marriage and family therapy for compensation.

Licensee—Any person licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

Marriage and Family Therapist Intern—A person who holds a temporary license issued by the Texas State Board of Examiners of Marriage and Family Therapists to practice marriage and family therapy under the supervision of a board-approved supervisor.

Marriage and family therapy—The rendering of professional therapeutic services to individuals, families, or married couples, singly or in groups, and involves the professional application of family systems, theories, and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction within the context of marriage or family systems.

Month—A calendar month

Party—Each person, governmental agency, or officer or employee of a governmental agency named by the Administrative Law Judge (ALJ) as having a justiciable interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

Person—An individual, corporation, partnership, or other legal entity

Pleading—Any written allegation filed by a party concerning its claim or position.

Regionally accredited institutions—An institution accredited by one of the following accreditation associations will be accepted for licensing purposes: Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Association of School and Colleges, Southern Association of Colleges and Schools, and Western Association of Schools and Colleges.

Recognized religious practitioner—A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally cognizable church, denomination or sect, or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, §1.6033-2, (g)(5)(i), (1982);

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary, and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

Rules—The rules in this chapter covering the designated policies and procedures of operation for the board and for individuals affected by the Act.

Supervision—The guidance or management of an individual or group in a clinical setting.

Supervisor—A person approved by the board as meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements), to supervise a licensed marriage and family therapist and/or marriage and family therapist intern

Texas Open Meetings Act—Government Code, Chapter 551

Texas Open Records Act—Government Code, Chapter 552

Therapist—For purposes of this chapter, a Texas licensed marriage and family therapist

Waiver—The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions.

Year—A calendar year

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 30, 1994.

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Bobby Schmidt
Executive Director
Texas State Board of
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For further information, please call. (512) 834-6657

Subchapter B. The Board

• 22 TAC §§801.11-801.20

The new sections are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

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Subchapter C. Rendering Professional Therapeutic Services and Code of Ethics

• 22 TAC §§801.41-801.54

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Subchapter D. Application Procedures

• 22 TAC §§801.71-801.73

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Subchapter E. Criteria for Determining Fitness of Applicants for Examination and Licensure

• 22 TAC §§801.91-801.93

The new sections are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists

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Subchapter F. Academic Requirements for Examination and Licensure

• 22 TAC §§801.111-801.114

The new sections are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists

§801.113 Academic Requirements

(a) Persons applying for examinations and licensure must have

(1) a master's or doctoral degree in marriage and family therapy or in a related mental health field with coursework and training equivalent to a graduate degree in marriage and family therapy, and

(2) a planned graduate program in marriage and family therapy or its substantial equivalent of at least 45 semester hours which an applicant completed at an accredited school. The 45 semester hours may be coursework taken in the required graduate degree program

(b) A graduate degree under subsection (a)(1) of this section or the substantial equivalent of a planned graduate program of at least 45 semester hours which was designed to train a person to provide direct services to assist individuals, families or couples in a therapeutic relationship in the resolution of cognitive, affective, behavioral or relational dysfunctions within the context of marriage or family systems

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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Subchapter G. Experience Requirements for Examination and Licensure

• 22 TAC §§801.141-801.144

The new sections are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists

§801.142 Experience Requirements

(a) After receipt of a degree meeting the requirements of subsection (a)(1) of this section, the applicant must have completed two years of work experience in marriage and family therapist services that

(1) include at least 1,000 hours of direct clinical services to individuals, couples, or families, of which at least 500 hours must be direct clinical services to couples or families, and

(2) are supervised in a manner acceptable to the Texas State Board of Examiners of Marriage and Family Therapists (board), including at least 200 hours of supervision of the provision of direct clinical services by the applicant, of which at least 100 hours must be supervised on an individual basis

(b) No direct clinical services course intended primarily for practice in the administration and grading of appraisal or assessment instruments shall count toward the 1,000 clock-hour requirement

(c) Experience shall be acceptable to the board if

(1) it was begun and completed after the completion of a graduate degree in marriage and family therapy or its substantial equivalent degree,

(2) it consisted of the provision of direct, face-to-face therapeutic services in the practice of marriage and family therapy to assist individuals, couples, and families, and

(3) the experience was under the direct supervision of a supervisor meeting the requirements of §801.143 of this title (relating to Supervisor Requirements)

§801.143 Supervisor Requirements

(a) A supervisor acceptable to the Texas State Board of Examiners of Marriage and Family Therapists (board) must be licensed by the board for at least 24 months or have been eligible for licensure by the board for at least 24 months

(b) A supervisor must be approved by the board by submitting a notarized board form as well as other documentation of credentials. Supervised experience will not be approved until all required documentation has been received.

(c) A supervisor approved by the board must meet and document the following educational, experiential, and supervision requirements:

(1) education required

(A) a graduate degree in marriage and family therapy, or a graduate degree in a mental health field, such as counseling and guidance, psychology, psychiatry, and clinical social work, from a regionally accredited educational institution, as defined in §801.2 of this title (relating to Definitions), and

(B) a one-semester graduate course in marriage and family therapy supervision (45 contact hours), or

(C) an equivalent course of study consisting of marriage and family therapy supervision workshops in combination with direct study of the literature. Fifteen of the 45 contact hours must have been in a class or workshop format which included a minimum of four persons training to become supervisors of marriage and family therapy. Direct study must have been approved and monitored by a licensed marriage and family therapy supervisor.

(2) post-master's degree experience required

(A) at least 3,000 hours of client contact in the practice of marriage and family therapy over a minimum of three years, and

(B) provision of a minimum of 180 hours of marriage and family therapy supervision over at least two years.

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Subchapter H. Licensure Examinations

• 22 TAC §§801.171-801.174

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Subchapter I. Issuance of License

• 22 TAC §§801.201-801.204

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Subchapter J. Licensure Renewal and Inactive Status

• 22 TAC §§801.231-801.237

The new sections are adopted under Acts 1993, 73rd Legislature, Regular Session,

Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

§801.237 Surrender of License

(a) Surrender by licensee. A licensee may at any time voluntarily offer to surrender his or her license for any reason, without compulsion.

(b) Acceptance by the Texas State Board of Examiners of Marriage and Family Therapists (board).

(1) The board shall decide whether to formally accept the voluntary surrender of a license.

(2) Surrender of a license without the acceptance of the board or a licensee's failure to renew the license shall not deprive the board of jurisdiction against the licensee under the Licensed Marriage and Family Therapist Act (Act) or any other statute.

(c) Formal disciplinary action. When a licensee has offered the surrender of his or her license after a complaint has been filed alleging violations of the Act or this chapter and the board has accepted such a surrender, that surrender is deemed to be the result of a formal disciplinary action.

(d) Reinstatement. A license which has been surrendered and accepted may not be reinstated, however, a person may apply for a new license in accordance with the Act and this chapter.

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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Subchapter K. Continuing Education Requirements

• 22 TAC §§801.261-801.268

The new sections are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family

Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

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Subchapter L. Complaints and Violations

• 22 TAC §§801.291-801.298

The new sections are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

§801.291. Purpose The purpose of this subchapter is to set forth the valid causes for the denial, revocation, probation or suspension of licensure, or reprimand of a licensee and the procedures for filing complaints and allegations of statutory or rule violations.

(1) Prior to denying, revoking, suspending, probating or suspending probation of a license, or reprimanding a licensee, the subcommittee shall give the applicant or licensee the opportunity for an informal disposition or a formal hearing or both an informal disposition and a formal hearing in accordance with the provisions of this subchapter, Subchapter N of this chapter (relating to Informal Dispositions), and Subchapter O of this chapter (relating to Formal Hearings)

(2) The following shall be grounds for revocation, suspension, probation or suspension of probation of a license, or reprimand of a licensee if a person has:

(A) been convicted of a felony or a misdemeanor involving moral turpitude;

(B) obtained or attempted to obtain a license by fraud or deception;

(C) used drugs or alcohol to an extent that affects professional competence;

(D) been grossly negligent in performing professional duties;

(E) been adjudicated mentally incompetent by a court of competent jurisdiction;

(F) practiced in a manner detrimental to the public health or welfare;

(G) advertised in a manner that tends to deceive or defraud the public;

(H) had a license or certification revoked by a licensing agency or by a certifying professional organization;

(I) otherwise violated the Licensed Marriage and Family Therapist Act (Act) or board rules; or

(J) committed an act in violation of Penal Code, §2114, or for which liability exists under Civil Practice and Remedies Code, Chapter 81.

§801.295. Power to Sue. The Texas State Board of Examiners of Marriage and Family Therapists (board) may institute a suit in its own name and avail itself of any other action, proceeding, or remedy authorized by law to enjoin the violation of the Licensed Marriage and Family Therapist Act (Act).

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

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Subchapter M. Licensing of Persons with Criminal Backgrounds

• 22 TAC §§801.331, §801.332

The new sections are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article

4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

§801.332. Criminal Conviction. The Texas State Board of Examiners of Marriage and Family Therapists (board) shall consider the felony or misdemeanor conviction of a therapist as grounds for the suspension or revocation of the therapist's license and shall review the conviction.

(1) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a therapist or if the crime involves moral turpitude.

(2) In considering whether a criminal conviction directly relates to the occupation of a therapist, the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a licensee to be a therapist. The following felonies and misdemeanors relate to the license of a therapist because these criminal offenses indicate an inability or a tendency to be unable to perform as a therapist:

(i) the misdemeanor of knowingly or intentionally acting as a therapist without a license,

(ii) a misdemeanor and/or a felony offense under various chapters of the Texas Penal Code:

(I) concerning Title 5, which relates to offenses against the person;

(II) concerning Title 7, which relates to offenses against property,

(III) concerning Title 9, which relates to offenses against public order and decency,

(IV) concerning Title 10, which relates to offenses against public health, safety, and morals; and

(V) concerning Title 4, which relates to offenses of attempting or conspiring to commit any of the offenses in subclauses (I)-(IV) of this clause.

(iii) The misdemeanors

and felonies listed in subclauses (I)-(II) of this subparagraph are not inclusive in that the board may consider other particular crimes in special cases in order to promote the intent of the Licensed Marriage and Family Therapist Act (Act) and this chapter.

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a therapist. In making this determination, the board will apply the criteria outlined in Texas Civil Statutes, Article 6252-13c, §4(c)(1)-(7).

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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Subchapter N. Informal Disposition

• 22 TAC §801.351

The new section is adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

§801.351. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal settlement conference held to determine whether an agreed settlement order may be approved.

(b) If the executive director or the complaints committee of the Texas State Board of Examiners of Marriage and Family Therapists (board) determines that the public interest might be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal

hearing, the provisions of this subchapter shall apply. A licensee or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the executive director or the complaints committee.

(c) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(d) The executive director shall decide upon the time, date and place of the settlement conference, and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested, to the last known address of the licensee or applicant or by personal delivery. The ten days shall begin on the date of mailing or delivery. The licensee or applicant may waive the 10-day notice requirement.

(e) A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the settlement conference. The notice shall inform the licensee or applicant of the nature of the alleged violation of the following:

(1) that the licensee may be represented by legal counsel;

(2) that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;

(3) that committee members may be present;

(4) that the board's legal counsel or a representative of the Office of the Attorney General will be present;

(5) that the licensee's or applicant's attendance and participation is voluntary;

(6) that the complainant and any client involved in the alleged violations may be present; and

(7) that the settlement conference shall be cancelled if the licensee or applicant notifies the executive director that he or she or his or her legal counsel will not attend.

(f) The notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is cancelled.

(g) Members of the complaints committee may be present at a settlement conference.

(h) The settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(i) The licensee or applicant, the licensee's or applicant's attorney, the committee members, the board's legal counsel, the executive director, and the board may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(j) The board's legal counsel or an attorney from the Office of the Attorney General shall attend each settlement conference. The committee members or executive director may call upon the attorney at any time for assistance in the settlement conference.

(k) The licensee shall be afforded the opportunity to make statements that are material and relevant.

(l) Access to the board's investigative file may be prohibited or limited in accordance with the Open Records Act and the Administrative Procedure Act (APA).

(m) At the discretion of the executive director or the committee members, a tape recording may be made of some or all of the settlement conference.

(n) The committee members or the executive director shall exclude from the settlement conference all persons except witnesses during their testimony, the licensee or applicant, the licensee's or applicant's attorney, and board staff.

(o) The complainant shall not be considered a party in the settlement conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(p) At the conclusion of the settlement conference, the committee members or executive director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Licensed Marriage and Family Therapist Act (Act). The committee member may also conclude that the board lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

(q) The licensee or applicant may either accept or reject the settlement recommendations at the conference. If the recommendations are accepted, an agreed settlement order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant.

The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(r) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive director for appropriate action.

(s) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.

(t) The identity of the licensee or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(u) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(v) If the board does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive director for other appropriate action.

(w) A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with the APA.

(x) A licensee's opportunity for an informal conference under this subchapter shall satisfy the requirement of the APA, §2001.054(c).

(1) If the executive director or complaints committee determines that an informal conference shall not be held, the executive director shall give written notice to the licensee or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the licensee or applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirement of the Act and this chapter.

(2) The complainant shall be sent a copy of the written notice. The complainant shall be informed that he or she may also submit a written statement to the board 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 March 30, 1994.

TRD-9438328

Bobby Schmidt
Executive Director
Texas State Board of
Examiners of Marriage
and Family Therapists

Effective date: April 20, 1994

Proposal publication date: December 17, 1993

For further information, please call: (512) 834-6657

Subchapter O. Formal Hearings • 22 TAC §§801.361-801.369

The new sections are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

§801.362. General.

(a) The Texas State Board of Examiners of Marriage and Family Therapists (board) on its own motion or on request from a licensee or applicant may initiate a formal hearing. A formal hearing and all related proceedings shall be conducted in accordance with the provision of the Administrative Procedure Act (APA), applicable state statutes, and this chapter.

(b) A formal hearing or contested case proceeding unless otherwise determined by board shall be held in Travis County, Texas.

§801.363. Notice.

(a) The Administrative Law Judge (ALJ) shall give notice of the formal hearing according to the notice requirements of the Administrative Procedure Act (APA).

(b) If a party fails to appear or be represented at a hearing or proceeding after receiving notice, the ALJ may proceed with the hearing or proceeding or take whatever action is fair and appropriate under the circumstances.

§801.364. Parties to the Hearing.

(a) All parties must have a justiciable interest in the proceedings to be designated as parties. All appearances are subject

to a motion to strike upon a showing that the party has no justiciable interest in the proceeding.

(b) A party has the privilege to participate fully in any prehearing and formal hearing, to appeal as provided by law, and to perform any and all duties and privileges provided by the Administrative Procedure Act (APA) and other applicable laws.

(c) Any person not wishing to be designated as a party but desiring only to appear for the purpose of showing support or opposition or to make general relevant statements showing support or opposition may appear at the hearing and make or file statements.

(d) The Administrative Law Judge (ALJ) shall designate parties at any time prior to final closing of the hearing. No person shall be admitted as a party later except upon a finding by the ALJ of good cause and extenuating circumstances and that the hearing will not be unreasonably delayed.

(e) In their pleadings, parties may classify themselves as applicants, petitioners, respondents, protesters, complainants, etc., but regardless of such classification, the ALJ has the authority to determine and designate their true status whenever necessary.

(f) A party may appear personally and/or be represented by counsel or other authorized representative.

(g) The ALJ may require parties of each class of affected persons to select one person to represent them in the proceedings.

§801.365. Subpoenas.

(a) On the Administrative Law Judge's (ALJ) own motion or on the written request of any party to the hearing, the ALJ shall issue a subpoena to the appropriate sheriff or constable to require the attendance of witnesses or the production of documents.

(b) There must be a showing of good cause for the subpoena, i.e., the witnesses or documents must have information that is relevant and material to the hearing. The subpoena should not result in undue harassment, imposition, inconvenience, or unreasonable expense to a party.

(c) A party or witness may seek to nullify the subpoena or move for a protective order as provided in the Texas Rules of Civil Procedure.

(d) Witnesses may be subpoenaed.

(e) Documents include books, papers, accounts, and similar materials or objects.

(f) The payment of subpoena costs or fees and the failure to comply with a subpoena shall be governed by the Administrative Procedure Act (APA), §14.

§801.366. Depositions. The taking and use of depositions in any contested case proceeding shall be governed by the Administrative Procedure Act (APA), §14.

§801.367. Pre-hearing Conferences.

(a) In a contested case, the Administrative Law Judge (ALJ), on his or her own motion or the motion of a party, may direct the parties, their attorneys, or representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of:

- (1) the formulation and simplification of issues;
- (2) the necessity or desirability of amending the pleading;
- (3) the possibility of making admissions or stipulations;
- (4) the procedure at the hearing;
- (5) specifying the number of witnesses;
- (6) the mutual exchange of prepared testimony and exhibits;
- (7) designation of parties; and
- (8) other matters which may expedite the hearing.

(b) The Administrative Law Judge (ALJ) shall conduct the pre-hearing conference in such a manner and with the necessary authority to expedite the conference while reaching a fair, just, and equitable determination of any matters or issues being considered.

(c) The ALJ shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering the said matters or issues.

(d) Any action taken at the pre-hearing conference shall be reduced to writing, signed by the parties, and made a part of the record.

§801.368. Hearing Procedures.

(a) The Administrative Law Judge's (ALJ) duties. The Administrative Law Judge (ALJ) shall preside over and conduct the hearing. On the day and time designated for the hearing, the ALJ shall:

- (1) convene and call the hearing to order;
- (2) state the purpose of and the legal authority for the hearing;

(3) announce that a record of the hearing will be made;

(4) outline the procedure and order of presentation that will be followed;

(5) administer oaths to those who intend to testify; and

(6) take any and all other actions as authorized by applicable law and this subchapter to provide for a fair, just, and proper hearing.

(b) Order of presentation.

(1) After making the necessary introductory and explanatory remarks on the purpose of and other matters related to the hearing, the ALJ will begin receiving testimony and evidence from the witnesses.

(2) Each party may present evidence and testimony and cross-examine or ask clarifying questions of any witness who presents evidence or testimony.

(3) In the request for relief or action of any kind, the party seeking such relief or action has the burden of proving entitlement to the same; provided, however, that the order of the proceeding may be altered or modified by the ALJ either upon agreement of the parties or upon his or her own motion when such action will expedite the hearing without prejudice to any party.

(4) When the party first proceeding finishes his or her case, the remaining party or parties will be allowed to present evidence and testimony in the same manner. Each witness is subject to cross-examination and clarifying questions by other participants to the proceedings.

(5) The ALJ may limit the number of witnesses whose testimony will be repetitious, and the ALJ may also establish time limits for testimony so long as all viewpoints are given a reasonable opportunity to be expressed.

(6) When the parties have concluded their testimony and evidence, the ALJ will ask the audience if any interested person desires to make a statement. If so, the interested person will be allowed to make his or her statement subject to cross-examination and clarifying questions by any party.

(7) After interested persons make statements or if there are no such statements, the ALJ, at his or her discretion, may allow final arguments or take the case under advisement, and shall note the time and close the hearing. For sufficient cause, the ALJ may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(c) Consolidation. The ALJ, upon his or her own motion or upon motion by any party, may consolidate for hearing two

or more proceedings which involve substantially the same parties or issues. Proceedings before the agency shall not be consolidated without consent of all parties to such proceedings unless the ALJ finds that such consolidation will be conducive to a fair, just and proper hearing and will not result in unwarranted expense or undue delay.

(d) The hearing record. The hearing record will include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings of them;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the Administrative Law Judge (ALJ); and

(7) all staff memoranda or data submitted to or considered by the Administrative Law Judge (ALJ) or members of the agency who are involved in making the decision.

(e) Recording the hearing. The ALJ will keep either a stenographic or audio record of the hearing proceeding. In the event an independently contracted court reporter is utilized in the making of the record of the proceedings, the Texas State Board of Examiners of Marriage and Family Therapists (board) shall bear the cost of the per diem or other appearance fee for such a reporter. Any party desiring a written transcript of the proceedings shall contract directly with such court reporter and be responsible for payment of same pursuant to the authority of the Administrative Procedure Act (APA), §13(g). In those cases when a tape recording of the formal hearing is made, the board shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the board necessitating the forwarding of the record to a court of law, the board may assess the cost of the transcript to the appealing party.

(f) Rules of evidence. The ALJ, at a hearing, a reopened hearing, or a rehearing will apply the rules of evidence under the APA, §14(a), and the following rules.

(1) Consolidation. The ALJ may consolidate the testimony of parties or persons if the evidence can be effectively consolidated into one document or the testimony of one witness. The standard by

which the ALJ should judge this consolidation is whether each party or person can offer unique or new evidence that has not been previously introduced. Any party, under oath, may make an offer of proof of the testimony or evidence excluded through consolidation by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing.

(2) **Documentary evidence.** Documentary evidence should be presented in its original form but if the original is not readily available, documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the ALJ may limit those admitted to a number which is typical and representative, and may, at his or her discretion, require the abstracting of the relevant data from the documents and presentation of the abstracts in the form of exhibits, provided, however, that before making such requirement, the ALJ shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made. Any party may make an offer of proof of the documents which are excluded by a ALJ's decision to remove only typical or representative documents.

(3) **Exhibits.**

(A) **Form.** Exhibits of documentary character shall be limited to facts material and relevant to the issues involved in a particular proceeding, and the parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the board.

(B) **Tender and service.** The original of each exhibit offered shall be tendered to the ALJ or a designee for identification and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

(C) **Excluded exhibits.** In the event an exhibit has been identified, objected to, and excluded, it shall be given an exhibit number for purposes of identification and shall be included in the record under seal.

(D) **After hearing.** Unless specifically directed by the Administrative Law Judge (ALJ), no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing except in a reopened hearing or a rehearing.

(4) **Admissibility of prepared testimony and exhibits.** When a proceeding will be expedited and the interests of the

parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question- and- answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what his or her testimony would be if he or she were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and his or her prepared testimony shall be subject to a motion to strike either in whole or in part.

(5) **Offer of proof.** When testimony is excluded by the ALJ, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the board. The ALJ may ask such questions of the witness as he or she deems necessary to satisfy himself or herself that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

(6) **Official notice.** Official notice by the Administrative Law Judge (ALJ) of the board shall be in accordance with the APA, §14(q). Official notice may be taken of any statute, ordinance, or duly promulgated and adopted rules or regulations of any governmental agency. The examiner shall indicate during the course of a hearing that information of which he or she will take official notice. When an examiner's findings are based upon official notice of a material fact not appearing in the evidence of record, the examiner shall set forth in his or her proposal for decision those items with sufficient particularity so as to advise the parties of the matters which have been officially noticed. The parties shall have the opportunity to show to the contrary through the filing of exceptions to the ALJ's proposal for decision.

§801.369. Action After the Hearing.

(a) **Reopening of hearing for new evidence.**

(1) The Texas State Board of Examiners of Marriage and Family Therapists (board) may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(2) The board will reopen a hearing to include such new evidence as part of the record if the board deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new

evidence.

