TEXAS REGISTER

IN THIS ISSUE

Volume 19, Number 26 April 8, 1994 *Page 2439-2575*

Office of the Governor

Appointments Made March 29, 1994

Trinity River Authority of Texas Board of Directors 2449

Appointments Made March 30, 1994

State Board of Nurse Examiners 2449

Midwestern State University Board of Regents 2449

Texas Judicial Council 2449

Appointments Made March 31, 1994

Texas State Technical College System Board of Regents 2449

Texas-Mexico Authority Advisory Board 2449

Executive Order

AWR 94-17 2451

Emergency Sections

Texas Department of Health

HIV and STD Control

25 TAC §98.101, §98 105 2453

25 TAC §98.105 2454

Proposed Sections

Texas Department of Agriculture

Pesticides

7 TAC §§7 1, 7 4, 7 8, 7.10, 7 25, 7.26, 7 35 2455

Agricultural Hazard Communication Regulations

4 TAC §§8.1-8.5, 8 7, 8.11 2457

Public Utility Commission of Texas

Substantive Rules

16 TAC §23.23 2460

Contents Continued Inside

The *Texas Register* is printed on recycled paper

Texas Register

a section of the Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

Secretary of State
Ronald Kirk

Director
Dan Procter

Assistant Director
Dee Wright

Circulation/Marketing
Roberta Knight
Jill S. Ledbetter

TAC Editor
Dana Blanton

TAC Typographer
Madeline Chrisner

Documents Section Supervisor
Patty Webster

Document Editors
Janiene Allen
Robert Macdonald

Open Meetings Clerk
Jamie Alworth

Production Section Supervisor
Ann Franklin

Production Editors/ Typographers
Carla Carter
Roy Felps
Chad Kissinger
Mimi Sanchez

Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except March 11, July 22, November 11, and November 29, 1994. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, $95 and electronic, $90; six-month printed, $75 and electronic, $70. Single copies of most issues are available at $7 per copy.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* Director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director. The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

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

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.

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

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

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

The Office of the Secretary of State does not discriminate on the basis of race color national origin, sex religion, age or disability in employment or the provision of services.

16 TAC §23.57 2464

Texas State Board of Examiners of Psychologists

Renewals

22 TAC §471.1 2467

Texas Workers' Compensation Commission

General Medical Provisions

28 TAC §133.206 2467

Texas Department of Human Services

Community Care for Aged and Disabled

40 TAC §48.9808 2442

Withdrawn Section

Texas Department of Human Services

Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

40 TAC §19.1104 2479

Adopted Sections

General Services Commission

Executive Administration Division

1 TAC §111.12, §111.19 2481

1 TAC §§111.61-111.63 2482

1 TAC §§111.61-111.70 2482

Texas Department of Commerce

Work Force Development Incentive Program

10 TAC §§184.101-184.104 2488

Texas State Board of Examiners of Psychologists

General Rulings

22 TAC §461.6 2489

Applications

22 TAC §463.5 2489

22 TAC §463.30 2489

22 TAC §463.31 2489

State Committee of Examiners for Speech-Language Pathology and Audiology

Speech-Language Pathologists and Audiologists

22 TAC §741.1, §741 2 2490

22 TAC §741.1, §741.2 2491

22 TAC §§741.11-741.27 2493

22 TAC §§741.11-741.26 2493

22 TAC §741.31, §741.32 2493

22 TAC §741.41 2494

22 TAC §§741.61-741.64 2496

22 TAC §§741.61-741.67 2496

22 TAC §§741.81-741.84 2500

22 TAC §§741.81-741.88 2501

22 TAC §741.91 2506

22 TAC §§741.101-741.103 2506

22 TAC §§741.121-741.123 2509

22 TAC §§741.141-741.143 2509

22 TAC §§741.141-741.145 2509

22 TAC §§741.161-741.163 2510

22 TAC §§741.161-741.166 2510

22 TAC §§741.181-741.182 2513

22 TAC §§741.191-741.199 2514

22 TAC §§741.208-741.210 2518

22 TAC §741.301 2518

22 TAC §§741.301-741.303 2518

Texas Department of Health

Hospital Licensing

25 TAC §§133.1-133.7 2522

25 TAC §§133.1-133.3 2522

25 TAC §§133.11-133.14 2525

25 TAC §133.21, §133.22 2528

25 TAC §133.29 2531

25 TAC §133.31, §133.32 2531

25 TAC §§133.51-133.54 2531

25 TAC §133.71, §133.72 2535

25 TAC §133.101, §133.102 2539

25 TAC §§133.111-133.113 2543

25 TAC §133.121 2546

Texas Workers' Compensation Commission

Attorney's Fees

28 TAC §§152.1, 152.3, 152.4 2547

Rejected Risk: Injury Prevention Services

28 TAC §§165.6-165.9 2548

Texas Parks and Wildlife Department

Fisheries

31 TAC §57.156, §57.158 2549

Teacher Retirement System of Texas

Membership Credit

34 TAC §25.113 2549

General Administration

34 TAC §51.1 2550

Employees Retirement System of Texas

Creditable Service

34 TAC §§71.5, 71.17, 71.19, 71.21 2550

Benefits

34 TAC §73.11, §73.21 2550

34 TAC §73.23 2551

Hazardous Profession Death Benefits

34 TAC §75.1 2551

Open Meetings Sections

Advisory Board of Athletic Trainers 2553

Texas Department on Aging 2553

Texas Commission on Alcohol and Drug Abuse 2553

Texas Bond Review Board 2554

Texas Department of Criminal Justice 2554

Texas Education Agency 2554

Texas Employment Commission 2554

Texas Commission on Fire Protection 2554

Texas Alternative Fuels Council 2555

Texas Department of Human Services 2555

Texas Department of Insurance 2555

Texas General Land Office 2555

Texas Department of Licensing and Regulation 2556

Texas Natural Resource Conservation Commission 2556

Board of Nurse Examiners 2555

Texas State Board of Physical Therapy Examining 2557

Texas State Board of Podiatry Examiners 2557

Public Utility Commission of Texas 2557

Railroad Commission of Texas 2557

Stephen F. Austin State University, Board of Regents 2558

Structural Pest Control Board 2558

Texas Department of Transportation 2559

University of Houston System 2559

University of Texas System, Board of Regents 2559

Texas Workers' Compensation Insurance Facility 2559

Regional Meetings 2559

In Addition Sections

Texas Commission on Alcohol and Drug Abuse

Notice of Request for Proposals 2563

State Banking Board

Cancellation of Hearing 2563

Texas Bond Review Board

Bi-Weekly Report on the 1994 Allocation of the State Ceiling on Certain Private Activity Bonds 2564

Central Texas Council of Governments

Consultant Proposal Request 2565

Texas Department of Criminal Justice

Request for Consultant Services 2565

Employees Retirement System of Texas

Request for Information 2566

General Services Commission, State Energy Conservation Office

Consultant Proposal Request for an Evaluation of Alternative Fuels Programs 2566

Consultant Proposals Request General Service Commission State Energy Conservation Office 2567

Texas Department of Housing and Community Affairs

Notice of Funding Availability 2569

Request for Proposal 2569

Public Utility Commission of Texas

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.28 2571

Notice of Proceedings for Approval of Extended Area Service 2571

Petition for Rulemaking 2572

Texas Office of State-Federal Relations

Request for Applications 2572

Texas Department of Transportation, Division of Aviation

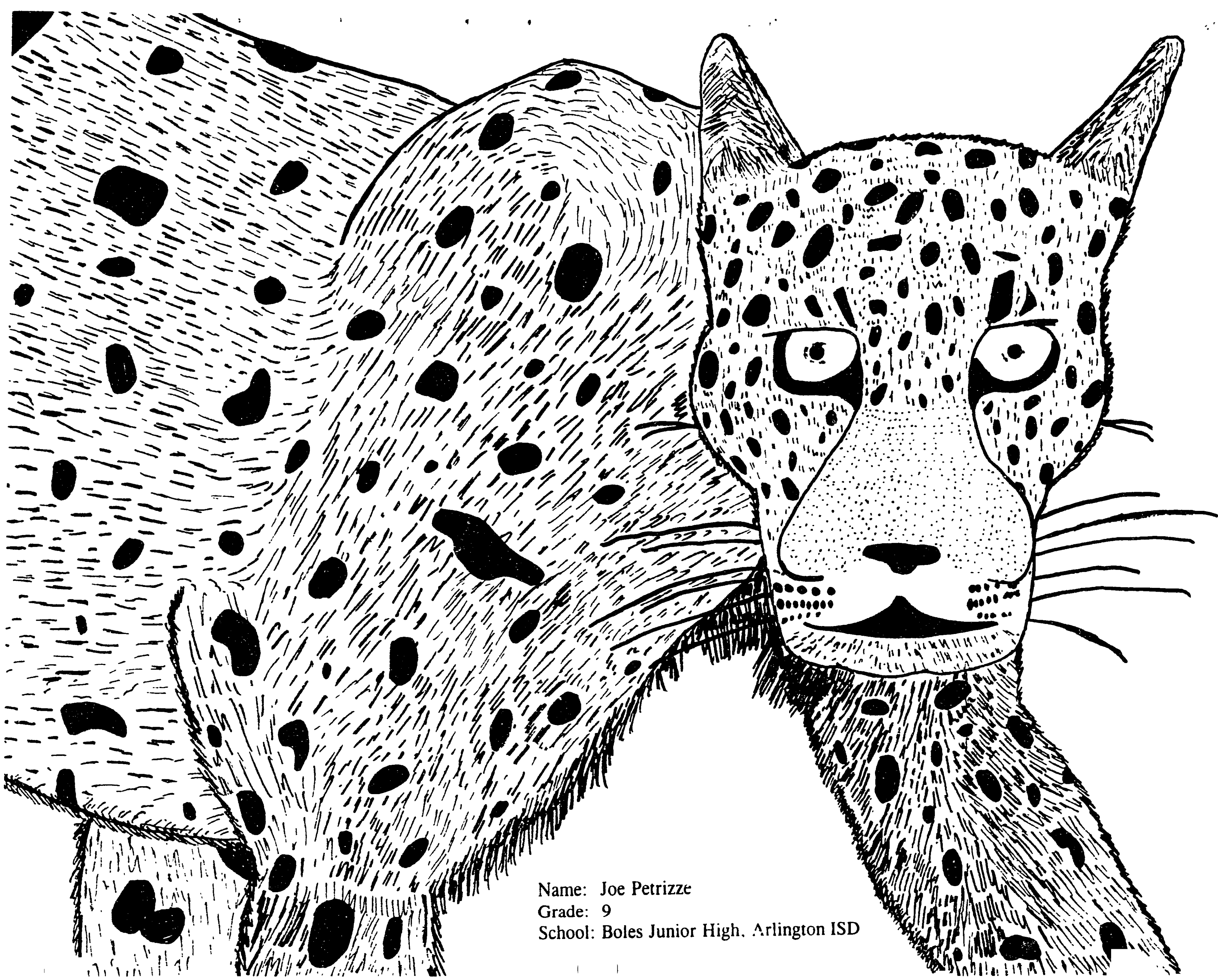
Notice of Contract Award.......... 2573

Public Hearing Notice.......... 2573

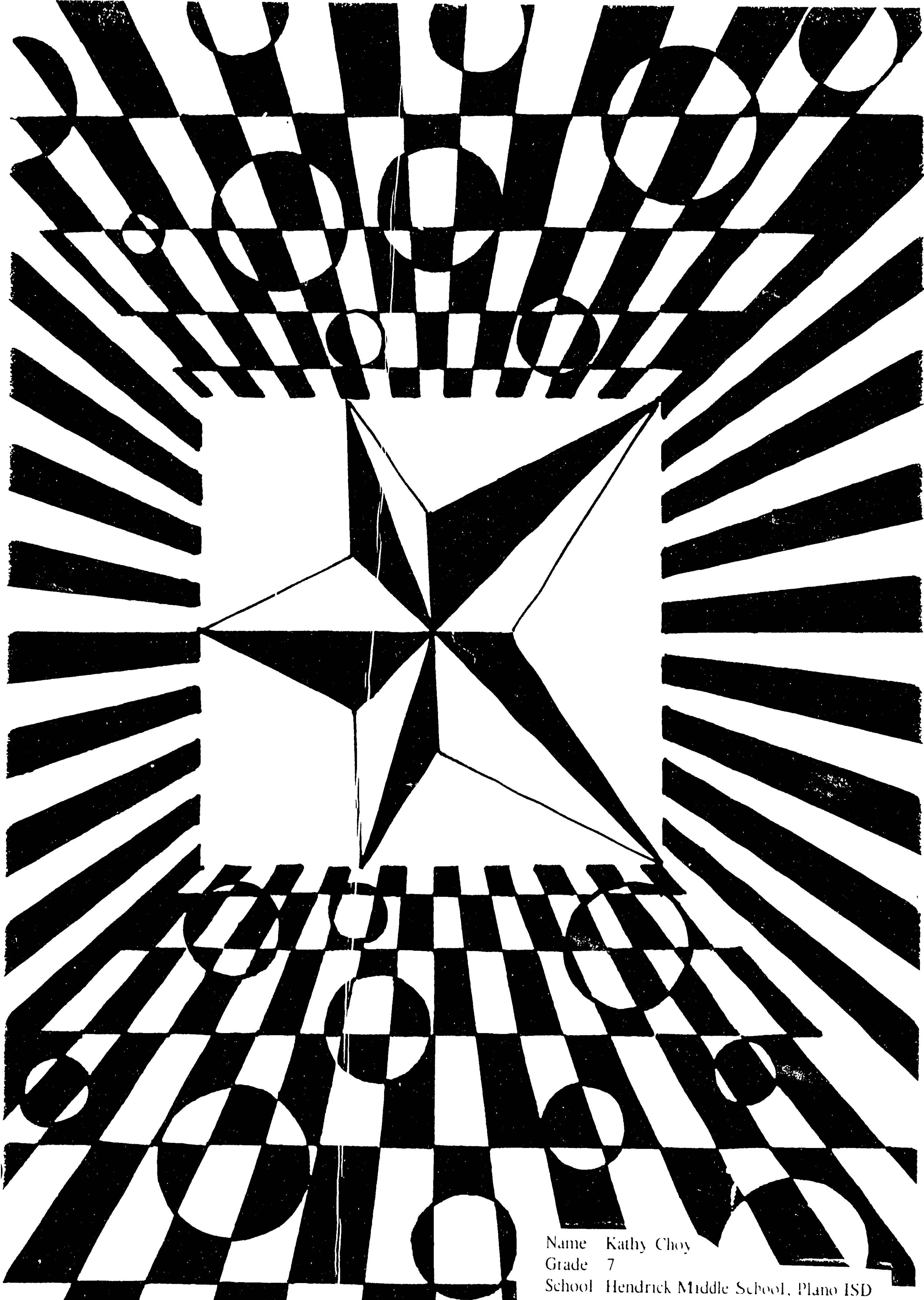
Request for Proposals.......... 2574

Name: Jennifer Podgorski
Grade: 9
School: Boles Junior High, Arlington ISD

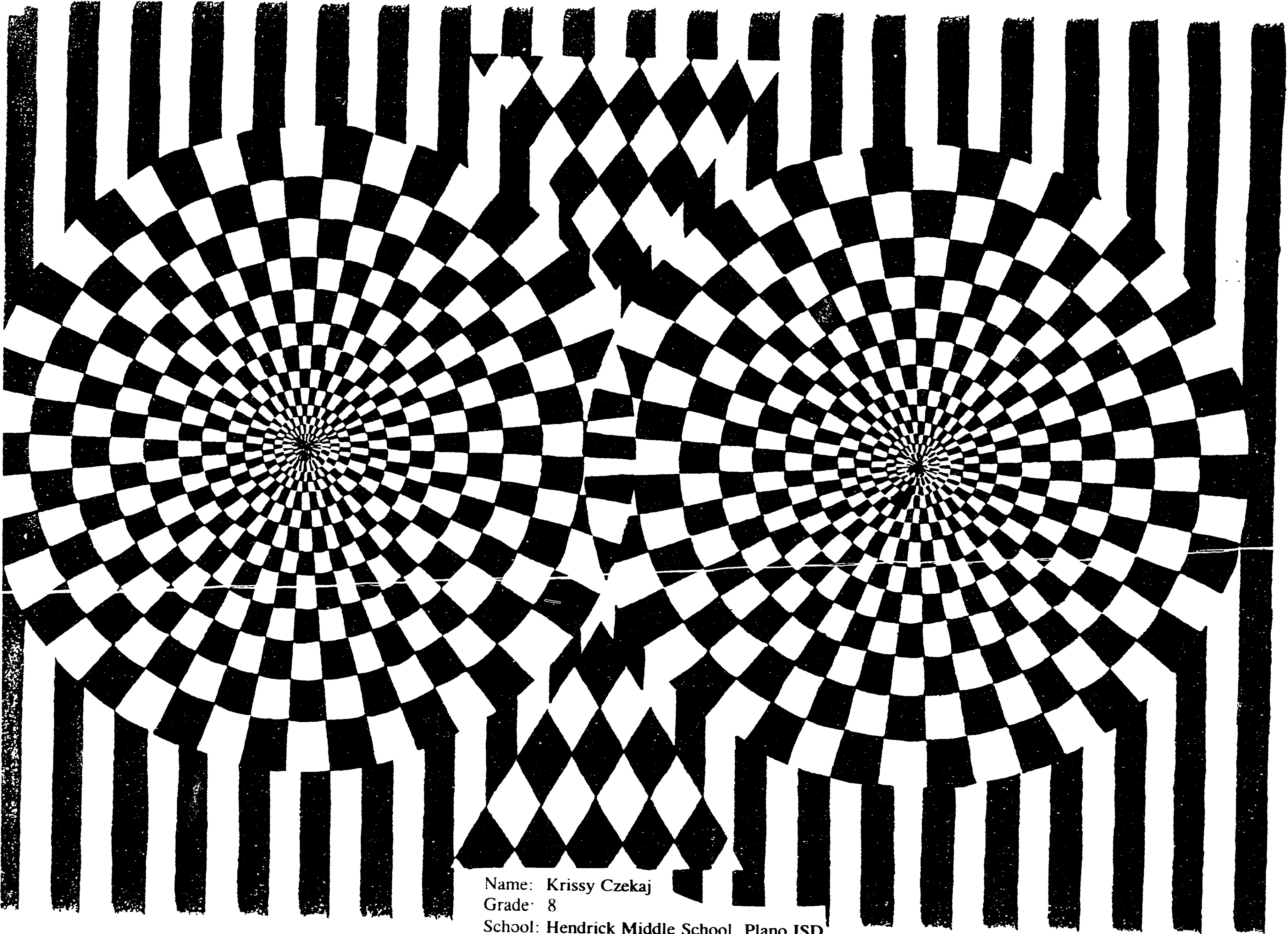
Jennifer Podgorski


Name: Joe Petrizze
Grade: 9
School: Boles Junior High, Arlington ISD

Name: April Reber
Grade: 9
School: Boles Junior High, Arlington ISD



Name Kathy Choy
Grade 7
School Hendrick Middle School, Plano ISD



Name: Krissy Czekaj
Grade: 8
School: Hendrick Middle School, Plano ISD

The Governor

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

Appointments Made March 29, 1994

To be a member of the **Trinity River Authority of Texas Board of Directors** for a term to expire March 15, 1999: Troy E. Nash, P.O. Box 577, Groveton, Texas 75845. Mr. Nash will be replacing Joe Wayne Vanecek of Trinity, whose term expired.

♦ ♦ ♦

Appointments Made March 30, 1994

To be a member of the **State Board of Nurse Examiners** for a term to expire January 31, 1999: Robert J. Provan, 101 Palmwood Trail, Pflugerville, Texas 78660. Mr. Provan will be replacing Lynn Curtis Besselman of Amarillo, whose term expired.

To be a member of the **Midwestern State University Board of Regents** for a term to expire February 25, 2000: Harold White, Jr., 2102 Avondale Street, Wichita Falls, Texas 76308. Mr. White will be replacing Dr. David H. Allen of Wichita Falls, whose term expired.

To be a member of the **Midwestern State University Board of Regents** for a term to expire February 25, 2000: Edward L. Watson, 4911 Cape Coral Drive, Dallas, Texas 75287. Mr. Watson will be replacing Dunman Perry, Jr of Mineral Wells, whose term expired.

To be a member of the **Midwestern State University Board of Regents** for a term to expire February 25, 2000: Kathryn Anne Yeager, 2111 Avondale, Wichita Falls, Texas 76308. Ms. Yeager is being reappointed.

To be a member of the **Texas Judicial Council** for a term to expire February 1, 1997: the Honorable Olin B. Strauss, 310 Nicolet, Jourdanton, Texas 78026. Judge Strauss will be replacing Judge Ray D. Anderson of Brownfield, whose term expired.

To be a member of the **Texas Judicial Council** for a term to expire June 30, 1999. the Honorable Joe Spurlock, 7 Century, Roanoke, Texas 76262. Judge Spurlock will be replacing Ward Koehler of El Paso, whose term expired.

To be a member of the **Texas Judicial Council** for a term to expire June 30, 1999. Cynthia Fay Solls, 9127 Valley Chapel Lane, Dallas, Texas 75220. Ms. Solls will be replacing Alan M. Sager of Austin, whose term expired.

To be a member of the **Texas Judicial Council** for a term to expire June 30, 1999· Algenita Scott Davis, 3340 South MacGregor, Houston, Texas 77021. Ms Davis will be replacing Blake Tartt of Houston, whose term expired.

To be a member of the **Texas Judicial Council** for a term to expire February 1, 1997: the Honorable Richard Barajas, 7140 Majorca, El Paso, Texas 79912 Chief Justice Barajas will be replacing Judge Joe Spurlock II of Fort Worth, who was appointed to a different position on the Council

Issued in Austin, Texas on March 31, 1994.

TRD-9438444 Ann B. Richards
Governor of Texas

♦ ♦ ♦

Appointments Made March 31, 1994

To be a member of the **Texas State Technical College System Board of Regents** for a term to expire August 31, 1999: Nat Lopez, 2810 Emerald Lake Drive, Harlingen, Texas 78550. Mr. Lopez will be replacing George Baur of Houston, who resigned

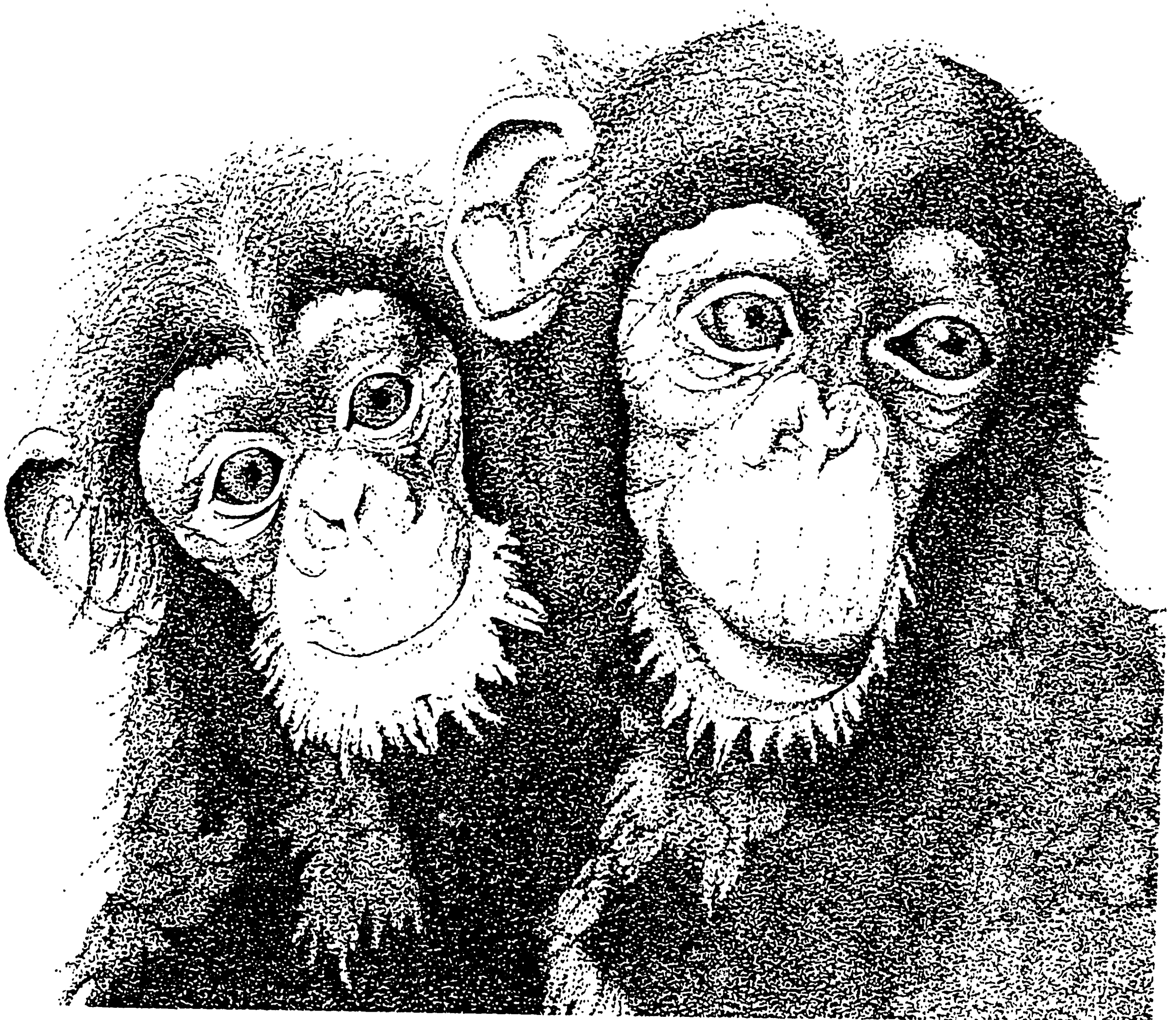
To be a member of the **Texas-Mexico Authority Advisory Board** for a term to expire February 1, 1995. Lillian A. Lamon, 2322 Riverside Drive, Harlingen, Texas 78550-8246 Ms. Lamon will be filling the unexpired term of Marjorie Kastman of Lubbock, who resigned

Issued in Austin, Texas on April 1, 1994

TRD-9438474 Ann W Richards
Governor of Texas

♦ ♦ ♦

Name: Kate Marstrand
Grade: 11
School: Lubbock High School, Lubbock ISD



Executive Order

AWR 94-17

ESTABLISHING A STATE PLANNING REGION TO PROMOTE AFFORDABLE HOUSING

WHEREAS, the East Texas Housing Finance Corporation, hereinafter the Corporation, is a duly organized and validly existing joint housing corporation created pursuant to the provisions of Chapter 394 of the Local Government Code which is currently comprised of Anderson, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, Van Zandt, and Wood Counties; and

WHEREAS, the Corporation was created, *inter alia*, in order to provide low interest mortgage funds for the purpose of promoting affordable housing for low and moderate income families within the East Texas area; and

WHEREAS, there exist common and interrelated problems of affordable housing within the counties comprising the Corporation and Angelina and Nacogdoches Counties; and

WHEREAS, the Corporation has approved the inclusion of Angelina and Nacogdoches Counties in the jurisdiction of the Corporation, contingent upon issuance of an executive order of the Governor of Texas establishing a state planning region for the purposes of §394 012, Local Government Code, which would include all the counties presently comprising the Corporation and Angelina and Nacogdoches Counties; and

WHEREAS, it appears that the Corporation has the clear, present, and unique opportunity to sponsor a program which will provide low cost mortgage loans within the seventeen counties listed below, a function which neither the Deep East Texas Council of Governments nor the East Texas Council of Governments is providing or is capable of providing under existing statutory or regulatory law in this state;

NOW THEREFORE, I, Ann W. Richards, Governor of the State of Texas, under the authority vested in me, pursuant to the provision of §772.002, Texas Government Code, and in my capacity as Chief Planning Officer of the State of Texas, hereby delineate the geographic boundaries of the following adjoining counties as a state planning region, solely for the purposes of §394.012, Local Government Code, and for the sole purpose of promoting affordable housing for low income families: Anderson, Angelina, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Nacogdoches, Panola, Rains, Rusk, Smith, Upshur, Van Zandt, and Wood Counties; provided, however, that the provisions of this Executive Order shall lapse upon the expiration of the time period in which mortgage loans can be originated pursuant to the 1994 East Texas Housing Finance Corporation mortgage revenue bond issue

This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Issued in Austin, Texas on March 19, 1994.

TRD-9438443 Ann W Richards
Governor of Texas

Name: April Reber
Grade: 9
School: Boles Junior High, Arlington ISD

EMERGENCY RULES

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

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 98. HIV and STD Control

Subchapter C. Texas HIV Medication Program

General Provisions

• 25 TAC §98.101, §98.105

The Texas Department of Health (department) adopts on an emergency basis an amendment to §98.101, the repeal of §98.105, and new §98.105, concerning the Texas HIV Medication Program. The sections implement the provisions of the "Communicable Disease Prevention and Control Act," Health and Safety Code, Chapter 85.063, Subchapter C, concerning the Texas HIV Medication Program. The program assists hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV related conditions Generally, the sections cover purpose, eligibility for participation, and medication coverage The amendments expand the eligibility criteria for Zidovudine, Didanosine, Zalcitabine, SMZ-TMP, Fluconazole, and Itraconazole.

The amendment, repeal, and new section are adopted on an emergency basis in order to expeditiously provide medications to HIV infected individuals. It is imperative to address this serious and imminent health condition by providing approved medications as soon as possible.

The amendment and new section are adopted on an emergency basis under the Health and Safety Code, §85.063, which provides the Texas Board of Health with the authority to adopt rules concerning a Texas HIV Medication Program; 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; and Texas Civil Statutes, Article 6252-13a, §5, which provide the Board with the authority to adopt rules on an emergency basis.

This amendment effects Chapter 85 of the Health and Safety Code.

§98.101. Purpose and Scope.

(a) Purpose. These sections will implement the provisions of the Texas HIV Medication Program (program) as authorized by the Communicable Disease Prevention and Control Act, Health and Safety Code, §§85.061-85.066 The program shall assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in obtaining medications **that have been shown to be effective in reducing hospitalizations due to** [indicated by the Food and Drug Administration for the treatment of] HIV-related conditions and approved by the Texas Board of Health for program coverage.

(b) (No change.)

§98.105. Drug specific eligibility criteria. A person is eligible for:

(1) Zidovudine, Didanosine, and Zalcitabine if he or she is younger than 18 years of age and has a diagnosis of HIV infection; or has a positive HIV antibody test and is classified in Group III or IV according to the Centers of Disease Control (CDC) classification system, or pending available funding classified in Group I or II with a CD4 cell count of 500 or less,

(2) Pentamidine for inhalation solution, sulfamethoxazole-trimethoprim (DS) tablets, and sulfamethoxazole-trimethoprim suspension if he or she is diagnosed with HIV infection and a CD4 cell count of 200 or less, or constitutional symptoms such as thrush or unexplained fever greater than 100 degrees F for greater than two weeks and children under the age of 13 with the following clinical indicators:

(A) all children who have had a previous episode of Pneumocystis Carinii Pneumonia (PCP);

(B) all children less than 13 years of age who meet the Center for Disease Control (CDC) definitions of HIV infection in children and who have CD4+ counts less than 400/mm3;

(C) all children less than 15 months of age who have HIV isolated from blood, cerebrospinal fluid (CSF), or tissues, or P24 antigen detected in blood/plasma or CSF, regardless of CD4 count,

(D) all children less than 15 months of age who are HIV-seropositive and have symptoms as defined by CDC class P2, regardless of CD4 count Children will qualify in class P2a if they have one symptom and persistent hypergammaglobulinemia (two measurements, one month apart);

(3) Erythropoietin if he or she soon would be or is currently transfusion dependent, has a hematocrit less than or equal to 25%, and has endogenous serum erythropoietin levels equal to or less than 500 mU/mL;

(4) Immune Globulin Intravenous (Human) if he or she is diagnosed with HIV infection and is younger than 18 years of age;

(5) Fluconazole if he or she has established cryptococcal meningitis or candida esophagitis and for prophylaxis after diagnosis. The total amount to be expended on this drug is up to $350,000, then pending available funding,

(6) Acyclovir for the treatment of acute herpetic infections and chronic suppressive therapy for the treatment of recurrent disease.

(7) IV Pentamidine for children 13 years of age or younger for the treatment of PCP and prophylaxis against PCP in HIV infected children,

(8) Interferon-Alpha for the treatment of disseminated Kaposi's sarcoma in HIV infected persons with T-Cell counts over 500. The total amount to be expended on this drug is up to $122,600. The request-

ing physician must complete a form to be returned to the program which will allow the program to evaluate the benefits of providing this medication;

(9) Amphotericin-B for the treatment of patients with progressive, and potentially fatal disseminated fungal infections. The total amount to be expended on this drug is up to $46,200. The requesting physician must complete a form to be returned to the program which will allow the program to evaluate the benefits of providing this medication;

(10) Atovaquone for the oral treatment of acute mild to moderate Pneumocystis carinii Pneumonia (PCP) in patients who are intolerant to sulfamethoxazole-trimethoprim (SMZ-TMP);

(11) Rifabutin for the prevention of disseminated mycobacterium avium complex disease in patients with a CD4 cell count of 100 or less. The total amount to be expended on this drug is up to $100,000, then pending available funding; and

(12) Itraconazole for the treatment of Blastomycosis and Histoplasmosis.

Issued in Austin, Texas, on March 31, 1994.

TRD-9438445 Susan K Steeg
General Counsel
Texas Department of Health

Effective date: March 31, 1994

Expiration date: July 30, 1994

For further information, please call: (512) 458-7500

• 25 TAC §98.105

The repeal is adopted on an emergency basis under the Health and Safety Code, §85.063, which provides the Texas Board of Health with the authority to adopt rules concerning a Texas HIV Medication Program; 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.

This repeal effects Chapter 85 of the Health and Safety Code

§98.105. Drug Specific Eligibility Criteria.

Issued in Austin, Texas, on March 31, 1994.

TRD-9438446 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: March 31, 1994

Expiration date: July 30, 1994

For further information, please call: (512) 458-7500

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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 7. Pesticides

• 4 TAC §§7.1, 7.4, 7.8, 7.10, 7.25, 7.26, 7.35

The Texas Department of Agriculture (the department) proposes amendments to §§7.1, 7.4, 7.8, 7.10, 7.25, and 7.26, and new §7.35, concerning the regulation of the use, registration and sale of pesticides. The amendments are proposed to clarify the sections and to make the sections consistent with the requirements of the Federal Worker Protection Standard, 40 Code of Federal Regulations (CFR), Part 170 (WPS), which was adopted by the United States Environmental Protection Agency (EPA) in October of 1992, and to clarify coverage under these regulations and the WPS in regards to training.

The proposed amendment to §7.1 adds definitions for Service, WPS, and Trained trainers The proposed amendment to §7.4 is being made to clarify what materials applicants for registration of pesticides are required to submit with their application. The proposed amendment to §7.8 is being made to clarify where distribution records are to be kept The proposed amendment to §7.10 is to clarify that department pesticide inspectors and pesticide program staff may conduct up to two hours of training for recertification courses without prior approval from the certification and training staff. The proposed amendment to §7.25 is being made to clarify coverage under the WPS and these regulations and, in subsection (d)(9), to change the type of flag or sign that may be used to indicate a danger due to pesticide application to make it consistent with that used under the WPS The proposed amendment to §7 26 is being made to make that section consistent with the WPS and to add an additional method of giving notification of a scheduled pesticide application New §7 35 is added to require a trainer to issue EPA-approved verification training cards Further, new §7 35 requires all trainers to maintain records of all training performed by them for a five-year period.

Steve Bearden, assistant commissioner for pesticide programs, 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. Bearden 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 greater clarity and understanding by the regulated community as well as increased awareness and protection of the environment and protected community. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Steve Bearden, Assistant Commissioner for Pesticide Programs, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.* The Department intends to hold public hearings on the proposals. Information regarding such hearings will be published in the *Texas Register.*

The amendments and new section are proposed under the Texas Agriculture Code, §76.004, which provides the Texas Department of Agriculture with the authority to adopt rules for carrying out the provisions of this chapter. The code affected by this proposal is the Texas Agriculture Code, Chapter 76

§7.1. Definitions. In addition to the definitions set out in the Texas Agriculture Code, §76.001, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Service-Texas Agriculture Extension Service.

Trained trainers-Anyone who has completed an EPA-approved WPS train-the-trainer program or a WPS trained handler who may train workers only.

WPS-Federal Worker Protection Standard, 40 Code of Federal Regulations (CFR), Part 170.

§7.4 Registration of Pesticides.

(a) In addition to the requirements contained in the Act, Subchapter C (concerning registration), the application for registration of a pesticide shall include·

(1)-(2) (No change)

(3) a material safety data sheet (MSDS) which complies with the provisions set forth in 29 Code of Federal Regulations, §1910.1200(g); **and** [.]

(4) an EPA-stamped accepted label for a pesticide that must be federally registered under the Federal Insecticide, Fungicide and Rodenticide Act, §3.

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

§7.8. Authorized Pesticide Users and Pesticide Dealers

(a) (No change.)

(b) Pesticide dealers. It shall be a violation for a pesticide dealer required to be licensed by the Act, Subchapter D (concerning licensing of dealers) to continue to distribute restricted-use or state-limited-use pesticides after December 31 of each year without first having renewed the pesticide dealer license in accordance with the Act

(1)-(4) (No change)

(5) Records of distribution shall be kept current and maintained at the place of business where distribution occurs as designated on the pesticide dealer's license. The record for each distribution shall contain all of the information as specified in subsection (b)(4) of this section. The licensee shall make these records available for inspection by the department upon request. The department may examine these records at any time during normal business hours or by written request require the licensee to submit a copy of these records. [Records shall be maintained at the place of business where the pesticides are distributed.]

(6) (No change.)

§7.10. Applicator Recertification

(a)-(b) (No change)

(c) Prior accreditation shall not be required for private applicator recertification courses of up to two continuing educa-

tion credit units conducted by the Texas Agricultural Extension Service, [or right-to-know training pursuant to Texas Agriculture Code, Chapter 125, conducted by the Texas Agricultural Extension Service or the Texas Department of Agriculture, and] The Texas Agricultural Extension Service specialists **and the Texas Department of Agriculture pesticide inspectors and pesticide program staff** may conduct up to two continuing education credit units for **any pesticide applicator** [commercial and noncommercial applicators] without prior accreditation provided that all other requirements for course content and records are met. In order for a recertification activity to be accredited by the department, the sponsor must:

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

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

(g) Each licensed commercial or noncommercial applicator must:

(1) (No change.)

(2) **during each** [as part of a] three-year **period** [requirement each applicator must have at least two credits on relevant laws and regulations and two credits in integrated pest management strategies, provided, however, if an applicator receives an initial license after September 1, the three-year continuing education period shall begin on the following January 1. Applicators with a recertification period beginning on or after January 1, 1996, shall be required to obtain two credits in integrated pest management as part of the three-year requirement.

(h)-(o) (No change.)

§7.25. Scope of Pesticide Application Standards.

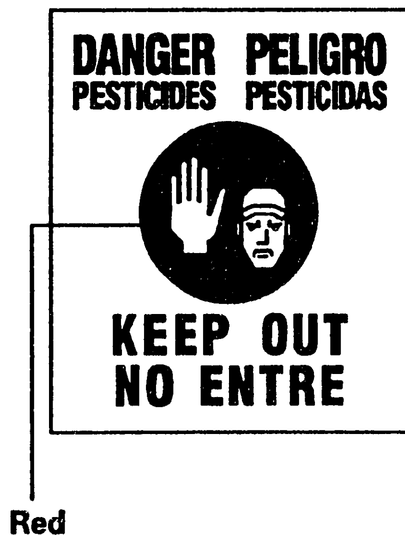
(a) Purpose. The purpose of §§7.25-7.31 of this title (relating to Pesticides) shall be to establish pesticide application standards designed to prevent unreasonable risk to human health and protect workers and others during the production of agricultural field crops. **If an agriculture employer is complying with all applicable provisions of the WPS then they will have satisfied the provisions of §§7.25, 7.27, 7.28, 7.30, and 7.31 of this title (relating to Scope of Pesticide Application Standards, Worker Reentry Into Fields, Reentry Instructions, Reentry Interval, and Establishing Reentry Intervals).**

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

(d) Definitions. In addition to the definitions set out in the Texas Agriculture Code, Chapter 76, §76.001 (1981), and §7.1 of this title (relating to Definitions), the following words and terms, when used in these regulations, shall have the following meanings:

(1)-(8) (No change.)

(9) **EPA WPS warning flag/sign must look like the one pictured as follows. Additional information may be included on the warning sign, such as the name of the pesticide or the date of application, if it does not lessen the impact of the flag/sign or change the meaning of the required information. If the required information is added in other languages, the words must be translated correctly. The flag/sign must be at least 14 inches by 16 inches, and the letters must be at least one inch high.** [Universal symbol. The meaning of universal symbol is a figure at least 18 inches in width by 24 inches in length in size, white in color, and which is inscribed a 12-inch diameter red circle with a red diagonal bar one inch in width placed from the two o'clock position to the eight o'clock position across the circle. The legend "Danger Pesticides" shall appear in black letters above the circular prohibitory symbol and the words "Peligro Pesticides" below; lettering must be no less than 1-1/2 inches high. Enclosed within the circular symbol shall be two figures amid rows of crops, all in black. The symbol should appear substantially as follows]



(10)-(11) (No change.)

§7.26. Notification Requirements.

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

(h) Notification. The following methods may be used for giving notification of a scheduled pesticide application.

(1) Adjoining neighbor. If the request for notification is made pursuant to subsection (c)(1) of this section, the notification may be made by:

(A) raising a **flag/sign**:

(i) the **EPA WPS posted warning flag/sign** [universal symbol (flag)] shall be raised to a height of at least approximately five feet, with the bottom of such **flag/sign** always at least two feet above the top of the crop, in or about the field to which pesticides are scheduled to be applied so that the **flag/sign** is located no farther than 650 yards from the nearest property line of any adjoining neighbor requesting notification;

(ii) in the event of unusually tall crops, such as citrus, corn, or sugar cane, or limited-access fields, the farm operator may raise a **flag/sign** at a distance greater than 650 yards from an adjoining neighbor, if such neighbor is [has] given written notice of the location of such **flag/sign** and the **flag/sign** is raised on a permanent pole to a height visible to the adjoining neighbor;

(iii) the telephone number of the farm operator shall be on or near the **flag/sign**, and the **flag/sign** shall be raised on the border of the field at a location to which the public has access for the purpose of reading the telephone number The farm operator shall provide the name of the pesticide and the intended date and approximate time of the scheduled application when requested by the requesting party;

(B) giving notification in writing, in person, or by telephone in English or, when appropriate, Spanish; or [.]

(C) other means mutually agreed upon by both parties. This agreement must be in writing and a copy filed with the department.

(2) (No change.)

(3) Licensed day-care centers, primary and secondary schools, hospitals, inpatient clinics, nursing homes. If the request for notification is made pursuant to subsection (c)(2) of this section, notification may be given in persons or by telephone in English or, when appropriate, Spanish. Alternatively, if mutually agreed by the farm operator and the person in charge of any such facility, notification may be given to such facilities by posting a **flag/sign** at a designated location.

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

(i) (No change.)

(j) Time and receipt of notice. Notice shall be given not later than on the day previous to a scheduled pesticide application.

(1) Notice shall be deemed given pursuant to subsection (h)(1) and (3) of this section:

(A) at the time of delivery (in person, in writing, or by telephone) to the requesting person or at the time of delivery to the address provided in the request for prior notification; [or]

(B) when the required **flag/sign** is raised; or [.]

(C) as mutually agreed upon pursuant to an agreement authorized by subsection (h)(1)(C).

(k) (No change.)

(l) Removal of **flags/signs**. **Flags/signs** raised under this section should be removed or lowered within 24 hours after the application. However, in no event shall such **flags/signs** be left posted for more than **72** [48] hours after the application. In the event that a pesticide application is not made when scheduled, the **flag/sign** may be left posted until after the application has been made

(m)-(n) (No change.)

§7.35. Worker Protection Standard Training Verification Requirements. All certified applicators or trained trainers must:

(1) issue an EPA WPS training verification card, issued by the department, and maintain records of each trainee for five years. These records must include a copy of each dated class roster signed by the trainer and each trainee, with the verification card number issued to the trainee, and the city or county and state where the training occurred.

(2) Issue EPA training verification cards only to trainees who have been trained in accordance with the requirements of the WPS, including the correct use of training materials developed or approved by EPA.

(3) Record trainee information on the verification cards, in ink or other indelible form.

(4) Issue EPA training verification cards that match EPA specifications or that comply with State variations from such specifications that have prior approval from EPA

(5) Promptly respond to requests from EPA, state, or tribal agencies or agricultural employers for information concerning issued EPA training verification cards.

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 April 1, 1994.

TRD-9438506 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Earliest possible date of adoption: May 9, 1994

For further information, please call: (512) 463-7583

♦ ♦ ♦

Chapter 8. Agricultural Hazard Communication Regulations

• 4 TAC §§8.1-8.5, 8.7, 8.11

The Texas Department of Agriculture (the department) proposes amendments to §§8.1-8.5, 8.7, and 8.11, concerning agricultural hazard communication regulations. The amendments are proposed to make Chapter 8 consistent with the United States Environmental Protection Agency (EPA) Worker Protection Standard, 40 Code of Federal Regulations (C.F.R.), Part 170 (WPS), and to clarify coverage of employers under the WPS, the Agricultural Hazard Communication Act, Texas Agriculture Code, Chapter 125 (the Act), and Chapter 8. The WPS was issued by the EPA in 1992, with an effective phase-in period beginning April 21, 1994. After that date, manufacturers will begin replacing old product labels with new labels which encompass the WPS. Use of a newly-labeled product brings the user under the coverage of the WPS. The established completion date for re-labeling of all registered products is October 25, 1995. After review of the WPS, the Act and Chapter 8, the department has determined that some provisions of Chapter 8 are more stringent than or are not included in the WPS and compliance with these provisions will still be required of employers, regardless of an employer's coverage by the WPS; the proposed amendments address these provisions. Other changes are proposed to make Chapter 8 consistent with the Act and for purposes of clarification.

New subsection (c) in §8.1 explains the need to comply with the WPS and Chapter 8 if a person is also a covered employer. New subsection (c), paragraphs (1)-(6) specifically address the more stringent aspects of the Act and Chapter 8. The definition of "trained trainer" is added to §8.2 for purposes of clarification. The proposed amendments to the definitions of "agricultural or horticultural commodity in its unmanufactured state", "covered pesticide chemical", "employer", and "threshold amount" in §8.2 are being made for purposes of clarification or to make the meanings consistent with the Act or the WPS. The proposed amendment to the definition of "member of the community" is being made to make it consistent with the Act, the WPS and the Texas Pesticide Law and Regulations. The definition of "handle, handling" is being deleted due to conflicting meanings given those terms in the WPS.

The amendments to §§8.3-8 5 are being proposed for purposes of clarification. The amendment to §8.5 also updates the cite to

the Texas Administrative Procedure Act. The proposed amendment to §8.7 makes grammatical changes to subsections (a) and (c), substitutes the term "regional" for "district" offices in subsections (b) and (c), deletes old language in subsection (b)(8) that is no longer needed, and makes subsection (c)(5) consistent with the Act by adding "treating medical personnel" to the list of persons entitled to notify the department of an employer's refusal to provide a workplace chemical list. New subsection (e) of §8.11 regarding training is being added to allow employers to train agricultural laborers. The changes will make the Act and WPS consistent in regard to training. Subsection (e), paragraphs (1)-(3) allow agricultural laborers trained in other states to be considered trained for purposes of the Act. This new section is being proposed to allow for agricultural laborers to work for a new employer without having to be retrained, as long as they possess a current EPA WPS training verification card. This new subsection also defines the categories of workers and approved training programs. New subsection (f)(1) requires a trainer to issue EPA approved WPS training verification cards. Further, new §8.11(f)(2) requires all trainers to maintain records of all training performed by them for a five year period. New §8.11(g)(1) allows agricultural laborers to be trained by employers, their managers, or their labor contractors so long as the trainer is utilizing an approved EPA WPS training program. This new subsection also defines the categories of training programs.

Steve Bearden, assistant commissioner for pesticide programs, has determined that for the first five-year period the rules as proposed in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections.

Mr. Bearden also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the sections will include improved health and safety for farm workers, farmers, and farming communities. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Steve Bearden, Assistant Commissioner for Pesticide Programs, P.O Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. The department intends to hold public hearings on the proposals Information regarding such hearings will be published in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §125.014, which provides the department with the authority to adopt rules and administrative procedures reasonably necessary to carry out the purposes of Chapter 125 The code affected by this proposal is the Texas Agriculture Code, Chapter 125

§8.1. General Provisions.

(a) Purposes. The purposes of these regulations are:

(1)-(2) (No change)

(3) to provide treating medical personnel and [certain] authorized persons, including persons conducting epidemiological research, with access to information regarding chemicals covered by the Act and these regulations.

(b) Compliance with the Hazard Communication Act. A covered employer shall comply with the requirements of the Act and this chapter except insofar as the Hazard Communication Act, Texas Civil Statutes, Article 5182b, provides equivalent requirements and the covered employer is in compliance with those requirements.

(c) Compliance with the Federal Worker Protection Standard (WPS) . The department, after review and comparison of the Act. these regulations and the Federal Worker Protection Standard, 40 Code of Federal Regulations (C. F.R.), Part 170 (WPS). has determined that the purpose of all these standards is to protect and communicate possible hazards to which agricultural laborers may be exposed in the work place. A covered employer shall comply with the requirements of the Act and these regulations. However, if an employer covered by the Act and these regulations complies with applicable provisions of WPS and the following additional and more stringent requirements of these regulations, they will be considered to be in compliance with the Act and these regulations:

(1) recognizing the use of a designated representative by an agricultural laborer as provided for in the Act and §8. 5 of this title (relating to Designated Representative);

(2) complying with requirements regarding the compilation. maintenance and provision of the Workplace Chemical List (WCL) and attachments as provided in §8.7 of this title (relating to Workplace Chemical List);

(3) obtaining a Material Safety Data Sheet from manufacturers and distributors in accordance with §8.6 of this title (relating to Material Safety Data Sheet(MSDS));

(4) complying with §8.11(e)(3) of this title (relating to Training Program) which provides that a covered employer may not refuse to hire a laborer solely because the laborer has not completed a training program or cannot produce a training card;

(5) providing and reading crop sheets to agricultural laborers in accordance with §8.8(b) of this title (relating to Crop Sheets) in absence of training and if they do not have a training card or they request it; and

(6) complying with notification requirements to the local fire chief about chemicals stored for more than 72 hours as provided in §8.12 of this title (relating to Emergency Response).

§8.2. Definitions. In addition to the statutory definitions, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Agricultural or horticultural commodity in its unmanufactured state-An agricultural or horticultural commodity is in its unmanufactured state until **the desirable portion of the agricultural plant is detached from its parent or the whole agricultural plant is separated from its growth media and removed from the work area** [it leaves an agricultural establishment packaged for market]. For horticultural commodities grown at the retail sales site, a commodity is in its unmanufactured state until it is sold and taken from the retail sales site.

Covered pesticide chemical-Any substance containing any element, chemical compound, or mixture of elements or compounds registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 United States Code, §136 et seq. This includes **general, restricted, or state-limited-use products** [both inert and active ingredients of the product] as packaged by the manufacturer.

Employer–

(A) Any person who:

(i) (No change.)

(ii) contracts with the operator of an agricultural establishment in advance of, during, or after production to **control** [handle] or purchase a crop and uses a covered pesticide chemical on an agricultural or horticultural commodity in its unmanufactured state; or

(iii) (No change.)

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

EPA-United States Environmental Protection Agency.

[Handle, handling-Work involving bodily contact with plants, soil, or other sources of pesticide residue which includes, but is not limited to, planting, drying, packing, packaging, grading, fumigating, hand harvesting, thinning, hoeing, sorting, or preparing for market of any agricultural or horticultural commodity in its unmanufactured state.]

Member of the community-Any individual who resides, is employed, attends school, or is a parent of a child attending school, is treated in a hospital, or resides, or is treated in a nursing home within a **1/4** [1/2]-mile radius of a [nursery operation, or

within a three-mile radius of any other] covered employer's work area [workplace].

Threshold amount–Fifty-five gallons or 500 pounds **as packaged by the registrant** or an amount that the department determines by rule for certain highly toxic or dangerous chemicals.

Trained trainers–Anyone who has completed an EPA-approved WPS train-the-trainer program or a WPS-trained handler who may train workers only.

WPS–Worker Protection Standard, 40 Code of Federal Regulations, Part 170.

§8.3. Agricultural Laborer.

(a) The terms "agricultural laborer" or "laborer" as used in this chapter mean an individual who does one or more of the following activities at an agricultural establishment including a farm, a tree [farm] or [a] sod farm, ranch, packing shed, greenhouse, or nursery:

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

(b) (No change.)

§8.4. Covered Employer.

(a) (No change.)

(b) An employer is a covered employer if he or she meets the minimum payroll requirements described in subsection (a)(1) or (2) of this section, and causes agricultural laborers to be present in a workplace(s) where the threshold amount of any one covered pesticide chemical is annually used or stored. An example of such an employer may be a packing shed or other entity which makes an agreement with a farmer to furnish agricultural laborers to produce a crop being produced at the farmer's farm. In such instances, the packing shed and the farmer would have the following responsibilities under the Act.

(1) -(6) (No change)

(7) Even where the farmer is a covered employer, his or her only responsibility under the Act is with respect to those agricultural laborers whom he or she has hired **directly** [himself] or through a labor agent

(8) (No change.)

(c)-(f) (No change.)

§8.5. Designated Representative.

(a) (No change.)

(b) Recognized or certified representatives

(1) Certified collective bargaining agent A certified collective bargaining agent is a person or unit that has been sanctioned by a governmental body to represent agricultural workers in matters of wages and working conditions. A certified collective bargaining agent is not required to have [a] written authorization from the agricultural laborer he represents.

(2) (No change.)

(3) Certified designated representative. A certified designated representative is a person who has been approved for certification by the department. In order to become a certified designated representative, an individual or organization shall submit a request for certification as a designated representative to the department. The request shall include the requester's name and address, the name of the agricultural laborer's employer, the address of the agricultural laborer's employer, if known, and a description of which of the laborer rights under the Act the designated representative intends to exercise. The laborer's written authorization shall be attached to the request and processed by the department as follows.

(A) The department shall review the request and determine whether to accept or reject it within two business days **after** [of] receipt. If the department determines that the request **fulfills** [has fulfilled] the requirements of the Act and these regulations the department shall certify the requester as a designated representative. The designated representative remains certified until the agricultural laborer notifies the department that he or she has withdrawn his or her authorization. If the department rejects the request, the department shall notify the requester of the decision and give a statement of the reasons for the rejection. A person whose request has been rejected may attempt to address the reasons for rejection and ask that the request be reconsidered. Alternatively, the requester may appeal the rejection to the commissioner. A person not satisfied with the decision of the commissioner may appeal in the manner provided for contested cases under the Texas Administrative Procedure [and Texas Register] Act.

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

§8.7. Workplace Chemical List.

(a) Defined. A workplace chemical list (WCL) is a form that must be completed with the information [necessary] required by the Act, §125.004 and §125.005. In order to determine whether the covered pesticide chemical must be listed, a covered employer shall total the quantities of pesticide products containing the same active ingredient to determine whether more than the threshold amount of any covered pesticide chemical is actually used or stored annually in the workplace. In order to determine total quantities when both liquid and dry formulations of a covered pesticide chemical have been used or stored the covered employer shall convert pounds to gallons or gallons to pounds using the ratio 9.09 pounds/gallon or .11 gallon/pound. The following documents or information shall be attached to the workplace chemical list:

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

(b) Responsibility to compile and maintain a workplace chemical list.

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

(5) The covered employer is responsible for obtaining the workplace chemical list form from a department regional [district] office and is not relieved of his duties under the Act and **these regulations** [this chapter] because he or she has not received a form from the department.

(6)-(7) (No change.)

(8) Any covered employer who wishes to file these records with the department shall include the covered employer's identification number. Records should be sent to the Texas Department of Agriculture, Right To Know Program, P.O. Box 12847, Austin, Texas 78711. [Records for the calendar year of 1988 shall be filed no later than March 15, 1989.] Records for **each** [every] calendar year [thereafter] shall be filed by January 31 of the following year. The department shall issue a receipt acknowledging records have been received from the covered employer.

(9) If the department determines that a covered employer [has] repeatedly **fails** [failed] to maintain the workplace chemical list and its attachments as required, the department may require the covered employer to annually file the list and attachments with the department.

(10)-(12) (No change.)

(c) Access to the workplace chemical list.

(1) A covered employer shall make the workplace chemical list and attachments accessible to an agricultural laborer, a designated representative, treating medical personnel, or a member of the community The term "accessible" as used in **these regulations** [this chapter] means:

(A) in nonemergency **situations**, [conditions] the term "accessible" means that the documents or information shall be provided to a requester for reading or copying, within a reasonable period of time, but in no event more than five normal working days from the time of a reasonable request. The term "reasonable request" as used in this section means a request made

orally or in writing either directly to the covered employer, a managerial or supervisory employee employed by the covered employer's place of business, or an employee designated by the covered employer to receive such requests during normal working hours at the workplace or the employer's place of business;

(B) (No change.)

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

(5) If a covered employer refuses to make accessible the workplace chemical list and attachments to a designated representative, **treating medical personnel**, or member of the community, that person may notify the appropriate **regional** [district] office of the department of his or her request and of the covered employer's refusal

(6)-(9) (No change)

(d) (No change)

§8.11. Training Program.

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

(e) **Training provided by others. For purposes of these regulations and the Act, §125.009(e), covered employers and their managers or their labor contractors may train employees if the covered employers and their managers or labor contractors are certified applicators or trained trainers.**

(1) Agricultural laborers trained in a state other than Texas, and possessing a current EPA WPS training verification card, will be considered trained for purposes of the Act and these regulations.

(2) Worker training programs which meet the minimum requirements of the WPS worker training are approved for workers who work under conditions specified under WPS, 40 C.F.R., Part 170.130. Workers having completed this training are considered trained under the Act and these regulations.

(3) Handler training programs which meet the minimum requirements of the WPS handler training are approved for handlers who work under conditions specified under WPS 40 C.F.R., Part 170.230. Handlers having completed this training are considered trained under the Act and these regulations.

(f)[(e)] Certification of completion of training.

(1) When an agricultural laborer completes a training program, the **trainer** [training agency] shall provide him or her with an **EPA training verification card for WPS training** [card stating the laborer's name, the location of the training program, and the date that the laborer completed the training].

(2) The training agency **and the training individual** shall **comply with the following requirements:** [keep a record of all agricultural laborers who complete the training program]

(A) maintain a record for five years of all agricultural laborers who complete the training program and are given a department-issued EPA WPS training verification card. These records must include at least a copy of each dated class roster signed by the trainer and each trainee, showing the verification card number issued to the trainee, and the city or county and state where the training occurred;

(B) issue EPA WPS training verification cards only to trainees who have been trained in accordance with the requirements of the WPS, including the correct use of training materials developed or approved by EPA;

(C) record trainee information on the verification cards, in ink or other indelible form;

(D) issue EPA WPS training verification cards that match EPA specifications or that comply with state variations from such specifications that have prior approval from EPA; and

(E) promptly respond to requests from EPA, state or tribal agencies or covered employers for information concerning issued EPA WPS training verification cards.

(3) (No change)

(g)[(f)] Access to training materials by covered employers

(1) The department shall prepare appropriate training materials for covered employers, their managers, and their labor contractors to be used for training purposes **For the purposes of compliance with these regulations, the department has determined that the EPA WPS training program for agricultural workers and Pesticide handlers meets or in some instances exceeds training requirements of the Act and these regulations.**

(2) These training materials may be obtained from **sources identified and approved by EPA for use in WPS trainings.** [the district offices of the department or the service]

[(3) The department shall collect a fee of $10 for these training materials, plus when appropriate, the cost of a blank videotape cassette]

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 April 1, 1994

TRD-9438507 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Earliest possible date of adoption May 9, 1994

For further information, please call (512) 463-7583

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission

Chapter 23. Substantive Rules

Rates

• 16 TAC §23.23

The Public Utility Commission of Texas proposes an amendment to §23 23, concerning expedited approval of changes in existing rates The amendment to the section is intended to address concerns with the existing rule

Thomas Brocato, assistant general counsel, 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 governments as a result of enforcing or administering the section

Mr Brocato also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more efficient processing of expedited rate proceedings at the commission There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr Brocato has determined that for each of the first five years the section is in effect, there will be no impact on employment in the geographical areas affected by implementing the requirements of the section

Comments on the proposal (13 copies) may be submitted to John Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard Austin, Texas 78757 Comments should be submitted within 30 days after publication of the proposed section and should refer to Project Number 12190

The amendment is proposed under the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c, §§16(a), 17(e), 37, and 38, which provides the Public Utility Commission of Texas with the authority to make and en-

force rules reasonably required in the exercise of its powers and jurisdiction; exclusive original jurisdiction over rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction; and all the authority and power of the State of Texas to insure compliance with the obligations under the Public Utility Regulatory Act.

The amended rule implements Texas Civil Statutes, Article 1446c, §§16, 17, 37, 38, and Government Code, §2001 004.

§23.23 Rate Design.

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

(c) Expedited Approval of Changes In Existing Rates. An electric distribution cooperative may request expedited review and approval of rate changes pursuant to the procedures and limitations of this subsection.

(1) Filing public notice and other information.

(A) Documents to be filed. The utility may initiate a proceeding under this subsection by filing with the Commission the following information:

(i) a copy of public notice;

(ii) the proposed customer, demand, and energy charges applicable to each class of service;

(iii) the estimated effects on total customer class revenue by customer class;

(iv) the estimated effects on base revenues (revenues minus power cost and excluding other operating revenues) for the system and by customer class;

(v) a request that the matter be assigned a docket number pursuant to subsection (c) of this section; and

(vi) a brief description of the applicability and type of service for any new class of service proposed by the utility;

(vii) if the utility desires to make changes in its service rules and regulations, it may also file the proposed service rules and regulations.

(B) Documents to be provided to others. Concurrent with the utility's filing of information as provided in paragraph (1)(A) of this subsection, the utility shall mail or deliver a copy of the public notice and other information to the office of public counsel, the general counsel's office of the Commission, the utility's ten largest customer accounts (as measured by annual kilowatt-hour consumption) addressed to each customer's billing address or an alternative address previously specified by the customer, and any other utility certified to provide retail electric utility service in the service area of the applicant utility.

(C) Receipt of information. Upon receipt of the utility's public notice and other information provided in paragraph (1)(A) of this subsection, the hearings division shall docket the matter as a request for rate change pursuant to subsection (c) of this section.

(2) Public notice. The utility shall provide public notice in compliance with the requirements of paragraph (2) of this subsection.

(A) Contents of notice. Public notice shall be entitled "Notice of Rate Change Request" and shall contain the following:

(i) the effect the proposed change is expected to have on the total revenues of the utility, expressed as an annual dollar amount over or under adjusted test year revenues and as a percent of adjusted test year revenues;

(ii) the proposed effective date of the proposed rate change;

(iii) the classes and numbers of utility customers affected by the rate change;

(iv) the following language: "Information concerning the proposed rate changes, including the proposed customer, demand, and energy charges applicable to each class of service, class, and a brief description of the applicability and type of service for any new class of service which is proposed by the utility, is available at the general office of the utility, located at (utility address), or will be provided upon request to any customer by mail without charge. The utility has filed a copy of this Notice of Rate Change Request with the Public Utility Commission of Texas. Persons who wish to intervene in or comment upon these proceedings should notify the Commission as soon as possible. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission's Public Information Office at (512) 458-0256, or (512) 458-0221 for text telephone. The deadline for intervening will be (45 days after the filing of notice).

(B) Issuance of notice. The utility shall provide notice of the proposed rate changes in the following manner:

(i) by publication in conspicuous form and place once a week for four consecutive weeks in a newspaper having general circulation in each county containing territory affected by the proposed rate change. Publication of public notice shall commence no later than seven days after the date public notice is filed with the Commission (the notice filing date);

(ii) by mailing public notice to all affected customers other than the utility's ten largest customer accounts no later than 15 days after public notice is filed as provided in paragraph (1)(A) of this subsection;

(3) Application. No later than 15 days after public notice is filed, with the Commission as provided in paragraph (1)(A) of this subsection, the utility shall file an application requesting Commission review in accordance with the expedited procedures of subsection (c) of this section.

(A) Limitations. The utility's request shall be limited as follows:

(i) Revenue change. The total revenue of the utility shall not change by more than 5% of the adjusted test-year level of total revenues as provided in paragraph (3)(B)(ii) of this subsection. The calculation of the change in total revenue shall be made subsequent to the removal of those expenses prohibited, for ratemaking purposes, by the Public Utility Regulatory Act;

(ii) Class allocation of revenues. The percentage change in adjusted base revenue collected from any customer class shall be no more than two times the percentage change in total system annual adjusted base revenues (revenues minus power cost) from all customer classes (not including other operating revenues, accounts 450 to 456) unless adjusted system revenues would not change, in which case no one class may receive a base revenue change greater than 10%.

(iii) Rate design. The utility's proposed rate design shall be within the following guidelines:

(I) if the utility's application includes a cost-of-service study, the utility may propose any changes in the design of existing customer class rate schedules, billing adjustments, and service fees.

(II) If the utility's application does not include a cost-of-service study, the utility may only propose changes in the level of charges in existing customer class rate schedules and service fees. No changes shall be proposed in billing adjustments, including adjustments for the recovery of purchased electricity costs.

(III) The utility may propose a new rate class if its application includes a cost-of-service study showing that the revenues to the class are equal to or greater than the cost of providing service to the class. The utility may propose a rate class be established solely for a new customer if the estimated annual cost of providing service to the class is less than the estimated annual revenues for the class.

(iv) Prior rate change. The utility shall not have changed any rate pursuant to this subsection during the preceding 12 months.

(v) The utility shall not have changed any rate pursuant to this subsection more than twice prior to its filing a full rate case.

(B) Contents of application. The utility's application shall contain the following:

(i) A Statement of Intent to change rates proposing rate revisions be effective not less than 90 days after public notice is filed with the Commission as provided in paragraph (1)(A) of this subsection.

(ii) An Income statement showing actual test-year revenues and expenses, adjustments to revenues and expenses as provided in this paragraph, the adjusted test year, the proposed revenue change, and the adjusted test-year with proposed revenue change. Adjustments to operating revenue shall be made for annualization of changes in the recovery of purchased electricity costs, and annualization of rate changes previously approved by a regulatory authority, if applicable. No other adjustments shall be made in calculating adjusted test-year operating revenues. Adjustments to operating expenses shall be made for removal of expenses not allowed to be included in the utility's cost-of-service by statute or Commission rule. No other adjustments to the operating expenses shall be made.

(iii) Board resolution. A resolution of the utility's board of directors approving the proposed change in rates and authorizing the filing of the statement of intent with the Commission.

(iv) Affidavits affirming that notice has been issued in accordance with paragraph (2)(B) of this subsection, and that affidavits of newspaper publishers will be filed as soon as they are available.

(v) Cost-of-service study. The utility shall include a cost-of-service study in its application if the revenues collected from the customer classes would not all change in the same direction, the percentage change in total revenues collected from any customer class would be less than one-half the percentage change in total revenue, or it has been more than five years since the Commission last entered a final order setting the utility's rates in a full rate case.

(vi) Affidavits supporting any exhibits or cost-of-service study filed with the statement of intent and affirming that the proposed rate changes are within the limitations of the subsection.

(vii) A statement for each proposed rate design change, explaining in detail the estimated effect on total revenue and on base revenue by customer classes and stating the classes and number of customers affected.

(viii) A statement showing operating and maintenance expenses listed by FERC account on a monthly basis.

(ix) Justification for rate design. The utility shall include in its application a statement of the reasons for each change in rate design proposed by the utility and testimony or affidavits supporting any exhibits or cost-of-service study filed with the statement of intent.

(x) Other information. Any other information required in an official form that may be promulgated by the Commission for filing with statements of intent to change rates pursuant to this subsection.

(C) Application to be provided to others. Concurrent with the filing of the utility's application with the Commission, the utility should mail or deliver a copy of its application to the Office of Public Counsel and the General Counsel's office of the Commission.

(D) Failure to file application. If the utility fails to timely file an application, the proceeding shall be dismissed without prejudice.

(4) Intervention. Any affected person may intervene by showing a justifiable interest related to the proposed change in rates. Concurrently with the filing of its request for intervention, the prospective intervenor shall mail a copy of its request for intervention to the utility.

(A) Deadline. Requests to intervene must be made in writing and filed with the Commission no later than 45 days after the filing of public notice with the Commission as provided in paragraph (1)(A) of this subsection.

(B) Action upon receipt. Upon receipt of a request for intervention the Hearings Officer shall:

(i) mail a copy of the request for intervention to the utility, and

(ii) if requested or if deemed advisable, mail a copy of this subsection to the person requesting intervention.

(C) The utility has seven days from receipt of the notice to object to the request for intervention.

(D) Ruling on intervention request. The Hearings Officer shall as expeditiously as practicable enter a ruling on requests to intervene based upon the request for intervention and any objection from the utility.

(5) Staff review. The Commission's staff shall review the application for compliance with the Act and in this subsection.

(A) Review of application and notice. The Hearings Officer shall determine whether the utility's public notice and application substantially comply with the following:

(i) Paragraph (1)(A) and (B) of this subsection, concerning contents and issuance of public notice; and

(ii) Paragraph (3)(A) concerning limitations on the utility's application;

(B) Review of rate design. Additionally, the Commission's staff shall review whether the proposed rate design changes are reasonable, including whether any of the changes create unreasonably discriminatory rates.

(6) General counsel recommendation. The General Counsel shall file a recommendation and written testimony which may be in the form of a memorandum setting forth its recommendations and the reasons for such recommendations. The General Counsel's recommendation and testimony shall be

filed 60 days after the utility files its public notice with the Commission as provided in paragraph (1)(A) of this subsection.

(7) Extension of effective date. The utility may request extending the proposed effective date for implementation of revised rates by filing a written extension with the Commission. The extension shall be for a period not more than 30 days. The utility's extension of the effective date shall operate to extend all subsequent procedural deadlines set forth in this subsection for the same number of days as the effective date is extended.

(8) Agreement of the parties. At any time within 70 days after public notice has been filed with the Commission as provided in paragraph (1)(A) of this subsection or any extension thereof, the parties may unanimously agree to a resolution of all issues in the case. The agreement of the parties may be in any appropriate pleading, including separate consents or non-objections to the Commission's approval of a draft proposed order that may be submitted by any of the parties.

(9) Conversion to full rate proceeding. At any time within 73 days after the utility files public notice with the Commission as provided in paragraph (1)(A) of this subsection or any extension thereof, the utility may elect to convert its request for expedited approval of rates to a full rate proceeding by filing its election with the Commission and serving a copy on all parties. A utility which elects to convert an expedited proceeding to a full proceeding shall file an application in compliance with the Commission's filing requirements for a major rate case within 100 days after filing its election and shall serve a copy on all parties. The application shall be based on the same test-year used as the basis for the utility's expedited filing. The utility shall include in the application, as proposed rates, the same rates proposed by the utility in its expedited proceeding under this subsection. If public notice given by the utility in connection with the expedited proceeding complies with the Commission's requirements for such notice, no additional public notice shall be required. Discovery shall commence when the utility's full application is filed. Except as provided herein, the merits of the utility's full application shall be considered de novo, as if the utility's expedited proceeding has never been filed and the utility's proposed effective date for the implementation of revised rates shall be 35 days after the date the utility's full application is filed.

(10) Action when case is not agreed or converted. In any case where there is neither an agreement of the parties, there has been no filing of an election to convert the expedited proceeding to a full rate case within the time prescribed, or the application shall be deemed denied and the Hearings Officer shall issue an order denying the utility's application without prejudice.

(11) Proposed order. The Hearings Officer shall prepare a proposal for decision.

(A) Deadline. The proposed order shall be filed within 75 days after the utility files public notice with the Commission pursuant to paragraph (1)(A) of this subsection unless the Hearings Officer has granted a request to extend the proceeding. In such case, the deadline for filing the proposed order shall be extended by the number of days the proceeding is extended.

(B) Contents. The proposed order shall contain proposed findings of fact and conclusions of law.

(C) Evidence. There shall be included in the evidence the utility's public notice and all other documents filed pursuant to paragraph (1) (A) of this subsection, any affidavits concerning public notice filed by the utility; the utility's application including supporting testimony, affidavits and schedules, staff's testimony, the proposal for decision filed by any party, and the agreements of the parties, if any. There shall be no objections to testimony or cross-examination.

(12) Setting on the commission's agenda/rate approval. If agreed, the Hearings Officer shall set the utility's application on the Commission agenda to be considered prior to the effective date of revised rates. If rate changes are authorized by the Commission, the utility may implement revised rates on the date of the Commission's final order or at such later date as may be requested by the utility.

(13) Utility withdrawal. The utility may withdraw its application without prejudice to refiling at any time before a final order is issued by the Commission. [Expedited approval of changes in existing rates This subsection applies only to cooperatively owned electric distribution utilities In this subsection, base revenue includes total system test-year revenue exclusive of purchased-power costs, and existing rates include only those tariff schedules of the utility in effect on the application filing date

[(1) Limitations The statement of intent and application must expressly request commission review and action pursuant to the procedures, conditions, and limitations of this subsection and must be served upon the Office of Public Utility Counsel concurrently with the filing with the commission A utility may file a statement of intent and application to change existing rates pursuant to this subsection subject to the following limitations·

[(A) The total revenue of the utility would change by no more than 5% from the test-year level, exclusive of any changes to reflect changes in the cost of purchased power;

[(B) The percentage change in the base revenue collected from any customer class would be no more than 1.5 times the percentage change in system base revenue, unless total revenue would not change, in which case no one class may receive a base revenue change greater than 7.5%,

[(C) The effective date of the proposed rate change is at least 60 days after the application filing date, and

[(D) The utility has not changed any rate pursuant to this subsection during the preceding 12 months

[(2) Application With a statement of intent to change rates pursuant to this subsection, the utility must file an application containing the following items

[(A) A resolution of the utility's board of directors approving the proposed change in rates and authorizing the filing of the statement of intent with the commission

[(B) Affidavits affirming that notice has been completed in accordance with paragraph (3) of this subsection

[(C) For each proposed rate change, a statement explaining in detail the estimated effect on total revenue and on revenue by customer classes and stating the classes and number of customers affected

[(D) A cost-of-service study, if

[(i) the base revenues collected from the customer classes would not all change in the same direction,

[(ii) the percentage change in the revenues collected from any customer class would be less than one-half the percentage change in total revenue, or

[(iii) it has been more than 5 years since the commission last entered a final order setting the utility's rates in a full rate case.

[(E) Affidavits supporting any exhibits or cost-of-service study filed with the statement of intent and affirming that the proposed rate changes are within the limitations of paragraph (1) of this subsection.

[(F) Any other information required in an official form that may be promulgated by the commission for filing with statements of intent to change rates pursuant to this subsection.

[(3) Notice. Each notice provided must state all proposed rate changes, their estimated effects on revenue by customer class, the number of customers affected by each rate change, the percentage change in base revenue, and the anticipated deadline for intervening and objecting to the rate changes. The notice provided pursuant to subparagraphs (B) and (C) of this paragraph must be provided no later than the date that the publication of notice begins In addition, the utility must provide notice of the proposed rate changes as follows:

[(A) Notice in accordance with §21.22 of this title (relating to notice for ratemaking proceedings);

[(B) Written individual notice to its ten largest customers (as measured by annual kilowatt-hour consumption) by first class mail to each customer's billing address or an alternative address previously specified by the customer, and

[(C) Written individual notice to any other utility certified to provide retail service in service area of the applicant utility.

[(4) Action within Hearings Division; intervention. The Hearings Division shall administer proceedings and receive pleadings filed pursuant to this subsection.

[(A) Requests to intervene must be filed no later than 45 days after the application filing date.

[(B) The Hearings Division shall review the application for compliance with the Act and applicable regulations and, no earlier than 45 days after the filing date, prepare and submit to the commission a proposed order with findings of fact and conclusions of law. At the same time, the Hearings Division shall place the application on the agenda of the commission's next scheduled meeting 45 days after the filing date The proposed rate changes will become effective upon approval by the commission unless the commission's order states otherwise

[(C) However, the Hearings Division shall not submit a proposed order to the commission, if

[(i) an affected person has filed a request to intervene that states an objection to the administrative approval of the application on grounds related to the change in rates, and the objection has not been withdrawn on or before the 45th day after the filing date, or

[(ii) the general counsel recommends denial of the change in rates for any of the following reasons

[(I) the statement of intent and application does not conform with the requirements of this subsection as to form,

(II) the financial condition of the utility does not warrant the proposed rate changes; and

(III) the proposed rate changes create unreasonably discriminatory rates

[(D) If the events, listed in subparagraph (c) of this paragraph occur, the Hearings Division shall issue an order denying the application without prejudice on or immediately following the 45th day after the date of filing

[(5) Denial without action In the absence of an order of approval by the commission, an application will be deemed denied on the 60th day after the filing date, unless the utility in writing postpones the effective date of the rate changes to allow the commission to approve the application at its next scheduled meeting

[(6) Withdrawal and refiling of applications. The utility, at its option, may withdraw its statement of intent and application without prejudice at any time before a final order is issued by the commission After denial or withdrawal of the application, the utility may refile its statement of intent with an application satisfying the commission's requirements for major rate changes]

(d)-(e)(No change)

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

Issued in Austin, Texas, on March 31, 1994

TRD-9438514 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Earliest possible date of adoption May 9, 1994

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

♦ ♦ ♦

Customer Service and Protection

• 16 TAC §23.57

The Public Utility Commission of Texas proposes an amendment to §23 57, concerning telecommunications privacy The section provides for the protection of certain privacy concerns. The section is proposed to clarify existing requirements and to establish new requirements relating to balloting for the release of customer-specific customer proprietary network information (CPNI)

Scott Smyth, assistant general counsel, 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 or administering the section

Mr Smyth also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the protection of certain privacy concerns There will be no effect on small businesses as a result of enforcing the section There is no anticipated economic cost to persons who are required to comply with the section as proposed

Mr Smyth also has determined that for each of the first five years the proposed section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the section

Parties filing comments are requested to address whether the balloting as proposed in this rule would be consistent with the prior authorization requirements set forth in United States District Court, Western District of Texas, Austin Division, Civil Number A-92-CA-270, signed and entered January 15, 1993

Comments on the proposed amendment (13 copies) may be submitted to John M Renfrow, Secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication Reply comments should be submitted within 45 days of the date of publication of this notice. All comments should refer to Project Number 12353

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction

The amended rule implements Texas Civil Statutes, Article 1446c

§23.57. Telecommunications Privacy.

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

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

(4) Privacy Issue-an issue that arises when a telecommunications utility proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. **The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:**

(A) the type of information about a customer that is released;

(B) the identity of the customers about whom information is released;

(C) the entity or entities to whom the information about a customer is released;

(D) the technology used to convey the information;

(E) the time at which the information is conveyed; and

(F) any other change in the collection, use, storage, or release of information.

(5) (No change.)

(b) Privacy Considerations. Local exchange service customers should be permitted to control the outflow of information about themselves. Any local exchange carrier proposing to offer a new service or a new feature to an existing service under the provisions of §23.24 of this title (relating to Form and Filing of Tariffs), [or] §23.26 of this title (relating to New and Experimental Services), **§23.27 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), or §23.28 of this title (relating to Promotional Rates for LEC Services)** for which the commission finds a **lost degree of** privacy [issue, as that term is defined in subsection (a)(4) of this section], and for which the local exchange carrier has not shown good cause pursuant to subsections **(c)(2)(B)(ii)** and **(c)(2)(D)**[(4)] of this section, must, in a manner ordered by the commission.

(1) provide a means of restoring the lost degree of privacy at no charge to the public, and

(2) educate the public as to the means by which the lost degree of privacy can be restored.

(c) New Services or features. **For all LEC applications filed pursuant to §23.24 of this title, §23. 26 of this title, §23.27 of this title, or §23.28 of this title, the LEC** [Staff shall review all applications submitted by a local exchange carrier under the provisions of §23.24 of this title, or §23.26 of this title for privacy issues. The application] must identify **all privacy issues, as that term is defined in subsection (a)(4) of this section, that result from the implementation of the new service and feature, and all privacy issues that result in a lost degree of privacy.**

(1) Identification of privacy issues. The LEC shall identify all privacy issues that result from the implementation of the new service or feature. Identification of privacy issues shall include, but not be limited to:

(A) identification and description of the type of information that is released as a result of the new service or feature;

(B) identification of customers about whom information will be released;

(C) identification of entities to whom information about a customer will be released;

(D) identification and description of the change in the technology used to convey the information;

(E) identification and description of the change in the time at which the information is conveyed; and

(F) identification and description of any other change in the collection, use, storage, or release of information.

(2) **Lost degree of privacy. For each privacy issue identified pursuant to paragraph (1) of this subsection, the LEC shall identify** all circumstances under which a customer of the local exchange carrier may experience a lost degree of privacy as a result of the implementation of the new service or feature proposed in the application, including, but not limited to, whether a customer's name, address, or telephone number will be provided to a called party or to any other third party, and for each such circumstance identified

(A)[(1)] state whether the lost degree of privacy can be restored by the affected customers and how such customers can restore it,

(B)[(2)] state whether the local exchange carrier will charge the affected customers for restoring the lost degree of privacy and, if applicable:

(i)[(A)] what such charge will be; and

(ii) [(B)] show good cause for such charge;

(C)[(3)] state how the local exchange carrier will educate the affected customers as to the implications for privacy and, if applicable, the means by which such customers can restore the lost degree of privacy; and

(D)[(4)] show good cause, if applicable, for not offering the affected customers a means by which the lost degree of privacy can be restored

(3) Staff review. Staff shall review all applications submitted by a local exchange carrier under the provisions of §23.24 of this title, §23.26 of this title, §23.27 of this title, or §23.28 of this title for privacy issues and privacy issues resulting in a lost degree of privacy.

(d) **Notice of number delivery over 800 and 900 services** [Automatic number identification] The local exchange carriers shall print in the white pages of their telephone directories, and send as a billing insert annually to all of their customers, the statement "When an 800 or 900 number is dialed from your telephone, your telephone number may be transmitted to the company you have called and may be available to that company's service representative before your call is answered" The statement must appear in all telephone directories published for the local exchange carrier subsequent to the effective date of this section The statement must appear as a billing insert for each local exchange carrier within 60 days of the effective date of this section and annually thereafter

(e) Customer proprietary network information (Customer-specific) [Unless otherwise provided by this section, a local exchange carrier must ensure that all customer-specific CPNI that has been authorized for release by the customer to a third party is offered to such third parties, under the same terms, conditions and prices as such or similar data is made available for use to all other businesses affiliated with the local exchange carrier and local exchange carrier personnel marketing supplemental services, provided that the third party must specify the type and scope of the customer-

specific CPNI requested. A local exchange carrier must, upon request, provide such customer-specific CPNI to a third party under any other just, alternative terms, conditions, or prices that are just and reasonable under the circumstances and that are not unreasonably preferential, prejudicial, or discriminatory.]

(1) Except as provided in paragraph (3)[(5)] of this subsection, local exchange carrier personnel may not use customer-specific CPNI to market supplemental services to residential customers **if restriction is requested by** [without written authorization from] such residential customers as set out in paragraph **(2)** [(3)] of this subsection.

[(2) A local exchange carrier may not release customer-specific CPNI to any third party, including, but not limited to, providers of supplemental services and any businesses affiliated with the local exchange carrier without written authorization from such customers as set out in paragraph (3) of this subsection.]

(2)[(3)] **A ballot allowing a customer to request restriction of the use of customer-specific CPNI by local exchange carrier personnel marketing supplemental services** [A ballot requesting customer authorization for the use or release of customer-specific CPNI] shall be sent to all residential customers of the local exchange carrier at least one time The ballot shall be reviewed by the staff of the Telephone Utility Analysis Division before it is sent to the customer. The staff shall notify the general counsel of any concerns it may have with the proposed ballot, and the general counsel shall notify the local exchange carrier within ten days of submission if the proposed ballot may not be distributed. The ballot must be distributed to all residential customers of the local exchange carrier within 180 days of the latest effective date of this section. **The ballot must meet the following criteria:**

(A) The ballot must describe specifically what information **may be** [is to be released to third parties or] used by local exchange carrier personnel to market supplemental services if **restriction is not requested** [authorization is granted]. The ballot must also state that [no] such information **may** [will] be used [or released] by the local exchange carrier if the ballot is not returned.

(B) If **restriction is** [the authorization is to be] requested for categories of information, the specific information contained in each category must be listed and the ballot must allow the customer to **restrict** [authorize] each category of information separately.

[(C) The ballot must allow the customer the option of listing only specific third parties for the local exchange carrier to which information may be released.]

(C) The ballot must state the limited circumstances described in paragraph (3) of this subsection, under which the local exchange carrier personnel may use customer-specific CPNI to market supplemental services even if the customer requests restriction of the use of the CPNI.

[(D) The ballot must allow the customer the option of releasing information to the interexchange carrier to which the customer has presubscribed

[(E) The ballot must allow the customer the option of releasing information to any other interexchange carrier

[(F) The ballot may allow the customer the choice of releasing the information to any businesses affiliated with the local exchange carrier or to be used by local exchange carrier personnel marketing supplemental services only

[(G) The ballot may allow the customer the choice of releasing the information to any party]

(D)[(H)] The ballot must state that there will be no charge to the customer for restricting [or releasing] any of the information listed on the ballot

(3) Even if the customer requests restriction of the use of CPNI, local exchange carrier personnel may use customer-specific CPNI to market supplemental services to residential customers if a residential customer contacts the local exchange carrier to inquire about supplemental services offered by the local exchange carrier and the local exchange carrier personnel obtains verbal authorization from the customer to use such CPNI at that time. Such verbal authorization must be received each time such residential customer contacts the local exchange carrier to inquire about supplemental services.

(4) Except as provided in subparagraphs (A)-(E) of this paragraph, all local exchange carriers that are subject to CPNI rules of the Federal Communications Commission may not provide or release customer-specific CPNI to third parties, including any businesses affiliated with that local exchange carrier, without obtaining prior written authorization from the residential customer. Such local exchange carriers are not required to obtain prior authorization before using customer-specific CPNI to market supplemental services. [A local exchange carrier may provide customer-specific CPNI to third parties without obtaining prior written authorization from the residential customer as provided in subparagraphs (A)-(D) of this subsection]

(A) A local exchange carrier may provide ANI to a provider of emergency services.

(B) A local exchange carrier must, where it has the technical capability, provide ANI to interexchange carriers or to other common carrier access customers.

(C) A local exchange carrier must provide ANI if otherwise required by law.

(D) The local exchange carrier must provide names, addresses and telephone numbers of customers, other than those customers that have requested that such information be unlisted or unpublished for the purpose of directory publication, to any entity requesting such information

(E) The local exchange carrier may allow use of and access to CPNI by local exchange carrier personnel marketing enhanced services, unless the customer requests restriction of the use of CPNI.

[(5) Local exchange carrier personnel may use customer-specific CPNI to market supplemental services to residential customers without obtaining prior written authorization from such customers as set out in subparagraphs (A) and (B) of this paragraph

[(A) If a new residential customer contacts a local exchange carrier to initiate local exchange service and such customer inquires about supplemental services, the local change carrier personnel must inform the new residential customer, prior to marketing the local exchange carrier's supplemental services to that customer, that similar services or products may be available to the customer from vendor other than the local exchange carrier

[(B) If a residential customer contacts the local exchange carrier to inquire about supplemental services offered by the local exchange carrier and such residential customer has not authorized the lo-

cal exchange carrier personnel to use his customer-specific CPNI to market supplemental services, the local exchange carrier personnel must ask the customer for verbal authorization to use such CPNI at that time. Such verbal authorization must be received each time such residential customer contacts the local exchange carrier to inquire about supplemental services.]

(f)-(g) (No change.)

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

Issued in Austin, Texas, on March 30, 1994

TRD-9438390 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Earliest possible date of adoption: May 9, 1994

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

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 471. Renewals

• 22 TAC §471.1

The Texas State Board of Examiners of Psychologists proposes an amendment to §471 1, concerning Notifications of Renewals The board is amending this rule in order to save money for the State, to carry out the mission of the Board in a more cost-effective manner, and to ensure that the Board has notification that notices were received by certificands/licensees

Rebecca E. Forkner, acting 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 This rule is promulgated under the authority of the Texas Tax Code, Title 2, therefore, no analysis of the effect on small business is required

Ms Forkner also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to save money for the State of Texas and to ensure that the public is receiving psychological services from psychologists who hold current certificates/licenses 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 Janice C Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Austin, Texas 78758, (512) 835-2036

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations and proceedings before it.

No statute, article or code is affected by the rule.

§471.1. Notification of Renewal All certificates and liceneses issued by the Board shall be subject to annual renewal. Annual renewals are due on the last day of each person's birth-month. Persons whose psychologists' certification, licensure, specialty certification, or psychological associate licensure is about to expire shall be notified once by regular mail at least 30 days before the last day of their birth-month each year and shall be notified by **certified** [registered] mail if they fail to renew by the last day of their birth-month. The second notice will not be mailed period to the last day of their birth-month

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-9438418 Rebecca E Forkner
Executive Director/Investigation, Compliance and Enforcement Division Manager
Texas State Board of Examiners of Psychologists

Earliest possible date of adoption May 9, 1994

For further information, please call (512) 835-2036

♦ ♦ ♦

TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 133. General Medical Provisions

Subchapter C. Second Opinions for Spinal Surgery

• 28 TAC §133.206

The Texas Workers' Compensation Commission proposes new §133 206, concerning second opinions for spinal surgery The Texas Workers Compensation Act (the Act) provides that a carrier is liable for spinal surgery if the surgery is an emergency procedure, if the commission orders the carrier to pay, if the insurance carrier waives or fails to timely request the right to obtain a second opinion, or if the second opinion by a doctor approved by the carrier or the commission concurs with the need for surgery. The rule sets out the circumstances under which a carrier is liable for spinal surgery costs and the costs which are included in a carrier's liability.

The Act further requires the commission to adopt rules to assure that the second opinion examination is performed without undue delay This rule is designed to determine liability for spinal surgery costs in a manner which provides for objective and timely second opinions and an appropriate appeals process. The rule sets out the responsibilities of the carrier, treating doctor, surgeon, injured employee, second opinion doctors, and the commission when spinal surgery is recommended as a non-emergency procedure. These include time deadlines, recordkeeping, and reporting requirements

The rule describes the process by which a carrier becomes liable for the costs of spinal surgery, including processes for: submission of the treating doctor or surgeon's recommendation of spinal surgery, notification of the carrier, carrier waiver or request for second opinion, employee request for a doctor to issue a second opinion, required qualifications for a doctor to issue a second opinion, selection of second opinion doctors, setting the second opinion appointments, reporting the second opinions, payment for the costs of the second opinions, appealing from second opinion(s), presumptions on appeal; and resubmission of a spinal surgery recommendation The rule sets out procedures and liability for costs of a second-opinion exam, and sets the fee for second opinions.

As proposed, this rule sets qualifications for doctors to perform second opinions on spinal surgery and requires the commission to maintain a list of spinal surgeons and to provide sublists of five qualified doctors from which a second opinion doctor is chosen by the injured employee and the carrier Also included is the medical review division's authority to issue orders requiring timely submission of doctors' reports, to refer for administrative violation a doctor who fails to comply with the rule or an order, and to refer a doctor to the commissioners for removal from the Approved Doctor List A doctor must be on the spinal surgeon list to be reimbursed by the carrier for spinal surgery The rule sets out actions which may result in division action to suspend or commission action to remove a doctor from the spinal surgeon list

This rule is required to carry out the commission's statutory duty to draft rules to assure that second opinions are rendered without undue delay and that liability for non-emergency spinal surgery is determined timely. This duty is placed on the commission by the Texas Labor Code §408.026. The processes this rule establishes will allow determination of the insurance carrier's liability for any spinal surgery that is recommended as a non-emergency procedure by the treating doctor, with procedures to resolve any dispute The deadlines this rule establishes for various responses and examinations are necessary to allow the commission to meet the statutory requirement that the commission

adopt a rule to require that second opinions be rendered without undue delay.

Janet Chamness, chief of budget, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering this rule.

This rule will have an effect on health care providers' businesses and on small or large businesses which are carriers or which serve as Austin carrier representatives. Both small and large business will be affected in the same way and to the same extent by the rule so there is no difference in the costs to comply with this rule for the small employer compared to the largest employer.

Ms. Chamness also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be objective and more rapid resolution of the issues when a treating doctor recommends spinal surgery, and certainty of timely decisions regarding spinal surgery liability.

The anticipated economic cost to individuals who are required to comply with the rule as proposed will be the potential increase in the total number of second opinion exams performed at the carrier's expense. Patients will be advised of their right to seek a second opinion from a doctor of their choice, and the carrier will retain the right to ask for a separate opinion by a doctor of the carrier's choice. In certain instances, the commission will order the employee to submit to a required medical examination. This cost may be offset by reduced numbers of spinal surgeries, thus reducing carrier liability for costs.

Another anticipated economic cost will be the established reimbursement for second opinion exams. Currently there is no set reimbursement and fees charged and paid range from $100-$1700. The limits proposed are an overall reduction in total reimbursement for these exams, with lower costs to carriers and lower reimbursement to doctors providing second opinions.

There is also potential loss of income to a doctor suspended or removed from the commission list of spinal surgeons, or from the Approved Doctor List. It is also possible that a doctor who currently renders and is paid for second opinions on spinal surgery will not meet the qualifications set by the rule and thus no longer perform second opinions.

The presumptive weight assigned to opinions on appeal may result in fewer appeals, thus reducing the costs involved in preparation, presentation, and decision-making for the claimants, the carriers, and the commission.

Written comments on the proposal may be submitted, for at least 30 days following publication, to Elaine Crease, Office of the General Counsel, Mail Stop #4D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

This new rule is proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and §408.026, which requires the commission to adopt rules as necessary to assure that the second opinion examination is obtained without undue delay and that liability is determined timely.

This rule affects the Texas Labor Code, §402.061 and §408.026.

§133.206. Spinal Surgery Second Opinion Process.

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

(1) Division-the Medical Review Division of the Texas Workers' Compensation Commission.

(2) Medical emergency-A diagnostically documented condition including but not limited to:

(A) unstable vertebral fracture of such critical nature that increased impairment may result without immediate surgical intervention;

(B) bowel or bladder dysfunction related to the spinal injury;

(C) severe or rapidly progressive neurological deficit; or

(D) motor or sensory findings of spinal cord compression.

(3) Treating doctor-the doctor who is primarily responsible for coordinating the injured employee's health care for a compensable injury.

(4) Surgeon-The doctor listed on the form TWCC-63 as the surgeon to perform spinal surgery.

(5) Acknowledgment date-The earlier of the date on which the insurance carrier representative in Austin signs for the TWCC-63 form or narrative report, or the day after the date the TWCC-63 form or narrative report is placed in the carrier's box.

(6) List-A list maintained by the division of surgeons whose current practice includes performing spinal surgery.

(7) Sublist-A sublist of five qualified doctors from the list, selected as required by subsection (c) of this section, and provided by the division to the injured employee and the carrier for selection of a second opinion doctor.

(8) Qualified doctor-A doctor who meets the minimum qualifications as listed in subsection (d) of this section.

(9) Carrier-selected doctor-A qualified doctor selected by a carrier within 14 days of the acknowledgment date, to render a second opinion on spinal surgery.

(10) Employee-selected doctor-A qualified doctor other than the treating doctor or surgeon, selected by an employee to render a second opinion on spinal surgery.

(11) Commission-selected doctor-A qualified doctor selected by the commission to render a second opinion on spinal surgery.

(12) Second opinion doctor-A commission-selected doctor, an employee-selected doctor and\or a carrier-selected doctor, provided that the injured employee and the carrier each may select only one second opinion doctor.

(13) Concurrence-A second opinion doctor's agreement with the surgeon's recommendation that spinal surgery is needed. Need is assessed by determining if there are any pathologies in the spine that require surgical intervention. Any indication by the qualified doctor that surgery to the proposed spinal area is needed is considered a concurrence, regardless of the type of procedure or level.

(14) Nonconcurrence-A second opinion doctor's disagreement with the surgeon's recommendation that spinal surgery is needed.

(15) Refusal-Refusal to perform second opinion exam except when due to absence from the office because of illness, accident or personal leave.

(b) Carrier Liability for Spinal Surgery Costs.

(1) The carrier is liable in any of the following situations for the reasonable and necessary costs of spinal surgery performed by a surgeon who was on the List at the time the TWCC-63 was filed with the commission by the treating doctor or the surgeon:

(A) medical emergencies;

(B) carrier waiver of second opinion,

(C) no carrier request within 14 days of acknowledgment date, for a second opinion;

(D) concurrence by both second opinion doctors;

(E) no timely appeal after two second opinions, only one of which is a concurrence,

(F) final and nonappealable commission order to pay.

(2) The reasonable and necessary costs of spinal surgery include the services of the surgeons and ancillary providers during the hospital admission, and the hospital services.

(3) If a carrier becomes liable for spinal surgery pursuant to the provisions of this rule, any medical dispute resolution shall be limited to a dispute as to the reasonableness of the fees charged for the spinal surgery.

(c) Commission List and Sublist.

(1) The division will maintain a list of surgeons who perform spinal surgery, including specialty, any specialty training/certification in spinal surgery, and names of spinal surgeons with whom the surgeon is economically associated or shares office space.

(2) The initial List will consist of all doctors who have billed for spinal surgery under the Texas Workers' Compensation Act (the Act), as indicated in the division's billing database, and who have provided the required information set out in paragraph (1) of this subsection. The division will request the required information from each of these doctors. Failure of the doctor to timely respond may result in an order to respond to the division's request, issued pursuant to §102.9 of this title (relating to Submission of Information Requested by the Commission). A doctor may be added to the list by filing with the division a written request which includes both a statement that the doctor performs spinal surgery, and the additional information required by the division for the list.

(3) If requested by an injured employee, a treating doctor or surgeon on behalf of the injured employee, or a carrier, the division will provide a sublist of five qualified doctors from which a second opinion doctor may be chosen The sublist will be composed of qualified doctors located within 75 miles of the injured employee's residence at the time of injury, and will be selected from the list by the division on a rotating basis. If the list does not include five qualified doctors located within 75 miles of the injured employee's residence at the time of injury, the division will include on the sublist the qualified doctors who are located at a greater distance.

(4) A doctor may be removed from the list in compliance with the following procedures, for any of the following actions:

(A) two refusals, within a 90-day period or two consecutive refusals to perform within the required time frames a requested second opinion for which the doctor is qualified;

(B) two untimely submissions, within a 90-day period or two consecutive untimely submissions of second opinion narrative reports;

(5) If a doctor who has been referred for an administrative violation pursuant to subsection (d)(4) of this section or meets the criteria of paragraph (4) of this subsection, the doctor will be suspended from the list by the division for 30 days.

(6) The division will notify a doctor by delivery, return receipt requested, of suspension from the list. The suspension will be effective from the date of receipt of the notice by the doctor. A doctor who has been suspended from the list for 30 days may be reinstated to the list by filing with the division a written request which includes a commitment to perform and submit timely and appropriate second opinions and reports.

(7) The commissioners may suspend a doctor from the list for up to a one-year period, if a doctor who was suspended for 30 days and reinstated to the list, again meets the criteria of paragraph (4) of this subsection.

(8) The division will again suspend the doctor from the list for 30 days, notify the doctor as required in paragraph (6) of this subsection and prepare a recommendation to the commission that the doctor be suspended from the list for a period of up to one year

(9) The division will notify the doctor by delivery, return receipt requested, of the division's intent to recommend to the commissioners that the doctor be suspended from the list. Within 20 days after receiving the notice, a doctor may request a hearing to be held as provided by §145.3 of this title (relating to Requesting a Hearing). The request must be in writing to the division and actually received in the commission's central office in Austin, Texas, within 20 days after the doctor's receipt of the notice of intent to suspend the doctor from the list. If a request for hearing is timely received, the commission will hold a hearing as provided in Chapter 145 of this title (related to Dispute Resolution-Hearings Under the Administrative Procedure and Act). If no request for a hearing is timely filed, the division's recommendation will be reviewed by the commissioners at a public meeting and a decision made to either suspend or maintain the doctor on the list.

(10) If the commissioners decide to suspend a doctor from the list, the commissioners will issue an order of suspension which states the length of the suspension and describes the effects of the suspension. The order may also state restrictions on reinstatement or impose a specific method for reinstatement to the list. The order will be delivered to the doctor, return receipt requested. After receipt, the doctor shall inform injured employees seeking second opinions on spinal surgery under the Act, of the doctor's suspension from the list and that the insurance carrier will not be liable for the costs of a second-opinion exam performed by that doctor while he is suspended from the list. Failure to inform the injured employees in the form and format prescribed by the commission may subject the doctor to administrative penalties of up to $10,000 and other sanctions as provided by the Act.

(11) Unless a different period of suspension or method of reinstatement is provided by the commission order suspending the doctor from the list, a doctor suspended from the list may be reinstated as follows. A doctor may be reinstated to the list after a six-month period by written request to the division which includes a renewed commitment to perform timely and appropriate second opinions and submitting reports, provided appropriate members of the doctor's staff have attended a division seminar for providers within the suspension period. After a one-year period, a doctor may be reinstated by written request to the division which includes a renewed commitment to perform and submit timely and appropriate second opinions and timely reports. The division will immediately notify a doctor who has been reinstated to the list. The reinstatement will be effective from the date of the division's action to reinstate.

(d) Second opinion doctor's qualifications.

(1) The doctor rendering a second opinion must meet the following minimum qualifications.

(A) be a spinal surgeon on the list;

(B) be of the same specialty as the surgeon recommending spinal surgery;

(C) not be economically associated with or share office space with the treating doctor or the surgeon; and

(D) not be scheduled to perform or assist with the recommended surgery.

(2) An out-of-state doctor who is not on the list may be approved by the division as a qualified doctor if the claimant is residing out-of-state.

(3) When deemed necessary the division at its discretion may waive any of these requirements to secure timely and reasonable appointments.

(4) The division may issue an order requiring timely submission of a narrative report, recommend administrative violation proceedings, take action to remove a doctor from the list as described in subsection (c) of this section and/or take action to remove a doctor from the Approved Doctor list in compliance with §126 8 of this title (relating to Commission-Approved Doctor list) for noncompliance with the order.

(e) Submission of request for spinal surgery and for second opinion by employee-selected doctor; doctors' responsibilities and records.

(1) To recommend spinal surgery, the treating doctor or surgeon shall submit to the division a TWCC-63 in the form and manner prescribed by the division. The TWCC-63 may be faxed directly to the division.

(2) The doctor submitting the TWCC-63 shall advise the injured employee of the injured employee's right to obtain a second opinion from a qualified doctor. If the injured employee decides to seek a second opinion, the injured employee or the treating doctor or surgeon on behalf of the employee, shall request that the division provide a sublist of qualified doctors. The injured employee with assistance from the treating doctor or surgeon shall select a qualified second opinion doctor from the sublist and schedule the appointment date prior to submitting the TWCC-63. The second opinion appointment date should be scheduled within 30 days but not to from the date the TWCC-63 is submitted to the division. The name of the selected doctor and the appointment information shall be submitted on the TWCC-63 in the form and manner prescribed by the division.

(3) The surgeon shall ensure that all medical records and films arrive at each second-opinion doctor's office prior to the date of the scheduled second opinion

(4) The doctor submitting the TWCC-63 shall maintain accurate records to reflect:

(A) medical information regarding emergency conditions;

(B) injured employee notification of right to a second opinion;

(C) submission date of the TWCC-63, and any amended TWCC-63s;

(D) date and time of any second opinion appointment scheduled with employee-selected doctor; and

(E) date the medical records were sent by the surgeon to each second-opinion doctor.

(f) Commission notification to carrier. The division will notify the carrier via the carrier representative in Austin of the receipt of any required TWCC-63's by placing copies in the carrier representative's box. The division will also provide a sublist to the carrier. The carrier representatives shall sign for the forms. The carrier representative is responsible for the receipt of and the response to TWCC-63s.

(g) Carrier waiver of or request for second opinion by carrier-selected doctor; carrier records.

(1) The carrier must waive second opinion or request a second opinion exam be performed by a carrier-selected doctor. This decision and choice of the carrier-selected doctor from a sublist must be made and submitted to the division on a TWCC-63 in the form and manner prescribed by the division and without undue delay but no later than 14 days after the acknowledgment date. The TWCC-63 may be faxed or delivered directly to the division.

(2) The carrier shall set the appointment and include appointment information on the TWCC-63 in the form and manner prescribed by the division. The appointment date set by the carrier should be within 14 days and must not exceed 30 days from the (acknowledgement date) date the carrier filed the TWCC-63 requesting a second opinion with the division.

(3) A carrier will be deemed to have waived a second opinion if the carrier chooses a doctor not on the sublist or sets an appointment which exceeds 30 days from the (acknowledgement date) date the carrier filed the TWCC-63 requesting a second opinion with the division.

(4) The carrier shall notify the injured employee, the treating doctor, and the surgeon in writing of the appointment information. This notification shall be in the form and manner prescribed by the division and shall include a copy of the TWCC-63, and a narrative explanation of the purpose of the exam.

(5) The carrier representative shall maintain accurate records to reflect

(A) acknowledgment date of the TWCC-63;

(B) date the TWCC-63 required by paragraph (1) of this subsection was submitted to the division;

(C) date the notice required by paragraph (4) of this subsection was given;

(D) if applicable, the name of the carrier-selected doctor and the date and time of the scheduled exam; and

(E) acknowledgment date of the narrative report required by subsection (i) of this section.

(h) Division notification to employee of option to obtain a second opinion from an employee-selected doctor.

(1) If the carrier elects to have a second opinion and the employee has not already scheduled a second opinion from an employee-selected-doctor, the division shall notify the employee of the following;

(A) that the carrier will be obtaining a second opinion and the date and time;

(B) that the employee may obtain a second opinion from an employee-selected doctor,

(C) the sublist from which the employee may select an employee- selected doctor;

(D) the procedures and the time deadlines for obtaining a second opinion from an employee-selected doctor, and

(E) if the carrier-selected second opinion is a nonconcurrence, failure to select an employee-selected doctor pursuant to paragraph (2) of this section will result in a requirement to attend a medical examination scheduled by the commission.

(2) The treating doctor or surgeon must within five days of receiving notification from the division, notify the division if the employee is going to select an employee-selected doctor.

(3) If the injured employee selects the employee-selected second-opinion doctor, the injured employee with assistance from the treating doctor or surgeon shall select a qualified second-opinion doctor from the sublist and schedule the appointment date prior to submitting an amended TWCC-63 which contains the information required by subsection (e) of this section The amended TWCC-63 must be filed with the division no later than ten days after the treating doctor or surgeon's receipt of notification from the division.

(4) If the commission does not receive the notice within five days, the

commission shall set the appointment with a doctor on the employee's sublist and notify the injured employee, treating doctor, surgeon, and carrier of the appointment information. The carrier will be notified via the carrier representative's box.

(5) The second opinion exams scheduled in this subsection shall be set for a date later than the carrier-selected doctor second opinion appointment.

(6) If the second opinion of the carrier-selected doctor is a concurrence the appointment scheduled in this subsection may be canceled.

(7) Decisions, reports, records, and payments for second opinions obtained pursuant to this subsection shall be governed by the same provisions applicable to second opinions pursuant to subsections (i) and (j) of this section.

(i) Second-opinion decisions and reports; second-opinion doctors' records.

(1) The second-opinion doctor's opinion must be based on physical examination of the injured employee and review of the medical records and films forwarded by the surgeon. The second-opinion doctor shall call the designated phone number at the division within 48 hours after the exam to submit the results of a second opinion. The message must include the injured employee's name and social security number, the date and time of the exam, the name of the second-opinion doctor and a clear decision of a "concurrence" or "nonconcurrence" with the need for surgery. The second-opinion doctor shall return any films within three days to the doctor who submitted the films.

(2) The second-opinion doctor must complete a narrative report regarding the second opinion exam which indicates the second-opinion doctor's decision, and submit it to the division, the treating doctor, the surgeon, and the carrier, within ten days of the exam. The narrative must indicate any differences of opinion in the type of procedure or level proposed for surgery. The second-opinion doctor should contact the surgeon to discuss the second-opinion doctor's opinion and recommendations. Differences of opinion between the surgeon and the second-opinion doctor do not affect the carrier's liability for the reasonable costs of spinal surgery. The division will notify the employee of the decision(s) of the second-opinion doctor(s)

(3) If the second-opinion doctor believes an area of the spine other than the one surgeon or treating doctor proposed, is indicated for surgery the division will notify the injured employee and advise him that he may wish to consult his treating doctor or surgeon about the differences.

(4) A second-opinion doctor shall maintain accurate records to reflect the following for second opinions:

(A) date for which the exam was scheduled;

(B) circumstances regarding a cancellation, no-show or other situations where the exam did not occur as scheduled;

(C) date of the examination;

(D) second-opinion doctor's decision;

(E) date the decision was called into the division;

(F) date the narrative was mailed to the treating doctor, the surgeon, and the carrier; and

(G) date the narrative was sent to the division.

(j) Payment for the second opinion exam.

(1) The division shall notify the carrier via the carrier representative of narrative reports received by the division. The carrier representative shall sign and acknowledge receipt of narrative reports. Carriers shall not pay a doctor for a second opinion exam until receipt of the narrative report from the division. A carrier's timeframe for payment of the bill for a second opinion begins with the receipt of the bill from the doctor or the acknowledgment date of the narrative report from the division, whichever is the later of the two dates, regardless of the timeframe or process established by Chapter 134 of this title (relating to Guidelines for Medical Services, Charges, and Payments).

(2) The insurance carrier is responsible for paying the reasonable costs of a second opinion exam whether requested by the injured employee or the carrier. The second-opinion doctors' bill and the carrier's payment for second opinion exams shall be inclusive of the exam, review of records and films, and the preparation and submission of the reports, and shall be the lesser of the charged amount or the following fees for the applicable service:

(A) $350 for second opinions (use code WC001),

(B) $100 if the injured employee fails to show up for the carrier scheduled exam or cancels the employee-selected or commission-selected exam (use code WC002); or

(C) $150 to reconsider an earlier decision (use code WC003).

(3) A carrier shall pay for the reasonable travel expenses for an injured employee to attend a second opinion appointment.

(k) Appeal to a contested case hearing ("CCH").

(1) An employee may appeal to a CCH if there is no second opinion concurrence.

(2) A carrier may appeal to a CCH if there is a second opinion nonconcurrence.

(3) The appeal must be filed within 10 days after receipt of notice of the latest second opinion. The appeal must be filed in compliance with §142.5(c) of this title (relating to Sequence of Proceedings to Resolve Benefit Disputes). The contested case will be scheduled to be held within 20 days of commission receipt of the request for a CCH. The hearings and further appeals shall be conducted in accordance with Chapters 140-143 of this title (relating to Dispute Resolution/General Provisions, Benefit Review Conference, Benefit Contested Case Hearing, and Review by the Appeals Panel). The carrier is entitled to be a party in any such proceeding.

(4) Of the three recommendations and opinions (the surgeon's, and the two second-opinion doctors'), presumptive weight will be given to the two which had the same result, and they will be upheld unless the great weight of medical evidence is to the contrary. The only opinions admissible at the hearing are the recommendation of the surgeon and the opinions of the two second opinion doctors.

(l) Resubmitting the issue of spinal surgery.

(1) If the injured employee's condition changes at any time after a nonconcurrence, the treating doctor or surgeon may submit the medical records and films which indicate and support the existence of a change to the second-opinion doctors for reconsideration The second-opinion doctors shall issue an addendum to the original decision and send a copy to the division, the treating doctor, the surgeon, and the carrier with the word "ADDENDUM" clearly indicated on the narrative report. Addendum decisions, reports, records, and payments, and appeal to a CCH are governed by all of the provisions of this rule. If the addendum second opinions result in carrier liability, any pending appeal shall be dismissed.

(2) Addendum decisions, reports, records, and payment shall be governed by subsections (i) and (j) of this section with the following exception. The

narrative report shall be submitted within ten days of the reviewing doctor's receipt of the request for an addendum opinion.

(3) A recommendation for spinal surgery may be resubmitted at any time after the final appeal upholds the nonconcurrence. The reason for resubmission must be indicated on a TWCC-63 in the form and manner prescribed by the division.

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-9438363 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Earliest possible date of adoption: May 9, 1994

For further information, please call: (512) 440-3700

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

Support Documents

• 40 TAC §48.9808

The Texas Department of Human Services (DHS) proposes an amendment to §48.9808, concerning reimbursement methodology for §1915(c) of the Social Security Act Medicaid home and community-based waiver services for persons with related conditions, in its Community Care for Aged and Disabled chapter The purpose of the amendment is to change the current case management reimbursement from a fee-for-service to a monthly rate The amendment also changes the rate determination for respite care from weighted median based on provider cost to a pro forma methodology.

Burton F Raiford, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state government as a result of enforcing or administering the section The effect on state government for the first five-year period the proposal will be in effect is an estimated additional cost of $40,113 in fiscal year (FY) 1994, $98,609 in FY 1995, $100,625 in FY 1996; $101,619 in FY 1997; and $101,619 in FY 1998 There will be no fiscal implications for local government as a result of enforcing or administering the section

Mr Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a better reflection of the way reimbursement is determined for case management and respite care services in the Community Living Assistance and Support Services program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Jerry Ball at (512) 450-3684 in DHS's Rate Analysis Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-084, 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 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

§48.9808. Reimbursement Methodology for 1915(c) of the Social Security Act Medicaid Home and Community-Based Waiver Services for Persons With Related Conditions

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

[(c) Initial rate analysis. For the initial rate period, providers will be reimbursed on a fee-for-service basis using a method based upon pro forma projected expenses. Until an adequate cost report data base becomes available, the pro forma expenses are developed for each separate delivered service by specifying a list of staff, supplies, and administrative overhead expenses required to provide services in compliance with state standards, and by costing out those requirements at estimated current year prices. Costs will be developed by using data from surveys; cost report data from other similar programs, providers, associations, and professionals experienced in delivering services to persons with related conditions; and other sources.

[(d) Initial administrative expense fee analysis For the initial rate period, providers will be reimbursed an administrative expense fee using a method based upon pro forma projected expenses. Until an adequate cost report data base becomes available, the pro forma expenses and information are developed for the administrative expense fee by specifying a list of staff and the amount of direct service time spent with the client while participating in the initial assessment and care planning process, and by costing out these requirements at estimated current year prices Costs will be developed by using data from surveys; cost report data from other similar programs, providers, associations, and professionals experienced in delivering services to persons with related conditions; and other sources.]

(c)[(e)] Reporting of cost.

(1) Cost report. Each provider must submit financial and statistical information on a cost report or in a survey format designated by DHS. The cost report must capture the expenses of the waiver services provided, including salaries and benefits, administration, building and equipment, utilities, supplies, travel, indirect overhead expenses related to the waiver services program. Also, the cost report must capture pertinent information related to the initial assessment and care planning process for waiver program applicants.

(A) Accounting requirements. All information submitted on the cost reports must be based upon the accrual method of accounting unless the provider is a governmental entity operating on a cash basis. The provider must complete the cost report according to the prescribed statement in subsection (f) of this section, concerning allowable and unallowable costs. Cost reporting should be consistent with generally accepted accounting principles (GAAP). In cases where cost reporting rules conflict with GAAP, IRS, or other authorities, the rules specified in this section take precedence for Medicaid provider cost reporting purposes.

(B) Reporting period. The provider must prepare the cost report to reflect activities during the provider's fiscal year. The cost report is due 90 days after the end of the provider's fiscal year, **or 90 days after the date the cost report is mailed, whichever is later**. DHS may require cost reports or other information for other periods. Failure to file an acceptable cost report or complete required additional information will result in a hold being placed on the vendor payments until the cost report information or additional information is provided The provider must certify the accuracy of his cost report or additional information.

(C) Allowable and unallowable costs. Providers must complete the cost report according to DHS's statement of allowable and unallowable costs in subsection (f) of this section.

(D) Cost report certification. Providers must certify the accuracy of cost reports submitted to DHS in the format specified by DHS. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to DHS requirements.

(E) Extension of due date. DHS may grant extensions of due dates for good cause. A good cause is defined as a cause that the provider could not reasonably be expected to control Providers must submit requests for extensions in writing to DHS before the cost report due date. DHS staff will respond to requests within 10 working days of their receipt

(F) Cost report supplements DHS may require additional financial and other statistical information to ensure the fiscal integrity of the program

(G) Failure to file an acceptable cost report If a provider fails to file a cost report or files an unacceptable report and refuses to make necessary changes, DHS may withhold vendor payments to that provider until the deficiencies are corrected

(H) Recordkeeping requirements Each provider must maintain records according to the requirements stated in §69 202 of this title (relating to Contractors' Records) The provider must ensure that the records are accurate and sufficiently detailed to support the financial and statistical information reported in the cost report If a provider does not maintain records which support the financial and statistical information submitted on the cost report, the provider will be given 90 days to correct his recordkeeping A hold of the vendor payments to the provider will be made if the deficiency is not corrected within 90 days from the date the provider is notified

(I) Audit and review of cost reports.

(i) Review of cost reports DHS reviews each cost report or survey to ensure that all financial and statistical information submitted conforms to all applicable rules and instructions Desk reviews are performed on all cost reports according to §24.201 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports) Cost reports not completed according to instructions or rules are returned to the provider for proper completion.

(ii) On-site audit of cost reports DHS staff perform a sufficient number of audits each year to ensure the fiscal integrity of the waiver services reimbursement rates The number of on-site audits actually performed each year may vary. Adjustments consistent with the results of on-site audits are made to the rate base until closure before the final rate analysis. During either desk audits or on-site audits according to §24.401 of this title (relating to Notification), DHS notifies providers of the exclusions and adjustments to reported expenses made.

(iii) Access to records The provider must allow DHS or its designated agents access to all records necessary to verify information on the cost report. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider. If a provider does not allow inspection of pertinent records within 30 days following written notice from DHS, a hold will be placed on the vendor payments until access to the records is allowed.

(iv) Reviews of cost report disallowances. Under §24 601 of this title (relating to Reviews and Administrative Hearings), providers may request an informal review and, if necessary, an administrative hearing to dispute any action taken by the department

(2) Other sources of cost information In the absence of reliable cost report data from which to set waiver services unit rates or the administrative expense fee, **the rates and/or** [both the rate and] fee will be developed by using data from surveys, cost report data from other similar programs, consultation with other service providers, associations, and professionals experienced in delivering services to persons with related conditions, and other sources

(d) [(f)] Waiver rate determination methodology

(1) Rates or rate ceilings by unit of service. Reimbursement rates or rate ceilings for related-conditions waiver services, habilitation, nursing, physical therapy, occupational therapy, speech pathology, and psychological and respite care services will be determined on a fee-for-service basis. These services are provided under the §1915(c) of the Social Security Act Medicaid waiver for persons with related conditions. [Rates by unit of service. Reimbursement rates for related-conditions waiver services will be determined on a fee-for-service basis for each of the services provided under the 1915(c) of the Social Security Act Medicaid waiver for persons with related conditions.]

(2) Monthly rate. Effective May 1, 1994, the reimbursement rate for the related-conditions case management waiver service will be determined as a monthly rate. This service is provided under the §1915(c) of the Social Security Act Medicaid waiver for persons with related conditions.

(3)[(2)] Exclusion or adjustment of expenses. Providers must eliminate unallowable expenses from the cost report. DHS excludes from the data base any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers, the purpose is to ensure that the data base reflects costs and other information which are consistent with efficiency, economy, and quality of care, are necessary for the provision of waiver services; and are consistent with federal and state Medicaid regulations. If there is doubt as to the accuracy or allowableness of a significant part of the information reported, individual cost reports may be eliminated from the data base

(4)[(3)] Rate determination process. The DHS Board determines, for each service, [fee-for-service] reimbursement rates **or rate ceilings** which will [reasonably] reimburse the **reasonable and necessary** costs of **a prudent and cost-effective operation** [an economic and efficient provider]. DHS staff submit recommendations for reimbursement rates **or rate ceilings** Recommended rates are determined in the following manner.

(A) Unit or service rates for habilitation, nursing, physical therapy, occupational therapy, speech pathology and psychological services are determined in the following manner:

(i)[(A)] Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information

(ii)[(B)] Each provider's total allowable costs are projected from the historical cost reporting period to the prospective rate period as described in §24.301 of this title (relating to Determination of Inflation Indices).

(iii)[(C)] An allowable cost per unit of service is calculated for each service. The allowable costs per unit of service are arrayed and weighted by the number of units of service and the median point is calculated

(iv)[(D)] The median cost component is multiplied by an appropriate percentage incentive factor, determined by the DHS Board, to calculate the recommended reimbursement rates. [which, in the Board's opinion, will be:

[(i) within budgetary constraints,

[(ii) adequate to reimburse the cost of operations for an efficient and economic provider; and

[(iii) justifiable given current economic conditions.]

(B) Effective with the five-year renewal of the home and community-based waiver for persons with related conditions, unit of service rates and rate ceilings for respite care services are determined in the following manner:

(i) For in-home respite care services, a unit of service reimbursement rate is determined using a method based on modeled projected expenses which are developed using data from surveys, cost report data from other similar programs or services, professionals' experience in delivering similar type services, and other relevant sources.

(ii) For out-of-home respite care services, a unit of service reimbursement rate ceiling is determined using a method based on modeled projected expenses which are developed using data from surveys, cost report data from other similar programs or services, professionals' experience in delivering similar type services, and other relevant sources.

(C) Effective May 1, 1994, the monthly reimbursement rate for case management services is determined in the following manner:

(i) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information.

(ii) Each provider's total allowable costs are projected from the historical cost reporting period to the prospective rate period as described in §24.301 of this title (relating to Determination of Inflation Indices).

(iii) Each provider's projected total allowable costs are divided by the number of client service months (total days of service participants are eligible for wavier services, divided by 30.4 days) in the provider's reporting period, to determine the projected cost per client month of service.

(iv) Each provider's projected cost per client month of service is arrayed from low to high and a median cost per client month of service is selected.

(v) The median projected cost per client month of service is multiplied by an appropriate percentage incentive factor, determined by the DHS Board, to calculate the recommended monthly reimbursement rate.

(D) The Texas Board of Human Services determines reimbursement rates and rate ceilings it believes are:

(i) within budgetary constraints;

(ii) adequate to reimburse the reasonable and necessary costs of a prudent and cost-effective operation; and

(iii) justifiable given current economic conditions.

(E) DHS [The department] also adjusts rates according to §24 501 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs) if new legislation, regulations, or economic factors affect costs.

(e)[(g)] Administrative expense fee determination methodology

(1) One-time administrative expense fee. Reimbursement for the initial assessment and care planning process required to determine eligibility for the waiver program will be provided as a one-time administrative expense fee

(2) Exclusion or adjustment of expenses Providers must eliminate unallowable expenses from the cost report. DHS excludes from the data base any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers The purpose is to ensure that the data base reflects costs and other information which are consistent with efficiency, economy, and quality of care, are necessary for the provision of the initial assessment and care planning process, and are consistent with federal and state Medicaid regulations If there is doubt as to the accuracy or allowableness of a significant part of the information reported, individual cost reports may be eliminated from the data base

(3) Administrative expense fee determination process. The DHS Board determines a one-time administrative expense fee which will reimburse the costs of the reasonable and necessary costs of a prudent and cost-effective operation. DHS staff submit recommendations for an administrative expense fee reimbursement The recommended fee is determined in the following manner

(A) Total number of direct service hours with the client and number of initial assessments of clients by type of professional service will be determined by analyzing allowable historical cost and other information reported on the cost report and any other pertinent cost survey information.

(B) The number of direct service hours per initial assessment is determined by dividing, for each type of professional service, the direct service hours by the number of assessments per provider.

(C) The number of initial assessments by type of professional service for each provider is arrayed from low to high and a weighted median is determined.

(D) The number of direct service hours per assessment that corresponds to the weighted median number of initial assessments for that type service is selected.

(E) The direct service hours per assessment is multiplied by the appropriate recommended reimbursement rate as described in subsection (d)[(f)] of this section for that type of professional service to determine the final cost for that particular service

(F) Final cost for each professional service under the direct-service provider will be summed to derive a final administrative expense fee for the direct-service provider, and cost for the case management service will be used as the final case management administrative expense fee These two final costs will be combined to determine one total administrative expense fee

(f)[(h)] Allowable and unallowable costs

(1) General. Allowable and unallowable costs are defined to identify expenses which are and are not reasonable and necessary to provide waiver services to clients by **a prudent and cost-effective operation** [an economic and efficient provider]. Only allowable cost information is used to compile the rate base Cost reporting by providers should be consistent with generally accepted accounting principles (GAAP) In cases where DHS cost reporting rules conflict with GAAP, IRS, or other authorities, DHS rules take precedence for cost reporting purposes

(2) Definitions The following words and terms, when used in this **section** [subsection], shall have the following meanings, unless the context clearly indicates otherwise

(A) Allowable costs Those expenses that are reasonable and necessary in the normal conduct of operations relating to the provision of waiver services

(i) Reasonable-refers to the amount expended The test of reasonableness is that the amount expended does not exceed the cost which would be incurred by a prudent business operator seeking to contain costs

(ii) Necessary-refers to the relationship of the cost to provision of waiver services To qualify as a necessary expense, a cost must be one that is usual and customary in the operation of waiver services and must meet the following requirements.

(I) The expenditure was not for personal or other activity not specifically related to the provision of waiver services

(II) The cost does not appear on the list of specific unallowable costs and is not unallowable under other federal, state, or local laws or regulations

(III) The cost bears a significant relationship to the provision of waiver services The test of significance is whether elimination of the expenditure would adversely affect the delivery of waiver services

(IV) The expense was incurred in the purchase of materials, supplies, or services provided directly to the clients or staff of the program in the conduct of normal business operations

(iii) Normal conduct of operations relating to waiver services and the initial assessment process includes, but is not limited to, the following: [ ]

(I) The administrative expense fee covers reimbursement for the initial assessment and care planning services.

(II) Only direct contact with the client is considered allowable when recording initial assessment and care planning time for each type of professional service.

(III) Only costs associated with the initial assessment and care planning of those clients seeking enrollment into the waiver program will be allowed.

(IV) Expenses are not used solely for the provision of waiver services and the initial assessment. Whenever allowable costs are attributable partially to personal or other business interests not related to the provision of waiver services/initial assessment and partially to waiver services/initial assessment, the latter portion may be allowed on a pro rata basis if the proportion of use by the waiver services/initial assessment is well-documented.

(V) Allowable costs must result from arms-length transactions involving unrelated parties. In related-party transactions, the allowable cost to the waiver services program is the cost to the related party. Allowable costs in this regard are limited to the lesser of the actual purchase price to the related party, or usual and customary charges for comparable goods or services. A related party is a natural person or organization related to the provider entity by blood/marriage, or common ownership, or any association which permits either entity to exert power or influence, either directly or indirectly, over the other.

[(I) Expenses are not used solely for the provision of waiver services and the initial assessment Whenever allowable costs are attributable partially to personal or other business interests not related to the provision of waiver services/initial assessment and partially to waiver services/initial assessment, the latter portion may be allowed on a pro rata basis if the proportion of use by the waiver services/initial assessment is well-documented

[(II) Allowable costs must result from arms-length transactions involving unrelated parties In related-party transactions, the allowable cost to the waiver services program is the cost to the related party Allowable costs in this regard are limited to the lesser of the actual purchase price to the related party, or usual and customary charges for comparable goods or services. A related party is a natural person or organization related to the provider entity by blood/marriage, or common ownership, or any association which permits either entity to exert power or influence, either directly or indirectly, over the other

[(III) The administrative expense fee covers reimbursement for the initial assessment and care planning professional services which include but are not limited to case management, nursing, psychological, physical therapist, occupational therapist, and speech pathologist.

[(IV) Only direct contact with the client is considered allowable when recording initial assessment and care planning time for each type of professional service

[(V) Only cost associated with the initial assessment and care planning of those clients seeking enrollment into the waiver program will be allowed.]

(B) Unallowable costs Those expenses that are not reasonable or necessary for the provision of waiver services and the initial assessment. Unallowable costs are not included in the data base used to determine recommended rates and fees

(3) List of Allowable Costs The following list of allowable costs is not comprehensive, but rather serves as a general guide and identifies certain key expense areas The absence of a particular cost does not necessarily mean that it is not an allowable cost.

(A) Compensation of waiver services staff. Compensation will be given only to those staff who provide waiver services directly to the clients or in support of staff of the waiver services in the normal conduct of operations relating to the provision of waiver services This includes

(i) Wages and salaries

(ii) Payroll taxes and insurance Federal Insurance Contributions Act (FICA or social security), unemployment compensation insurance, workman's compensation insurance

(iii) Employee benefits Employer-paid health, life, accident, liability, and disability insurance for employees, contributions to employee retirement fund, and deferred compensation limited to the dollar amount the employer contributes The expense

(I) must represent a clearly enumerated liability of the employer to individual employees,

(II) must not be incurred as a benefit to employees who do not provide services directly to the clients or staff of the waiver services program, and

(III) must not represent any form of profit sharing

(B) Compensation of staff outside of the waiver program who provide services directly to the clients or in support of staff of the program. Allowable compensation is limited to the pro rata portion of the actual working time spent on behalf of the program.

(C) Compensation of outside consultants providing services directly to the clients or in support of staff of the program.

(D) Materials and supplies. Includes office supplies, housekeeping supplies, medical, and other supplies.

(E) Utilities Includes electricity, natural gas, fuel oil, water, wastewater, garbage collection, telephone, and telegraph.

(F) Buildings, equipment, and capital expenses. Buildings, equipment, and capital used by the waiver provider or in support of the waiver services staff, and not for personal business. If these costs are shared with other program operations, the portion of the costs relating directly to waiver services may be allowed on a pro rata basis if the proportion of use for waiver services is documented.

(G) Depreciation and amortization expense. Property owned by the provider entity and improvements to owned, leased, or rented property used by the waiver provider that are valued at more than $500 at the time of purchase must be depreciated or amortized using the straight-line method The minimum usable lives to be assigned to common classes of depreciable property are as follows.

(i) buildings 30 years, with a minimum salvage value of 10%, and

(ii) transportation equipment used for the transport of clients, materials and supplies, or staff providing waiver services a minimum of three years for passenger automobiles and five years for light trucks and vans, all with a minimum salvage value of 10%

(H) Provider-owned property. Property owned by the provider entity and improvements to property owned, leased, or rented by the provider that are valued at less than $500 at the time of purchase may be treated as ordinary expenses.

(I) Rental and lease expense. This includes rental and lease expenses for buildings, building equipment, transportation equipment, and other equipment, and related materials, and supplies used by the waiver provider Rental or lease expense paid to a related party is limited to the actual allowable cost incurred by the related party.