(3) Notice and procedural requirements will be the same as for the original hearing.

(b) **Proposal for decision.**

(1) If a proposal for decision is necessary under the Administrative Procedure Act (APA), §15, the Administrative Law Judge (ALJ) shall prepare the proposal and provide copies of the same to all parties.

(2) Each party having the right and desire to file exceptions and briefs shall file them with the ALJ within the time designated by the ALJ.

(3) Parties desiring to do so shall file written replies to these exceptions and briefs as soon as possible after receiving same and within the time designated by the ALJ.

(4) All exceptions and replies to them shall be succinctly stated.

(c) **Pleadings after close.** At any time after the record has been closed in a contested case, and prior to the administrative decision becoming final in such case, all briefs, exceptions, written objections, motions (including motion for rehearing), replies to the foregoing, and all other written documents shall be filed with the ALJ. The party filing such instrument shall provide copies of the same to all other parties of record by first class United States mail or personal service and certify, in writing thereon, the names and addresses of the parties to whom copies have been furnished, as well as the date and manner of service.

(d) **Final orders or decisions.**

(1) The final order or decision will be rendered by the board.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law, either in the body of the order or by reference to the ALJ's proposal for decision.

(3) All final orders shall be signed by the executive director and the chairperson of the board; however, interim orders may be issued by the ALJ in accordance with his or her order of appointment.

(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(e) **Motion for rehearing.** A motion for rehearing shall be in accordance with the APA, §16, or other pertinent statute and shall be addressed to the executive director of the board and filed with the ALJ.

(f) **Appeals.** All appeals from final board orders or decisions shall be in accord-

ance with the APA, §19 and §20, or other pertinent statute and communications regarding any appeal shall be to the executive director of the board.

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

Issued in Austin, Texas, on March 30, 1994.

TRD-9438327

Bobby Schmidt
Executive Director
Texas State Board of
Examiners of Marriage
and Family Therapists

Effective date: April 20, 1994

Proposal publication date: December 17, 1993

For further information, please call: (512) 834-6657

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 125. Special Care Facilities

• 25 TAC §§125.1-125.8

The Texas Department of Health (department) adopts amendments to §§125.1-125.7, and new §125.8, concerning special care facilities. Sections 125.1-125.4 and 125.6-125.8 are adopted with changes to the proposed text as published in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8848). Section 125.5 is adopted without changes and will not be republished.

The amendments clarify and update existing language and add new language to implement Acts of the 73rd Legislature, 1993, Chapter 504 (House Bill 944) and Chapter 800 (House Bill 1551). In implementing the new legislation, the new language adds definitions for AIDS, bereavement, bereavement services, hospice services, palliative care, residential AIDS hospice, residential AIDS hospice care, support services, and terminal illness (House Bill 1551); language relating to the residential AIDS hospice designation for a special care facility (House Bill 1551); and language which reflects the exemption from special care facility licensure of a child care institution, foster group home, foster family home, and child-placing agency, and children in foster care or other residential care who are under the conservatorship of the Texas Department of Protective and Regulatory Services (House Bill 944). HB 1551 prohibits a facility from using the word "hospice" in a title or description of a facility, organization, program, service provider, or services, or using any other words, letters, abbreviations, or insignia indicating or implying that the person holds a license under the Health and Safety Code, Chapter 142 (relating to Home and Community Support Services Act) to provide hospice services. The residential AIDS hos-

pice designation will allow a special care facility to use the term "residential AIDS hospice" without receiving an additional license issued under the Health and Safety Code, Chapter 142.

In clarifying existing language, the amendments add a definition of "social worker" and clarify the meaning of the term "special residential care facility" which appears in the definition of "special care facility" by adding a definition of "special residential care facility." In updating existing rule language, the amendments require a facility to adopt and enforce a policy for natural disaster preparedness. The new section adds language relating to time periods in which the department processes initial, renewal and change of ownership applications for special care facilities. The language relating to natural disaster preparedness and time frames for processing a license mirror language presently in other health care facility rules adopted by the department.

Changes made to the proposed text result from comments received during the comment period. The details of the changes are described in the following summary of comments below. Other minor editorial changes were made for clarification purposes.

Comment: Concerning the definition of "bereavement services" in §125.1, one commenter recommended that the family should include a significant other(s)

Response: The department agrees with the commenter and has added the suggested language to the definition.

Comment: Concerning the definition of "hospice services" in §125.1, one commenter stated that certain wording in the definition was not relevant to the provision of hospice services to residents in a residential AIDS hospice.

Response: The department agrees and has deleted the irrelevant language.

Comment: Concerning the addition of a definition for "social worker" in §125.1, one commenter recommended the addition for clarification purposes.

Response: The department agrees and has added the definition.

Comment: Concerning the definition of "support services" in §125.1, one commenter suggested the definition should be modified to reference a residential AIDS hospice to avoid confusion with a hospice licensed under the Health and Safety Code, Chapter 142.

Response: The department agrees with the commenter and has added the suggested language.

Comment: Concerning §125.2, one commenter requested the exemptions contained in the Health and Safety Code, §248.003(a) be included in the rules.

Response: The department agrees in part with the commenter and has added the reference to the statute in §125.2(i). The department has not repeated the language which appears in the statute to avoid redundancy and because repetition is not necessary.

Comment: Concerning §125.2(a)(2)(B) and §125.4(e)(2), one commenter pointed out that the word "Code" was omitted when referring to the Tax Code in each paragraph.

Response: The department agrees and has made the corrections.

Comment: Concerning §125.2(a)(15)(A), one commenter stated one of the specific concerns that the legislation was designed to address was the need to ensure that designated residential AIDS hospices were in fact providing palliative care and requested that the required policy relates also to palliative care.

Response: The department agrees with the commenter and has added the suggested language.

Comment: Concerning §125.3(e), one commenter pointed out that the time frame of 20 days regarding submittal of an acceptable plan of correction to the department by a special care facility is not consistent with the time frame of ten days applicable to other facilities licensed by the department.

Response: The department agrees and has changed the plan of correction submittal timeframe from 20 days to 10 days.

Comment: Concerning §125.6(a)(1)(H), one commenter suggested clarifying that the administrative records are to be filed in the facility director's office.

Response: The department agrees with the commenter and has added the word "facility" to the rule when referring to the director's office.

Comment: Concerning §125.6(a)(2)(B), one commenter stated that the facility's policy should require the facility to evacuate, transport or triage the residents.

Response: The department agrees with the commenter and has modified the language in the rules.

Comment: Concerning §125.6(b)(11), one commenter pointed out that the department unintentionally deleted the numerical reference of §125.6(b)(10) to replace it with the new numerical reference of §125.6(b)(11).

Response: The department agrees with the commenter and has corrected the citation to §125.6(b)(10) as it appears in the present rules. The text in the subsection (relating to facility location) is not affected.

Comment: Concerning §125.6(f)(12)(B), one commenter stated that the description of hospice services is not the same as the definition "hospice services" in §125.1 and requested revision of the paragraph to more accurately relate to the term as defined.

Response: The department agrees, has added the suggested language, and has modified the language in §125.6(f)(12)(B)(v) to delete the word "facility" and replace it with the words "interdisciplinary team."

Comment: Concerning §125.6(f)(12)(B)(i), one commenter stated that the description of care and services to be provided by a facility needed clarification.

Response: The department agrees with the commenter and has added the clarified language suggested by the commenter.

Comment: Concerning §125.6(f)(12)(B)(ii)(I) and §125.6(f)(12)(B)(iv)(I), two commenters stated that the meaning of the terms "qualified individual" and "qualified person" should be more specific as to the meaning of these terms.

Response: The department agrees and has added language suggested by one of the commenters.

Comment: Concerning §125.6(f)(12)(B)(v)(II)(c-c), two commenters stated that the review of the plan of care "periodically as necessary" is not specific enough to ensure quality provision of hospice services.

Response: The department agrees that a minimum review cycle should be required and has added the language one commenter recommended that the review take place "periodically as necessary, but not less than once a month."

Comment: Concerning §125.6(f)(12)(B)(vi), two commenters stated that the physician conducting the clinical and medical review of the care and services provided to a resident should be a member of the interdisciplinary team.

Response: The department agrees and has added mandatory language to the rule. The department has further clarified the physician's status with the facility may be as an employee, a volunteer or a contracted consultant.

Comment: Concerning §125.7(e) in reference to the facility's receipt of the department's notice of the reasons for a proposed action to deny, suspend or revoke a license and opportunity for a hearing, a commenter recommended clarification concerning whether the number of days mentioned are calendar days or working days.

Response: The department agrees with the commenter and has clarified the number of days as "calendar" days. The sentence now reads, "Receipt of the notice is presumed to occur on the tenth calendar day after the notice is mailed to the last address known to the department..."

Comment: Concerning §125.7(j), two commenters stated that stronger language concerning the unauthorized and misleading use of the term "hospice" should be added.

Response: The department agrees with the commenter and has added the language suggested by one of the commenters.

Comment: Concerning §125.8(d), a commenter requested clarification regarding the submittal of a written report of facts relating to the processing of an application

Response: The department agrees with the commenter and has specified that the Health Facility Licensure and Certification Division (division) will submit the written report to the commissioner of health, and the commissioner, in making the final decision, will provide written notification of the decision to the applicant and the division.

The comments on the proposed rules received by the department during the comment period were submitted by a board member of the Texas Hospice Organization, by Vitas Healthcare Corporation, and by department staff. The commenters were neither for nor against the rules in the entirety; however, they raised questions, offered comments for clarification purposes, and suggested clarifying language concerning specific provisions in the rules.

The amendments and new section are adopted under the Health and Safety Code, §248.026, which provides the Texas Board of Health (board) with the authority to adopt rules to establish and enforce minimum standards for the licensing of special care facilities; and §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

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

AIDS—Acquired immune deficiency syndrome.

Bereavement—The process by which a survivor of a deceased person mourns and experiences grief.

Bereavement services—Support services offered to a family during bereavement. Family includes a significant other(s).

Hospice services—Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a resident or resident's family as part of a coordinated program which includes palliative care for terminally ill residents and support services for a resident and a resident's family that are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement; and are provided by a medically directed interdisciplinary team.

Nursing personnel—All persons responsible for giving nursing care to residents. Such personnel includes registered nurses, licensed vocational nurses, nurses aides, and orderlies.

Palliative care—Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness.

Residential AIDS hospice—A special care facility licensed and designated as a residential AIDS hospice in accordance with §125.6(f)(12) of this title (relating to Standards).

Residential AIDS hospice care—Hospice services provided in a residential AIDS hospice.

Social worker—A person who is currently licensed as a social worker under the Human Resource Code, Chapter 50.

Special residential care facility—A residential facility required to obtain a spe-

cial care facility license under the Act.

Support services—Social, spiritual, and emotional care provided to a resident and a resident's family by a residential AIDS hospice.

Terminal illness—An illness for which there is limited prognosis if the illness runs its usual course.

§125.2. Application and Issuance of License for First-Time Applicants.

(a) Upon written request, the department shall furnish a person with an application form for a special care facility license. The applicant shall be at least 18 years of age, and shall submit to the department a separate and accurate application form for each license, required documentation, and the license application fee. The applicant shall retain a copy of all documentation that is submitted to the department. The address provided on the application must be the address from which the facility will be operating. The applicant shall submit the following documents with the application for the license:

- (1) (No change.)
- (2) if an applicant is a corporation;

(A) a certificate from the State Comptroller's office which states that the corporation that operates the facility is not delinquent in tax owed to the state under the Tax Code, Texas Codes Annotated, Chapter 171, or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171; or

(B) a notarized certification on the license application form that the tax owed to the state under the Tax Code, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Texas Codes Annotated, Chapter 171;

- (3)-(11) (No change.)

(12) documentation regarding volunteer orientation to the facility, which include at a minimum location of fire alarm system; emergency procedures, including emergency phone numbers; evacuation plan; availability of counseling programs, support groups, and advocacy information; the facility's policy on confidentiality of medical records and information pertaining to patients' diagnosis, treatment, and identification; and the general mission statement of the facility;

(13) written approval by the local fire marshal and a copy of the certificate of occupancy granted by the local building official;

(14) a written policy for publicly-known natural disaster preparedness for facility residents. The written policy shall include a plan for a reasonable mechanism for triaging residents, the notification of appropriate personnel and family members or significant other in the event of a disaster, the identification of appropriate community resources, and the identification of evacuation procedures. The plan need not require the facility actually evacuate, transport or triage the residents; and

(15) if the facility requests designation as a residential AIDS hospice, the facility shall request the designation on the initial application and provide the following as evidence that it meets the minimum standards described in §125.6(f)(12) of this title (relating to Standards):

(A) a written policy relating to the facility's organized program for the provision of hospice services, including the provision of palliative care and support, counseling and bereavement services; and

(B) documentation relating to the establishment and responsibilities of the facility's interdisciplinary team.

(b) Upon receipt of the application, including the required documentation and the fee, the department shall review the material to determine whether it is complete in accordance with §125.8 of this title (relating to Time Periods for Processing and Issuing a Special Care Facility License). All documents submitted with the original application shall be certified copies or originals.

(c) Once the application is complete and correct, a presurvey conference shall be held at the survey office designated by the department. An applicant is required to attend a presurvey conference unless the designated survey office waives the requirement. The designated survey office shall verify compliance with the applicable provisions of this chapter and may recommend that the facility be issued a license or that the application be denied pursuant to §125.7 of this title (relating to License Denial, Suspension, or Revocation and Criminal Penalties).

(d) (No change.)

(e) If the facility is approved for occupancy by local authorities, a license may be issued if the facility submits a plan of correction acceptable to the department to bring the facility into full compliance with the provisions of this chapter. The plan may reflect dates for compliance occurring after issuance of the license if approved by the department.

(f) If the department determines that compliance with the provisions of this

chapter is not substantiated, the department may propose to deny the license and shall notify the applicant of a license denial as provided in §125.7 of this title (relating to License Denial, Suspension, or Revocation and Criminal Penalties).

(g) The department shall mail the license to the licensee. A license shall not be materially altered. Continuing compliance with the minimum standards and the provisions of this chapter is required during the licensing period.

(h) The change of ownership of a special care facility requires the submittal of an application as a first-time applicant. A request for a change of ownership application for a special care facility shall be submitted 60 days prior to the desired change of licensure and in accordance with subsection (a) of this section. A change of ownership application shall be reviewed by the department in accordance with subsection (b) of this section.

(i) Persons who are exempt from licensing requirements are listed in the Health and Safety Code, §248.003(a).

§125.3. Inspections.

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

(c) After an inspection is completed, the surveyor shall submit a compliance record to the department which contains the following:

(1) a citation of each standard with which the facility was not in compliance and the specifics of noncompliance, if applicable; and

(2) a plan of correction proposed by the facility for each deficient standard cited and the date(s) by which correction(s) must be made.

(d) The surveyor shall request the owner or person in charge to sign the compliance record as an acknowledgment of receipt of a copy of the record at the completion of the on-site survey. Signing the record does not indicate agreement with any part of the compliance record. If a person declines to sign the record, the surveyor shall note the declination and the name of the person in charge on the compliance record. Any written comments of the owner or person in charge concerning the compliance record shall be attached to and become a permanent part of the record. The surveyor shall leave a copy of the compliance record at the facility, and, if the person in charge is not the owner, shall mail a copy to the owner. If at the time of inspection the person in charge declines to provide a plan of correction, the department will notify the facility by certified mail, return receipt requested, that a plan of correction must be submitted by the facility within 30 calendar days of receipt of the notice.

(e) The surveyor shall prepare a summary report of each inspection and submit it to the department for evaluation and decision. If the department determines the facility is not meeting minimum standards, the department shall notify the facility in writing of the standards that are not met and request that the facility prepare the plan of correction necessary for compliance if a plan has not been submitted at the time of inspection. If the plan of correction is not acceptable, the department will notify the applicant in writing within 10 calendar days of receipt of the plan and request that an acceptable plan of correction be resubmitted within a specified period of time, but no later than 30 calendar days from the date of the department's written notification.

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

§125.4. Renewal of License.

(a) (No change.)

(b) The department will send notice of expiration to a facility at least 45 calendar days before the expiration date of the facility's license. If the facility has not received notice of expiration from the department 30 calendar days prior to the expiration date, it is the duty of the facility to notify the department and request a renewal application for a license. The facility shall submit to the department a complete, correct, and notarized application renewal form and the license renewal fee postmarked no later than ten calendar days prior to the expiration date of the license.

(c)-(d) (No change.)

(e) If an applicant is a corporation, the facility shall provide:

(1) a certificate from the State Comptroller's office which states that the corporation that operates the facility is not delinquent in tax owed to the state under the Tax Code, Chapter 171, or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171; or

(2) a notarized certification on the license application form that the tax owed to the state under the Tax Code, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171.

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

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

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

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

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

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

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

(7) This subsection applies to a licensee who is a sole practitioner or a partnership with only individuals as partners where all of the partners were on active duty with the armed forces of the United States serving outside the State of Texas.

(g) The department shall conduct a review of the renewal application and accompanying documents described in subsections (d) and (e) of this section in accordance with §125.8 of this title (relating to Time Period for Processing and Issuing a Special Care Facility License). The department shall issue an annual license to the facility which meets the minimum standards for a license.

§125.6. Standards.

(a) Administrative management.

(1) General requirements.

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

(C) A special care facility license is not a license to provide day care services to children or adults; it allows the facility to provide only the services defined in the Special Care Facility Licensing Act (Act).

(D) Each resident receiving services in a special care facility must be admitted for 24-hour residential care.

(E) Copies of this chapter shall be available to the personnel and residents of the facility upon request.

(F) The facility management upon request shall make available to the department representatives copies of pertinent facility documents or records which in the opinion of the representatives contain evidence of conditions that threaten the health and safety of residents. Such documents and records are residents' medical records including health care notes, pharmacy records, medication records, physicians' orders, and incident/accident reports concerning residents.

(G) Each facility shall conspicuously and prominently post the facility license.

(H) All accidents, whether resulting in injury, and any unusual incidents or abnormal events, including allegations of mistreatment of residents by staff, personnel, or visitors, shall be described in separate administrative records filed in the facility director's office. Certain procedures regarding accidents, unusual incidents, and abnormal events shall be observed as directed by the department.

(I) Within 72 hours of admission, the facility must prepare a written inventory of the personal property a resident brings to the facility. The facility does not have to inventory the resident's clothing. If requested by the resident or responsible party, the inventory shall be updated. The facility should have a mechanism to protect resident clothing.

(J) Grounds for denial, revocation, or suspension of the license in accordance with §125.7 of this title (relating to License Denial, Suspension, or Revocation and Criminal Penalties) may exist when there is substantiated evidence of the owner, director, or any employee willfully inflicting injury, physical suffering, or mental anguish on any resident in a facility; the failure of management, who is knowledgeable of a substantiated case of physical or mental abuse or neglect, to take corrective action; or the failure of management, who has cause to believe that a resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person, to report it to the department.

(K) A license may not be transferred or assigned.

(2) Operating policies and pro-

cedures. The facility shall comply with its own written policies and procedures. All policies shall be reviewed and updated annually.

(A) (No change.)

(B) A facility shall adopt, implement, and enforce a written policy for publicly-known natural disaster preparedness for residents. The written policy shall include a plan for the reasonable mechanism for triaging residents; the notification of appropriate personnel, family members and significant other in the event of a disaster; the identification of appropriate community resources; and the identification of possible evacuation procedures. The policy shall require how the facility will actually evacuate, transport or triage residents should the circumstances of the disaster require such action.

(C) A facility shall adopt, implement, and enforce a written policy to ensure compliance of the facility and its employees, volunteers and contractors with the Health and Safety Code, §161.091, concerning the prohibition of illegal remuneration for securing or soliciting patients or patronage.

(D) The facility shall have written personnel policies and procedures. These policies and procedures must be explained to employees when first employed and be made available to them.

(E) In accordance with personnel policies, the facility may hire and retain employees with certain communicable diseases based on their abilities to perform on the job adequately and safely and on their willingness to follow prescribed measures to prevent the transmission of infections. Questions of employee infectious status and ability to perform duties should be resolved by consultation with a physician and/or local health authorities.

(F) The requirements of subparagraph (E) of this paragraph shall apply to staff from outside resources and to volunteers.

(G) The facility shall ensure that personnel records are correct and contain sufficient information to support placement in the assigned position (including a resume of training and experience). Where applicable, a current copy of the person's license or permit shall be in the file. If copying of a license is prohibited, the file shall include a notation of when the license was verified.

(H) If the resident or the resident's responsible party entrusts the handling of cash to the facility, simple accounting records of receipts and expenditures of such cash shall be maintained. These funds must be separate from the facility's operating accounts.

(I) The facility is encouraged to provide assistance to the residents in their securing or arranging for transportation to meet the residents' transportation needs.

(J) In the case of an acute episode, a serious change in the resident's condition, or death, the resident's responsible party shall be notified as soon as possible.

(K) If a facility does not employ a person qualified to provide a required or needed service, it shall have arrangements with an outside resource that has the necessary qualifications to provide the service directly to residents or to act as a consultant to the facility. Facility policies shall state the methods used to provide required or needed services. The facility may employ personnel or use appropriate volunteer services or arrange with outside resources to provide services to residents or to act as consultants to the facility. Regardless of the method or combinations of methods used, staff performing services must be appropriately qualified or supervised.

(3)-(7) (No change.)

(b) Minimum construction standards.

(1) A facility that is classified as an institutional occupancy shall comply with the requirements found in National Fire Protection Association (NFPA), Life Safety Code (NFPA 101), Chapter 12 (concerning new construction) and Chapter 13 (concerning existing facilities), and building codes applicable to institutional use. New construction shall be subject to applicable local codes covering construction and electrical and mechanical systems for the occupancy. In the absence of, or absence of enforcement of the local codes, the department shall require conformance to the fundamentals of the following codes:

(A) the appropriate sections of NFPA 101;

(B)-(E) (No change.)

(2) (No change.)

(3) A facility that is classified by an occupancy other than institutional or which will house 16 or less residents shall comply with NFPA 101, Chapter 22, relating to residential board and care facilities.

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

(8) When a common wall exists between a facility and another occupancy, the common wall between the facility and the other occupancy shall be not less than a two-hour noncombustible fire-rated partition as is defined in NFPA 101, Chapter 6 (concerning features of fire protection), unless approved otherwise by the department. A licensed hospital, nursing home, custodial care home, or personal care home is not considered another occupancy for this purpose.

(9) Planning, construction, procedures, and approvals shall be done in conformance with the following provisions.

(A) A facility shall submit construction documents to the department if it is anticipated the facility is classified as institutional by the local building authority or will house 17 or more residents.

(B) The construction documents shall be drawn to scale; include a plot plan; and indicate the usages of all spaces, sizes of areas and rooms, and the kind and location of fixed equipment.

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

(C) (No change.)

(10) Facility location shall be determined using the following considerations.

(A) The facility shall be located so as to promote at all times the health, comfort, safety, and well-being of the residents.

(B) The facility shall be serviced by a paid or volunteer fire fighting unit as approved by the department. Water supply for fire fighting purposes shall be as required or approved in writing by the fire fighting unit serving the area.

(C) Any site conditions that can be considered a fire hazard, health hazard, or physical hazard shall be corrected by the facility as determined by the department.

(c)-(e) (No change.)

(f) Care and services.

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

(7) Medications.

(A)-(F) (No change.)

(G) Medications that are administered to a resident shall be adminis-

tered only by a registered professional nurse, licensed vocational nurse, practitioner or individual under direct delegation orders by a physician and in conformance with all laws, rules, and recognized professional standards of practice. A home health agency who is providing services within a special care facility may use a home health medication aide in accordance with §115.62(c) of this title (relating to Home Health Medication Aides).

(i)-(vi) (No change.)

(H) -(O) (No change.)

(8)-(11) (No change.)

(12) Residential AIDS hospice designation.

(A) General. A special care facility designated as a residential AIDS hospice shall meet the standards of this paragraph. These standards are in addition to the other standards described in this chapter which apply to special care facilities.

(B) Provision of hospice services. Hospice services shall be provided as follows:

(i) Palliative care. The facility shall provide exclusively palliative care that is reasonable and necessary to meet the needs of a resident and the management of the resident's terminal illness and related conditions.

(ii) Support services. Support services shall be available to both the resident and the family.

(I) There shall be an organized program for the provision of support services under the supervision of a qualified individual who may be a person with a master of social work, an accredited member of the clergy, or a person with appropriate training and experience.

(II) Support services shall include social, spiritual and emotional care provided to a resident and the family.

(iii) Counseling services. Counseling services shall be available to the resident and the family. If provided, counseling services shall be identified as a need in the resident's plan of care described in clause (v) of this subparagraph.

(iv) Bereavement services. Bereavement services shall be available to the family. The provision of bereavement services shall be:

(I) provided in an organized program under the supervision of a qualified person who may be a person with

a master of social work, an accredited member of the clergy, or a person with appropriate training and experience;

(II) available to families for up to one year following the death of the resident; and

(III) identified as a need for the family in the resident's plan of care described in clause (v) of this subparagraph.

(v) Plan of care. The interdisciplinary team shall develop a plan of care for each resident receiving hospice services.

(I) A registered nurse shall participate in developing the initial plan of care for each resident receiving hospice services.

(II) The facility shall use an interdisciplinary team in implementing and reviewing the plan of care.

(-a-) The interdisciplinary team shall consist of a physician, a registered nurse and other appropriate members who are involved with the resident's care

(-b-) A member of the interdisciplinary team may be a volunteer, an employee of the facility, an individual under contract with facility, or an employee or representative of a home and community support services agency employed by the resident to provide services.

(-c-) The interdisciplinary team shall review and revise the resident's plan of care periodically as necessary, but not less than once a month, in providing hospice services to the resident.

(III) The plan of care shall identify the need for counseling and bereavement services, as appropriate.

(vi) Clinical and medical review. A physician shall conduct a clinical and medical review of the care and services provided to a resident receiving hospice services. The physician conducting the review shall serve as a member of the interdisciplinary team described in clause (v)(II) of this subparagraph. The physician may be an employee, a volunteer, or a contracted consultant to the facility.

(C) A special care facility's designation as a residential AIDS hospice must be approved by the department prior to the implementation of hospice services.

(i) A special care facility may request designation as a residential

AIDS hospice at the submission of the initial application by completing the applicable section on the initial application; or by submitting a written request to the department for the designation at any time during the renewal period.

(ii) A written request for designation as a residential AIDS hospice submitted during a renewal period shall include the evidence described in §125.2(a)(15) of this title (relating to Application and Issuance of License for First-Time Applicants).

(iii) The department shall send written notice approving or disapproving the designation to the facility. If disapproved, the written notice shall state the reasons for the disapproval and the facility may submit additional information to the department supporting the request for the designation.

(iv) The facility may withdraw the residential AIDS hospice designation by submitting to the department a written request to withdraw. The written request to withdraw shall include the effective date of withdrawal. A facility which withdraws the designation must resubmit the request as described in clause (ii) of this subparagraph in order to re-establish hospice services.

(13) Laboratory services. A facility which provides laboratory services must meet the requirements of Federal Public Law 100-578, Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988). CLIA 1988 applies to all facilities with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(g) (No change.)

§125.7. License Denial, Suspension, or Revocation and Criminal Penalties.

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

(e) If the department proposes to deny, suspend, or revoke a license, the director shall notify the applicant or the facility by certified mail, return receipt requested, of the reasons for the proposed action and offer the applicant or facility an opportunity for a hearing. The applicant or facility must request a hearing within 30 calendar days of receipt of the notice. The request must be in writing and submitted to the Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas

Board of Health). If the applicant or facility does not request a hearing, in writing, within 30 calendar days of receipt of the notice or does not appear at a scheduled hearing, the applicant or facility is deemed to have waived the opportunity for a hearing and the proposed action shall be taken. Receipt of the notice is presumed to occur on the tenth calendar day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.

(f) The department may suspend or revoke a license to be effective immediately when the department has reasonable cause to believe the health and safety of persons are threatened. The department shall notify the facility of the emergency action by certified mail, return receipt requested, or personal delivery of the notice. If requested by the license holder, the department shall conduct a hearing, which shall be not earlier than ten calendar days from the effective date of the suspension or revocation. The effective date of the emergency action shall be stated in the notice. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001 and the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).

(g)-(i) (No change.)

(j) A licensed special care facility designated as a residential AIDS hospice may use the term "residential AIDS hospice" or a similar term or language in its title or in a description or representation of the facility if the similar term or language clearly identifies the facility as a licensed special care facility and clearly distinguishes the facility from a hospice regulated under the Health and Safety Code, Chapter 142. A special care facility shall be designated as a residential AIDS hospice and shall meet the standards of §125.6(f)(12) of this title (relating to Standards) if the facility provides hospice services.

§125.8. Time Periods for Processing and Issuing a Special Care Facility License.

(a) General.

(1) The date an application for an initial license, renewal license or change of ownership is received is the date the application reaches the department.

(2) An application for an initial license is complete when the department has received, reviewed and found acceptable the information described in §125.2(a)-(c) of this title (relating to Application and Issuance of License for First-Time Applicants).

(3) An application for a renewal license is complete when the department has received, reviewed and found acceptable the information described in §125.4(b)-

(e) of this title (relating to Renewal of License).

(4) An application for change of ownership is complete when the department has received, reviewed and found acceptable the information described in §125.2(a)-(c) of this title.

(b) Time periods. An application from a special care facility shall be processed in accordance with the following time periods.

(1) The first time period begins on the date the application is received. The first time period ends on the date the special care facility license is issued, or, if the application is received incomplete, the period ends on the date the special care facility is issued a written notice that the application is incomplete. The written notice shall describe the specific information that is required before the application is considered complete. The time period is 20 calendar days for each of the following categories:

(A) application for an initial license;

(B) application for change of ownership; and

(C) application for renewal of license.

(2) The second time period begins on the date the last item necessary to complete the application is received and ends on the date the special care facility license is issued. The time period is 20 calendar days for each of the following categories:

(A) application for an initial license;

(B) application for change of ownership; and

(C) application for renewal of license.

(c) Reimbursement of fees.

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

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

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

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

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

(d) Appeal. If the request for full reimbursement authorized by subsection (c) of this section is denied, the applicant may then appeal to the commissioner of health for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting full reimbursement of all filing fees paid because the application was not processed within the adopted time period. The division shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will make the final decision and provide written notification of the decision to the applicant and the division.

(e) Contested case hearing. If at any time during the processing of the application during the second time period, a contested case hearing becomes involved, the time periods in §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearing) are applicable.

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

Issued in Austin, Texas, on March 30, 1994.

TRD-9438358

Susan K. Steeg
General Counsel
Texas Department of
Health

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For further information, please call: (512) 834-6650

Chapter 128. Licensure and Regulation of Marriage and Family Therapists

The Texas State Board of Examiners of Marriage and Family Therapists (board) adopts the repeal of §§128.1, 128.2, 128.11-128.20, 128.41-128.51, 128.71-128.73, 128.91-128.94, 128.111-128.114, 128.141-128.144, 128.171-128.174, 128.201-128.203, 128.231-128.237, 128.261, 128.291-128.295, 128.321, 128.322, and 128.331-128.339, concerning licensure as li-

censed marriage and family therapists. These repeals are adopted because Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425) which amends Texas Civil Statutes, Article 4512c-1, provide the board with the authority to adopt rules independently (without Board of Health approval). New sections are being adopted in this issue of the *Texas Register* under Title 22, Part XXXV, Chapter 801.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

Subchapter A. Introduction

• 25 TAC §§128.1-128.2

The repeals are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists. The sections affect Texas Civil Statutes, Article 4512c-1.

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

Issued in Austin, Texas, on March 30, 1994.

TRD-9438355

Bobby D. Schmidt
Executive Director
Texas Department of
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Proposal publication date: December 17, 1993

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

Subchapter B. The Board

• 25 TAC §§128. 11-128.20

The repeals are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

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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Bobby D Schmidt
Executive Director
Texas Department of
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For further information, please call (512) 458-7236

Subchapter C. Code of Ethics

• 25 TAC §§128. 41-128.51

The repeals are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists

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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Subchapter D. Application Procedures

• 25 TAC §§128.71-128.73

The repeals are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists

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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Subchapter E. Criteria for Determining Fitness of Applicants for Examination and Licensure

• 25 TAC §§128.91-128.94

The repeals are adopted under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

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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Bobby D Schmidt
Executive Director
Texas Department of
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For further information, please call (512) 458-7236

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 157. State Jail Felony Facilities

- 37 TAC §§157.21, 157.23, 157.25, 157.27, 157.29, 157.31, 157.33, 157.35, 157.37, 157.39, 157.41, 157.43, 157.45, 157.47, 157.49, 157.51, 157.53, 157.55, 157.57, 157.59, 157.61, 157.63, 157.71, 157.73, 157.75, 157. 77, 157.79, 157.81, 157.83, 157.85, 157.87, 157.89, 157.91, 157.93, 157.95, 157.97

The Texas Department of Criminal Justice adopts new §§157 21, 157 23, 157.25, 157 27, 157.29, 157 31, 157 33, 157 35, 157 37, 157.39, 157.41, 157.43, 157 45, 157 47, 157 49, 157.51, 157 53, 157.55, 157 57, 157 59, 157 61, 157. 63, 157 71, 157.73, 157 75, 157.77, 157 79, 157.81, 157 83, 157 85, 157 87, 157.89, 157 91, 157.93, 157.95, and 157.97, concerning State Jail Standards Sections 157 21, 157.23, 157 27, 157 33, 157 35, 157.37, 157.39,

157.41, 157. 51, 157.53, 157.55, 157.57, 157.83, 157.87, 157.89, 157.91, and 157.95 are adopted with changes to the proposed text as published in the October 5, 1993, issue of the *Texas Register* (18 TexReg 6805). Sections 157.25, 157.29, 157.31, 157.43, 157.45, 157.47, 157.49, 157.59, 157.61, 157.63, 157.71, 157.73, 157.75, 157.77, 157.79, 157.81, 157.85, 157.93, and 157 97 are adopted without changes and will not be republished.

The new sections provide minimum standards for a new type of state correctional facility, the state jail, as enacted in Senate Bill 532, 73rd Texas Legislature. The sections will govern facilities constructed and operated by the Department of Criminal Justice, as well as those constructed and operated by counties and community supervision and corrections departments.

The new sections define the objectives of state jails and operate to ensure policies are adopted to meet minimum standards in the following areas: administration, management, and operations; personnel policies, training, and staff development; eligibility criteria; use of a state jail as a transfer facility; security and control measures; disciplinary procedures for inmates; enforcement of inmate rights, classification and orientation services; food service, sanitation, and health services; rehabilitative programs and services; citizen involvement and volunteer services; physical plant standards and variances; inmate housing requirements; and construction approval requirements.

The agency received the following comments.

Commenters requested that references to oversight authority and appropriate TDCJ division director should be specified where possible to clearly state who the authority is who determines if specific conditions or procedures meet standards; and that the word "will" should be changed to "shall" in several areas, and the agency should review the use of the words "may" and "should" in specific areas.

One commenter stated the standards raise some general concerns about restrictiveness in some areas and lack of restrictiveness in other areas, and that certain standards should be reviewed in that context; and another commenter stated the standards do not address distinctions between Mode One and Mode Two facilities, such as who decides which one a defendant goes to, and what criteria govern the decision.

Other commenters stated that the standards are commendable as being comprehensive and consistent with practice and legal precedent; that the standards related to physical plant provide design latitude that offers opportunity for reduced development time and lower construction costs; and that the standards are highly professional.

The agency received the following specific comments concerning individual sections as listed: §157.21, Objectives: a fourth objective should be added consistent with legislative intent, §157.23, Administration, Management and Operations: the section is too restrictive on Mode II; §157.33, Security and Control:

additional language should be added to reflect use of least amount of force necessary, paragraph (1) appears to be a missing word or phrase, paragraph (33) a routine maintenance plan should be added, and in paragraph (16) a reference to searching inmate housing areas/materials should be added; §157.35, Rules and Discipline: paragraph (4) needs clarification on personnel training; §157.37, Special Management: paragraph (14), on legal access should be expanded; §157.39, Inmate Rights: a procedure for handling inmate requests should be added; a prohibition on retaliation for exercising access to courts/grievances should be added; in paragraph (3), access to stamps for indigent inmates should be added; §157.53, Inmate Programs: the 90-day program cycle should be optional; the CSCD and Community Justice Councils should be able to provide program consultation to the facility staff rather than the State Jail Division and Community Justice Assistance Division; §157.55, Mail, Telephone, Visiting: indigent inmates should receive unlimited postage allowance for legal mail; in paragraph (6), mail to media and legislators should be included; §157.81, Building and Safety: where national or association codes are referenced, they should be reviewed to ensure that all sections apply, or that only applicable sections are referenced; adoption of Uniform Codes is commended, but Uniform Fire Code should be added; changes reflected in supplements to codes via 1993 Accumulative Supplement should be considered; §157.83, Size, Organization and Location: deviation on wording of several standards suggested to include elimination of requirement for guard towers in lieu of fence alarm systems, allow separate laundry facilities for housing areas, and in paragraph (6), a clarifying statement suggested on rated capacity; §157.85, Site Design Requirements: a deviation requested to make the 300-foot wide clear zone optional; §157.87, Inmate Housing: in paragraph (2), dormitory capacity of 48 should be reviewed as Jail Commission has policy to further reduce to 24; a reference to toiletry for each group of eight inmates should be reviewed/clarified due to 50-bed dormitories; word change suggested to reflect every eight inmates and delete the wording "or increment thereof"; in paragraph (11), space requirements of dayrooms from 24 to 50 inmates; in paragraph (18), removal of the restriction on modesty shields suggested; §157.89, Environmental Conditions: in paragraph (1), a reference to picket towers suggested to be removed; and §157.91, Program and Service Facilities: in subsection (d), private visitation for attorneys and inmates should be provided; in subsection (e), dayrooms should be allowed to be used as classrooms/counseling rooms; and in subsection (g), the requirement of counselor offices should be changed from ratio of 1/150 counselor/inmate to 1/250

The agency Standards Review Committee recommended, and the board adopted, several clarifying changes to the following sections: §157.27(2), Training requirements; §157.33(15), Routine use of restraints; §157.33(18), Strip searches, §157.33(22), Security equipment; §157.33(25), Written reports; §157.33(27), Use of force; §157.33(28), Use of weapons; §157.41(4),

Searches of legal material; §157.51(e), Dental screening and examinations; §157.53(11), Life skills programs; §157.53(17), Work requirements; §157.55, Mail, Telephone, Visiting; §157.57(2), Comprehensive library services; §158.83(1)(R), Laundry facilities; §157.83(1)(J), Armory; §157.83(13), Space requirements; §157.87(14), Furnishings—dayrooms for administrative segregation cells; §157.91(2), Indoor recreation, §157.91(8)(C), Dining facilities; §157.91(8)(J), Guard post; and §157.95, Security.

The following groups and associations commented in favor of adoption of the new sections: Commission on Jail Standards, International Conference of Building Officials, Aguirre Associates, Sprung Instant Structures, Cornell Cox Group, L.P. The Travis County Community Justice Council commented against adoption of the new sections. The characterization as "for" or "against" is difficult, as most comment letters were mixed.

The agency does not agree with the general comment regarding use of "will" and "should," as being based on a limiting misinterpretation of intent

The agency does not agree with the following comments.

Concerning §157.23, because the board determined that current wording should generally stand as all state jails must have consistent and common missions, and TDCJ should approve operational policies

Concerning §157.53, the board determined that the 90-day program cycle should remain to enhance programming efforts to meet offender needs, and nothing in the standards prevents open-ended programs; inmate programs local/regional planning should remain as proposed, to provide equal protection and consistent programs statewide, which does not prevent additional creative, innovative programs from being developed and implemented within regions.

Concerning §157.55, the board determined that current standards allow for adequate postage, and that waiver is available where necessary.

Concerning §157.85, the board determined that the clear zone should not be optional due to security concerns, particularly in light of the possibility of using state jails as transfer facilities.

Concerning §157.91, the board determined that counselor ratios should remain at 1/150 due to the nature of programs designed for state jails; and that dayrooms should remain dedicated for their specific purpose rather than double as program space, for the same reason.

The new sections are adopted under Government Code, Chapter 507, as enacted in Senate Bill 532, 1993, which provides authority for the financing, construction, operation, maintenance, and management of state jail facilities by the Board of Criminal Justice, and Government Code, §492.013(a), which gives the Board authority to adopt rules as necessary for the operation of the department. Read together, these statutes authorize adoption of rules setting out minimum standards

for state jail facilities, which are to be operated by state, local, and private entities

§157.21. Objectives

(a) The objective of the State Jail facility concept are:

(1) to provide the courts with a viable alternative in the expansion of sentencing options and rehabilitative programs for state jail felony offenders,

(2) to provide local jurisdictions with additional opportunities to increase their involvement in the risk control management of offenders from their communities;

(3) to provide state jail felony offenders with the structure and programming to address risk and need areas which may impact their criminal behavior, and

(4) to reinforce the effectiveness and viability of community supervision by providing a secure residential facility to house state jail offenders who are revoked because they cannot or will not comply with the terms of community supervision

(b) The objectives of the standards for State Jail facilities include the following.

(1) to make state jail facility beds available to every judicial district in Texas;

(2) to provide criminal justice system decision-makers with the goals, regulations and guidelines of the Texas Department of Criminal Justice (TDCJ) State Jail facilities,

(3) to establish uniform policy for the management and operations of those facilities,

(4) to establish minimum environmental, structural and functional requirements for state jail facilities,

(5) to provide technical assistance in the establishment and implementation and improvement of sentencing alternatives, sanctions and rehabilitative programs;

(6) to enhance the state and local partnership through the coordination of their resources, information and services;

(7) to establish a statewide offender tracking system and statistical information source for state jail felons,

(8) to enhance the professional knowledge and skills of state jail facility personnel and operators by defining the minimum statewide and regional education and training requirements,

(9) to establish policy for the ongoing assessment and evaluation of persons confined in state jail facilities,

(10) to establish policy for the ongoing assessment and evaluation of state jail facility correctional methods, programs and systems;

(11) to ensure that regionally-based sanctions and programs are designed to meet the needs and resources of each region and the offenders whom each serves; and

(12) to delineate procedures to ensure fiscal accountability of the funds designated for the state jail facilities and programs.

§157.23. Administration, Management and Operations.

(a) General administration. Each State Jail facility will have a written body of policy and procedure which establishes the facility's goals, objectives, standard operating procedures and a system of regular review.

(b) Purpose and mission. Each facility will have a written document delineating the facility's mission, as approved by the TDCJ. This document is reviewed by TDCJ staff at least annually and updated as needed.

(c) Policy and goal formulation. The facility administrator will formulate goals for the facility at least annually and translate them into measurable objectives.

(d) Employee participation. The facility administrator will establish a process to provide that employees participate in the formulation of policies, procedures and programs.

(e) Outside participation. The facility administrator will, through written policy, procedure and practice, demonstrate that related community agencies with which the facility has contact participate in policy development, coordinated planning and interagency consultation.

(f) Table of organization. Each facility will have a written document describing the facility's organization. The description includes an organizational chart that groups similar functions, services and activities in administrative subunits. This document is reviewed annually, and specifies the roles and functions of employees of other agencies providing a service to the facility.

(g) Policies and procedures manual. The policies and procedures for operating and maintaining the facility and its satellites shall be specified in a manual that is accessible to all employees and the public. This manual is reviewed at least annually and updated as needed. These manuals will be submitted for approval by the appropriate state oversight authority 60 days prior to acceptance of offenders into the facility.

Offenders cannot be accepted into the facility until approval is granted by TDCJ. Changes to the manuals must have the same approval prior to implementation of those changes.

(h) Monitoring and assessment. The facility administrator will develop written policy, procedure and practice to provide that operations and programs that are monitored through inspections and reviews. This regular self-monitoring of operations and programs will be separate from external or continuous inspection conducted by other agencies, including TDCJ audits and inspections.

(i) Routine reports. The facility administrator shall ensure that quarterly reports on the facility's activities are provided to the TDCJ and the Community Justice Councils for that region. These reports are in writing and include major developments in each department or administrative unit, major incidents, population data, assessment of staff and inmate morale and major problems and plans for solving them.

(j) Media access. The facility administrator shall, through written policy, procedure and practice, grant representatives of the media access to the facility consistent with preserving inmates' right to privacy and maintaining order and security.

(k) Waiver. The TDCJ may grant a waiver, to a State Jail facility administrator/operator, from a State Jail facility standard or standards upon receipt and approval of a Request for Waiver by the appropriate TDCJ division director. The Request for Waiver must include a plan to comply with said standard or standards by a specific date, and an explanation as to why the facility is not currently in compliance with said standard or standards. If the waiver is approved by the TDCJ division director, the waiver becomes part of the audit record for compliance with that standard.

(l) Compliance with standards. Compliance with all State Jail standards is required of all agencies, governmental units, individuals and private operators responsible for the operations and/or provision of services, in whole or in part, of TDCJ State Jail facilities.

(m) Budget. The facility administrator shall operate from an annual budget in a manner consistent with good accounting practices and approved by the TDCJ. The budget shall be prepared and submitted to the TDCJ budget office in a format as required and within the provisions as outlined by the TDCJ budget office.

(n) Complaint notice. Each facility administrator shall have posted, in conspicuous public and common areas of each facility, a sign notifying offenders and members of the public that they can direct

written complaints to the TDCJ. The sign shall include the State Jail Division's (SJD) and/or the Community Justice Assistance Division's (CJAD) mailing address.

§157.27. Training and Staff Development. A written body of policy and procedure establishes the facility's training and staff development programs, including training requirements for all categories of personnel.