(J) Transportation expense This includes the cost of public transportation or mileage claimed at the allowable reimbursement per mile set by the state legislature for state employees

(K) Interest expense. Interest expense is allowable on loans for the acquisition of allowable items, subject to

(i) all of the requirements for allowable costs;

(ii) written evidence of the loan; and

(iii) the provider entity being named as maker or comaker of the note. Allowable interest is limited to the lesser of the cost to the related party or the prevailing national average prime interest rate for the year in which the loan contract was executed.

(L) Tax expense This includes real and personal property taxes, motor vehicle registration fees, sales taxes, Texas corporate franchise taxes, and organization filing fees

(M) Insurance expense This includes facility fire and casualty, professional liability and malpractice, and transportation insurance

(N) Contract waiver services provided by outside vendors to persons with related conditions

(O) Business and professional association dues limited to associations devoted primarily to the issues of related conditions

(P) Outside training costs Limited to direct costs (transportation, meals, lodging, and registration fees) for training provided to personnel rendering services directly to the clients or staff of the waiver provider The training must be directly related to issues concerning related conditions and located within the continental United States

(4) List of unallowable costs Unallowable costs are those expenses that are not reasonable or necessary for the provision of waiver services Unallowable costs are not included in the rate base used to determine recommended rates The following list is not intended to be comprehensive, but rather to serve as a general guide and identify certain key expense areas that are not allowable. The absence of a particular cost does not necessarily mean that it is an allowable cost

(A) compensation in the form of salaries, benefits, or any form of compensation given to individuals who do not provide waiver services either directly to clients or in support of staff;

(B) personal expenses not directly related to the provision of waiver services;

(C) client room and board expenses, except for those related to respite care,

(D) management fees paid to a related party that are not derived from the actual cost of materials, supplies, or services provided directly to the program,

(E) advertising expenses other than those for yellow pages advertising, advertising for employee recruitment, and advertising to meet any statutory or regulatory requirement;

(F) business expenses not directly related to the provision of waiver services,

(G) political contributions,

(H) depreciation and amortization of unallowable costs This includes amounts in excess of those resulting from the straight-line depreciation method, capitalized lease expenses in excess of the actual lease payment, and goodwill or any excess above the actual value of the physical assets at the time of purchase,

(I) trade discounts of all types Returns, allowances, and refunds,

(J) donated facilities, materials, supplies, and services including the values assigned to the services of unpaid workers and volunteers,

(K) dues to all types of political and social organizations, and to professional associations not directly and primarily concerned with the provision of waiver services,

(L) entertainment expenses except those incurred for entertainment provided to the staff of the waiver provider as an employee benefit.

(M) Boards of directors' fees,

(N) fines and penalties for violations of regulations, statutes, and ordinances of all types,

(O) fund raising and promotional expenses,

(P) expenses incurred in the purchase of goods and services with revenues from gifts, donations, endowments, and trusts,

(Q) interest expenses on loans pertaining to unallowable items and on that portion of interest paid which is reduced or offset by interest income,

(R) insurance premiums pertaining to items of unallowable cost,

(S) accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount This includes any form of profit sharing and the accrued liabilities of deferred compensation plans,

(T) planning and evaluation expenses for the purchase of depreciable assets, except where purchases are actually made and the assets are put into service in providing waiver services,

(U) mileage expense which exceeds the current reimbursement rate set by the Texas Legislature for state employee travel or expenses exceeding actual cost of public transportation,

(V) costs of purchases from a related party which exceed the original cost to the related party;

(W) out-of-state travel expenses, except for provision of waiver services that may include training and quality assurance functions,

(X) legal and other costs associated with litigation between a provider and state or federal agencies, unless the litigation is decided in the provider's favor,

(Y) contributions to self-insurance funds which do not represent payments based on current liabilities,

(Z) any expense incurred because of imprudent business practices,

(AA) expenses which cannot be adequately documented,

(BB) expenses not reported according to the instructions on the cost report,

(CC) expenses not allowable under other pertinent federal, state, or local laws and regulations, and

(DD) federal, state, and local income taxes and any expenses related to preparing and filing income tax forms

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 April 4,, 1994

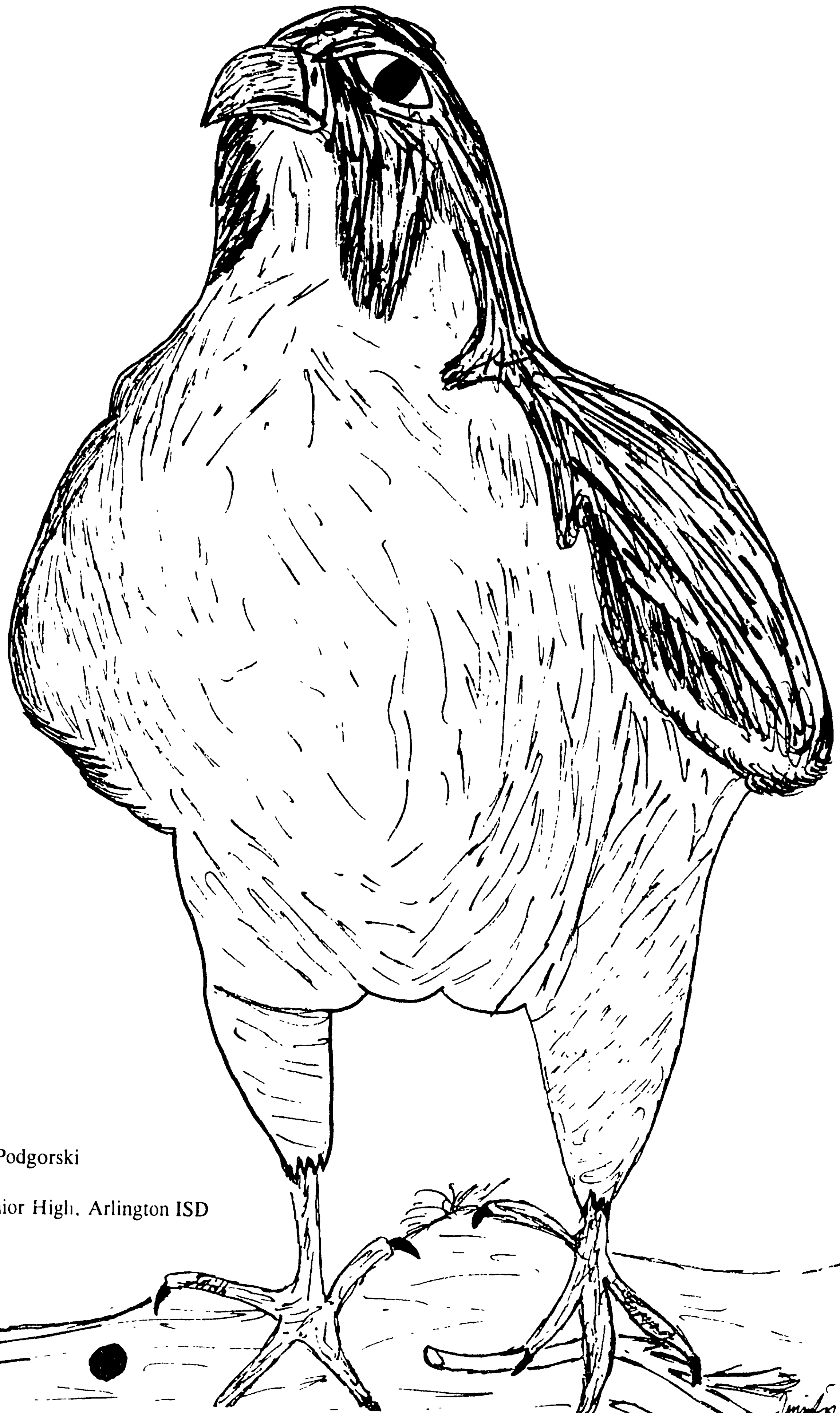
TRD-9438523

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

Proposed date of adoption June 15, 1994

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

◆ ◆ ◆



Name: Jennifer Podgorski
Grade: 9
School: Boles Junior High, Arlington ISD

WITHDRAWN RULES

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

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

• 40 TAC §19.1104

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption a proposed amendment to §19 1104, concerning rehabilitative services in its Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification, rule chapter, which appeared in the February 15, 1994, issue of the *Texas Register* (19 TexReg 1092). The effective date of this withdrawal is April 1, 1994.

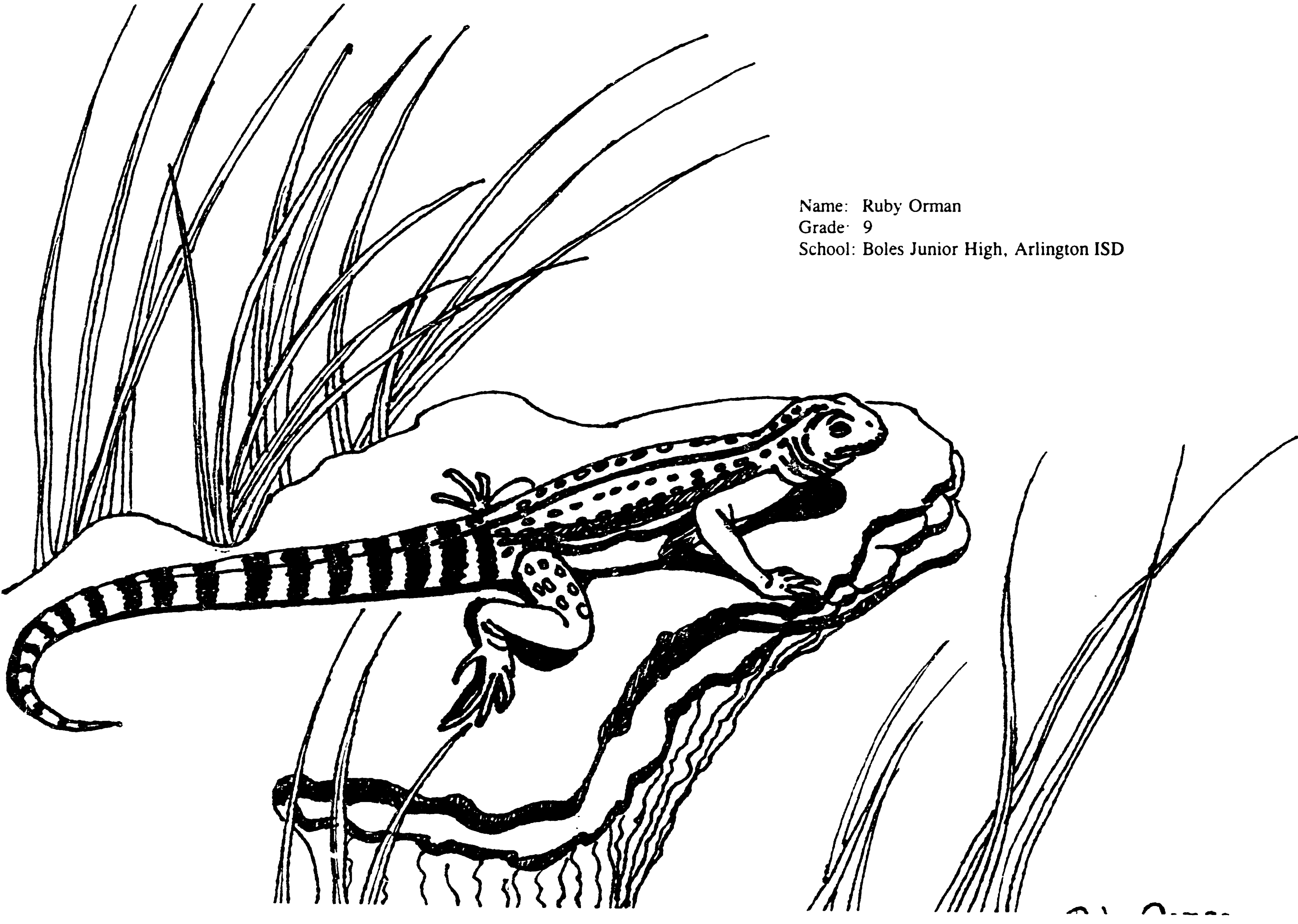
Issued in Austin, Texas, on April 1, 1994.

TRD-9438486 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date April 1, 1994

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

Name: Ruby Orman
Grade: 9
School: Boles Junior High, Arlington 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 V. General Services Commission

Chapter 111. Executive Administration Division

Historically Underutilized Business Certification Program

• 1 TAC §111.12, §111.19

The General Services Commission adopts amendments to §111.12 concerning the definition of "historically underutilized business" and §111.19 concerning state agency reporting requirements, with changes to the proposed text as published in the February 25, 1994, issue of the *Texas Register* (19 TexReg 1359).

The amendments expand the definition of Asian Pacific Americans to include "Subcontinent Asian Americans" whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal. In §111.12(1)(iv) the following language was added to expand the definition of Asian Pacific Americans: "Subcontinent Asian Americans whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal. Section 111.12(A)(v) and §111.19(f) (3)(E), i.e., references to Asian Indian Americans, were deleted. Reference to §111.12(A)(vi) was corrected to read §111.12(A)(v) and §111.12(A)(vii) was corrected to read §111.12(A)(vi). Reference to §111.19(f)(3)(F) was corrected to read §111.19(f)(3)(E).

The amendments include persons whose origins are from Subcontinent Asia in the definition of a historically underutilized business.

Seven written comments were received. An individual recommended using the term "Subcontinent Asian." The remaining comments addressed the issue of including persons with disabilities in the Historically Underutilized Business Program.

For-An individual.

Against-Coalition of Texans with Disabilities, Personal Assistant Services Task Force, Texas Rehabilitation Commission, Texas Paralyzed Veterans Association; Texas Planning Council for Developmental Disabilities; and an individual.

The commission maintains the position that the definition of HUBs in Texas Civil Statutes, Article 601b, §1.02, includes only women, racial or ethnic minority owned businesses.

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

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

Historically Underutilized Business-

(A) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons who have been historically underutilized (socially disadvantaged) because of their identification as members of certain groups, including but not limited to:

(i) Black Americans-which includes persons having origins in any of the Black racial groups of Africa;

(ii) Hispanic Americans-which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) Women-which includes all women of any ethnicity;

(iv) Asian Pacific Americans-which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the United States Trust Territories of the Pacific, the Northern Marianas, and Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal; and

(v) Native Americans-which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; and

(vi) who have a proportionate interest and demonstrate active participation in the control, operation, and management of the corporation's affairs.

(B)-(E) (No change.)

§111.19. State Agency Reporting Requirements.

(a)-(e) No change.

(f) The commission shall prepare a consolidated report based on a compilation and analysis of the reports submitted by each state agency and information provided by the comptroller in the format specified by the commission. These reports of historically underutilized business purchasing and contracts shall form a record of each agency's purchases in which the agency selected the vendor. If the vendor was selected by the commission as part of its state term contract program, the purchase will be reflected on the commission's report of its own purchases. The commission report will contain the following information:

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

(3) the total number of contracts (if available from the comptroller) and dollar amount of contracts awarded and actually paid by each state agency to the following groups certified by the commission:

(A) Black Americans;

(B) Hispanic Americans;

(C) Women;

(D) Asian Pacific Americans; and

(E) Native Americans.

(g) (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 April 1, 1994.

TRD-9438472 Ross-Michel Munguia
Legal Counsel
General Services
Commission

Effective date: April 22, 1994

Proposal publication date: February 25, 1994

For further information, please call: (512) 463-3960

♦ ♦ ♦

Administration

• 1 TAC §§111.61-111.63

The General Services Commission adopts the repeal of §§111.61-111.63 concerning the cost of copies of open records, without changes to the proposed text as published in the February 1, 1994, issue of the *Texas Register* (19 TexReg 679).

Sections 111.61-111.63 are being repealed to be replaced by new §§111. 61-111.70.

The repeal of §§111.61-111 63 deletes obsolete language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, §552.261, which provides the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the section

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 29, 1994

TRD-9438470 Judith M. Porras
General Counsel
General Services
Commission

Effective date: April 22, 1994

Proposal publication date: February 1, 1994

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

♦ ♦ ♦

Cost of Copies of Open Records

• 1 TAC §§111.61-111.70

The General Services Commission adopts new §§111.61-111 70 concerning charges for public records. §§111.61, 111.62, 111 63, 111.65, 111.66, 111 67 and 111 69 are adopted with changes to the proposed text as published in the February 1, 1994, issue of the *Texas Register* (19 TexReg 680) §§111.64, 111.68, and 111.70 are adopted without changes and will not be republished

The new sections establish guidelines that may be used by governmental bodies to recover up to the full cost of providing copies of, or access to, public records

Section 111.61, subsection (b) was amended to read "governmental bodies may use §§111.61-111.70 both to calculate the costs of providing public information and also to set the charges a body may choose to establish for providing copies of public information. The cost of providing public information is not necessarily synonymous with the charges made for providing public information." The amendment was made to clarify the paragraph. In subsection (c), the second sentence was amended to read "when a request for copies of public records is made, state agencies are authorized to establish charges up to the full cost to the agency of providing the copies, unless the request is for 50 pages or less of readily available information in standard-size form." The amendment was made to clarify the subsection and bring it in compliance with the language of §552 261, Subchapter F, Chapter 552, Government Code.

In §111.62, the sentence "Information that requires a substantial amount of time to locate or prepare for release is not readily available information" was added to the definition of readily available information. This change broadens the definition of readily available information and deletes the reference to the 15 minutes required to locate the requested information Also added to this subsection was a statement which reads "governmental bodies should compile and maintain information, especially information that is likely to be the subject of repeated requests for access or copies, in a manner that maximizes the ready availability of the information. In determining whether to charge for providing copies of public records, governmental bodies should take into account not only whether the information is in fact readily available but also whether, in the exercise of efficient recordkeeping, it could and should have been readily available." The addition was made to encourage agencies to fulfill their customer service purpose and make information more readily available to their primary customers, the citizens of Texas. In §111 63, subsection (a), the phrase "copies of" was added between "providing" and "public information." The addition was made to clarify that the charges apply to copies. Also, in the same subsection a sentence was added which reads "when actual costs vary greatly from those used in these rules, governmental bodies should use their actual costs to calculate their charges." The addition was made to encourage agencies to comply with §5, subsection (a), House Bill 1009, Acts, 73rd Legislature, regarding charges to recover up to the full cost to the agency of providing copies of public records. In subsection (b)(2) the charge for a diskette was changed from "$2 00" to "$1 00", and the charge for a computer magnetic tape was changed from "$15" to "$10". These changes were made to reflect an average of the actual prices paid by governmental bodies either when buying on contract or piecemeal from vendors. In subsection (c)(2), the verb "may" was changed to "should" and the phrase "in standard-size form" was added at the end of the same subsection. The changes were made to preserve the form throughout the rules regarding charges applicable to requests of copies for 50 or fewer pages Subsection (c)(3) was added which reads "personnel time should not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information (A) to determine whether the governmental body will raise any exceptions to disclosure of the requested information under subchapter C of the Open Records Act or (B) to research or prepare a request for a ruling by the Attorney General's Office pursuant to subchapter G of the Open Records Act." This subsection was added because time incurred in determining exceptions to the requirements for disclosure is an internal compliance cost and should, therefore, not be charged to the requestor. Subsection (d)(2) was amended to read "an overhead charge should not be made for requests for copies of 50 pages or less of readily available information in standard-size form." This change was made to preserve the form throughout the rules regarding charges applicable to requests of copies for 50 or less pages. Subsection (e) was amended to read "(1) if a governmental body already has information that exists on microfilm and has microfilm copies available, the suggested charge is the total costs of making the copy of the fiche or film. If the requestor prefers to have a copy of the fiche or film, itself, and the information on the fiche or film can be released in its entirety, the body should make a copy of the fiche or film available and charge for the cost of having such a copy made. The Texas State Library has the capacity to reproduce microfiche and microfilm for state agencies. (2) If a master copy of information in microform is maintained, the suggested charge is $.10 per page for standard size paper plus a charge to cover any personnel time spent in making the paper copies." This change was made to clearly distinguish between paper copies of microfiche and microfilm, and actual fiche or film copies. In subsection (f)(2), the number "five" was changed to "50", and the phrase "in standard-size form" was added at the end of the same subsection. These changes were made to comply with rules regarding charges applicable to requests for 50 or less pages. In subsection (g)(3) the manufacturers' names and models for computer systems were deleted. This change was made because systems can be reconfigured to be more than the names and models would suggest. In subsection (g)(4), after the first sentence, add the following sentences "The CPU charge is not meant to apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time frame most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming is set forth in subsection (h). No charge should be made for computer print-out time." These sentences were added to clarify the use of CPU charges

In §111.65, subsection (a) was amended to read "access to information in standard-size form. A governmental body should not charge for making available for inspection information maintained in standard-size form. Access charges are permitted only where the governmental body is asked to provide copies of information that is not readily available or that is for more than 50 pages of readily available information in standard-size form." The subsection was amended to comply with rules regarding charges applicable to access to

public information. Subsection (b)(1) was replaced by subsection (b), which reads "access to information in other than standard-size form. In response to requests for access, for purposes of inspection only, to information that is maintained in other than standard-size form, a governmental body may charge the requesting party the cost of preparing and making available such information, unless the information is readily available. Preparation might involve retrieval of information from a database, and deletion of confidential information. In such a case, a body may recover the cost of personnel as set forth in §111.63(c)(1)" Subsection (b)(2) was deleted Its basic idea, that agencies should consider the public's desire to know when deciding how readily available their public information could or should be, has been already expressed as part of the earlier definition of "readily available information. "

Section 111.66 was amended to read "To the extent possible governmental bodies should attempt to accommodate a requesting party by providing information in the format requested. If a requesting party asks that information be provided on a diskette, and the requested information is electronically stored, the governmental body should provide the information on diskette. The extent to which a requestor can be accommodated will depend largely on the technological capability of the of the body to which the request is made. A governmental body is not required to acquire software or programming capabilities that it does not already possess to accommodate a particular kind of request. However, a governmental body should take into account in its data processing planning the public's interest in obtaining access to information and the ways in which such access can be facilitated through acquisition of improved technology." The change was made to discuss the ever increasing technological advances and the desire of the public to have access to copies of records other than in standard sized pages.

In §111.67, subsection (a), the sentence "governmental bodies have the discretion to furnish public records without charge or at a reduced charge if it is determined that a waiver or reduction is in the public interest" was deleted. Subsection (b) became subsection (c) A new subsection (b) was added, which reads "A governmental body shall furnish public records without charge or at a reduced charge if the governmental body determines that waiver or reduction of the fees is in the public interest." This change was made to comply with Chapter 552, Subchapter F, §552 667 of the Government Code in §111 69, paragraph (1)(A), the charge for a diskette was changed from "$2 00" to "$1.00" In paragraph (1)(B) the charge for a computer magnetic tape was changed from "$15" to "$10". The changes were made to reflect an average of the actual prices paid by governmental bodies either when buying on contract or piecemeal from vendors Paragraph (5) was separated into paragraph (5)(A) and (5)(B) which read, respectively, "paper copy, $ 10 per page" and "fiche or film copy, actual cost " The changes were made to agree with the changes made in §111.63, subsection (b)(2).

The new sections implement the provisions of House Bill 1009, Acts, 73rd Legislature with respect to the cost of providing records to the public and the charges that state agencies and other governmental entities may set to recover the full costs of providing copies of, or access to, public records They also serve as guidelines for governmental bodies to consider as they analyze their costs and determine their charges.

We received 36 letters with one or more comments. The letters were from individuals, groups, associations, and governmental bodies. Many of the comments praised the commission for trying to clarify and standardize charges for copies of public records; however, there were some rule contents with which the commentors disagreed. Those points are addressed below. We also received comments during a Public Hearing held on March .8, 1994, at the request of Texas Attorney General Dan Morales. The transcripts of that hearing are available upon request.

We received 20 comments regarding the 15-minute time limit included in the definition of "readily available information." Of these 20 comments, two were in favor of it , and 18 were against it Four of the comments received were from individuals. The following groups, associations, and governmental bodies also made comments:

For-Texas State Board of Public Accountancy; and Harris County-Office of Administrative Services.

Against-Office of the Attorney General; The Freedom of Information Foundation of Texas, Dan Morales, Attorney General, Bishop, Payne, Williams & Werley, L.L.P., Common Cause, Office of the Comptroller; Texas Performance Review, Texas Media, Department of Information Resources, Garza County Democratic Executive Committee; Burnet County Association of Concerned Taxpayers, Consumers Union Southwest Regional Office, Voters of Montgomery County, and Ronald Luke & Associates/RPC Publications

The commission amended the definition of readily available information to exclude information that requires a substantial amount of time to locate and prepare for release. The 15 minute time limit was removed. It should also be noted that the fact that records are stored off-site does not necessarily make them "not readily available "

There were 12 comments regarding charges for access to information where copies are not requested or for copies of electronically stored information that are made for the sole purpose of inspection All of the comments were against such charges. Two of the comments were from individuals.

Against-Office of the Attorney General; The Freedom of Information Foundation of Texas, Texas Media, Office of the Comptroller; Texas Performance Review; Common Cause, Harris County-Office of Administrative Services, Department of Information Resources, Ronald Luke & Associates/RPC Publications, and Bishop, Payne, Williams & Werley, L L P

The commission amended the sections to establish that such charges are permitted only when the governmental body is asked to provide copies of information that is not readily available or is for more than 50 pages of readily available information or that is not in a standard-size form. Also, the definition of readily available information was amended to encourage agencies to maximize the ready availability of their records.

We received two comments regarding the $15 per hour charge for personnel time. Both of the comments were against it because it is considered too high One of the comments was from an individual.

Against-The Freedom of Information Foundation of Texas. We disagree. This charge, based on information received from the State Auditor's Office, is considered appropriate, reasonable, and allowed by the Open Records Act.

There were two comments regarding the existence of a personnel charge. Both comments, from individuals, were against the charge We disagree. Such charge is allowed by the Open Records Act. There was one comment regarding the need for a provision to charge for personnel time to clarify requests that are received by means other than in person.

For-Texas Workers' Compensation Commission. We disagree. Such a provision would not be appropriate since assisting the requestors to identify the object of their request is part of the customer service function of governmental bodies

There was one comment regarding the need for a prohibition to charge for personnel time if it takes more than 15 minutes to locate the record because of filing errors or other shortcoming of the governmental body.

For-Harris County-Office of Administrative Services We disagree. Such a prohibition is not necessary since the definition of readily available was expanded to allow for a substantial amount of time to locate records.

We received six comments proposing an addition stating that there should be no personnel charge for the time an attorney, legal assistant, or any other person spends reviewing the material to claim exceptions to disclosure or to prepare a request for an opinion from the Attorney General.

For-Office of the Attorney General; Texas Media, Office of the Comptroller; Texas Performance Review; Common Cause, and the Department of Information Resources.

We received one comment stating that personnel time must always be charged because the records are confidential and the public cannot have access to them.

For-Texas Board of Pardons and Paroles. We disagree. Wording added to the definition of readily available encourages governmental bodies to maximize the ready availability of public records.

There were five comments regarding the charge of $17.50 per minute for a mainframe computer CPU time. Three comments stated that this amount was too high, one comment stated that it was too low, and one comment stated that it did not represent the actual costs of every agency because the sample

used was not large enough. One of the comments was from an individual.

Against-The Freedom of Information Foundation of Texas; Bishop, Payne, Williams & Werley, L.L.P.; Harris County-Office of Administrative Services; and the Department of Information Resources. We disagree. The charge was compiled from a limited survey of agencies with extensive computer systems, and it is intended to be a suggested charge. Future surveys will include a larger representative sample. It is pointed out, at the beginning of §111.63 that the charges are only suggestions and that governmental bodies should use their actual costs if they vary greatly from the suggested ones.

There was one comment stating that the charge of $3.00 per minute for a midrange computer CPU time was too low. This comment is based in the fact that agencies that out-source their computer functions to the Department of Information Resources (DIR) are charged $3.38 per minute.

Against-Texas Department of Agriculture. We disagree. The charge is an average of the prime and off-prime rates charged by DIR.

There was one comment to delete the charge for CPU time for a PC/LAN because most are not equipped to identify program execution time.

Against-Department of Information Resources. We disagree. Some governmental bodies may have this capability already.

We received seven comments proposing the addition of a statement regarding the fact that CPU time is not meant to apply to programming or printing time, but rather only to the time it takes the computer to process a program.

For-Freedom of Information Foundation of Texas; Texas Media; Office of the Attorney General; Office of the Comptroller; Texas Performance Review; Common Cause; and the Department of Information Resources.

There were two comments regarding the charges for computer programming time. One comment stated that the $26 per hour was too low, and one comment cited that since citizens do not have access to computer terminals, they should not be charged for programming to retrieve information from a database.

Against-Texas Department of Agriculture; and Ronald Luke & Associates/RPC Publications. We disagree. This charge is the average hourly rate of computer programmers in state employment.

There was one comment proposing that there should be a way to verify that a computer programmer has performed the requested task as expeditiously and efficiently as possible.

For-Bishop, Payne, Williams & Werley, L.L.P. We disagree. Such matters are a function of governmental bodies' management, and should not be dictated in a rule and/or a guideline.

There were two comments regarding the fact that the governmental agencies should be encouraged to program their records initially in a manner that, to the extent possible, segregates confidential information from information which is undisputably public.

For-Department of Information Resources; and Bishop, Payne, Williams & Werley, L.L.P.

We received six comments asking us to delete the manufacturers' names and models in reference to computer systems. Since systems can be reconfigured, this was thought to be very confusing.

For-Texas Media; Office of the Attorney General; Office of the Comptroller; Texas Performance Review; Common Cause; and the Department of Information Resources.

There were 14 comments regarding the charge of $.10 per page for copies of public records. Two of the comments were against charging at all, six of the comments stated that the charge should be less than $.10 per page while two of the comments said that $.10 per page was reasonable. Another four comments wanted charges only for voluminous requests or for those who will utilize the information for a business purpose. Eleven of the comments were from individuals.

For-Texas Board of Pardons and Paroles

Against-Ronald Luke & Associates/RPC Publications; and Garza County Democratic Executive Committee.

We disagree. The charge of $.10 per page, regardless of the number of pages copied or printed, is considered reasonable since the agency incurred certain costs in producing and storing the information and, in most cases, the per page full cost is equal to or greater than $.10 per page. In the matter of charging more to those who will utilize the copies for business purposes, such higher charge is not allowed at this time by the existing legislation.

We received nine comments regarding estimates and waivers of public information charges. One comment stated that a governmental body should make an initial determination that furnishing the copies does not benefit the general public prior to assessing any charges. Seven comments proposed that the language of this section be changed to reflect the fact that the waiver or reduction of charges is not a discretionary matter but rather a mandatory one. One comment said that it was a good reinforcer to have a statement regarding the waivers and reduction in the rules because most governmental bodies rely more on the rules and guidelines that on the statute.

For-Ronald Luke & Associates/RPC Publications.

Against-The Freedom of Information Foundation of Texas; Bishop, Payne, Williams & Werley, L.L.P.; Texas Media, Office of the Attorney General; Office of the Comptroller; Texas Performance Review, Common Cause; and the Department of Information We disagree with the comment that an initial determination be made that furnishing the copies does not benefit the general public prior to assessing charges. Since the governmental bodies are prohibited from making any inquiries from the requestors, other than to establish proper identification, there is no way to make such determination.

There was one comment regarding the charges for copies of records kept in microfiche and microfilm. The comment stated that the subsection was presented in a way that could lead to confusion or abuse. Since a request can be either for paper copies of fiche or film, or for a copy of the fiche or film, itself, the comments suggested that two separate paragraphs be set.

Against-Title Data, Inc.

We received three comments regarding the provision to enable governmental bodies to charge overhead based on personnel charges. All of the comments were against the provision. One of the comments was from an individual.

Against-Bishop, Payne, Williams & Werley, L.L.P.; and Ronald Luke & Associates/RPC Publications. We disagree. An overhead charge for requests that are voluminous and involve a considerable amount of personnel time is allowed in the statute. The percentage used in the proposed rules is an average of what governmental bodies reported in the survey conducted in 1993.

There were nine comments regarding the document retrieval charge. Two comments stated that there should never be a retrieval charge, one comment was in favor of a retrieval charge always, regardless of the number of copies made, and six were against a retrieval charge for requests that were for fewer than 50 pages of readily available information.

For-Harris County-Office of Administrative Services.

Against-Bishop, Payne, Williams & Werley, L.L.P.; Ronald Luke & Associates/RPC Publications; Office of the Attorney General; Office of the Comptroller; Texas Media; Texas Performance Review; Common Cause; and the Department of Information Resources.

We disagree with the comments that there should never be a retrieval charge, as well as with the comment that there should always be a retrieval charge, regardless of number of copies requested. The decision to store records off-site is not always a choice. Also, some governmental bodies have field offices across the state, and records may be stored at these offices that are to be included in a response to an open records request. Therefore, governmental bodies should have a way to recover those costs.

We received two comments regarding the charges for facsimile transmittals. Both comments stated that the charges were inadequate, either because they were too low or too high.

Against-Bishop, Payne, Williams & Werley, L.L.P.; and Harris County-Office of Administrative Services. We disagree. The charges for local facsimile transmittals are the same as for a copy, $.10 per page. No other charge is imposed on a local transmittal. The charges for toll calls or long distance calls include a $.10 per page cost plus the estimated telephone costs.

There were six comments proposing language regarding the fact that, though not required by the statute, governmental bodies should provide the requests, to the extent

possible, in the format that the requestor desires it. Evidently, it is understood that this is dependent on the technological capabilities of the governmental bodies.

For-Texas Media; Office of the Attorney General; Office of the Comptroller; Texas Performance Review; Common Cause; and the Department of Information Resources.

We received two comments regarding a governmental body's right to require prepayment for copies or the posting of a bond. Both comments, though in favor of requiring such prepayment, questioned the amount, $100, mentioned in the subsection as either too high or too low.

Against-Texas Workers' Compensation Commission; and the Texas Department of Criminal Justice. We disagree. The suggestion to require a prepayment if the charges total more than $100 is only a guideline. Since the statute mentions amounts that are "unduly costly," such amounts would depend on the nature and size of the governmental body and its budgetary restrictions.

There was one comment regarding the need for a charge for long distance calls needed to clarify requests made by any means other than in person.

For-Texas Workers' Compensation Commission. We disagree. As pointed before, assisting requestors to adequately identify the subject of their requests is part of the customer service function of state government.

There was one comment regarding the need for an expedite or rush fee. The comment stated that the statute provides for a prompt response to requests; however, sometimes requestors want their requests filled immediately

For-Texas Workers' Compensation Commission. We disagree. A prompt response is framed in the context of the need of the governmental body to continue its regular operations while at the same time complying with requests for public information. The rules address estimates of times and charges when a request is voluminous and will require substantial personnel time to fulfill.

We received one comment regarding the need for a certification fee.

For-Texas Workers' Compensation Commission. We disagree. The statute refers only to charges for uncertified copies of public records.

We received three comments regarding matters that cannot be answered by this commission, but rather are subject to legislative change. These comments stated that the commission's rules should be enforced on all governmental bodies, that the 50 or fewer pages limit is arbitrary and should be disregarded, that governmental bodies be given unlimited authorization to offer electronic access to public information and charge for it One of the comments was from an individual.

For-Harris County-Office of Administrative Services. We disagree. These comments cannot be addressed by the commission, but rather should be for the Legislature to decide

We received one comment regarding the definition of full cost The comment stated that the definition included in the proposed rules was not in the statute and was in fact a product of the drafting committee.

Against-Ronald Luke & Associates/RPC Publications We disagree. Full cost is an accepted accounting term. The meaning given to it in the proposed rules is based on the definition of total cost adopted by the Council on Competitive Government, in November, 1993.

The new sections are adopted under the Texas Government Code, Chapter 552, §552.261 and §552.262, which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

§111.61. General.

(a) The General Services Commission must:

(1) periodically determine the actual cost of standard-size reproductions (up to 8 1/2 inches by 14 inches) and publish these cost figures for use by governmental bodies in determining charges for supplying copies of public information; and

(2) specify the methods and procedures that may be used in determining the amounts that may be charged to recover the full cost of providing copies of public records.

(b) Governmental bodies may use §§111.61-111.70 of this title (relating to Cost of Copies of Open Records) both to calculate the costs of providing public information and also to set the charges a body may choose to establish for providing copies of public information. The cost of providing public information is not necessarily synonymous with the charges made for providing public information.

(c) Chapter 428, Acts, 73rd Legislature, Regular Session (1993) requires state agencies to adopt rules that specify the charges the agency will make for copies of public records. When a request for copies of public records is made, state agencies are authorized to establish charges up to the full cost to the agency of providing the copies, unless the request is for 50 pages or less of readily available information in standard-size form

(d) Each state agency is required by Chapter 428, Acts, 73rd Legislative, Regular Session (1993) to review its procedures for providing access to, and copies of, public information and to analyze the charges the agency makes for providing copies. To comply, an agency may utilize the cost methodology adopted by the Council on Competitive Government to analyze its costs. Each state agency is required to promulgate rules specifying the charges the agency will establish for copies of public information. To comply, an agency may consider these Commission rules. These rules do not diminish the authority of a state agency either to adopt an alternative methodology for calculating costs or to reduce or waive the charges that might be made for public information. These rules may also be used to determine what a state agency could charge another state agency for public information. The adoption of these rules by state agencies should promote uniformity throughout state government for providing public information.

(e) Utilization of standard charges enhances the public's understanding of how costs for public information have been calculated. The charges for providing public information may not be excessive and should be reasonable and not effectively bar access to information.

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

Full Cost-The sum of all direct costs plus a proportional share of overhead, or indirect costs. Full cost should be determined in accordance with generally accepted methodologies. To determine full costs, governmental bodies may utilize the cost methodology adopted by the Council on Competitive Government.

Nonstandard-size copy-A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, and nonstandard-size paper copies are examples of nonstandard-size copies.

Readily available information-Information that already exists in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming, or information that already exists on microfiche or microfilm. Information that requires a substantial amount of time to locate or prepare for release is not readily available information. Governmental bodies should compile and maintain information, especially information that is likely to be the subject of repeated requests for access or copies, in a manner that maximizes the ready availability of the information. In determining whether to charge for providing copies of public records, governmental bodies should take into account not only whether the information is in fact readily available but also whether, in the exercise of efficient recordkeeping, it could and should have been readily available.

Standard-size copy-A printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single-copy. A piece of paper that is printed on both sides is counted as two copies.

State agency–Any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or statute, including a university system or institution of higher education as defined in Texas Education Code, §61.003, other than a public junior college.

§11.63. Suggested Charges for Providing Copies of Public Information.

(a) The charges suggested in this section to recover costs associated with providing copies of public information are based on estimated average costs to state agencies. When actual costs vary greatly from those used in these rules, governmental bodies should use their actual costs to calculate their charges.

(b) Copy charge.

(1) Standard-size copy. The suggested charge for standard-size paper copies reproduced by means of an office machine copier or a computer printer is $.10 per page.

(2) Nonstandard-size copy. The suggested charges for nonstandard copies are:

(A) Diskette–$1.00;

(B) Computer magnetic tape–$10;

(C) VHS video cassette–$2.50;

(D) Audio cassette–$1.00;

(E) Paper copy–$ .50.

(3) The suggested charges in this subsection are to cover the cost of materials onto which information is copied and do not reflect any additional charges that may be associated with a particular request.

(c) Personnel Charge.

(1) The suggested charge for personnel costs incurred in processing a request for public information is $15 an hour, which is the average hourly cost, including fringe benefits, to the State for classified state employees as of May 31, 1993. Where applicable, the personnel charge should be prorated to recover the cost for personnel time spent to take requests, locate documents, and reproduce requested information.

(2) A personnel charge should not be billed in connection with complying with requests that are for 50 or fewer pages of readily available information in standard-size form.

(3) Personnel time should not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

(A) to determine whether the governmental body will raise any exceptions to disclosure of the requested information under Subchapter C of the Open Records Act; or

(B) to research or prepare a request for a ruling by the Attorney General's Office pursuant to subchapter G of the Open Records Act.

(d) Overhead Charge.

(1) In response to a request either for information that is not readily available or for in excess of 50 pages of readily available information, a governmental body may include in the charges direct and indirect costs, in addition to the personnel charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities and administrative overhead. It is suggested that, if a governmental body chooses to recover such costs, a charge be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge should not be made for requests for copies of 50 pages or less of readily available information in standard-size form.

(3) It is suggested that the overhead charge be computed at 20% of any charge made to cover personnel costs associated with a particular request. For example, if one hour of personnel time is expended to respond to a particular request, the personnel charge would be $15 and the overhead charge would be $3.00.

(e) Microfiche and microfilm charge.

(1) If a governmental body already has information that exists on microfilm and has microfilm copies available, the suggested charge is the total of the costs of making the copy of the fiche or film. If the requestor prefers to have a copy of the fiche or film, itself, and the information on the fiche or film can be released in its entirety, the body should make a copy of the fiche or film available and charge for the cost of having such a copy made. The Texas State Library has the capacity to reproduce microfiche and microfilm for state agencies.

(2) If a master copy of information in microform is maintained, the suggested charge is $.10 per page for standard size paper plus a charge to cover any personnel time spent in making the paper copies.

(f) Remote document retrieval charge.

(1) Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by state agencies to store such documents with the Texas State Library, which is equipped to provide such a service to state agencies free of charge. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services. Where a charge is made for documentation retrieval, no additional personnel charge should be factored in for time spent locating documents.

(2) It is suggested that such charge be waived if the request is for 50 pages or fewer of readily available information in standard-size form.

(g) Computer Resource Charge.

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) There is currently a wide range of computer capabilities. Many organizations with more advanced computer capabilities have already developed methodologies to recover the costs of computer utilization. It may be appropriate, nonetheless, in response to requests for public information, for governmental bodies with existing methodologies that choose to charge for CPU or other computer related costs to consider using the uniform charges suggested in these rules. These suggested computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to open records requests.

(3) The suggested charges in this subsection are averages based on a survey of state agencies with a broad range of computer capabilities. Each governmental body using this cost recovery charge should determine which category of computer type most closely fits its existing system and set its charge accordingly.

Type of System	Rate
Mainframe	$17.50 per minute
Midrange	$ 3.00 per minute
Client/Server	$ 1.00 per minute
PC or LAN	$ .50 per minute

(4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time frame most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (h). No charge should be made for computer print-out time. For example, the computer resource charge for a request that takes 20 seconds to execute on a mainframe system would be $5.83.

(h) Programming time. If a particular request requires a programmer to enter data in order to execute an existing program or to create a new program so that requested information may be accessed, the governmental body may charge for the programmer's time. The average hourly salary of a programmer for the State of Texas is currently $26 an hour, including fringe benefits, which is the suggested charge to be used in these rules. Any charge for programming time should be prorated. Only programming services should be charged at this hourly rate. Any personnel time spent in performing services other than programming should be charged at the rate specified for personnel as described in subsection (c)(1) of this section.

(i) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information may be added to the total charge for public information.

(j) Postal and shipping charges. Governmental bodies may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

(k) Fax charge. The suggested charge for a fax transmitted locally is $. 10 per page. The suggested charge for long distance transmission is $ .50 per page for a fax sent within the sender's area code, and $1.00 per page for a fax transmitted to a different area code.

(l) Sales tax. Sales tax should not be added on charges for public information.

(m) The Commission shall reevaluate and update annually the charges recommended in this section.

§111.65. Access to Information Where Copies Are Not Requested.

(a) Access to information in standard-size form. A governmental body should not charge for making available for inspection information maintained in standard-size form. Access charges are permitted only where the governmental body is asked to provide copies of information that is not readily available or that is for more than 50 pages of readily available information in standard-size form.

(b) Access to information in other than standard-size form. In response to requests for access, for purposes of inspection only, to information that is maintained in other than standard-size form, a governmental body may charge the requesting party the cost of preparing and making available such information, unless the information is readily available. Preparation might involve retrieval of information from a database, and deletion of confidential information. In such a case, a body may recover the cost of personnel as set forth in §111.63(c)(1) of this title (relating to Suggested Charges for Providing Copies of Public Information).

§111.66. Format for Copies of Public Information. To the extent possible governmental bodies should attempt to accommodate a requesting party by providing information in the format requested. If a requesting party asks that information be provided on a diskette, and the requested information is electronically stored, the governmental body should provide the information on diskette. The extent to which a requestor can be accommodated will depend largely on the technological capability of the body to which the request is made. A governmental body is not required to acquire software or programming capabilities that it does not already possess to accommodate a particular kind of request. However, a governmental body should take into account in its data processing planning the public's interest in obtaining access to information and the ways in which such access can be facilitated through acquisition of improved technology.

§111.67. Estimates and Waivers of Public Information Charges.

(a) A party requesting copies of public information will not always be aware of the amount of time and cost that may be involved in complying with a particular request. Where a particular request will involve considerable time and resources to process, governmental bodies are urged to advise the requesting party of what may be involved and to provide an estimate of date of completion and the charges that may result. All efforts should be made to process requests as efficiently as possible so that requested information will be provided at the lowest possible charge. When a body charges for public information, full disclosure should be made to the requesting party as to how the charges were calculated.

(b) A governmental body shall furnish public records without charge or at a reduced charge if the governmental body determines that waiver or reduction of the fees is in the public interest.

(c) A deposit may be required in the amount of the estimated charges if such charges exceed $100.

§111.69. The General Services Commission Charge Schedule. The following is a summary of the charges for copies of public information that have been adopted by the Commission for internal use. These are also the suggested charges set forth in these rules.

	Service Rendered	Charge
(1)	Standard-size paper copy	$ .10 per page
(2)	Nonstandard-size copy	
	(A) Diskette	$ 1.00 each
	(B) Magnetic tape	$10.00 each
	(C) VHS video cassette	$ 2.50 each
	(D) Audio cassette	$ 1.00 each
	(E) Paper copy	$ .50 each
	(F) Other	Actual cost
(3)	Personnel charge	$15.00 per hour
(4)	Overhead charge	20% of personnel charge
(5)	Microfiche or microfilm charge	
	(A) Paper copy	$.10 per page
	(B) Fiche or film copy	Actual cost
(6)	Remote document retrieval charge	Actual cost
(7)	Computer resource charge	
	(A) Mainframe	$17.50 per minute
	(B) Midsize	$ 3.00 per minute
	(C) Client/Server	$ 1.00 per minute
	(D) PC or LAN	$ .50 per minute
(8)	Programming time charge	$26.00 per hour
(9)	Miscellaneous supplies	Actual cost
(10)	Postage and shipping charge	Actual cost
(11)	Fax charge	
	(A) local	$ .10 per page
	(B) long distance, same area code	$ .50 per page
	(C) long distance, different area code	$ 1.00 per page
(12)	Other costs	Actual cost

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 April 1, 1994.

TRD-9438471 Judith M. Porras
General Counsel
General Services Commission

Effective date· April 22, 1994

Proposal publication date: February 1, 1994

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

TITLE 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 184. Work Force Development Incentive Program

• **10 TAC §§184.101-184.104**

The Texas Department of Commerce adopts the repeal of §§184.101-184.104, concerning Work Force Development Incentive Program, without changes to the proposed text as published in the March 1, 1994, of the *Texas Register* (19 TexReg 1429). The repeal is necessary, because the Texas Department of Commerce no longer has statutory authority to administer the Program.

No comments were received in response to the proposed repeal of §§184. 101-184.104.

The repeals are adopted under the authority of §481.021(a)(1) and §481. 103(23) of the Texas Government Code, which specifically authorize the Texas Department of Commerce to promulgate rules, and the Administrative Procedure Act, Chapter 2002, Subchapter B, of the Texas Government Code, which prescribes the standards for agency rulemakings.

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 April 1, 1994.

TRD-9438485 Deborah C Kastrin
Acting Executive Director
Texas Department of Commerce

Effective date: April 22, 1994

Proposal publication date: March 1, 1994

For further information, please call: (512) 320-9401

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 461. General Rulings

• 22 TAC §461.6

The Texas State Board of Examiners of Psychologists adopts an amendment to §461.6, without changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 858).

The amendment is necessary to ensure that all individuals certified or licensed by the Board, as well as all applicants, are responsible for keeping their professional files current at all times.

The amendment will ensure that information in an individual's file is up to date so that the information available to certificands, licensees and the general public is always correct and current.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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-9438413 Rebecca E Forkner
Executive Director/Investigation, Compliance and Enforcement Division Manager
Texas State Board of Examiners of Psychologists

Effective date: April 20, 1994

Proposal publication date. February 8, 1994

For further information, please call. (512) 835-2036

♦ ♦ ♦

Chapter 463. Applications

• 22 TAC §463.5

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.5, without changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 859).

The amendment is necessary to more fully define the Board's requirements regarding applicants with complaints filed against them and to include a stipulation on the number of hours for practicum internship or experience in psychology and the supportive documentation of said hours.

The amendment will ensure that consumers receive quality psychological services by guaranteeing proof of any applicant's internship or experience in psychology and to ensure that complaints are brought to a final determination before an applicant is certified or licensed in order to protect the general public from harm and to ensure they are receiving psychological services from qualified individuals.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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-9438414 Rebecca E. Forkner
Executive Director/Investigation, Compliance and Enforcement Division Manager
Texas State Board of Examiners of Psychologists

Effective date. April 20, 1994

Proposal publication date: February 8, 1994

For further information, please call: (512) 835-2036

♦ ♦ ♦

• 22 TAC §463.30

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.30, without changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 859).

The amendment is necessary to include applicants for a provisional license/certificate in the Board's requirements for passing the Jurisprudence Examination.

The amendment will ensure that consumers receive quality psychological services, to ensure that applicants for a provisional license/certificate know the laws, ethics, rules and regulations governing the profession in the State of Texas.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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-9438415 Rebecca E. Forkner
Executive Director/Investigation, Compliance and Enforcement Division Manager
Texas State Board of Examiners of Psychologists

Effective date: April 20, 1994

Proposal publication date: February 8, 1994

For further information, please call: (512) 835-2036

♦ ♦ ♦

• 22 TAC §463.31

The Texas State Board of Examiners of Psychologists adopts new §463.31, without changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 860).

The new rule is necessary to conform to law enacted by the 73rd Legislature.

The new rule will ensure the public will be able to receive psychological services from a person licensed in another jurisdiction while he/she is applying in Texas and can, therefore, receive services from an experienced professional.

No comments were received regarding adoption of the rule.

The new rule is adopted under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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-9438416 Rebecca E. Forkner
Executive Director/Investigation, Compliance and Enforcement Division Manager
Texas State Board of Examiners of Psychologists

Effective date: April 20, 1994

Proposal publication date. February 8, 1994

For further information, please call: (512) 835-2036

♦ ♦ ♦

Chapter 467. Announcements

• 22 TAC §467.1

The Texas State Board of Examiners of Psychologists adopts an amendment to §467.1, without changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 868).

The amendment is necessary to bring the rules in line with the current requirements of the Board by allowing only licensed psychologists and local professional societies whose membership is open to all licensed psychologists and who have obtained approval by the Board to advertise in the yellow pages under the heading of psychologists.

The amendment will ensure that it will be easier for the general public to have access to psychological services by qualified professionals in the State of Texas.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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-9438417 Rebecca E Forkner
Executive
Director/Investigation, Compliance and Enforcement Division Manager
Texas State Board of Examiners of Psychologists

Effective date: April 20, 1994

Proposal publication date: February 8, 1994

For further information, please call: (512) 835-2036

Part XXXII. State Committee of Examiners for Speech-Language Pathology and Audiology

Chapter 741. Speech-Language Pathologists and Audiologists

Subchapter A. Introduction

• 22 TAC §741. 1, §741.2

The State Board of Examiners for Speech-Language Pathology and Audiology (board) adopts the repeal of existing §§741.1, 741.2, 741. 11-741.27, 741.41, 741.61-741.64, 741.81-741.84, 741.101-741.103, 741.121-741. 123, 741.141-741.145, 741.161-741.163, 741.181, 741.182, 741.191-741.199, 741. 208-741.210, and 741.301 and adopts new §§741.1, 741.2, 741.11-741.26, 741. 31, 741.32, 741.41, 741.61-741.66, 741.81-741.87, 741.91, 741.101-741.103, 741. 121-741.123, 741.141-741.143, 741.161-741.166, 741.181, 741.182, 741.191-741. 199, and 741.301-741.303. Sections 741.2, 741.20, 741.25, 741.26, 741.31, 741. 32, 741.41, 741.61, 741.62, 741.64-741.66, 741.81, 741.82, 741.84-741.87, 741. 103, 741.123, 741.142, 741.162-741.165, 741.181, and 741.192-741.198 are adopted with changes to the proposed text as published in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8304-8336). Sections 741.1, 741.11-19, 741.21-741.24, 741.63, 741.83, 741.91, 741.101, 741.102, 741.121, 741 122, 741.141, 741.143, 741.161, 741.166, 741.182, 741.191, 741.199, and 741.301-741.303 are adopted without changes and will not be republished

These sections define terms commonly used in the professions; define the duties and powers of the board; define open meetings and open records procedures; define how one may petition for adoption of a rule; define communication and hearing screenings; establish a code of ethics; set out the requirements for licensure of speech-language pathologists, audiologists, interns and assistants; set out the requirements for dual licensure; set out the requirements for a provisional license; set out the requirements for a temporary certificate of registration, set out the requirements for a registration to fit and dispense hearing instruments; establish the application procedures, issuance of license and registration; establish the renewal process, including continuing education, inactive status, late renewal and renewal of licensee on military duty; set out applicable fees and processing procedures; establish the basis and procedures for denial, probation, suspension, or revocation of licensure or registration; establish complaint procedures; establish licensing or registration procedures of individuals with criminal backgrounds, establish procedures for formal hearings; establish procedures for surrender of a license; establish procedures for informal disposition or proceedings; establish procedures for default orders; and provide for publications and consumer information.

The following comments were received concerning the proposed sections

COMMENT: Concerning §741.2, a commenter stated that the use of the term "hearing aid/hearing instrument", is too lengthy and redundant. The commenter requested that "hearing instrument" be used.

RESPONSE: The board agreed and has made the change throughout the sections.

COMMENT: Concerning §741.25(a), the Comptroller of Public Accounts commented that this language is different than the language in Texas Civil Statutes, Article 4512j, (the "Act") concerning reimbursement for expenses incurred for action of board business. Also, concerning §741.25(b), the commenter questioned the statement that "state vouchers which have been approved by the executive secretary" because the executive secretary's name is not listed on the signature cards in their office.

RESPONSE: Board members have always been reimbursed for travel expenses at the same rate as that of state employees under §4(e) of the Act but, to avoid any misunderstanding, the board deleted the questionable language in subsection (a). Concerning who approves the state vouchers in subsection (b), the board was administratively created within the Texas Department of Health (department) and all state vouchers are transacted through the department's Fiscal Division. The reference to "approved by the executive secretary" has been deleted to avoid any misunderstanding.

COMMENT. Concerning §741.31(d) and §741 32(e), the Board of Nurse Examiners, the Texas Nurses Association, the Texas Association of School Nurses, the department Bureau of Women and Children, and the Texas Department of Mental Health and Mental Retardation commented that the requirement that individuals not licensed under the Act be certified by a licensed speech-language pathology instructor in a department communication or hearing screening program if that person wished to screen for communication or hearing problems should be deleted because it appears it was beyond the board's statutory authority and that the department would regulate the practice of nursing Also the department's Bureau of Women and Children expressed concern that it had insufficient resources to meet the increased number of individuals trained by the department.

RESPONSE: The Act requires that the board define speech, language, communication and hearing screenings but not to stipulate who may screen or instruct. If speech, language, communication or hearing screenings are within the scope of practice of a professional, that individual may screen The board has, therefore, deleted subsections §741.31(d) and §741.32(e).

COMMENT: Concerning §741 32(c) and (d), a commenter stated that tympanometry and evoked responses are not hearing screenings and should only be administered by individuals who have been specifically trained by licensed audiologists. The department's Bureau of Women and Children commented that the department was willing to develop protocol for tympanometry and evoked response screenings for lay people but asked that the board be responsible for licensing the trainees.

RESPONSE: Because the board believed that further study was needed, subsections (c) and (d) have been deleted. The board agreed that it is responsible for licensing persons who are not exempt under the provision exempting certain persons doing screening.

COMMENT: Concerning §741.61(8) and §741.81(8), a commenter asked if language could be included to allow an individual to qualify for licensure if he or she graduated prior to January 1, 1993, and completed only 300 clock hours of clinical experience. Three hundred clock hours of clinical experience was the board's standard until November 10, 1993, but the standard of the professional

association for speech-language pathology and audiology changed to 375 hours on January 1, 1993.

RESPONSE: The Act allows the board to set the number of hours of clinical experience required. The board does not believe an applicant should be denied a license because the applicant met the requirements that were in effect at the time the applicant graduated and has added language to allow a 300 hours practicum before November 10, 1993, and require a 375 hour practicum after that date.

COMMENT: Concerning §741.61(8) and §741.81(8), a commenter asked if the requirement that a supervisor complete the professional experience and pass the examination could be deleted. It should be sufficient to require that the supervisor hold a valid license and possess a master's degree.

RESPONSE: The board agreed and made the change.

COMMENT: Concerning §741.61(8) and §741.81(8), a commenter asked the board to include language that would allow an individual who completed the clinical experience at an out-of-state university to be supervised by an individual who held a valid license in that state.

RESPONSE: The board stated this was an oversight and added a paragraph (10) in each section to address this issue.

COMMENT: Concerning §741.62 and §741.82, a commenter requested that an individual who had applied for an intern registration before the effective date of the amended Act (September 1, 1993) be evaluated for full licensure under the qualifications that were in effect at the time the individual first applied.

RESPONSE: The response received from legal counsel stated that the board may adopt such a rule. A person is considered an "applicant" under §10(b) and (a) of the Act at the time the person applies for approval of the internship. The board added a new subsection (c) to allow the individual's licensure qualifications to be evaluated under the requirements that were in effect at the time of registration.

COMMENT: Concerning proposed §741.62(d) and proposed §741.81(d), a commenter stated that a committee of the board should make the decision to extend or revise an internship.

RESPONSE: The board agreed and made the change.

COMMENT: Concerning proposed §741.62(f) and proposed §741.82(f), a commenter requested that the requirement for a supervisor to complete the professional experience and pass the examination be deleted. It should be sufficient to require that the supervisor holds a valid license and possess a master's degree.

RESPONSE: The board agreed and deleted that requirement.

COMMENT: Concerning §741.65(a) and §741.85(a), a commenter asked if the new qualifications for the assistant license could be deferred until September 1994 because some students were in the process of completing the number of semester hours currently in effect.

RESPONSE: The board agreed and added language to allow applicants who applied for the license before September 1, 1994, to meet the requirements currently in effect.

COMMENT: Concerning §741.103(a)(7), (e)(6), and (f)(6), a commenter asked if the letters of reference were necessary to evaluate credentials for licensure.

RESPONSE: The board agreed the letters were not used to evaluate the credentials for licensure but that a list of individuals who could attest to the applicant's skills should still be required. The board deleted the requirement that letters of reference be mailed.

COMMENT: Concerning §741.162(c), a commenter asked that licensees be required to submit a notarized statement when renewing the license that asked whether he or she complied with the Act and board rules and if he or she had been convicted of a felony or misdemeanor, entered a plea of nolo contendere to, guilty to, or received deferred adjudication in the past 12 months.

RESPONSE: The board agreed and added the language.

COMMENT: Concerning §741.163(4)(A)-(L), a commenter stated that the number of continuing education hours required for 12 months should be 10, not 9.5; the number of hours a dually licensed individual must submit is not defined; and, since the initial license may be issued for up to 15 months, the number of hours the licensee who renews a license issued for more than 12 months is not defined.

RESPONSE: The board stated that the number of hours in the proposed rules was incorrect due to an error in computing and revised this section to reflect the correct amounts. The board agreed that the number of hours a dually licensed individual must submit was not defined and added language to correct this omission. The board stated it was an oversight that the number of hours to renew a license issued for more than 12 months was not defined and added language to address this issue.

COMMENT: Concerning §741.163(8) and proposed 741 165(b)(2)(A), a commenter stated that this language conflicts with the language in paragraph (4) of this section.

RESPONSE. The board agreed and deleted the language in §741.163(8) and renumbered the following paragraphs accordingly. The board also revised the language in proposed §741.165(b)(2)(A) for the same reason

COMMENT: Concerning §741.164(f), a commenter stated that hours accrued under §741.163(5) should be allowed.

RESPONSE. The board agreed and added language to that effect.

COMMENT: Concerning §741.165, a commenter stated that language should be added to inform everyone that a licensee who's 60-day grace period had expired may not practice or represent him or herself as a licensee.

RESPONSE: The board agreed and added language as new subsection (b) to address this issue and renumbered the following subsections accordingly.

COMMENT: Concerning §741.181(1)(K), a commenter stated that the number of renewal fees required should be three instead of two.

RESPONSE: The board agreed and made the change.

COMMENT: Concerning §741.193, a commenter asked that language be included relating to monitoring of a licensee.

RESPONSE: The board agreed and added the language in subsections (n)-(q).

In addition to the changes described in the comments/response section, the board made a number of miscellaneous editorial clarifications resulting from board staff review of the proposed rules.

Comments were received from the Comptroller of Public Accounts, the Board of Nurse Examiners, the Texas Nurses Association, the Texas Association of School Nurses, the Texas Department of Health, and the Texas Department of Mental Health and Mental Retardation.

The commenters were neither for or against the sections in their entirety; however, they had questions and offered suggestions regarding changes.

The repeal and new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with the Act and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438053 Gene R Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

• 22 TAC §741.1, §741.2

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with the Act and as necessary to administer and enforce the Act.

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

Act–The law relating to the licensing and regulation of speech-language pathologists and audiologists, Texas Civil Statutes, Article 4512j.

Assistant in audiology–An individual who works under the direct on-site supervision and direction of a licensed audiologist and is licensed under §741.85 of this title (relating to Requirements for an Assistant in Audiology License).

Assistant in speech-language pathology–An individual who works under the direct, on-site supervision and direction of a licensed speech-language pathologist and is licensed under §741.65 of this title (relating to Requirements for an Assistant in Speech-Language Pathology License).

Audiologist–An individual who meets the requirements of Subchapter H of this chapter (relating to Application Procedures) and holds a valid license to practice audiology.

Board–The State Board of Examiners for Speech-Language Pathology and Audiology.

Department–The Texas Department of Health.

Ear specialist–A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the patient, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, and otorhinolaryngologists.

Extended absence–More than two consecutive working days for any single continuing education experience.

Health care professional–An individual required to be licensed or registered by this Act or any person licensed, certified, or registered by the state in a health-related profession.

Hearing instrument–A device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.

Intern in audiology–An individual completing the supervised professional experience as required by §741.81(12) of this title (relating to Requirements for a Audiology License) and licensed under §741. 82 of this title (relating to Requirements for an Intern in Audiology License).

Intern in speech-language pathology–An individual completing the supervised professional experience as required by §741.61(12) of this title (relating to Requirements for a Speech-Language Pathology License) and licensed under §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License).

License–The document required by the Act which provides verification that an individual has met the requirements for qualification and practice as set forth in the Act and as interpreted within this chapter.

Month–A calendar month.

Person–An individual, a corporation, partnership, or other legal entity.

Practice of audiology–The application of nonmedical principles, methods and procedures for the measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction related to disorders of the auditory or vestibular systems for the purpose of rendering or offering to render services or for participating in the planning, directing or conducting of programs which are designed to modify communicative disorders involving speech, language, auditory or vestibular function, or other aberrant behavior relating to hearing loss. An audiologist may engage in any tasks, procedures, acts, or practices that are necessary for the evaluation of hearing, for training in the use of amplification including hearing instrument, for the making of earmolds for hearing instrument, for the fitting, dispensing, and sale of hearing instrument or for the management of cerumen. An audiologist may participate in consultation regarding noise control and hearing conservation, may provide evaluations of environment or equipment including calibration of equipment used in testing auditory functioning and hearing conservation, and may perform the basic speech and language screening tests and procedures consistent with his or her training.

Practice of speech-language pathology–The application of nonmedical principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes, for the purpose of rendering or offering to render services or for participating in the planning, directing or conducting of programs which are designed to modify communicative disorders and conditions in individuals or groups of individuals. Speech-language pathologists may perform basic audiometric screening tests and aural rehabilitation or habilitation.

Provisional license–A nonrenewable license issued to an applicant who meets the requirements of §741.64 of this title (relating to Requirements for a Provisional Speech-Language Pathology License) or §741.84 of this title (relating to Requirements for a Provisional Audiology License).

Registrant–An individual issued a temporary certificate of registration or a registration to fit and dispense hearing instruments.

Registration to fit and dispense hearing instruments–A registration issued to an audiologist or intern in audiology licensed under this Act who completed a form received from the board office that declared his or her intent to fit and dispense hearing instruments as required by §741.88 of this title (relating to Requirements for Registration of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments).

Sale or purchase–A lease or rental of a hearing instrument to a member of the consuming public who is a user or prospective user of a hearing aid/hearing instrument.

Speech-language pathologist–An individual who meets the requirements of Subchapter E of this chapter (relating to Requirements for Licensure and Registration of Speech-Language Pathologists) and holds a valid license to practice speech-language pathology.

Student in audiology–An individual pursuing a course of study leading to a degree with an emphasis in audiology and who works within the educational institution or one of its cooperating programs under the direct, on-site supervision and direction of an audiologist licensed under the Act.

Student in speech-language pathology–An individual pursuing a course of study leading to a degree with an emphasis in speech-language pathology and who works within the educational institution or one of its cooperating programs under the direct, on-site supervision and direction of a speech-language pathologist licensed under the Act.