(1) Training plan. Facility administrators will ensure that written policy, procedure and practice provide that the facility's employee staff development and training programs are planned, coordinated and supervised by a qualified employee. The training plan is reviewed annually.

(2) Training requirements. Pre-service, in-service and appropriate specialized training necessary for facility operations shall be provided to all facility personnel. Training requirements will be specified by TDCJ. Additional training may be provided, as needed, at the direction of the facility administrator.

(3) Outside resources. The facility administrator will develop procedures to provide that the training and staff development program uses outside resources when appropriate.

(4) Space and equipment. Facility administrators shall ensure that the necessary space and equipment for the training and staff development program are available.

§157.33. Security and Control. The facility shall use a combination of supervision, inspection, accountability and clearly-defined policies and procedures on use of force to promote safe and orderly operations.

(1) Operations manual. Each facility will develop and maintain a manual containing all procedures for facility security and control, with detailed instructions for implementing these procedures. The manual is available to all staff, reviewed at least annually and updated if necessary.

(2) Correctional officer assignments. Facility administrators shall ensure that correctional officer posts are located in or immediately adjacent to inmate areas to permit officers to be deployed in such a manner as to ensure safety and security.

(3) Security staff. The facility administrators shall ensure that the facility has the staff needed to provide full coverage of designated security posts, full surveillance of inmates and to perform all ancillary functions.

(4) Post orders. Each facility will maintain written orders for every cor-

rectional officer post. These orders are reviewed annually and updated if necessary.

(5) Personnel notification. Written policy, procedure and practice will provide that personnel read the appropriate post order each time they assume a new post and sign and date the post order.

(6) Staff and inmate interactions. Facility administrators will develop written policy, procedure and practice to facilitate personal contact and interaction between staff and inmates. The policy shall define both security and rehabilitative interactions.

(7) Co-ed staffing. Facility administrators shall ensure that when both males and females are housed in the facility, at least one male and one female staff members are on duty at all times.

(8) Prohibition of inmate authority. Facility administrators shall ensure that no inmate or group of inmates is given control or authority over other inmates.

(9) Permanent log. Facility administrators will ensure that written policy, procedure and practice require that correctional staff maintain a permanent log and prepare shift reports that record routine information, emergency situations and unusual incidents.

(10) Patrols and inspections. Facilities will maintain written policy, procedure and practice to ensure that supervisory staff conduct a daily patrol, including holidays and weekends, of all areas occupied by inmates and submit a daily written report to their supervisory. Unoccupied areas are to be inspected weekly.

(11) Regular observation by corrections officers. Every facility will develop a security staffing plan that provides visual, face-to-face observation of all inmates by corrections officers on a continuous basis. At least one corrections officer shall be provided on each floor where inmates are housed and sufficient officers must be provided to meet the continuous observation requirement.

(12) Inmate counts. The facility shall have a system for physically counting inmates. The system includes strict accountability for inmates assigned to work educational or program activities release, and other approved temporary absences.

(13) Inmate movement. Each facility will maintain written policy, procedure and practice to provide that staff regulate inmate movement.

(14) Inmate transportation. Facility administrators will ensure that written policy and procedure govern the transportation of inmates outside the facility and from one jurisdiction to another.

(15) Use of restraints. Facility administrators shall ensure that written policy, procedure and practice provide that instruments of restraint, such as handcuffs, irons and straightjackets, are never applied as punishment and are applied only with the approval of the facility administrator or designee. This policy shall include a description of the routine use of restraints.

(16) Control of contraband. Facility administrators shall establish written policy, procedure and practice to require facility shakedowns and pat searches of inmates to control contraband and provide for its disposal.

(17) Body cavity searches. Facility administrators shall ensure that an established written policy and procedure provide that body cavity searches conducted for reasons of security will be done in private, by medical personnel or by correctional personnel of the same sex as the inmate, who have been trained by a physician or other health care provider to probe body cavities (without the use of instruments) so as to cause neither injury to tissue nor infections.

(18) Strip searches. Facility administrators will establish written policy, procedure and practice to provide for strip searches of inmates based on specific guidelines (e.g., entry into the facility, after/before visitation, returning from furlough or when there is a reasonable belief) that the inmate is carrying contraband or any other prohibited items. Such searches shall be conducted by personnel of the same sex as the inmate being searched whenever reasonably possible.

(19) Controlled access and use of keys. Each facility will develop and maintain written policy and procedure to detail the control and use of keys.

(20) Tools and equipment. Each facility will develop and maintain written policy and procedure to govern the control and use of tools and culinary and medical equipment.

(21) Monitoring system. Security areas may have electronic monitoring systems to assist in inmate supervision and enhance the overall security of the facility. Monitoring systems may be used to supplement and reduce corrections officers, but will not be used as a replacement for minimum security personnel requirements.

(22) Security equipment. Facility administrators will ensure that written policy and procedure govern the availability, control, and use of chemical agents, and related security devices and specify the level of authority required for their access and use. Chemical agents are used only with the authorization of the facility administrator or designee.

(23) Emergency distribution. Facility administrators will ensure that written policy, procedure and practice provide that the facility maintains a written record of routine and emergency distributions of security equipment.

(24) Security equipment inventory. Facility administrators will ensure that firearm, chemical agents and related security equipment are inventoried at least monthly to determine their condition and expiration dates.

(25) Written reports. Facility administrators shall require that personnel discharging firearms, using chemical agents or any other weapon, or any other security equipment to control inmates, with the use of force, submit written reports to the facility administrator or designee no later than the conclusion of the tour of duty.

(26) Injuries. Facility administrators will ensure that written policy, procedure and practice provide that all persons injured in an incident receive immediate medical examination and treatment.

(27) Use of force. Facility administrators will ensure that written policy, procedure and practice restrict the use of physical force to commensurate instances of justifiable self-defense, protection of others, protection of property, prevention of escapes and only as a last resort and in accordance with statutory authority. In no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to administrative staff for review.

(28) Use of weapons. Facility administrators will develop written policy and procedure to govern the use of weapons and include the following listed requirements:

(A) security equipment is subjected to stringent safety regulations and inspections;

(B) a secure weapons locker is located outside the primary security perimeter of the facility;

(C) except in emergency situations, firearms and security equipment such as batons are permitted only in designated areas to which inmates have no access;

(D) employees supervising inmates outside the facility perimeter follow procedures for the security of security equipment;

(E) employees are instructed to use deadly force only after other actions

have been tried and found ineffective, and only when the employee believes that a person's life is immediately threatened; and

(F) employees on duty only use weapons or other security equipment that have been approved through the facility and only when directed by or authorized by the facility administrator.

(29) Fire safety. Each facility will maintain written policy and procedure to specify the facility's fire prevention regulations and practices to ensure the safety of staff, inmates and visitors. They include, but are not limited to, the following:

(A) provision for an adequate fire protection service;

(B) a system of fire inspection and testing of equipment at least quarterly;

(C) an annual inspection by local or state fire officials or other qualified person(s); and

(D) availability of fire hoses or extinguishers at appropriate locations throughout the facility.

(30) Monthly inspections. Facility administrators will ensure that written policy, procedure and practice provide for a comprehensive and thorough monthly inspection of the facility by a qualified fire and safety officer for compliance with safety and fire prevention standards. There is a weekly fire and safety inspection of the facility by a qualified departmental staff member. This policy and procedure is reviewed annually and updated as needed.

(31) Flammable, toxic and caustic materials. Each facility will maintain written policy, procedure and practice to govern the control and use of all flammable, toxic and caustic materials.

(32) Emergency power and communications. Facility administrators will develop and implement written policy, procedure and practice to provide for a communications system within the facility and between the facility and community in the event of urgent, special or unusual incidents or emergency situations.

(33) Maintenance. There shall be a written plan for routine and preventive maintenance of the physical plant; the plan includes provisions for emergency repairs or replacement in life-threatening situations.

(34) Emergency plans. Facility administrators will ensure that facility personnel are trained in the implementation of written emergency plans.

(35) Evacuation procedures. Each facility will maintain a written evacuation plan to be used in the event of fire or major emergency. The plan is certified by an independent, outside inspector trained in the application of national fire safety codes and is reviewed annually, updated if necessary, and reissued to the local fire jurisdiction. The plan includes the following:

(A) location of building/room floor plans;

(B) use of exit signs and directional arrows for traffic flow;

(C) location of publicly posted plan;

(D) at least quarterly drills in all facility locations, including administrative areas; and

(E) staff drills even when evacuation of inmates may not be included.

(36) Emergency release. Facility administrators will ensure that written policy, procedure and practice specify the means for the immediate release of inmates from locked areas in case of emergency and provide for a backup system.

(37) Work stoppage. Each facility will maintain written plans that specify the procedures to be followed in situations that threaten facility security. Such situations include but are not limited to: natural disasters; riots; hunger strikes; disturbances; work stoppages; and the taking of hostages. These plans are made available to all applicable personnel, are reviewed at least annually and updated as needed.

(38) Escapes. Facility administrators will ensure that there are written procedures regarding escapes; these procedures are reviewed at least annually and updated if necessary.

§157.35. *Rules and Discipline.* The facility rules of conduct and sanctions and procedures for violations are defined in writing and communicated to all inmates and staff. Disciplinary procedures are carried out promptly and with respect for due process.

(1) Rules of conduct. Facility administrators shall provide all inmates and staff with written rules of inmate conduct which specify acts prohibited within the facility and penalties that can be imposed for various degrees of violation. The written rules are reviewed annually and updated if necessary.

(2) Disciplinary procedures. Facility administrators will ensure that there is

a written set of disciplinary procedures governing inmate rule violations. These are reviewed annually and updated if necessary.

(3) Rulebook. During facility orientation, a rulebook that contains all chargeable offenses, ranges of penalties and disciplinary procedures is given to each inmate and is translated into those languages spoken by significant numbers of inmates. When a literacy or language problem prevents an inmate from understanding the rulebook, a staff member or translator assists the inmate in understanding the rules. Each staff member shall be given a copy of the rulebook.

(4) Training requirements. Facility administrators shall ensure that all personnel who work with inmates shall receive sufficient training so that they are thoroughly familiar with the rules of inmate conduct and inmate staff, the rationale for the rules and the sanctions available.

(5) Resolution of minor infractions. Each facility will maintain written guidelines for resolving minor inmate infractions that include a written statement of the rule violated and a hearing and decision within seven days, excluding weekends and holidays, by a person not involved in the rule violation. The inmate may waive the hearing.

(6) Criminal violations. Each facility will establish written policy, procedure and practice to provide that, where an inmate allegedly commits an act covered by criminal law, the case is referred to appropriate court or law enforcement officials for consideration for prosecution.

(7) Disciplinary reports. Facility administrators shall ensure that written policy, procedure and practice provide that when rule violations require formal resolution, staff members prepare a disciplinary report and forward it to the designated supervisor.

(8) Report content. Disciplinary reports prepared by staff members shall include, but are not limited to, the following information:

(A) specific rule(s);

(B) a formal statement of the charge;

(C) any unusual inmate behavior;

(D) any staff witness;

(E) an explanation of the event that should include who was involved, what transpired, and the time and location of occurrence;

(F) any physical evidence and its disposition;

(G) any immediate action taken, including the use of force; and

(H) reporting staff member's signature and date and time of report.

(9) Prehearing action. Facility administrators shall ensure that written policy, procedure and practice specify that, when an alleged rule violation is reported, an appropriate investigation is begun within 24 hours of the time the violation is reported and is completed without unreasonable delay, unless there are exceptional circumstances for delaying the investigation.

(10) Prehearing detention. Within the disciplinary procedures shall document there is a provision for preheating detention of inmates who are charged with a rule violation. The inmate's preheating status shall be reviewed by the facility administrator or designee within 72 hours, including weekends and holidays.

(11) Written statement of charges. Facility administrators shall ensure that written policy, procedure and practice provide that an inmate charged with a rule violation receives a written statement of the charge(s), including a description of the incident and specific rules violated. The inmate is given the statement at the same time that the disciplinary report is filed with the disciplinary committee but no less than 24 hours prior to the disciplinary hearing. The hearing may be held within 24 hours with the inmate's written consent.

(12) Presence at hearing. Facility administrators shall ensure that written policy and procedure provide that inmates charged with rule violations are present at the hearing, unless they waive that right in writing or through behavior. Inmates may be excluded during the testimony of any inmate whose testimony must be given in confidence. The reasons for the inmate's absence or exclusion are documented.

(13) Disciplinary hearing. Each facility shall maintain written policy, procedure and practice to provide that inmates charged with rule violations are scheduled for hearing as soon as practicable but no later than seven days, excluding weekends and holidays, after the alleged violation. Inmates are notified of the time and place of the hearing at least 24 hours in advance of the hearing.

(14) Postponement of continuance. Each facility shall maintain written policy, procedure and practice to provide for postponement or continuance of the dis-

ciplinary hearing for reasonable period and good cause.

(15) Conducting of hearing. Each facility shall maintain written policy, procedure and practice to provide that disciplinary hearings on rule violations are conducted by an impartial person or panel of persons. A record of the proceedings is made and maintained for at least six months.

(16) Inmate rights. Each facility shall maintain written policy, procedure and practice to provide that inmates have an opportunity to make a statement and present documentary evidence at the hearing and can request witnesses on their behalf. The reasons for denying such a request are stated in writing.

(17) Inmate assistance. Each facility shall maintain written policy, procedure and practice to provide that a staff member or agency representative assist inmates at disciplinary hearings if requested. A representative is appointed when it is apparent that an inmate is not capable of collecting and presenting evidence effectively on his or her own behalf.

§157.37. Special Management. Inmates who threaten the secure and orderly management of the facility may be removed from the general population and placed in special units.

(1) General policy. Each facility shall maintain written policy, procedure and practice to govern the operation and supervision of inmates under administrative segregation, protective custody and disciplinary detention.

(2) Immediate segregation. The facility administrator or shift supervisor can order immediate segregation when it is necessary to protect the inmate or others. That action is reviewed within 72 hours by the appropriate authority as designated in the policy.

(3) Admission and review of status. Facility administrators shall ensure that written policy, procedure and practice provide that an inmate is admitted to protective custody status when there is documentation that protective custody is warranted and no reasonable alternatives are available.

(4) Disciplinary detention. Each facility shall maintain that written policy, procedure and practice provide that an inmate is placed in disciplinary detention for a rule violation only after a hearing.

(5) Status review. Facility administrators shall establish written policy, procedure and practice to provide for a review of the status of inmates in administrative segregation and protective custody every seven days for the first two months

and at least every 30 days thereafter. The facility administrator shall designate staff responsible for this review.

(6) Review process. Facility administrators shall ensure that written policy, procedure and practice specify the review process used to release an inmate from administrative segregation or protective custody.

(7) Daily visits. Facility administrators shall ensure that written policy and procedure provide that inmates in segregation receive daily visits from the chief security officer or shift supervisor, member of the program staff on request and a qualified health care provider three times per week as specified in the Health Services Policy and Procedure Manual.

(8) Log. Facility administrators shall ensure that written policy, procedure and practice provide that staff operating special management units maintain a permanent log.

(9) General conditions of confinement. Facility administrators shall ensure that all inmates in special management units provide prescribed medication, clothing that is not degrading and access to basic personal items for use in their cells unless there is imminent danger that an inmate or any other inmate(s) will destroy an item or induce self-injury.

(10) On-going services. Facility administrators shall ensure that inmates in special management units receive laundry, barbering, hair care services and are issued and exchanged, bedding and linen on the same basis as inmates in the general population. Exceptions are permitted only when found necessary by the senior officer on duty; any exception is recorded in the unit log and justified in writing.

(11) Action report. Each facility will maintain written policy and procedure to provide that whenever an inmate in segregation is deprived of any usually authorized item or activity, a report of the action is made and forwarded to the facility administrator.

(12) Programs and services for special management units. Facility administrators shall ensure written policy, procedure and practice provide that inmates in special management units can write and receive letters on the same basis as inmates in the general population.

(13) Visiting. Facility administrators will ensure written policy, procedure and practice provide that inmates in special management units have opportunities for visitation unless there are substantial reasons for withholding such privileges.

(14) Access to legal materials. Each facility shall maintain written policy,

procedures and practice to provide that inmates in special management units have access to legal materials, counsel and the courts.

(15) Access to reading materials. Each facility shall maintain written policy, procedure and practice to provide that inmates in special management units have access to reading materials.

(16) Exercise outside of cell. Facility administrators shall ensure written policy, procedure and practice provide that inmates in these units receive a minimum of one hour of exercise per day outside their cells, unless security or safety considerations dictate otherwise.

(17) Telephone privileges. Facility administrators shall ensure written policy, procedure and practice provide that inmates are allowed telephone privileges.

(18) Telephone privileges-segregation/custody. Facility administrators shall ensure written policy and procedure provide that inmates in administrative segregation and protective custody are allowed telephone privileges.

(19) Telephone privileges-disciplinary detention. Facility administrators shall ensure written policy and procedure provide that inmates in disciplinary detention are allowed limited telephone privileges consisting of telephone calls related specifically to access to the judicial process and family emergencies as determined by the facility administrator or designee.

§157.39. Inmate Rights. The facility protects the safety and constitutional rights of inmates and seeks a balance between expression of individual rights and preservation of facility order.

(1) Access to courts. Each facility will maintain written policy, procedure and practice to ensure the right of inmates to have access to courts.

(2) Access to counsel. Each facility will maintain written policy, procedure and practice to ensure and facilitate inmate access to counsel and assist inmates in making confidential contact with attorneys and their authorized representatives; such contact includes, but is not limited to, telephone communications, uncensored correspondence and visits.

(3) Access to law library. Each facility will maintain written policy, procedure and practice to provide that inmates have access to legal materials if there is not adequate free legal assistance to help them with criminal, civil and administrative legal matters. Inmates shall have access to paper, writing materials, postage and other supplies and services related to legal matters.

(4) Access to programs and services. Facility administrators shall ensure written policy, procedure and practice provide that program access, work assignments

and administrative decisions are made without regard to inmates' race, religion, national origin, sex, handicap or political views.

(5) Administrative segregation. Inmates in administrative segregation because of behavioral problems should be provided with programs conducive to their well-being.

(6) Protective custody. Inmates in protective custody should be allowed to participate in as many of the programs afforded the general population, providing such participation does not threaten facility security.

(7) Equal opportunity. Where males and females are housed in the same facility, equal opportunities shall be provided for participation in programs and services. They are provided separate sleeping quarters but equal access to all available services and programs. Neither sex is denied opportunities solely on the basis of their smaller number of the total population.

(8) Inmate communications. Each facility shall maintain written policy, procedure and practice to grant inmates the right to communicate or correspond with persons or organizations, subject only to the limitations necessary to maintain order and security.

(9) Grievance procedures. Facility administrators shall ensure that there is a written inmate grievance procedure that is made available to all inmates which includes at least one level of appeal.

(10) Inmate requests. Each facility shall maintain a written policy describing the manner in which inmates may make written requests of the staff.

(11) Prohibition of harassment. There will be no harassment of or retaliation against any inmate for exercising their access to the courts or filing a grievance.

§157.41. Institutional Services. All incoming inmates undergo thorough screening and assessment at admission and receive thorough orientation to the facility's procedures, rules, programs and services.

(1) Reception and orientation. Each facility will maintain written policies and procedures to govern the admission of inmates new to the system and are reviewed annually and updated if necessary. These procedures include at a minimum the following:

(A) determination that inmate is legally committed to the facility;

(B) drug/alcohol use;

(C) thorough search of the individual and possessions;

(D) disposition of personal property;

(E) shower and hair care, if necessary;

(F) issuance of clean, laundered clothing when appropriate;

(G) photographing and fingerprinting, including notation of identifying marks or other unusual physical characteristics;

(H) medical, dental and mental health screening;

(I) assignment to a housing unit;

(J) recording basic personal data and information to be used for mail and visiting list;

(K) explanation of mail and visiting procedures;

(L) assistance to inmates in notifying their next of kin and families of admission;

(M) medical, dental, substance abuse and mental health screening;

(N) assignment of registered number to the inmate;

(O) giving written orientation materials to the inmate;

(P) telephone calls by inmate;

(Q) criminal history check; and

(R) assignment to a case manager to develop supervision/treatment plan.

(2) Inmate location. Inmates will be separated from the general population of the facility during the admissions process.

(3) Personal property. Inmate admission will include a written, itemized inventory of all personal property of newly admitted inmates and secure storage of in-

mate property, including money and other valuables. The inmate is given a receipt for all property held until release. If the inmate arrives with medications or prosthetic devices, the items should be submitted to the unit medical staff for a determination of appropriate disposition.

(4) *Searches of Legal Material.* Facility administrators shall establish written policy, procedure and practice to govern the search of legal materials of all incoming inmates.

§157.51. Health Screenings and Examinations.

(a) *Preliminary screening.* Facility administrators shall ensure that written policy, procedure and practice require medical, dental and mental health screening to be performed by health-trained or qualified health care personnel on all inmates, excluding intrasystem transfers, on the inmate's arrival at the facility. All findings are recorded on a form approved by the health authority. The screening includes at least the following:

(1) Inquiry to:

(A) current illness and health problems, including venereal diseases and other infectious diseases;

(B) dental problems;

(C) mental problems;

(D) use of alcohol and other drugs, including type(s) of drugs used, mode of use, amounts used, frequency used, date or time of last use and history of any problems that may have occurred after ceasing use (e.g., convulsions);

(E) past and present treatment or hospitalization for mental disturbance or suicide;

(F) possibility of pregnancy; and

(G) other health problems designated by the responsible physician.

(2) Observation of:

(A) behavior, including state of consciousness, mental status, appearance, conduct, tremor and sweating;

(B) body deformities, ease of movement, etc.; and

(C) condition of skin, including trauma markings, bruises, lesions, jaundice, rashes and infestations and needle marks or other indications of drug abuse.

(3) Medical disposition of inmate:

(A) general population; or

(B) general population with prompt referral to appropriate health care service; or

(C) referral to appropriate health care service for emergency treatment.

(b) *Intrasystem transfers.* Facility administrators shall ensure written policy, procedure and practice require that all intrasystem transfers receive a health screening by health-trained or qualified health care person immediately on arrival at the facility. All findings are recorded on a screening form approved by the health authority. The screening includes at a minimum the following:

(1) Designated nursing personnel at each unit will pick up the medical record for each day's incoming inmates.

(2) The health record for each incoming inmate will be reviewed for the following:

(A) housing, work, disciplinary restrictions (from the health summary for classification form);

(B) prescribed medication; and

(C) prescribed treatment regimen.

(3) Based on the records review, medication, appointments and referrals will be scheduled as appropriate.

(4) Following the nursing service review, the record will be forwarded to dental and psychiatric services for their respective reviews.