Temporary certificate of registration–A nonrenewable document issued to an individual who meets all requirements for licensure as required by §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) or §741.81 of this title (relating to Requirements for an Audiology License) and is in the processing of taking the examination as required by §741.122 of this title (relating to Administration).

Used hearing instrument–A hearing instrument that has been worn for any period of time by a user. However, a hearing instrument shall not be considered "used" merely because it has been worn by a prospective user as a part of a bona fide hearing instrument evaluation conducted to determine whether to select that particular hearing instruments for that prospective user, if such evaluation has been conducted in the presence of the dispenser or a hearing instruments health professional selected by the dispenser to assist the buyer in making such a determination.

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 23, 1994.

TRD-9438052

Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter B. The Committee

• 22 TAC §§741.11-741.27

The repeals are adopted under Texas Civil Statutes, Article 4512j, §5, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438051 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date. April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter B. The Board

• 22 TAC §§741.11-741.26

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.20. Official Records.

(a) All official records of the board, except files containing information considered confidential under the provisions of the law relating to open records, Government Code, Chapter 552, shall be open for inspection during regular office hours.

(b) An individual who wishes to examine official records shall be required to show proof of identification and sign statements listing the records requested and to be examined.

(c) Official records shall not be taken from board offices; however, individuals may obtain photocopies of files upon written request and by paying, in advance, the costs as set by the Texas Department of Health. Payment shall be made prior to the release of the records and may be made by personal check.

§741.25. Reimbursement for Expenses.

(a) A board member is entitled to reimbursement for expenses incurred for transaction of board business. Reimbursement shall be governed by applicable law.

(b) Payment to members of per diem and transportation expenses which are necessary and appropriate shall be transacted through official state vouchers.

(c) At the closest regular meeting to officer elections, the board will review annual board expenditures and proposed budgets.

§741.26. Petition for Adoption of a Rule.

(a) Purpose. The purpose of this section is to delineate the board's procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing; shall state the petitioner's name, address, and telephone number; and shall contain the following:

(A) a brief explanation of and justification for the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is to be promulgated; and

(D) the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The petition shall be mailed or delivered to the executive secretary, State Board of Examiners for Speech-Language Pathology and Audiology, 1100 West 49th Street, Austin, Texas 78756-3183.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in paragraph (4) of this subsection, the executive secretary shall submit a completed petition to the board for its consideration.

(2) Within 60 days after receipt of the completed petition by the executive secretary, the board shall either:

(A) deny the petition;

(B) initiate rulemaking procedures in accordance with the Administrative Procedure Act, Government Code, Chapter 2001; or

(C) deny parts of the petition and/or institute rulemaking procedures on parts of the petition.

(3) If the board denies the petition, the executive secretary shall give the petitioner written notice of the board's denial, including the reason(s) for the denial.

(4) If the board initiates rulemaking procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section. The board may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438050 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter C. Communication and Hearing Screenings

• 22 TAC §741.31, §741.32

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.31. Communication Screening.

(a) Communication screening should include cursory assessments of language and speech to determine if they may be deviant or not age-appropriate. Formal

instruments and informal observations may be used for the assessment. If the screening is not passed, detailed evaluation is indicated.

(1) The aspects of language to be screened may include phonology, morphology, syntax, and semantics.

(2) The aspects of speech to be screened may include articulation or speech sound production, voice (including phonation and resonation), and fluency.

(b) Whenever possible, language and speech screening should be conducted in the client's native language.

§741.32. Hearing Screening.

(a) Hearing screening is defined as the pass/fail result of a pure-tone hearing sweep check administered with a pure-tone audiometer at intensity levels and frequencies appropriate for screening. This definition expires July 31, 1994.

(b) Pure-tone hearing screening is an automated or manually administered individual pure-tone air-conduction screening with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication. Hearing screening will be conducted as follows: 20dB HL (re ANSI-1969) at the frequencies of 500, 1,000, 2,000, and 4,000 Hz. This definition will become operational August 1, 1994.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438049 Gene R. Powers, PhD
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter C. The Practice of Speech-Language Pathology and Audiology

• 22 TAC §741.41

The repeal is adopted under Texas Civil Statutes, Article 4512j, §5, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438048 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter D. The Standards of Professional and Ethical Conduct

• 22 TAC §741.41

The new section is adopted under Texas Civil Statutes, Article 4512j, §5, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.41. Code of Ethics.

(a) The purpose of this subchapter is to establish the standards of professional and ethical conduct required of a speech-language pathologist, an audiologist, an intern and an assistant licensed or registered under Texas Civil Statutes, Article 4512j (Act), and constitutes a code of ethics as authorized by the Act, §17(a)(3). It is the responsibility of all speech-language pathologists, audiologists, interns, and assistants licensed or registered under the Act to uphold the highest standards of integrity and ethical principles. An individual licensed or registered under the Act:

(1) shall honor his or her professional responsibility to each client.

(A) The licensee or registrant shall:

(i) fully inform clients of the nature and possible effects of the services rendered by the individual licensed or registered under the Act;

(ii) fully inform clients, in writing, of the results of an evaluation within 60 days;

(iii) seek appropriate medical consultation whenever indicated;

(iv) fully inform subjects participating in research or teaching activities of the nature and possible effects of these activities;

(v) maintain accurate records of professional services rendered. Personal client records shall be made available to a client or the parent or guardian of a client upon request; and

(vi) seek to identify competent, dependable referral sources for clients.

(B) The licensee or registrant shall not:

(i) engage in the medical treatment of speech-language and hearing disorders;

(ii) guarantee, directly or by implication, the results of any therapeutic procedures. A reasonable statement of prognosis may be made, but caution must be exercised not to mislead clients to expect results that cannot be predicted from reliable evidence;

(iii) delegate any service requiring professional competence of a licensee or registrant to anyone not licensed or registered for the performance of that service;

(iv) provide services to a client if the services cannot be provided with reasonable skill or safety to the client;

(v) provide any services which create an unreasonable risk that the client may be mentally or physically harmed;

(vi) engage in sexual contact, including intercourse, kissing or fondling, with a client or an assistant, intern or student supervised by the licensee or registrant; and

(vii) use alcohol or drugs when the use adversely affects or could adversely affect the licensee's or registrant's provision of professional services.

(2) when making statements to clients and to the public shall provide accurate information about the nature and management of communicative disorders and about the profession and the services rendered by the licensee or registrant;

(A) A licensee or registrant shall not:

(i) misrepresent his or her training or competence;

(ii) present false, misleading, deceptive, or not readily verifiable, information in any advertisement, announcement or presentation relating to the services of the licensee or registrant or any person supervised or employed by the licensee or registrant. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, com-

mercial products, billing statements. False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

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

(II) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(III) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(IV) contains a testimonial;

(V) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(VI) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(VII) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;

(VIII) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

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

(iii) use professional or commercial affiliations in any way that would mislead clients or the public; and

(iv) present false, misleading or deceptive information in connection with an application by the licensee or registrant for employment to provide speech-language pathology or audiology services.

(B) A licensee or registrant shall:

(i) bill a client or a third party only for the services actually rendered in the manner agreed to by the licensee or registrant and the client or the client's authorized representative.

(I) On the written request of a client, a client's guardian, or a client's parent, if the client is a minor, a licensee or registrant shall provide, in plain language, a written explanation of the charges for speech-language pathology and/or audiology services previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(II) A licensee or registrant may not persistently or flagrantly overcharge or overtreat a client; and

(ii) cooperate with the board by furnishing required documents or papers and by responding to a request for information from or a subpoena issued by the board or the board's authorized representative.

(3) shall maintain objectivity in all matters concerning the welfare of clients;

(A) A licensee or registrant shall not:

(i) participate in activities that constitute a conflict of professional interest. Activities that constitute a conflict of interest may include the following:

(I) the exclusive recommendation of a product which the individual owns or has produced; and

(II) lack of accuracy in the performance description of a product a licensee has developed; or

(III) the restriction of freedom of choice for sources of services or products.

(ii) use his or her professional relationship with a client, intern, assistant or student to promote for personal gain or profit any item, procedure, or service unless the licensee or registrant has disclosed to the client, intern, assistant or student the nature of the licensee's or registrant's personal gain or profit; and

(B) A licensee or registrant shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services being provided;

(4) shall supervise an intern or assistant in accordance with this chapter;

(5) shall inform the board of violations of this code of ethics. A licensee or registrant:

(A) shall comply with any order relating to the licensee or registrant which is issued by the board;

(B) shall not aid or abet the practice of an unlicensed person when that person is required to have a license or registration under the Act;

(C) having cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person shall report in accordance with the Family Code, §34.12; and

(D) shall not interfere with a board investigation or disciplinary proceeding by willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person;

(6) who supervise assistants, interns, students or other supportive personnel is responsible for the services to the client that may be performed by these individuals. The supervising professional must ensure that all services provided are in compliance with this chapter;

(7) shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash on in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage for or from any health care professional. The provisions of the Health and Safety Code, §161.091, et. seq., relating to the prohibition of illegal remuneration apply to licensees;

(8) who provides direct patient care must comply with Health and Safety Code, Chapter 85, Subchapter I, relating to the prevention of the transmission of HIV or Hepatitis B virus by infected health care workers;

(9) shall be subject to disciplinary action by the board if the licensee or 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 under the Crime Victims Compensation Act, Texas Civil Statutes, Article 8309-1; and

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

(A) on a sign prominently displayed in the primary place of business of each licensee; and

(B) on a written document such as a written contract, a bill for service, or office information brochure provided by a licensee or registrant to a client or third party.

(b) In addition, an audiologist or intern in audiology registered to fit and dispense hearing instrument under this Act must:

(1) adhere to federal Food and Drug Administration regulations in accordance with 21 Code of Federal Regulations, §801.420 and §801.421;

(2) provide clients with a written contract for services in this state that contains the name, mailing address and telephone number of the board;

(3) follow the guidelines as set out in §741.88 of this title (relating to Requirements for Registration of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments);

(4) meet the most recent American National Standards Institute "ears covered" octave band criteria for permissible ambient noise levels during audiometric testing; and

(5) receive a written statement before selling a hearing instrument that is signed by a licensed physician who specializes in diseases of the ear and states that the client's hearing loss has been medically evaluated during the preceding six-month period and that the client may be a candidate for a hearing instrument. If the client is age 18 or over, the registered audiologist or intern in audiology may inform the client that the medical evaluation requirement may be waived as long as the registered audiologist or intern in audiology:

(A) informs the client that the exercise of the waiver is not in the client's best health interest;

(B) does not encourage the client to waive the medical evaluation; and

(C) gives the client an opportunity to sign this statement: "I have been advised by (the name of the individual dispensing the hearing instrument) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing instrument. I do not wish a medical evaluation before purchasing a hearing aid/hearing instrument".

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438047 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter D. Academic Requirements for Examination and Licensure for Speech-Language Pathologists

• 22 TAC §§741.61-741.64

The repeals are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438045 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter E. Requirements for Licensure and Registration of Speech-Language Pathologists

• 22 TAC §§741.61-741.67

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.61. Requirements for a Speech-Language Pathology License. The purpose of this section is to delineate the academic, practicum, supervised professional experience and examination required for licensure of a speech-language pathologist.

(1) An applicant must possess a minimum of a master's degree with a major in not less than one of the areas of communicative sciences or disorders from a program accredited by the American-Speech-Language-Hearing Association in an accredited or approved college or university.

(2) An applicant must have earned at least 75 semester credit hours that reflect a well integrated program of study.

(3) At least 27 of the 75 semester credit hours must be in basic science coursework which includes at least:

(A) six semester credit hours in the biological/physical sciences and mathematics;

(B) six semester credit hours in the behavioral and/or social sciences; and

(C) 15 semester credit hours in the basic human communication processes, to include coursework in each of the following three areas of speech, language, and hearing:

(i) the anatomic and physiologic bases;

(ii) the physical and psychophysical bases; and

(iii) the linguistic and psycholinguistic aspects.

(4) At least 36 of the 75 semester credit hours must be in professional course work acceptable toward a graduate degree with at least 30 semester credit hours awarded graduate credit.

(5) At least 24 semester credit hours acceptable toward a graduate degree must be earned in the area of speech-language pathology as follows:

(A) six graduate semester credit hours in speech disorders;

(B) six graduate semester credit hours in language disorders; and

(C) other graduate semester credit hours in courses that include information on the understanding, evaluation, treatment and prevention of communication disorders across all age spans in a variety of disorders.

(6) Six semester credit hours must be earned in the area of audiology as follows:

(A) three semester credit hours in hearing disorders and hearing evaluation; and

(B) three semester credit hours in habilitative or rehabilitative procedures with individuals who have hearing impairment.

(7) A maximum of six academic semester credit hours associated with clinical practicum and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraphs (5) and (6) of this section.

(8) An applicant who earned a master's degree prior to November 10, 1993, must have completed a minimum of 300 clock hours of clinical experience with individuals who present a variety of communication disorders under supervision of a individual who holds a valid Texas license in speech-language pathology and who possesses a minimum of a master's degree. This experience must have been obtained within an educational institution or in one of its cooperating programs. Clinical experience may be referred to as clinical practicum.

(9) An applicant who earned a master's degree on or after November 10, 1993, must have completed a minimum of 375 clock hours of clinical experience with individuals who present a variety of communication disorders under supervision of an individual who holds a valid Texas license in speech-language pathology and who possesses a minimum of a master's degree. This experience must have been obtained within an educational institution or in one of its cooperating programs. Clinical experience may be referred to as clinical practicum.

(A) At least 25 clock hours of clinical observation must be completed prior to beginning the clinical practicum that concerns the evaluation and treatment of children and adults with disorders of speech, language, or hearing.

(B) At least 350 clock hours of supervised clinical practicum that concern the evaluation and treatment of children and adults with disorders of speech, language, and hearing must be completed as follows:

(i) no more than 25 of the clock hours may be obtained from participation in staffing in which evaluation, treatment, and/or recommendations are discussed or formulated, with or without the client present;

(ii) at least 250 clock hours must be completed in speech-language pathology with at least 50 clock hours in each of three types of settings and completed in each of the following:

(I) evaluation of speech disorders in children;

(II) evaluation of speech disorders in adults;

(III) evaluation of language disorders in children;

(IV) evaluation of language disorders in adults;

(V) treatment of speech disorders in children;

(VI) treatment of speech disorders in adults;

(VII) treatment of language disorders in children; and

(VIII) treatment of language disorders in adults.

(C) At least 35 of the 350 clock hours must be in audiology as follows:

(i) at least 15 involved in the evaluation or screening of individuals with hearing disorders; and

(ii) at least 15 involved in habilitation/rehabilitation of individuals who have hearing impairment.

(D) While pursuing this course of study, the applicant shall be designated as a trainee in speech-language pathology.

(E) Supervised clinical practicum earned at foreign universities shall be acceptable if the applicant follows procedures outlined in paragraph (11)(G) of this section.

(10) An applicant who earned the master's degree in another state must meet the requirements of paragraph (8) or (9) of this section except the supervisor must have been licensed in that other state, rather than Texas. However, if the other state did not require licensing, the supervisor must have held the American Speech-Language-Hearing Association certificate of clinical competence in speech-language pathology.

(11) Original transcripts shall be required to process an application for licensure. Certified copies of transcripts shall be considered originals. Transcripts shall be reviewed as follows.

(A) Graduate degrees must have been completed at a college or university which has a program accredited by the American Speech-Language-Hearing Association and holds accreditation or candidacy status from a recognized regional accrediting agency, such as the Southern Association of Colleges and Universities.

(B) The transcript must verify which courses received graduate credit.

(C) Semester credit hours that are acceptable may include upper division hours.

(D) The board shall only accept course work completed with a grade of at least a "C" or for credit.

(E) The board shall consider a quarter hour of academic credit as two-thirds of a semester credit hour.

(F) Academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(G) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours can be verified as meeting the requirements of this paragraph. The applicant must bear all expenses incurred during the procedure.

(12) An applicant must have obtained the equivalent of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in speech-language pathology as required by §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License).

(A) While pursuing this professional employment experience, the applicant shall be designated as an intern in speech-language pathology.

(B) Prior to the beginning of an intern's required, supervised professional

experience, the intern must be licensed as required by §741.62 of this title.

(C) An applicant who completed an internship in another state must meet the requirements of §741.62 of this title except the supervisor must have been licensed in that other state, rather than Texas. However, if the other state did not require licensing, the supervisor must have held the American Speech-Language-Hearing Association certificate of clinical competence in speech-language pathology.

(13) An applicant must pass the examination as referenced by §741.122 of this title (relating to Administration) before a license will be issued.

§741 62. Requirements for an Intern in Speech Language Pathology License.

(a) Effective January 1, 1994, an applicant who has completed the requirements of §741.61(1)-(11) of this title (relating to Requirements for a Speech-Language Pathology License) must be licensed as an intern in order to commence the supervised professional experience.

(b) Effective January 1, 1994, an applicant who has successfully completed all academic and clinical requirements of §741.61(1)-(11) of this title but who has not had the degree officially conferred may be licensed as an intern in order to commerce the supervised professional experience but must submit an original or certified copy of a letter from the program director verifying that the applicant has met all academic coursework, clinical practicum requirements and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred.

(c) An individual who applied for registration as an intern prior to September 1, 1993, may be licensed under the requirements that were in effect at the time of registration.

(d) The intern must complete 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in speech-language pathology. Full-time employment is defined as a minimum of 30 hours per week in direct patient/client contact, consultations, record keeping and administrative duties relevant to a bona fide program of clinical work. Part time equivalent is defined as follows:

(1) 0-15 hours per week–no credit will be given;

(2) 15-19 hours per week for over 72 weeks;

(3) 20-24 hours per week for over 60 weeks; or

(4) 25-29 hours per week for over 48 weeks.

(e) A committee of the board may determine if an intern needs to extend or revise the internship.

(f) This internship must begin within four years after the academic and clinical experience requirements as required by §741.61 of this title have been met and must be completed within a maximum period of 36 consecutive months once initiated. Applicants who do not meet these times frames must request, in writing, and may receive board approval for an extension. A committee of the board will decide on a case-by-case basis and may require that the applicant complete additional coursework, earn continuing professional education hours or pass the examination referenced in §741.122 of this title (relating to Administration).

(g) This work must be done under the supervision of an individual who holds a valid Texas license in speech-language pathology and who possesses a minimum of a master's degree.

(h) Original or certified copy of the transcript(s) are required and will be evaluated under §741.61(9) of this title.

(i) An applicant whose master's degree is received at a college or university approved by the American Speech-Language-Hearing Association Educational Standards Board will receive automatic approval of the course work and clinical experience if the program director verifies that all requirements as outlined in §741.61(1) - (11) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of speech-language pathology with six hours in audiology.

(j) The internship experience should be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(1) 18 on-site observations of direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation;

(2) 18 other monitoring activities which may include correspondence, review of video tapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; and

(3) other options to complete this supervisory process must be requested in writing and receive approval from a committee of the board before commencing the activity.

(k) The internship should involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities.

(l) The supervisor periodically shall conduct a formal evaluation of the applicant's progress in the development of professional skills.

(m) An original or certified copy of the intern plan or an individual work plan signed by the supervisor and applicant must be submitted. The board office must be notified in writing of any change in the supervisory arrangement. If a major change in the plan occur, a revised plan must be submitted immediately.

(n) A supervisor of an intern is responsible for the services to the client that may be performed by the intern. The supervising professional must ensure that all services provided are in compliance with this chapter.

(o) A person who possesses a master's degree with a major in audiology and is pursing an internship in speech-language pathology may apply for an intern license in speech-language pathology if the board has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the department head of the college or university stating that the individual has completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical requirements for a license as an audiologist.

(p) An intern license is issued and expires as described in §741.142 of this title (relating to Issuance of License, and Registration) and may be renewed as described in §741.162 of this title (relating to General).

§741.64. Requirements for a Provisional Speech-Language Pathology License.

(a) The board may grant a provisional license to a person if the following requirements are met:

(1) possesses a license in good standing as a speech-language pathologists in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of Texas Civil Statutes, Article 4512j (Act);

(2) submits evidence of having passed the Educational Testing Service examination as reference in §741.122 of this title (relating to Administration) or a state validated examination required for licensure in speech-language pathology; and

(3) submits a form signed by a person licensed as a speech-language pathologist under this Act who agrees to sponsor the applicant.

(b) The board may excuse an applicant for a provisional license from the requirement of subsection (a)(3) of this section if he or she submits documentation to show that meeting this requirements would constitute a hardship.

(c) Once issued, a provisional license is valid until the date the board approves or denies the provisional license holder's application for a license.

(d) The board shall issue a speech-language pathology license to the provisional license holder if he or she submits the following:

(1) an original or certified copy of transcript(s) and other documentation showing that the provisional license holder met all requirements referenced in §741.61 of this title (relating to Requirements for a Speech-Language Pathology License); and

(2) an original or certified copy of a passing score from the Educational Testing Service as referenced in §741.122 of this title.

(e) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued.

§741.65. Requirements for an Assistant in Speech-Language Pathology License.

(a) An assistant is an individual who provides services and support of clinical programs of speech-language pathology and is supervised by a licensed speech-language pathologist.

(1) An applicant who applies for an assistant in speech-language pathology license prior to September 1, 1994, must meet the following requirements:

(A) a baccalaureate degree as shown on an original transcript filed with the board;

(B) no fewer than 21 semester hours in speech-language pathology and/or audiology, at least nine of which must be in the area for which license is being sought;

(C) the filing of original transcripts which shall be reviewed as in §741.61(11) of this title (relating to Requirements for a Speech-Language Pathology License); and

(D) a supervisory responsibility statement submitted upon application and each subsequent renewal or with a change of supervisor.

(2) An applicant who applies for an assistant in speech-language pathology license on or after September 1, 1994, must meet the following requirements:

(A) a baccalaureate degree with an emphasis in speech-language pathology or audiology;

(B) no fewer than 24 semester hours in speech-language pathology and/or audiology, at least nine of which must be in the area for which license is being sought;

(C) no fewer than 25 hours of clinical observation and 25 hours of clinical practicum completed under supervision of an individual licensed by this board;

(D) the filing of original or certified copy of transcript(s) which shall be reviewed as in §741.61(11) of this title (relating to Requirements for a Speech-Language Pathology License); and

(E) a supervisory responsibility statement submitted upon application and each subsequent renewal or with a change of supervisor.

(b) Although the supervisor may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated. The supervisor must ensure that all services provided are in compliance with this chapter. The assistant may execute specific components of the clinical speech, language, and/or hearing program if the supervisor determines that the assistant has received the training and has the skill to accomplish that task, and the supervisor provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant. The supervisor must keep job descriptions and performance records; these must be current and must be made available to the board within 30 days of the date of the board's request for such records.

(1) Examples of duties which assistants may be assigned include the following:

(A) conducting or participating in speech, language, and/or hearing screening;

(B) conducting valuative or management programs which may include the utilization of published materials for which the associate has received training;

(C) maintaining clinical records of client performance;

(D) preparing clinical materials; and

(E) participating with the professional in research projects, staff development, public relations programs, or similar activities as designated and supervised by the professional.

(2) The assistant should not engage in any of the following activities:

(A) interpreting observations or data into diagnostic statements, clinical management strategies, or procedures;

(B) determining case selection;

(C) presenting written reports of client information to those other than the supervisor without the signature of the supervisor;

(D) referring a client to other professionals or other agencies;

(E) using any title which connotes the competency of a licensed professional, as defined in §2 of the Act; or

(F) practicing as an assistant in speech-language pathology without a valid supervisory responsibility statement on file in the board office.

(3) Any references to the licensee's title shall state clearly that the license status is that of an assistant.

(4) An assistant may not provide speech-language pathology services without an approved supervisor.

(5) Direct-care staff in a residential care or treatment facility who use only the concepts of daily living in their job performance are not required to be licensed as assistants.

(c) Therapy/intervention is:

(1) the systematic, individualized process of minimizing communication disorders, involving the dynamic interaction between the fully licensed speech-language pathologist and client;

(2) designed and executed on the basis of ongoing evaluation of the client's communication needs, skills, and resources; and,

(3) designed and executed only by a fully licensed speech-language pathologist; certain routine and perfunctory aspects of the intervention process, such as carryover activities, may be delegated to a licensed assistant.

(d) Carryover is:

(1) the therapeutically designed transfer of a newly acquired communication ability to contexts and situations outside of the therapy situation; and

(2) designed by a fully licensed speech-language pathologist.

(e) The assistant may conduct carryover activities, language and auditory stimulation, and other activities related to intervention and record keeping as described in these sections and as deemed appropriate by the supervising fully licensed speech-language pathologist.

(f) The assistant may oversee activities of communication helpers in consultation with, and direction of, fully licensed speech-language pathologists.

(g) Direct supervision of speech-language pathology duties assigned to the assistant shall be provided by a licensed speech-language pathologist.

(1) Following on-the-job training, the assistant's initial client contact shall be directly supervised. Thereafter, the minimum supervision requirements for an assistant by the supervisor shall be no less than two hours a week, at least half of which is direct on-site supervision at the location where the assistant is employed. If an alternative arrangement is needed, the supervisor must submit a proposed plan for review by the board or the appropriate committee to determine if the plan is acceptable. Indirect methods of supervision such as audio and/or video tape recording, telephone communication, numerical data, or other means of reporting may be utilized.

(2) Supervisory records shall be maintained by the supervisor which verify regularly scheduled monitoring, assessment, and evaluation of assistant and client performance. Such documentation may be requested by the board.

(h) An assistant will be required to meet continuing education requirements for license renewal as stated in §741.163 of this title (relating to Requirements for Continuing Professional Education).

(i) An assistant may renew a license even though the assistant does not have a supervisor. However, the assistant may not practice until a supervisor is obtained and a new supervisory responsibility statement is approved by the board office. To continue to practice without supervision may result in revocation of the assistant's license.

(j) The licensed supervisor and/or assistant shall ensure that the requirements and duties of an individual such as a communication helper are followed. A communication helper:

(1) is accountable to a fully licensed professional who is ultimately responsible for the communication helper;

(2) may work under direction of an assistant if the assistant is supervised as required by subsection (g) of this section;

(3) may not singularly engage in direct intervention or assessment activities; and

(4) may participate in activities as described and approved by a fully licensed professional such as:

(A) setting up room and equipment for evaluation/ intervention/conference;

(B) clearing room and storing equipment after evaluation/ intervention/conference;

(C) preparing materials for use by an assistant or speech-language pathologist in intervention, evaluation, carryover, etc.;

(D) transporting clients to and from clinical sessions;

(E) assisting with field trips and other communication stimulation situations;

(F) acting as surrogate parent;

(G) participating in daily living activities and care; and

(H) applying language stimulation strategies in daily living activities as directed by assistant and approved by fully licensed speech-language pathologist.

§741.66. Requirements for a Temporary Certificate of Registration in Speech-Language Pathology.

(a) A temporary certificate of registration in speech-language pathology may be applied for by an individual who submits original or certified copy of documentation that all requirements referenced in §741.61 (1)-(12) of this title (relating to Requirements for a Speech-Language Pathology License) have been met but who has not previously applied to the board to take the examination for licensure as required by §741.122 of this title (relating to Administration).

(b) If issued, this certificate entitles an applicant approved for examination to practice speech-language pathology for a period of time ending eight weeks after the offering of the next examination after the date of issue of the certificate.

(c) A temporary certificate of registration is not renewable.

§741.67. Requirements for a Temporary Certificate of Registration in Speech-Language Pathology.

(a) A temporary certificate of registration in speech-language pathology may be applied for by an individual who submits original or certified copy of documentation that all requirements referenced in §741.61(1)-(12) of this title (relating to Requirements for a Speech- Language Pathology License) have been met but who has not previously applied to the board to take the examination for licensure as required by §741.122 of this title (relating to Administration).

(b) If issued, this certificate entitles an applicant approved for examination to practice speech-language pathology for a period of time ending eight weeks after the offering of the next examination after the date of issue of the certificate.

(c) A temporary certificate of registration is not renewable.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438046 Gene R. Powers, PhD
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter E. Academic Requirements for Examination and Licensure for Audiologists

• 22 TAC §§741.81-741.84

The repeals are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438044 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter F. Requirements for Licensure and Registration of Audiologists

• 22 TAC §§741.81-741.88

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.81. Requirements for an Audiology License. The purpose of this subchapter is to delineate the academic, practicum, supervised professional experience and examination required for licensure of an audiologist.

(1) An applicant must possess a minimum of a master's degree with a major in not less than one of the areas of communicative sciences or disorders from a program accredited by the American-Speech-Language-Hearing Association in an accredited or approved college or university.

(2) An applicant must have earned at least 75 semester credit hours that reflect a well integrated program of study.

(3) At least 27 of the 75 semester credit hours must be in basic science coursework which includes at least:

(A) six semester credit hours in the biological/physical sciences and mathematics;

(B) six semester credit hours in the behavioral and/or social sciences; and

(C) 15 semester credit hours in the basic human communication processes, to include coursework in each of the following three areas of speech, language, and hearing:

(i) the anatomic and physiologic bases;

(ii) the physical and psychophysical bases; and

(iii) the linguistic and psycholinguistic aspects.

(4) At least 36 of the 75 semester credit hours must be in professional course work acceptable toward a graduate degree with at least 30 semester credit hours awarded graduate credit.

(5) At least 24 semester credit hours acceptable toward a graduate degree must be earned in the area of audiology as follows:

(A) six graduate semester credit hours in hearing disorders and hearing evaluation;

(B) six graduate semester credit hours in habilitative/rehabilitative procedures with individuals who have hearing impairment; and

(C) other graduate semester credit hours in courses that include information on hearing disorders, hearing evaluations, habilitative/rehabilitive procedures, and preventive methods, including the study of auditory disorders and habilitative/rehabilitative procedures across the life span.

(6) Six semester credit hours must be earned in the area of speech-language pathology as follows:

(A) three semester credit hours in speech disorders; and

(B) three semester credit hours in language disorders.

(7) A maximum of six academic semester credit hours associated with clinical practicum and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraphs (5) and (6) of this section.

(8) An applicant who earned a master's degree prior to November 10, 1993, must have completed a minimum of 300 clock hours of clinical experience with individuals who present a variety of communication disorders under supervision of a individual who holds a valid Texas license in audiology and who possesses a minimum of a master's degree. This experience must have been obtained within an educational institution or in one of its cooperating programs. Clinical experience may be referred to as clinical practicum.

(9) An applicant who earned a master's degree on or after November 10, 1993, must have completed a minimum of 375 clock hours of clinical experience with individuals who present a variety of communication disorders under supervision of an individual who holds a valid Texas license in audiology and who possesses a minimum of a master's degree. This experience must have been obtained within an educational institution or in one of its cooperating programs. Clinical experience may be referred to as clinical practicum.

(A) At least 25 clock hours of clinical observation must be completed prior to beginning the clinical practicum that concerns the evaluation and treatment of children and adults with disorders of speech, language, or hearing.

(B) At least 350 clock hours of supervised clinical practicum that concern the evaluation and treatment of children and adults with disorders of speech, language, and hearing must be completed as follows:

(i) no more than 25 of the clock hours may be obtained from participation in staffing in which evaluation, treatment, and/or recommendations are discussed or formulated, with or without the client present;

(ii) at least 250 clock hours must be completed in audiology as follows:

(I) at least 40 clock hours in evaluation of hearing in children;

(II) at least 40 clock hours in evaluation of hearing in adults;

(III) at least 80 clock hours in selection and use of amplification and assistive devices for children and adults;

(IV) at least 20 clock hours in treatment of hearing disorders in children and adults; and

(iii) At least 35 of the 350 clock hours must be in speech-language pathology as follows:

(I) at least 15 clock hours involved in the evaluation or screening of individuals with speech and language disorders unrelated to hearing impairment and

(II) at least 15 clock hours involved in the treatment of individuals with speech and language disorders unrelated to hearing impairment.

(C) While pursuing this course of study, the applicant shall be designated as a trainee in audiology.

(D) Supervised clinical practicum earned at foreign universities shall be acceptable if the applicant follows procedures outlined in paragraph (9)(G) of this section.

(10) An applicant who earned the master's degree in another state must meet the requirements of paragraph (8) or (9) of this section except the supervisor must have been licensed in that other state, rather than Texas. However, if the other state did not require licensing, the supervisor must have held the American Speech-Language-Hearing Association certificate of clinical competence in audiology.

(11) Original transcripts shall be required to process an application for licensure. Certified copies of transcripts shall be considered originals. Transcripts shall be reviewed as follows.

(A) Graduate degrees must have been completed at a college or university which has a program accredited by the American Speech-Language-Hearing Association and holds accreditation or candidacy status from a recognized regional accrediting agency, such as the Southern Association of Colleges and Universities.

(B) The transcript must verify which courses received graduate credit.

(C) Semester credit hours that are acceptable may include upper division hours.

(D) The board shall only accept course work completed with a grade of at least a "C" or for credit.

(E) The board shall consider a quarter hour of academic credit as two-thirds of a semester credit hour.

(F) Academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(G) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours can be verified as meeting the requirements of this paragraph. The applicant must bear all expenses incurred during this procedure.

(12) An applicant must have obtained the equivalent of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in audiology as required by §741.82 of this title (relating to Requirements for an Intern in Audiology License).

(A) While pursuing this professional employment experience, the applicant shall be designated as an intern in audiology.

(B) Prior to the beginning of an intern's required, supervised professional experience, the intern must be licensed as required by §741.82 of this title.

(C) An applicant who completed an internship in another state must meet the requirements of §741.82 of this title, except the supervisor must have been licensed in that other state, rather than Texas. However, if the other state did not require licensing, the supervisor must have held the American Speech-Language-Hearing Association certificate of clinical competence in audiology.

(13) An applicant must pass the examination as referenced by §741.122 of this title before a license will be issued.

§741.82. Requirements for an Intern in Audiology License.

(a) Effective January 1, 1994, an applicant who has completed the requirements of §741.81(1)-(11) of this title (relating to Requirements for an Audiology License) must be licensed as an intern in order to commence the supervised professional experience.

(b) Effective January 1, 1994, an applicant who has successfully completed all academic and clinical requirements of §741.81(1)-(11) of this title but who has not had the degree officially conferred may be licensed as an intern in order to commence the supervised professional experience but must submit an original or certified copy of a letter from the program director verifying that the applicant has met all academic coursework, clinical practicum requirements and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred.

(c) An individual who applied for registration as an intern prior to September 1, 1993, may be licensed under the requirements that were in effect at the time of registration.

(d) The intern must complete 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in audiology. Full-time employment is defined as a minimum of 30 hours per week in direct patient/client contact, consultations, record keeping and administrative duties relevant to a bona fide program of clinical work. Part time equivalent is defined as follows:

(1) 0-15 hours per week-no credit will be given;

(2) 15-19 hours per week for over 72 weeks;

(3) 20-24 hours per week for over 60 weeks; or

(4) 25-29 hours per week for over 48 week.

(e) A committee of the board may determine if an intern needs to extend or revise the internship.

(f) This internship must begin within four years after the academic and clinical experience requirements as required by §741.81 of this title have been met and must be completed within a maximum period of 36 consecutive months once initiated. Applicants who do not meet these times frames must request, in writing, and may receive board approval for an extension. A committee of the board will decide on a case-by-case basis and may require that the applicant complete additional coursework, earn continuing professional education hours or pass the examination referenced in §741.122 of this title (relating to Administration).

(g) This work must be done under supervision of an individual who holds a valid Texas license in audiology and who possesses a minimum of a master's degree.

(h) An original or certified copy of the transcript(s) is required and will be evaluated under §741.81(11) of this title.

(i) An applicant whose master's degree is received at a college or university approved by the American Speech-Language-Hearing Association Educational Standards Board will receive automatic approval of the course work and clinical experience if the program director verifies that all requirements as outlined in §741.81(1)-(11) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree int he area od speech-language pathology with six hours in audiology.

(j) The internship experience should be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(1) 18 on-site observations of direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation and rehabilitation;

(2) 18 other monitoring activities which may include correspondence, review of video tapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; and

(3) other options to complete this supervisory process must be requested in writing and receive approval from a committee of the board before commencing the activity.

(k) The internship should involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities.

(l) The supervisor periodically shall conduct a formal evaluation of the applicant's progress in the development of professional skills.

(m) An original or certified copy of the intern plan or an individual work plan signed by the supervisor and applicant must be submitted. The board office must be notified in writing of any change in the supervisory arrangement. If a major change in the plan occur, a revised plan must be submitted immediately.

(n) A supervisor of an intern is responsible for the services to the client that may be performed by the intern. The supervising professional must ensure that all services provided are in compliance with this chapter.

(o) A person who possesses a master's degree with a major in speech-language pathology and is pursing an internship in audiology may apply for an intern license in audiology if the board has an original transcript showing completion of a master's degree with a major in speech-language pathology on file and a letter from the department head of the college or university stating that the individual has completed enough hours to establish a graduate level major in audiology and would meet the academic and clinical requirements for a license as an audiologist.

(p) An intern license is issued and expires as described in §741.142 of this title (relating to Issuance of License and Registration) and may be renewed as described in §741.162 of this title (relating to General).

§741.84. Requirements for a Provisional Audiology License.

(a) The board may grant a provisional license to a person if the following requirements are met:

(1) possesses a license in good standing as an audiologist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of Texas Civil Statutes, Article 4512j (Act);

(2) submits evidence of having passed the Educational Testing Service examination as reference in §741.122 of this title (relating to Administration) or a state validated examination required for licensure in audiology; and

(3) submits a form signed by a person licensed as an audiologist under this Act who agrees to sponsor the applicant.

(b) The board may excuse an applicant for a provisional license from the requirement of subsection (a)(3) of this section if he or she submits documentation to show that meeting this requirements would constitute a hardship.

(c) Once issued, a provisional license is valid until the date the board approves or denies the provisional license holder's application for a license.

(d) The board shall issue an audiology license to the provisional license holder if he or she submits the following:

(1) an original or certified copy of transcript(s) and other documentation showing that the provisional license holder met all requirements referenced in §741. 81 of this title (relating to Requirements for an Audiology License); and

(2) an original or certified copy of a passing score from the Educational Testing Service as referenced in §741.122 of this title (relating to Administration).

(e) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued.

§741.85. Requirements for an Assistant in Audiology License.

(a) An assistant is an individual who provides services and support of clinical programs of audiology, and is supervised by a licensed audiologist.

(1) The applicant who applies for an assistant in audiology license prior to September 1, 1994, must meet the following requirements:

(A) a baccalaureate degree as shown on an original transcript filed with the board;

(B) no fewer than 21 semester hours in speech-language pathology and/or audiology, at least nine of which must be in the area for which license is being sought;

(C) the filing of original transcripts which shall be reviewed as in §741.61(11) of this title (relating to Requirements for a Audiology License); and

(D) a supervisory responsibility statement submitted upon application and each subsequent renewal or with a change of supervisor.

(2) An applicant who applies for an assistant in audiology license on or after September 1, 1994, must meet the following requirements:

(A) a baccalaureate degree with an emphasis in speech-language pathology or audiology;

(B) no fewer than 24 semester hours in speech-language pathology and/or audiology, at least nine of which must be in the area for which license is being sought;

(C) no fewer than 25 hours of clinical observation and 25 hours of clinical practicum completed under supervision of an individual licensed by this board;

(D) the filing of an original or certified copy of transcript(s) which shall be reviewed as in §741.81(11) of this title (relating to Requirements for an Audiology License); and

(E) a supervisory responsibility statement submitted upon application and each subsequent renewal or with a change of supervisor.

(b) Although the supervisor may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated. The supervisor must ensure that all services provided are in compliance with this chapter. The assistant may execute specific components of the clinical speech, language, and/or hearing program if the supervisor determines that the assistant has received the training and has the skill to accomplish that task, and the supervisor provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant. The supervisor must keep job descriptions and performance records; these must be current and must be made available to the board within 30 days of the date of the board's request for such records.

(1) Examples of duties which assistants may be assigned include the following:

(A) conducting or participating in speech, language, and/or hearing screening;

(B) conducting valuative or management programs which may include the utilization of published materials for which the associate has received training;

(C) maintaining clinical records of client performance;

(D) preparing clinical materials; and

(E) participating with the professional in research projects, staff development, public relations programs, or similar activities as designated and supervised by the professional.

(2) The assistant should not engage in any of the following activities:

(A) interpreting observations or data into diagnostic statements, clinical management strategies, or procedures;

(B) determining case selection;

(C) presenting written reports of client information to those other than the supervisor without the signature of the supervisor;

(D) referring a client to other professionals or other agencies;

(E) using any title which connotes the competency of a licensed professional, as defined in §2 of the Act; or

(F) practicing as an assistant in audiology without a valid supervisory responsibility statement on file in the board office.

(3) Any references to the licensee's title shall state clearly that the license status is that of an assistant.

(4) An assistant may not provide speech-language pathology services without an approved supervision.

(5) Direct-care staff in a residential care or treatment facility who use only the concepts of daily living in their job performance are not required to be licensed as assistants.

(c) Therapy/intervention is:

(1) the systematic, individualized process of minimizing communication disorders involving the dynamic interaction between the fully licensed audiologist and client;

(2) designed and executed on the basis of ongoing evaluation of the client's communication needs, skills, and resources; and

(3) designed and executed only by a fully licensed audiologist; certain routine and perfunctory aspects of the intervention process, such as carryover activities, may be delegated to a licensed assistant.

(d) Carryover is:

(1) the therapeutically designed transfer of a newly acquired communication ability to contexts and situations outside of the therapy situation; and

(2) designed by a fully licensed audiologist.

(e) The assistant may conduct carryover activities, language and auditory stimulation, and other activities related to intervention and record keeping as described in these sections and as deemed appropriate by the supervising fully licensed audiologist.

(f) The assistant may oversee activities of communication helpers in consultation with, and direction of, fully licensed audiologists.

(g) Direct supervision of audiologist duties assigned to the assistant shall be provided by a licensed audiologist.

(1) Following on-the-job training, the assistant's initial client contact shall be directly supervised. Thereafter, the minimum supervision requirements for an assistant by the supervisor shall be no less than two hours a week, at least half of which is direct on-site supervision at the location where the assistant is employed. If an alternative arrangement is needed, the supervisor must submit a proposed plan for review by the board or the appropriate committee to determine if the plan is acceptable. Indirect methods of supervision such as audio and/or video tape recording, telephone communication, numerical data, or other means of reporting may be utilized.

(2) Supervisory records shall be maintained by the supervisor which verify regularly scheduled monitoring, assessment, and evaluation of assistant and client performance. Such documentation may be requested by the board.

(h) An assistant will be required to meet continuing education requirements for license renewal as stated in §741.163 of this title (relating to Requirements for Continuing Professional Education).

(i) An assistant may renew a license even though the assistant does not have a supervisor. However, the assistant may not practice until a supervisor is obtained and a new supervisory responsibility statement is approved by the board office. To continue to practice without supervision may result in revocation of the assistant's license.

(j) The licensed supervisor and/or assistants shall ensure that these requirements and duties of an individual such as a communication helper are as follows.

(1) A communication helper is accountable to a fully licensed professional who is ultimately responsible for the communication helper.

(2) A communication helper may work under direction of an assistant if the assistant is supervised as required by subsection (g) of this section.

(3) A communication helper may not singularly engage in direct intervention or assessment activities.

(4) A communication helper may participate in activities as described and approved by a fully licensed professional such as:

(A) setting up room and equipment for evaluation/ intervention/conference;

(B) clearing room and storing equipment after evaluation/ intervention/conference;

(C) preparing materials for use by an assistant or speech-language pathologist in intervention, evaluation, carryover, etc.;

(D) transporting clients to and from clinical sessions;

(E) assisting with field trips and other communication stimulation situations;

(F) acting as surrogate parent;

(G) participating in daily living activities and care; and

(H) applying language stimulation strategies in daily living activities as directed by assistant and approved by fully licensed speech-language pathologist.

§741.86. Requirements for a Temporary Certificate of Registration in Audiology.

(a) A temporary certificate of registration in audiology may be applied for by an individual who submits original or certified copy of documentation that all requirements referenced in §741.81 (1)-(12) of this

title (relating to Requirements for an Audiology License) have been met but who has not previously applied to the board to take the examination for licensure as required by §741.122 of this title (relating to Administration).

(b) If issued, this certificate entitles an applicant approved for examination to practice audiology for a period of time ending eight weeks after the offering of the next examination after the date of issue of the certificate.

(c) A temporary certificate of registration is not renewable.

§741.87. Requirements for Registration of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments.

(a) A licensed audiologist or an intern in audiology must register his or her intent to fit and dispense hearing instruments, on a form obtained from the board.

(b) An audiologist or intern in audiology must renew the registration annually in accordance with §741.162(r) of this title (relating to General).

(c) An audiologist or intern in audiology must notify the board if he or she no longer wishes to fit and dispense hearing instruments.

(d) An audiologist or intern in audiology may not fit and dispense hearing instruments if:

(1) the license has been placed in the inactive status; or

(2) the license was not renewed before the end of the 60-day grace period.

(e) After the expired or inactive license has been properly renewed, the audiologist or intern in audiology may renew his or her registration to fit and dispense hearing instruments.

(f) An audiologist or intern in audiology must adhere to §741.41 of this title (relating to Code of Ethics).

(g) An audiologist or intern in audiology must comply with the following concerning a 30-day trail period on every hearing instrument purchase.

(1) All purchasers shall be informed of a 30-day trial period by written agreement. All charges and fees associated with such trial period shall be stated in this agreement which shall also include the name, address, and telephone number of the State Board of Examiners for Speech-Language Pathology and Audiology. The purchaser shall receive a copy of this agreement.

(2) Any purchaser of a hearing instrument shall be entitled to a refund of the purchase price advanced by purchaser for the hearing instrument, less the agreed-upon amount associated with the trial period, upon return of the instrument to the licensee in good working order within the 30-day trial period ending 30 days from the date of delivery. Should the order be canceled by purchaser prior to the delivery of the instrument, the licensee may retain the agreed-upon charges and fees as specified in the written contract. The purchaser shall receive the refund due no later than the 30th day after the date on which the purchaser cancels the order or returns the hearing instrument to the licensee.

(h) If audiometric testing is not conducted in a stationary acoustical enclosure, sound level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most recent American National Standards Institute "ears covered" octave band criteria for permissible ambient noise levels during audiometric testing. A dBA equivalent level may be used to determine compliance.

(i) An audiologist or intern in audiology must comply with 21 Code of Federal Regulations §801.420 and §801.421, federal Food and Drug Administration regulations for fitting and dispensing hearing instruments.

§741.88. Requirements for Registration of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments.

(a) A licensed audiologist or an intern in audiology must register his or her intent to fit and dispense hearing instruments, on a form obtained from the board.

(b) An audiologist or intern in audiology must renew the registration annually in accordance with §741.162(r) of this title (relating to General).

(c) An audiologist or intern in audiology must notify the board if he or she no longer wishes to fit and dispense hearing instruments.

(d) An audiologist or intern in audiology may not fit and dispense hearing instruments if:

(1) the license has been placed in the inactive status; or

(2) the license was not renewed before the end of the 60-day grace period.

(e) After the expired or inactive license has been properly renewed, the audiologist or intern in audiology may renew his or her registration to fit and dispense hearing instruments.

(f) An audiologist or intern in audiology must adhere to §741.41 of this title (relating to Code of Ethics).

(g) An audiologist or intern in audiology must comply with the following concerning a 30-day trail period on every hearing instrument purchase.

(1) All purchasers shall be informed of a 30-day trial period by written agreement. All charges and fees associated with such trial period shall be stated in this agreement which shall also include the name, address, and telephone number of the State Board of Examiners for Speech-Language Pathology and Audiology. The purchaser shall receive a copy of this agreement.

(2) Any purchaser of a hearing instrument shall be entitled to a refund of the purchase price advanced by purchaser for the hearing instrument, less the agreed-upon amount associated with the trial period, upon return of the instrument to the licensee in good working order within the 30-day trial period ending 30 days from the date of delivery. Should the order be canceled by purchaser prior to the delivery of the instrument, the licensee may retain the agreed-upon charges and fees as specified in the written contract. The purchaser shall receive the refund due no later than the 30th day after the date on which the purchaser cancels the order or returns the hearing instrument to the licensee.

(h) If audiometric testing is not conducted in a stationary acoustical enclosure, sound level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most recent American National Standards Institute "ears covered" octave band criteria for permissible ambient noise levels during audiometric testing. A dBA equivalent level may be used to determine compliance.

(i) An audiologist or intern in audiology must comply with 21 Code of Federal Regulations §801.420 and §801.421, federal Food and Drug Administration regulations for fitting and dispensing hearing instruments.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438043

Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter G. Requirements for Dual Licensure as a Speech-Language Pathologist and an Audiologist.

• 22 TAC §741.91

The new section is adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438042 Gene R. Powers, PhD
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter F. Application Procedures

• 22 TAC §§741. 101-741.103

The repeals are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438041 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter H. Application Procedures

• 22 TAC §§741. 101-741.103

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.103. Required Application Materials.

(a) An applicant applying for a speech-language pathology or audiology license under §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) or §741.81 of this title (relating to Requirements for an Audiology License) must submit the following:

(1) an application form obtained from the board office which shall contain:

(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceeding, felony and misdemeanor convictions, educational background, practicum experience, supervised experience and references;

(B) a statement that the applicant has read Texas Civil Statutes, Article 4512j (Act), and the board rules and agrees to abide by them;

(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(E) the dated and notarized signature of the applicant; and

(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title (relating to Processing Procedures);

(2) the nonrefundable application fee,

(3) an original or certified copy of transcript(s) of all relevant course work;

(4) an original or certified copy from the director or designee of the college or university training program verifying the applicant completed the clinical experience set out in either §741.61(8) or (9) of this title or §741.81(8) or (9) of this title.

(5) a supervised post-graduate experience form which must contain the following information·

(A) the name of the applicant;

(B) the supervisor's name, address, degree, and licensure status;

(C) the name and address of the agency or organization where the experience was gained;

(D) the inclusive dates of the supervised experience and the total number of hours of supervised post-graduate practice;

(E) the number of hours of weekly face-to-face supervision provided for the applicant and the types of supervision used (direct, observation room, video tape, audio tape, review of records, etc.);

(F) the applicant's employment status during supervised experience; and

(G) the dated and notarized signature of the supervisor; and

(6) an original or certified statement from the Educational Testing Service showing a passing score on the examination described in §741.122 of this title (relating to Administration).

(b) An applicant applying for an intern in speech-language pathology license under §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License) or an intern in audiology license under §741.82 of this title (relating to Requirements for an Intern in Audiology License) must submit the following:

(1) an application form obtained from the board office which shall contain:

(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, practicum experience, supervised experience and references;

(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(D) a statement that the applicant understands that fees submitted int he licensure process are nonrefundable; and

(E) the dated and notarized signature of the applicant; and

(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title;

(2) the nonrefundable application fee;

(3) an original or certified copy of transcript(s) of all relevant course work;

(4) an original or certified copy from the director or designee of the college or university training program verifying the applicant completed the clinical experience set out in §741. 61(8) or (9) of this title or §741.81(8) or (9) of this title; and

(5) the intern plan and notarized agreement of supervision.

(c) An applicant who holds the American Speech-Language-Hearing Association certificate of clinical competence applying for licensure under §741.63 of this title (relating to Special Conditions for Licensure of Speech-Language Pathologists) or §741.83 of this title (relating to Special Conditions for Licensure of Audiologists) must submit the following:

(1) an application form obtained from the board office which shall contain:

(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, practicum experience, supervised experience and references;

(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(E) the dated and notarized signature of the applicant; and

(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title;

(2) the nonrefundable application fee; however, an applicant who holds the American Speech-Language-Hearing Association certificates of clinical competence in audiology and in speech-language pathology applying for dual licensure as a speech-language pathologist and audiologist must submit two application fees;

(3) an original or certified copy of a letter from the American Speech-Language-Hearing Association stating the applicant holds the certificate of clinical competence in the area in which the applicant has applied for license; however, an applicant who holds the American Speech-Language-Hearing Association certificate of clinical competence in audiology and in speech-language pathology applying for dual licensure as a speech-language pathologist and audiologist must submit an original or certified copy of a letter from the American Speech- Language-Hearing Association stating the applicant currently holds the certificate of clinical competence in speech-language pathology and in audiology; and

(4) an original or certified copy of transcript(s) of all relevant course work.

(d) An applicant applying for a speech-language pathology or audiology provisional license under §741.64 of this title (relating to Requirements for a Provisional Speech-Language Pathology License) or §741.84 of this title (relating to Requirements for a Provisional Audiology License) must submit the following:

(1) an application form obtained from the board office which shall contain:

(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, practicum experience, supervised experience and references;

(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(E) the dated and notarized signature of the applicant; and

(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title;

(2) the nonrefundable application fee;

(3) a copy of the licensing law and rules from the state of the applicant's previous residence;

(4) a copy of the applicant's license from another state;

(5) an original form completed by that state's licensing board with board seal affixed which contains:

(A) name and social security number of the applicant;

(B) area of licensure;

(C) date license issued;

(D) date license expired;

(E) what licensure qualifications were met by the applicant;

(F) whether the applicant passed an examination required for state licensure and the name of the examination;

(G) whether the license had ever been revoked, cancelled or suspended; and

(H) whether disciplinary proceedings were initiated;

(6) an original or certified statement from the Education Testing Service showing a passing score on the examination described in §741.122 of this title (relating to Administration) if no examination is listed under paragraph (5)(F) of this subsection;

(7) a form completed by the individual licensed by this board accepting sponsorship unless the board excused the applicant from this requirement because it would constitute a hardship to the applicant; and

(8) once documentation required in this paragraph has been received and a provisional license issued, the provisional license holder must submit additional documentation as required by §741.64(d) of this title (relating to Requirements for a Provisional Speech-Language Pathology License) or §741.84(d) of this title (relating to Requirements for a Provisional Audiology License) in order to receive a full license.

(e) An applicant applying for an assistant in speech-language pathology license under §741.65 of this title (relating to Requirements for an Assistant in Speech-Language Pathology License) or an assistant in audiology license under §741.85 of this title (relating to Requirements for an Assistant in Audiology License) must submit the following:

(1) an application form obtained from the board office which shall contain:

(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background and references;

(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(E) the dated and notarized signature of the applicant; and

(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title;

(2) the nonrefundable application fee;

(3) a supervisory responsibility statement form obtained from the board office which contains:

(A) the name, address, employer, area of licensure and license number of the supervisor;

(B) the name, area of licensure and employer of the associate;

(C) a statement that the supervisor is responsible for notifying the board office of any change in the supervisory arrangements; and

(D) the dated and notarized signature of the supervisor;

(4) an original or certified copy of transcript(s) of relevant course work; and

(5) for applicants who apply for license after September 1, 1994, an original or certified copy from the director or designee of the college or university training program verifying the applicant completed the clinical experience set out in §741.65(a)(2)(c) of this title or §741.85(a)(2)(c) of this title.

(f) An applicant applying for a speech-language pathology temporary certificate of registration under §741.67 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) or an audiology temporary certificate of registration under §741.87 of this title (relating to Requirements for a Temporary Certificate of Registration in Audiology) must submit the following:

(1) an application form obtained from the board office which shall contain:

(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, practicum experience, supervised experience and references;

(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(E) the dated and notarized signature of the applicant; and

(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title,

(2) the nonrefundable application fee;

(3) an original or certified copy of transcript(s) of all relevant course work;

(4) an original or certified copy from the director or designee of the college or university training program verifying the applicant completed the clinical experience set out in either §741.61(8) or (9) of this title or §741.81(8) or (9) of this title; and

(5) an original or certified copy of a supervised post-graduate experience form which must contain the following information:

(A) the name of the applicant;

(B) the supervisor's name, address, degree, and licensure status;

(C) the name and address of the agency or organization where the experience was gained;

(D) the inclusive dates of the supervised experience and the total number of hours of supervised post-graduate practice;

(E) the number of hours of weekly face-to-face supervision provided for the applicant and the types of supervision used (direct, observation room, video tape, audio tape, review of records, etc.);

(F) the applicant's employment status during supervised experience; and

(G) the dated and notarized signature of the supervisor.

(g) A licensed audiologist or licensed intern in audiology who wishes to fit and dispense hearing instruments under §741.88 of this title (relating to Requirements for Registration of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments) must submit the following:

(1) a registration form obtained from the board office which shall contain:

(A) the name, address, social security number, license number, expiration date of license and dated and notarized signature of the licensee; and

(B) a statement that the audiologist or intern in audiology agrees to adhere to requirements of the Act and board rules and to comply with Title 21, Chapter 1, Code of Federal Regulations; and

(2) the nonrefundable registration fee.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438040 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

Subchapter G. Licensure Examinations

• 22 TAC §§741. 121-741.123

The repeals are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438039 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

Subchapter I. Licensure Examinations

• 22 TAC §§741. 121-741.123

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.123. Procedures.

(a) An applicant wishing to take the required examination shall contact the Educational Testing Service (ETS) directly for any required registration forms, fees or other information. The applicant shall pay the fee to the testing service.

(b) Upon receiving the request to take an examination, the ETS may furnish a Bulletin of Information to the applicant that describes the program, procedures for registration, and any requirements or regulations pertinent to the applicant. The date, time, and place of the next scheduled examinations may be furnished to the applicant. A descriptive booklet with sample test questions, along with other materials, may be furnished to all applicants who register for a particular examination.

(c) An applicant shall have satisfied the examination requirements of the board if the applicant has passed the national examination in speech-language pathology or audiology administered by the ETS.

(d) An applicant shall indicate on the registration form the Code #8327 assigned to the board so that the applicant's test score will be sent to the board.

(e) An applicant who fails the examination may be examined at a subsequent time if he or she pays another nonrefundable examination fee.

(f) An applicant who has taken and failed to pass two examinations may not take the examination until the person has submitted a new application together with a nonrefundable application fee and presented evidence to the board of additional study in the area for which licensure is sought.

(g) An applicant who fails a licensing examination administered by ETS under Texas Civil Statutes, Article 4512j (Act), shall contact ETS to request a profile of his or her performance on the examination.

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

Issued in Austin, Texas, on March 23, 1994

TRD-9438038 Gene R Powers, PhD
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date November 12, 1993

For further information, please call (512) 834-6627

Subchapter H. Licensing

• 22 TAC §§741.141-741.145

The repeals are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438037 Gene R. Powers, PhD
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date November 12, 1993

For further information, please call: (512) 834-6627

Subchapter J. Licensing and Registration Procedures

• 22 TAC §§741.141-741.143

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act

§741.142. Issuance of License and Registration.

(a) The board shall send each applicant for a speech-language pathology or audiology license who met the requirements of §741.61 of this title (relating to Requirements for a Speech- Language Pathology License), §741.63 of this title (relating to Special Conditions for Licensure of Speech-Language Pathologists), §741.81 of this title (relating to Requirements for a Audiology License), or §741.83 of this title (relating to Special Conditions for Licensure of Audiologists) whose application has been approved, a form to complete and return with the nonrefundable initial license fee. This fee must be submitted to the executive secretary no later than 90 days following the date of the request or the application and approved will be voided.

(1) The initial license and the initial license fee shall be prorated according to the licensee's birth month. Any applicant approved for license within three months of the applicant's birth month shall pay the prorated amount plus one year license fee Any applicant approved for less than 12 months, but for more than three months, shall pay a fee prorated for only those months. The prorated fee and all licensee records are based on the month of approval through the last day of the birth month. An applicant may not practice in the professional area in which he or she applied for a license until the initial license fee has been received by the board.

(2) Upon receiving an applicant's license form and initial license fee, the board shall issue the applicant

(A) a license;

(B) a certificate; and

(C) an ID card.

(3) The license may be renewed as required by §741.162 of this title (relating to General).

(b) The board shall send each applicant for an intern license who met the requirements of §741.62 of this title (relating to Requirements for an Intern in Speech-language Pathology License) or §741.82 of this title (relating to Requirements for an Intern in Audiology License) whose application has been approved, a form to complete and return with the nonrefundable initial license fee. Upon receipt of the license form and fee, the board shall issue a license that will expire one year from the issue date. The license may be renewed as required by §741.162 of this title (relating to General).

(c) The board shall send each applicant for a provisional license who met the requirements of §741.64 of this title (relating to Requirements for a Provisional Speech-Language Pathology License) or §741.84 of this title (relating to Requirements for a Provisional Audiology License) whose application has been approved, a nonrenewable provisional license which is valid until the date the board approves or denies the application for a full license. Within the 180 days from date of issuance of the provisional license, the board shall either send the provisional licensee:

(1) a speech-language pathology or audiology license issued under subsection (a) that may be renewed as required by §741.162 of this title; or

(2) a letter of proposed denial if proof of having met the requirements of §741 61 of this title or §741.81 of this title and §741. 122 of this title (relating to Administration) have not been received and accepted by the board.

(d) The board shall send each applicant for an assistant license who met the requirements of §741.65 of this title (relating to Requirements for a Assistant in Speech-Language Pathology License) or §741.85 of this title (relating to Requirements for an Assistant in Audiology License) whose application has been approved, a form to complete and return with the nonrefundable initial license fee.

(1) The initial license and the initial license fee shall be prorated according to the licensee's birth month. Any applicant approved for license within three months of the applicant's birth month shall pay the prorated amount plus one year license fee. Any applicant approved for less than 12 months, but for more than three months, shall pay a fee prorated for only those months. The prorated fee and all licensee records are based on the month of approval through the last day of the birth month.

(2) Upon the applicant meeting the requirements set out in subsection (d) of this section and upon receiving an applicant's license form and fee, the board shall issue the applicant a license.

(3) The license may be renewed as required by §741.162 of this title.

(e) The board shall send each applicant for a temporary certificate of registration who met the requirements of §741.67 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) or §741 87 of this title (relating to Requirements for a Temporary Certificate of Registration in Audiology) whose application has been approved, a nonrenewable certificate of registration which is valid for a period ending eight weeks after the next scheduled examination as required by §741.122 of this title.

(f) The board shall send each audiologist or intern in audiology licensed under this Act who met the requirements of §741.88 of this title (relating to Requirements for Registration of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments) a form to register his or her intent to fit and dispense hearing instruments has been accepted and the nonrefundable registration fee has been paid, a certificate of registration. This registration is valid from date of issue through the last day of the licensee's birth month. This registration may be renewed as required by §741 162 of this title (relating to General)

(g) Any license, certificate or registration issued by the board remains the property of the board

(h) An application may be denied if the applicant's license to practice speech-language pathology or audiology in another state or jurisdiction has been suspended, revoked or otherwise restricted by the licensing entity in that state or jurisdiction for reasons relating to the applicant's professional competence or conduct which could adversely affect the health and welfare of a client.

(i) The board is not responsible for lost, misdirected, or undelivered correspondence, including forms and fees, if sent to the address last reported to the board.

(j) Upon written request from the licensee and payment of the duplicate fee, a duplicate license, certificate, or registration may be obtained from 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 23, 1994.

TRD-9438036 Gene R Powers, PhD
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter I. License Renewal

• 22 TAC §§741.161-741. 163

The repeals are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438035 Gene R Powers, PhD
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date. April 13, 1994

Proposal publication date: November 12, 1994

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter K. License and Registration Renewal

• 22 TAC §§741.161-741.166

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act

§741 162 General.

(a) Each licensed speech-language pathologist, audiologist, intern or assistant is responsible for license renewal before the expiration date. The board shall use the following system to determine the date on which the license expires.

(1) The annual renewal date of a license for all speech-language pathologists, audiologists, or assistants shall be the last day of the licensee's birth month.

(2) The annual renewal date of a license for all interns shall be the same as that of the issue date.

(3) An audiologist or intern in audiology registered to fit and dispense hearing instruments must renew the registration at the time the license is renewed.

(b) At least 45 days prior to the expiration date of an individual's license, the executive secretary shall send to the licensee a license renewal notice which will include the following:

(1) the name and address of the licensee;

(2) the expiration date of the license;

(3) the amount of the renewal fee due;

(4) the number of continuing education hours required for renewal; and

(5) a form, which a supervisor must complete, if required.

(c) Each licensee shall annually pay the nonrefundable fee for license renewal. The executive secretary shall not consider a license to be renewed until the licensee has completed, dated and signed the renewal form in the presence of a notary public and submitted this form with proof of earned continuing education and the renewal fee to the board office. In addition, an intern must submit a form signed by the supervisor verifying the professional experience completed and the plan for the following year's experience. An assistant must provide an updated supervisory responsibility statement signed by the assistant's supervisor. The postmarked date is the date of mailing.

(d) Renewal of a speech-language pathology, audiology, intern or assistant license is contingent on the applicant meeting uniform continuing education requirements established by the board. Any continuing education hours earned before the effective date of the license are not acceptable.

(e) Each licensee is required to provide current addresses and telephone numbers, employment information, and other information on the license renewal form.

(1) A request to change the name as issued on the certificate or license must be submitted in writing with a copy of the divorce decree, marriage certificate, or social security card showing the new name.

(2) The board is not responsible for lost, misdirected, or undelivered renewal forms and fees if sent to the address last reported to the board.

(f) The board shall issue a renewed license to each speech-language pathologist, audiologist, intern or assistant who has met all requirements for renewal.

(g) The board shall deny renewals pursuant to the Education Code, §57.491, relating to defaults on guaranteed student loans.

(h) A 60-day grace period, after the date of expiration of a license, shall be allowed. A licensee may continue to practice during the grace period and must follow all requirements of the Act and this chapter.

(i) If a license is placed on inactive status or is not renewed before the end of the 60-day grace period, the licensee must cease practicing or representing himself or herself as a speech-language pathologist, audiologist, intern or assistant.

(j) Prior to expiration of a license or the end of the 60-day grace period, a licensee may request inactive status and, if accepted, shall remain in this status until renewed or deleted in accordance with §741.164 of this title (relating to Inactive Status).

(k) After the end of the 60-day grace period, unless inactive status was granted, a licensee may renew his or her license in accordance with §741.165 of this title (relating to Late Renewal of a License).

(l) A license not renewed within two years of the date of expiration may not be renewed. However, the individual may reapply for licensure if requirements of Subchapter E of this chapter (relating to Requirements for Licensure and Registration of Speech-Language Pathologists) or Subchapter F of this chapter (relating to Requirements for Licensure and Registration of Audiologists) are met.

(m) An individual who within the last three years was licensed in this state and is currently licensed and has been in practice in another state for the two years preceding application may renew the Texas license without reexamination if the individual submits the following:

(1) an original or certified copy of a letter from the licensing board where he or she currently holds a valid license verifying:

(A) the area in which the license was issued;

(B) the date of issue;

(C) the date of expiration; and

(D) whether derogatory information is on record;

(2) a fee equal to the examination fee; and

(3) proof of having earned at least ten approved continuing education hours during the preceding 12 months.

(n) In case of medical hardship, a former licensee may:

(1) request that the license be renewed without a penalty being assessed if the following is submitted:

(A) an original letter signed by the licensee's physician stating the licensee was unable to practice for at least six months during that renewal period because of a physical or mental disability;

(B) any approved continuing education hours earned during the renewal period; and

(C) the renewal fee; or

(2) petition the board if the person does not meet paragraph (1)(A) of this subsection but believes he or she has a valid medical reason for the late renewal.

(o) A suspended license is subject to expiration and may be renewed as provided in this subchapter; however, the renewal does not entitle the licensee to engage in the licensed activity or in any other activity or conduct in violation of the order or judgement by which the license was suspended, until such time as the license is fully reinstated.

(p) A license revoked on disciplinary grounds may not be renewed. If it is reinstated, the former licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect, plus the late renewal penalty fee, if any, accrued since the time of the license revocation.

(q) An audiologist or intern in audiology who fits and dispenses hearing instruments must submit an updated notarized registration form with the registration fee each year when the audiology or intern in audiology license is renewed. If the licensee does not wish to continue to fit and dispense hearing instruments at the time he or she renews the license, the licensee must return the registration form informing the board of that decision. Should the licensee later wish to fit and dispense, he or she may submit the completed notarized registration form and fee.

§741.163. Requirements for Continuing Professional Education. Continuing professional education requirements must be met for renewal of a speech-language pathology, audiology, intern or assistant license.

(1) Continuing professional education in speech-language pathology and audiology consists of a series of planned individual learning experiences beyond the

basic educational program which has led to a degree or qualifies one for licensure.

(A) Continuing professional education must be in the following areas:

(i) basic communication processes;

(ii) speech-language pathology;

(iii) audiology; or

(iv) an area of study related to the areas listed in clauses (i), (ii) or (iii) of this subparagraph.

(B) Continuing education hours under subparagraph (A)(iv) of this paragraph shall be considered if the licensee submits a description of the continuing education activity; prior approval is advised. Review by the board or the appropriate committee to determine that the activity is in a related area may require the submission of additional information. Any continuing education hours earned in a related area must further the knowledge of speech-language pathology or audiology or enhance service delivery. Partial credit may be awarded.

(2) A continuing education unit (CEU) is the basic unit of measurement used to credit individuals with continuing education activities for licensure. One CEU is defined as ten contact hours of participation in an approved continuing education experience.

(3) Continuing education requirements must be of such a nature that they can be met without necessitating an extended absence from the licensee's county of residence.

(4) Ten clock hours (one CEU) will be required for yearly renewal; provided, however, 15 clock hours (1.5 CEUs) will be required for holders of dual speech-language pathology and audiology licenses. Depending upon the number of months the initial license was held, when renewing an initial license the licensee must submit the following continuing education hours:

(A) four months-3. 0 clock hours (or 5.0 clock hours if dually licensed);

(B) five months-4.0 clock hours (or 6.25 clock hours if dually licensed);

(C) six months-5.0 clock hours (or 7.5 clock hours if dually licensed);

(D) seven months-5.5 clock hours (or 8.75 clock hours if dually licensed);

(E) eight months-6.5 clock hours (or 10.0 clock hours if dually licensed);

(F) nine months-7.25 clock hours (or 11.25 clock hours if dually licensed);

(G) ten months-8.25 clock hours (or 12.5 clock hours if dually licensed);

(H) 11 months-9.0 clock hours (or 13.75 clock hours if dually licensed);

(I) 12 months-10.0 clock hours (or 15.0 clock hours if dually licensed);

(J) 13 months-10.75 clock hours (or 16.25 clock hours if dually licensed);

(K) 14 months-11.5 clock hours (or 17.5 clock hours if dually licensed); or

(L) 15 months-12.5 clock hours (or 18.75 clock hours if dually licensed).

(5) Earned continuing education hours exceeding the minimum requirements in a previous renewal period shall first be applied to the continuing education requirements for the current renewal period. A maximum of 20 additional clock hours may be accrued during a license period to be applied to the next two consecutive renewal periods; provided, however, a maximum of 30 additional clock hours may be accrued for dual speech-language pathology and audiology licenses during a license period to be applied to the next two consecutive renewal periods.

(6) If a licensee successfully completes course work from an accredited college or university, that course work may be accepted for continuing education credit. The licensee must submit an original or certified copy of the transcript and complete a statement that this was a continuing education experience. Ten continuing education clock hours or one continuing education unit equals one semester hour of course work; however, partial credit may be granted when course work has been earned under paragraph (1)(A)(iv) of this subsection.

(7) The taking and passing of the licensure examination in speech-language pathology or audiology as referenced in §741.122 this title (relating to Administration) within the renewal period, will meet the continuing education requirement for license renewal for three consecutive years.

(8) Approved sponsors will be designated by the board. The board will provide a list of approved continuing education sponsors which will be revised and updated periodically. Any continuing education activity must be provided by an approved sponsor.

(9) The board office will accept a letter or form bearing a valid signature or verification as authorized by the continuing education sponsor as proof of completion of a valid continuing education experience. Unauthorized signatures or verification will not be accepted.

(10) Evidence of the acquisition of continuing education credit shall be submitted to the board together with the license renewal form and fee at the time of renewal.

§741.164. Inactive Status.

(a) Prior to the expiration of the license a speech-language pathologist, audiologist, intern or assistant may request that his or her license be declared inactive by written request to the board. The request must be submitted with the inactive status fee. The postmarked date is the date of mailing.

(b) A person may not practice or represent himself or herself as a licensed speech-language pathologist, audiologist, intern or assistant during the period of inactive status.

(c) The maximum time that a license may be inactive is three years past the date of expiration of the license. The licensee must submit an additional inactive status fee for each year as follows:

(1) the fee must be received on or before a date that is one year past expiration of the license if the licensee wishes the license to remain inactive for a second year; and

(2) another inactive status fee must be submitted on or before a date that is two years past expiration of the license, if the licensee wishes the license to remain inactive for the third and final year.

(d) An inactive status period shall begin following expiration of the license.

(e) A late renewal penalty fee will be assessed for each speech-language pathologist, audiologist, intern or assistant who fails to submit the inactive status fee

within the required time frames. The licensee may then reactivate the license as required by §741.165 of this title (relating to Late Renewal of a License).

(f) The inactive license may be reactivated at any time by submitting a written request and proof of having earned ten continuing education hours during the 12-month period preceding the request to reactivate the license unless hours were accrued under §741.163(5) of this title (relating to Requirements for Continuing Professional Education) . If approved, active status shall begin on the date of approval.

(g) The licensee's next continuing education cycle will begin upon return to active status.

(h) A license that is not reactivated within the three-year period may not be renewed, and the license may not be restored, reissued, or reinstated thereafter, but that person may reapply for and obtain a new license if requirements of Texas Civil Statutes, Article 4512j (Act), are met.

(i) An individual with a license placed in the inactive status is subject to investigation and action under §741.193 of this title (relating to Complaint Procedures).

§741.165. Late Renewal of a License.

(a) A speech-language pathologist, audiologist, intern, or assistant who fails to renew his or her license before the end of the 60-day grace period will be assessed a late renewal penalty unless the license had been placed in the inactive status.

(b) A person may not practice or represent himself or herself as a licensed speech-language pathologist, audiologist, intern or assistant during the period of inactive status.

(c) The licensee must submit the following if he or she wishes to renew the license:

(1) payment of the late renewal penalty fee; and

(2) proof of having earned or accrued continuing education as follows.

(A) if renewing an initial license before the end of the first year of the inactive status, the number of continuing education hours that must be earned are listed under §741.163(4) of this title (relating to Requirements for Continuing Professional Education);

(B) if renewing before the end of the first year of inactive status, at least 10 continuing education hours or 15 for holders of dual speech-language pathology and audiology licenses;

(C) if renewing at the end of the first year of inactive status but before the end of the second year, at least 20 continuing education hours or 30 hours for holders of dual speech-language pathology and audiology licenses;

(D) if renewing at the end of the second year of inactive status, at least 30 continuing education hours or 45 hours for holders of dual speech-language pathology and audiology license; and

(E) the hours earned or accrued before expiration of the license shall count toward meeting these hours.

(d) After renewal of the license, the licensee shall earn and accrue continuing education hours as required by §741.163 of this title (relating to Requirements for Continuing Professional Education).

(e) An individual with an expired license is subject to investigation and action under §741.193 of this title (relating to Complaint Procedures)

(f) A license that is not reactivated within the two-year period after expiration may not be renewed and the license may not be restored, reissued, or reinstated thereafter, but that person may reapply for and obtain a new license if requirements of Texas Civil Statutes, Article 4512j (Act), are met

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438034 Gene R Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date. April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter J. Fees and Late Renewal Penalties

• 22 TAC §741.181, §741.182

The repeals are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438033 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter L. Fees and Processing Procedures

• 22 TAC §741.181, §741.182

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.181. Schedule of Fees. The purpose of this section is to establish a schedule of fees to provide the funds to support the activities of the board.

(1) The schedule of fees and is as follows:

(A) application fee-$35;

(B) provisional license fee-$35,

(C) temporary certificate of registration fee-$35;

(D) registration fee for audiologist and intern in audiology who fit and dispense hearing aids-$10;

(E) initial license fee (prorated)-$35;

(F) initial dual license as a speech-language pathologist and audiologist fee (prorated)-$55;

(G) license renewal fee-$35;

(H) dual license as a speech-language pathologist and audiologist renewal fee-$55;

(I) duplicate license, certificate or registration fee-$10;

(J) inactive fee-$35;

(K) late renewal penalty fee-an amount equal to the renewal fee(s), with a maximum of three renewal fees, plus the examination fee; and

(L) examination fee-the amount charged by the Texas Department of Health's designee administering the examination.

(2) Any licensee attaining the age of 65 years shall have his or her license renewal fee waived, but if renewed after the expiration of the 60-day grace period, the late renewal penalty fee will be assessed.

(3) Fees paid to the board are nonrefundable.

(4) Any remittance submitted to the board in payment of a required fee must be in the form of a personal check, certified check, or money order unless this section requires otherwise Checks from foreign financial institutions are not acceptable.

(5) An applicant whose check for the application fee is returned marked insufficient funds, account closed or payment stopped shall be allowed to reinstate the application by remitting to the board a money order or check for guaranteed funds within 30 days of the date of the receipt of the board's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(6) An approved applicant whose check for the initial license fee is returned marked insufficient funds, account closed or payment stopped shall remit to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's notice. Otherwise, the application and the approval shall be invalid.

(7) A licensee whose check for the renewal fee is returned marked insufficient funds, account closed or payment stopped shall remit to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's notice. Otherwise, the license shall not be renewed If a renewal card has already been issued, it shall be invalid. If the guaranteed funds are received after expiration of the 60-day grace period, a late renewal penalty fee will be assessed.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438032 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1994

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter K. Denial, Suspension, or Revocation of Licensure

• 22 TAC §§741.191-741.199

The repeals are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438031 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1994

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter M. Denial, Probation, Suspension, or Revocation of Licensure or Registration

• 22 TAC §§741.191-741.199

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.192. Basis for Denial, Probation, Suspension, or Revocation of Licensure or Registration.

(a) The board may refuse to issue or renew a license or registration to an applicant or may revoke, probate or suspend the license or registration of a speech-language pathologist, audiologist, intern or assistant who:

(1) obtained a license or registration by means of fraud, misrepresentation, or concealment of material facts;

(2) sold, bartered, or offered to sell or barter a license or registration;

(3) exhibited unprofessional conduct as described in §741.41 of this title (relating to Code of Ethics);

(4) violated any provision of Texas Civil Statutes, Article 45123j (Act), or this chapter or any lawful order of the board; or

(5) violated any provision of a state or federal law pertaining to the licensee's or registrant's type of practice.

(b) The board may also issue a written reprimand to a license holder under any grounds listed in subsection (a) of this section. Section 741.194 of this title (relating to the Procedures for Denying, Suspending or Revoking a License or Registration) does not apply to the issuance of a reprimand.

§741.193. Complaint Procedures.

(a) An individual wishing to report a complaint against or alleged violation of Texas Civil Statutes, Article 4512j (Act), or this chapter by a licensee, registrant or other person shall notify the executive secretary, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6627 or 1-800-942-5540. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the board office.

(b) Upon receipt of a complaint, the executive secretary may send to the complainant an official form which the complainant should complete and return to the board office.

(c) The categories of complaints may include:

(1) practicing without a license;

(2) violation of the Code of Ethics; or

(3) practicing without appropriate supervision, if required.

(d) All parties shall be notified of the schedule that is established to determine when each phase of the complaint process will be completed. If a change is necessary, all parties shall be notified within seven days of the change.

(e) The executive secretary may notify the alleged violator of the complaint and request a written response within 30 days.

(f) The executive secretary shall collect all information related to the complaint. The chairperson shall appoint a committee to review the complaint and the

supporting documentation to determine if there is sufficient evidence to request further investigation.

(g) The complainant shall be given an opportunity to explain the allegations made in the complaint.

(h) The committee may request further investigation of the complaint. After investigation has been completed, the person completing the investigation shall submit his or her findings to the committee and the executive secretary. The written investigative report shall set out all pertinent facts obtained during the investigation.

(i) If the committee determines that there are insufficient grounds to support or act upon the complaint, the committee may dismiss the complaint and give written notice of the dismissal, explaining why this action was taken, to the complainant and the licensee, registrant or person against whom the complaint has been filed. The committee will report to the board that the complaint was dismissed and the reason for dismissal.

(j) If the committee determines that there are sufficient grounds to support the complaint, the committee may recommend to the board that the license or registration be denied, suspended, probated or revoked; that a written reprimand be issued or that other appropriate action as authorized by law be taken.

(k) The executive secretary shall determine whether the complaint fits within the category of a serious complaint affecting health or safety of clients or other persons.

(l) If an investigation is done, the investigator shall always attempt to contact the complainant to discuss the complaint.

(m) The board shall use a private investigator only if the Texas Department of Health's investigators available to the board have a conflict of interest.

(n) The executive secretary shall maintain a complaint tracking system.

(o) Each licensee that has had disciplinary action taken against his or her license shall be required to submit regularly scheduled reports. The report shall be scheduled at intervals appropriate to each individual situation.

(p) The executive secretary shall review the reports and notify the complaints committee if the requirements of the disciplinary action are not met.

(q) The complaints committee may consider more severe disciplinary proceedings if non-compliance occurs.

§741.194. Procedures for Denying, Suspending or Revoking a License or Registration.

(a) Prior to institution of formal proceedings to revoke or suspend a license or registration, the board shall give written notice to the licensee or registrant by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension, and the licensee or registrant shall be given the opportunity, as described in the notice, to show compliance with all requirements of Texas Civil Statutes, Article 4512j (Act), and this chapter.

(b) A formal proceeding to revoke or suspend a license or registration shall be commenced by filing charges with the board in writing and under oath. The charges may be made by any person. A formal proceeding to deny a license shall be commenced by issuance of the notice required by subsection (c) of this section.

(c) If denial, revocation, probation or suspension of a license is proposed, the board shall give written notice that the licensee, applicant or registrant must request, in writing, a formal hearing within ten days of receipt of the notice, or the right to a hearing shall be waived and the license or registration shall be denied, revoked, probated or suspended. The notice shall include a copy of written charges, if applicable. Receipt of the notice is presumed to occur on the 10th day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt.

(d) If the applicant, licensee or registrant does not respond as required by subsection (c) of this section, the formal hearing is deemed to be waived, and the board may deny, suspend, revoke, or impose probationary conditions on the license or registration.

(e) If the applicant, licensee, or registrant requests a formal hearing:

(1) the committee of the board may request that a formal hearing be set by the Texas Department of Health, Office of General Counsel. The chairperson shall appoint a hearing examiner to conduct the formal hearing. The hearing examiner shall recommend final action to the board based on the evidence presented at the formal hearing; or

(2) the committee of the board may request that the board schedule and conduct a formal hearing.

(f) Not less than one year from the date of revocation of a license or registration, application may be made to the board for reinstatement. The board may accept or reject an application for reinstatement and may require an examination for the reinstatement.

(g) If the board suspends a license or registration, the suspension shall remain in effect until the board determines that the reason for the suspension no longer exists or for the period of time stated in the order.

(h) If a suspension overlaps a license or registration renewal date, the individual whose license or registration is suspended may comply with the renewal procedures in this chapter; however, the board may not renew the license or registration until the board determines that the reason for the suspension no longer exists or the period of suspension is completed.

(i) If a license or registration suspension is probated, the board may require the license or registration holder to:

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

(2) limit practice to the areas prescribed by the board; or

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

(j) If the board denies an initial license, renewal or registration request, a person may reapply for a license or registration, if applicable, by complying with the then-existing requirements and procedures for application. The board may refuse to issue a license or registration if the reason for the denial continues to exist.

(k) Upon revocation, suspension or nonrenewal, a licensee or registrant shall return his or her license, certificate or registration to the board.

(l) The executive secretary shall monitor each license or registration against whom a board order is issued to ascertain that the licensee performs the required acts.

§741.195. Licensing or Registration of Individuals with Criminal Backgrounds.

(a) This section establishes guidelines and criteria on the eligibility of individuals with criminal backgrounds to obtain licenses or registration as speech-language pathologists, audiologists, interns or assistants.

(1) The board shall have the authority to obtain from the Texas Department of Public Safety or from a local law enforcement agency the record of any conviction of any person applying for or holding a license or a registration from the board.

(2) The board may suspend or revoke an existing license or registration, disqualify an individual from receiving a license or registration or deny to an individual the opportunity to be examined for a license or registration because of an individual's conviction of a felony or misdemeanor

if the crime directly relates to the duties and responsibilities of a speech-language pathologist, audiologist, intern or assistant.

(3) In considering whether a criminal conviction directly relates to the profession of a speech-language pathologist, audiologist, intern or assistant, 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 or registration to be a speech-language pathologist, audiologist, intern or assistant;

(C) the extent to which a license or registration might afford an opportunity to repeat the criminal activity in which the individual 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 speech-language pathologist, audiologist, intern or assistant.

(i) In making this determination, the board shall consider the following evidence:

(I) the extent and nature of the person's past criminal activity;

(II) the age of the person at the time of the commission of the crime;

(III) the amount of time that has elapsed since the person's last criminal activity;

(IV) the conduct and work activity of the person prior to and following the criminal activity;

(V) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(VI) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person;

(ii) it shall be the responsibility of the applicant to the extent possible to secure and provide to the board the recommendations of the prosecution, law enforcement, and correctional authorities; the applicant shall also furnish proof in such form as may be required by the board that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(b) Upon a licensee's or registrant's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his or her license or registration shall be subject to revocation.

(c) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to perform or to be unfit for licensure or registration:

(1) the misdemeanor of violating Texas Civil Statutes, Article 4512j (Act);

(2) a conviction relating to deceptive business practices;

(3) a conviction relating to Medicare or Medicaid fraud;

(4) a misdemeanor or felony offense involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child;

(H) injury to an elderly person;

(I) child abuse or neglect;

(J) tampering with a governmental record;

(K) forgery;

(L) perjury;

(M) failure to report abuse;

(N) bribery;

(O) harassment; or

(P) insurance claim fraud under the Penal Code, §32.55;

(5) a conviction relating to delivery, possession, manufacturing, or use of a controlled substance, dangerous drug, or narcotic; or

(6) other misdemeanors or felonies, including convictions under the Texas Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or registrant or unfit for licensure or registration if action by the board will promote the intent of the Act, this chapter, and Texas Civil Statutes, Article 6252-13c.

(d) Procedures.

(1) The executive secretary will give written notice to the individual that the board or a committee of the board intends to deny, suspend, or revoke the license or registration after hearing, in accordance with the provisions of §741.196 of this title (relating to Formal Hearings).

(2) If the board denies, suspends or revokes a license or registration under this subsection after hearing, the executive secretary will give the individual written notice in accordance with Texas Civil Statutes, Article 6252-13d.

§741.196. Formal Hearings.

(a) The State Board of Examiners of Speech-Language Pathology and Audiology shall abide by the Texas Department of Health's formal hearing procedures in 25 TAC Chapter 1 (relating to the Board of Health) with the following exceptions.

(1) All final orders or decisions will be made by the board.

(2) The board is not required to adopt the recommendations of a hearing examiner and may take action as it deems appropriate and lawful.

(3) All references in the formal hearing procedures to "agency," "board, " and "commissioner," means the State Board of Examiners for Speech-Language Pathology and Audiology.

(b) All formal hearings unless otherwise determined by the hearing examiner or upon agreement of the parties shall be held in Austin, Texas.

(c) The committee of the board may determine whether a hearing will be held before a hearing examiner or the board. If a hearing examiner is not utilized, the board shall conduct the formal hearing and contested case proceedings, and all references in this chapter to the hearing examiner shall be references to the board.

(d) If the applicant or licensee fails to appear or be represented at the scheduled hearing, the person is deemed to be in agreement with the charges and proposed action and to have waived the right to a hearing.

(e) The parties to a hearing shall be the applicant or licensee who requested the hearing and the committee appointed under §741.193 of this title (relating to Complaint Procedures).

(f) A witness or deponent shall be paid for mileage, transportation, meals, and lodging expenses and a fee of $10 a day in accordance with the Administrative Procedure Act.

§741.197. Surrender of License.

(a) A licensee or registrant may offer his or her license or registration for surrender to the board office. The board will notify the licensee or registrant that the license or registration has been received.

(b) The board shall consider accepting the voluntary surrender of the license or registration at its next regularly scheduled meeting which is at least 18 days after the offer of surrender.

(c) When a licensee or registrant has offered the surrender of his or her license or registration after a complaint has been filed alleging violations of Texas Civil Statutes, Article 4512j (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) A license or registration which has been surrendered and accepted may not be reinstated; however, that person may apply for a new license or registration in accordance with the Act and this chapter.

§741.198. Informal Disposition or Proceedings.

(a) Informal disposition of any compliant or contested case involving a licensee or registrant or an applicant for licensure or registration may be made through an informal settlement conference held to determine whether an agreed settlement order may be approved.

(b) If the executive secretary or the complaints committee of the board determines that the public interest might by served by attempting to resolve a complaint or contested case by an agreed order in lieu of a formal hearing, the provisions of this section shall apply. A licensee, registration, or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the executive secretary or the complaints committee.

(c) An informal conference shall be voluntary. It shall not be a prerequisite to a formal hearing.

(d) The executive secretary shall decide upon the time, date and place of the settlement conference and provide written notice to the licensee, registrant, 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, registrant, or applicant or by personal delivery. The ten days shall begin on the date of mailing or delivery. The licensee, registrant, or applicant may waive the ten day notice requirement.

(e) The notice shall inform the licensee, registrant or applicant of the nature of the alleged violation; that the licensee, registrant or applicant may be represented by legal counsel; that the licensee, registrant or applicant may offer the testimony of witnesses and present other evidence as may be appropriate; that committee members may be present; that the board's legal counsel or a representative of the Office of the Attorney General will be present; that the licensee's, registrant's or applicant's attendance and participation is voluntary; that the complainant and any client involved in the alleged violations may be present; and that the settlement conference shall be cancelled if the licensee, registrant or applicant notifies the executive secretary that he or she or his or her legal counsel will not attend. A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the settlement conference.

(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 registrant, the licensee's or registrant's attorney, complaints committee members, and board staff 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 complaints committee members or executive secretary 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 law relating to open records, Government Code, Chapter 552, and the Administrative Procedure Act, Government Code, Chapter 2001.

(m) At the discretion of the executive secretary or the complaints committee members, a tape recording may or may not be made of none or all of the settlement conference.

(n) The committee members or the executive secretary shall exclude from the settlement conference all persons except witnesses during their testimony, the licensee or registrant, the licensee's or registrant'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 complaints committee members or executive secretary may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by Texas Civil Statutes, Article 4512j (Act). The committee members 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, registrant, or applicant may either accept or reject at the conference the settlement recommendations. 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, registrant, or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee, registrant, or applicant shall exe-

cute 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, registrant, 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, registrant, or applicant rejects the proposed settlement, the matter shall be referred to the executive secretary for appropriate action.

(s) If the licensee, registrant 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, registrant or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee, registrant or applicant chooses to attend the board meeting. The licensee, registrant, 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, registrant, 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 registrant 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, registrant, or applicant and the complainant shall be so informed. The matter shall be referred to the executive secretary 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 Administrative Procedure Act, Government Code, Chapter 2001.

(x) A licensee's or registrant's opportunity for an informal conference under this section shall satisfy the requirement of the Administrative Procedure Act, Government Code, §2001.054(c)

(1) If the executive secretary or complaints committee determines that an informal conference shall not be held, the executive secretary shall give written notice to the licensee, registrant or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the licensee, registrant or applicant shall be given the opportunity to show, in writing, and as described in the notice, compliance with all requirements 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 23, 1994.

TRD-9438030 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1994

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter L. Publication

• 22 TAC §§741.208-741.210

The repeals are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438029 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date· November 12, 1994

For further information, please call. (512) 834-6627

♦ ♦ ♦

Subchapter M. Academic Requirements for Examination and Dual Licensure for Speech-Language Pathologists and Audiologists

• 22 TAC §741.301

The repeal is adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994

TRD-9438028 Gene R. Powers, PhD.
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1994

For further information, please call: (512) 834-6627

♦ ♦ ♦

Subchapter N. Publications

• 22 TAC §§741. 301-741.303

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on March 23, 1994.

TRD-9438027 Gene R Powers, PhD
Chairperson
State Committee of Examiners for Speech-Language Pathology and Audiology

Effective date: April 13, 1994

Proposal publication date: November 12, 1994

For further information, please call: (512) 834-6627

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 133. Hospital Licensing

Minimum Standards for State Mental Hospitals, State Schools for the Retarded, and State Tuberculosis Hospitals

The Texas Department of Health (department) adopts the repeal of §§133. 1-133.7; new §§133.1-133.3, 133.11-133.14; an amendment to §133.21; new §133.22; repeal of §§133.29, 133.31, and 133 32; and new §§133.51-133.54, 133.71-133.72, 133.101-133.102, 133.111-133.113, and 133.121. Sections 133. 1-133.3, 133.11-133.14, 133.22, 133.51-133.54, 133.71, 133.101, 133.102, 133. 111-133.113, and 133.121 are adopted with changes to the proposed text as published in the November

2, 1993, issue of the *Texas Register* (18 TexReg 7963). Sections 133.21, 133.72, and the repealed sections are adopted without changes and will not be republished.

The new sections contain new language; incorporate existing language presently located in §133.29, §133.31 and §133.32, which are being repealed; and incorporate existing language from Chapters 1, 4, 5, 7, 8 and 11 of the hospital licensing standards which were adopted by reference in §133. 21.

The amendment to §133 21 repeals §1-2.4, Chapters 4 and 5, §§8-5 6 and 8-5.7 and Chapter 11 of the hospital licensing standards (adopted by reference in this section). New §§133 22, 133.51, 133.71, 133.72, 133 101, and 133.102 replace §1-2.4 (relating to special service requirements-rehabilitation), Chapter 4 (relating to application of standards), Chapter 5 (relating to submittal requirements), §§8-5.6 and 8-5.7 (relating to medical gas and clinical vacuum systems) and Chapter 11 (relating to rules governing hospital patient transfer policies and agreements). In addition, the amendment to §133.21 amends existing language in §§1-14, 1-20, 7-2.4 and 7-7.1 either by deleting language which was incorporated into new sections or by deleting cross references which will be obsolete with the adoption of the new sections.

Existing §§133.29, 133 31 and 133.32 are repealed for the purpose of reorganizing Chapter 133 As previously mentioned, these sections are now relocated in the adopted new sections, specifically, new §§133 3, 133.13, and 133 52

The purpose of this adoption is to update and clarify the hospital licensing standards to implement the recent legislative changes made during the 73rd Texas Legislature, Regular Session, 1993, and is a continuation of the effort to convert existing hospital licensing standards, presently adopted by reference, to *Texas Register* rule format. Adoption of these rules is required in order to implement the laws that were effective September 1, 1993 These laws required the Texas Board of Health to establish rules that hospitals must implement. These laws are· Acts 1993, 73rd Legislature, Regular Session, Chapter 584 (Senate Bill 86) provides for civil penalties and the assessment of administrative penalties, increases fees relating to plan reviews and hospital licenses, Acts 1993, 73rd Legislature, Regular Session, Chapter 705 (Senate Bill 205) pertains to marketing practices, patients rights, the admission and treatment of minors, the intake, assessment and admission of patients receiving mental health services, chemical dependency services or comprehensive medical rehabilitation services and patients receiving electroconvulsive therapy; Acts 1993, 73rd Legislature, Regular Session, Chapter 903 (Senate Bill 207) pertains to audits of billing for improper, unreasonable or medically or clinically unnecessary treatments; Acts 1993, 73rd Legislature, Regular Session, Chapter 573 (Senate Bill 210) pertains to illegal remuneration, abuse, neglect, unethical or unprofessional conduct towards patients receiving mental health services, chemical dependency services or comprehensive medical rehabilitation services, and Acts 1993, 73rd Legislature, Regular Session, Chapter 707 (Senate Bill 212) pertains to patients receiving comprehensive medical rehabilitation services.

The changes made to sections are based on comments submitted during the comment period.

The following comments were received concerning §133.1 (relating to Purpose).

Comment: Relating to §133.1, one commenter suggested that the department provide an explanation to define Chapters 161, 164, 222, 241, 311, 313 and 321

Response: The department agrees and has provided an explanation of each chapter.

Comment: Relating to §133.1(b), one commenter suggested that complaints against the department be added to the existing language

Response: The department agrees and has modified the language.

The following comments were received concerning §133 2 (relating to Definitions)

Comment. Relating to §133.2, a commenter suggested that abuse include sexual exploitation and verbal abuse

Response: The department agrees and has modified the language accordingly

Comment. Relating to §133.2, a commenter suggested that the definition of affiliate could be subject to an unintentionally broad interpretation and suggested the department add an additional definition for principal stockholder

Response The department agrees in part with the commenter The definition of affiliate was modified to delete the terms principal and person with a disclosable interest, language was added regarding direct ownership of at least 10%, a definition was added for owner

Comment: Relating to §133.2, two commenters suggested that "inpatient mental health facility" be modified to reflect the statutory scope of its application

Response The department has deleted this term and the language

Comment Relating to §133 2, a commenter suggested that the definition of manager and management services was confusing

Response The department agrees and has modified the language for clarity

Comment Relating to §133 2, a commenter suggested that the definition of mental health facility was confusing

Response. The department agrees and has deleted the term throughout the rules

Comment Relating to §133 2, a commenter suggested that the term owner be added

Response The department agrees and has provided language for the definition

Comment Relating to §133 2, a commenter suggested that the term person with a disclosable interest be deleted.

Response· The department agrees and has deleted the term

Comment· Relating to §133.2, a commenter suggested that the definition of a rehabilitation unit be revised to state "an identifiable part of a hospital or other health care facility which provides comprehensive medical rehabilitation services to patients admitted to the unit."

Response: The department has no authority at this time to modify the definition of a rehabilitation unit pending an interpretation from the Office of the Attorney General. The following comment was received concerning §133. 3 (relating to Fees).

Comment: Relating to §133 3(a)(2), a commenter suggested that §133.3(a) (2) be deleted.

Response: The department agrees and has deleted §133 3(a)(2) and other references to payment coupons throughout the rules accordingly.

The following comments were received concerning §133.11 (relating to Application and Issuance of Temporary Initial License for First-Time Applicants).

Comment: Relating to §133.11(b)(6), a commenter suggested that the language be revised to delete the reference to the payment coupon provided by the department.

Response. The department agrees and has deleted this portion of the language accordingly.

Comment. Relating to §133.11(b)(8), a commenter asked if a final approval letter from the Texas Department of Licensing and Regulation (TDLR) should be submitted with project plans and specifications

Response The department agrees and has added new language at §133.11(b) (8) and 133 71(a)(7) and deleted the language at 133 22(h)(2)(A)(iii).

Comment Relating to §133.11(c), a commenter suggested that the person for whom the requested information must be disclosed should be identified.

Response. The department agrees and has modified the language accordingly.

Comment. Relating to §133.11(d)(1)(C), a commenter suggested that the language be deleted

Response The department agrees and has deleted the language.

Comment. Relating to §133.11(d)(4), a commenter suggested that 5.0% should be changed to 10%

Response The department agrees and has modified the language accordingly.

The following comment was received concerning §133.12 (relating to Issuance and Renewal of Annual License).

Comment: Relating to §133.12(d)(3), a commenter suggested that the language be revised to delete the reference to the payment coupon provided by the department.

Response: The department agrees and has deleted this portion of the language accordingly. The following comment was received concerning §133.13 (relating to Time Periods

for Processing and Issuing Hospital Licenses).

Comment: Relating to §133.13(d), a commenter suggested that a written report of facts shall be submitted by the division rather than the department.

Response: The department agrees and has deleted the term department and has added division.

The following comments were received concerning §133.14 (relating to Change of Ownership or Services).

Comment: Relating to §133.14(a)(4), a commenter asked that language be added to more fully explain the issuance of a temporary initial license resulting from Change of Ownership.

Response: The department agrees and has modified the language accordingly for clarity.

Comment: Relating to §133.14(a)(5), a commenter suggested that the language was confusing and did not specify what happens with an annual license.

Response: The department agrees and has added language to provide clarity.

The following comments were received concerning §133 22 (relating to Licensure Requirements and Standards for All Hospitals).

Comment: Relating to §133.22(b), a commenter suggested that the language be revised by replacing the word "ensure" with the word "monitor"

Response: The department agrees and has changed the language accordingly.

Comment: Relating to §133 22(c), one commenter stated that according to the Nursing Practice Act, Texas Civil Statutes, Articles 4525a and 4525b, the correct language is professional nurse reporting and peer review rather than peer review and mandatory reporting requirements.

Response: The department agrees with the commenter and has made the correction.

Comment: Relating to §133.22(h)(2), one commenter suggested that or health care facility is confusing.

Response: The department agrees and has modified the language throughout the rules.

Comment: Relating to §133.22(h)(2)(A)(iii), one commenter suggested that the commission is confusing and should be deleted.

Response: The department agrees and has modified the language to indicate TDLR throughout the rules.

Comment: Relating to §133.22(h)(6), a commenter asked if outlets should be provided and suggested that revisions be made to restrict the use of a licensed, certified plumber only to the installation of medical gas piping, and that repairs be performed by hospital personnel

Response: The department responds that outlets shall be provided, and agrees with the suggestion and has modified the language

Comment: Relating to §133.22(h)(7), a commenter suggested that the language be deleted in its entirety because it is unduly burdensome and unnecessary.

Response: The department disagrees and will let the language stand as it is proposed to protect the health and safety of the citizens.

The following comments were received concerning §133.51 (relating Standards for the Provision of Comprehensive Medical Rehabilitation Services).

Comment: Relating to §133.51(c), a commenter suggested that the person proposing to initiate the provision of comprehensive medical rehabilitation services may not be a hospital and recommended that the reference to "hospital" include "or other health care facility".

Response: The department disagrees with the comment as the department does not license any other types of facilities under the Health and Safety Code, Chapter 241, the statutory authority for these rules and will let the language stand as it is proposed.

Comment. Relating to §133.51(e)(3)(D), three commenters suggested the language creates an undue burden upon the providers of rehabilitation services which are not found for providers of any other services within a general or special hospital licensed by the department and that there is no comparable standard requiring ACLS (advanced cardiac life support) certification in any program licensed by the department.

Response. The department understands the possible concomitant effects of this licensure requirement, but will let the language stand as proposed in the best interest of the health, safety and welfare of the citizens.

Comment: Relating to §133.51(i)(1)(A), one commenter suggested that the language was awkward and should be rewritten.

Response The department agrees and has modified the language accordingly.

Comment Relating to §133 51(i)(2)-(3), a commenter suggested that the language be modified to specify medical rehabilitation services.

Response. The department agrees and has modified the language accordingly.

Comment. Relating to §133.51(i)(3)(B), two commenters suggested that internal medicine be added.

Response. The department agrees and has added internal medicine accordingly.

Comment. Relating to §133.51(j), one commenter suggested that the language was beyond the department's statutory authority.

Response The department disagrees and has clarified the language throughout the rules accordingly.

Comment: Relating to §133.51(j)(2), a commenter suggested the language required a preadmission screening procedure that was not clearly defined and beyond the statutory authority of the department.

Response: The department disagrees with the comment and has modified the language for clarity.

Comment: Relating to §133.51(k)(1)(A)(iv), a commenter suggested that the requirement for a therapeutic recreational therapist appears to increase the cost of the program and duplicate services.

Response: The department disagrees and will let the language stand as it is a statutory requirement of the Health and Safety Code, Chapter 241.123(c).

Comment: Relating to §133.51(k)(2), two commenters suggested deleting the phrase "in coordination with the interdisciplinary team," or adding a new sentence to the section to read "If it is not practicable to coordinate with the interdisciplinary team within that time, the physician shall perform the initial assessment or preliminary treatment plan."

Response: The department has deleted "in coordination with the interdisciplinary team" in §133.51(k)(2) accordingly.

Comment: Relating to §133.51(k)(3)(B), a commenter suggested that the last sentence be revised to state that the hospital must establish written qualifications for services provided by each discipline for which there is no applicable professional licensure or certification state statute

Response: The department agrees and has modified the language in §133. 51(k)(3)(B) accordingly.

Comment: Relating to §133.51(k)(3)(E), two commenters stated that they interpreted this section to require an updated treatment plan at least every two weeks after a conference of the interdisciplinary team, and should a patient refuse treatment and be discharged to another setting that the treatment plan revisions are not necessary and in that event, a continuing care plan would be prepared and issued to the patient according to §133.51(l) .

Response: The department's response is that is an accurate interpretation, and has added clarifying language.

Comment: Relating to §133.51(l), one commenter suggested that the language be modified to indicate when the patient's interdisciplinary team shall prepare a written continuing care plan.

Response: The department agrees and has modified the language accordingly.

Comment: Relating to §133.51(m), a commenter asked if the department would be promulgating a form Patient's Bill of Rights for comprehensive medical rehabilitation services.

Response: The department's response is that no form will be promulgated.

Comment. Relating to §133.51(m), one commenter suggested that the language in §133.54(e)-(f) be moved to §133.51(m).

Response: The department agrees and has moved the text accordingly.

Comment: Relating to §133.51, a commenter provided information regarding chronically ill and disabled children's services that identified specific rules for pediatric inpatient rehabilitation centers.

Response: The department responds that

suggested rules exceed the statutory limits of the Hospital Licensing Law, Health and Safety Code, Chapter 241.

The following comments were received concerning §133.52 (relating to Standards for the Provision of Mental Health Services in an Identifiable Part of a Hospital).

Comment: Relating to §133.52(a)(1), a commenter suggested the language required a preadmission screening procedure that was not clearly defined and beyond the statutory authority of the department.

Response: The department disagrees with the comment and has modified the language for clarity.

Comment: Relating to §133.52(b) and §133.53(a)-(c), a commenter suggested that the standards cited promulgate different rules for mental health and chemical dependency programs.

Response: The department responds that an effort has been made not to duplicate licensure standards in enforcing statutory requirements.

Comment: Relating to §133.52(b), a commenter suggested that the effective dates of the rules adopted by reference from the Texas Department of Mental Health and Mental Retardation were not current.

Response: The department agrees with the comment and has corrected the effective dates

Comment Relating to §133 52(b), a commenter asked if the rules relating to restraint and seclusion promulgated by TXMHMR are being enforced by the department.

Response: The department responds that the rules are being enforced and has added them to the list of rules adopted by reference.

Comment: Relating to §133.52(b)(2), a commenter suggested that language be added to indicate where the patient's bill of rights should be posted.

Response. The department agrees and has modified the language to indicate where the patient's bill of rights should be posted.

The following comments were received concerning §133.53 (relating to Standards for the Provision of Chemical Dependency Services in an Identifiable Part of a Hospital).

Comment Relating to §133.53(b), a commenter suggested that the subsection be deleted as it was redundant.

Response: The department agrees that the language was duplicative and has deleted §133 53(b) accordingly and moved unduplicated language to §133. 51(m).

The following comments were received concerning §133.54 (relating to Standards for Hospitals Providing Comprehensive Medical Rehabilitation, Mental Health, or Chemical Dependency Services).

Comment Relating to §133 54(d), a commenter asked whether TDH, TXMHMR, TCADA, and TDPRS will collaborate in developing one set of rules and reporting requirements, as well as inservice requirements for all four agencies.

Response: The department's response is the department has adopted by reference the memorandum of understanding as specified in §401.57 of this title (relating to Training Requirements for Identifying Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities).

Comment: Relating to §133.54(d)(1), a commenter asked if it would be possible for an individual to complete an initial eight-hour training program and be later certified, versus completing the annual eight-hour training requirement.

Response: The department responds that the number of hours is specified by statutory requirements.

Comment: Relating to §133.54(d)(1), two commenters suggested that the section not specify the minimum number of hours required in the memorandum of understanding

Response: The department disagrees as the number of hours is specified by statutory requirements

Comment Relating to §133.54(d)(2), a commenter suggested that any hospital providing comprehensive medical rehabilitation, mental health, or chemical dependency services shall comply with the memorandum of understanding

Response. The department agrees and has included the language in §133 54(d)(2) accordingly.

Comment: Relating to §133 54(e), a commenter asked if a person in an inpatient chemical dependency program would be required to sign a patient right's document from TXMHMR and TCADA.

Response. The department's response is that a patient right's document is required by each licensing authority

Comment. Relating to §133.54(e), a commenter suggested that the language be changed to read "the hospital shall ensure that within 24 hours of the patient's admission. .."

Response. The department disagrees as the language is statutory.

Comment. Relating to §133 54(e), a commenter asked whether the minor's guardian needs to sign the adult version of the patient's rights statement.

Response: The department's response is that the guardian signs the minor's patient rights statement.

Comment: Relating to §133.54(e)(1)-(5), a commenter suggested that the language was confusing and should be rewritten.

Response: The department agrees and has deleted subsections §133.54(e)(1) -(5) accordingly.

Comment. Relating to §133.54(e)-(f), a commenter suggested the subsections be deleted as they were redundant as this language is in the rules adopted by reference.

Response: The department agrees that the language was duplicative and has deleted §133.54(e)-(f) accordingly and moved unduplicated language to §133. 51(m).

Comment: Relating to §133.54(f), a commenter asked why should there be a separation of minor patients from adults, when TCADA allows participation of adults and adolescents in the chemical dependency program.

Response: The department responds that the statutory requirement specifies separation of minor patients from adult patients.

The following comments were received concerning §133.71 (relating to Construction Plans, Specifications, and Inspections).

Comment: Relating to §133.71(a)(5), a commenter suggested that every minor remodeling change need not be reported to the department.

Response: The department disagrees with the comment and has added language to provide clarity.

Comment. Relating to §133 71(b)(2)(B)(i), one commenter suggested deleting the phrase shall be shown on the drawings or equipment list.

Response. The department agrees and has revised the language accordingly

Comment: Relating to §133 71(c)(2), one commenter suggested that the language be revised to indicate only one set of drawings

Response. The department agrees and has revised the language accordingly.

Comment. Relating to §133.71(d)(7), a commenter suggested the language be revised by placing the adjective major in front of the word addition so as to modify the entire phrase "addition, alteration, conversion, modernization, or renovation space ..."

Response The department disagrees with the comment and will let the language stand as proposed

The following comments were received concerning §133.101 (relating to Hospital Patient Transfer Policies)

Comment. Relating to §133 101(b)(7), a commenter suggested the paragraph be retitled "Transfer of Patients Who Do Not Have Emergency Medical Conditions "

Response The department agrees and has retitled the paragraph.

Comment: Relating to §133.101(b)(7)(A)-(C), a commenter suggested that the language be duplicated in §133 101(b)(6).

Response: The department agrees and has included the language in §133. 101(b)(6) accordingly.

Comment. Relating to §133.101(b)(7)(C), a commenter suggested the language was not clear and should be revised.

Response: The department agrees and has revised the language accordingly.

Comment: Relating to §133.101(b)(7)(D), a commenter suggested that the language be moved to section §133.101(b)(6), and modi-

fied to refer to transfer of patients who have emergency medical conditions.

Response: The department agrees and has moved §133.101(b)(7)(D) to §133. 101(b)(6).

The following comment was received concerning §133.102 (relating to Hospital Patient Transfer Agreements).

Comment: Relating to §133.102(b)(5)(C), one commenter suggested that the language is confusing.

Response: The department agrees and has modified the language for clarity.

The following comments were received concerning §133.111 (relating to Inspections and Investigation Procedures).

Comment. Relating to §133 111(d), a commenter suggested that the language is unclear.

Response: The department agrees and has provided clarifying language.

Comment. Relating to §133.111(g), a commenter suggested that the last sentence is redundant and unnecessary.

Response: The department agrees and has deleted the sentence accordingly

Comment· Relating to §133.111(i), a commenter suggested that the introductory phrase prior to the colon be revised.

Response· The department agrees and has made the revision to the section accordingly

Comment Relating to §133 111(i), a commenter suggested the language be modified to state what the department should provide during an inspection or investigation.

Response: The department partially agrees and has added new language to §133.111(i) to specify what the department will provide during an inspection or investigation

The following comments were received concerning §133.112 (relating to Audits of Billing)

Comment: Relating to §133 112(d), a commenter suggested that the language be changed to indicate 30 days rather than 60 days.

Response: The department agrees and has modified the language accordingly

Comment Relating to §133.112(f), a commenter suggested the language is confusing and should be revised

Response: The department agrees and has modified the language to provide clarity.

The following comment was received concerning §133.113 (relating to Disciplinary Action and Emergency Orders).

Comments: Relating to §133.13(b)-(c), a commenter suggested that the language is confusing and too narrow.

Response: The department partially agrees and has modified the language for clarity.

Minor editorial changes were made for clarification purposes.

Comments received on the proposed rules during the comment period were from individuals; Continental Medical Systems, Inc.; HealthSouth Rehabilitation Hospital; HealthSouth Rehabilitation Corporation; Milestone Healthcare; National Medical Enterprises; The New Pavilion, Northwest Texas Healthcare System; Riosa Rehabilitation Institute of San Antonio; Texas Hospital Association; Texas Medical Association; Texas Department of Health Chronically Ill and Disabled Children's Services. The commenters were neither for nor against the rules in their entirety; however, they raised questions, offered comments for clarification concerns, and made recommendations concerning specific provisions in the rules.

• 25 TAC §§133.1-133.7

The repeals are adopted under the Health and Safety Code, Chapter 241, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals; and 161, 164, 222, 311, 313, and 321 which provide the board with the authority to adopt rules relating to abuse, neglect and unprofessional or unethical conduct in health care facilities; treatment facilities marketing and admission practices; health care facility surveys, construction, inspection, and regulation; powers and duties of hospitals; cooperative agreements; and provision of mental health, chemical dependency and rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health

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

Issued in Austin, Texas, on April 1, 1994.

TRD-9438495 Susan K Steeg
General Counsel
Texas Department of Health

Effective date· April 22, 1994

Proposal publication date: November 2, 1993

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

♦ ♦ ♦

Subchapter A. General Provisions

• 25 TAC §§133.1-133.3

The new sections are adopted under the Health and Safety Code, Chapter 241, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals; and 161, 164, 222, 311, 313, and 321 which provide the board with the authority to adopt rules relating to abuse, neglect and unprofessional or unethical conduct in health care facilities; treatment facilities marketing and admission practices; health care facility surveys, construction, inspection, and regulation; powers and duties of hospitals; cooperative agreements; and provision of mental health, chemical dependency and rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

§133.1. Purpose.

(a) The purpose of this chapter is to implement the Health and Safety Code, Chapters 161, 164, 222, 241, 311, 313, and 321 relating to abuse, neglect and unprofessional or unethical conduct in health care facilities; treatment facilities marketing and admission practices; health care facility surveys, construction, inspection, and regulation; general and special hospitals to be licensed by the Texas Department of Health (department); powers and duties of hospitals; cooperative agreements; and provision of mental health, chemical dependency and rehabilitation services.

(b) These sections provide minimum standards for hospital licenses; procedures for granting, denying, suspending, or revoking a license; patient transfers; commissioner's emergency orders; patient care; construction; audits of billing; complaints against the department; and cooperative agreements among hospitals.

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

Abuse-Abuse includes:

(A) any act or failure to act by an employee of a hospital which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to a patient, and includes acts such as:

(i) the rape, sexual assault or sexual exploitation of a patient;

(ii) the striking of a patient,

(iii) the use of excessive force when placing a patient in bodily restraints; and

(iv) the use of bodily or chemical restraints on a patient which is not in compliance with federal and state laws and regulations; and

(B) verbal abuse, coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy or treatment.

Act-The Texas Hospital Licensing Law, Health and Safety Code, Chapter 241.

Affiliate-With respect to an applicant or owner which is:

(A) a corporation-means each officer, director, stockholder with a direct ownership of at least 10%, subsidiary, and parent company;

(B) a limited liability company-means each officer, member, and parent company;

(C) an individual-means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, or stockholder with a direct ownership of at least 10%;

(D) a partnership-means each partner and any parent company; and

(E) a group of co-owners under any other business arrangement-means each officer, director, or the equivalent under the specific business arrangment and each parent company.

Applicant-A person who seeks a hospital license from the department

Attorney general-The attorney general of Texas or any assistant attorney general acting under the direction of the attorney general of Texas.

Board-The Texas Board of Health.

Chemical dependency-Dependency resulting from:

(A) the abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

Comprehensive medical rehabilitation-The provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share responsibility to achieve team treatment goals for the person.

Cooperative agreement-An agreement among two or more hospitals for the allocation or sharing of health care equipment, facilities, personnel, or services.

Council-The Hospital Licensing Advisory Council.

Department-The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

Designated provider-A provider of health care services, selected by a health maintenance organization, a self-insured business corporation, a beneficial society, the Veterans Administration, CHAMPUS, a business corporation, an employee organization, a county, a public hospital, a hospital district or any other entity to provide health care services to a patient with whom the entity has a contractual, statutory or regulatory relationship that creates an obligation for the entity to provide the services to the patient.

Director-The director of the Health Facility Licensure and Certification Division, Texas Department of Health.

Disciplinary action-Denial, suspension, or revocation of a license, issuance of an emergency order or imposition of an administrative penalty.

Division-The Health Facility Licensure and Certification Division, Texas Department of Health.

Emergency medical condition-A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in one or all of the following:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) with respect to a pregnant woman who is having contractions:

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

Fast-track projects-A construction project in which it is necessary to begin initial phases of construction before later phases of the construction documents are fully completed in order to establish other design conditions or because of time constraints such as mandated deadlines.

General hospital-An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

Governmental unit-A political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

Governing body-The governing authority of a hospital which is responsible for a hospital's organization, management, control, and operation, including appointment of the medical staff; includes the owner or partners for hospitals owned or operated by an individual or partners. Hospital-A general hospital or a special hospital.

Hospital administration-An individual who has the authority to represent the hospital and who is responsible for the operation of the hospital according to the policies and procedures of the hospital's governing body.

Hospital licensing director-The director of hospital licensing, Texas Department of Health.

Illegal conduct-A conduct prohibited by state or federal law

Interdisciplinary team-A group of at least two health and allied health professionals which is directed by a physician and which work collaboratively to develop and implement the patient's treatment plan.

Learning disability-A severe discrepancy which exists when the individual's assessed intellectual ability is above the mentally retarded range, but where the individual's assessed educational achievement in areas specified is more than one standard deviation below the individual's intellectual ability.

Licensee-A person who has been granted a hospital license.

Manager-A person having a contractual relationship to provide management services to a hospital for the overall operation of a hospital, including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered to be contracts for management services shall include contracts solely for maintenance, laundry, or food services.

Medical staff-A physician or group of physicians or a podiatrist or group of podiatrists who by action of the governing body of a hospital are privileged to work in and use the facilities of a hospital for or in connection with the observation, care, diagnosis, or treatment of an individual who is or may be suffering from mental or physical disease or disorder, or a physical deformity

or injury.

Mental health services-All services concerned with research, prevention, and detection of mental disorders and disabilities, and all services necessary to treat, care for, control, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction.

Mental illness-An illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgement; or

(B) grossly impairs behavior as demonstrated by recent disturbed behavior.

Mental retardation-Significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

Neglect-A negligent act or omission by any individual responsible for providing services in a hospital which caused or may have caused injury or death to a patient or which placed a patient at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a patient, the failure to provide adequate nutrition, clothing, or health care to a patient, or the failure to provide a safe environment for a patient, including the failure to maintain adequate numbers of appropriately trained staff.

Owner-One of the following persons which will hold or does hold a license issued under the statute in the person's name or the person's assumed name:

(A) a corporation;

(B) a limited liability company,

(C) an individual;

(D) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;

(E) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or

(F) all co-owners under any other business arrangement.

Person-An individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative of those entities.

Physician-A physician licensed by the Texas State Board of Medical Examiners.

Podiatrist-A podiatrist licensed by the Texas State Board of Podiatry Examiners.

Presurvey conference-A conference held with department staff and the applicant or his or her representative to review licensure standards and survey documents and provide consultation prior to the on-site licensure inspection.

Psychiatric disorder-A clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is typically associated with either a painful syndrome (distress) or impairment in one or more important areas of behavioral, psychological, or biological function and is more than a disturbance in the relationship between the individual and society.

Rehabilitation unit-An identifiable part of a hospital which provides comprehensive medical rehabilitation services to patients admitted to the unit.

Rehabilitation hospital-A special hospital which provides comprehensive medical rehabilitation services.

Rural area-A nonmetropolitan county as defined by the United States Census Bureau in its most recent census

Rural community-A municipality in a rural area.

Special hospital-An establishment that:

(A) offers services, facilities and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated and discharged and who require services more intensive than room, board, personal services, and general nursing care;

(B) has clinical laboratory facilities, X-ray facilities, treatment facilities, or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient.

Stabilize-The adequate evaluation and initiation of treatment to assure that transfer of a patient will not, within reasonable medical probability, result in death or loss or serious impairment of bodily functions, parts, or organs.

Unethical conduct-Conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

Unprofessional conduct-Conduct prohibited under rules adopted by the state licensing agency for the respective profession.

§133.3. Fees.

(a) General.

(1) All fees paid to the Texas Department of Health (department) are nonrefundable.

(2) All fees shall be paid by check or money order made payable to the Texas Department of Health.

(b) License fees.

(1) The fee for a temporary initial license or a renewal license is $4.00 per bed based upon the design capacity of the hospital. The total fee may not be less than $200 or more than $10,000.

(2) The temporary initial license fee includes the fee for the first annual license.

(3) A hospital shall submit an additional fee with the notarized affidavit for final construction approval for an increase in the number of beds resulting from an approved construction project and an additional plan review fee if the construction cost increases to the next higher fee schedule according to subsection (c)(4) of this section.

(4) A hospital will not receive a refund of previously submitted fees should the hospital's bed capacity decrease as a result of an approved construction project.

(c) Plan review fees. This subsection outlines the fees which must accompany the application for plan review and all proposed plans and specifications covering the construction of new buildings or alterations to existing buildings which must be submitted for review and approval by the department in accordance with §133.71 of this title (relating to Construction Plans, Specifications, and Inspections).

(1) Architectural plans will not be reviewed or approved until the required fee and an application for plan review are received by the department.

(2) Plan review fees are based upon the estimated construction project costs which are the total expenditures required for a proposed project from initiation to completion, including at least the following.

(A) Expenditures for physical assets such as.

(i) site acquisition;

(ii) soil tests and site preparation;

(iii) construction and improvements required as a result of the project;

(iv) building, structure, or office space acquisition;

(v) renovation;

(vi) fixed equipment; and

(vii) energy provisions and alternatives.

(B) Expenditures for professional services including:

(i) planning consultants;

(ii) architectural fees;

(iii) fees for cost estimation;

(iv) legal fees;

(v) managerial fees; and

(vi) feasibility study.

(C) Expenditures or costs associated with financing, excluding long-term interest, but including:

(i) financial advisor;

(ii) fund-raising expenses;

(iii) lender's or investment banker's fee; and

(iv) interest on interim financing.

(D) Expenditure allowances for contingencies including:

(i) inflation;

(ii) inaccurate estimates;

(iii) unforeseen fluctuations in the money market; and

(iv) other unforeseen expenditures.

(3) Regarding purchases, donations, gifts, transfers, and other comparable arrangements whereby the acquisition is to be made for no consideration or at less than the fair market value, the project cost shall be determined by the fair market value of the item to be acquired as a result of the purchase, donation, gift, transfer, or other comparable arrangement.

(4) The plan review fee schedule based on cost of construction is:

(A) $600,000 or less-$500;

(B) $600,001-2,000,000-$1,000;

(C) $2,000,001-5,000,000-$1,500;

(D) $5,000,001-10,000,000-$2,000; and

(E) $10,000,001 and over-$3,000.

(5) If an estimated construction cost cannot be established, the estimated cost shall be based on $105 per square foot. No construction project shall be increased in size, scope or cost unless the appropriate fees are submitted with the proposed changes.

(d) Construction inspection fees. A fee of $400 and an application for construction inspection for each inspection shall be submitted to the department at least four weeks prior to the anticipated inspection date. Construction inspections will not be conducted until all required fees are received by the department. If additional construction inspections are required by the department or requested by the hospital of the proposed project, the appropriate additional fees shall be submitted prior to any inspections conducted by the staff of the department.

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 April 1, 1994.

TRD-9438496 Susan K Steeg
General Counsel
Texas Department of Health

Effective date: April 22, 1994

Proposal publication date: November 2, 1993

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

♦ ♦ ♦

Subchapter B. Application and Issuance of a Hospital License

• 25 TAC §§133.11-133.14

The new sections are adopted under the Health and Safety Code, Chapter 241, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals; and Chapters 161, 164, 222, 311, 313, and 321 which provide the board with the authority to adopt rules relating to abuse, neglect and unprofessional or unethical conduct in health care facilities; treatment facilities marketing and admission practices; health care facility surveys, construction, inspection, and regulation; powers and duties of hospitals; cooperative agreements; and provision of mental health, chemical dependency and rehabilitation services; and §12 001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

§133.11. Application and Issuance of Temporary Initial License for First-Time Applicants.

(a) General. The first application for a hospital license is an application for a temporary initial license issued by the department. The application for a temporary initial license is also an application for the first annual license.

(b) Application submittal. Upon written request, the Texas Department of Health (department) shall furnish a person with an application form for a hospital license. The applicant shall submit the following to the department no more than 60 days prior to the projected opening date of the hospital and shall retain a copy of all documentation that is submitted to the department:

(1) an accurate and complete application form;

(2) a copy of the hospital's patient transfer policy which is developed in accordance with §133.101 of this title (relating to Hospital Patient Transfer Policies) and is signed by both the chairman and secretary of the governing body attesting to:

(A) the date the policy was adopted by the governing body; and

(B) the policy's effective date;

(3) a copy of the hospital's memorandum of transfer form which contains at a minimum the information described in §133.101(b)(11) of this title;

(4) copies of any existing patient transfer agreements entered into between the hospital and another hospital in accordance with §133.102 of this title (relating to Hospital Patient Transfer Agreements) unless there is a written waiver by the hospital licensing director. If waived, the hospital must submit a list and dates of any existing agreements;

(5) a copy of an approved fire safety inspection report from the local fire authority in whose jurisdiction the hospital is based that is dated no earlier than one year prior to the hospital opening date;

(6) the license fee;

(7) if the applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification on

the license application that the tax owed to the state under the Tax Code, Texas Codes Annotated, 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; and

(8) the final approval letter from the Texas Department of Licensing and Regulation (TDLR) for project plans and specifications.

(c) Disclosure requirements. An applicant must disclose the following information for the two-year period preceding the application date, data concerning the applicant, and the real property, lessors, affiliates, and managers of the applicant, without regard to whether the data required relates to current or previous events:

(1) denial, suspension, or revocation of a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state;

(2) federal Medicare or state Medicaid sanctions or penalties;

(3) state or federal criminal convictions which imposed incarceration;

(4) federal or state tax liens;

(5) unsatisfied final judgements;

(6) operation of a hospital that has been decertified in any state under Medicare or Medicaid;

(7) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;

(8) eviction involving any property or space used as a hospital in any state;

(9) unresolved final federal Medicare or state Medicaid audit exceptions; or

(10) injunctive orders from any court.

(d) Ownership and management information required.

(1) Each applicant for a hospital license shall disclose to the department the name and business address of:

(A) each limited partner and general partner if the applicant is a partnership;

(B) each director and officer if the applicant is a corporation.

(2) If the applicant has held or holds a hospital license or has been or is an affiliate of another licensed hospital, the applicant shall disclose to the department the relationship, including the name and current or last address of the other hospital and the date such relationship commenced and, if applicable, the date it was terminated.

(3) If the applicant is a subsidiary of another organization, the information shall include the names and addresses of the parent organization and the names and addresses of the officers and directors of the parent organization.

(4) If the facility is operated by or proposed to be operated under a management contract, the names and addresses of any person and organization having an ownership interest of 10% or more in the management company shall be disclosed to the department.

(e) Exemptions. The provisions of subsections (c) and (d) of this section shall not apply to an applicant who is a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license will be issued in a fiduciary capacity except for provisions that require disclosure relating to the manager of the hospital.

(f) Review of application. Upon receipt of the application material, the department shall review the material to determine whether it is complete. The time periods for processing an application shall be in accordance with §133.13 of this title (relating to Time Periods for Processing and Issuing Hospital Licenses). Prior to the department's issuance of a temporary initial license, the following shall be completed

(1) The department must have reviewed and approved preliminary and final architectural plans and specifications in accordance with §133.71 of this title (relating to Construction Plans, Specifications, and Inspections).

(2) The department must have conducted necessary preliminary inspections and a final construction inspection to determine that the hospital is constructed in accordance with this chapter.

(3) The department must have received all plan review and construction inspection fees.

(4) The department must have received a copy of the approval for occupancy issued by the city building inspector, if applicable.

(5) The department must have received a complete, accurate, and notarized affidavit for final construction approval.

(6) The applicant must have attended a presurvey conference at the office designated by the department. The designated survey office may waive the presurvey requirement.

(g) Issuance of temporary initial license. When the hospital has submitted the information described in subsections (b)-(d) and (f) of this section, the department shall issue the temporary initial license effective the date the hospital is determined to be in compliance with this chapter. The effective date of the temporary initial license shall not be prior to the date of the final construction inspection conducted by the department. The admission of patients for hospital services shall not commence until the hospital has been issued a temporary initial license.

(1) The department will issue a temporary initial license which is valid for six months from the date of issuance and is not renewable. The department shall mail the temporary initial license to the licensee.

(2) The hospital shall post the temporary initial license in a conspicuous place on the licensed premises.

(3) A temporary initial license shall not be materially altered.

(4) Continuing compliance with the minimum standards and the provisions of this chapter is required during the temporary licensing period in order for an annual license to be issued.

(h) Withdrawal of application. If an applicant decides not to continue the application process for a temporary initial license, first annual license, or renewal of an annual license, the application may be withdrawn. If a temporary or annual license has been issued, the applicant shall return the temporary or annual license to the department with its written request to withdraw. The department shall acknowledge receipt of the request to withdraw.

(i) Denial of a license. Denial of a license shall be governed by §133.113 of this title (relating to Disciplinary Action and Emergency Orders).

§133.12. Issuance and Renewal of Annual License.

(a) The Texas Department of Health (department) will issue a first annual license to a hospital which meets the minimum standards for a license contained in this chapter as determined through a health inspection to assess compliance with the provisions of this chapter relating to patient health, safety and rights or through the hospital's successful completion of an on-site inspection conducted after issuance of the temporary initial license to determine compliance with the Medicare Conditions of Participation for Hospitals.

(1) A hospital must have admitted and be providing services to at least one patient in the hospital at the time of the health inspection

(2) A health inspection to assess compliance with the provisions of this chap-

ter relating to patient health, safety and rights shall only be required and conducted if a certification inspection to determine compliance with the Medicare Conditions of Participation for Hospitals did not occur after the issuance of the temporary initial license.

(b) The first annual license supersedes the temporary initial license and shall expire one year from the date of issuance of the temporary initial license.

(1) If the temporary initial license was issued effective the first day of a month, the first annual license expires on the last day of the month preceding the issuance month (e.g. if a temporary initial license is effective September 1, the first annual license expires on August 31 of the next year and every year thereafter unless a change of ownership occurs).

(2) If the temporary initial license was issued effective the second or any subsequent day of a month, the first annual license expires on the last day of the month of issuance of the next year (e.g. if the temporary initial license is effective September 2, the first annual license expires on September 30 of the next year and every year thereafter unless a change of ownership occurs).