(c) *Health appraisal.* The facility health authority shall ensure written policy, procedure and practice require that a health appraisal for each inmate, excluding intrasystem transfers, is completed within 14 days after arrival at the facility. If there is documented evidence of a health appraisal within the previous 90 days, a new health appraisal is not required except as determined by the designated health authority. The health appraisal shall include the following:

(1) review of the earlier receiving screening;

(2) collection of additional data to complete the medical, dental, mental health and immunization histories;

(3) laboratory and/or diagnostic tests to detect communicable disease and tuberculosis;

(4) recording of height, weight, pulse, blood pressure and temperature;

(5) other tests and examinations as appropriate;

(6) medical examination, including review of mental and dental status;

(7) review of the results of the medical examination, tests and identification of problems by a physician or other qualified health care personnel, if such is authorized in the Medical Practice Act;

(8) initiation of therapy when appropriate; and

(9) development and implementation of treatment plan, including recommendations concerning housing, job assignments and program participation

(d) *Recording appraisal data.* The facility health authority shall ensure written policy, procedure and practice for the collection and recording of health appraisal data require the following:

(1) the process is completed in a uniform manner as determined by the health authority;

(2) health history and vital signs are collected by health-trained or qualified health personnel, and

(3) collection of all other health appraisal data is performed only by qualified health personnel

(e) *Dental screening and examination.* The facility health authority shall ensure written policy and procedure require that dental care is provided to each inmate under the direction and supervision of a dentist, licensed in the state, as follows:

(1) dental screening within 14 days of admission;

(2) dental health orientation and education services within 14 days of admission;

(3) dental examinations within three months of admission;

(4) dental treatment, not limited to extractions, within three months of admission when the health of the inmate would be adversely affected; and

(5) dental emergency treatment within 24 hours of admission or discovery.

(f) *First aid.* First aid kits shall be available in designated areas of the facility based on need.

(g) Use of specialists. The facility administrators will ensure written policy and procedure require that arrangements are made for the provision of special medical programs, including chronic care, convalescent care and medical preventive maintenance for the inmates.

(h) Severe mental illness and retardation. The facility health authority shall ensure written policy and procedure require postadmission screening and referral for care of mentally ill or retarded inmates whose adaption to the correctional environment is significantly impaired.

(i) Administrative consultation. Each facility shall maintain written policy which requires consultation between the facility administrator and the responsible physician, or their designees, under the following conditions before the following actions are taken regarding patients who are diagnosed as having a psychiatric illness:

- (1) housing assignments;
- (2) program assignments;
- (3) disciplinary measures; and
- (4) transfers in and out of the facility.

(j) Management of chemical dependency. The facility health authority shall maintain written policy and procedure to guide the clinical management of chemically dependent inmates and include the following requirements:

- (1) screening, assessment and diagnosis of chemical dependency; and
- (2) determination as to whether an individual requires nonpharmacologically supported care.

(k) Informed consent. All examinations, treatments and procedures affected by informed consent standards in the community shall likewise be observed for inmate care. In the case of minors, the informed consent of parent, guardian or legal custodian applies when required by law. Health care is rendered against inmate's will only in accordance with law.

§157.53. Inmate Programs. Programs designed to address specific offender risk and needs offer the greatest opportunity to have a positive impact in changing criminal behavior.

(1) Continuum of programs and services. All State Jail facilities shall ensure the development and implementation of a continuum of programs and services designed to address the risk and needs of the offenders placed within those facilities.

(2) Basic programs required. Each State Jail facility will, at a minimum, provide programs in the following areas which will include, but not be limited to:

- (A) educational/vocational programs;
- (B) work programs;
- (C) rehabilitation programs; and
- (D) recreational programs.

(3) Local/regional planning. State jail programs shall be developed based upon local and regional needs. The Community Justice Councils and the Community Supervision and Corrections Departments (CSCD) served by the facility shall provide consultation to the SJD and the CJAD in program development through identification of local/regional resource and needs.

(4) Program staffing. The facility administrator shall ensure that all programs are adequately staffed by qualified persons providing specific program components. The facility will utilize community volunteers, whenever it is feasible.

(5) Classification and assessments. Facility staff shall adhere to written policy, procedure and practice to provide the specific methods and areas of classification and assessment necessary for each offender upon entry into the facility.

(6) Supervision/treatment plans. Facility administrators shall ensure written policy, procedure and practice to provide that the classification/assessment process will be utilized to develop an individualized supervision/treatment plan for each offender in the facility. Plans are to be long range and developed in such a manner as to provide for a continuity of service and when appropriate, supervision care for offenders after discharge from the facility. Services shall be prioritized based upon need and availability.

(7) Case management services. Facility management shall include written policy, procedure and practice to provide that a case manager will be assigned to each offender to monitor and evaluate the progress of the offenders achievement of the plan. The case manager will be responsible for determining changes to that plan (where progression or regression dictate) and to provide guidance to that offender toward successful accomplishment of the plan.

(8) Reintegration model. To optimize reintegration of offenders, written policy, procedure and practice to provide that each offender develop a transition plan for release back into the community. Such plan will be developed with oversight and assistance from the case manager prior to the offender's release. The plan will be transferred with the offender to any after-

care and/or community supervision agencies upon discharge from the facility.

(9) Basic program design. All programs shall be designed to be presented in specific "sections" so that offenders may complete those sections within a 90-day cycle. Such design is meant to address differing periods of time of confinement for offenders.

(10) Educational/vocational programs. Facility administrators will ensure written policy, procedure and practice provide that, at a minimum, each facility will offer adult basic education, GED preparation and GED classes and English as a Second Language (where necessary). Offender participation will be predicated upon specific educational assessments determining specific need for any or all of these programs. Computer-assisted learning labs will be utilized to better address individual learning rates. Each facility shall develop vocational programs designed to address local/regional needs. The facility staff, the local Community Justice Councils, Texas Employment Commission, Texas Rehabilitation Commission and local employers will determine the local need.

(11) Life skills programs. It is the intent of this standard that each offender will be assessed to determine specific areas listed in subparagraphs (A)-(I) of this paragraph which are applicable to that offender's needs. Each facility will implement life skills programming which may include, but is not limited to, the following areas:

- (A) personal financial management;
- (B) employment readiness/job search;
- (C) employment interviewing skills;
- (D) personal hygiene;
- (E) parenting classes;
- (F) interpersonal relationships;
- (G) anger management;
- (H) problem solving; and
- (I) conflict resolution.

(12) Rehabilitation programs. Each offender, as determined by the assessments and supervision plan, will have supervised access to programs designed to

address that offender's risk and areas of need. Those programs will include, but not be limited to, the following areas:

(A) substance abuse education;

(B) group/individual counseling;

(C) Alcoholics Anonymous (AA), Narcotics Anonymous (NA) and Cocaine Anonymous (CA); and

(D) expanded programs from life skills, where needed.

(13) Community Service Restitution (CSR) programs. Each facility shall maintain written policy, procedure and practice to provide for the development and implementation of CSR programs. Such programs will be designed to provide service restitution to the community and as a method to provide incentives for positive offender behavior. Initial CSR activities will be restricted to the grounds of the facility. Incentive CSR activities may allow offenders to perform CSR outside of the facility under staff supervision.

(14) Work programs. Facility administrators shall ensure written policy, procedure and practice provide each offender with specific work/tasks to be performed while residing in the facility. Such work will include routine maintenance tasks, personal area maintenance, specific work assignments and institutional support. Such programs are not to be included as credit toward CSR hours mandated by court order.

(15) Recreational programs. Facility administrators shall ensure that written policy, procedure and practice provide each offender within the facility with specific, regular time to engage in recreational activities. Indoor recreation and outdoor recreation, weather permitting, must be available to assist in the rehabilitation and physical well-being of offenders.

(16) Inmate work plan. The facility has a written inmate work assignment plan that provides for inmate work opportunities, subject to the number of work opportunities available and the maintenance of facility security.

(17) Work requirement. The facility administrator shall require all able-bodied inmates to work in addition to participation in an approved education or training program. Inmates are to participate as prescribed by their supervision, treatment and classification plan.

(18) Non-discrimination. Facility administrators shall ensure that written

policy and procedure prohibit discrimination in inmate work assignments based on sex, race, religion and national origin.

§157.55. Mail, Telephone, Visiting. A written body of policy and procedure governs the facility's mail, telephone and visiting service for inmates, including mail inspection, public phone use and routine and special visits.

(1) Inmate correspondence. Each facility will maintain written policy and procedure that govern inmate correspondence; they are available to all staff and inmates, reviewed annually and updated as needed.

(2) Inmate cost. When the inmate bears the mailing cost, there shall be no limit on the volume of letters he/she can send or receive or on the length, language, content or source of mail or publications, except when there is reasonable belief that limitation is necessary to protect public safety or facility order and security.

(3) Postage allowance. Facility administrators shall ensure written policy, procedure and practice provide that indigent inmates, as defined in policy, receive a specified postage allowance to maintain community ties.

(4) Publication access. Each facility shall maintain written policy, procedure to govern inmate access to publications.

(5) Inspection of letters and packages. Each facility shall specify written policy, procedure and practice to provide that inmate mail, both incoming and outgoing, may be opened and inspected for contraband. Mail is read, censored or rejected when based on legitimate facility interests of order and security. Inmates are notified when incoming or outgoing letters are withheld in part or in full.

(6) Sealed letters. Facility administrators shall ensure written policy, procedure and practice specify that inmates are permitted to send sealed letters to a specified class of persons and organizations, including but not limited to the following: courts; counsel; designated facility administrators; state and local chief executive officers; media representatives; members of the State legislature; and administrators of grievance systems. Mail to inmates from this specified class of persons and organizations may be opened only to inspect for contraband and only in the presence of the inmate, unless waived in writing.

(7) Mail inspections. Facility administrators shall establish written policy and procedure to provide for the inspection of inmate letters and packages to intercept cash, checks, money orders and contraband. A receipt is given to the addressee.

(8) Holding mail. Facility administrators shall establish written policy, procedure and practice to require that, excluding weekends and holidays, incoming and outgoing letters are held for no more than 24 hours and packages are held for no more than 48 hours.

(9) Telephone. Each facility shall maintain written policy, procedure and practice to provide for inmate access to telephones.

(10) Visiting. Facility administrators shall ensure written policy, procedure and practice provide that the number of visitors an inmate may receive and the length of visits may be limited only by the facility's schedule, space and personnel constraints, or when there are substantial reasons to justify such limitations.

(11) Visiting high-risk inmates. Each facility shall maintain written policy and procedure to govern visiting for high-risk inmates. Special visits shall be governed by written policy and procedure developed by facility administrators.

(12) Extended visits. Extended visits between inmates and their families shall be governed by written policy, procedure and practice developed by facility administrators.

(13) Furloughs. As provided by written policy, procedure and practice, facility administrators shall provide that inmates with appropriate security classifications are allowed furloughs to the community to maintain community and family ties, seek employment opportunities and for other purposes consistent with the public interest.

(14) Visitor registration. Facility administrators shall ensure written policy, procedure and practice provide that visitors register on entry into the facility and specify the circumstances under which visitors may be searched.

(15) Visitor information. Facility administrators shall designate staff to provide information to visitors about transportation to the facility and between the facility and nearby public transit terminals.

§157.57. Library. A written body of policy and procedure governs the facility's library program, including acquisition of materials, hours of availability and staffing.

(1) Comprehensive library services. Library services shall be available to all inmates in detention facilities library programs, including acquisition of materials, hours of availability and staffing.

(2) Library staff. Each facility shall have a qualified staff person who coordinates and supervises library services.

(3) Selection and acquisition of materials. Facility administrators shall ensure that written policy defines the principle, purposes and criteria used in selection and maintenance of library materials.

(4) Interlibrary loan. Facility administrators shall ensure that the library participates in interlibrary loan programs when available.

§157.83. Size, Organization and Location. The question of facility size is most properly approached from the dual perspectives of inmate profile and facility mission. This approach encourages flexibility, creativity and innovation in meeting safety and quality of life concerns.

(1) Functions. Space shall be allocated for, but not limited to, the following functions:

- (A) clear zone surrounding perimeter;
- (B) parking;
- (C) service and delivery vehicles;
- (D) inmate housing;
- (E) exercise and recreation;
- (F) visiting;
- (G) inmate programs;
- (H) library;
- (I) counseling;
- (J) central food service and dining;
- (K) housekeeping;
- (L) clothing and supply distribution;
- (M) storage;
- (N) mechanical and electrical equipment;
- (O) inmate commissary;
- (P) inmate mail;
- (Q) medical examination and treatment;

- (R) laundry facilities;
 - (S) maintenance;
 - (T) hazardous material storage;
 - (U) multipurpose rooms;
 - (V) barber shops;
 - (W) interview rooms;
 - (X) facility administrative areas;
 - (Y) security staff areas;
 - (Z) chaplain's area;
 - (AA) classification management;
 - (BB) risk managers office;
 - (CC) classification testing (Mode One only);
 - (DD) control rooms with sallyports;
 - (EE) security equipment storage;
 - (FF) inmate reception (all Mode One, some Mode Two);
 - (GG) visitor reception and sallyport;
 - (HH) vehicle sallyport and shakedown;
 - (II) security perimeter; and
 - (JJ) armory.
- (2) Staff/inmate interaction. Physical plant design facilitates personal contact and interaction between inmates and staff.
- (3) Facility size. The size of the facility is variable and is subject to TDCJ approval. Facilities are divided into distinct, semiautonomous management units that encourage positive staff/inmate interactions and enhance the safety of staff and inmates, improves inmate behavior and increases the effectiveness of programs and services.

(4) Unit size. The maximum size of a single management unit is variable and is based on the characteristics of its inmate population. The exact size of each management unit is determined by:

(A) the security classification of the inmate occupants (higher security levels may require smaller unit size); and

(B) the ability of staff to complete regular security checks, maintain visual and auditory contact, maintain personal contact and interaction with inmates and be aware of unit conditions.

(5) Single cells. Single-cell living units shall not exceed 80 inmates.

(6) Rated capacity. The number of assigned inmates shall not exceed the unit's rated bed capacity.

(7) Location. Each unit is located within a 30-minute radius from a Joint Commission on Accreditation of Hospital Organization (JCAHO) accredited hospital with a Level III emergency room, fire protection and public transportation.

§157.87. Inmate Housing. Inmate housing areas are the basis for institutional living and as such must promote the safety and well-being of staff and inmates. All inmate areas shall provide unobstructed view of all inmates by security staff from outside the secure areas.

(1) Dormitories. Dormitories shall accommodate 9-50 general population inmates and shall contain not less than 40 square feet of clear floor space for one inmate, plus 18 square feet of clear floor space per each additional inmate. Dormitories shall have a bunk for each inmate. Stacking double bunks are acceptable. A toilet and lavatory capable of providing drinking water for each group of eight inmates or increment thereof shall be provided in each dormitory.

(2) Multi-occupancy cells. Multi-occupancy cells shall accommodate 1-8 inmates and shall contain not less than 40 square feet of clear floor space for one inmate plus 18 square feet of clear floor space per each additional inmate. Each multiple-occupancy cell shall have a bunk for each inmate, one toilet and one lavatory capable of providing drinking water. Stacking double bunks are acceptable. The sum of the number of multiple-occupancy cells and the number of administrative segregation cells shall be at least 10% of the unit's rated bed capacity.

(3) Administrative segregation cells. Administrative segregation cells shall approximate the living conditions provided to general population inmates and shall

house only one inmate each. Cells shall contain not less than 40 square feet of clear floor space exclusive of furnishings and shall permit the assigned inmate to speak with and be observed by staff. They shall have a bunk, toilet, lavatory capable of providing drinking water, desk and seating. The number of cells shall be at least 2.51 of the unit's rated bed capacity.

(4) Medical isolation cells. Medical isolation cells shall be accessible for wheelchair-bound inmates and shall contain a hospital-type bed, shower, toilet and lavatory capable of providing drinking water. A vestibule shall separate the medical isolation cell(s) from adjacent spaces. Mechanical systems for medical isolation cells shall insure that airborne pathogens are not released into the outside air or into building spaces. The travel path from the medical isolation room to the ambulance evacuation area shall be sized for a gurney. Units of less than 1,000 inmates shall contain at least one medical isolation cell and units with more than 1,000 inmates shall contain at least two medical isolation cells. The number of medical isolation cells do not count towards the unit's rated bed capacity.

(5) Padded cells. Padded cells shall accommodate one inmate each. At least one and, if necessary, additional violent cells shall be provided in each facility for the temporary holding of violent persons or persons suspected of insanity. The number of violent cells shall not count toward the facility's rated capacity. Violent cells shall include the following features and equipment:

(A) Size. The room or cell shall not have less than 40 square feet of clear floor space and a ceiling height of not less than eight feet.

(B) Furnishings. The cell shall be equipped with a hammock, not less than 2'-3" wide and 6'-3" long, made of an elastic or fibrous fabric designed to minimize its use to inflict self-injury. A shelf the length of the cell at least 2'-3" wide and not more than 8" above the floor covered with padding material identical to that of the floor may be used in lieu of the hammock. A flushing-type floor drain with control outside the cell shall also be provided.

(C) Padding. Walls and inside door surfaces shall be completely padded to the lower of ceiling or 10' high and the floor shall be covered with a material to protect the inmate from self-injury. The type of quality materials used for padding and floor covering shall be designed to prevent self-injury and have the capability of being cleaned. It shall be fire-resistant and non-toxic.

(6) Bunks. Bunks shall be fire-resistant and not less than 2'-3" wide and 6'-3" long. Bunks shall be securely anchored and should have lockable storage at least 12" X 24" X 24" in size for each inmate.

(7) Water closets and lavatories. Water closets and lavatories shall be constructed in such manner and of such material so as to resist vandalism. A combination toilet and lavatory constructed of vandal-resistant material is recommended.

(8) Additional furnishings. For administrative segregation cells, multiple-occupancy cells and dormitories may include desks and seats (mandatory for single cells), lockers, mirrors, detention-type electric light fixtures, detention-type heating and ventilation grilles and showers. Where light fixtures or other appurtenances are recessed in or otherwise made an integral part of walls or ceilings, provisions should be made to prevent destruction or removal.

(9) Dayrooms. Dayrooms shall be provided in close proximity to all inmate sleeping areas except for medical isolation cells. Medical isolation cells do not get dayrooms. Space shall be provided for varied inmate activities. Different classifications of inmates shall not be commingled in the same dayroom.

(10) Space requirements. Dayrooms for dormitories shall accommodate not more than 50 inmates. Dayrooms shall contain at least 40 square feet of clear floor space for one inmate plus 18 square feet of clear floor space for each additional inmate. Dormitory dayrooms may be contiguous with inmate sleeping areas.

(11) Space requirements. Dayrooms for multiple-occupancy cells shall accommodate not more than 24 inmates. Dayrooms shall contain at least 40 square feet of clear floor space for one inmate, plus 18 square feet of clear floor space for each additional inmate. Multi-occupancy cell dayrooms shall be separated from multi-occupancy cells with controlled access from one to the other.

(12) Furnishings. Dayrooms for dormitories and multiple-occupancy cells are equipped with a toilet and lavatory capable of providing drinking water for each group of eight inmates or increment thereof. A mirror shall be provided at each lavatory. They shall also provide a shower for each group of 12 inmates or increment thereof. Each dayroom shall be suitably furnished with, but not limited to, seating and tables to accommodate the number of inmates to be confined therein, one television for each group of 25 inmates and may provide dining facilities and other activities. A utility sink shall be provided. Multi-occupancy

cell dayrooms shall be separated from multiple-occupancy cells with controlled access from one to the other.

(13) Space requirements. Dayrooms for administrative segregation cells shall accommodate one inmate and shall contain at least 200 square feet. A maximum of four inmates shall be permitted in any dayroom at any one time. The number of administrative segregation dayrooms shall be at least 8.0% of the number of cells.

(14) Furnishings. Dayrooms for administrative segregation cells shall contain a toilet, a lavatory capable of providing drinking water, a table with seating for four inmates. They should also contain at a minimum, an exercise mat, a television and a chinning bar.

(15) Holding rooms. Holding rooms shall accommodate no more than 12 inmates each and shall contain 40 square feet of clear floor space for the first inmate and 18 square feet of clear floor space per each additional inmate. Furnishings shall include benches against the walls of the rooms to afford the best possible visibility of inmates by security staff. Each holding room for two or more inmates shall provide a floor drain and cleanable floor surface. Inmate reception areas shall contain at least two single occupancy holding rooms containing at least 40 square feet of clear floor space. Each holding cell shall contain one toilet and lavatory capable of dispensing drinking water.

(16) Tables and benches. Tables and benches should be constructed of materials which will reduce maintenance. They shall be fire-resistant and securely anchored to floor or wall surfaces. Benches shall be not less than 12" wide, and linear seating dimensions shall be not less than 18" per person to be seated at any one time. Stools shall not be less than 12" in diameter.

(17) Detoxification cells. Facilities that do not provide inmate reception areas shall provide one or more detoxification cells containing the following:

(A) Seating. The detoxification cell shall be equipped with stationary benches or bunks no higher than 8" above the floor.

(B) Plumbing. The detoxification cell shall be provided with one or more vandal-resistive flushing floor drains, or vandal-resistive water closet/lavatory/drinking fountain combinations with standard floor drains. The floor shall be properly pitched to drains and plumbing shall have outside water shutoffs and controls.

(C) Cell size. The size of the detoxification cell shall be determined by the anticipated maximum number of persons received at any one time. A detoxification cell shall not accommodate more than 12 persons and shall have a minimum of 40 square feet of floor space for one person plus 18 square feet of floor space per additional person.

(D) The floor and wall materials shall be durable and easily cleaned.

(E) Supervision. The detoxification cell shall be constructed to facilitate supervision of the cell area and to materially reduce noise.

(18) Toilets. Should be constructed in such manner and of such material so as to resist vandalism. A combination toilet and lavatory constructed of vandal-resistant material is recommended. Inmates should have access to toilets and hand washing facilities 24-hours per day and are able to use toilets without staff assistance when they are confined in their sleeping areas. Dormitory and multiple-occupancy cell toilets are provided at the rate of one for every group of eight inmates or increment thereof. Urinals may be substituted for up to one-half of the toilets in male facilities.

(19) Lavatories. Lavatories shall be constructed in such manner and of such material so as to resist vandalism. A combination toilet and lavatory constructed of vandal-resistant material is recommended. Inmates have access to operable wash basins with temperature controlled hot and cold running water in the housing units at a minimum ratio of one lavatory for every eight inmates.

(20) Showers. Shower areas shall be not less than 2'-6" square per showerhead and not less than 7'-0" high. Construction should be of materials which resist the action of soap and water and which cannot be easily damaged by acts of vandalism. Drying areas of not less than 2'-6" square sloped to a drain should be provided adjoining the shower entrance. Inmates have access to operable showers with temperature controlled hot and cold running water at a minimum ratio of one shower to every 12 inmates. Water is thermostatically controlled to temperatures ranging from 100-108 degrees Fahrenheit to ensure the safety of inmates.

(21) Housing for the handicapped. Within all facilities, inmate areas shall comply with the provisions of the United States Americans with Disabilities Act and the State of Texas Elimination of Architectural Barriers Act for the mobility impaired in all aspects that do not compromise the safety of inmates and/or staff. Fa-

ilities shall provide for a handicapped inmate population of 2.0% of the total inmate population. Handicapped inmates may be segregated in common housing units. At least one administrative segregation cell shall be handicapped accessible. Facilities need not accommodate inmates with handicaps other than mobility impairments.

§157.89. Environmental Conditions. Environmental conditions significantly influence unit operations. Acceptable standards for lighting, air quality, temperature and noise levels promote the health and well-being of staff and inmates while enhancing unit order and security.

(1) Light levels. Lighting throughout the unit is determined by the tasks performed, surface finishes and colors, type and spacing of light sources, outside lighting, shadows and glare. Exteriors of buildings and outdoor recreation yards shall be lighted at night sufficiently for security staff to observe all inmate activity. Exterior light fixtures shall be positioned to eliminate glare.

(2) Inmate cells. Inmate living areas shall be equipped with lighting that provides an average of 20 footcandles at the desk and grooming station of illumination during non-sleeping hours and three footcandles during sleeping hours.

(3) Natural light-inmate sleeping areas. Detention-grade windows and/or skylights shall be provided in all dormitories, multiple occupancy cells and administrative segregation cells. Operable windows are required in non-air conditioned inmate housing areas.

(4) Dayrooms. Windows and/or skylights shall be provided in all dayrooms for dormitories and multiple occupancy cells. Administrative segregation dayrooms shall provide a minimum of three square feet of transparent glazing with a view to the outside.

(5) Noise levels. Noise levels in inmate housing units shall not exceed 70 dBA (A scale) in daytime and 45 dBA (A scale) at night.

(6) Indoor air quality-winter ventilation. Systems shall circulate at least 15 cubic feet per minute of outside air per occupant for all occupied spaces subject to paragraphs (8) and (10) of this section. Winter exhaust systems shall insure positive pressurization of inmate living areas.

(7) Indoor air quality-summer ventilation. Systems shall provide at least 15 air changes per hour in all non-air conditioned occupied spaces subject to paragraphs (8) and (10) of this section. Programmatic space and administrative areas shall be air conditioned.

(8) Restroom ventilation. Systems shall circulate the following amounts of fresh air:

(A) Winter season—the greater of 12.5 cubic feet per minute per inmate or 1.2 times the required toilet and shower exhaust fan airflow; and

(B) Summer season—15 air change per hour.

(9) Restroom exhaust. Systems shall provide the following air flows:

(A) Toilet exhaust fans—1.5 cubic feet per minute per square foot of floor space used for toilets, urinals and lavatories;

(B) Shower exhaust fans—the greater of two cubic feet per minute per square foot of shower stall or 50 cubic feet per minute per showerhead; and

(C) All toilet exhaust fans shall operate continuously regardless of season.

(10) Kitchen ventilation. Systems shall provide 15 air changes per hour during all time that the kitchen is in use, regardless of season. Air flow from exhaust hood may count toward this standard. Kitchen area ventilation systems shall provide pressure differentials on the following descending order:

(A) dining rooms;

(B) kitchen preparation areas;

(C) pot scrub areas; and

(D) sculleries.

(11) Dry food storage areas. Shall have ventilation systems capable of providing 15 air changes per hour in the summer.

(12) Exhaust hood. Each exhaust hood serving kitchen equipment shall exhaust no less than 150 cubic feet per minute per linear foot of hood perimeter and shall conform to the Uniform Mechanical Code, §2003(g).

(13) Scullery. Each scullery shall have exhaust systems capable of providing at least 30 air changes per hour.

(14) Pot scrub area. Each pot scrub area shall have exhaust systems capable of providing 20 air changes per hour.

(15) Heating and cooling. All

mechanical equipment for heating and air movement shall be designed to provide a temperature level between 68 degrees Fahrenheit and 78 degrees Fahrenheit during the winter season. All staff and inmate program areas shall be air conditioned. Administrative segregation cells shall provide tempered air.

§157.91. Program and Service Facilities. Adequate space is essential for the various programmatic, non-programmatic and service functions conducted on each unit.

(1) Outdoor recreation. Inmates of different security levels shall not be commingled in outdoor or indoor recreation areas. An outdoor recreation area shall be provided specifically for each housing unit and shall accommodate all of the inmates at one time from within that housing unit. Outdoor recreation areas shall provide 100 net square per inmate and each yard shall have a maximum capacity of 200 inmates.

(2) Indoor recreation. Indoor gymnasiums and/or covered exercise areas may be provided. They shall contain at least six square feet per inmate for the total number of inmates in the facility with a minimum ceiling height of 18 feet. Indoor or covered exercise areas shall contain not less than 1,000 square feet of unencumbered space. In the event indoor recreation is not provided, the outdoor areas must include covered weight lifting areas, handball walls, tables and seating for 10% of the inmates assigned to that recreation area, and other activity areas that are deemed appropriate for inmate exercise and recreation.

(3) Administrative segregation recreation. Outdoor exercise areas for administrative segregation inmates shall accommodate one inmate and shall contain at least 350 square feet. The number of administrative segregation outdoor exercise areas shall be at least 8.0% of the number of cells.

(4) Visiting. Non-contact visitation booths shall total .5% of the total inmate population. Sufficient space is provided for contact, attorney, and non-contact visitation. There is adequate space to permit the screening and searching of inmates and visitors. Appropriate hygiene facilities are contained in the areas allowing for convenient access consistent with security concerns. Space is provided for the proper storage of visitors' coats, handbags and other personal items not allowed into the visiting area.

(5) Inmate programs. In units offering academic and vocational training programs, classrooms are designed in consultation with school authorities. Classrooms shall be designed for a maximum of 24 students and shall provide 35 square feet

per student. Individual classrooms may be separated with a moveable partition to provide larger group meeting rooms. Inmate dayrooms may be utilized for classrooms when the only inmates in the class are those residing in that dayroom.

(6) Library. Facilities shall contain a central library book repository of fiction and nonfiction reading and a separate legal resource library to meet the needs of the institutional staff and inmates. Book distribution may occur either in a central reading room or through a delivery system to the inmate housing areas.

(7) Counseling. Facilities shall provide office space for counselors at the rate of one counselor per 150 inmates. Inmate counseling may occur in any other functional spaces (e.g., dayrooms of subject inmates, classrooms, multi-purpose rooms, etc.).

(8) Food service and dining. Each facility shall provide a central kitchen for the daily preparation of meals in accordance with §157.45(12) of this title (relating to Food Service). Equipment and spaces shall be arranged to provide adequate security with the least number of corrections officers.

(A) Food preparation. The size of the food preparation areas shall be determined by TDCJ and will be based on population size, type of food preparation and methods of meal service.

(B) Food storage. Provide appropriate and sanitary facilities for both dry and/or refrigerated storage of all foods.

(C) Dining facilities. Facilities shall provide central dining or shall provide meal service within the inmate housing area. Facilities which provide central dining shall insure that central dining areas accommodate a maximum seating capacity of 150 inmates. In all cases meals shall be served within two and one-half hours while giving each inmate 20 minutes of dining time for each meal.

(D) Restrooms. Toilet and lavatory facilities are available to food service personnel and inmates in the vicinity of the food preparation area.

(E) Staff dining. Facilities shall provide a dining area for institutional staff.

(F) In-cell feeding. Meals may be served to inmates assigned to dormitories or multiple-occupancy cells either in central dining rooms or in their day-

rooms. Inmates assigned to administrative segregation cells and medical isolation cells shall have their meals served in their cells.

(G) Grease interceptor. Plumbing systems shall prohibit the introduction of excessive amounts of grease and/or suspended solids into the sewer system.

(H) Hot storage. Provide secure storage space for controlled ingredients.

(I) Shakedown. Provide shakedown area for inmate work crews.

(J) Guard post. Provide guard posts in food preparation areas to maintain adequate supervision with the minimum security staff.

(K) Security division. Provide appropriate secure divisions between functional areas of the kitchen and dining.

(9) Housekeeping. Space is provided for janitorial closets which are accessible to activity and living areas. The closets provide space for a sink, cleaning implements and supplies in proportion to the spaces served.

(10) Clothing and supplies. The unit provides space for the storage and issuance of clean clothing, bedding, cleaning supplies and other items required for daily operations.

(A) Inmate property. Space is provided for storing authorized personal property and legal material of inmates safety and securely.

(B) Facility storage. Facilities provide 2.5 square feet of storage space for spare per inmate for furniture, fixtures and equipment.

(C) General storage. Facilities provide adequate space within each functional area for the storage of items used in that area.

(11) Personal property. Space is provided for facility and general storage and for storing-authorized personal property and legal material of inmates safety and securely.

(A) Inmate property. Space is provided for storing authorized personal property and legal material of inmates safety and securely.

(B) Facility storage. Facilities provide 2.5 square feet of storage space for spare per inmate for furniture, fixtures and equipment

(C) General storage Facilities provide adequate space within each functional area for the storage of items used in that area

(12) Mechanical and electrical equipment Separate and adequate space is provided for mechanical and electrical equipment

(13) Inmate commissary. Adequate space is provided at each unit for an inmate commissary The commissary should be centralized

(14) Inmate mail Facilities shall provide adequate space to receive, sort and distribute incoming inmate mail and receive and forward outgoing inmate mail

(15) Health services Based on the availability of outside services, TDCJ will determine the health service requirements of the facility. Facilities shall provide adequate space for the following functions subject to the TDCJ's determination

(A) Exam rooms Provide examination and treatment rooms for medical, dental and mental health care large enough to accommodate the necessary equipment and fixtures, and to permit privacy for the inmate-patients.

(B) Offices and storage Provide sufficient space for pharmaceuticals, medical supplies and mobile emergency equipment and for storage of medical records Provide office space with administrative files, writing desks and shelves for publications

(C) Psychiatric services Provide private interviewing spaces, desks, chairs and lockable file space for the provision of psychiatric services

(D) Radiology and laboratory If laboratory, radiological, inpatient or specialty services are provided on site, the area(s) devoted to any of these services is appropriately constructed and sufficiently large to hold equipment and records and for the provisions of the services themselves

(E) Waiting area Provide a waiting area with seats, drinking water and access to toilets for inmate-patients during sick call Provide separate and secure waiting areas for inmates undergoing medical in-processing

(F) Medical isolation cells. Medical isolation cells shall comply with §157.87(4) of this title (relating to Inmate Housing).

(G) Review. Unless otherwise directed by the TDCJ, the design of health services facilities shall comply with the written review of the Texas Department of Health.

(16) Centralized laundry. Based on the availability of outside laundry services, the TDCJ will determine which facilities shall provide central laundries Space and equipment for the laundering of inmate clothing and bedding shall comply with the requirements of §157.47 of this title (relating to Sanitation and Hygiene).

(17) Maintenance. Facilities shall provide secure and adequate space for equipment, materials storage, fabrication, repairs and administration for the maintenance of the physical plant and grounds.

(18) Multi-purpose rooms Facilities shall provide at least one multi-purpose room for each group of 200 inmates in the inmate housing unit Each multi-purpose room shall contain at least 600 square feet

(19) Hair care services Facilities shall provide space for hair care services at each inmate housing unit Hair care services shall comply with applicable health regulations

(20) Interview rooms Facilities shall provide at least one interview room per group of 100 inmates in the inmate housing units Interview rooms shall contain at least 72 square feet

§157.95. Security. The physical plant and layout supports and enhances the secure and orderly function of each facility The design of the facility shall minimize the number of corrections officers required to maintain adequate supervision through prudent arrangement of buildings and spaces

(1) Central control rooms Every unit has a secure central control room which provides a 24-hour monitoring and coordinating of the security, safety and communications systems This control room shall provide one hour protection from non-ballistic assault Transparent glazing shall meet WMFL Level Two test standards for this criteria The central control room shall provide access to a lavatory and toilet

(2) Control rooms Areas containing groups of 200 or less inmates shall provide a secure control room These control rooms provide for 24-hour monitoring and coordinating of the security, safety and communication system of that housing area group. These control rooms shall provide 30

minute protection from non-ballistic assault. Transparent glazing shall meet WMFL Level Three test standards for this criteria.

(3) Pedestrian sallyport. All inmate areas are separated from public and staff areas with pedestrian sallyports consisting of two electronically interlocked doors such that both doors are not simultaneously open except in emergency.

(4) Vehicle sallyport. All vehicle entrances at the security perimeter and inmate reception unloading areas shall be made secure by remotely controlled electrically operated doors or gates for entrance and exit The doors or gates shall be electronically interlocked so that both sides of the vehicle sallyport are not open at the same time.

(5) Security perimeter The facility shall be enclosed with a perimeter fence at an average distance of 100 feet from buildings within the facility, but not less than 50 feet The area between the buildings shall be devoid of trees and other features that obscure surveillance of this area by security staff Facilities may provide guard towers to ensure full view by security staff of the entire length of the inner fence surface of the security perimeter. Guard towers shall be tall enough for mutual observation from all towers The maximum distance between guard towers shall be 750 feet Facilities located in a county designated as an "a" region by the Board of Criminal Justice are exempt from the secure perimeter fence requirement when structure walls encompass the entire security compound Security systems such as intrusion systems or electronic systems may be used to enhance security at such a facility

(6) Entrances and exits Pedestrians and vehicles enter and leave at designated points in the perimeter. Safety vestibules, turnout gates and sallyports constitute the only breaches in the perimeter of institutions All inmate areas are separated from public areas by two electronically interlocked doors such that both doors are not simultaneously open except in emergency. These doors shall be operated from inside secure control rooms or from outside the perimeter security fences

(7) Security equipment storage. Firearms, chemical agents and other security items are stored in separate, but readily accessible unit armories which are outside inmate housing and activity areas

(8) Inmate reception The TDCJ will determine if the facility provides inmate reception areas and, if so, they shall comply with the following standards

(A) Vehicle sallyport. A vehicle sallyport shall be situated at the in-

mate entrance to the inmate reception area. The sallyport shall accommodate a 46-passenger bus and the vehicle travel path shall provide for the door side of the bus to be adjacent to the building.

(B) Holding rooms. Inmate reception areas shall provide holding rooms to accommodate the maximum number of inmates anticipated to arrive at one time.

(C) Detoxification cells. Facilities shall provide one or more detoxification cells.

(D) Shakedown area. Inmate reception areas shall provide an enclosed, heated area for an initial strip search of arriving inmates.

(E) Property and necessities handling area. Inmate reception areas shall provide secure spaces for staff to receive and inventory inmate property and distribute necessities.

(F) Barber area. Inmate reception areas shall provide adequate space and equipment to cut the hair of incoming inmates.

(G) Showers. Inmate reception areas shall provide adequate showers in accordance with §157.87(20) of this title (relating to Inmate Housing).

(H) Fingerprinting. Inmate reception areas shall provide adequate space and equipment for fingerprinting inmates.

(I) Photo I.D. Inmate reception areas shall provide adequate space and equipment for the production of a photo identification card for each inmate.

(J) Assessment. Inmate reception areas shall provide at least one private interview room of at least 64 square feet for the initial classification interview.

(K) Incoming inmate property. Inmate reception areas shall provide adequate secure space for the storage, packing and shipment of incoming inmate property.

(L) Incoming inmate necessities. Inmate reception areas shall provide adequate secure storage space for inmate necessities.

(M) Reception waiting areas. Inmate reception areas shall provide adequate space and benches for inmates waiting for the various steps in their processing.

(N) Pedestrian sallyports. Inmate reception areas shall be adjacent to and separated from multiple-occupancy inmate housing and classification processing areas with pedestrian sallyports.

(O) Commingling. Inmate reception areas shall prohibit contact between processed and unprocessed inmates.

(P) Security. The physical arrangement of spaces provides for adequate supervision of inmates by the least number of security staff from the time the inmates leave the bus until they leave the inmate reception area.

(9) Visitor reception. The facility shall provide adequate space outside the security perimeter to receive public visitors. The visitor reception area shall contain public restrooms, a secure control room and a pedestrian sallyport through the security perimeter.

(10) Administrative segregation inmate property. Facilities shall provide adequate space to temporarily store unauthorized inmate possessions while that inmate is assigned to administrative segregation.

(11) Fire road. Facilities shall provide roads within the security perimeter affording fire fighting vehicles and equipment adequate access to all buildings. The distance from the fire road to the inner surface of the security perimeter shall be at least 30 feet.

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

Issued in Austin, Texas, on March 25, 1994.

TRD-9438139

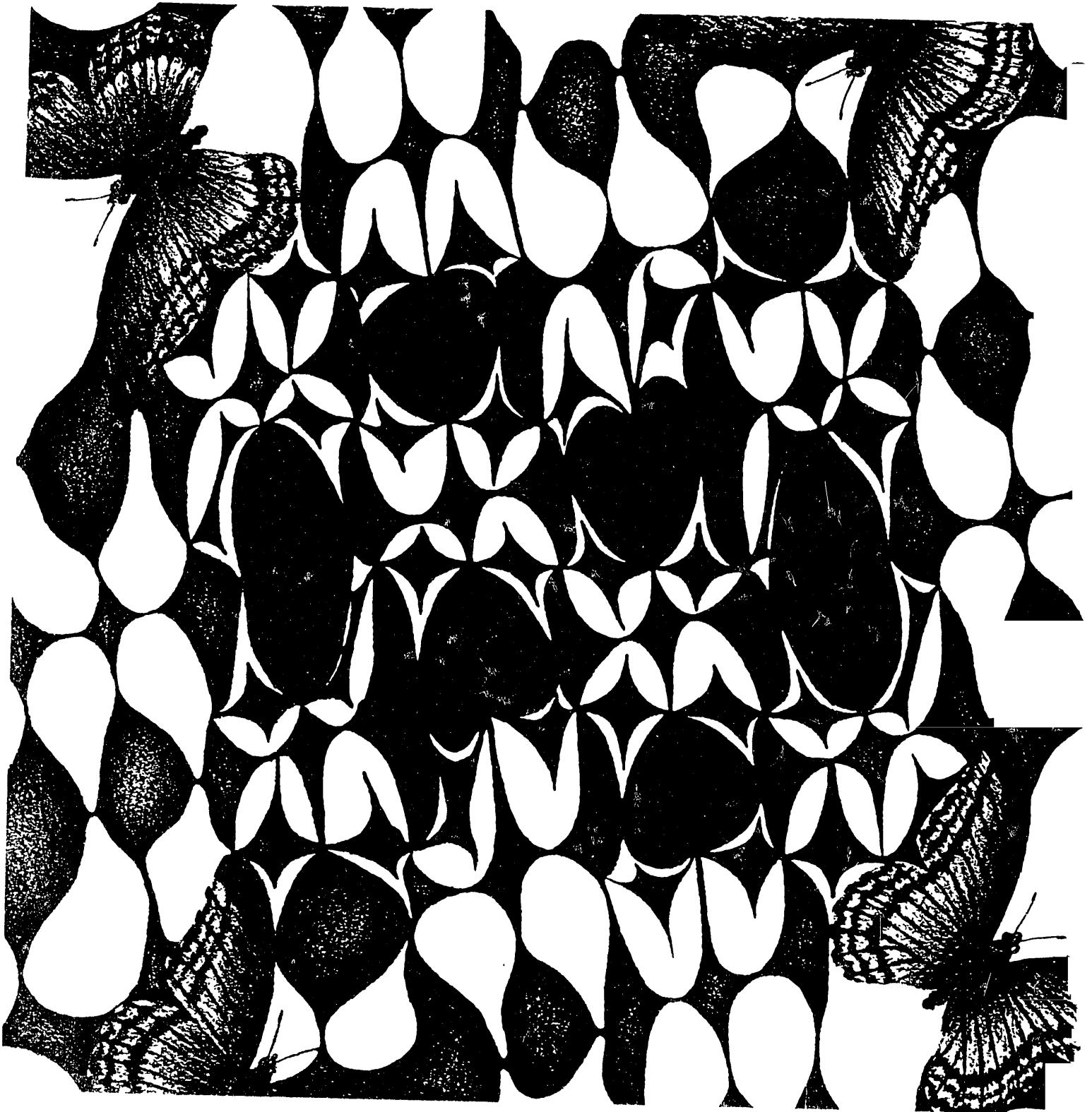
Carl Reynolds
General Counsel
Texas Board of Criminal
Justice

Effective date: April 15, 1994

Proposal publication date: October 5, 1993

For further information, please call: (512) 463-9693

◆ ◆ ◆



Name: Sheri Moen

Grade: 12

School: Plano Senior High School, Plano ISD

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 Commission on Alcohol and Drug Abuse

Monday, April 11, 1994, 9:00 a.m.

710 Brazos
Austin

According to the complete agenda, the Offender Credentialing Committee will call to order; review applications for the Licensed Chemical Dependency Counselor; and adjourn.

Contact: Mike Ezzell, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8257.

Filed: March 30, 1994, 8:58 a.m.

TRD-9438318

State Bar of Texas

Thursday-Friday, April 7-8, 1994, 10:00 a.m. and 8:30 a.m. respectively

1301 McKinney, Chevron Tower, 51st Floor, Crooker Room
Houston

According to the agenda summary, the Commission for Lawyer Discipline will call to order; introduction; review and discuss: minutes, status reports, commission's compliance with provisions of the State Bar Act, Texas Rules of Disciplinary Procedure and Order of the Supreme Court, organization and budget of the General Counsel's Office, grievance committees; presentation by Jay Foonberg and Pat Nester; review and discuss: special counsel program, organiza-

tion and budget of the commission; presentation by trial staff; closed executive session: discuss pending litigation, cases pending before evidentiary panels of grievance committees, special counsel assignments, personnel matters; public: discuss and take action on cases and special counsel assignments considered in closed executive session; discuss future meetings; discuss other matters as appropriate; public comment; and adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1-(800)-204-2222.

Filed: March 30, 1994, 3:58 p.m.

TRD-9438395

State Board of Barber Examiners

Tuesday, April 12, 1994, 9:00 a.m.

9101 Burnet Road, Suite 103
Austin

According to the complete agenda, the State Board of Barber Examiners will meet in open session to open the meeting, call roll call, and then go into: executive session to consider the appointment, employment, evaluation, reassignment duties, discipline, or dismissal of the Executive Director, Mike Rice, and/or hear complaints against the Executive Director, Mike Rice, pursuant to Texas Government Code, §551.074; return to open session for further discussion and possible action involving the appointment, employment, evaluation, reassignment duties, discipline, or dismissal of the

Executive Director, Mike Rice, and/or hear complaints against the Executive Director, Mike Rice, pursuant to Texas Government Code, §551.074; return to executive session to consider the appointment, employment, and duties of an acting executive director pursuant to Texas Government Code, §551.074; return to open session for further discussion and possible action involving the appointment, employment, and duties of an acting executive director pursuant to Texas Government Code, §551.074; and adjourn.

Contact: B. Michael Rice, 9101 Burnet Road, Suite 103, Austin, Texas 78758, (512) 835-2040.

Filed: March 29, 1994, 11:58 a.m.

TRD-9438288

Children's Trust Fund of Texas Council

Tuesday, April 12, 1994, 10:00 a.m.