(c) The department will send notice of expiration to a hospital at least 60 days before the expiration date of an annual license. If the hospital has not received notice of expiration from the department within 45 days prior to the expiration date, it is the duty of the hospital to notify the department and request a renewal application for a license. If the hospital fails to submit the application and fee within 15 days prior to the expiration date of the license, the department shall send by certified notice to the hospital a letter advising that unless the license is renewed, the hospital must cease operations upon the expiration of the hospital's license.

(d) The department shall issue a renewal license to a hospital which meets the minimum standards for a license, and which submits the following to the department postmarked no later than 30 days prior to the expiration date of the license:

(1) a completed and accurate renewal application form;

(2) a copy of an approved fire safety inspection report from the local fire authority in whose jurisdiction the hospital is based that is dated no earlier than one year prior to the application date;

(3) the renewal license fee;

(4) if the applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification on the licensure application that the tax owed to the state under the Tax Code, Texas Codes Annotated, 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;

(5) if the applicant is accredited by the Joint Commission on Accreditation of Healthcare Organizations or the American Osteopathic Association, the applicant shall submit a copy of documentation from the accreditation body showing that the hospital is currently accredited; and

(6) any changes to the information relating to the disclosure, ownership, and management requirements in §133.11(c) and (d) of this title (relating to Application and Issuance of Temporary Initial License for First-Time Applicants). The information provided shall address all changes during the most recent annual license period.

(e) If a hospital fails to submit the application, documents and fee by the expiration date of the hospital's license, the department shall notify the hospital that it must cease operation and immediately return the license by certified or registered mail to the department. If the hospital wishes to provide services after the expiration date of the license, it must apply for a temporary initial license under §133.11 of this title (relating to the Application and Issuance of Temporary Initial License for First-Time Applicants).

(f) An annual license shall not be materially altered.

(g) A hospital license shall be posted in a conspicuous place on the licensed premise.

§133.13. Time Periods for Processing and Issuing Hospital Licenses.

(a) General.

(1) The date an application for a temporary initial license and first annual license, renewal license, or change of ownership is received is the date the application reaches the Texas Department of Health (department).

(2) An application for a temporary initial license is complete when the department has received, reviewed and found acceptable the information described in §133.11(b)-(d) and (f) of this title (relating to Application and Issuance of Temporary Initial 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 §133.12(d) of this title (relating to Issuance and Renewal of Annual License).

(4) An application for change of ownership is complete when the department has received, reviewed and found acceptable the information described in §133.14 of this title (relating to Change of Ownership or Services).

(b) Time periods. An application from a hospital for a hospital license 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 hospital license is issued, or, if the application is received incomplete, the period ends on the date the hospital 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 days for each of the following categories: application for a temporary initial and first annual hospital license; application for change of ownership; and application for renewal of annual 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 hospital license is issued. The time period is 20 days for each of the following categories: application for temporary initial and first annual hospital licenses; application for change of ownership; and application for renewal of annual 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.

§133.14. Change of Ownership or Services.

(a) No license may be transferred or assigned.

(1) A change of ownership of a hospital occurs when the name of the licensed person as reflected on the original application is changed.

(2) A person who desires to receive a license in its name for a hospital currently licensed under the name of another person or to change the ownership of any hospital must submit a license application 60 days prior to the desired date of change of licensure. The application shall be in accordance with §133.11 of this title (relating to the Application and Issuance of Temporary Initial License for First-Time Applicants) and shall include the effective date of the new ownership.

(3) The on-site construction and health inspections required by §133. 11 of this title and §133.12 of this title (relating to Issuance and Renewal of Annual License) may be waived by the department.

(4) When the person has complied with the provisions of §133.11 of this title, the department shall issue a temporary initial license which shall be effective the date of the change of ownership unless the department waives the inspections in accordance with paragraph (3) of this subsection. If the inspections are waived, the department shall issue an annual license, in lieu of the temporary initial license, effective the date of the change of ownership.

(5) The previous owner's license shall be void on the effective date of the new temporary initial license or annual license and must be surrendered to the Texas Department of Health (department).

(6) If a corporate licensee amends its articles of incorporation to revise its name, this subsection does not apply, except that the corporation must notify the department within five business days after the effective date of the name change.

(7) The sale of stock of a corporate licensee does not cause this subsection to apply.

(8) The provisions of this subsection are in addition to any applicable federal law or regulations relating to change of ownership or control.

(b) A hospital must notify the department in writing of any change in the hospital's main telephone number within a reasonable period of time.

(c) A hospital shall notify the department in writing prior to the occurrence of any of the following:

(1) addition or deletion of services provided;

(2) addition or deletion of beds;

(3) request to change license classification;

(4) cessation of operation of the hospital. The temporary initial license or annual license shall be mailed or returned to the department at the end of the day hospital services were terminated;

(5) any change in certification or accreditation status; and

(6) construction, renovation, or modification of the hospital buildings.

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 April 1, 1994.

TRD-9438497 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: April 22, 1994

Proposal publication date: November 2, 1993

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

♦ ♦ ♦

Subchapter C. Operational Requirements for All Hospitals

• 25 TAC §133.21, §133.22

The amendment and new sections are adopted under the Health and Safety Code, Chapter 241, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals; and Chapters 161, 164, 222, 311, 313, and 321 which provide the board with the authority to adopt rules relating to abuse, neglect and unprofessional or unethical conduct in health care facilities; treatment facilities marketing and admission practices; health care facility surveys, construction, inspection, and regulation; powers and duties of hospitals; cooperative agreements; and provision of mental health, chemical dependency and rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

§133.22. Licensure Requirements and Standards for All Hospitals.

(a) A hospital shall meet the requirements set forth by the department in §§1.131-1.137 of this title (relating to Definition, Treatment and Disposition of Special Waste from Health Care Related Facilities) and 31 TAC §330.1004 (relating to Generators of Medical Waste).

(b) A hospital shall adopt, implement, and enforce a written policy to monitor compliance of the hospital and its personnel and medical staff with universal precautions in accordance with the Health and Safety Code, Chapter 85, Subchapter I (relating to the Prevention of HIV and Hepatitis B Virus by Infected Health Care Workers) .

(c) The hospital shall comply with the Nursing Practice Act, Texas Civil Statutes, Articles 4525a and 4525b (relating to Professional Nurse Reporting and Peer Review).

(d) A hospital that provides laboratory services shall comply with the requirements of Federal Public Law 100-578, Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988). CLIA 1988 applies to all hospitals 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.

(e) A hospital shall adopt, implement, and enforce a written policy for publicly known natural disaster preparedness for the reception, treatment and disposition of casualties from a single catastrophe. The written policy shall be developed through a joint effort of the hospital governing body, administration, medical staff, and hospital personnel. The written policy shall include a plan for the reasonable mechanism for triaging patients, the notification of appropriate personnel and patients in the event of a disaster, the identification of appropriate community resources and the identification of possible evacuation procedures. The written policy shall include the applicable information contained in the National Fire Protection Association's (NFPA) 1990 Edi-

tion of NFPA 99, Annex 1, Health Care Emergency Preparedness as published in the NFPA's 1991 National Fire Codes.

(f) The following provisions relate to patient rights.

(1) A hospital shall adopt, implement and enforce a policy to ensure the patient's rights. The written policy shall include:

(A) the right of the patient to the hospital's reasonable response to his/her requests and needs for treatment or service, within the hospital's capacity, its stated mission, and applicable law and regulation;

(B) the right of the patient to considerate and respectful care;

(i) the care of the patient includes consideration of the psychosocial, spiritual, and cultural variables that influence the perceptions of illness;

(ii) the care of the dying patient optimizes the comfort and dignity of the patient through:

(I) treating primary and secondary symptoms that respond to treatment as desired by the patient or surrogate decision maker;

(II) effectively managing pain; and

(III) acknowledging the psychosocial and spiritual concerns of the patient and the family regarding dying and the expression of grief by the patient and family;

(C) the right of the patient, in collaboration with his/her physician, to make decisions involving his/her health care, including:

(i) the right of the patient to accept medical care or to refuse treatment to the extent permitted by law and be informed of the medical consequences of such refusal; and

(ii) the right of the patient to formulate advance directives and appoint a surrogate to make health care decisions on his/her behalf to the extent permitted by law;

(I) in formulating an advance directive, a hospital shall have in place a mechanism to ascertain the existence of and assist in the development of advance directives at the time of the patient's admission;

(II) the provision of care shall not be conditioned on the existence of an advance directive; and

(III) an advance directive(s) shall be in the patient's medical record and shall be reviewed periodically with the patient or surrogate decision maker;

(D) the right of the patient to the information necessary to enable him/her to make treatment decisions that reflect his/her wishes; a policy on informed decision making shall be developed by the medical staff and governing body and shall be consistent with any legal requirements;

(E) the right of the patient to receive, at the time of admission, information about the hospital's patient rights policy(ies) and the mechanism for the initiation, review and, when possible, resolution of patient complaints concerning the quality of care;

(F) the right of the patient or the patient's designated representative to participate in the consideration of ethical issues that arise in the care of the patient. The hospital shall have a mechanism for the consideration of ethical issues arising in the care of patients and to provide education to caregivers and patients on ethical issues in health care;

(G) the right of the patient to be informed of any human experimentation or other research or educational projects affecting his/her care or treatment;

(H) the right of the patient, within the limits of law, to personal privacy and confidentiality of information,

(I) the right of the patient and/or the patient's legally designated representative access to the information contained in the patient's medical records, within the limits of the law; and

(J) the right of the patient's guardian, next of kin, or legally authorized responsible person to exercise, to the extent permitted by law, the rights delineated on behalf of the patient if the patient:

(i) has been adjudicated incompetent in accordance with the law;

(ii) is found by his/her physician to be medically incapable of understanding the proposed treatment or procedure,

(iii) is unable to communicate his/her wishes regarding treatment; or

(iv) is a minor.

(2) The hospital's patient bill of rights shall be posted next to the hospital's license.

(g) The following provisions relate to protection from discrimination or retaliation.

(1) Each hospital shall prominently and conspicuously post for display in a public area of the hospital that is readily available for patients, residents, employees, and visitors a statement that employees and staff are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language appropriate to the demographic makeup of the community served.

(2) Each hospital shall prominently and conspicuously post for display in a public area of the hospital that is readily available to patients, residents, employees, and visitors a statement that nonemployees are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language appropriate to the demographic makeup of the community served. The sign may be combined with the sign required by paragraph (1) of this subsection.

(3) A hospital may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for reporting to the employee's supervisor, an administrator of the hospital, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of the Act or this chapter.

(4) A hospital may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of the Act or this chapter.

(h) Construction and building requirements are as follows.

(1) Compliance with this chapter does not constitute release from the requirements of other applicable federal, state, or local codes and ordinances. This chapter must be followed where it exceeds other codes and ordinances.

(2) A hospital must comply with design for the handicapped.

(A) A hospital must be designed in accordance with 16 TAC Chapter 68 (relating to Elimination of Architectural Barriers) administered by the Texas Department of Licensing and Regulation (TDLR). Special design features for the handicapped shall be provided for all buildings.

(i) These special considerations are intended for the benefit of handicapped staff and visitors, as well as patients.

(ii) All provisions for handicapped persons shall be in accordance with Standards and Specifications and other applicable regulations adopted by the TDLR.

(iii) The building owner and appointed designee shall comply with the TDLR instructions, rules, and regulations for the plan and specification review process and shall be responsible for completing the necessary forms and for obtaining final approval from TDLR.

(B) A hospital shall meet applicable requirements of the federal Rehabilitation Act of 1973, §504, which requires program accessibility as well as facility accessibility. When federal funds are used for construction, for program requirements, or for client services, the handicapped requirements of §504 will apply. In such cases, all facilities constructed after June 3, 1977, must be designed and constructed to conform with the American National Standards Institute (ANSI) A.117.1 requirements for handicapped individuals or some other standard which clearly provides equivalent access to the facility. The Office of Civil Rights enforces the ANSI standards, pursuant to 45 Code of Federal Regulations (CFR) §84.22 and §84.23.

(C) A hospital shall comply with the United States Department of Health and Human Services, Office of Civil Rights, Requirements for Program Accessibility and Facility Accessibility, as required by the Americans with Disabilities Act (ADA), Public Law 101-336: 42 United States Code §120101.

(3) A hospital must provide a physical environment that protects the health and safety of patients, personnel, and the public. The physical premises of the hospital and those areas of the hospital's surrounding physical structure that are used by the patients (including all stairwells, corridors and passageways) must meet the local building and fire safety codes and this chapter.

(4) No building may be converted for use as a hospital which, because of its location, physical condition, state of repair, or arrangement of facilities, would be hazardous to the health and safety of the patients who would be housed in such a building. Prior to licensure by the department, the facility must meet all requirements of this chapter for new construction.

(5) The requirements found at 42 CFR §482(b)(1)(i) are hereby adopted by reference as the fire safety requirements for all hospitals which have been vacated or used for an occupancy other than as a hospital. These requirements are that the hospitals must meet the applicable provisions of the 1991 edition of the National Fire Protection Association's (NFPA) "Life Safety Code" (NFPA 101), unless such hospitals are in compliance and continue to remain in compliance with that edition (1967, 1981, or 1985) of NFPA 101 that was in effect when the hospital was constructed, modified or expanded.

(6) Nonflammable medical gas system installations shall be in accordance with the requirements of NFPA's "Standard for Health Care Facilities" (NFPA 99). Outlets shall be provided in accordance with table 8-4 adopted by reference in §133.21 of this title (relating to Standards-Adoption by Reference). Where any piping or supply of medical gases is affected by change, alterations or additions, the entire system shall be tested and certified as to type, quality, and quantity of medical gas at each outlet and exact areas affected by each control valve station. All installations of the medical gas system shall be done only by a licensed plumber with the supplementary certification in medical gas installations. Repair and maintenance work that does not breach the integrity of the system shall not be considered as installation for purposes of this provision. Certifications and inspections of installations shall be completed only by person(s) holding the supplementary certification in medical gas installations.

(7) Clinical vacuum system shall be designed, installed and maintained in accordance with NFPA 99, and paragraph (6) of this subsection. Clinical vacuum outlets shall be provided as shown in table 8-4 adopted by reference in §133.21 of this title.

(8) Nothing in this subsection shall be construed to prohibit a better type of building construction, more exits, or otherwise safer conditions than the minimum requirements specified in this subsection.

(9) Nothing in this subsection is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety to those prescribed by this subsection, providing technical documentation is submitted to the department to demonstrate equivalency and the system, method, or device is approved for the intended purpose.

(10) The specific requirements of this subsection for existing buildings may be modified by the department to allow alternate arrangements that will secure as nearly equivalent safety to life from fire as practical, but in no case shall the modification afford less safety to life than compliance with the corresponding provisions contained in this subsection for existing buildings.

(11) Neither these rules nor the other state and local codes and standards mentioned in this subsection are intended in any way to restrict innovations and improvements in design or construction techniques. Plans and specifications which contain deviations from the requirements prescribed may be approved if it is determined that the minimum requirements of this subsection are met.

(12) Certain projects may be subject to other regulations, including those of state, local, and federal authorities.

(A) Verification of compliance with other regulations, when applicable, is required.

(B) In addition to the provisions of this subsection, a project submitted by a hospital certified under Title XVIII, Social Security Act, is subject to the applicable requirements contained in the Medicare Conditions of Participation for Hospitals, §§482.2-482.62.

(C) The more stringent standard or requirement shall apply when a difference in program requirements for construction exists.

(13) All new constructions or additions to hospitals shall be constructed and comply with Chapter 12, New Health Care Occupancies, NFPA 101, 1991 edition.

(14) An existing building may be converted to a hospital if the construction complies with Chapter 12, New Health Care Occupancies, NFPA 101, 1991 edition.

(15) Existing hospital buildings may be modernized or renovated for health services; however, no construction shall diminish the fire safety features of the hospital currently in effect.

(A) When an existing hospital is modernized or renovated, that portion of the project to the hospital affected by the work shall comply with provisions of Chapter 12, New Health Care Occupancies, NFPA 101, 1991 edition.

(B) An existing hospital shall maintain the level of fire safety required under the NFPA 101 to which the facility was constructed.

(C) An existing building which does not comply with all provisions of NFPA 101 may be continued in service subject to approval of the authority having jurisdiction. Otherwise a limited but reasonable time shall be allowed for compliance

with any part of the NFPA 101 for existing buildings, commensurate with the magnitude of expenditure, description of services, and degree of hazard.

(16) Plans and specifications for buildings and facilities shall be submitted as required by §133.71 of this title (relating to Construction Plans, Specifications and Inspections).

(17) In the implementation of energy conservation initiatives, and as a part of an overall energy conservation plan, each applicant is required to give consideration to the selection of building and system components for effective utilization of energy in the operation of the facility. The sponsor shall use American Society of Heating, Refrigeration, Air Conditioning, and Electrical (ASHRAE) Standard 90A-1989, Energy Conservation in New Building Design, or equivalent criteria to improve the utilization of energy in new building design, insofar as these energy conservation measures do not conflict with the rules. Energy conservation measures shall also be applied, insofar as practicable, to projects involving alterations of and additions to existing buildings. For most projects, the adoption of effective energy conservation measures will not substantially increase the construction costs but there may be cases where the initial costs may be higher while the overall life cycle cost would be lower.

(i) A hospital shall not violate the Health and Safety Code, §161.091, et seq relating to illegal remuneration.

(j) A hospi.al shall comply with the Health and Safety Code, §311.002, relating to itemized statements of billed services.

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 April 1, 1994

TRD-9438498 Susan K Steeg
General Counsel
Texas Department of Health

Effective date

Proposal publication date: November 2, 1993

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

♦ ♦ ♦

Standards

• 25 TAC §133.29

The repeals are adopted under the Health and Safety Code, Chapter 241, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals; and Chapters 161, 164, 222, 311, 313, and 321 which provide the board with the authority to adopt rules relating to abuse, neglect and unprofessional or unethical conduct in health care facilities; treatment facilities marketing and admission practices, health care facility surveys, construction, inspection, and regulation; powers and duties of hospitals; cooperative agreements; and provision of mental health, chemical dependency and rehabilitation services, and '12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

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

Issued in Austin, Texas, on April 1, 1994.

TRD-9438499 Susan K Steeg
General Counsel
Texas Department of Health

Effective date: April 22, 1994

Proposal publication date: November 2, 1993

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

♦ ♦ ♦

Permits

• 25 TAC §133.31, §133.32

The repeals are adopted under the Health and Safety Code, Chapter 241, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals; and Chapters 161, 164, 222, 311, 313, and 321 which provide the board with the authority to adopt rules relating to abuse, neglect and unprofessional or unethical conduct in health care facilities; treatment facilities marketing and admission practices, health care facility surveys, construction, inspection, and regulation; powers and duties of hospitals; cooperative agreements; and provision of mental health, chemical dependency and rehabilitation services; and §12 001 which provides the board with the authoritv to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

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

Issued in Austin, Texas, on April 1, 1994.

TRD-9438500 Susan K Steeg
General Counsel
Texas Department of Health

Effective date April 22, 1994

Proposal publication date: November 2, 1993

For further information, please call (512) 834-6645

♦ ♦ ♦

Subchapter D. Special Service Requirements

• 25 TAC §133.51, §133.54

The new sections are adopted under the Health and Safety Code, Chapter 241, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals, and Chapters 161, 164, 222, 311, 313, and 321 which provide the board with the authority to adopt rules relating to abuse, neglect, and unprofessional or unethical conduct in health care facilities, treatment facilities marketing and admission practices, health care facility surveys, construction, inspection, and regulation, powers and duties of hospitals, cooperative agreements, and provision of mental health, chemical dependency and rehabilitation services, and §12 001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health

§133.51 Standards for the Provision of Comprehensive Medical Rehabilitation Services.

(a) Purpose This section is adopted to improve the care and treatment of patients receiving comprehensive medical rehabilitation services in hospitals

(b) License required Unless a person (as defined in §133 2 of this title (relating to Definitions)) has a hospital license, a person other than an individual may not provide inpatient comprehensive medical rehabilitation services to a patient who requires medical services that are provided under the supervision of a physician and that are more intensive than nursing facility care and minor treatment

(c) Notice A hospital must notify the Texas Department of Health (department) of its intent to initiate the provision of comprehensive medical rehabilitation services before the provision of these services has begun

(d) Plans If the hospital intends to initiate the provision of comprehensive medical rehabilitation services, the hospital must submit plans and specifications for the rehabilitation unit for approval by the department The submittal of plans and specifications shall comply with the following

(1) the hospital licensing standards, Chapter 3 (relating to renovation projects) and Chapter 7, Subchapters 7-14, 7-15, and 7-16 (relating to physical therapy suite, occupational therapy suite and respiratory therapy suite) adopted by reference in §133 21 of this title (relating to Standards-Adoption by Reference), and

(2) §133 71 of this title (relating to Construction Plans, Specifications, and Inspections)

(e) Equipment.

(1) The hospital shall have the necessary equipment and sufficient space to implement the treatment plan described in subsection (k)(3) of this section and allow for adequate care. Necessary equipment is all equipment necessary to comply with all parts of the written treatment plan. The equipment must be on-site or is available through an arrangement with another provider. Sufficient space is the physical area of a hospital which in the aggregate, constitutes the total amount of the space necessary to comply with the written treatment plan.

(2) The hospital shall have an X-ray department, portable X-ray equipment or arrangements with another facility for radiology services. The provision of radiological services by arrangements shall be performed in a timely manner so as not to jeopardize the patient's health.

(3) Emergency equipment, supplies and medications for special hospitals providing comprehensive medical rehabilitation services shall be as follows.

(A) A special hospital which provides comprehensive medical rehabilitation services shall have emergency equipment, supplies, medications, and designated personnel assigned for providing emergency care to patients and visitors.

(B) The emergency equipment, supplies, and medications shall be properly maintained and immediately accessible to all areas of the hospital. The emergency equipment shall be periodically tested according to the policy established by the hospital.

(C) At a minimum, the emergency equipment and supplies shall include the following:

(i) emergency call system;

(ii) oxygen;

(iii) mechanical ventilatory assistance equipment, including airways, manual breathing bag, and mask;

(iv) cardiac defibrillator;

(v) cardiac monitoring equipment;

(vi) laryngoscopes and endotracheal tubes;

(vii) suction equipment; and

(vii) emergency drugs and supplies specified by the medical staff.

(D) The personnel providing emergency care in accordance with this section must be staffed for 24-hour coverage and accessible to all areas of the hospital. The personnel providing the 24-hour emergency coverage must be licensed and qualified by training to perform advanced cardiac life support and administer emergency drugs.

(E) All direct patient care licensed personnel of the hospital shall maintain current certification in cardiopulmonary resuscitation.

(f) Rehabilitation units. A patient admitted to a general hospital to receive comprehensive medical rehabilitation services must be housed in the rehabilitation unit which has been approved by the department.

(g) Rehabilitation hospitals.

(1) A special rehabilitation hospital shall meet the hospital licensing standards, Chapter 7, except for Subchapters 7-3 (relating to intensive care unit), 7-4 (relating to neonatal and pediatric intensive care units), 7-5 (relating to newborn nurseries unit), 7-6 (relating to pediatric and adolescent nursing units), 7-7 (relating to psychiatric nursing unit/chemical dependency unit), 7-8 (relating to surgical facilities), 7-9 (relating to obstetrical facilities), 7-10 (relating to emergency suites), 7-11 (relating to outpatient clinic services), 7-12 (relating to radiology suite), 7-13 (relating to laboratory suite), 7-17 (relating to morgue and autopsy), and 7-22 (relating to central services department), adopted by reference in §133.21 of this title (relating to Standards-Adoption by Reference).

(2) A special rehabilitation hospital shall have an agreement in writing with a general hospital for the transfer of a patient when services are needed but are unavailable at the rehabilitation hospital. This requirement applies only to transfers not covered by Subchapter F of this title (relating to Patient Transfers).

(3) A rehabilitation hospital is not required to have an emergency room but shall comply with the provisions in §133 101 of this title (relating to Hospital Patient Transfer Policies)

(h) Medications. A hospital's governing body shall adopt and enforce policies and procedures for the administration of medications that require all medications to be administered by licensed nurses, licensed physicians or other licensed professionals authorized by law to administer medications.

(i) Staffing.

(1) A hospital providing comprehensive medical rehabilitation services must be organized and staffed to ensure the health and safety of the patients.

(A) All provided services must be consistent with accepted professional standards and practice.

(B) The organization of the services must be appropriate to the scope of the services offered.

(C) The hospital must have written patient care policies that govern the services it furnishes.

(2) The provision of comprehensive medical rehabilitation services in a hospital shall be under the medical supervision of a licensed physic'an who is on duty and available or who is on call 24 hours each day.

(3) A hospital providing comprehensive medical rehabilitation services must have a director of comprehensive medical rehabilitation services who supervises and administers the provisions of comprehensive medical rehabilitation services and who is:

(A) a licensed physician in the State of Texas;

(B) board certified or eligible for board certification in physical medicine and rehabilitation, orthopedics, neurology, neurosurgery, internal medicine, or rheumatology as appropriate for the rehabilitation program; and

(C) qualified by training or at least two years training and experience to serve as medical director. A person is qualified under this subsection if the person has training and experience in the treatment of rehabilitation patients in a rehabilitation setting

(j) Admission criteria. A hospital providing comprehensive medical rehabilitation services must have written admission criteria that are applied uniformly to all patients.

(1) The hospital's admission criteria shall include procedures to prevent the admission of a minor for a condition which is not generally recognized as responsive to treatment in an inpatient setting for comprehensive medical rehabilitation services. A minor may be qualified for admission based on other disabilities which would be responsive to comprehensive medical rehabilitation services. The following are not generally recognized as responsive to treatment in an inpatient setting for comprehensive medical rehabilitation services unless the minor to be admitted is qualified because of other disabilities:

(A) persons with cognitive disabilities due to mental retardation;

(B) learning disabilities; or

(C) psychiatric disorders.

(2) The hospital must have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a qualified physician to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(k) Care and services.

(1) A hospital providing comprehensive medical rehabilitation services must use a coordinated interdisciplinary team which shall be directed by a licensed physician.

(A) The interdisciplinary team for comprehensive medical rehabilitation services shall have available to it, at the hospital at which the services are provided or by contract, members of the following professions as necessary to meet the treatment needs of the patient:

(i) physical therapy;

(ii) occupational therapy;

(iii) speech-language pathology;

(iv) therapeutic recreation;

(v) social services/case management;

(vi) dietetics;

(vii) psychology;

(viii) respiratory therapy;

(ix) rehabilitative nursing,

(x) certified orthotics; and

(xi) certified prosthetics

(B) The coordinated interdisciplinary team approach used in the rehabilitation of each patient must be documented by periodic entries made in the patient's medical record to note the patient's status in relationship to goal attainment and that team conferences are held at least every two weeks to determine the appropriateness of treatment.

(C) In the case of a minor patient, the interdisciplinary team shall include persons who have specialized training in emotional, mental health, chemical dependency problems and treatment of minors.

(2) An initial assessment or preliminary treatment plan shall be performed or established by the physician within 24 hours of admission.

(3) The physician in coordination with the interdisciplinary team must establish a written treatment plan for the patient within seven working days of the date of admission.

(A) Comprehensive medical rehabilitation must be provided in accordance with the written treatment plan.

(B) The treatment provided under the written treatment plan must be provided by staff who are qualified to provide services under state law. The hospital must establish written qualifications for services provided by each discipline for which there is no applicable professional licensure or certification state statute.

(C) Services provided under the written treatment plan must be given in accordance with the orders of practitioners who are authorized by the governing body, hospital administration and medical staff to order the services, and the orders must be incorporated in the patient's record.

(D) The written treatment plan must delineate anticipated goals and specify the type, amount, frequency, and anticipated duration of services to be provided. Within ten working days of the date of admission, the written treatment plan shall be provided in the person's primary language, if practicable, to:

(i) the patient;

(ii) a person designated by the patient; and

(iii) upon request, a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(E) The written treatment plan shall be reviewed by the interdisciplinary team at least every two weeks and must be revised by the interdisciplinary team if a comprehensive reassessment of the patient's status or the results of a patient case review conference indicates the need for revision. The revision must be incorporated into the patient's record within seven working days after the revision. The revised treatment plan shall be reduced to writing in the person's primary language, if practicable, and provided to the patient; a person designated by the patient; and upon request, a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(l) Discharge and continuing care plan. The patient's interdisciplinary team shall prepare a written continuing care plan that addresses the patient's needs for care after discharge.

(1) The continuing care plan for the patient shall include recommendations for treatment and care and information about the availability of resources for treatment or care.

(2) If the patient's interdisciplinary team deems it impracticable to provide a written continuing care plan prior to discharge, the patient's interdisciplinary team shall provide the written continuing care plan to the patient within two working days of the date of discharge.

(3) Prior to discharge or within two working days of the date of discharge, the written continuing care plan shall, if practicable, be provided in the person's primary language, to the patient and to a person designated by the patient, and upon request to a family member, guardian or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(m) Bill of rights.

(1) A patient receiving comprehensive medical rehabilitation services shall have a patient's bill of rights which complies with §133.22 of this title (relating to Licensure Requirements and Standards for All Hospitals) which shall address the rights of minors and provide that a minor is entitled to:

(A) appropriate treatment in the least restrictive setting available;

(B) not receive unnecessary or excessive medication;

(C) an individualized treatment plan and to participate in the development of the plan;

(D) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs;

(E) a separation from adult patients; and

(F) regular communication between a minor patient and the patient's family, subject only to a restriction in accordance with Health and Safety Code, §576.006.

(2) Prior to admission or acceptance for evaluation, a written copy of the patient's bill of rights in the patient's primary language, if possible, shall be given to each patient, and, as appropriate, to the patient's parent, managing conservator, or guardian.

(3) If the patient cannot comprehend the information because of illness, age, or other factors; or an emergency exists that precludes immediate presentation of the information; or the patient refuses to sign the written copy of the patient's bill of rights, the presentation of the document shall be witnessed by two members of the hospital staff and the unsigned patient's bill of rights shall be placed in the clinical record along with a note signed by the witnesses indicating the reasons for their signatures.

(4) The hospital shall ensure that within 24 hours after the patient is admitted to the hospital, the rights described in this subsection are explained to the patient and, if appropriate, to the patient's parent, managing conservator, or guardian in the following manner

(A) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(B) through a means reasonably calculated to communicate with a person who has an impairment of vision or hearing, if applicable

(5) The hospital shall obtain from each patient, and, if appropriate, from the patient's parent, managing conservator, or guardian, a copy of the patient's bill of rights signed by the patient and, if appropriate, the patient's parent, managing conservator or guardian. The signed copy shall include a statement that the patient, patient's parent, managing conservator, or guardian has read the document and understands the rights specified in the document. The signed copy shall be made a part of the patient's clinical record.

§133 52 Standards for the Provision of Mental Health Services In an Identifiable Part of a Hospital.

(a) Admission criteria A hospital providing mental health services must have written admission criteria that are applied uniformly to all patients

(1) The hospital's admission criteria shall include procedures to prevent the admission of minors for a condition which is not generally recognized as responsive to treatment in an inpatient setting for mental health services. A minor may be qualified for admission based on other disabilities which would be responsive to mental health services. The following are not generally recognized as responsive to treatment in a hospital unless the minor to be admitted is qualified because of other disabilities:

(A) persons with cognitive disabilities due to mental retardation; or

(B) learning disabilities.

(2) The hospital must have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a qualified physician to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(b) Compliance. A hospital providing mental health services shall comply with the following rules adopted by the Texas Mental Health and Mental Retardation board (TXMHMR):

(1) Chapter 401, Subchapter J of this title (relating to Standards of Care and Treatment in Psychiatric Hospitals) effective February 10, 1994 ;

(2) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services) effective December 10, 1993, shall prominently and conspicuously post a copy of the patient's bill of rights for display in a public area of the hospital that is readily available to patients, residents, employees, and visitors, in English and in a second language appropriate to the demographic makeup of the community served;

(3) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy) effective December 10, 1993,

(4) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication) effective October 1, 1993 . This subchapter applies in cases in which a patient is committed to care that is funded by the state, and

(5) Chapter 405, Subchapter F of this title (relating to Restraint and Seclusion in Mental Health Facilities) effective August 20, 1984.

§133 53 Standards for the Provision of Chemical Dependency Services in an Identifiable Part of a Hospital.

(a) Admission criteria A hospital providing chemical dependency services must have written admission criteria that are applied uniformly to all patients

(1) The hospital's admission criteria shall include procedures to prevent the admission of minors for a condition which is not generally recognized as responsive to treatment in an inpatient setting for chemical dependency services. A minor may be qualified for admission based on other disabilities which would be responsive to chemical dependency services. The following are not generally recognized as responsive to treatment in a treatment facility for chemical dependency unless the minor to be admitted is qualified because of other disabilities:

(A) persons with cognitive disabilities due to mental retardation;

(B) learning disabilities; or

(C) psychiatric disorders.

(2) The hospital must have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a qualified physician to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(b) Compliance. A hospital providing chemical dependency services shall comply with 40 TAC §§151.11-151.111 (relating to Licensure) adopted by the Texas Commission on Alcohol and Drug Abuse (TCADA) effective May 22, 1993, under the Health and Safety Code, Title 6, Subtitle B, Chapter 464, and the rules to be adopted by TCADA relating to the following

(1) patient's bill of rights;

(2) marketing, admission, and referral services, and

(3) standards of care for chemical dependency

§133.54. Standards for Hospitals Providing Comprehensive Medical Rehabilitation, Mental Health, or Chemical Dependency Services

(a) Reporting of abuse and neglect, or of illegal, unprofessional, or unethical conduct A hospital providing comprehensive medical rehabilitation, mental health, or chemical dependency services shall prominently and conspicuously post for display in a public area or the unit of the hospital providing such services that is readily available to patients, residents, volunteers, employees, and visitors a statement of the duty to report abuse and neglect, or of illegal, unprofessional, or unethical conduct. The statement must be in English and in a second language appropriate to the demographic makeup of the community

served and contain the number of the Texas Department of Health (department) hospital patient information and complaint line at (800) 228-1570.

(1) A person, including an employee, volunteer, or other person associated with a hospital that provides comprehensive medical rehabilitation, mental health, or chemical dependency services who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient of the hospital who is receiving comprehensive medical rehabilitation, mental health, or chemical dependency services has been, is, or will be adversely affected by abuse or neglect by any person shall as soon as possible report the information supporting the belief to the department or to the appropriate state health care regulatory agency.

(2) An employee of or other person associated with a hospital that provides comprehensive medical rehabilitation, mental health, or chemical dependency services, including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the hospital or an employee of or health care professional associated with the hospital, has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the hospital or comprehensive medical rehabilitation, mental health, or chemical dependency services provided in the hospital shall as soon as possible report the information supporting the belief to the department or to the appropriate state health care regulatory agency.

(3) A complaint may include physical or verbal abuse or sexual exploitation.

(4) The requirement prescribed by this section is in addition to the requirements provided by the Family Code, Chapter 34, and the Human Resources Code, Chapter 48.

(b) Investigation of reports of abuse and neglect, or of illegal, unprofessional, or unethical conduct.

(1) A complaint made under subsection (a) of this section may be submitted in writing or verbally to the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, telephone, (800) 228-1570

(2) A complaint containing allegations which are a violation of the Act or this chapter will be investigated by the department

(3) A complaint containing allegations which are not a violation of the Act or this chapter will not be investigated by the department but shall be referred to law enforcement agencies or other agencies, as appropriate.

(4) The department shall inform in writing a complainant who identifies himself by name and address of:

(A) the receipt of the complaint;

(B) if the complainant's allegations are potential violations of the Act or this chapter warranting an investigation;

(C) whether the complaint will be investigated by the department;

(D) whether and to whom the complaint will be referred; and

(E) the findings of the complaint investigation.

(5) The department shall request a report from each referral agency of the action taken by the agency on a quarterly basis.

(6) A health care professional who fails to report shall be referred by the department to the individual's licensing board for appropriate disciplinary action.

(c) Treatment Methods Advisory Council. The department shall report or forward a copy of a complaint relating to an abusive treatment method to the Treatment Methods Advisory Committee with the Texas Department of Mental Health and Mental Retardation.

(d) Memorandum of understanding on inservice training.

(1) The Texas Board of Mental Health and Mental Retardation, Texas Board of Health, and Texas Commission on Alcohol and Drug Abuse shall adopt a joint memorandum of understanding that requires each inpatient mental health facility, chemical dependency treatment facility, or hospital that provides comprehensive medical rehabilitation, mental health services, or chemical dependency services to annually provide as a condition of continued licensure a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse and neglect, or of illegal, unprofessional, or unethical conduct by or in the facility.

(2) A hospital providing any of these services shall comply with the memorandum of understanding as specified in §401 57 of this title (relating to Training Requirements for Identifying Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities).

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

Issued in Austin, Texas, on April 1, 1994.

TRD-9438502 Susan K Steeg
General Counsel
Texas Department of Health

Effective date: April 22, 1994

Proposal publication date: November 2, 1993

For further information, please call (512) 834-6645

♦ ♦ ♦

Subchapter E. Physical Plant and Fire Safety Requirements

• 25 TAC §133.71, §133.72

The new sections are adopted under the Health and Safety Code, Chapter 241, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals; and 161, 164, 222, 311, 313, and 321 which provide the board with the authority to adopt rules relating to abuse, neglect and unprofessional or unethical conduct in health care facilities, treatment facilities marketing and admission practices; health care facility surveys, construction, inspection, and regulation; powers and duties of hospitals, cooperative agreements; and provision of mental health, chemical dependency and rehabilitation services; and §12 001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health

§133.71. Construction Plans, Specifications, and Inspections.

(a) Submission of plans and specifications Before construction is begun, plans and specifications covering the construction of new buildings or alterations, additions, conversions, modernizations or renovations to existing buildings, shall be submitted to the department for review and approval. These plans and specifications must be accompanied by an Application for Plan Review, the appropriate plan review fee as required by §133.3 of this title (relating to Fees).

(1) The submission of plans and specifications shall be made in preliminary and final stages.

(2) Preliminary (stage one) plans shall be submitted in accordance with subsection (b)(1) of this section.

(3) All deficiencies noted in the preliminary (stage one) plan review shall be satisfactorily resolved prior to proceeding into final plans and specifications (stage two). This paragraph also applies to fast-

track projects. Final (stage two) plans shall be submitted in accordance with subsection (b)(2) of this section.

(4) The final working plans and specifications shall be submitted to the department for review and approval prior to construction. Any contract modifications which affect or change the function, design, or designated use of an area shall be submitted to the department for approval prior to authorization of the modifications.

(5) Minor alterations or remodeling changes which do not involve alterations to load bearing members or partitions; change functional operation; affect fire safety; and add beds or services over those for which the hospital is licensed shall be requested in writing with a brief description of the proposed changes for approval to the department.

(6) No system of mechanical, electrical, plumbing, fire protection, or medical gases shall be installed, or any such existing system materially altered or extended until complete plans and specifications for the installation, alteration, or extension have been submitted to the department for review and approval in accordance with this section.

(7) The final approval letter from the Texas Department of Licensing and Regulation (TDLR) for project plans and specifications shall be submitted to the department.

(b) Preparation of plans and specifications.

(1) Stage one. One complete set of the preliminary plans and outline specifications shall be submitted and contain sufficient information to establish the scope of project, project location; required fire safety and exiting criteria; building construction type; compartmentation showing fire and smoke barriers; bed count and services; and the assignment of all spaces, areas and rooms for each floor level including the basement.

(A) The plans shall be drawn at a scale sufficiently large to clearly present the proposed design.

(B) The total floor area and proposed bed distribution shall be computed and shown on the drawings.

(C) Each floor plan shall indicate the type and location of all rated partitions, fire and smoke compartments, and means of egress.

(D) An existing floor plan showing existing spaces and exits and their relationship to the new construction shall be submitted on all renovation or additions to an existing facility.

(E) A building section(s) shall be required to establish construction type and fire rating. Section(s) shall be drawn at a scale sufficiently large to clearly present the proposed construction system.

(F) A site plan shall be submitted and shall indicate the location of the building(s) in relation to property lines, existing buildings or structures, access and approach roads, and parking areas and drives. Any overhead or underground utilities or service lines and building structures or other conditions which may impair or adversely affect the construction shall be indicated.

(G) Outline specifications shall provide a general description of the construction, materials and finishes, that are not shown on the drawings.

(2) Stage two. One complete set of final drawings and specifications shall be submitted. All working drawings shall be well prepared so that clear and distinct prints may be obtained, accurately dimensioned, and shall include all necessary explanatory notes, schedules and legends. Final drawings shall be complete and adequate for contract purposes. All final plans and specifications shall be appropriately sealed and signed by a registered architect and professional engineer licensed by the State of Texas. Separate drawings shall be prepared for each of the following branches of work.

(A) Architectural drawings shall include the following:

(i) site plan showing all new topography, newly established levels and grades, existing structure on the site (if any), new buildings and structures, roadways, walks, and the extent of the areas to be landscaped. All structures and improvements which are to be removed under the construction contract shall be shown;

(ii) plan of each floor and roof to include fire and smoke separation and means of egress;

(iii) schedules of doors, windows and finishes;

(iv) elevations of each facade;

(v) sections through building; and

(vi) scaled details as necessary.

(B) Equipment drawings shall include the following:

(i) all equipment necessary for the operation of the hospital as planned. The design shall indicate provisions for the installation of large and special items of equipment, and for service accessibility;

(ii) fixed equipment (equipment which is permanently affixed to the building or which must be permanently connected to a service distribution system designed and installed during construction for the specific use of the equipment). The term "fixed equipment" includes items such as laundry extractors, walk-in refrigerators, communication systems, and built-in casework (cabinets);

(iii) movable equipment (equipment not described in clause (ii) of this subparagraph as fixed). The term "moveable equipment" includes wheeled equipment, plug-in type monitoring equipment, and relocatable items such as operating tables and obstetrical tables; and

(iv) equipment which is not included in the construction contract but which requires mechanical or electrical service connections or construction modifications. The equipment described in this clause shall be identified on the drawings to assure its coordination with the architectural, mechanical, and electrical phases of construction.

(C) Structural drawings shall include plans for foundations, floors, roofs and all intermediate levels and shall show a complete design with sizes, sections, and the relative location of the various members. Schedule of beams, girders, and columns shall be provided. Floor levels, column centers, and offsets shall be dimensioned. Special openings and pipe sleeves shall be dimensioned or otherwise noted for easy reference Details of all special connections, assemblies, and expansion joints shall be given.

(D) Mechanical drawings with specifications shall show the complete heating, steam piping and ventilation systems; plumbing, drainage and standpipe systems. Drawings shall include identification of all spaces, volume of air provided these spaces, fire and smoke partitions, and location of all dampers, registers, and grilles.

(E) Electrical drawings shall include location of the following:

(i) all electrical wirings, outlets, and equipment which require electrical connections;

(ii) electrical service entrance with service switches, service feeders to the public service feeders and character-

istics of the light and power current. Transformers and their connections, if located in the building;

(iii) plan and diagram showing main switchboard, power panels, light panels, and equipment. Feeder and conduit sizes shall be shown with schedule of feeder breakers or switches;

(iv) telephone and communication, fixed computers, terminals, connections, outlets, and equipment;

(v) nurse call system showing all stations, signals, and annunciators on the plans and one-line diagram of the complete system;

(vi) fire alarm system showing all system components and fire zones on the plans and the one-line diagram of the complete system; and

(vii) a one-line diagram showing the complete electrical distribution system including the main switchgear, transfer switches, emergency generator(s), panels, subpanels, transformers, conduit and wire sizes.

(c) Special submittals.

(1) Fast-track projects. Fast-track projects must have prior approval by the department and shall be submitted in a maximum of four separate packages as follows:

(A) site work, foundation, structural, underslab mechanical, electrical, and plumbing work, and related specifications;

(B) complete architectural plans and specifications;

(C) all mechanical, electrical and plumbing plans and specifications; and

(D) equipment and furnishings.

(2) Automatic sprinkler systems. A minimum of one set of sprinkler system shop drawings, specifications and calculations, prepared by the licensed installer, shall be submitted to the department for review and approval prior to installation of the proposed system in the project.

(3) Radiation protection. Prior to installment of radiology equipment relating to a project, a hospital shall include in the project submission one set of plans, specifications, and shielding criteria, prepared by a qualified expert in the field of radiation protection.

(d) Construction and inspections.

(1) Construction, of other than minor alterations, shall not be commenced until stage two plan review deficiencies have been satisfactorily resolved, the appropriate plan review fee according to the plan review schedule in §133.3 of this title (relating to Fees) has been paid, and the department has issued a letter granting approval to begin construction. Such authorization does not constitute release from the requirements contained in this chapter.

(2) Written notification shall be given to the department when construction is commenced. If the construction takes place in or near occupied areas, adequate provision shall be made for the safety and comfort of patients.

(3) After construction has commenced, progress reports shall be submitted by the hospital as required by the department to monitor the construction work

(4) Construction shall be completed in compliance with the final drawings and specifications including all addenda or modifications approved for the project.

(5) The department shall determine the number of required inspections necessary to complete all proposed construction projects All hospitals including those which maintain certification under Title XVIII of Social Security Act (42 United States Code, §1395 et seq) and those which maintain accreditation by the Joint Commission on Accreditation of Healthcare Organizations or by the American Osteopathic Association are subject to construction inspections as a new hospital or an existing hospital.

(6) A minimum of two construction inspections of the project in the hospital will be scheduled for the purpose of verifying compliance with this subchapter and the approved plans and specifications.

(A) The intermediate construction inspection will be scheduled at approximately 80% completion.

(B) The final construction inspection will be scheduled at 100% completion when the project is ready to be occupied.

(7) A facility shall not occupy a new structure or alteration, addition, conversion, modernization, or renovation space until the appropriate approval has been received from the local building and fire authorities and the department.

(8) A construction project shall commence within one year of the construction approval date. A project not meeting this requirement shall be resubmitted for approval.

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 April 1, 1994.

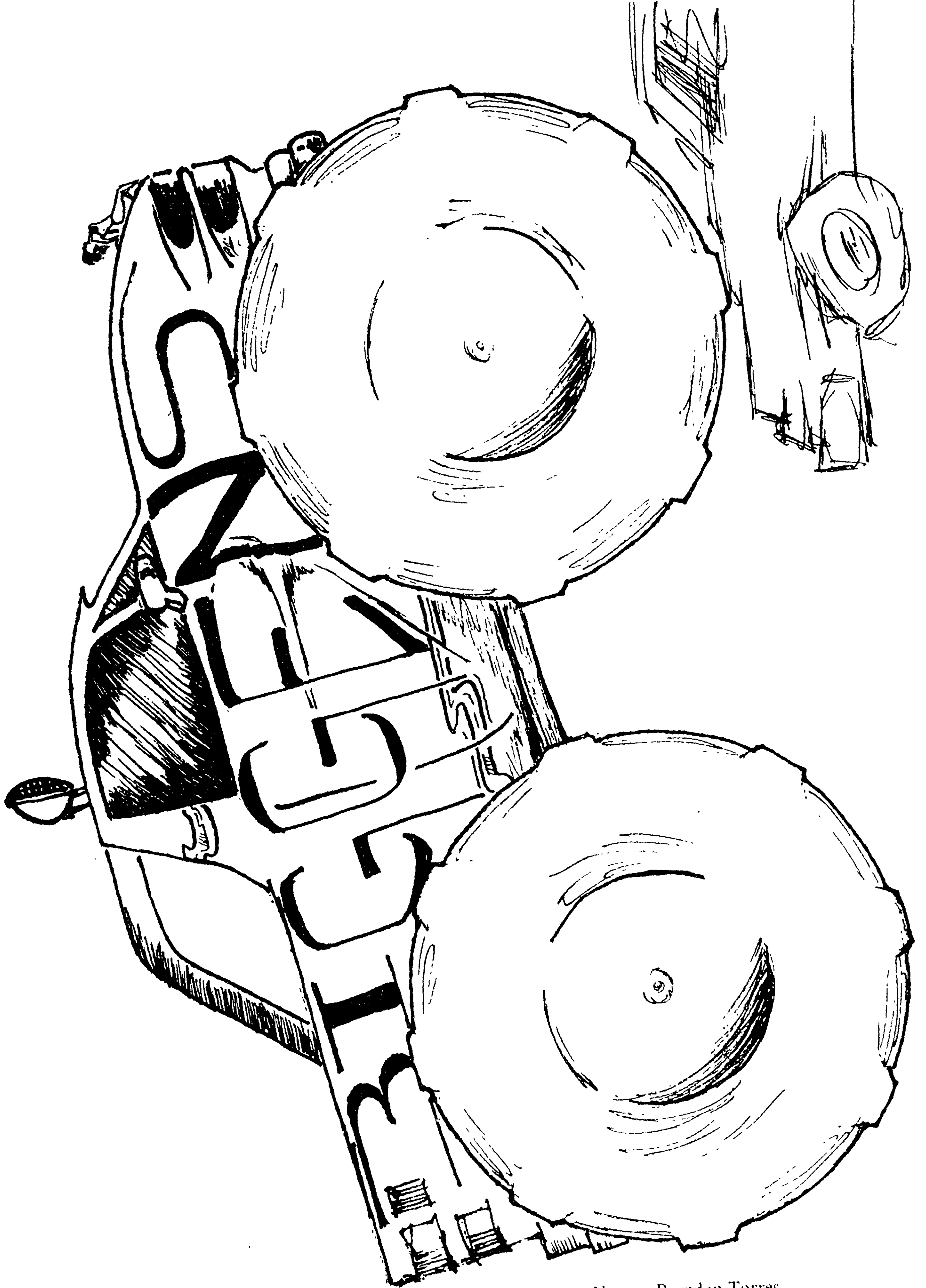
TRD-9438503 Susan K Steeg
General Counsel
Texas Department of Health

Effective date April 22, 1994

Proposal publication date. November 2, 1993

For further information, please call: (512) 834-6645

♦ ♦ ♦



Name Brandon Torres
Grade: 9
School Boles Junior High, Arlington ISD

Subchapter F. Patient Transfers

• 25 TAC §133.101, §133.102

The new sections are adopted under the Health and Safety Code, Chapter 241, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals; and Chapters 161, 164, 222, 311, 313, and 321, which provide the board with the authority to adopt rules relating to abuse, neglect and unprofessional or unethical conduct in health care facilities; treatment facilities marketing and admission practices; health care facility surveys, construction, inspection, and regulation; powers and duties of hospitals; cooperative agreements; and provision of mental health, chemical dependency and rehabilitation services, and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

§133 101. Hospital Patient Transfer Policies

(a) General.

(1) The governing body of each hospital shall adopt and enforce a policy relating to patient transfers that is consistent with this section and contains each of the standards in subsection (b) of this section. The hospital administration is the person who has the authority to represent a hospital during the transfer from or receipt of patients into the hospital.

(2) The transfer policy shall be adopted by the governing body of the hospital after consultation with the medical staff.

(3) The policy shall govern transfers not covered by a transfer agreement.

(4) The move of a stable patient from a hospital to another hospital is not considered to be a transfer under this section if it is the understanding and intent of both hospitals that the patient is going to the second hospital only for tests, the patient will not remain overnight at the second hospital and the patient will return to the first hospital. This paragraph applies only when a patient remains stable during transport to and from hospitals and during testing.

(5) The hospital's transfer policy must include a written operational plan to provide for patient transfer transportation services if the hospital does not provide its own patient transfer transportation services.

(6) If possible, each governing body, after consultation with the medical staff, shall implement its transfer policy by adopting transfer agreements with other hospitals in accordance with §133.102 of this title (relating to Hospital Patient Transfer Agreements).

(7) A public hospital or a hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services and staff available for providing care to the patient.

(b) Standards for the transfer of patients between hospitals.

(1) Discrimination. Except as is specifically provided in paragraphs (6)(E) and (F), (7)(A) and (B) of this subsection, relating, respectively, to mandated providers and designated providers, the hospital policy shall provide that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition or economic status.

(2) Disclosure. The hospital's policy shall recognize the right of an individual to request transfer into the care of a physician and a hospital of his own choosing, however, if a patient is transferred for economic reasons and the patient's choice is predicated upon or influenced by representations made by the transferring physician or hospital administration regarding the availability of medical care and hospital services at a reduced cost or no cost to the patient, the physician or hospital administration must fully disclose to the patient the eligibility requirements established by the patient's chosen physician or hospital.

(3) Patient. A patient is an individual.

(A) seeking medical treatment who may or may not be under the immediate supervision of a personal attending physician, has one or more undiagnosed or diagnosed medical conditions; and who, within reasonable medical probability requires immediate or continuing hospital services and medical care; or

(B) admitted to the hospital as a patient.

(4) Patient evaluation. The hospital's policy shall provide that each patient who arrives at the hospital is:

(A) evaluated by a physician who is present in the hospital at the time the patient presents or is presented or evaluated by a physician on call who:

(i) is physically able to reach the patient within 30 minutes after being informed that a patient is present at the hospital who requires immediate medical attention; or

(ii) is available by direct, telephone, or radio communication within 30 minutes with authorized personnel at the hospital under orders to assess and report the patient's condition to the physician; and

(B) is personally examined and evaluated by the physician before an attempt to transfer is made; however:

(i) after receiving a report on the patient's condition from the hospital's nursing staff by telephone or radio, if the physician on call determines that an immediate transfer of the patient is medically appropriate and that the time required to conduct a personal examination and evaluation of a patient will unnecessarily delay the transfer to the detriment of the patient, the physician on call may order the transfer by telephone or radio; and

(ii) physician orders for the transfer of a patient which are issued by telephone or radio shall be reduced to writing in the patient's medical record, signed by the hospital staff member receiving the order and countersigned by the physician authorizing the transfer as soon as possible. The patient transfers resulting from physician orders issued by telephone or radio shall be subject to automatic review by the medical staff pursuant to paragraph (9) of this subsection, relating to quality of care.

(5) Hospital personnel; written protocols; standing delegation orders, eligibility and payment information. The policy of the transferring and receiving hospital shall provide that licensed nurses and other qualified personnel are available and on duty to assist with patient transfers and to provide accurate information regarding eligibility and payment practices. The policy shall provide that written protocols or standing delegation orders are in place to guide hospital personnel when a patient requires transfer to another hospital.

(6) Transfer of patients who have emergency medical conditions.

(A) If a patient at a hospital has an emergency medical condition which has not been stabilized or when stabilization of the patient's vital signs is not possible because the hospital or emergency department does not have the appropriate equipment or personnel to correct the underlying process (e.g children's hospitals, thoracic surgeon on staff, or cardiopulmonary by-

pass capability), evaluation and treatment should be performed and transfer should be carried out as quickly as possible.

(B) The hospital's policy shall provide that the hospital may not transfer a patient with an emergency medical condition which has not been stabilized unless.

(i) the patient or a legally responsible person acting on the patient's behalf, after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another hospital;

(ii) a licensed physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another hospital outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer, or

(iii) if a licensed physician is not physically present in the emergency department at the time a patient is transferred, a qualified medical person has signed a certification described in clause (ii) of this subparagraph after a licensed physician, in consultation with the person, has made the determination described in the clause and subsequently countersigns the certificate.

(C) Except as provided by paragraphs (6)(E) and (F), and (7)(A) and (B) of this subsection, the hospital's policy shall provide that the transfer of patients who have emergency medical conditions, as determined by a physician, may be undertaken for medical reasons only.

(D) Except as expressly permitted in clauses (i) and (ii) of this subparagraph, a hospital's policy shall provide for the receipt of patients who have an emergency medical condition from other hospitals so that upon notification from a transferring physician or a transferring hospital prior to transfer, the receiving hospital shall respond to the transferring hospital and transferring physician with the status of the transfer request within 30 minutes and either accept or refuse the transfer. The time period begins to run at the time a member of the staff of the receiving hospital receives the call initiating the request to transfer.

(i) The receiving hospital's policy may permit response to the transferring hospital and transferring physician within a period of time in excess of 30 minutes but no longer than one hour if there are extenuating circumstances for the delay. If the transfer is accepted, the reason for the delay must be documented on the memorandum of transfer.

(ii) The response time may be extended before the expiration of the initial 30 minutes period by agreement among the transferring hospital and transferring physician and the receiving hospital and receiving physician. If the transfer is accepted, the agreed extension must be documented in the memorandum of transfer.

(E) The hospital's policy shall recognize and comply with the requirements of the Indigent Health Care and Treatment Act, Health and Safety Code, §§61.030-61.032 and §§61.057-61.059, relating to mandated providers, as those requirements may apply to a patient.

(F) The hospital's policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist concerning a patient and a designated provider.

(G) The hospital's policy shall require that all reasonable steps are taken to secure the informed refusal of a patient refusing a transfer or a related examination and treatment or of a person acting on a patient's behalf refusing a transfer or a related examination and treatment. Reasonable steps include a factual explanation of:

(i) the increased medical risks to the patient reasonably expected from not being transferred, examined or treated at the transferring hospital;

(ii) any increased risks to the patient from not effecting the transfer; and

(iii) the medical benefits reasonably expected from the provision of appropriate treatment at another hospital, and

(iv) the informed refusal of a patient or of a person acting on a patient's behalf, to examination or evaluation related to subsections (a)(4) and (6) of this section or treatment related to subsections (a)(6) and (b)(8) of this section and documents reflecting such refusals, signed if possible by the patient or by a person acting on the patient's behalf, dated and witnessed by the attending physician or hospital employee and placed in the patient's medical record.

(H) Transfer of patients may occur routinely or as part of a regionalized plan for obtaining optimal care for patients at a more appropriate or specialized facility.

(7) Transfer of patients who do not have emergency medical conditions.

(A) The hospital's policy shall recognize and comply with the requirements of the Indigent Health Care and Treatment Act, Health and Safety Code, §§61.030-61.032 and §§61.057-61.059, relating to mandated providers, as those requirements may apply to a patient.

(B) The hospital's policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist concerning a patient and a designated provider.

(C) The hospital's policy shall require that all reasonable steps are taken to secure the informed refusal of a patient refusing a transfer or a related examination and treatment or of a person acting on a patient's behalf refusing a transfer or a related examination and treatment. Reasonable steps include a factual explanation of:

(i) the increased medical risks to the patient reasonably expected from not being transferred, examined or treated at the transferring hospital;

(ii) any increased risks to the patient from not effecting the transfer; and

(iii) the medical benefits reasonably expected from the provision of appropriate treatment at another hospital; and

(iv) the informed refusal of a patient or of a person acting on a patient's behalf, to examination or evaluation related to subsections (a)(4) and (6) of this section or treatment related to subsections (a)(6) and (b)(8) of this section and documents reflecting such refusals, signed if possible by the patient or by a person acting on the patient's behalf, dated and witnessed by the attending physician or hospital employee and placed in the patient's medical record.

(D) Transfer of patients may occur routinely or as part of a regionalized plan for obtaining optimal care for patients at a more appropriate or specialized facility.

(E) The hospital's policy shall recognize the right of an individual to request a transfer into the care of a physician and a hospital of the individual's own choosing.

(8) Physician's duties; standard of care.

(A) The policy shall provide

that the transferring physician shall determine and order life support measures which are medically appropriate to stabilize the patient prior to transfer and to sustain the patient during transfer.

(B) The policy shall provide that the transferring physician shall determine and order the utilization of appropriate personnel and equipment for the transfer.

(C) The policy shall provide that in determining the use of medically appropriate life support measures, personnel, and equipment, the transferring physician shall exercise that degree of care which a reasonable and prudent physician exercising ordinary care in the same or similar locality would use for the transfer.

(D) The policy shall provide that except as allowed under paragraph (4)(B) of this subsection, prior to each patient transfer, the physician who authorizes the transfer shall personally examine and evaluate the patient to determine the patient's medical needs and to assure that the proper transfer procedures are used.

(E) The policy shall provide that prior to transfer, the transferring physician shall secure a receiving physician and a receiving hospital that are appropriate to the medical needs of the patient and that will accept responsibility for the patient's medical treatment and hospital care.

(9) Quality of care review. The hospital's policy shall provide that the hospital's medical staff review appropriate records of patients transferred from the hospital to determine that the appropriate standard of care has been met.

(10) Medical record.

(A) The hospital's policy shall provide that a copy of those portions of the patient's medical record which are available and relevant to the transfer and to the continuing care of the patient be forwarded to the receiving physician and receiving hospital with the patient. If all necessary medical records for the continued care of the patient are not available at the time the patient is transferred, the records should be forwarded to the receiving physician and hospital as soon as possible.

(B) The medical record shall contain at a minimum:

(i) a brief description of the patient's medical history and physical examination;

(ii) a working diagnosis and recorded observations of physical assessment of the patient's condition at the time of transfer;

(iii) the reason for the transfer;

(iv) the results of all diagnostic tests, such as laboratory tests;

(v) pertinent x-ray films and reports; and

(vi) any other pertinent information.

(11) Memorandum of transfer.

(A) The hospital's policy shall provide that a memorandum of transfer be completed for every patient who is transferred.

(B) The memorandum shall contain the following information:

(i) the patient's full name, if known;

(ii) the patient's race, religion, national origin, age, sex, physical handicap, if known;

(iii) the patient's address and next of kin, address, and phone number if known;

(iv) the names, telephone numbers and addresses of the transferring and receiving physicians;

(v) the names, addresses, and telephone numbers of the transferring and receiving hospitals;

(vi) the time and date on which the patient first presented or was presented to the transferring physician and transferring hospital;

(vii) the time and date on which the transferring physician secured a receiving physician;

(viii) the name, date, and time hospital administration was contacted in the receiving hospital;

(ix) signature, time, and title of the transferring hospital administration who contacted the receiving hospital;

(x) the certification required by paragraph (6)(B)(ii) of this subsection, if applicable (the certification may be part of the memorandum of transfer form or may be on a separate form attached to the memorandum of transfer form);

(xi) the time and date on which the receiving physician assumed responsibility for the patient;

(xii) the time and date on which the patient arrived at the receiving hospital;

(xiii) signature and date of receiving hospital administration;

(xiv) type of vehicle and company used;

(xv) type of equipment and/or personnel needed in transfers;

(xvi) name and city of hospital to which patient was transported;

(xvii) diagnosis by transferring physician; and

(xviii) attachments by transferring hospital.

(C) The receipt of the memorandum of transfer shall be acknowledged in writing by the receiving hospital administration and receiving physician.

(D) A copy of the memorandum of transfer shall be retained by the transferring and receiving hospitals. The memorandum shall be filed separately from the patient's medical record and in a manner which will facilitate its inspection by the department.

(c) Violations. A hospital violates the Act and this subchapter if the governing body fails or refuses to:

(1) adopt a transfer policy which is consistent with this section;

(2) adopt a memorandum of transfer form which meets the minimum standards for content contained in this section; or

(3) enforce its transfer policy and the use of the memorandum of transfer.

§133.102. Hospital Patient Transfer Agreements.

(a) General provisions.

(1) Transfer agreements between hospitals are voluntary.

(2) If transfer agreements are executed between hospitals that are consistent with the requirements of subsection (b) of this section, any patient transfers between the hospitals will be governed by the agreement.

(3) The transfer agreement shall be submitted to the department for review to determine if the agreement meets the requirements of subsection (b) of this section.

(4) Multiple transfer agreements may be entered into by a hospital based upon the type or level of medical services available at other hospitals.

(b) Standards for hospital patient transfer agreements.

(1) Discrimination. A patient transfer agreement must provide that:

(A) except as specifically provided in paragraph (4) of this subsection, relating to mandated providers, the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, or economic status; and

(B) the transfer or receipt of patients in need of emergency care shall not be based upon the individual's inability to pay for the services rendered by the transferring or receiving hospital.

(2) Standards of care. The hospital patient transfer agreement must require that patient transfers between the hospitals be accomplished in a medically appropriate manner from physician to physician and from hospital to hospital by providing for.

(A) the use of medically appropriate life support measures which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use to stabilize the patient prior to transfer and to sustain the patient during the transfer,

(B) the provision of appropriate personnel and equipment which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use for the transfer;

(C) the transfer of all necessary records for continuing the care for the patient, and

(D) the consideration of the availability of appropriate facilities, services, and staff for providing care to the patient.

(3) Freedom of choice. The hospitals will recognize the right of an individual to request transfer into the care of a physician and hospital of the individual's own choosing.

(4) Mandated providers. The hospitals will recognize and comply with the requirements of the Indigent Health Care and Treatment Act, Health and Safety Code, Chapter 61, relating to the transfer of patients to mandated providers.

(5) Emergency medical conditions. The hospital patient transfer agreement shall provide that the hospital may not transfer a patient with an emergency medical condition which has not been stabilized unless.

(A) the patient or a legally responsible person acting on the patient's behalf, after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another hospital;

(B) a licensed physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another hospital outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer, or

(C) if a licensed physician is not physically present in the emergency department at the time a patient is transferred, a qualified medical person has signed a certification described in subparagraph (B) of this paragraph after a licensed physician, in consultation with the person, has made the determination described in subparagraph (B) of this paragraph and subsequently countersigns the certificate

(c) Review of transfer agreements; approval; rejection.

(1) Submission procedure. Each party to a transfer agreement may obtain the department's review of a transfer agreement by jointly submitting to the Texas Department of Health (department):

(A) a copy of the current or proposed agreement between the parties, and

(B) the signature of the chairman and secretary of each party's governing body attesting to

(i) the date of the adoption of the agreement, and

(ii) the effective date of the agreement.

(2) Alternate submission procedure. The governing body may submit a document, executed by both the chairman and secretary, delegating to the administrator of the hospital or other designee the authority to negotiate and adopt transfer agreements.

(A) If such a delegation is made, in the joint submission of the transfer agreement, the administrator or other designee shall act on behalf of the governing body from which the authority was obtained.