Driskill Hotel, Sixth and Brazos

According to the complete agenda, the Children's Trust Fund of Texas Council will consider welcome and overview of agenda; Budget and Oversight Committee report; Public Awareness Advisory Committee report; Program Design and Implementation Committee report; Executive Director report; new business; and adjourn.

Contact: Sue Marshall, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78758-6854, (512) 458-1281.

Filed: March 29, 1994, 4:46 p.m.

TRD-9438309

Friday, April 8, 1994, 10:00 a.m.

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Texas Commission on Children and Youth

Texas Tech University Health Science Center, Room 2B-152, Fourth and Indiana Lubbock

According to the agenda summary, the Texas Commission on Children and Youth will consider organization matters; guest speakers; public testimony; lunch; public testimony continues; and adjourn.

Contact: Ginny McKay, P.O. Box 13106, Austin, Texas 78711, (512) 305-9056.

Filed: March 30, 1994, 3:03 p.m.

TRD-9438387

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Texas Cosmetology Commission

Tuesday, April 12, 1994, 10:00 a.m.

Texas Cosmetology Commission, Hearing Room, 5717 Balcones Drive

Austin

According to the complete agenda, the Texas Cosmetology Commission will call to order; introductions; go into executive session pursuant to Texas Government Code, §551.074, to discuss matters involving the appointment, employment, evaluation, duties, discipline, or dismissal of a public officer, the executive director of the Commission, or to hear complaints or charges against the executive director; 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, 5717 Balcones Drive, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: March 30, 1994, 10:37 p.m.

TRD-9438361

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Texas State Board of Dental Examiners

Friday-Saturday, April 8-9, 1994, 8:00 a.m.

Stouffer Austin Hotel, 8721 Arboretum Boulevard

Austin

According to the agenda summary, the Texas State Board of Dental Examiners will call to order; roll call; approval of past minutes; appearance before the board—Mike

Pitcock; approval of sedation/anesthesia permits; approval/denial of applicants for licensure by credentials; approval of settlement orders; modification of board orders—Mahabir, McMains, LaCombe; appearances before the board—Hill, Robinson, Zurita, Arnold discussion, Blankenship; discussion of and video of scope of dentistry reflected through oral surgery procedures; discussion of and appointments to Specialty Advisory Committee; discussion of and appointment to Specialty Advisory Committee—periodontics; discussion, consideration and nominations to Dental Hygiene Advisory Committee; reports—presidents, committees; executive session—to discuss pending litigation Adair, Blake, Bhatti, vs. State of Texas and the Texas State Board of Dental Examiners and other pending litigation, annual review—executive director; announcements; and adjournment.

Contact: C. Thomas Camp, 333 Guadalupe, Tower 3, Suite 3800, Austin, Texas 78701, (512) 463-6400.

Filed: March 29, 1994, 3:21 p.m.

TRD-9438295

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Texas Office for Prevention of Developmental Disabilities

Wednesday, April 13, 1994, 1:00 p.m.

401 West 15th Street, Tenth Floor

Austin

According to the complete agenda, the Executive Committee Quarterly Meeting will consider: call to order; introductions and welcome; status of appointments; task force report; presentations: Future Homemakers of America and Educare; other reports as requested; project director's report; and adjournment.

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: March 31, 1994, 8:53 a.m.

TRD-9438402

◆ ◆ ◆
Texas Planning Council for Developmental Disabilities

Thursday, April 7, 1994, 8:30 a.m.

Stouffer Austin Hotel, Guadalupe Room, 9721 Arboretum

Austin

According to the complete agenda, the Executive Committee will call to order; introductions; public comments; approval of minutes of February 10, 1994; chair's re-

port; executive director's report; fiscal year 1994 budget status report; NADDC dues recommendation; fiscal year 1996-1997 TPCID appropriations request; review of bylaws; and review of stipends proposals.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Rosalinda Lopez at (512) 483-4094.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: March 30, 1994, 1:32 p.m.

TRD-9438374

Thursday-Friday, April 7-8, 1994, 1:00 p.m. and 8:30 a.m. respectively

Stouffer Hotel, Frio Room, 9721 Arboretum Austin

According to the complete agenda, the Advocacy and Public Information Committee will consider: Thursday: call to order/introduction; public comments; approval of minutes; development of draft position on children and families; discussion of Advocacy and Public Information state policy/legislation—updates, discussion and recommendations; and discussion of process to develop legislative platform for fiscal year 1996-1997. Friday: reconvene; continuation of unfinished business from April 7, 1994; federal policy and legislation: updates, discussion and recommendations; public information report; and chair's report.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Denese Holman at (512) 483-4087.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: March 30, 1994, 1:32 p.m.

TRD-9438378

Thursday-Friday, April 7-8, 1994, 1:00 p.m. and 9:00 a.m. respectively

Stouffer Austin Hotel, Concho Room, 9721 Arboretum Boulevard

Austin

According to the complete agenda, the Planning and Evaluation Committee will: Thursday: call to order; introduction of council members, staff, and guests; approval of minutes of January 13-14, 1994; presentation: Aging/DD planning study; future funding activities discussion; continue discussion of future funding activities; and

recess. Friday: reconvene; discussion about DD projects of national significance; TPCDD state plan status and process; presentation: consumer stipend survey; report from Advocacy and Public Information Committee; discussion about joint activities with UT-Austin UAP; and adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Cindy Wright at (512) 483-4085.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: March 30, 1994, 1:33 p.m.

TRD-9438376

Thursday-Friday, April 7-8, 1994, 1:30 p.m. and 9:00 a.m. respectively

The Stouffer Hotel, 9721 Arboretum Boulevard

Austin

According to the complete agenda, the Grants Monitoring Committee will: Thursday: call to order; public comments; review of committee responsibilities; review of grants management procedures; and recess. Friday: consider grantee presentations; future committee activities; and adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Mary Townsend at (512) 483-4091.

Contact: Lester Sanders, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4084.

Filed: March 30, 1994, 1:33 p.m.

TRD-9438375

Texas Education Agency

Thursday, April 7, 1994, 8:30 a.m.

William B. Travis Building, Room 1-104, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) and Texas Juvenile Probation Commission (TJPC) will consider introductions and opening remarks; discussion of issues and concerns relating to the increasing incidence of juvenile crime and violence in schools (including review of the status and recommended actions from the joint SBOE/TJPC Task Force; report from the joint SBOE/TJPC Task Force; recommended model policy guidelines; consid-

eration of proposed joint resolutions; and future role of joint task force); Safe Texas Schools-policy initiatives and programs; and compact for safe schools.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: March 30, 1994, 9:07 a.m.

TRD-9438315

Thursday, April 7, 1994, 3:00 p.m.

William B. Travis Building, Room 1-109, 1701 North Congress Avenue

Austin

According to the complete agenda, the State Board of Education Ad Hoc Committee on Communications will discuss partnership effort on education information project to effectively communicate the message of successful practices and academic success currently underway in Texas Schools.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: March 30, 1994, 9:07 a.m.

TRD-9438314

Friday, April 8, 1994, 8:30 a.m.

William B. Travis Building, Room 1-104, 1701 North Congress Avenue

According to the agenda summary, the State Board of Education (SBOE) Committee on Long-Range Planning will hold a work session which will include: expert session-long-range planning for systemic change in education; panel discussion on the incorporation of state goals and objectives in regional and local educational plans; and development of SBOE long-range plan for public education, 1995-1999.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: March 30, 1994, 9:09 a.m.

TRD-9438316

Texas Employment Commission

Tuesday, April 5, 1994, 2:00 p.m.

TEC Building, Room 644, 101 East 15th Street

Austin

Emergency Revised Agenda

Rescheduled from April 5, 1994, 9:00 a.m.

According to the agenda summary, the Texas Employment Commission will add to the agenda: executive session to consider Sondra Dawn, et al. vs. Texas Employment

Commission; and actions, if any, resulting from executive session. The commission will also delete consideration and possible approval of bid for interior renovation at the TBC headquarters building, 101 East 15th Street.

Reason for emergency: To accommodate necessary business travel schedule on part of commissioners; necessary to comply with order of Federal Court; and unforeseen complications in bidding process.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: March 30, 1994, 2:03 p.m.

TRD-9438378

State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Friday, April 15, 1994, 9:00 a.m.

The Exchange Building, Suite S-400, 8407 Wall Street

Austin

According to the complete agenda, the committee will discuss and possibly act on: organization structure (Texas Department of Health: associateship for special health services; professional licensing and certification division; and fitting and dispensing of hearing instruments licensing program); laws/procedures governing board activity (Administrative Procedure Act; Texas Open Meetings Act; Texas Open Records Act; and *Texas Register*/rulemaking process); administrative procedures (travel vouchers; state credit cards-American Express and AT&T; vendor identification number; and financial statements); election of committee officers; appointment of subcommittees; committee business (adopt an official seal; application forms; license forms; continuing education sponsors; continuing education for apprentice permits; examination dates; and name newsletter); draft rules; subcommittee assignments and setting of dates for subcommittee meetings; and setting of next committee meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, contact Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 30, 1994, 4:16 p.m.

TRD-9438397

Texas Department of Health

Thursday, April 14, 1994, 8:30 a.m.

Texas Department of Health, Room T-607,
1100 West 49th Street

Austin

According to the complete agenda, the Maternal and Child Health Advisory Committee will hear public comment; discuss approval of the minutes of January 13, 1994, meeting; and discuss and possibly act on: report on concerns relayed to the commissioner; subcommittee reports concerning Texas Department of Health use of medical home concept for women, children, and families; report on Texas Department of Health, Maternal and Child Health activities, including: state plan for perinatal care plan, immunization program, HIV/STD statistics, lead screening, dental program; legislative appropriations request process; Chronically Ill and Disabled Children budget status; and family planning update.

Contact: Madelin Walls, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the hearing.

Filed: March 30, 1994, 4:16 p.m.

TRD-9438399

Texas Higher Education Coordinating Board

Thursday, April 7, 1994, 9:30 a.m.

Chevy Chase Office Complex, Building Five, Room 5.139, 7745 Chevy Chase Drive

Austin

According to the complete agenda, the Campus Planning Committee will consider presentations from Texas A&M University, Texas Agricultural Extension Service, Texas A&M Kingsville, University of Houston-Downtown, and Stephen F. Austin State University, regarding projects to be considered at the April 1994 board meeting.

Contact: Landrum Hickman, P.O. Box 12788, Austin, Texas 78711, (512) 483-6110.

Filed: March 30, 1994, 2:20 p.m.

TRD-9438383

Thursday, April 7, 1994, 3:00 p.m.

JC Kellam Building, Regents Room, 11th Floor, Southwest Texas State University

San Marcos

According to the complete agenda, the Campus Planning Committee will consider presentations from Southwest Texas State University regarding projects to be considered at the April 1994 board meeting.

Contact: Landrum Hickman, P.O. Box 12788, Austin, Texas 78711, (512) 483-6110.

Filed: March 30, 1994, 2:20 p.m.

TRD-9438384

Friday, April 8, 1994, 8:30 a.m.

UT-Austin Balcones Research Center Commons, Building 137, Room 1.112G

Austin

According to the complete agenda, the Campus Planning Committee will consider presentations from UT-Austin, UT-San Antonio, UT-Health Science Center at Houston, and UT-Medical Branch at Galveston regarding projects to be considered at the April 1994 board meeting.

Contact: Landrum Hickman, P.O. Box 12788, Austin, Texas 78711, (512) 483-6110.

Filed: March 30, 1994, 2:21 p.m.

TRD-9438385

Texas Juvenile Probation Commission/State Board of Education

Thursday, April 7, 1994, 8:30 a.m.

William B. Travis Building, Room 1-104, 1701 North Congress Avenue

Austin

According to the agenda summary, the Texas Juvenile Probation Commission and the State Board of Education will meet jointly to discuss issues and concerns previously identified as need collaborative efforts related to the increase of juvenile crime and violence in schools. Agenda items include: consideration of model policy guidelines, presentation of TFA's paper entitled "Safe Texas Schools," and adoption of the "Compact for Safe Schools." The meeting will adjourn after public testimony is heard.

Contact: Bernard Licarione, Ph.D., P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: March 29, 1994, 3:21 p.m.

TRD-9438296

Bill Blackwood Law Enforcement Management Institute of Texas

Thursday, April 14, 1994, 9:00 a.m.

Rudder Building, Room 401, Texas A&M University

College Station

According to the agenda summary, the Advisory Board will call to order; opening remarks and introductions; overview of

agenda; approve minutes of last meeting; old business; financial report; quarterly activities report (except GMI); report on Graduate Management Institute; upcoming events, activities, programs in next quarter; new business; open discussion; set date of next board meeting; closing remarks; and adjourn.

Contact: Dr. Gerald Williams, Box 2296, Huntsville, Texas 77341-2296, (409) 294-1669 or 294-1693.

Filed: March 30, 1994, 9:26 a.m.

TRD-9438322

Texas State Board of Medical Examiners

Wednesday, April 6, 1994, 9:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

According to the agenda summary, the Hearings Division will consider probation appearances, termination requests, and modification requests.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: March 29, 1994, 3:21 p.m.

TRD-9438297

Wednesday, April 6, 1994, 9:00 a.m.

1012 Centre Creek Drive, Suite 300

Austin

Emergency Revised Agenda

According to the agenda summary, the Hearings Division will add to the previously posted agenda a request for termination of probation.

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: March 30, 1994, 3:50 p.m.

TRD-9438392

Texas Natural Resource Conservation Commission

Wednesday, April 6, 1994, 9:00 a.m.

1700 North Congress, Stephen F. Austin State Building, Room 118

Austin

Revised Agenda

According to the agenda summary, the Texas Natural Resource Conservation Commission will add to the agenda: consider-

ation of composting rules and Devers Canal interim water rates.

Contact: Douglas A. Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: March 29, 1994, 4:13 p.m.

TRD-9438304

Texas Optometry Board

Thursday-Friday, April 7-8, 1994, 1:00 p.m. and 8:30 a.m. respectively

Wyndham Austin Hotel, 4140 Governor's Row

Austin

According to the agenda summary, the Texas Optometry Board will hold committee meetings on April 7, 1994: 1:00 p.m.—Investigation-Enforcement Committee; 2:30 p.m.—Continuing Education; 3:30—Rules; and 7:30 p.m.—all committees. On April 8, 1994, the Board will hold a special meeting to consider reports of Secretary-Treasurer, chairpersons, executive director, and legal counsel; consider general business matters; adopt proposed Rule 279.5 as published in the *Texas Register*; consider proposed rules on continuing education and cost of copies (House Bill 1009); consider matters regarding meeting of International Association of Boards of Optometry, Health Professions Council, Technical Advisory Committee, strategic plan; consider examination matters; public comment at 10:00 a.m., time-certain; and hold executive session in compliance with Texas Government Code, §551.071, to discuss pending litigation with board attorney.

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938.

Filed: March 30, 1994, 1:31 p.m.

TRD-9438372

Texas Board of Pardons and Paroles

Monday-Friday, April 11-15, 1994, 9:30 a.m.

1212 North Velasco, Suite 201

Angleton

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will meet to 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: March 29, 1994, 11:19 a.m.

TRD-9438286

Monday-Wednesday, April 11-13, 1994, 1:30 p.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will meet to 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: March 29, 1994, 11:19 a.m.

TRD-9438284

Monday-Friday, April 11-15, 1994, 1:30 p.m.

2503 Lake Road, Suite #2

Huntsville

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will meet to 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: March 29, 1994, 11:19 a.m.

TRD-9438283

Thursday-Friday, April 14-15, 1994, 9:30 a.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will meet to 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: March 29, 1994, 11:19 a.m.

TRD-9438285

Thursday-Friday, April 14-15, 1994, 1:00 p.m. and 9:00 a.m. respectively

Route 5, Box 258-A

Gatesville

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will meet to 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: March 29, 1994, 11:18 a.m.

TRD-9438282

Pecos River Commission

Thursday, April 21, 1994, 9:00 a.m.

Library Annex

Carlsbad, New Mexico

According to the complete agenda, the Pecos River Commission will call to order by Chairman Hale; introduction: Commissioner Newton and Commissioner Gerrells; approval of minutes of meeting held April 29, 1993; report of chairman; report of secretary; report of treasurer; report of audit; report of commission committees: Budget, Legal, and Engineering; reports from cooperating agencies and others; unfinished business; new business: Mr. C. Jack DeLoach, Agricultural Service, Mr. Burt Reid, Triton Aquaculture, and Mr. Alfonso Leal, Soil Conservation Service; and adjournment.

Contact: Zack L. Dean, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8063.

Filed: March 30, 1994, 10:46 a.m.

TRD-9438362

Polygraph Examiners Board

Friday, April 8, 1994, 9:00 a.m.

Fredonia Hotel and Convention Center,
Raguet Meeting Room, 200 North Fredonia
Nacogdoches

According to the complete agenda, the Polygraph Examiners Board will: 9:00 a.m.: open meeting; close meeting to administer Phase III of the licensing examination; 10:00 a.m.: open meeting; certification of January 1994 meeting minutes; consideration of applications for licensure; consideration of amendment to Board Rule 391.3(13); consideration of amendment to Board Rule 395.10; discussion of computerized voice stress analysis; and agency update.

Contact: Bryan M. Perot, P.O. Box 4087,
Austin, Texas 78773, (512) 465-2058.

Filed: March 30, 1994, 2:33 p.m.

TRD-9438386

Texas Department of Protective and Regulatory Services

Thursday-Friday, April 7-8, 1994, 5:00 p.m.

Bexar County Justice Center, 300 Dolorosa,
Suite B-20, Central Jury Room

San Antonio

According to the complete agenda, the Texas Board of Protective and Regulatory Services will convene to hear public testimony on agency-related issues. An opportunity for public testimony will also be available Friday morning. On Friday, the Board will conduct a work session on the draft strategic plan; instructions for the budget process; and draft appropriations for fiscal year 1995 for DPRS. The Board will address the following agenda items at the conclusion of the work session but no earlier than 11:00 a.m.: approval of minutes of March 11, 1994, board meeting; continuation of public testimony; comments and announcements; executive director's report; overview of Region 8; adoption of board voting procedures; internal auditing workplan; policy review for DPRS; draft revision of \$6000 of Child Protective Services Handbook; and update on proposed revisions to minimum standards for licensed day care centers.

Contact: Michael Gee, P.O. Box 149030,
Mail Code E-554, Austin, Texas
78714-9030, (512) 450-3645.

Filed: March 30, 1994, 9:15 a.m.

TRD-9438321

Public Utility Commission of Texas

Monday, April 11, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard
Austin

According to the complete agenda, the Hearings Division will hold a hearing on interim rates in Docket Number 12820—petition of the General Counsel for an inquiry into the reasonableness of the rates and services of Central Power and Light Company; petition of Office of Public Utility Counsel for an inquiry into the reasonableness of the rates and services of Central Power and Light Company; appeal and petition of Central Power and Light Company from the ratemaking decisions of the Cities of Pharr, Edinburg, Mission, Weslaco, McAllen, and Alton, Texas; and complaint of James O. Bryant against Central Power and Light Company, Inc.

Contact: John M. Renfrow, 7800 Shoal
Creek Boulevard, Austin, Texas 78757,
(512) 458-0100.

Filed: March 29, 1994, 3:50 p.m.

TRD-9438298

Monday, April 18, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard
Austin

Rescheduled from Monday, April 11, 1994,
9:00 a.m.

According to the complete agenda, the Hearings Division will hold a rescheduled interim hearing in Docket Number 12820—petition of the General Counsel for an inquiry into the reasonableness of the rates and services of Central Power and Light Company; petition of Office of Public Utility Counsel for an inquiry into the reasonableness of the rates and services of Central Power and Light Company; appeal and petition of Central Power and Light Company from the ratemaking decisions of the Cities of Pharr, Edinburg, Mission, Weslaco, McAllen, and Alton, Texas; complaint of James O. Bryant against Central Power and Light Company, Inc.

Contact: John M. Renfrow, 7800 Shoal
Creek Boulevard, Austin, Texas 78757,
(512) 458-0100.

Filed: March 31, 1994, 8:56 a.m.

TRD-9438404

Texas Senate

Wednesday, April 13, 1994, 2:00 p.m.

300 West 15th Street, Committee Room
Five
Austin

According to the agenda summary, the
Committee Interim Charge on Permitting at

Texas Natural Resources Conservation
Commission will call to order; opening re-
marks; Honorable Garry Mauri, Chairman,
Coastal Coordinating Council; Honorable
John Hall and staff discussing current per-
mitting practices at the TNRCC; State Au-
ditor's Office discussing findings from its
charge in Senate Bill 750 from the 73rd
Legislative Session; Texas Department of
Commerce discussing findings from its
charges in Senate Bill 750 from the 73rd
Legislative Session; and closing remarks.

Contact: Shayne Woodard, P.O. Box
12068, Austin, Texas 78711, (512)
463-0390.

Filed: March 30, 1994, 3:51 p.m.

TRD-9438393

Texas State Board of Examiners of Social Worker Examiners

Friday, April 8, 1994, 8:00 a.m.

The Exchange Building, Room S-402, 8407
Wall Street

Austin

According to the complete agenda, the Texas State Board of Examiners of Social Worker Examiners will discuss and possibly act on: training session on Chapter 50, Human Resource Code; review of social work rules; Texas Department of Health Policies on travel and reimbursement; election of officers and committee appointments; permanent licenses design selection; American Association of State Social Work Boards (membership and examination contract); and planning and scheduling (future meetings and activities).

Contact: Michael Doughty, 1100 West
49th Street, Austin, Texas 78756, (512)
719-3521. 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: March 30, 1994, 4:16 p.m.

TRD-9438398

Texas Southern University, Board of Regents

Thursday, April 7, 1994, 4:00 p.m.

Texas Southern University, School of Law
Building, Room 221, 3100 Cleburne
Houston

According to the complete agenda, the Fi-
nance and Buildings and Grounds Commit-
tee will consider: matters relating to finan-
cial 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: March 30, 1994, 2:16 p.m.

TRD-9438381

Thursday, April 7, 1994, 5:00 p.m.

Texas Southern University, School of Law Building, Room 221, 3100 Cleburne Houston

According to the complete agenda, the Personnel, Student Services and Academic Affairs Committee will consider: reports on progress of academic activities and programs; and personnel actions.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: March 30, 1994, 2:18 p.m.

TRD-9438380

Friday, April 8, 1994, 8:30 a.m.

Texas Southern University, University Library, Fifth Floor

Houston

According to the complete agenda, the Texas Southern University, 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: March 30, 1994, 2:16 p.m.

TRD-9438382

Texas Department of Transportation/Texas Parks and Wildlife

Thursday, April 14, 1994, 9:00 a.m.

200 East Riverside Drive, Texas Department of Transportation Annex

Austin

According to the agenda summary, the Interagency Abandoned Rail Corridor Committee will consider briefing on current status of transportation enhancement submission and awards; question and answer period with Interstate Commerce (ICC) staff concerning ICC procedures; committee policy regarding attendance at local meetings; committee policy regarding petitions submitted to ICC for public use conditions; and discussion on status of various abandonment proceedings.