(B) The submission of a transfer agreement adopted by designees must include a copy of the current or proposed agreement between the parties which has been signed by each administrator or other designee of each party's governing body and attestation to:

(i) the date of the adoption of the agreement; and

(ii) the effective date of the agreement.

(3) Exception to submission requirements.

(A) The department may waive the submittal of the documents required under paragraphs (1) or (2) of this subsection to avoid the repetitious submission of required documentation and approved agreements.

(B) If a governing body or a governing body's designee executes a transfer agreement and the entire text of that agreement consists of the entire text of an agreement that has been previously approved by the department, the governing body or the governing body's designee is not required to submit the later agreement for review. On the date the later agreement is fully executed and before the later agreement is implemented, the governing body or the governing body's designee must give adequate notice to the department that the later agreement has been executed.

(C) Adequate notice of a later agreement consists of the following.

(i) specific reference to the quoted agreement,

(ii) identification of the hospitals that are party to the later agreement; and

(iii) if a party hospital has not previously submitted any agreement for approval, the documentation for that party hospital required in paragraphs (1) or (2) of this subsection, relating respectively to the documentation that must be submitted to verify the action taken by the hospital's governing body or to verify the governing body's delegation of authority to the hospital administrator or other designee.

(4) Review. The department will review the agreement within 30 days after the department's receipt of the agreement to determine if the agreement is consistent with the requirements of this section.

(5) Approval After the department's review of the agreement, if the department determines that the agreement is consistent with the requirements contained in this section, the department will notify

the hospital administration that the agreement has been approved.

(6) Rejection. If the department has reason to believe that the agreement is not consistent with the requirements contained in this section, the department shall give notice to the hospital administration that the agreement is deficient.

(7) Deficiency notice. The deficiency notice shall contain:

(A) a complete statement of the deficiencies;

(B) recommendations for correction or an offer of consultation; and

(C) a statement of caution to the submitting hospitals that a rejection by the department has the effect of continuing each hospital's respective hospital patient transfer policy.

(d) Appeals.

(1) If the department rejects a patient transfer agreement, the hospitals that are parties to the agreement may jointly request an internal reconsideration of the department's decision.

(2) A hospital that is party to a rejected agreement must appeal the rejection jointly with an appeal by other appealing parties or waive that hospital's opportunity to appeal.

(3) To initiate the appeal process, the party hospitals must notify the department, in writing, that each party hospital requests a hearing on the decision

(4) The request must be received by the department within 20 days from the receipt of the department's rejection notice by the hospital that submitted the proposed agreement for review and approval.

(5) Failure of the party hospitals to provide a written request for appeal will be deemed a waiver of the opportunity for an internal reconsideration by the department and the rejection will become final.

(6) An internal review of a rejection will consist of a review of the actions taken to-date concerning the rejection of the agreement

(7) The review will be conducted by a three member panel The members will be appointed by the commissioner The panel members may not have participated in the department's decision

(A) The panel will meet as necessary

(B) The panel will review all agreement submissions for which an appeal has been requested.

(C) The review will be based primarily on the documentation provided with the request for an appeal but the party (parties) requesting the appeal may appear before the panel, if desired

(D) The panel's decision is binding on the department and the hospital(s).

(e) Amendments to an agreement

(1) The governing body of a hospital or governing body's designee may adopt proposed amendments to a transfer agreement which has been approved by the department. The governing body or the governing body's designee shall submit the proposed amendments to the department for review in the same manner as the agreement to be amended was submitted before the amendments are implemented

(2) The department shall review the amendments and shall approve or reject them in the same manner as provided for the review of the agreement to be amended

(f) Complaints Complaints alleging a violation of a transfer agreement will be treated in the same manner as complaints alleging violations of the Act or this chapter

(g) Enforcement.

(1) If after investigation of the complaint, it is determined that the violation alleged in the complaint is not a violation of a standard required by subsection (b) of this section, the department will notify the complainant that the complaint is not within the jurisdiction of the department and that the complainant may proceed by undertaking private resolution.

(2) If after investigation of the complaint, the department determines that a hospital has violated a standard required of subsection (b) of this section, the department may proceed against the violating hospital in the same manner as provided for enforcement of the Act and this chapter

(3) The department may not enforce provisions of a hospital patient transfer agreement that are not required by subsection (b) of this section

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 April 1, 1994

TRD-9438505 Susan K Steeg
General Counsel
Texas Department of Health

Effective date: April 22, 1994

Proposal publication date November 2, 1993

For further information, please call (512) 834-6645

♦ ♦ ♦

Subchapter G. Enforcement

• 25 TAC §§133.111-133.113

The new sections are adopted under the Health and Safety Code, Chapter 241, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals, and Chapters 161, 164, 222, 311, 313, and 321, which provide the board with the authority to adopt rules relating to abuse, neglect and unprofessional or unethical conduct in health care facilities, treatment facilities marketing and admission practices; health care facility surveys, construction, inspection, and regulation; powers and duties of hospitals, cooperative agreements; and provision of mental health, chemical dependency and rehabilitation services, and §12 001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health

§133.111 Inspections and Investigation Procedures

(a) The department may make any inspection or investigation that it considers necessary A representative of the department may enter the premises of a hospital at any reasonable time to make an inspection or an investigation to assure compliance with or prevent a violation of the Texas Hospital Licensing Act (Act) or this chapter, an order or special order of the commissioner of health, a special license provision, a court order granting injunctive relief, or other enforcement procedures

(b) The department or a representative of the department is entitled to access to all books, records, or other documents maintained by or on behalf of the hospital to the extent necessary to enforce the Act, this chapter, an order or special order of the commissioner of health, a special license provision, a court order granting injunctive relief, or other enforcement procedures. The department shall maintain the confidentiality of hospital records as applicable under state or federal law

(c) By applying for or holding a hospital license, the hospital consents to entry and inspection or investigation of the hospital by the department or a representative of the department in accordance with the Act and this chapter

(d) A hospital is not subject to additional health licensing inspections before the department issues the hospital a license while the hospital maintains:

(1) certification under Title XVIII of the Social Security Act, 42 United States Code (USC), §1395 et seq; or

(2) accreditation by the Joint Commission on Accreditation of Healthcare Organizations or by the American Osteopathic Association.

(e) The department has the authority to:

(1) reinspect a hospital if a hospital applies for the reissuance of its license after the suspension or revocation of the hospital's license, the assessment of administrative or civil penalties, or the issuance of an injunction against the hospital for violations of the Act, this chapter, a special license condition, or an order of the commissioner of health; or

(2) investigate a complaint against a hospital and, if appropriate, enforce the provisions of the Act on a finding by the department that reasonable cause exists to believe that the hospital has violated provisions of the Act, this chapter, special license conditions, or orders of the commissioner of health; provided, however, that the department shall coordinate with the federal Health Care Financing Administration and its agents responsible for the inspection of hospitals to determine compliance with the conditions of participation under Title XVIII of the Social Security Act, (42 USC, §1395 et seq), so as to avoid duplicate investigations.

(f) If an individual wishes to report an alleged violation of the Act or this chapter, the individual shall notify the department by telephone at 1 (800) 228-1570 or by writing the department at 1100 West 49th Street, Austin, Texas 78756-3199, or by personal visit. The department shall inform in writing a complainant who identifies himself by name and address of:

(1) the receipt of the complaint;

(2) if the complainant's allegations are potential violations of the Act or this chapter warranting an investigation;

(3) whether the complaint will be investigated by the department;

(4) whether and to whom the complaint will be referred, and

(5) the findings of the complaint investigation.

(g) The department's representative shall hold a conference with the hospital administrator or designee before beginning the on-site inspection or investigation to explain the nature, scope and estimated time schedule of the inspection or investigation.

(h) The department shall fully inform the hospital administrator or designee of the preliminary findings of the inspection or investigation and shall give the person a reasonable opportunity to submit additional facts or other information to the department's authorized representative in response to those findings The response shall be made a part of the record of the inspection or investigation for all purposes and must be received by the department within ten working days of the hospital's receipt of the preliminary findings.

(i) After an inspection or investigation of a hospital by the department, the department's representative shall hold an exit conference with the hospital administrator or designee and other invited staff and provide the following to the hospital administrator or designee:

(1) the specific nature of the inspection or investigation,

(2) any alleged violations of a specific statute or rule;

(3) the specific nature of any finding regarding an alleged violation or deficiency;

(4) if the deficiency is alleged, the severity of the deficiency;

(5) if there are no deficiencies found, a statement indicating this fact; and

(6) if requested by the hospital information on the identity, including the signature, of each department representative conducting, reviewing or approving the results of the inspection or investigation and the date on which the department representative acted on the matter,

(7) if requested by the hospital, copies of all documents relating to the inspection or investigation maintained by the department or provided by the department to any other state or federal agency that are not confidential under state law; and

(8) identity of any records that were duplicated.

(j) The surveyor shall:

(1) prepare a statement of deficiencies, if any,

(2) for deficiencies, obtain a plan of correction which is provided by the hospital and indicates the date(s) by which correction(s) will be made;

(3) obtain the signature of the hospital administrator or designee acknowledging the receipt of the statement of deficiencies and plan of correction form;

(4) obtain within ten working days of the inspection or investigation, written comments, if any, by the hospital administrator or designee concerning the inspection or investigation. Additional facts, written comments or other information provided by the hospital in response to the findings shall be made a part of the record of the inspection or investigation for all purposes; and

(5) inform the administrator or designee of the hospital's right to an informal administrative review when there is disagreement with surveyor's findings and recommendations or when additional information bearing on the findings is available.

(k) If deficiencies are cited and the plan of correction is not acceptable, the department shall notify the hospital in writing and request that the plan of correction be resubmitted within ten days of the hospital's receipt of the department's written notice. Upon resubmission of an acceptable plan of correction, written notice will be sent by the department to the hospital acknowledging same.

(l) The hospital shall come into compliance by the completion date provided on the statement of deficiencies and plan of correction form or come into compliance at least 30 days prior to the expiration date of the temporary initial license or annual license, whichever comes first.

(m) The department shall verify the correction of deficiencies by mail or by an on-site inspection or investigation.

(n) The department may initiate disciplinary action even if a plan of correction is accepted and completed.

§133.112. Audits of Billing.

(a) The purpose of this section is to implement Health and Safety Code, §311.0025. This section applies to all hospitals.

(b) A hospital shall not submit to patients or third party payors a bill for treatments which are improper, unreasonable or medically or clinically unnecessary or for treatments which were not provided.

(c) A complaint relating to billing must specify the patient for whom the bill was submitted.

(d) Upon receiving a complaint warranting an investigation, the department shall send the complaint to the hospital requesting the hospital to conduct an internal investigation. Within 30 days of the hospital's receipt of the complaint, the hospital shall submit to the department:

(1) a report outlining the hospital's investigative process;

(2) the resolution or conclusions reached by the hospital with the patient, third party payor or complainant; and

(3) corrections, if any, in the hospital's policies or protocols which were made as a result of its investigative findings.

(e) In addition to the hospital's internal investigation, the department may

also conduct an investigation to audit any billing and patient records of the hospital.

(f) The department shall inform in writing a complainant who identifies himself by name and address:

(1) of the receipt of the complaint;

(2) if the complainant's allegations are potential violations of the Act or this chapter warranting an investigation,

(3) whether the complaint will be investigated by the department;

(4) if the complaint was referred to the hospital for internal investigation;

(5) whether and to whom the complaint will be referred;

(6) of the results of the hospital's investigation and the hospital's resolution with the complainant; and

(7) of the department's findings if an on-site audit investigation was conducted.

(g) The department shall refer investigative reports of billing by health care professionals who have provided improper, unreasonable, or medically or clinically unnecessary treatments or billed for treatments which were not provided to the appropriate licensing agency.

§133.113. Disciplinary Action and Emergency Orders

(a) The department may deny, suspend, or revoke a hospital's license if the department finds that the hospital

(1) has failed to comply with:

(A) a provision of the Act;

(B) a rule adopted in this chapter;

(C) a special license condition;

(D) an order or emergency order by the commissioner of health; or

(E) another enforcement procedure permitted under this chapter,

(2) has a history of noncompliance with this chapter relating to patient health, safety, and rights which reflects more than nominal noncompliance,

(3) has aided, abetted, or permitted the commission of an illegal act, or

(4) has committed fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the hospital pursuant to the provisions of this chapter.

(b) The department may deny a license if the applicant or licensee:

(1) fails to provide the required application or renewal information;

(2) fails to pay administrative penalties in accordance with the Act; or

(3) discloses any of the following actions against or by the applicant, or the licensee, or against or by affiliates or managers of the applicant or the licensee within the two-year period preceding the application:

(A) operation of a hospital that has been decertified or had its contract cancelled under the Medicare or Medicaid program in any state;

(B) federal Medicare or state Medicaid sanctions or penalties;

(C) state or federal criminal convictions which imposed incarceration;

(D) federal or state tax liens;

(E) unsatisfied final judgments;

(F) eviction involving any property or space used as a hospital in any state;

(G) unresolved state Medicaid or federal Medicare audit exceptions;

(H) denial, suspension, or revocation of a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(I) a court injunction prohibiting ownership or operation of a hospital.

(c) Denial of a license includes denial of a temporary initial license, first annual license, or a renewal license.

(d) The department may suspend or revoke an existing valid license, or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the ownership or operation of a hospital.

(1) In determining the present fitness of a person who has been convicted of a crime, the department shall consider the provisions of Texas Civil Statutes, Article 6252-13c.

(2) The following felonies and misdemeanors directly relate because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate a hospital:

(A) a violation of the Act;

(B) an offense involving moral turpitude;

(C) an offense relating to deceptive business practice;

(D) an offense of practicing any health-related profession without a required license,

(E) an offense under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) an offense under Title 5 of the Texas Penal Code involving a patient or client of a health care facility or agency;

(G) an offense under various titles of the Texas Penal Code.

(i) Title 5 concerning offenses against the person,

(ii) Title 7 concerning offenses against property;

(iii) Title 9 concerning offenses against public order and decency;

(iv) Title 10 concerning offenses against public health, safety, and morals; or

(v) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection, or

(H) other misdemeanors or felonies which indicate an inability or tendency for the person to be unable to own or operate a hospital if action by the department will promote the intent of the Act, this chapter or Texas Civil Statutes, Article 6252-13c

(3) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license shall be revoked.

(e) If the department proposes to deny, suspend, or revoke a license, the department shall notify the applicant or the hospital by certified mail, return receipt requested, of the reasons for the proposed action and offer the applicant or hospital an opportunity for a hearing. The applicant or

hospital must request a hearing within 30 days of receipt of the notice. The request must be in writing and submitted to the Hospital Licensing Director, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199 A hearing shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). If the applicant or hospital does not request a hearing, in writing, within 30 days of receipt of the notice or does not appear at a scheduled hearing, the applicant or hospital 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 day after the notice is mailed to the last address known to the department unless another date is reflected on a U.S. Postal Service return receipt.

(f) A hospital whose license is suspended or revoked may apply to the department for the reissuance of a license. A hospital must apply for reissuance according to §133 11 of this title (relating to Application and Issuance of Temporary Initial License for First-Time Applicants) The department may reissue the license if the department determines that the hospital has corrected the conditions that led to the suspension or revocation of the hospital's license.

(g) Following notice to the hospital and opportunity for hearing, the commissioner of health or a person designated by the commissioner may issue an emergency order, either mandatory or prohibitory in nature, in relation to the operation of a hospital if the commissioner or the commissioner's designee determines that the hospital is violating or threatening to violate the Act, this chapter, a special licensing provision, injunctive relief, an order of the commissioner or the commissioner's designee, or another enforcement procedure permitted under the Act and the provision, rule, license provision, injunctive relief, order, or enforcement procedure relates to the health or safety of the hospital's patients.

(1) The department shall send a written, certified notice of the hearing and shall include within the notice the time and place of the hearing The hearing must be held within ten days after the date of the hospital's receipt of the notice

(2) The hearing shall not be governed by the contested case provisions of the Administrative Procedure Act, Government Code, Chapter 2001 and its subsequent amendments but shall instead be held in accordance with the board's informal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health)

(3) The order shall be effective on delivery to the hospital or at a later date specified in the order.

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 April 1, 1994.

TRD-9438504 Susan K Steeg
General Counsel
Texas Department of Health

Effective date April 22, 1994

Proposal publication date November 2, 1993

For further information, please call (512) 834-6645

♦ ♦ ♦

Subchapter H. Hospital Investigation

• 25 TAC §133.121

The new sections are adopted under the Health and Safety Code, Chapter 241, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals, and Chapters 161, 164, 222, 311, 313, and 321, which provide the board with the authority to adopt rules relating to abuse, neglect and unprofessional or unethical conduct in health care facilities; treatment facilities marketing and admission practices, health care facility surveys, construction, inspection, and regulation, powers and duties of hospitals, cooperative agreements, and provision of mental health, chemical dependency and rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

§133 121 Complaints Against the Department

(a) A hospital may register with the division a complaint against a division surveyor who conducts an inspection or investigation.

(b) A complaint against a surveyor shall be registered with the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, telephone (512) 834-6650 or (800) 228-1570.

(1) A complaint against a surveyor which is received by telephone, will be referred within two working days to the appropriate supervisor. The caller will be requested to submit the complaint in writing to the department

(2) When a complaint is received in writing, it will be forwarded to the appropriate supervisor within two working days Within ten calendar days of receipt of the complaint, the division will inform the complainant in writing that their complaint has been forwarded to the appropriate supervisor.

(3) Within ten calendar days of the supervisor's receipt of the complaint, the supervisor will notify the complainant in writing that an investigation will be done.

(4) The supervisor will review the documentation in the survey packet and interview the surveyor identified in the complaint to obtain facts and assess the objectivity of the surveyor in the surveyor's application of this chapter during the hospital's inspection or investigation.

(5) The supervisor will review the applicable rules, personnel policies, and review the training and qualifications of the surveyor as it relates to the inspection or investigation.

(6) The supervisor will document the investigation. A report of the investigation will be placed in the hospital's file, if the complaint and investigation affected the inspection process. A counseling form will be used and placed in the surveyor's personnel file, if the complaint relates to personnel performance.

(7) The supervisor will offer to meet with the complainant to resolve the issue The surveyor identified in the complaint will participate in the discussion. The resolution meeting may be conducted at the division's office or during an on-site follow-up visit to the hospital.

(8) Changes and deletions will be made to the inspection report, if necessary.

(9) The supervisor will notify the complainant in writing of the status of the investigation within 30 days of the date the supervisor received the complaint.

(10) The supervisor will forward all final documentation to the director and notify the complainant of the results.

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 April 1, 1994.

TRD-9438501 Susan K Steeg
General Counsel
Texas Department of Health

Effective date April 22, 1994

Proposal publication date November 2, 1993

For further information, please call (512) 834-6645

♦ ♦ ♦

TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 152. Attorneys' Fees

• 28 TAC §152.1, §152.3, §152.4

The Texas Workers' Compensation Commission adopts amendments to §§152.1, 152 3, and 152.4. Section 152 1 is adopted with changes to the text as published in the November 9, 1993 issue of the *Texas Register* (18 TexReg 8142) and republished in the November 16, 1993 issue of the *Texas Register* (18 TexReg 8444), to correct errors published in the table in §152 4(c) Sections 152 3 and 152 4 are adopted without changes and will not be republished The only changes are to §152 1(c) and (d). The changes to subsection (c) clarify that the lien is only against any remaining unpaid benefits, and decrease the timeframe in which a carrier must begin payment of the attorney fee The changes to subsection (d) clarify the commission's intent to provide commutation of attorney's fees only within the statutory requirement that the fee be paid out of the employee's recovery To meet that limitation, the rule provides for commutation of an attorney fee only out of a sum certain award or payment for benefits and only with approval of the commission, limits the fee to 25% of the sum certain, and limits recoupment to 25% of any single payment of benefits to a claimant

These rules are based on the provisions of the Texas Labor Code §§408 147, 408 185, 408 203, 408.221, and 408 222.

Section 152 1 establishes that only attorneys with active licenses can receive a fee, that the fee has to be approved by the commission, the limits to the amount of the fee, the point in time that the fee becomes payable, that lump sums for attorneys' fees have to be approved by the commission, that discharge does not necessarily defeat an attorney's right to collect a fee for services rendered prior to discharge, and what happens when the attorney fee is based on assisting an employee to obtain contested supplemental income benefits Section 152 3 sets out the requirements for requesting approval of a fee, the actions which the commission can take regarding the request, who gets copies of the application and the resulting commission order, apportionment of fees, the effect of the commission order, how to appeal a commission order of attorney fees, and how overpayments are recovered. Section 152 4 establishes a guideline for the number of hours attorneys and their legal assistants may be paid for various activities related to a workers' compensation claim and the hourly rate for attorney and legal assistant services

The rules are justified based on the following the statute requires an attorney's fee for representing a claimant or a carrier in a workers' compensation action to be approved by the commission or a court (§408 221 and §408 222)-the rules set out the process and ground rules for obtaining commission approval, the statute requires an attorney's fee to be based on the attorney's time and expenses and analogous issues and requires written evidence to support the claimed fees (§408.221 and §408 222)-the rules set out requirements for claiming the fee, including time and expenses, and for contesting or supporting the fee claimed, the statute requires the claimant's attorney's fee to be paid from the claimant's recovery (§408 221 and §408.147)-the rules provide for a payment from unpaid claimant benefits (clarified by the change in subsection (c)), provide for the statutory exception for an employee who prevails when a carrier disputes entitlement to or amount of supplemental income benefits, require reimbursement of overpayments, and set the time requirements for carrier payments to attorneys so attorneys are more likely to be paid before all benefits due the claimant have already been paid. Attorneys and carriers have complained to the commission that delays in payments to the attorney could result in non-payment to the claimant's attorney if all benefits due the claimant have already been paid The reduced timeframe of seven days in subsection (c) should improve the system and help prevent non-payments to attorneys, (4) the statute requires the commission to consider the factors set out in §408 221(c) (§408 221 and §408 222)-the rules provide a process for securing information on, and commission consideration of, such factors, the statute, with one exception, allows the commission to provide by rule for commutation of a claimant's attorney's fee (§408 221 and §408 185) and, with one exception, limits the attorney fee to 25% of a claimant's recovery-the rule provides for the statutory exception for commutation and the amendments further limit commutation to circumstances involving a sum certain award or order to pay benefits, limit the commuted fee to 25% of the sum certain, and limit recoupment to 25% of any single payment of benefits; the statute requires the commission to adopt rules to provide guidelines for maximum fees for specific services (§408 221)-the rules set the number of hours which may be approved without additional justification; the number of hours set are based on a survey which ascertained the average, minimum, and maximum times spent on each service, the statute provides the extent to which an attorney's fee is an allowable lien against an income or death benefit (§408 203)-the rules set out the point in time at which an attorney's fee becomes a lien against a claimant's unpaid benefits, and the change in subsection (c) clarifies which income benefits are subject to a lien and which are not

Comments were received from Liberty Mutual Insurance Group Liberty pointed out the dilemma faced by a carrier, especially with regard to lump sum payments of benefits, when benefits have been ordered paid to a claimant who is represented by an attorney, but the carrier has not yet received an order to pay the attorney's fee Liberty suggested an amendment to provide for withholding a portion of a claimant's benefits pending resolution of the issue of attorney's fees

The commission disagrees with the proposed solution because the statute requires benefits to be paid when due, and strictly limits liens against benefits. The statute provides that an attorney's fee owed based on a commission order to pay does not become a lien until the carrier has received written notice of the lien. The commission interprets this as requiring carrier receipt of the commission order to pay attorney fees. (§408.203) The commission followed this statutory provision in §152.1(c) by providing that the fee becomes a lien when the carrier receives the commission order To require a carrier to hold benefit payments in essence creates a lien against the benefits before the attorney fee request has been processed, or perhaps even received, by the commission. To improve the likelihood of benefits being available from which to pay the attorney fee, the commission has required the carrier to begin payments to the attorney within seven days after receiving the commission order, instead of the 14 days proposed (§152 1(c)) The commission is also implementing an automated system of processing attorney fees, which should decrease the time required for the commission to process the attorney fee requests, and thus increase the likelihood that unpaid benefits exist from which to pay the attorney fee. Finally, commission staff will be advised to consider whether attorney fee requests are outstanding when setting a date by which a lump sum payment of benefits must be made This will give the attorney time to file a fee request and have it processed by the commission Attorneys are encouraged to file applications for fee approval frequently and to be prepared to request and prove attorney fees at any benefit review conference or contested case hearing, so attorney fees may issue when benefits payment orders are issued The procedures set by the commission and urged on attorneys will each reduce delays in having attorney fee requests approved and paid, so income benefits are more likely to still be due out of which they are paid

Hammerman and Gainer also submitted comments concerning payment of attorney fees, although the commentor stated they were not directly related to the proposed amendments to the Chapter 152 rules One request was that the commission distinguish for carriers between those hearings on attorney fee disputes which the carrier does not need to attend, and those which the carrier should attend This is a procedural issue outside the scope of these rules, and it will be appropriately addressed by the commission.

The other issue and proposed solution raised by Hammerman and Gainer is the same as that raised by Liberty Mutual escrow accounts to prevent all benefits from being paid out before a carrier receives an order for payment of attorney fees The commission response is set out above

Comments submitted by Tom Sheehan also addressed the issue of fee approval orders being mailed after benefit payment orders are mailed The commission response above answers this comment, as well

The amendments to §§152.1, 152 3, and 152 4 are adopted under the Texas Labor Code, §402 061 which authorizes the commission to adopt rules necessary to administer the Act, §408 147, which describes

attorney fees related to contests of entitlement to supplemental income benefits; §408.185, which describes attorney fees related to disputes as to beneficiaries in death cases, §408.203, which limits liens against benefits and sets the point in time at which an attorney fee becomes a lien, the §408.221, which describes attorney fees paid to claimant's counsel as well as the commission mandate for developing rules providing guidelines; and §408 222, which describes attorney fees for defense counsel.

§152 1. Attorney Fees· General Provisions.

(a) To be eligible to earn a fee, an attorney representing any party shall hold an active license to practice law in Texas and not be currently under suspension for any reason.

(b) An attorney may receive a fee for representation of any party before the commission only after the commission approves the amount of the fee An attorney shall not receive an amount greater than the fee approved by the commission, notwithstanding any agreements between the parties, including retainer fee agreements.

(c) The fee approved by the commission shall be limited to 25% of each weekly income benefit payment to the employee, up to 25% of the total income benefits allowed and shall also be based on the attorney's time and expenses, subject to the guidelines and standards set forth in the Texas Workers' Compensation Act (the Act) and commission rules. An attorney's fee for representing an injured employee becomes a lien against any unpaid income benefits due the injured employee once the carrier receives the commission order approving the fee. The carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the commission order and thereafter whenever income benefits are paid until the fee has been paid or income benefits cease.

(d) An attorney's fee for representing a claimant may upon request by the attorney or carrier and approval by the commission, be commuted to a lump sum only out of a sum certain award or order to pay benefits. This commuted fee may be discounted for present payment at the rate provided under the Act, §401.023, and shall not exceed 25% of the unpaid sum certain. A commuted fee shall be recouped by the carrier out of the future income benefits paid to the represented claimant, not to exceed more than 25% out of any single payment. The fee for representing a claimant for death benefits cannot be commuted where the only dispute involves identification of the proper beneficiaries

(e) A client who discharges an attorney does not, by that action, defeat the attorney's right to claim a fee for services performed by that attorney prior to discharge.

(f) An attorney for an employee who prevails when a carrier contests a commission determination of eligibility for supplemental income benefits shall be eligible to receive a reasonable and necessary attorney's fee, including expenses. This fee is payable by the carrier, not out of the employee's benefits and the fee shall not be limited to a maximum of 25% of the employee's recovery. All provisions of these rules, except §152.4, of this title (relating to Guidelines For Legal Services Provided to Claimants and Carriers), apply

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-9438364 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: April 20, 1994

Proposal publication date: November 9, 1993

For further information, please call (512) 440-3700

♦ ♦ ♦

Chapter 165. Rejected Risk: Injury Prevention Services

• 28 TAC §§165.6-165.9

The Texas Workers' Compensation Commission adopts new §§165.6-165.9. Section 165.7 is adopted with changes to the proposed text as published in the December 21, 1993 issue of the *Texas Register* (18 TexReg 9822). Sections 165.6, 165.8 and 165.9 are adopted without changes, and will not be republished. Changes were made in §165.7(a)(2) to make it clear the fund is the only insurance carrier involved in this program; in §165.7(b) to make it clear that the commission provides a list of approved professional sources to the fund and that the fund will provide the list to the policyholder who asks for it and to a policyholder to whom the fund decides not to provide safety consultation and accident prevention plan development services; in §165.7(c) to allow the fund to use field safety representatives to perform the hazard survey if the fund does not charge for the service; in §165.7(d) to require the hazard survey performed by a field safety representative to be reviewed, approved, and signed by an approved professional source, in §165.7(e) to make it clear that the whole process between notification and turning in the final plan cannot take more than 90 days, which includes an automatic approval of an extension to the deadlines required in the chapter 164 rules to allow for the review and approval by a professional source if the fund provides services using a field safety representative; and in §165.7(f) to allow the field service representative to assist in the preparation of an accident prevention plan if the fund does not charge for the service and if the plan is reviewed, approved, and signed by an approved professional source.

The Texas Insurance Code, Article 5.76-3, created the Texas Workers' Compensation Insurance Fund as an insurer of last resort for workers' compensation insurance. Section 10 of this Article requires certain identified policyholders to take specific accident prevention measures. Once identified, a policyholder must obtain a safety consultation, and one of the consultation sources is the Fund. It is the intent of these rules to assist in the statutory mandate of Article 5 76-3 for the commission and the Fund to jointly provide the assistance to Fund policyholders in the form of qualified safety consultants in an attempt to prevent accidents

These rules are a valid exercise of the commission's rule-making authority provided in the Texas Labor Code, §402.061 and accomplish the commission's rule-making as contemplated in the Texas Insurance Code, Article 5.76-3, §10. The changes to proposed rule 165 7 were made so as to enable the only insurance carrier with the statutory mandate to be the carrier of last resort to service a potentially large number of policyholders with existing personnel.

The only public comment on these proposed rules was received from the Texas Workers' Compensation Insurance Fund. The comment supports adoption of the rules with changes that would allow use of field service representatives to perform some of the tasks of the approved professional source and to extend the time limit to allow time for review by approved professional sources.

The commission agrees with the recommendations of the fund and the changes previously described have been made to incorporate those recommendations in these rules.

These new rules are adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and the Texas Insurance Code, Article 5 76-3, §10, which establishes the requirement for commission involvement with policyholders required by the Fund to develop an accident prevention plan

§165.7 Safety Consultation and Formulation of the Accident Prevention Plan.

(a) Not later than 30 days following the effective date of the policy, or receipt of notice of identification, whichever occurs later, the policyholder shall complete a safety consultation using a source approved by the division pursuant to §164.9 and §164.10 of this title (relating to Approval of Professional Sources for Safety Consultations; Removal From the List of Approved Sources). The consultation may be provided by:

(1) the division, subject to the conditions specified in §164.3, 164.11, and 164.12 of this title (relating to Safety Con-

sultation; Request for Safety Consultation from the Division; and Reimbursement of Division for Services Provided to Extra-Hazardous Employer);

(2) the fund; or

(3) another professional source.

(b) The division shall provide the fund with a list of approved professional sources. If the fund elects not to provide the policyholder with safety consultation and accident prevention plan development services, the fund shall include a copy of the list with the notification letter to the policyholder. If the fund elects to provide such services, the list will be provided to the policyholder by the fund at the request of the policyholder.

(c) The safety consultant, or the field safety representative if the fund is providing the survey at no charge to the policyholder, shall conduct a hazard survey at each appropriate job site of the policyholder and prepare a hazard survey report. The report shall be in a written format prescribed by the commission and shall include a description of any hazardous conditions or practices identified, along with recommendations for controlling the identified hazardous conditions or practices.

(d) The hazard survey report(s), signed by the safety consultant, the field safety representative, and the policyholder, and any attachments shall be filed by the consultant with the division within 24 hours of completing the consultation. In the event the survey was conducted by a field safety representative of the fund, the report shall be reviewed, approved, and signed by the field safety representative and an approved professional source on the staff of the fund. Failing to file the survey, or including false or misleading statements, is an additional reason for removal from the list of professional sources as provided in §164.10 of this title (relating to Removal From the List of Approved Professional Sources).

(e) The initial consultation, report, and accident prevention plan must all be delivered to the Division of Workers' Health and Safety no later than 90 days after the policyholder receives the notice of identification. This 90 day period includes the time required for completing a hazard survey, producing a report and getting it reviewed by an approved professional source if necessary, and producing an accident prevention plan and getting that reviewed and approved by an approved professional source.

(f) Formulation of an accident prevention plan shall be in accordance with rule 164.4 of this title (relating to Formulation of Accident Prevention Plan) except that the field safety representative of the fund may assist in the formulation of the accident prevention plan if the fund does not charge for the service and if an approved professional source employed by the fund reviews, approves, and signs the plan.

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-9438365 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: April 20, 1994

Proposal publication date: December 21, 1993

For further information, please call: (512) 440-3700

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

Mussels and Clams

• 31 TAC §57.156, §57.158

The Texas Parks and Wildlife Commission in a regularly-scheduled public hearing held January 20, 1994, adopted amendments to §57.156, §57.158, concerning the harvest of mussels and clams from public water, without changes to the proposed text as published in the December 17, 1993, issue of the *Texas Register* (18 TexReg 9698).

The rules as adopted will correct the location of the North Sulphur River mussel sanctuary, add new mussel sanctuaries on Pine Creek, Sanders Creek, and Elm Creek, and change the size limit on bleufer (Potamilus purpuratus) from 2. 5 to 2.75 inches.

The rules as adopted will protect the federally endangered Ouachita rock-pocketbook (Arkansia wheeleri), and an important Tampico Pearlymussel (Cyrtonaias tampicoensis) population through the creation of new sanctuary areas. Since bleufers and Tampico Pearlymussels are easily confused, making the size limit the same for both species will ease potential enforcement problems.

The rules are designed to create harvest-free sanctuary areas for breeding and growth of the federally endangered Ouachita rock-pocketbook, and Tampico Pearlymussels, as well as regulate the take of bleufers

No comments were received regarding adoption of the rules

The amendments are adopted under Texas Parks and Wildlife Code, Chapter 78, which provides the Texas Parks and Wildlife Commission with the authority to regulate taking, possession, purchase, and sale of mussels and clams.

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 April 1, 1994.

TRD-9438466 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Effective date:

Proposal publication date:

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 25. Membership Credit

Joint Service with Employees Retirement System

• 34 TAC §25.113

The Teacher Retirement System of Texas (TRS) adopts an amendment to §25. 113 with one change to the proposed text as published in the February 11, 1994, issue of the *Texas Register* (19 TexReg 1026). The change substitutes wording in the second sentence of subsection (f) of the section in order to follow the wording of Government Code, §805.008 which the subsection implements.

The section provides guidance for the administration of new legislation (Government Code, Chapter 805) that provides for the transfer of service credit between TRS and the Employees Retirement System of Texas (ERS). The proposed amendment reflects the understanding reached by the two systems concerning the transfer of funds between them to fund the costs of the service credit transfers.

Under the amendment a system will transfer within 30 days the amount that the other system certifies monthly to have been the amount of annuities that it paid during the certification period based on service credit transferred pursuant to Government Code, Chapter 805.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §825.102, which authorizes the Board of Trustees of TRS to adopt rules for eligibility for membership, administration of the funds of the system, and the transaction of its business.

The amendment is also adopted under the Texas Government Code, §805.009, which authorizes the Board of Trustees to adopt rules to administer the credit transfer law.

§25.113. Transfer of Credit Between TRS and ERS

(a) Purpose These rules are intended to implement the provisions of the Government Code, Chapter 805, concerning the transfer of credit between the Teachers Retirement System of Texas and the Employees Retirement System of Texas and to provide a systematic method of funding the actuarial value of the annuity resulting from transferred service

(b)-(e) (No change.)

(f) Transfer of funds The ERS and the TRS agree on the following method of transferring funds Each system shall certify on a monthly basis the total dollar amount of annuities paid by the system which are based on service credit transferred pursuant to Government Code, Chapter 805 The amount certified shall exclude any portion of annuities paid consisting of post-retirement increases Each system shall remit to the other system the amount certified within 30 days of receipt of such certification It is recognized that adjustments will be made from month-to-month as a result of such things as administrative errors, the death of the annuitant or a beneficiary, return-to-work, and recovery from disability by an annuitant The systems will jointly agree on the administrative and accounting procedures to be established in order to ensure the transfer of funds pursuant to this section

(g)-(n) (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 31, 1994

TRD-9438469 Wayne Blevins
Executive Director
Teacher Retirement
System of Texas

Effective date April 22, 1994

Proposal publication date. February 11, 1994

For further information, please call (512) 370-0506

♦ ♦ ♦

Chapter 51. General Administration

• 34 TAC §51.1

The Teacher Retirement System of Texas (TRS) adopts an amendment to §51 1 without changes to the proposed text as published in the February 11, 1994, issue of the *Texas Register* (19 TexReg 1026)

The changes in the section make additions to the list of advisory committees which the retirement system appoints and compensates as provided by Texas Government Code, §825 114 and Texas Insurance Code, Article 3 50-4, §18C The additional committees, consisting of regional credentialling committees and a Medical Advisory Committee, provide assistance in the administration of a coordinated health care network for the Texas Retired Public School Employees Group Health Insurance Program

The amendment authorizes the creation of the committees to be composed of health care practitioners and provides that their members may be compensated in accordance with contracts negotiated by the retirement system's executive director

No comments were received regarding adoption of the amendment

The amendment is adopted under the Texas Government Code, §825 102, which authorizes TRS to adopt rules governing the administration of its funds and the transaction of its business

The amendment is also adopted under the Government Code, §825 114, which specifically authorizes the rule

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 31, 1994

TRD-9438468 Wayne Blevins
Executive Director
Teacher Retirement
System of Texas

Effective date April 22, 1994

Proposal publication date February 11, 1994

For further information, please call (512) 370-0506

♦ ♦ ♦

Part IV. Employees Retirement System of Texas

Chapter 71. Creditable Service

• 34 TAC §§71.5, 71.17, 71.19, 71.21

The Employees Retirement System of Texas (ERS) adopts amendments to §§71.5, 71 17, 71 19, and 71 21, concerning credit previously transferred from the Teacher Retirement System of Texas (TRS), credit for unused accumulated sick leave, and transfer of service between the ERS and the TRS Section 71 5 is adopted with changes to the proposed text as published in the February 11, 1994, issue of the *Texas Register* (19 TexReg 1027) Sections 71 17, 71 19, and 71 21 are adopted without changes and will not be republished

These amendments are justified to implement legislation passed by the 73rd Legislature

These amendments will function by providing employees with a procedure for transferring service between the ERS and the TRS Employees will receive additional credit for accumulated sick leave and the retirement systems will be provided a method for funding transfers between the ERS and the TRS

The agency received no comments regarding the adoption of the amendments.

The amendments are adopted under Government Code, §§805.008, 805.009, and 815.102, which provide the ERS the authority to adopt rules for the administration of the funds of the retirement system.

§71 5 Credit Previously Transferred from Teacher Retirement System (TRS) and Credit Transferred from TRS Pursuant to the Government Code, Title 8.

(a) Credit for 4-1/2 months or more of service performed in a fiscal year under the Teacher Retirement Act prior to September 1, 1958, was transferred to the Employees Retirement System (ERS) as one year of service credit. No credit was established for less than 4-1/2 months service in a fiscal year ending prior to September 1, 1958.

(b) Service of nine or more months in a fiscal year beginning after August 31, 1958, was established as 12 months' credit. All other service performed under TRS after August 31, 1958, was transferred to the ERS on a month-for-month basis.

(c) Credit for military service transferred from the TRS is established in the ERS only if that military service was eligible for credit under provisions of the Government Code, Title 8

(d) Credit for service transferred from the TRS to the ERS pursuant to the Government Code, Title 8, shall be established in the ERS on a month-for-month basis notwithstanding any other provision of this section.

(e) Credit for service transferred from the TRS to the ERS after August 1, 1993, shall be according to the rules adopted by the TRS for determining creditable service

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 29, 1994.

TRD-9438370 Charles D Travis
Executive Director
Employees Retirement
System of Texas

Effective date April 20, 1994

Proposal publication date February 11, 1994

For further information, please call (512) 867-3336

♦ ♦ ♦

Chapter 73. Benefits

• 34 TAC §73.11, §73.21

The Employees Retirement System of Texas (ERS) adopts amendments to §73 11 and §73 21, concerning the supplemental retire-

ment program and the reduction factor for age and retirement options, without changes to the proposed text as published in the February 11, 1994, issue of the *Texas Register* (19 TexReg 1028).

These amendments are justified to implement new reserve tables adopted by the ERS Board of Trustees.

These amendments will function by calculating retirements based on the new reserve tables utilizing new assumptions.

The agency received no comments regarding the adoption of the amendments.

The amendments are adopted under Government Code, §815.105, which provides the ERS with the authority to adopt mortality, service, and other tables the board considers necessary for the retirement system

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 29, 1994.

TRD-9438367 Charles D Travis
Executive Director
Employees Retirement
System of Texas

Effective date. April 20, 1994

Proposal publication date. February 11, 1994

For further information, please call (512) 867-3336

♦ ♦ ♦

• 34 TAC §73.23

The Employees Retirement System of Texas (ERS) adopts the repeal of §73. 23, concerning the transferred service salary average, without changes to the proposed text as published in the February 11, 1994, issue of the *Texas Register* (19 TexReg 1029).

This repeal is necessary to implement legislation passed by the 73rd Legislature

This repeal will function by allowing new legislation and rules to be applied to transfers between the ERS and the Teacher Retirement System of Texas

The agency received no comments regarding the adoption of the repeal

The repeal is adopted under the Government Code, §815.105, which provides the ERS with the authority to adopt mortality, service, and other tables the board considers necessary for the retirement system.

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 29, 1994.

TRD-9438369 Charles D Travis
Executive Director
Employees Retirement
System of Texas

Effective date April 20, 1994

Proposal publication date: February 11, 1994

For further information, please call (512) 867-3336

♦ ♦ ♦

Chapter 75. Hazardous Profession Death Benefits

• 34 TAC §75.1

The Employees Retirement System of Texas (ERS) adopts an amendment to §75.1, concerning the filing of claims by survivors of certain law enforcement officers, fire fighters, and others, without changes to the proposed text as published in the February 11, 1994, issue of the *Texas Register* (19 TexReg 1029).

This amendment is justified to implement legislation passed by the 73rd Legislature to provide for payment of benefits to adoptive parents of a minor, as well as to the natural parents

This amendment will function by allowing adoptive parents to receive benefit payments on behalf of a minor child.

The agency received no comments regarding the adoption of the amendment.

The amendment is adopted under the Government Code, §615 002, which provides the ERS with the authority to adopt rules for the administration of the 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.

Issued in Austin, Texas, on March 29, 1994

TRD-9438368 Charles D Travis
Executive Director
Employees Retirement
System of Texas

Effective date April 20, 1994

Proposal publication date. February 11, 1994

For further information, please call. (512) 867-3336

♦ ♦ ♦

Name: Michael Ross
Grade: 8
School: Boles Junior High, Arlington 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 Erazos, 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).

Advisory Board of Athletic Trainers

Saturday, April 16, 1994, 10:00 a.m.

Sports Medicine and Performance Institute of Texas, Suite 600, 7400 Fannin Street

Austin

According to the complete agenda, the Advisory Board of Athletic Trainers will hold a ten-minute open forum to receive input from interested parties; and discuss approval of the minutes of the January 30, 1994, meeting, and discuss and possibly act on: chairman's report; executive secretary's report; program director's report; request from Maribeth Bocke concerning approval of apprenticeship hours; complaints (#94-006 James E. Dodson; and #94-004 Joe Poe and Diana Lichenstein); interpretation of Vernon's Texas Civil Statutes (V T C S.), Article 4512d, §9(1); amendments to Chapter 313, request for attorney general opinion on V T.C.S., Article 4512p; announcements and comments not requiring board action, and setting of the next meeting date

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6615 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 31, 1994, 4 45 p m

TRD-9438463

♦ ♦ ♦

Texas Department on Aging

Tuesday, April 12, 1994, 9:30 a.m.

1949 South IH-35, Third Floor Large Conference Room

Austin

According to the agenda summary, the Areas Agency on Aging (AAA) Operations Committee will call to order; receive public testimony on various new, revised, and relocated rules that have been published in the **Texas Register** for 30-day review and comment, receive public testimony on various rules that have been published for repeal in the **Texas Register** for 30-day review and comment, and adjourn.

Contact: Mary Sapp, P.O Box 12786, Austin, Texas 78741, (512) 444-2727

Filed: April 4, 1994, 1.17 p.m.

TRD-9438560

♦ ♦ ♦

Texas Commission on Alcohol and Drug Abuse

Monday, April 11, 1994, 10:00 a.m.

710 Brazos, Eighth Floor, Conference Room

Austin

According to the complete agenda, the Criminal Justice Issues Committee will call to order, approval of minutes, Treatment Alternatives to Incarceration Program reallocation, report on women's services, report on Texas Criminal Justice Treatment Initiative Training Center, report on staffing of Criminal Justice Initiative, report on transportation, report on Transitional Treatment Center development, new business, schedule for future meetings, and adjourn

Contact: Ted Sellers, 710 Brazos, Austin, Texas 78701, (512) 867-8132.

Filed: March 31, 1994, 1:51 p m

TRD-9438423

Monday, April 11, 1994, 11:00 a.m.

710 Brazos, Perry Brooks Building, Commission Meeting Room, Eighth Floor

Austin

According to the complete agenda, the Audit Committee will call to order; approval of February 7, 1994, minutes, review report on performance measures prepared by Price Waterhouse, discuss outsourcing of internal audit function, and adjourn

Contact: Otis E Williams, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8720

Filed: March 31, 1994, 1 50 p m

TRD-9438422

Monday, April 11, 1994, 11:30 a.m.

710 Brazos, Perry Brooks Building, Eighth Floor, Conference Room

Austin

According to the complete agenda, the Grant and Contract Review Committee and Criminal Justice Review Committee will call to order, approval of minutes from

March 11, 1994; committee will take funding action on items in the following categories: fiscal year 1994 award adjustments; unsolicited requests for funds; non-competitive negotiation of award; reallocation; and adjourn.

Contact: Steve Casillas or Lynn Brunn-Shank, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8265.

Filed: March 31, 1994, 1:50 p.m.

TRD-9438421

Monday, April 11, 1994, 4:00 p.m.

710 Brazos, Perry Brooks Building, Commission Meeting Room, Eighth Floor

Austin

According to the complete agenda, the Board of Commissioners will call to order; meet in executive session to discuss employment matter pertaining to the executive director position; reconvene and adjourn.

Contact: David P. Tatum, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8875.

Filed: March 31, 1994, 1:50 p.m.

TRD-9438420

Tuesday, April 12, 1994, 8:30 a.m.

710 Brazos, Perry Brooks Building, Commission Meeting Room, Eighth Floor

Austin

According to the complete agenda, the Board of Commissioners will call to order; approval of February 8, 1994, minutes; public comments, action on Statewide Advisory Council appointments, report on criminal justice activities; implementation of criminal justice in-prison therapeutic community program (ITC), substance abuse felony punishment facility program (SAFP), continuum of care (TTC), (and treatment alternatives to incarceration program (TAIP); report on development of juvenile justice initiative; report on Criminal Justice Committee activities; report on HIV prevention initiative; report on fiscal year 1995 funding processes; report on Grant and Contract Review Committee activities; action by consent on adoption of drug and alcohol driving awareness program rules and adoption of amendments to the DWI repeat offender educational program standards and procedures; report on compliance activities; action on fiscal year 1994 mid-year opening budget revision; report on first quarter performance; action on Audit Committee activities; congressional update; action on revised strategic plan; interim executive director's report; chairman's report, and adjourn.

Contact: David P. Tatum, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8875.

Filed: March 31, 1994, 1:50 p.m.

TRD-9438419

♦ ♦ ♦

Texas Bond Review Board

Tuesday, April 12, 1994, 9:00 a.m.

Clements Building, Committee Room #1, Fifth Floor, 300 West 15th Street

Austin

According to the agenda summary, the Staff Planning meeting will call to order; approval of minutes; discussion of proposed issues; other business; and adjourn.

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: April 4, 1994, 4:12 p.m.

TRD-9438569

♦ ♦ ♦

Texas Department of Criminal Justice

Sunday, April 10, 1994, 8:00 a.m.

Plaza of the Americas Hotel, 650 North Pearl Street

Dallas

According to the agenda summary, the Board of Criminal Justice will: 8:00 a. m.: executive session (Ascot Room): deliberation on the employment/duties of Executive Director position; 3:30 p.m.. regular session (Plaza Ballroom C): final authorization for negotiation/Jack County; discussion of position or selection process and possible action-Executive Director.

Contact: Susan Power-McHenry, P O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: April 1, 1994, 1:00 p m.

TRD-9438491

♦ ♦ ♦

Texas Education Agency

Monday, April 11, 1994, 8:30 a.m.

Wyndham Southpark Hotel, IH-35 South and Ben White Boulevard

Austin

According to the complete agenda, the Texas Education Program Manual Task Force will consider the following: welcoming remarks, a review of the training module, training options, and time lines; information needed by site teams; group reports, and closing remarks

Contact: Joe Lopez, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9076.

Filed: March 31, 1994, 10:55 a.m.

TRD-9438412

♦ ♦ ♦

Texas Employment Commission

Tuesday, April 12, 1994, 9:00 a.m.

TEC Building, Room 644, 101 East 15th Street

Austin

According to the agenda summary, the Texas Employment Commission will consider prior meeting notes, staff reports; internal procedures of commission appeals, consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 15; and set date of next meeting

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291

Filed: April 4, 1994, 4:06 p.m.

TRD-9438566

♦ ♦ ♦

Texas Commission on Fire Protection

Monday-Tuesday, April 11-12, 1994, 9:00 a.m.

3006B Longhorn Boulevard

Austin

According to the agenda summary, the Texas Commission on Fire Protection will consider executive session under §551.074, Texas Government Code, to interview and discuss the following candidates for executive director: George William Buck, Helen Benner Campbell, Michael Eugene Hines, John Soteriou, and Rufus Terry Summers, and discussion and possible action on selection of executive director.

Contact: Carol Manchu, 3005B Longhorn Boulevard, Austin, Texas 78758, (512) 873-1700

Filed: March 31, 1994, 3:32 p m.

TRD-9438452

Wednesday-Friday, April 13-15, 1994, 9:00 a.m.

3006B Longhorn Boulevard

Austin

According to the agenda summary, the Texas Commission on Fire Protection will consider executive session, discussion and possible action regarding appointments to Advisory Committee; matters referred from the Fire Protection Personnel Advisory Committee, discussion and possible action regarding letter from Texas Capitol Area Builders Association, on rules under 37 TAC §501, and on rules under 37 TAC §503; report on Firemen's Training School Advisory Board, matters referred from the

Volunteer Fire Fighter Advisory Committee; discussion and possible action on proposed rules relating to charges for public records, matters from the executive director, new matters from the public; and discussion and possible action on future meeting dates.

Contact: Carol Manchu, 3005B Longhorn Boulevard, Austin, Texas 78758, (512) 873-1700.

Filed: March 31, 1994, 3 32 p m

TRD-9438453

♦ ♦ ♦

Texas Alternative Fuels Council

Thursday, April 14, 1994, 10:00 a.m.

105 West 15th Street, Room 101, John H Reagan Building

Austin

According to the complete agenda, the Texas Alternative Fuels Council will call to order, consideration of minutes from February 10, 1993, council meeting, report on grant program, report on council budget, executive session personnel matters, pending litigation, consideration of personnel matters, information items, public comment, and adjournment

Contact: Soll Sussman, 1700 North Congress, Austin, Texas 78701, (512) 463-5039

Filed: March 31, 1994, 1 53 p m

TRD-9438430

♦ ♦ ♦

Texas Department of Human Services

Friday, April 8, 1994, 10:00 a.m.

701 West 51st St, Fifth Floor, West Tower, Conference Room, 560W

Austin

According to the complete agenda, the Services to Persons with Disabilities Subcommittee will welcome everyone and make introductions, and will consider approval of minutes, public comment, comments by chair, comments by director, discuss explanation of meeting format, open discussion, expectations of subcommittee members, goals and objectives of subcommittee, meeting summary, announce next meeting date, announcements from subcommittee members, and adjournment

Contact: D J Johnson, P O Box 149030, Austin, Texas 78714-9030, (512) 450-3533

Filed: March 31, 1994, 10 02 a m

TRD-9438411

♦ ♦ ♦

Texas Department of Insurance

Monday, April 11, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fourth Floor, Suite 408

Austin

According to the agenda summary, the Texas Department of Insurance will meet to consider whether disciplinary action should be taken against Life General Security Insurance Company, Miami, Florida, which holds Certificates of Authority issued by the Texas Department of Insurance

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527

Filed: March 31, 1994, 1 52 p.m

TRD-9438427

Wednesday, April 13, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fourth Floor, Suite 408

Austin

According to the agenda summary, the Texas Department of Insurance will meet to consider the application of Nick Diaz, Jr, San Antonio, Texas, for a Group II, Insurance Agent's license to be issued by the Texas Department of Insurance

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527

Filed: March 31, 1994, 1 52 p m

TRD-9438426

Thursday, April 14, 1994, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Fourth Floor, Suite 408

Austin

According to the agenda summary, the Texas Department of Insurance will consider a request by Metroplex Fabrication and Erection, Inc, for a hearing on additional premiums owed as a result of employees of Fred Pankey doing business as The Wild Bunch Ironworks being included in the audit calculation of the 1992-1993 policy-facility appeal

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527

Filed: March 31, 1994, 1 52 p.m

TRD-9438425

Friday, April 15, 1994, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Fourth Floor, Suite 408

Austin

According to the agenda summary, the Texas Department of Insurance will consider application for approval of a proposed deviation to a sub-classification of §11, Trucks, Rule 37, Food Delivery, All Other of the Automobile Commercial Lines Manual Pursuant to Texas Insurance Code, Annotated Article 5.101, §3(g). Filed by Mount Airy Insurance Company

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: March 31, 1994, 1:52 p.m.

TRD-9438424

♦ ♦ ♦

Texas General Land Office

Friday, April 8, 1994, 9:30 a.m.

1700 North Congress Avenue, SFA Building, Room #831

Austin

Revised Agenda

According to the agenda summary, the Veterans Land Board will, in addition to minor revisions, include this item. consideration and action on resolution. authorizing the issuance and sale of State of Texas Veterans' Housing Assistance Taxable Refunding Bonds, Series 1994-A, when combined with the A-1 Refunding Bonds not to exceed $176,000,000 (the "A-2 Refunding Bonds"); approving the sale of the A-2 Refunding Bonds pursuant to a bond purchase contract with the following underwriting syndicate: Bear, Stearns and Company, Inc.; Stephens Inc, First California; Alexander Brown and Sons Inc, First American Municipals, Inc; CS First Boston; Morgan Stanley and Company, Inc, Walton Johnson and Company; and WR Lazard and Company, Incorporated; designating the initial paying agent(s) and the initial registrar(s) with respect to the A-2 Refunding Bonds, authorizing the preparation and approval of a preliminary official statement and a final official statement with respect to the A-2 Refunding Bonds, designating the initial remarketing agent(s) and approving the remarketing agreement with respect to the A-2 Refunding Bonds, designating the initial liquidity provider(s) and approving the liquidity agreement with respect to the A-2 Refunding Bonds, designating the initial tender agent(s) with respect to the A-2 Refunding Bonds, and authorizing other matters in connection therewith.

Contact: Karen Pratt, 1700 North Congress Avenue, Room 700, Austin, Texas 78701, (512) 463-5171

Filed: March 31, 1994, 4:19 p m

TRD-9438462

♦ ♦ ♦

Texas Department of Licensing and Regulation

Monday, April 18, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Third Floor

Austin

According to the complete agenda, the Manufactured Housing Inspections and Investigations Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for David Gilbreath doing business as Big 7 Mobile Homes, Inc. for violation of the Texas Revised Civil Statutes, Annotated Article 5221f, §4(b), Article 9100, 16 T.A.C., §69.121(c) and §69.28(a), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: March 31, 1994, 4:07 p.m.

TRD-9438458

Tuesday, April 19, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Third Floor

Austin

According to the complete agenda, the Career Counseling Inspections and Investigations Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for David Eckenrode, President, CPI, Inc. doing business as Princeton/Masters for violation of the Texas Revised Civil Statutes, Annotated Article 5221a-8, §§5(a), 8(c), and 9(c), Article 9100, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: March 31, 1994, 4:07 p.m.

TRD-9438460

Thursday, April 28, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Room 1012

Austin

According to the complete agenda, the Manufactured Housing Inspections and Investigations Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Robert Starnes doing business Starnes Mobile Home Service for violation of the Texas Revised Civil Statutes, Annotated Article 5221f, §7(d), Article 9100, 16 T.A.C., §69.125(e)(1), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: March 31, 1994, 4:07 p.m.

TRD-9438459

Tuesday, May 3, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Room 1012

Austin

According to the complete agenda, the Manufactured Housing Inspections and Investigations Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Louis Perrow doing business as D & B Mobile Home Transport for violation of the Texas Revised Civil Statutes, Annotated Article 5221f, §7(d), Article 9100, 16 T.A.C., §69.125(e)(1), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: March 31, 1994, 4:07 p.m.

TRD-9438457

Wednesday, May 4, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Room 1012

Austin

According to the complete agenda, the Auctioneer Inspections and Investigations Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Isaam Bouchedid doing business as New Orleans Galleries, Inc. for violation of the Texas Revised Civil Statutes, Annotated Article 8700, §§7(a)(3) and (7), and 10A, Article 9100, 16 T.A.C., §67. 70(b), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: March 31, 1994, 4:08 p.m.

TRD-9438461

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Wednesday, April 13, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will consider approving the following matters water quality permit amendments, water quality permit renewal, district matters, settled hearings, water quality enforcement, proposal for decisions; executive session, in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date and time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: April 1, 1994, 11:24 a.m.

TRD-9438484

Thursday, April 14, 1994, 5:45 p.m.

Stouffer Austin Hotel, 9721 Arboretum Boulevard

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission commissioners will attend Governor's Awards for Environmental Excellence banquet.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: April 1, 1994, 11.24 a.m.

TRD-9438483

Wednesday, May 18, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Office Building, Room 118

Austin

According to the agenda summary, the Texas natural Resource Conservation Commission will meet for an agenda hearing on a standby fee application submitted by Roman Forest Public Utility District Number Four of Montgomery County The amount of the standby fee requested is $523.88 per equivalent single family connection per year. Any revenues collected from the standby fees shall be used to pay operation and maintenance expenses and debt service on the bonds.

Contact: Gloria Vasquez, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: March 31, 1994, 2:35 p.m.

TRD-9438448

Wednesday, May 18, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Office Building, Room 118

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will meet for an agenda hearing on Bastrop County Water Control and Improvement District Number Three's application for standby fees to be charged on undeveloped property within the district The amount of the standby fee requested is $540 per year per equivalent single family con-

nection and will be used to pay operation and maintenance expenses of the district.

Contact: Gloria Vasquez, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: March 31, 1994, 2:35 p.m.

TRD-9438449

◆ ◆ ◆

Board of Nurse Examiners

Thursday, April 14, 1994, 11:00 a.m.

9101 Burnet Road, Suite 104

Austin

According to the agenda summary, the Eligibility and Disciplinary Committee will receive the minutes from the February 22, 1994, meeting; consider action on ten declaratory order petitions; and eight ALJ proposals for decision and 19 agreed orders

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675

Filed: April 4, 1994, 11:42 a.m.

TRD-9438556

◆ ◆ ◆

Texas State Board of Physical Therapy Examiners

Tuesday, April 19, 1994, 10:00 a.m.

3001 South Lamar Boulevard, Suite 101

Austin

According to the agenda summary, the Texas State Board of Physical Therapy Examiners will consider approval of minutes of February 22, 1994, board meeting, attorney general discussion concerning contested case procedure and SOAH recommendation; presentation of proposal for decision on Docket Number 522-93-906 and possible board action on same docket; committee reports; executive director report; presiding officers report; and public comment.

Contact: Gerard Swain, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704, (512) 443-8202.

Filed: March 31, 1994, 1:59 p.m.

TRD-9438441

◆ ◆ ◆

Texas State Board of Podiatry Examiners

Wednesday, April 13, 1994, 9:00 a.m.

3420 Executive Center Drive, Suite 305

Austin

According to the complete agenda, the Executive Director Search Committee will meet at the board office to convene in open session and then go into executive session to screen applicants for the executive director position. The executive session is held in accordance with §551.074(a)(1) of the Texas Government Code.

Contact: Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

Filed: April 4, 1994, 10:03 a.m.

TRD-9438522

◆ ◆ ◆

Public Utility Commission of Texas

Thursday, April 7, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Public Utility Commission considered the following dockets: P-11785, FCC 90-623, FCC 92-256, P-11365, P-11198, 11643, 12535, 11927, 12504, 12188, and 11109.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 1, 1994, 1:44 p.m.

TRD-9438494

Thursday, April 14, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Revised Agenda

According to the revised agenda, the Public Utility Commission of Texas will hold an open meeting to hear Motions for Rehearing on Docket Number 11735-application of Texas Utilities Electric Company for authority to change rates and investigation of the General Counsel into the accounting practices of Texas Utilities Electric Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 4, 1994, 1:44 p.m.

TRD-9438561

Friday, April 15, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12900. application of Texas-New Mexico Power Company for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 5, 1994, 8:49 a.m.

TRD-9438570

Thursday, July 7, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 12592-application of Cap Rock Electric Cooperative, Inc. to amend Certificate of Convenience and Necessity for proposed transmission line within Midland, Glasscock, Reagan, Upton, Howard, and Mitchell Counties.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 1, 1994, 12:11 p.m.

TRD-9438487

Monday, October 31, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Rescheduled from Wednesday, June 8, 1994, 10:00 a.m.

According to the complete agenda, the Hearings Division will hold a rescheduled hearing on the merits 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.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: April 1, 1994, 2:45 p.m.

TRD-9438511

◆ ◆ ◆

Railroad Commission of Texas

Monday, April 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room, 1-111

Austin

According to the agenda summary, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments. The Railroad Commission of Texas may consider the procedural

status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The commission may meet in executive session on any items listed above as authorized by the Open Meetings Act

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

Filed: April 1, 1994, 11.03 a.m

TRD-9438482

Monday, April 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room, 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Personnel Division director's report on division administrations, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline, and/or dismissal of personnel The following matters will be taken up for consideration and/or decision by the commission. commission budget, fiscal, administrative, or procedural matters, strategic planning, and personnel and staffing, including restructuring or transferring the Oil Field Theft Division

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-6981

Filed: April 1, 1994, 11 03 a m

TRD-9438481

Monday, April 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room, 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the division director's report on budget, personnel, and policy matters related to operation of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: April 1, 1994, 11 03 a m

TRD-9438480

Monday, April 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room, 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the agency budget, fiscal and administrative matters, and the Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: April 1, 1994, 11.02 a m.

TRD-9438479

Monday, April 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room, 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the director's report on division administration, budget, procedures, and personnel matters

Filed: Melvin B Hodgkiss, P.O. Box 12967, Austin, Texas 78711, (512) 463-6901.

Filed: April 1, 1994, 11.02 a m.

TRD-9438478

Monday, April 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room, 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Office of Information Services director's report on division administration, budget, procedures, and personnel matters

Contact: Brian W Schaible, P O. Box 12967, Austin, Texas 78701, (512) 463-6710

Filed: April 1, 1994, 11 02 a.m.

TRD-9438477

Monday, April 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room, 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters The commission will consider and act on the Information Resource manager's report on information resource planning documents

Contact: Bob Kmetz, P O Box 12967, Austin, Texas 78701, (512) 463-7251

Filed: April 1, 1994, 11 02 a m.

TRD-9438476

Tuesday, April 12, 1994, 10:00 a.m.

1701 North Congress Avenue, 12th Floor Conference Room, 12-126

Austin

According to the complete agenda, the Railroad Commission of Texas will consider: Rule 37 Case Number 0201687, application of Kaiser-Francis Oil Company for SWR 37/38, Lohberger/Meadows lease, Well Number 1013, Buffalo Wallow (A Chert Zone) Field, Wheeler County, Texas; Rule 37 Case Number 0202564, application of Sonat Exploration Company for SWR 37/38, Waterfield lease, Well Number 1602, Waterfield (Morrow Upper) Field, Wildcat Field, Hemphill County, Texas, and to consider standing of Kaiser-Francis Oil Company to protest. The commission will hear oral arguments on these and other matters The commission may take these applications up for consideration and/or decision.

Contact: David Clarkson, P O. Box 12967, Austin, Texas 78711, (512) 463-6855

Filed: April 1, 1994, 11·02 a.m.

TRD-9438475

♦ ♦ ♦

Stephen F. Austin State University, Board of Regents

Friday, April 8, 1994, 9:00 a.m.

Stephen F Austin Campus, Room 307, Austin Building

Nacogdoches

According to the complete agenda, the Stephen F Austin State University, Board of Regents, Finance Committee will review proposed 1994-1995 budget.

Contact: Dr. Dan Angel, P.O Box 6078, Nacogdoches, Texas 75962, (409) 568-2201

Filed: April 4, 1994, 4.08 p m

TRD-9438567

♦ ♦ ♦

Structural Pest Control Board

Monday, April 18, 1994, 9:00 a.m.

Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 1.122

Austin

According to the complete agenda, the Committee on Advertising will consider public comment, discuss consumer information sheet and inspection criteria, discuss training requirements, discuss necessary proposed regulations and timeframe; and set next meeting (if necessary)

Contact: Benny M Mathis, Jr , 9101 Burnet Road, Suite 201, Austin, Texas 78758, (512) 835-4066

Filed: April 4, 1994, 2 09 p m

TRD-9438562

♦ ♦ ♦

Texas Department of Transportation

Tuesday, April 19, 1994, 9:00 a.m.

200 East Riverside Drive, Building 200, Room 101

Austin

According to the agenda summary, the Environmental Advisory Committee will consider election of chair/vice-chair; approve minutes; preliminary review of proposed rulemaking concerning: environmental review of Transportation projects; the use of state-owned rights-of-way by others during remediation of contaminated sites, and consultation between the department and the Texas Natural Resource Conservation Commission during the State Implementation Plan Conformity Process. Briefing on current status/commission action of rules previously reviewed by committee. Staff presentation on overview of Environmental Affairs Division organizational structure.

Contact: Dianna Noble, 125 East 11th Street, Austin, Texas 78701, (512) 416-3001

Filed: April 1, 1994, 2.41 p.m

TRD-9438509

♦ ♦ ♦

University of Houston System

Friday, April 8, 1994, 4:30 p.m.

4800 Calhoun, 212 East Cullen

Houston

According to the complete agenda, the Asset Management Committee will consider: executive session: purchase, exchange, lease or value of real property, negotiated contracts for prospective gifts or donations (Open Meetings Act, Vernon's Texas Civil Statutes, Article 6252-17, §2(f)), and report from executive session-information.

Contact: Peggy Cervenka, 1600 Smith, #3400, Houston, Texas 77002, (713) 754-7442.

Filed: April 5, 1994, 9:27 a.m.

TRD-9438586

University of Texas System, Board of Regents

Thursday, April 14, 1994, 10:00 a.m.

Auditorium (Room 119), Biomedical Research Building, UT Health Center-Tyler, Highway U.S. 271 North and State Highway 155

Tyler

According to the agenda summary, the University of Texas System, Board of Regents, and standing committees will meet to consider: amendments to RRR; chancellor's docket (submitted by system administration); amend various investment policies and revenue financing guidelines; UT System-role and mission statements; certified nonprofit health corporations, degree programs; student fees; agreements; appointments to endowed academic positions; student housing rates; buildings and grounds matters including project authorization, approval of preliminary and final plans, appointment of architects, award of contracts, and appropriations; investment matters; acceptance of gifts, bequests and estates, establishment of endowed positions and funds; and potential litigation.

Contact: Arthur H. Dilly, P.O Box N, Austin, Texas 78713-7328, (512) 499-4402.

Filed: April 4, 1:08 p.m.

TRD-9438559

♦ ♦ ♦

Texas Workers' Compensation Insurance Facility

Thursday, April 7, 1994, 9:00 a.m.

Southfield Building, Room 910-911, 4000 South IH-35

Austin

According to the agenda summary, the Texas Workers' Compensation Commission called to order; approval of minutes, discussion and possible action on Rules from proposal: Chapter 134; discussion and possible action on rules for proposal and/or amendment: Chapter 110; discussion and possible action on members and/or alternate members to serve on the Medical Advisory Committee; discussion and possible action on any issues regarding rules or policy; discussion and possible action on spinal surgery rules for repeal. Chapter 133, executive session; action on matters considered in executive session, general reports and action on issues relating to commission activities; confirmation of future public meetings and possible public hearings for two recently proposed rules, and adjourned.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: April 1, 1994, 3:28 p.m

TRD-9438512

Monday, April 11, 1994, 9:45 a.m.

Guest Quarters Hotel, 303 West 15th

Austin

According to the agenda summary, the Governing Committee will consider approval of February 14, 1994, minutes; consideration and possible action on recommendations from the Appeal Committee, servicing company requests for reimbursement, routine correspondence to Governing Committee regarding appeals, and servicing company procedural handbook regarding settlement authority and discounting reserves; discussion of 1993 financial audit progress; executive director's report, and executive session(s) regarding personnel matters and pending legal matters. Following the closed executive session(s), the Governing Committee will reconvene in open and public session and take any action as may be desirable or necessary as a result of the closed deliberations, including possible approval of settlements of potential or existing litigation, possible approval of facility transition plans, and personnel policies

Contact: Peter Potemkin, 8303 MoPac Expressway North, Suite 310, Austin, Texas 78759, (512) 345-1222

Filed: March 31, 1994, 2:59 p.m.

TRD-9438450

♦ ♦ ♦

Regional Meetings

Meetings Filed March 31, 1994

The Aqua Water Supply Corporation (Revised Agenda.) Board of Directors met at 305 Eskew, Aqua Office, Bastrop, April 4, 1994, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas 78602, (512) 321-3943. TRD-9438451.

The Atascosa County Appraisal District Agricultural Advisory Board will meet at Fourth and Avenue J, Poteet, April 8, 1994, at 8:00 a.m Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9438442.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors meet at 1124-A Regal Row, Austin, April 7, 1994, at 5.30 p.m Information may be obtained from Bill E. Couch, 1124-A Regal Row, Austin, Texas 78748, (512) 282-8441, Fax (512) 282-7016 TRD-9438428.

The Creedmoor Maha Water Supply Corporation Monthly Board Meeting met at 1699 Laws Road, Mustang Ridge, April 6, 1994, at 7.00 p.m Information may be obtained from Charles Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-2113 or 243-1991. TRD-9438431.

The Guadalupe-Blanco River Authority Board of Directors met at 933 East Court Street, Seguin, April 4, 1994, at 3:00 p.m. Information may be obtained from W. E West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9438455.

The Hockley County Appraisal District Appraisal Review Board met at 1103-C

Houston, Levelland, April 5, 1994, at 7.00 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9438454.

The Texas Natural Resource Conservation Commission Galveston Bay National Estuary Program will meet at the American Legion Hall, Fort Anahuac Park, Anahuac, May 18, 1994, 7:00 p m. Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937. TRD-9438432.

The Texas Natural Resource Conservation Commission Galveston Bay National Estuary Program will meet at the College of the Mainland, Room L131, Auditorium Library, 1200 Amburn Road, Texas City, May 19, 1994, at 7:00 p.m. Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937 TRD-9438433

The Texas Natural Resource Conservation Commission Galveston Bay National Estuary Program will meet at the Houston Garden Center, Auditorium, Hermann Park, Houston, May 24, 1994, at 10:00 a.m. Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937. TRD-9438434.

The Texas Natural Resource Conservation Commission Galveston Bay National Estuary Program will meet at the Brazosport Center for Arts and Sciences, Art Gallery, 400 College Drive, Lake Jackson, May 25, 1994, at 6:30 p.m Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937. TRD-9438435.

The Texas Natural Resource Conservation Commission Galveston Bay National Estuary Program will meet at the Rosenberg Library, Auditorium, 2310 Sealy Avenue, Galveston, May 26, 1994, at 6.30 p.m. Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937. TRD-9438436

The Texas Natural Resource Conservation Commission Galveston Bay National Estuary Program will meet at the Tracy Gee Center, Meeting Rooms A, B, and C, 3599 Westcenter Drive, Houston, May 31, 1994, at 6:30 p.m. Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937. TRD-9438437.

The Texas Natural Resource Conservation Commission Galveston Bay National Estuary Program will meet at the Sylvan Beach Park, Pavilion, 1 Sylvan Beach Drive, La Porte, June 1, 1994, at 7:00 p.m. Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937. TRD-9438438

The Texas Natural Resource Conservation Commission Galveston Bay National Estuary Program will meet at the Nassau Bay Hilton, 3000 NASA Road One, Nassau Bay, June 2, 1994, at 7:00 p.m. Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937. TRD-9438439.

The Texas Natural Resource Conservation Commission Galveston Bay National Estuary Program will meet at the Baytown Community Center, Meeting Room, 2407 Market Street, Baytown, June 7, 1994, at 7:00 p m Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937. TRD-9438440

The Riceland Regional Mental Health Authority Board of Trustees, Joint Committee, met at 4910 Airport Boulevard, Rosenburg, April 5, 1994, at 3. 00 p.m Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3098. TRD-9438429

The San Antonio-Bexar County Metropolitan Planning Organization Technical Advisory Committee met in the MPO Conference Room, 434 South Main, Suite 205, San Antonio, April 4, 1994, at 2:00 p.m Information may be obtained from Michael C. Riojas, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9438456.

Meetings Filed April 1, 1994

The Austin-Travis County MHMR Center (Emergency Meeting.) Board of Trustees met at 1430 Collier Street, Board Room, Austin, April 4, 1994, at 7:00 a m (Reason for emergency: Immediate board action required, only time a quorum could meet) Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78704, (512) 447-4141. TRD-9438490.

The Austin-Travis County MHMR Center Public Relations Committee met in the Board Room, 1430 Collier Street, Austin, April 6, 1994, at 12:30 p m Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9438516.

The Central Texas Quality Work Force Planning Committee Full Committee will meet in the Conference Room, Arnold Student Union Building, Temple Junior College, Temple, April 22, 1994, at 9:30 a m Information may be obtained from Wanda L. Williams, 2600 South First Street, Temple, Texas 76504, (817) 773-9961, Ext. 311. TRD-9438492.

The Dallas Area Rapid Transit Audit Committee met in Conference Room C, 1401 Pacific Avenue, Dallas, April 5, 1994, at 11:00 a.m. Information may be obtained from Vanessa A Knight, P.O. Box 660163, Dallas, Texas 75266-1063, (214) 749-3371. TRD-9438488

The Dallas Area Rapid Transit Committee-of-the-Whole met in Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, April 5, 1994, at 1:00 p m Information may be obtained from Vanessa A. Knight, P O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9438489

The High Plains Underground Water Conservation District Number One Board of Directors will meet in the Conference Room, 2930 Avenue O, Lubbock, April 12, 1994, at 10:00 a m Information may be obtained from A Wayne Wyatt, 2930 Avenue O, Lubbock, Texas 79405, (806) 762-0181 TRD-9438517

The South Texas Private Industry Council, Inc. met at 901 Kennedy Street, Zapata, April 4, 1994, at 4 00 p m Information may be obtained from Myrna V Herbst, P O Box 1757, Laredo, Texas 78044-1757, (512) 722-0546 TRD-9438518.

The Tarrant Appraisal District Tarrant Appraisal Review Board will meet at 2329 Gravel Road, Fort Worth, April 12, 1994, at 8:00 a.m Information may be obtained from Suzanne Williams, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884 TRD-9438467

Meetings Filed April 4, 1994

The Canadian River Municipal Water Authority Board of Directors will meet at the Holiday Inn, 4005 Olton Road, Plainview, April 13, 1994, at 10.30 a m Information may be obtained from John C Williams, Box 99, Sanford, Texas 79078, (806) 865-3325 TRD-9438564.

The Capital Areas Planning Council Executive Committee will meet at 2520 IH-35 South, Suite 100, Austin, April 13, 1994, at 1:30 p m Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653 TRD-9438557

The Erath County Appraisal District Board of Directors will meet in the Board Room, 1390 Harbin Drive, Stephenville, April 12, 1994, at 7 00 a. m Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434 TRD-9438520

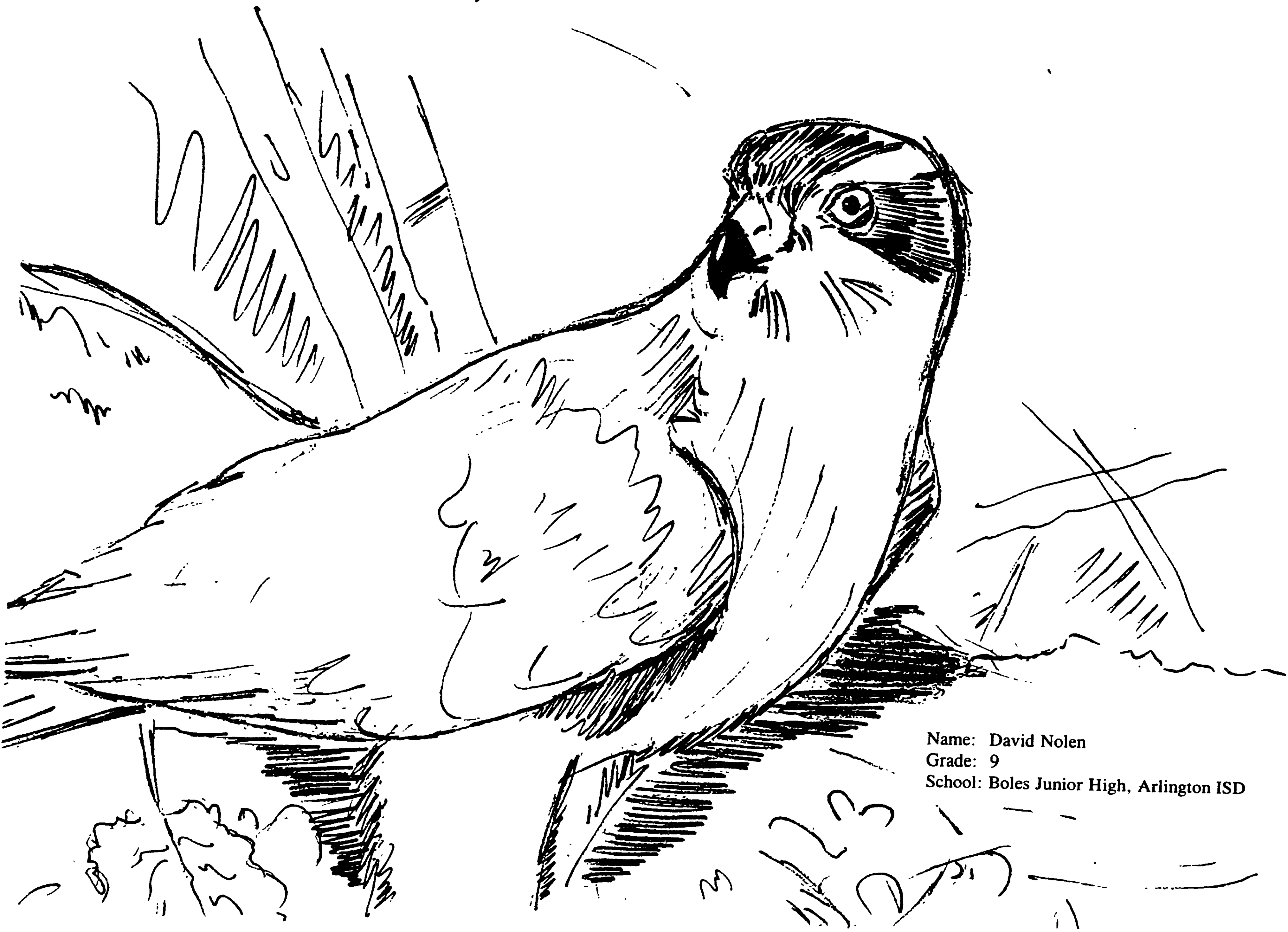
The Grand Parkway Association will meet at 5757 Woodway, Suite 140, East Wing, Houston, April 14, 1994, at 8:15 a.m. Information may be obtained from Jerry L. Coffman, 5757 Woodway, 140 East Wing, Houston, Texas 77057, (713) 782-9330. TRD-9438540.

The Gregg Appraisal District Appraisal Review Board will meet at 2010 Gilmer Road, Longview, April 13, 1994, at 8:00 a.m. Information may be obtained from Bill Carroll, 2010 Gilmer Road or P.O. Box 6700, Longview, Texas 75604, (903) 759-0015. TRD-9438519.

The Gulf Coast State Planning Region Transportation Policy Council will meet at 3555 Timmons Lane, Second Floor Conference Room A, Houston, April 15, 1994, at 9:30 a.m. Information may be obtained from Rosalind Hebert, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9438539.

The Hamilton County Appraisal District Board Meeting will meet at 119 East Henry, Hamilton, April 12, 1994, at 7:00 a.m. Information may be obtained from Doyle Roberts, 119 East Henry Street, Hamilton, Texas 76531. TRD-9438568.

The Shackelford Water Supply Corporation Regular Monthly Director's Meeting met at the Fort Griffith Restaurant, Albany, April 7, 1994, at noon. Information may be obtained from Gaynell Perkins, P.O. Box 1295, Albany, Texas 76430, (817) 345-6868. TRD-9438558.



Name: David Nolen
Grade: 9
School: Boles Junior High, Arlington ISD

In Addition

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Notice of Request for Proposals

To request a copy of the RFP, call the Funding Processes Department at (512) 867-8752 or write to: Texas Commission on Alcohol and Drug Abuse, Funding Processes Department, 710 Brazos Street, Austin, Texas 78701-2576.

The closing date for receipt of applications by TCADA is 5:00 p.m. on May 23, 1994. The initial award period is September 1, 1994-August 31, 1995.

The amount of funds that will be available for the award period is not known at the time the RFP is released. The amount of funds will not be known until the Summer of 1994.

Eligible applicants are public entities and private nonprofit corporations.

TCADA is soliciting applications for HIV outreach programs for substance abusers who may or may not be seeking treatment and for other groups who are at high risk of HIV because of their relationships with substance abusers. The purpose of the RFP is to provide street outreach activities by indigenous outreach workers in the community to reach the target populations; to facilitate the immediate admission and/or referral of clients to the most appropriate services to meet their needs, including substance abuse treatment, health care services, case management, and ancillary services; to provide HIV education and risk reduction information that is effective and appropriate for the targeted audience, to demonstrate appropriate, meaningful, and effective risk reduction strategies; to provide follow-up contacts to reinforce behavior changes to reduce the risk of HIV transmission; and to conduct the HIV outreach activities within the constraints of Federal and State confidentiality requirements, including 42 Code of Federal Regulations, Part 2. The target population for HIV outreach is substance users, including adolescents, women, racial and ethnic minorities, men who have sex with men, injecting drug users, and high risk individuals residing in unserved areas.

The HIV95 RFP also is soliciting applications for a statewide HIV training and technical assistance program. The purpose of the statewide training is to reduce the risk of HIV infection among the substance abusing population through the delivery of structured, curriculum-based training activities for service providers The focus of the trainings will be on skill building and practice of the concepts covered in the course curriculum The target population for statewide training includes the following populations listed in priority order· TCADA treatment contractors other adult and adolescent treatment providers licensed by TCADA; other TCADA grantees and contractors; persons seeking Texas Association of Alcoholism and Drug Abuse Counselor/Licensed Chemical Dependency Counselor (TAADAC/LCDC) certification/recertification; and social service agencies and organizations TCADA will select one provider to conduct the statewide HIV training and technical assistance program.

Funding decisions on applications submitted through this RFP will be based on criteria such as availability of HIV outreach programs and appropriate treatment resources in metropolitan areas, availability of resources, overall program and geographic balance, applicant's past performance, potential contribution of proposed activities, demonstration of the greatest need for such services, appropriateness for TCADA funding, and other policy considerations.

Organizations interested in making application through the RFP are encouraged to attend one of the funding information workshops The workshops will provide potential applicants an opportunity to meet TCADA staff, discuss the intent of the RFP, potential for funding, and obtain help with the application. Following the workshops, TCADA staff may provide telephone assistance regarding application forms and submission requirements. To receive information about workshop locations contact the Funding Processes Department at (512) 867-8265 Workshop dates, times, and locations are: April 19, 1994, 10:00 a.m. to 4:00 p.m., McAllen, McAllen Public Library, 601 North Main.

April 20, 1994, 10.00 a.m. to 4.00 p.m., Dallas, Dallas Public Library, North Oak Cliff Branch, 302 West 10th

April 22, 1994, 10 00 a.m. to 4·00 p.m., Austin, Austin Public Library, Carver Branch, 1161 Angelina.

Individuals needing auxiliary aids or services should notify Lynn Brunn-Shank at (512) 867-8113 at least two working days prior to the workshop by mail, telephone, or RELAY Texas (1-800-735-2989).

Issued in Austin, Texas, on April 1, 1994

TRD-9438473 David P Tatum
Interim Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed April 1, 1994

♦ ♦ ♦

State Banking Board

Cancellation of Hearing

As no opposition has been noted in the application for the Howe State Bank, Howe, Texas, to convert a limited

banking association under the name of First Bank Howe, LBA, the hearing previously scheduled for Thursday, April 7, 1994, has been CANCELLED.

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

TRD-9438379 Lynda A. Drake
Director of Corporate Activities
Texas Department of Banking

Filed: March 30, 1994

Texas Bond Review Board

Bi-Weekly Report on the 1994 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of March 12, 1994-March 25, 1994.

Total amount of state ceiling remaining unreserved for the $252,434,000 subceiling for qualified mortgage bonds under the Act as of March 25, 1994: $97,016,750.

Total amount of state ceiling remaining unreserved for the $157,771,250 subceiling for state-voted issues under the Act as of March 25, 1994: $157,771, 250.

Total amount of state ceiling remaining unreserved for the $67,616,250 subceiling for qualified small issues under the Act as of March 25, 1994: $57, 216,250.

Total amount of state ceiling remaining unreserved for the $45,077,500 subceiling for residential rental project issues under the Act as of March 25, 1994: $3,102,500.

Total amount of state ceiling remaining unreserved for the $378,651,000 subceiling for all other bonds requiring an allocation under the Act as of March 25, 1994: $23,651,000.

Total amount of state of the $90,550,000 state ceiling remaining unreserved as of March 25, 1994: $338,757,750.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from March 12, 1994-March 25, 1994:

	ISSUER	USER	DESCRIPTION	AMOUNT
1)	Gulf Coast Waste Disposal Authority	Amoco Corp.	Pollution Control Facilities	$50,000,000
2)	Harris County IDC	National Waste Industries, Inc.	Landfill	$5,000,000

Following is a comprehensive listing of applications which were either withdrawn or cancelled pursuant to the Act from March12, 1994-March 25, 1994:

	ISSUER	USER	DESCRIPTION	AMOUNT
1)	San Antonio HFC	Agape Community Housing Foundation	Residential Rental Laurel Apts	$2,100,000
2)	Port of Bay City Authority of Matagorda County, Texas	Hoechst Celanese Corp.	Solid Waste Disposal Facility	$50,000,000

Following is a comprehensive listing of applications which released a portion of their reserved amount pursuant to the Act from March 12, 1994-March 25, 1994.

ISSUER	DESCRIPTION	AMOUNT RELEASED
1) Grand Prairie IDA	NTA Leasing	$200,000

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

TRD-9438401 Albert L. Bacarisse
Executive Director
Texas Bond Review Board

Filed: March 30, 1994

Central Texas Council of Governments

Consultant Proposal Request

This request for planning services is filed pursuant to Texas Civil Statutes, Article 6252-11c.

The Central Texas Council Governments is requesting written proposals for planning services related to conducting a transportation planning study. Specifically, the study will cover the Bicycle and Pedestrian Element of the Metropolitan Area Transportation Plan.

The proposals will be evaluated upon:

Project Understanding-25%;

Scope of Services-25%;

Project Managers/Staff Qualifications-20%;

Firm Qualifications/Consultant References-10%;

Study Schedule-5.0%; and

Project Cost-10%.

A detailed scope of work and guidelines for the proposal's content can be obtained from Sara Koeninger, Central Texas Council of Governments, (817) 939-1801 or P.O. Box 729, Belton, Texas 76513. The deadline for receipt of proposals is April 29, 1994.

Issued in Belton, Texas, on April 1, 1994.

TRD-9438493 Sara Koeninger
Regional Planner
Central Texas Council of Governments

Filed: April 1, 1994

Texas Department of Criminal Justice

Request for Consultant Services

Pursuant to authority granted by the Texas Government Code, §§492.013(b), 493.006, and 2254.021 et seq, the Texas Department of Criminal Justice hereby requests all interested parities to submit a proposal for consulting services to assist the Board of Criminal Justice and its Executive Director in preparing the response to the State Comptroller's Performance Audit of the Texas Department of Criminal Justice and to assist in the development of a transition plan for the new Executive Director, agency goals and the organizational structure for the agency.

The consultant will be expected to assist in the development of a transition plan that includes immediate actions to be taken such a fiscal expenditures, fiscal cuts, and short-term operational decisions; assist in clarifying the relationship between the Executive Director and the Board and the Legislature; assist in developing a manual for Board members; assist in the continuation of agency goals and policy development; assist in the development of strategies for Board meeting; and facilitate cohesiveness between the Board and the TDCJ staff. In addition, the consultant will be asked to assist in developing strategies for responding to the recommendations/observations of the Sate Comptroller Performance Audit of the agency. It is expected that the consultant will be extensively involved for a longer period of time in facilitating and above processes.

To be considered for the requested consultant services, interested parities must submit eight copies of their proposals containing statement so of interest, listing of qualifications and past experiences, and hourly or daily fees or rates. The Board is particularly interested in consultants with a demonstrated history of working with the management staff and management issues of large organizations or business. Experience preferred in the criminal justice field, particularly adult corrections, adult probation and/or adult parole services at the state level.

Proposals must be received no later than 5:00 p.m. on May 5, 1994 at the following address: Art Mosley, Assistant Director of Personnel and Training, 1650 Seventh Street, Huntsville, Texas 77340.

All proposals must be sealed and clearly marked Consultant Services Questions relating to this request for consulting services should be addressed to Art Mosely at (409) 294-4023.

Proposals will be reviewed by the Board, who will select the consultant whom they deem most qualified to perform the requested services. Factors serving as the basis for selection will be the consultant's qualifications, expertise, and past experiences in working with large organizations or businesses related to criminal justice and/or state government. A contract will then be negotiated with the selected consultant This consulting service is a continuation of a service previously performed by a private consultant The Texas Department of Criminal Justice intends to award this contract to the private consultant previously performing service unless a better offer is submitted. The determination of the most qualified consultant shall be at the sole discretion of the Board of Criminal Justice.

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

TRD-9438396 Carl Reynolds
General Counsel
Texas Department of Criminal Justice

Filed March 30, 1994

♦ ♦ ♦

Employees Retirement System of Texas

Request for Information

The Employees Retirement System of Texas (ERS), in an effort to determine 'Best Value" and prepare for Fiscal Year 1995 budgeting, will release a Request for Information (RFI) on April 5, 1994 The RFI will be provided to vendors who have an approved catalog on file with the General Services Commission of Texas. The RFI will be limited to catalog vendors in an effort to comply with §3 081 of the Texas Purchasing and General Services Act (601b)

The deadline for submission of responses to this RFI if 5 00 p.m on April 29, 1994

The responses that meet the minimum requests will be evaluated based on how well their solutions address our strategic direction, their technological stability/past performance in technology and cost Points will be assigned to each qualification grouped in the categories listed as follows (40%) Solution vs Strategic Direction, (30%) Technological Stability and (30%) Cost

This RFI is for Fiscal Year 1995 budgetary purposes only

Persons wishing to respond to this request may contract Jane Miller, Purchasing Officer, Employees Retirement System of Texas, P.O Box 13207, Austin, Texas 78711-3207, (512) 867-3199.

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

TRD-9438366 Charles D Travis
Executive Director
Employees Retirement System of Texas

Filed March 30, 1994

♦ ♦ ♦

General Service Commission, State Energy Conservation Office

Consultant Proposal Request for an Evaluation of Alternative Fuels Programs

Introduction This packet has been prepared by the State Energy Conservation Office (SECO) to solicit proposals from qualified entities to provide an evaluation of current Alternative Fuels Projects and Programs in the State of Texas The Packet contains background information on SECO, the services to be provided, the contractor selection process and the required proposal format For more information about this proposal packet, the Consultant Proposal Request, or the alternative fuels program within State Energy Conservation Office, please contact Mike Wiley, State Energy Conservation Office, P O Box 13047, Austin, Texas 78711 (512) 463-1931

Objectives To identify the status of current Alternative Fuels projects and programs offered under the auspices of the State Energy Conservation Office (SECO), Texas Natural Resource Conservation Commission (TNRCC), the General Land Office (GLO), the Texas Railroad Commission (RRC) other state agencies local, regional and county government entities, the location, volume of business and accessibility of existing refueling stations for alternative fuels by fuel type Provide an accurate portrait of where Texas stands in alternative fuels program implementation Provide a reasoned analysis and list of alternatives, incentives and processes for accelerating the use of alternative fuels

Background Information 3 A Pursuant to the authority vested in the Governor under §3 and §4 of the Oil Overcharge Restitutionary Act (Texas Civil Statutes, Article 4413(56) and Chapter 447 of the Texas Government Code), Governor Ann Richards has designated the General Services Commission (GSC) as the supervising agency responsible for general oversight and monitoring of the competitive and direct grant programs prescribed by the Act GSC has established the State Energy Conservation Office (SECO), formally the Governor's Energy Office, to carry out these responsibilities SECO, alone and in collaboration with other state and federal entities, administers a variety of federal grants and oil overcharge funds to promote energy programs throughout the state With respect to alternative fuels projects, SECO has been evaluating alternative fuels through demonstration projects and has promoted the accelerated use of alternative fuels for transportation in Texas. These programs are targeted at school districts, transit authorities, state agencies, local governments, universities, colleges, institutions and private fleets. Pursuant to Senate Bill 5, Article V, §113 and interagency agreement, the Alternative Fuels Council has been named the administering agency for these programs subject to guidelines, evaluation and reporting requirements of SECO and the United States Department of Energy Pursuant to Senate Bill 737, Acts of the 73rd Legislature, the AFC is charged with coordinating a cohesive alternative fuels program for the State of Texas The AFC is composed of the chairman and members of the Railroad Commission, the chairman of the General Land Office, the Texas Natural Resource Conservation Commission, and the General Services Commission

3.B Legal authority relevant to alternative fuels programs and projects includes, but is not limited to, Senate Bill 740 and Senate Bill 769, Acts of the 71st Legislature, House Bill 2505, Acts of the 72nd Legislature, Senate Bill 737, Acts of the 73rd Legislature, the Clean Air Act of 1990, as amended, 42 USCS 7401 et seq, the Clean Fuels Vehicles Act, 42 USCS 7581 et seq

Travel All travel expenses will be paid in accordance with the State of Texas approved rates for mileage, per diem, air diem, air fare and lodging as follows Mileage-27 5 cents per mile for privately owned vehicles, Lodging-Actual expenses not to exceed $55 per day (receipts required), Meals-Actual expenses not to exceed $8 33 per meal or $25 per day

In-State travel to conferences and workshops directly related to delivery of services is permitted

Reimbursement Contracts will be administered through a cost reimbursement system Expenses must be properly documented, allowable under the contract, and subject to approval by SECO No advance payments are possible

Consultant Proposal Request This request for consulting services is filed pursuant to the provisions of the Texas Civil Statutes, Article 6252-11c

Consultant Proposals Request General Service Commission State Energy Conervation Office

Notice of Invitation The State Energy Conservation Office(SECO) invites proposals from qualified firms, institutions for higher education, or individuals to provide an evaluation of the current Alternative Fuels Programs in the State of Texas

Historically Underutilized Businesses (HUBs) are encouraged to bid. and all businesses that bid are encouraged to give particular attention in preparing their bids to include HUBs as Subcontractors and material suppliers at the first tier The State of Texas operates under the basic principles of free and vigorous competition In accordance with House Bill 2626, 73rd Legislature, all state agencies are to give a good faith effort to award at least 30% of the total value of all contracts to certified HUBs Achievement of the goal may be reached by the state contracting directly with HUB firms or by the states general contractor establishing contracts with HUB firms as subcontractors, suppliers or material providers.

Services to be Performed The successful proposer will be charged with identifying the status of current alternative fuels projects and programs, including infrastructure, offered under the auspices of SECO, other state agencies, local, regional, and county governmental entities. In addition, the successful proposer will be expected to submit a final report which will·

1) identify and compile state and federal laws, regulations and guidelines including, but not limited to, standards and requirements for conversion equipment, and emissions standards applicable to each of the following fleets listed Fleets to consider:

a.) Texas Education Agency-School Districts;

b.) state agencies,

c.) transit authorities,

d) private,

e) city and county government

Include number of total vehicles in each fleet affected by the mandates and the number of AFVs by fuel type currently in fleet use (i e Status of compliance) Also, include fleet replacement cycles, if any, and analyze their impact

2) supply an up to date list of refueling sites by fuel type. (Please provide a separate list for proposed sites) Please include

a) address/location,

b) access (who can use and by what means),

c) records establishing the volume of business of each site,

d) contact person(s) responsible for each site (Name, address, and phone number)

3) identify the status of current alternative fuels projects funded by SECO, the General Land Office (GLO), the Texas Railroad Commission (RRC) other state agencies, local, regional, and county government entities Provide an accurate assessment of where these programs stand in Texas's alternative fuels program implementation SECO will provide a list of known alternative fuels programs by agency funding source,

4) identify possible duplication(s) of services and need(s) within the previously-referenced alternative fuels programs and projects, recommend ways to consolidate data/information from each program to provide an overall statewide view of alternative fuels

5.) assess alternative fuels program implementation Please include

a.) costs of equipment, vehicle and refueling

b) OEMs (Original Equipment Manufacturer) alternative fuels programs and their time tables;

c) existing incentives i e., rebate programs, tax incentives, etc,

d.) existing training programs for the alternative fuels industry, for public or private post-secondary educational institutions, state agencies etc

e.) status of after market converted vehicles and equipment

6) develop a list of proposed alternatives and processes which will: facilitate SECO funding activities, create incentives which will enhance the use of alternative fuels and assist other state agencies, including, the AFC, in coordinating alternative fuels programs Each alternative, incentive or process identified shall include a discussion of feasibility and cost(s),

7) contractor shall submit two written interim reports at 21-day intervals to insure proposal compliance and direction Contractor shall further agree that the Project Manager shall be available during reasonable business hours to discuss the status of the project with designated officials of the State Energy Conservation Office In addition, Contractor shall submit a written final report which compiles the information requested in items 1-6 of Services To Be Performed The selected contractor shall further agree that time is of the essence for this project and acknowledge that SECO reserves the right to refuse payment(s) for work not completed within mutually scheduled time frames. The projected time-frame for this project is 60 days

Contact Person Additional information concerning this project may be obtained by contacting Mike Wiley, State Energy Conservation Office, P.O Box 13047, Austin, Texas 78711, (512) 463-1931

Closing Date. Seven copies of the sealed proposal should be sent to Grace Rios at the previously listed address or at the State Energy Conservation Office The State Energy Conservation Office is located at the Insurance Annex Building, Suite 200, 221 East 11th Street, Austin, Texas 78701. In order to be considered, proposals must be postmarked or hand delivered by 4 00 p.m on May 9, 1994. Late Proposals and proposals submitted by fax will not be considered ALL POTENTIAL PROPOSERS ARE ENCOURAGED TO ATTEND A PRE-PROPOSALS CONFERENCE TO BE HELD ON April 15, 1994 FROM 10 00 a m UNTIL NOON AT THE INSURANCE ANNEX BUILDING, FIRST FLOOR CONFERENCE ROOM, 221 EAST 11TH STREET, AUSTIN, TEXAS. It is anticipated that contractor selection will be made on or before June 3, 1994, and that the contract period will extend through August 5, 1994 Persons employed within the past 12 months by the State Energy Conservation Office (formerly, the Governor's Energy Office) are not eligible to participate in SECO contracts.

Format The submittal shall be organized in the following

sequence described, and when appropriate should include reference to the specific section being addressed by number and title

1.) Proposers ability to assign qualified personnel to the project

A.) Business Organization: state the full name and address of the Proposer's organization and identify parent company if applicable Specify the branch office or other subordinate element which will perform, or assist in performing, the work described herein Indicate whether the firm is operated as a partnership, corporation, or sole proprietorship Identify the State in which incorporated or licensed to operate State the number of years the firm has been in business,

B.) Project Management Structure provide an explanation, using charts or other exhibits if necessary, which specifies project leadership and reporting responsibilities, and interface with SECO. Provide a description of the methods which will be employed to organize, direct, monitor, control schedules and costs, and otherwise manage resources under the Proposers control in the performance of the work If the use of the subcontractors is proposed, identify their placement in the primary project structure, and provide internal management description for each subcontractor,

C) Authorized negotiator. include name, address, and telephone number of person in Proposer's organization authorized to negotiate contract terms and render binding decisions on contract matters

2.) Relevant background of assigned personnel and familiarity with similar work

A) Prior Experience describe only relevant corporate experience and individual experience for personnel who will be actively engaged in the project(s). Do not include corporate experience unless personnel assigned to this project actively participated Describe only those projects dealing with alternative fuels Do not include details of experience prior to 1988 Supply the project title, year, and reference name, title, present address, and phone number of principal party for whom prior projects were accomplished,

B.) Personnel include names, qualifications and copies of resumes for all professional personnel who will be assigned to the project(s) State the primary work assigned to each person and the percentage of time each person will devote to this work Identify key persons by name and title

3) Plan ability to complete tasks in a timely manner

A) proposed work plan, including a description of proposed methodologies to be employed,

B.) sequence and schedule of activities,

C.) proposer's current workload and staffing levels. Specify the number of personnel, both technical and clerical who will be assigned to this project and the percentage of working hours for each person to be assigned

D) three references willing to attest to the proposer's timely completion of similar projects

4) Soundness of Budget The proposed Budget should be detailed and reasonable.

5.) Conflicts of Interest. Describe the quantity and nature of any work, interest in work, partnership interest or other interest in any property or business arrangement which may give rise to a potential conflict of interest with the proper execution of this work

Selection and Evaluation Criteria This procurement will comply with applicable SECO policy The successful Proposer will be selected by SECO based on demonstrated qualifications The following criteria outlined will be used to evaluate and compare submittals Selection of finalists may be made without discussion with proposers after submittals are received Submittals should, therefore, be developed on the most favorable terms. SECO reserves the right to reject any or all responses with or without cause SECO will negotiate and enter into contract(s) with the firm(s) determined to be best qualified to successfully perform the services sought by SECO, but SECO is not precluded from entering into separate negotiations with multiple responding firms The evaluation criteria to be used are as follows

1 Demonstrated Experience from 1988 to Date (0-20 points) proposer's relevant prior experience and proven success in evaluating alternative fuels programs, to include any subcontractors employed. The degree to which the Proposer demonstrated expertise and technical competence related to alternative fuels projects and program planning will be considered The statement of the qualifications should include the type and purpose of the program and the names of the firm's personnel who conducted program with the nature and degree of their involvement (minimum of three program/project examples),

2 Experience of Project Manager (0-20 points) proposed Project Manager qualifications, and experience and direct participation in planning, conducting, and/or managing projects similar to the subject assignment,

3 Adequacy of Proposed Staff (0-20 points) demonstrated expertise of firm, proposed project team, and individuals (including subcontractors) who will be assigned to the project The statement of qualifications should include the proposed area of responsibility and principal duties for each individual, appropriate information documenting expertise in which each individual will be working, and the identification of team members considered to be key personnel for the life of the project,

4 Project Organization (0-20 points): project Management Structure and Management Plan presented will be reviewed to determine to flow of information and the responsible parties. Key items to be evaluated will be major decision points, key participants, schedule control, budget and resource control

5 Interviews (0-20 points): SECO anticipates requesting interviews with the highest ranking three to five Proposers after initial evaluation of the submittals These Proposers will be allowed up to two hours to make presentations utilizing criteria furnished to the proposers prior to the interviews The interview process, in addition to the submittals, will be utilized when making the final selection No respondent will be reimbursed for any costs incurred in the preparation, submission or clarification of a proposal

Issued in Austin, Texas, on April 4, 1994

TRD-9438565 Judith Porras
General Counsel
General Service Commission, State Energy Conservation Office

Filed April 4, 1994

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Funding Availability

The Texas Department of Housing and Community Affairs (The Department), through its Housing Trust Fund is authorized to provide loans and grants to finance acquire, rehabilitate and develop affordable, decent, safe, and sanitary housing for low and very-low income persons and families The Department will make approximately nine hundred thousand dollars ($900,000) available as loans and grants to rehabilitate existing multifamily housing projects. Applicants must hold clear title to property at the time of submission of this application The funds are being made available to provide supplemental financial support to housing projects to preserve affordability At least 80% of these funds will be made available as loans This will promote the establishment of a revolving fund to serve future Housing Trust Fund endeavors.

Eligible applicants include the following Local Units of Governments, Public Housing Authorities, Community Housing Development Organizations and Non-profit Organizations

Only one application will be accepted per applicant The Department's Board of Directors reserves the right to limit the award amount, and to award less than the requested amount. In addition, The Department reserves the right to recommend a lesser amount of funds than the applicant requested Funds will be made available for multifamily homes. Eligible activities include Rehabilitation of multifamily units.

Preference will be given to applicants that will utilize other sources of funding in conjunction with loans provided by the Housing Trust Fund It is not the Department's intent to be the primary financier of the project. The Trust Fund seeks submissions for projects that will be ready to commence work in the next 180 days. Additional preference will be given to applicants who have not already received Housing Trust funds from a previous funding cycle

The Department will seek to select a diverse group of projects that will serve various populations in a broad geographic dispersion in need of low and very-low income housing. Eligible applicants from the same geographic area (CHAS Region) will compete with each other for funding Top applications will then compete on a statewide basis For more information or an application package call The Housing Trust Fund Office at (512) 475-1458 Letters of Intent must be postmarked or hand delivered on or before 5 00 p.m., April 29, 1994. All Housing Trust Fund Final Applications must be received, in-house, no later than 5 00 p m, May 31, 1994

Please send you Letters of Intent and Applications to the following address Housing Trust Fund, Texas Department of Housing and Community Affairs, 811 Barton Springs, Suite 700, Austin, Texas 78704, Attention Judith Rhedin

Issued in Austin, Texas, on April 1, 1994

TRD-9438521 Henry Flores
Executive Director
Texas Department of Housing and Community Affairs

Filed April 4, 1994

♦ ♦ ♦

Request for Proposal

I Background on the Texas Department of Housing and Community Affairs.

Purpose The Texas Department of Housing and Community Affairs ("TDHCA"), a public and official governmental agency of the state, was created pursuant to Texas Civil Statutes, Article 4413(501), ("the Act"), effective September 1, 1991, codified as Chapter 2306 of the Texas Government Code, and as amended by Acts of the 73rd Legislative Session, Chapter 141, page 292, effective May 16, 1993, and Acts of the 73rd Legislative Session, Chapter 725, page 838, effective September 1, 1993. TDHCA is the successor agency to the Texas Housing Agency and the Texas Department of Community Affairs, both of which were abolished by the Act and their functions and obligations transferred to TDHCA One of the purposes of TDHCA is to provide assistance to persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing Pursuant to the Act, TDHCA may allocate low income housing tax credits in accordance with §42 of the Internal Revenue Code of 1986, as amended (the "Code") and the rules promulgated thereunder

Organization. TDHCA is governed by an executive director, who is appointed by the Governor upon the advice and consent of the Texas Senate, and by a nine-member board of directors. The members of the board of directors are also appointed by the Governor upon the advice and consent of the Texas Senate for staggered six-year terms The board is responsible for authorizing the allocation of tax credits of TDHCA and all other acts in connection therewith specified in the Act The Executive Director, as administrator and head of TDHCA, is responsible for he overall administration of TDHCA and its programs and for employing its staff of approximately 250.

Low-Income Housing Tax Credit Program. The low income housing tax credit ("tax credit") program was created so as to provide tax incentives in return for the creation and maintenance of low and very low income rental housing In order to qualify for the tax credit, prospective developers must either construct new, rehabilitate, or acquire and subsequently rehabilitate existing rental housing. In addition to developing or improving rental housing units, the developer must agree to set aside a portion of the available units in each development for occupancy by persons and families of low and/or very-low income. The units which are to be set aside for occupancy by these low and/or very-low income tenants must also be rent restricted.

II. Scope of Services.

Nature of Services Required. TDHCA anticipates the need for legal services in connection with the administration of the tax credit program at any time and from time to time during the term of the contract at the request of TDHCA. The specific functions for which the TDHCA is seeking tax credit counsel are as follows:

1. selected counsel must examine and advise TDHCA on its administration of the tax credit allocation process, including but not limited to counsel's analysis of rules promulgated for such purpose, which are anticipated to be finalized by the end of May 1994,

2. selected counsel must examine and advise TDHCA on its compliance and monitoring process, including but not

limited to counsel's analysis of relevant manuals promulgated for such purpose,

3 selected counsel must provide TDHCA with information concerning programmatic changes along with interpretation of relevant Internal Revenue Service (the "IRS") law and other related matters pertaining to the tax credit program in a timely manner,

4. selected counsel must advise the TDHCA with regards to the necessity for formal ruling requests on behalf of TDHCA to the IRS as well as draft and submit such request,

5 selected counsel must be qualified to appear before the IRS on behalf of TDHCA,

6. selected counsel must be available to answer questions from TDHCA staff regarding the tax credit program and applicable law, and

7 selected counsel must be available to handle any other service as may be required by TDHCA with regards to the tax credit program and its relevant law

Tax credit counsel is expected to assign those attorneys and professionals employed by the firm who are best suited to appropriately respond to such requests.

Terms of Agreement Subject to the approval of the selection by the governing board of the TDHCA and negotiations of an acceptable contract by the parties and approval by the Attorney General of Texas, TDHCA will execute an agreement with tax credit counsel for at least a one year term with optional extensions as required based on performance and as approved by the Attorney General However, TDHCA will retain the right to terminate the contract for any reason and at any time upon the payment of fees and expenses then earned

III RFP Instructions

Proposal Form and Format Five copies of the proposal are requested and should be sent by registered mail or delivered in person to Robert Johnston, Director of Multi-Family Programs, Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 300, Austin, Texas 78704, no later than the deadline for submission of proposals specified below. The proposals must include each question or request for information, as specified herein, followed by the narrative answer as in the standard format for interrogatories, limited to one side of a single 8-1/2" x 11" page. Supplemental information such as Annual Reports or other background material, if any, must be restricted to Appendices following the responses. The pages of the proposal should be numbered sequentially with the name of the firm on each page. The proposal should be submitted in a loose leaf binder

Deadline of Submission. The deadline for submission in response to this Request for Proposal is 5.00 p.m. on May 2, 1994. No proposal will be accepted after the deadline.

General Information TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposal in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response

Release of Information Information submitted relative to this request for proposal shall not be released by TDHCA during the proposed evaluation process or prior to contract award All information submitted to and retained by TDHCA becomes subject to disclosure under the Texas Open Records Act, unless an exception under such Act is applicable

Proprietary Information If a firm does not desire proprietary information in the proposal to be disclosed under the Texas Open Records Act or otherwise, it is required to clearly identify (and segregate, if possible) all proprietary information in the proposal, which identification shall be submitted concurrently with the proposal If such information is requested under the Texas Open Records Act, the firm will be notified and given an opportunity to present its position to the Texas Attorney General, who shall make the final determination. If the firm fails to clearly identify proprietary information, it agrees, by the submission of a proposal, that those sections shall be deemed non-proprietary and made available upon public request after the contract is awarded.

Requested Information.

1. Provide a general description of your law firm, including historical background, number and location of firm offices, number of attorneys, and major areas of practice

2. Provide a general description of your firm's practice in the field of tax credit law, including the size and scope of the practice, the number of attorneys active in the practice and other resources of the firm relevant to the practice

3. Provide the TDHCA with information concerning your firm's experience in preparing and submitting ruling requests from the IRS, with regards to the tax credit program, and the corresponding success rate.

4 Provide a listing of major clients who your firm has served including any tax credit counsel relationships between your firm and a housing financing agency.

5. Identify the individuals who will be assigned to the TDHCA account if your firm is selected as tax credit counsel Provide information regarding the background and experience of each individual, in particular their experience with housing finance agencies under the tax credit program, if any, and designate the percentage of work for which each individual will be responsible

6. Describe in detail the services that your firm normally provides as tax credit counsel for a transaction or client and other matters not directly related to tax credit transactions in which your firm anticipates its services may be necessary. Explain the reasons why and the extent to which additional involvement may be necessary.

7. Discuss briefly your firm's views as to the major problems to be faced by the TDHCA as a tax credit allocating agency during the next three years Discuss the role of tax credit counsel in helping to find solutions to those problems.

8 Provide a copy of the firm's affirmative action policy and information concerning the firm's employment of female, black, Hispanic and other ethnic minority attorneys, law clerks, paralegals and non-legal personnel Describe the firm's degree of achievement of the affirmative action goals in the past 12 months and provide an em-

ployee profile showing the number and percentage of male, female, and minority employees by category

9 Additional consideration will be given to those respondents which can demonstrate their knowledge of the legislative history of the tax credit program and have been actively involved in its continued evolution

10 Compensation Clearly specify the firm's proposed method of charging for legal services provided If an hourly basis is anticipated, describe the fee schedule in detail If the firm proposes that TDHCA bear the costs of incidental expenses associated with its representation of TDHCA, the proposal should clearly state the nature of such incidental expenses and their estimated costs to TDHCA Please indicate minimum charges on any of the fees. Invoices presented for payment must be itemized and contain detail of specific expenses. Reimbursement for time spent traveling will be negotiated during pre-selection interviews with TDHCA. All proposals must include a statement that they are valid for the duration of the contract

Review. In accordance with law, TDHCA will make its selection based upon its perception of the need for tax credit counsel, the demonstrated competence, experience, knowledge and qualifications of applicants, on the reasonableness of the proposed fee for the services, and on the efficacy of applicant firms affirmative action policy and practices. By this Request for Proposal, however, TDHCA has not committed itself to employ tax credit counsel for any or all of the referenced matters, nor does the suggested scope of services of term of agreement require that tax credit counsel be employed for any of those purposes. TDHCA reserves the right to make those decisions after receipt of responses, and TDHCA's decision on these matters is final.

TDHCA reserves the right to negotiate all elements which comprise the proposal of the firm(s) to ensure that the best possible consideration be afforded to all concerned. TDHCA reserves the right to reject any and all proposals and to re solicit in such an event. TDHCA permits proposals utilizing joint ventures of any two or more firms, if appropriate.

Additional Information. For additional information concerning the requirements of this request for proposals, please contact Robert Johnston, Director of Multi-Family Programs, at (512) 475-3340. Communication with any member of the board of directors, the executive director, or TDHCA staff other than Mr Johnston, concerning any matter relating to this request for proposals is grounds for immediate disqualification

Issued in Austin, Texas, on April 4, 1994.

TRD-9438508 Henry Flores
Executive Director
Texas Department of Housing and Community Affairs

Filed April 1, 1994

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.28

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 28 for approval of promotional rates for two existing services

Tariff Title and Number Application of Southwestern Bell Telephone Company For Approval of Promotional Rate For Priority Call and Auto Redial Services Pursuant to Public Utility Commission Substantive Rule 23.28 Tariff Control Number 12892

The Application Southwestern Bell Telephone Company is seeking approval of promotional rates for new and existing customers of two seeking services, Priority Call and Auto Redial The geographic service market for these services includes the general statewide area of Texas where facilities are available.

Person who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf

Issued in Austin, Texas, on March 31, 1994

TRD-9438515 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed March 30, 1994

♦ ♦ ♦

Notice of Processing for Approval of Extended Area Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint petition on March 22, 1994, seeking approval of optional extended area service (EAS) pursuant to §23.49(b)(8) of the Public Utility Commission of Texas substantive rules The following is a summary of the joint petition.

Project Title and Number Joint Petition for Extended Area Service Between Southwestern Bell Telephone Company's Center's Exchange and its San Augustine Exchange and its San Augustine Exchange, Project Number 12862, before the Public Utility Commission of Texas

The Joint Petition In Project Number 12862, Southwestern Bell Telephone Company (SWB) and the Center Exchange seek approval of a joint petition to offer optional, one-way EAS from the Center Exchange to the San Augustine Exchange and optional one-way EAS from the San Augustine Exchange to the Center Exchange on a flat-rate basis Customers choosing to subscribe to EAS will pay the currently approved rates for basis local service, plus a flat-rate monthly additive (EAS monthly additive), as follows

Class of Service	EAS Monthly Additive
Residence per line	$ 7.50
Business per line	$ 15.00

Person who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256 by Monday, June 6, 1994. The telecommunications device for the deaf (TDD) number for the Public Information Office is (512) 458-0221.

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

TRD-9438391 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 30, 1994

Petition For Rulemaking

The Public Utility Commission of Texas has received a petition for rulemaking from Enron Gas Services Corporation, requesting the commission to amend its rules relating to electric utilities' recovery of fuel costs. The petition requests that the commission's rules concerning fuel costs be amended to permit a utility to recover through its fixed fuel factor certain costs of transactions conducted to hedge on fuel cost changes Copies of the petition filed by Enron are available in Central Records of the commission.

The commission requests comments on whether it should initiate a proceeding to amend its rules, in the manner requested by the Enron If the commission decides to initiate a rulemaking proceeding on this subject, it will, at a later date, request interested persons to comment on the merits of the Enron proposal. Today's request for comments relates to whether the commission should initiate the rulemaking project, and interested persons are requested to confine their comments to this question. Interested persons should file 15 copies of their comments with the commission's Secretary, John Renfrow, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 21 days of the publication of this notice in the *Texas Register*. Comments should refer to project number 12890 This notice is not a formal notice of proposed rulemaking, but the comments of interested parties will assist the commission in deciding whether to initiate a rulemaking proceeding.

Issued in Austin, Texas, on March 31, 1994.

TRD-9438513 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 1, 1994

Texas Office of State-Federal Relations

Request for Applications-State Match Pool

The Office of State-Federal Relations (OSFR) State Match Pool pilot program requests applications from state agencies who need state funds to meet the matching monies requirements of federal discretionary grant programs. The 1994-1995 biennial amount of $10,000,000 was appropriated (General Appropriations Act of 1993) to OSFR for this purpose. Adopted administrative rules governing the State Match Pool may be found at 19 TexReg 1825.

State Match Pool funds will only be awarded to state agencies to meet the matching monies requirements of federal discretionary grant programs under which funds are available to be awarded during the 1994-1995 biennium. State agencies who are or will be applying during the 1994-1995 biennium to a federal discretionary grant program for project funding are eligible to apply also for State Match Pool funds. Applicants to the State Match Pool must be a single state agency, but grant activities proposed by a state agency in partnership with other state and non-state entities are encouraged

The pilot program is comprised of a competitive application process that gives preference to federal grant proposals that include realistic projections of economic growth in the state as a direct outcome to be expected from completion of the proposed grant activities Projects that shall not be considered for State Match Pool funding include projects proposed solely for the purposes of research, planning, curricular education, public transportation, public works, or continuation grants for any project

Applications for State Match Pool funding of specific projects will be evaluated on the basis of criteria listed below Applications will be ranked according to their cumulative score on these criteria, which will be weighted according to their importance in the selection process.

Quantitative criteria to be derived from proposed project financing information include ratio of federal grant amount requested to the State Match Pool funds requested, ratio of private contributions to project (if any) to the State Match Pool funds requested; ratio of non-state project funds to state project funds from all sources, ratio of cash to in-kind matching contributions to the project Other criteria by which project descriptions will be evaluated include expected project outcomes and impacts on specific populations or geographic areas, including projections for direct job creation or retention in the state and new economic investment in the state, how well the proposed project addresses the objectives/requirements of the federal program under which the grant funds are re-

quested; plans for attracting future federal funding or economic investment in the state; project coordination, including a statement of how the proposed project meets statewide, regional, or local policy priorities or planning objectives, project support for or recommendations from related agencies and organizations, and recommendations from federal/state/local elected officials; and innovative linkages between local/state/federal organizations and between the public and private sectors.

No minimum or maximum award amount has been set. However, the maximum award amount is clearly limited by the amount of the $10 million appropriation. OSFR asks, therefore, that requests for State Match Pool funding to a single project not exceed $2 million. In no case shall the amount of State Match Pool funds awarded to a single project exceed 40% of the total projected costs for that project.

Commitment of State Match Pool funding to any project is subject to availability of funds. The OSFR does not expect that every qualified application will be accepted for federal funding. Therefore, the OSFR may over-commit funds. Encumbrance and subsequent disbursement of State Match Pool funds to any qualified applicant agency is dependent on the date of their federal award and the availability of State Match Pool funds at the time of their federal award.

The present solicitation closes May 20, 1994. State agencies who are or will be submitting an appropriate federal grant proposal at any time during the 1994-1995 biennium may apply for State Match Pool funding during the present solicitation. Applications received during the present solicitation period will be evaluated, rated, and ranked as a cohort group. Additional solicitations for applications may be issued throughout the 1994-1995 biennium, dependent on continued availability of unallocated match funds. Evaluation criteria for application review are established on a solicitation by solicitation basis.

The present solicitation is also open to state agency applicants who already have been notified of a pending award by the federal program during the state's 1994 fiscal year and who are in the process of actively negotiating a state match amount with the federal award program. Such negotiations must be threatened by insufficient state match funds within the agency's own budget.

Standardized application forms must be completed and submitted as part of the application. For the present solicitation, applications will be accepted anytime prior to 4:00 p.m. on May 20, 1994. An information/application packet can be requested from the Texas Office of State-Federal Relations at P.O. Box 13005, Austin, Texas 78711, (512) 463-1803. Questions related to the solicitation or the application process should be directed to Dr. Mary E. Lee, (512) 463-1803.

Issued in Austin, Texas, on March 31, 1994.

9438447 Dr Mary E Lee
State Match Pool Administrator
Texas Office of State Federal Relations

Filed: March 31, 1994

♦ ♦ ♦

Texas Department of Transportation, Division of Aviation

Notice of Contract Award

Under the provisions of the Texas Civil Statutes, Article 664-4, the Texas Department of Transportation publishes this notice of a consultant award for providing professional engineering services.

The request for qualifications for professional engineering services was published in the *Texas Register* on September 14, 1993 (18 TexReg 6239).

The consultant will provide professional engineering services for the design and construction administration phases for the following TxDOT Project: 95-11-041, Hamilton Municipal Airport.

The engineering firm for these services: Parkhill, Smith & Cooper, Inc., 4010 Avenue R, Lubbock, Texas 79412.

The total value of the contract is $40,600 and the contract period starts on March 28, 1994, until the completion of the project.

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

TRD-9438464 Diane L. Northam
Legal Administration Assistant
Texas Department of Transportation

Filed: March 31, 1994

♦ ♦ ♦

Public Hearing Notice

Pursuant to the Uniform Act Regulating Traffic on Highways, Texas Civil Statutes, Article 6701d, §169B, the Texas Transportation Commission will conduct a public hearing to receive data, comments, views and/or testimony concerning proposed action by the Commission to establish maximum prima facie speed limits not to exceed 65 mph for Interstate highways and selected non-Interstate freeways located outside an urbanized area of 50,000 population or more, and 55 mph on all other highways. The action is the result of the change in the 1990 Bureau of Census boundaries, which has resulted in revised eligible 65 mph sections on Interstate highways and selected non-Interstate freeways as previously established on November 21, 1991. Some eligible sections have increased in length and some have decreased in length due to changes in the 1990 census boundaries.

There are 30 sections of Interstate highways eligible for 65 mph statewide; 10 sections have been lengthened a total of approximately 25 miles and 17 sections have been shortened a total of approximately 81 miles, for a net reduction of approximately 56 miles eligible for 65 mph speed limits. There are 13 sections of selected non-Interstate freeways eligible for 65 mph statewide; one section has been lengthened approximately two miles and seven sections have been shortened a total of approximately 26 miles, for a net reduction of approximately 24 miles. Overall, there will be a net reduction of approximately 82 miles of highways eligible for 65 mph statewide.

The public hearing will be held at 9:30 a.m. on Thursday, April 28, 1994 in the first floor auditorium, Building 200, Room 101, 200 East Riverside Drive, Austin, Texas 78704.

Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of commenters or witnesses will be reserved exclusively to the Commission as may be necessary to ensure a complete record While any person with pertinent comments or

testimony will be granted an opportunity to present them during the course of the hearing, the Commission reserves the right to restrict testimony in terms of time or repetitive content.

For a listing of highway routes and applicable speed limits or further information pertaining to these revisions, please contact Gary K. Trietsch, Director, Traffic Operations Division, at the previously mentioned Austin address, or by calling (512) 416-3200; or B. F. Templeton, Assistant Executive Director for Field Operations at (512) 463-8672; or any of the Department's local district offices.

Issued in Austin, Texas, on April 1, 1994.

TRD-9438510 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: April 1, 1994

♦ ♦ ♦

Request for Proposals

The Texas Department of Transportation (TxDOT) is requesting proposals for the Texas Highway Safety Plan (HSP) for fiscal year (FY) 1995 (October 1, 1994-September 30, 1995).

The Texas HSP is developed through a process beginning the preceding fiscal year through the collection of project proposals from local jurisdictions, as well as from agencies with statewide responsibility. The program of work developed in the HSP is intergovernmental in nature and functions, either directly or indirectly through grants-in-aid agreements and contracts awarded to local jurisdictions, other state agencies, educational institutions, and private contractors. Agencies and local jurisdictions who have previously submitted proposals for the FY 95 HSP need not resubmit.

Authority and Responsibility. Federal grant involvement in traffic safety dates from the passage of the National Highway Safety Act of 1966 (23 United States Code §402). Texas passed supporting legislation in 1967. The Texas traffic safety program was made an integral part of the Texas Department of Transportation in 1976 and the department's districts assumed responsibility for local projects. The traffic safety section of the traffic operations division is responsible for the management of the overall highway safety program. The executive director of the department serves as the designated Governor's Highway Safety Representative.

HSP Review and Approval. The HSP is prepared and submitted to the Transportation Commission for approval in May or June of each year. Upon approval, it is submitted to the Governor's office, other state agencies, and the councils of government for review and comment, and then, by August 1, forwarded to the federal government for approval. The HSP becomes operational on October 1 of every year.

HSP Program Areas. The FY95 HSP will be divided into 12 program areas. Two federal agencies provide funding to implement the HSP, the Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA). One area is funded by FHWA, ten are primarily funded and approved by NHTSA, and one is primarily funded from state resources. In addition to federal and state funds, some participating state and local agencies provide matching funds.

The first six program areas were designated by federal regulation in 1982. The seventh, Motorcycle Safety, was added in 1986 and received federal designation as a national priority area in 1988. As Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 goes through further definition and refinement during the rulemaking process, some of the program areas may be reprioritized. Currently, the 12 programs planned for FY 1995 are:

1. Police Traffic Services: Selective Traffic Enforcement Projects (STEPs) to apprehend reckless drivers, and enforce speed limits, specialized training for law enforcement officers, and a system assessment.

2. Alcohol and Other Drug Countermeasures: Selective Traffic Enforcement Projects to apprehend drunk drivers, comprehensive programs to support anti-driving while intoxicated (DWI) activities from apprehension through adjudication, public information programs on alcohol/other drug use and driving, education programs for convicted DWI offenders, and education for teenagers.

3. Emergency Medical Services: Training for rural emergency medical services technicians, local projects, data management, and public education.

4. Occupant Protection: Community and volunteer programs, public education to promote child safety seats and occupant safety belts, police selective enforcement, and observational surveys, and evaluations.

5. Information Services: Development of software for traffic safety practitioners for problem identification, countermeasure design and evaluation. Specialized analyses of accident occurrences and causal factors, improvements to data collection and the automated accident file, and other traffic records systems. Joint efforts with other agencies to improve the state traffic record system.

6. Roadway Safety: Course development and training, consulting engineering services, traffic surveillance equipment, problem identification and pedestrian/bicycle safety projects.

7. Motorcycle Safety: Public awareness.

8. Planning and Administration: Operation of the traffic safety program and traffic safety functions in TxDOT headquarters offices and district offices throughout the state.

9. Community/Corridor Traffic Safety Programs: Problem identification, plan development, and program implementation for selected city and college communities.

10. Public Information and Education: State and local media campaigns, material development and production, statewide theme support, drugfree project celebration support, traffic safety conference support and newsletter production and distribution.

11. School Bus Safety: School bus crash data studies and training materials and programs.

12. Pedestrian/Bicycle Safety: Community school zone safety, bicycle crash investigation, public education and community programs.

HSP Implementation. When the HSP has received federal approval, TxDOT districts begin working with local

jurisdictions to develop grant agreements for the approved projects. TxDOT traffic safety section program managers also begin similar activities with statewide contractors and subgrantees. All traffic safety contracts and grant agreements are then reviewed and processed for TxDOT approval.

A copy of the FY 1994 HSP and proposal submission forms can be obtained by writing to: John McKay, Traffic Safety Section, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 416-3170, Fax (512) 416-3349

HSP project proposals should be submitted by Thursday, June 30, 1994 to: Susan N. Bryant, Chief, Traffic Safety Operations, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

Proposals received for the FY95 HSP which show strong evidence of potential effectiveness may be considered for funding in FY94. Proposals may be submitted for multiyear projects, up to a maximum of three years.

Proposal selection for local projects will be based on the following criteria. Save City/Save County ranking; subgrantee resources such as personnel, equipment, training, and administrative support; continuation of an existing grant; whether the project is in a priority area; and innovativeness of the project. Availability of local matching funds is a bonus criterion.

Proposal selection for state projects will be based on the following criteria If there is statewide impact, the project should provide statewide support and should be cost effective and needed annually. The quality of the project will also be considered. If there is no statewide impact, state projects will be selected based on Save City/Save County ranking; the lack of local resources to enter into an agreement for the project; cost effectiveness of the project; annual need for the project; quality of the project; subgrantee resources such as personnel, equipment, training, and administrative support; continuation of an existing grant; whether the project is in a priority area; and the innovativeness of the project, with local matching funds a bonus criterion.

Legislative mandate, public opinion and resource availability may also influence proposal selection.

The Save City/Save County ranking procedure is a set of formulae developed by the Texas Transportation Institute for TxDOT based on crash rate and severity and designed to provide a ranking of problem severity for each city and county in Texas. These rankings are used to assist in problem identification to ensure that funds are used as effectively as possible, aid in countermeasure development, enhance the ability to evaluate program efforts, and support program decisions.

Issued in Austin, Texas, on March 31, 1994.

TRD-9438465 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: March 31, 1994

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	Wedesday, 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 34
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, Novmber 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
96 *Friday, December 30	Friday, December 23	Tuesday, December 27