Contact: Curtis Toews, 125 East 11th Street, Austin, Texas 78701, (512) 305-9506.

Filed: March 30, 1994, 11:39 a.m.

TRD-9438371

Texas Turnpike Authority

Wednesday, April 6, 1994, 10:30 a.m.

Texas Turnpike Authority Administrative Offices, 3015 Raleigh Street

Dallas

According to the agenda summary, the DNT Refinance Committee will meet for consideration of the following: roll call of committee members; introduction of guests; potential refinancing of DNT Series 1989 Revenue Bonds, briefing by First Southwest Company on related matters, recommendation by First Southwest Company of an investment banking team; executive session—pursuant to Article 6252-17, Vernon's Revised Civil Statutes, §2(r)—briefing by Texas Turnpike Authority staff, consultants, and advisers on legal matters relating to the refinancing of the DNT Series 1989 Revenue Bonds; consider retention of an investment banking team to represent the Authority in a possible refinancing of the DNT Series 1989 Revenue Bonds; and adjournment.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: March 29, 1994, 4:45 p.m.

TRD-9438307

Wednesday, April 6, 1994, 11:45 a.m.

Texas Turnpike Authority Administration Offices, 3015 Raleigh Street

Dallas

According to the agenda summary, the Finance Committee will meet for consideration of the following: with respect to Addison Airport Tunnel, issuance of Addison Airport Series 1994 Revenue Bonds, retention of investment banking team, approval of contract with bond counsel to write Trust Indenture, and authorize general counsel to work with bond counsel to develop Trust Indenture; executive session; report on progress of transfer of Houston Ship Channel Bridge; and lease of office space for Toll Tag store.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: March 29, 1994, 4:46 p.m.

TRD-9438308

Texas Board of Veterinary Medical Examiners

Tuesday, April 12, 1994, 11:00 a.m.

Rudder Tower, Room 507, Texas A&M University

College Station

According to the complete agenda, the Examination Review Committee will meet to review examination results. The committee will convene in open session and then go into executive session in accordance with Attorney General Opinion H-484, 1974, and JM-460, 1987. This meeting was originally scheduled for Room 140 of the Memorial Student Center for the same date.

Contact: Ron Allen, 1946 South IH-35, #306, Austin, Texas 78704, (512) 447-1183.

Filed: March 29, 1994, 2:06 p.m.

TRD-9438290

Texas Workers' Compensation Research Center

Wednesday, April 6, 1994, 10:00 a.m.

William B. Clements Jr. Building, Committee Room One, 300 West 15th Street

Austin

According to the complete agenda, the Board of Directors will meet to discuss and act on the following items: call to order; approval of minutes of meeting of February 2, 1994; public participation; announcements; discussion and possible assignment of board members to standing committees; discussion and possible approval of draft of agency strategic plan; report from subcommittee on policy recommendations on fees for open records and publications; report from subcommittee on workplace health and safety; report from subcommittee on medical costs; research progress report; confirm meeting of May 4, 1994; executive session to consider personnel issues; and adjournment.

Individuals who may require auxiliary aids or services for this meeting should contact Lavon Guerrero at (512) 469-7811 at least two days prior to the meeting so that appropriate arrangements can be made.

Contact: Lavon Guerrero, 105 West Riverside Drive, Suite 100, Austin, Texas 78704, (512) 469-7811.

Filed: March 30, 1994, 9:36 a.m.

TRD-9438326

Regional Meetings

Meetings Filed March 29, 1994

The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging will meet at the Council Offices, 1706 East 29th Street, Bryan, April 5, 1994, at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9438292.

The Heart of Texas Region MHMR Center (Emergency Revised Agenda.) Board of Trustees met at 110 South 12th Street, Waco, March 31, 1994, at 11:45 a.m. (Reason for emergency: notice of lease expiration necessitated immediate action on facility renovation expenditures.) Information may be obtained from Helsen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451, Ext. 290. TRD-9438289.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Hallettsville, April 11, 1994, at 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, 113 North Main, Hallettsville, Texas 77964, (512) 798-4396. TRD-9438299.



Meetings Filed March 30, 1994

The Dallas Central Appraisal District Board of Directors will meet at 2949 North Stemmons Freeway, Second Floor, Community Room, Dallas, April 6, 1994, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons, Dallas, Texas 75247, (214) 631-0520. TRD-9438377.

The East Texas Council of Governments JTPA Board of Directors will meet at the Roy H. Laird Country Club, Kilgore, April 7, 1994, at 11:30 a. m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9438394.

The Guadalupe-Blanco River Authority (Emergency Meeting.) Legal Committee met at the Victoria Bank and Trust-Gonzales, 301 St. Joseph, Gonzales, March 31, 1994, at 1:30 p.m. (Reason for emergency: Information not received in time for regular posting.) Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9438388.

The Henderson County Appraisal District Appraisal Review Board will meet at 1751 Enterprise, Athens, April 7, 1994, at 9:30 a.m. Information may be obtained from Lori Fetterman, 1751 Enterprise, Athens, Texas 78751, (903) 675-9296. TRD-9438310.

The 50th Judicial District Juvenile Board will meet in the District Courtroom-Baylor County Courthouse, Seymour, April 5, 1994, at 11:30 a.m. Information may be obtained from David Hajek, P.O. Box 508, Seymour, Texas 76380, (817) 688-2852. TRD-9438360.



Meetings Filed March 31, 1994

The Aqua Water Supply Corporation Board of Directors met at the Aqua Office, 305 Eskew, Bastrop, April 4, 1994, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9438405.

The Bell-Milam-Falls Water Supply Corporation Board of Directors will meet at the WSC Office, FM 485 West, Cameron, April 6, 1994, at 8:30 a.m. Information may be obtained from Dwayne Jekel, FM 485 West, Cameron, Texas 76520, (817) 697-4016. TRD-9438408.

The East Texas Council of Governments Executive Committee will meet at the ETCOG Office, Kilgore, April 7, 1994, at 2:00 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9438403.

The Education Service Center, Region VI Board of Directors and Executive Committee will meet at the Briarcrest Country Club, Bryan, April 14, 1994, at 5:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9438409.

The Golden Crescent Private Industry Council Executive Committee met at 2401 Houston Highway, Victoria, April 4, 1994, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9438407.

The Golden Crescent Private Industry Council Planning and Education Advisory Committee will meet at 2401 Houston Highway, Victoria, April 6, 1994, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9438406.

The Region 18 Education Service Center Board of Directors will meet at 2811 LaForce Boulevard, Midland, April 7, 1994, at 6:00 p.m. Information may be obtained from Dr Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380. TRD-9438410.



IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formu-

las and methods described in Article 1.04, Title 79, Revised Civil Statutes of Texas, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes).

<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)	04/04/94-04/10/94	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	04/01/94-04/30/94	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose. (3)For variable rate commercial transactions only.

Issued in Austin, Texas, on March 28, 1994.

TRD-9438317 Al Endsley
Commissioner
Office of Consumer Credit Commissioner

Filed: March 30, 1994

Texas Environmental Awareness Network

Notice of Monthly Meeting

The Texas Environmental Awareness Network, an association of state agencies and environmental and educational organizations, will meet Wednesday, April 13, 1994, at 9.00 a.m. at Texas Parks and Wildlife Department, Wild Basin Preserve Offices, 805 South Capital of Texas Highway, Austin, Texas 78746

For information about the meeting, or to place an item on the agenda, contact Bob Murphy, TEAN Chair, by mail at 4200 Smith School Road, Austin, Texas 78744; by phone at (512) 389-4360, or by fax at (512) 389-4394.

Issued in Austin, Texas, on February 16, 1994.

TRD-9438109 Jolin Williams
Secretary
Texas Environmental Awareness Network

Filed: March 25, 1994

Texas Department of Health

Statewide Request for Proposal—Case Management Services

The Texas Department of Health (department) is soliciting proposals for the provision of case management services to eligible children in selected areas of the state. Case management is the assessment of a client's overall service needs, and the development and implementation of a course of action or plan for meeting those needs, which is family centered, community-based, culturally competent, comprehensive, and is intended to assist those clients who need a variety of services. The purpose of case management is to access, organize and assure services and resources for clients through the activities of advocacy, mutual goal setting, monitoring and tracking, education, information and referral, family empowerment, and system development. To be eligible for services, a resident must under the age of 21, a resident of Texas, and have a special health need.

The management services will be reimbursed through contractual arrangements with the department, Bureau of Women and Children (W&C). Contracts will be awarded for a one-year period from September 1, 1994-August 31, 1995. Contract awards will be based on available funding. Contracts will be awarded in accordance with Texas law, the department policies, Chronically Ill and Disabled Children's Services program (CIDC) policies, and the Uniform Grant and Contract Management Act (UGCMA) manual, which is available from the department, Grants Management Division, 1100 West 49th Street, Austin, Texas 78756-3199.

Contracts will be awarded to those who propose the most cost-effective and professionally appropriate plans of operation. Proposals must contain service delivery systems that promote family-centered, community-based, culturally competent, coordinated care for children with special health needs and their families. Proposals will be evaluated on the following criteria: the extent to which the proposal will meet identified needs; the provision of comprehensive services delivered in a culturally competent environment in unserved or underserved areas of the state, the cost of initiating or operating a program (cost effectiveness, allocation of direct services, and elimination of duplication of services); the availability of other funding sources including general agency funds, program income, and foundation and community support; the assurance of community support as exhibited by cooperative service agreements or letters of support documenting coordination of services among local agencies and resources, community volunteers, and parent advocacy groups; equal distribution of resources across the state; and, for funded projects, past contract performance.

Proposals submitted must include a comprehensive needs assessment; the identification of the target population and area, the estimated number of clients to be served, the medical conditions of children to be served, and the specific needs to be addressed by the proposed service; a comprehensive description of the project's purpose, goals, services, objectives, and strategies; an evaluation plan to assess process and outcome measures of the program's performance objectives; and documented evidence of support from local parent groups, the Regional CDC Director of Social Work Services, and area service providers.

All income generated from third party payments and client fees must be utilized by the contract recipient in accordance with the department policy interpreting the UGCMA regulations. Proposal packets may be obtained by contacting Marjorie Simmons, Chronically Ill and Disabled Children's Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3179, (512) 458-7355, extension 3028. Proposals must be received in the CIDC office by 5:00 p.m. on Friday, June 10, 1994, or postmarked on or before Wednesday, June 8, 1994. Proposals which do not meet this deadline will not be considered.

Issued in Austin, Texas, on March 30, 1994.

TRD-9438356 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed March 30, 1994

Texas Department of Insurance Company License Application

The following applications have been filed with the Texas Department of Insurance and are under consideration.

Application for name change in Texas for American Interstate Insurance Company of Georgia, a foreign fire and casualty company. The proposed new name is American Interstate Insurance Company. The home office is in DeRidder, Louisiana.

Application for Admission in Texas for Excess Share Insurance Company of Ohio, a foreign fire and casualty company. The home office is in Dublin, Ohio.

Application for name change in Texas for United Employers Insurance Company, a foreign fire and casualty company. The proposed new name is Grocers Insurance Company. The home office is in Milwaukee, Oregon.

Application for name change in Texas for TRW Title Insurance Company, a foreign title company. The proposed new name is Nations Title Insurance Company. The home office is in Overland Park, Kansas.

Application for name change in Texas for TRW Title Insurance Company of New York, Inc., a foreign title company. The proposed new name is Nations Title Insurance of New York, Inc. The home office is in White Plains, New York.

Application for name change in Texas for United Reinsurance Corporation of New York, a foreign fire and casualty company. The proposed new name is ReCor Insurance Company, Inc. The home office is in New York, New York.

Issued in Austin, Texas, on March 29, 1994.

TRD-9438294 Linda K von Quintus-Dorn
Chief Clerk

Filed: March 29, 1994

Third-Party Administrator Applications

The following third-party administrators (TPA) have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas for Printing Industries of Texas Insurance Agency, Inc., a domestic third party administrator. The home office is in Dallas, Texas.

Application for admission in Texas for Interstate Specialty Marketing, Inc., a foreign third party administrator. The home office is in Tustin, California.

Application for admission in Texas for The Benefit Group, Inc., a foreign third party administrator. The home office is in Omaha, Nebraska.

Application for incorporation in Texas for I.P.A. Management Associates, Inc. (doing business under the assumed name of North American Medical Management of Texas), a domestic third party administrator. The home office is in Houston, Texas.

Application for incorporation in Texas for National Marketing and Administration, a domestic third party administrator. The home office is in Houston, Texas.

Issued in Austin, Texas, on March 29, 1994.

TRD-9438293 Linda K von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed March 29, 1994

Texas Natural Resource Conservation Commission Enforcement Orders

An agreed enforcement order was entered regarding Lasater, Jim doing business as Diamond J. Service (Sludge Registration Number RA 710444) on March 16, 1994, assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Smith, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0458.

Issued in Austin, Texas, on March 23, 1994.

TRD-9438267 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: March 28, 1994

◆ ◆ ◆
An agreed enforcement order was entered regarding the Crosbyton Consolidated ISD (MSW Unauthorized Site Number 32942) on March 11, 1994, assessing \$9,200 in administrative penalties with \$2,500.

Information concerning any aspect of this order may be obtained by contacting Vic Ramirez, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0478.

Issued in Austin, Texas, on March 23, 1994.

TRD-9438266 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: March 28, 1994

◆ ◆ ◆
Public Utility Commission of Texas

**Notice of Intent to File Pursuant to
Public Utility Commission Substantive
Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Brownsville ISD, Brownsville, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for approval of Plexar-Custom Service for Brownsville ISD pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 12867.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Brownsville ISD. The geographic service market for this specific service is the Brownsville, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on March 28, 1994.

TRD-9438303 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 29, 1994

**Texas Low-Level Radioactive Waste
Disposal Authority**

**Notice of License Application
Information Meeting**

In accordance with the Health and Safety Code, the Authority has submitted a license application to the Texas Natural Resource Conservation Commission for the operation of a low-level radioactive waste disposal facility in Hudspeth County, Texas.

Copies of the license application are available for viewing at Austin office of the Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar Boulevard, Suite 300, Austin, Texas (512) 451-5292, and the Sierra Blanca office at 203 FM 1111 South, Sierra Blanca, Texas (915) 369-3391.

Authority staff will available to answer questions concerning this license application on Tuesday, April 12, 1994, from 8:00 a.m. to 12:00 p.m. in their offices at 7701 North Lamar Boulevard, Suite 300, Austin, Texas (512) 451-5292.

For more information please contact Adriana Riojas, Public Information Officer, at (512) 451-5292.

Issued in Austin, Texas, on March 25, 1994.

TRD-9438275 Lee H. Mathews
Deputy General Manager and Legal
Counsel
Texas Low-Level Radioactive Waste
Disposal Authority

Filed: March 29, 1994

◆ ◆ ◆
Railroad Commission of Texas

Invitation for Bids

The Railroad Commission of Texas, Surface Mining and Reclamation Division (commission), is soliciting bids for the characterization (chemical and physical analyses) of minesoil samples and chemical analyses of a limited number of plant tissue samples from Abandoned Mined Land (AML) sites in Milam, Kames, and Live Oak counties. Samples will undergo assorted suites of 31 analyses (see \$4.0 of the contract for breakdown of suites). Sample flow will be seasonal and no guarantee is made on the number of samples to be analyzed by the successful bidder (contractor) each month.

This contract is contingent upon receipt by commission of federal funds in an amount sufficient to cover the total compensation to be paid to contractor under the terms of this contract.

As the designated state agency for implementation of the "Surface Mining Control and Reclamation Act of 1977" (30 U.S.C.A., §1201 et seq), the commission will award a unit price contract to the lowest best bidder for completion of this work. Sealed bids must be submitted by returning the entire bid document appropriately completed and executed in the addressed envelope provided with each bid document. Sealed bids will be received until 2:00 p.m., May 3, 1994, at which time the bids will be publicly opened and read at the following address.

Copies of the specifications and other contract documents are on file in Austin at the following address. The complete bid package may be obtained from the following

mailing address: AML Minesoil Characterization Laboratory Contract, Surface Mining and Reclamation Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, Attn: Melvin B. Hodgkiss, P.E., Director. All questions concerning the work or bid document must be received in writing by 5:00 p.m., April 19, 1994.

Issued in Austin, Texas, on March 29, 1994.

TRD-9438305

Mary Ross McDonald
Assistant Director, Legal Division-Gas
Utilities/L.P. Gas
Railroad Commission of Texas

Filed: March 29, 1994



TAC Titles Affected

The following is a list of the administrative rules that were published in the January 4 thru March 29, 1994 issues.

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1 TAC §5.195 1595

Part II. Texas Ethics Commission

1 TAC §20.206 749, 2140

1 TAC §§34.7, 34.9, 34.11 749, 2140

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1 TAC §§61.7, 61.10, 61.19-61.21, 61.23-61.26, 61.28 1725

1 TAC §§61.2, 61.6, 61.10, 61.17, 61.19-61.21, 61.23-61.27, 61.31, 61.32, 61.36, 61.38 1725

Part IV. Office of the Secretary of State

1 TAC §71.8 679, 1825

1 TAC §78.53 2117

1 TAC §85.1 679, 1825

Part V. General Services Commission

1 TAC §113.2, §113.20 1509

1 TAC §113.11, §113.12 686, 2125

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1 TAC §121.5, §121.9 1510

Part XII. Advisory Commission on State Emergency Communications

1 TAC §251.3 1995

Part XVII. Texas Office of State-Federal Relations

1 TAC §§451.1-451.9 751, 1825

TITLE 4. AGRICULTURE

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4 TAC §19.8, §19.9 1995

4 TAC §29.3 389, 1996

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4 TAC §35.1 1649

4 TAC §35.2 1649

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7 TAC §79.105 393, 1542

Part VII. State Securities Board

7 TAC §101.4 1542

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1994 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

29 Friday, April 22	Monday, April 18	Tuesday, April 19
30 Tuesday, April 26	Wednesday, April 20	Thursday, April 21
31 Friday, April 29	Monday, April 25	Tuesday, April 26
32 Tuesday, May 3	Wednesday, April 27	Thursday, April 28
33 Friday, May 6	Monday, May 2	Tuesday, May 3
34 Tuesday, May 10	Wednesday, May 4	Thursday, May 5
35 Friday, May 13	Monday, May 9	Tuesday, May 10
36 Tuesday, May 18	Wednesday, May 11	Thursday, May 12
37 Friday, May 20	Monday, May 16	Tuesday, May 17
38 Tuesday, May 24	Wednesday, May 18	Thursday, May 29
39 Friday, May 27	Monday, May 23	Tuesday, May 24
40 Tuesday, May 31	Wednesday, May 25	Thursday, May 26
41 *Friday, June 3	Friday, May 27	Tuesday, May 31
42 Tuesday, June 7	Wednesday, June 1	Thursday, June 2
43 Friday, June 10	Monday, June 6	Tuesday, June 7
44 Tuesday, June 14	Wednesday, June 8	Thursday, June 9
45 Friday, June 17	Monday, June 13	Tuesday, June 14
46 Tuesday, June 21	Wednesday, June 15	Thursday, June 16
47 Friday, June 24	Monday, June 20	Tuesday, June 21
48 Tuesday, June 28	Wednesday, June 22	Thursday, June 23
49 Friday, July 1	Monday, June 27	Tuesday, June 28
50 Tuesday, July 6	Wednesday, June 29	Thursday, June 30
51 *Friday, July 8	Friday, July 1	Tuesday, July 5
Tuesday, July 12	SECOND QUARTERLY INDEX	
52 Friday, July 15	Monday, July 11	Tuesday, July 12
53 Tuesday, July 19	Wednesday, July 13	Thursday, July 14
Friday, July 22	NO ISSUE PUBLISHED	
54 Tuesday, July 26	Wednesday, July 20	Thursday, July 21
55 Friday, July 29	Monday, July 25	Tuesday, July 26
56 Tuesday, August 2	Wednesday, July 27	Thursday, July 28
57 Friday, August 5	Monday, August 1	Tuesday, August 2
58 Tuesday, August 9	Wednesday, August 3	Thursday, August 4
59 Friday, August 12	Monday, August 8	Tuesday, August 9
60 Tuesday, August 16	Wednesday, August 10	Thursday, August 11
61 Friday, August 19	Monday, August 15	Tuesday, August 16
62 Tuesday, August 23	Wednesday, August 17	Thursday, August 18
63 Friday, August 26	Monday, August 22	Tuesday, August 23
64 Tuesday, August 30	Wednesday, August 24	Thursday, August 25
65 Friday, September 2	Monday, August 29	Tuesday, August 30
66 Tuesday, September 6	Wednesday, August 31	Thursday, September 1
67 *Friday, September 9	Friday, September 2	Tuesday, September 6

68 Tuesday, September 13	Wednesday, September 7	Thursday, September 8
69 Friday, September 16	Monday, September 12	Tuesday, September 13
70 Tuesday, September 20	Wednesday, September 14	Thursday, September 15
71 Friday, September 23	Monday, September 19	Tuesday, September 20
72 Tuesday, September 27	Wednesday, September 21	Thursday, September 22
73 Friday, September 30	Monday, September 26	Tuesday, September 27
74 Tuesday, October 4	Wednesday, September 28	Thursday, September 29
75 Friday, October 7	Monday, October 3	Tuesday, October 4
Tuesday, October 11	THIRD QUARTERLY INDEX	
76 Friday, October 14	Monday, October 10	Tuesday, October 11
77 Tuesday, October 18	Wednesday, October 12	Thursday, October 13
78 Friday, October 21	Monday, October 17	Tuesday, October 18
79 Tuesday, October 25	Wednesday, October 19	Thursday, October 20
80 Friday, October 28	Monday, October 24	Tuesday, October 25
81 Tuesday, November 1	Wednesday, October 26	Thursday, October 27
82 Friday, November 4	Monday, October 31	Tuesday, November 1
83 Tuesday, November 8	Wednesday, November 2	Thursday, November 3
Friday, November 11	NO ISSUE PUBLISHED	
84 Tuesday, November 15	Wednesday, November 9	Thursday, November 10
85 Friday, November 18	Monday, November 14	Tuesday, November 15
86 Tuesday, November 22	Wednesday, November 16	Thursday, November 17
87 Friday, November 25	Monday, November 21	Tuesday, November 22
Tuesday, November 29	NO ISSUE PUBLISHED	
88 Friday, December 2	Monday, November 28	Tuesday, November 29
89 Tuesday, December 6	Wednesday, November 30	Thursday, December 1
90 Friday, December 9	Monday, December 5	Tuesday, December 6
91 Tuesday, December 13	Wednesday, December 7	Thursday, December 8
92 Friday, December 16	Monday, December 12	Tuesday, December 13
93 Tuesday, December 20	Wednesday, December 14	Thursday, December 15
94 Friday, December 23	Monday, December 19	Tuesday, December 20
95 Tuesday, December 27	Wednesday, December 21	Thursday, December 22
98 *Friday, December 30	Friday, December 23	Tuesday, December 27