

TEXAS REGISTER

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How to Use the Texas Register

Information Available The 10 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations

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

Secretary of State - opinions based on the election laws

Texas Ethics Commission - summaries of requests for opinions and opinions

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

Proposed Rules - sections proposed for adoption

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption or automatically withdrawn by the *Texas Register* six months after the proposal publication date

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

Open Meetings - notices of open meetings

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

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

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

In order that readers may cite material more easily, page numbers are now written as citations. For 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-ADDC 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
- Banking and Securities
- 10 Community Development
- 13 Cultural Resources
- 16 Economic Regulation
- 19 Education
- 27 Examining Boards
- 28 Health Services
- 28 Insurance
- 30 Environmental Control
- 32 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 19 TAC §27.15

19 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 § 704 950, 1820

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

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

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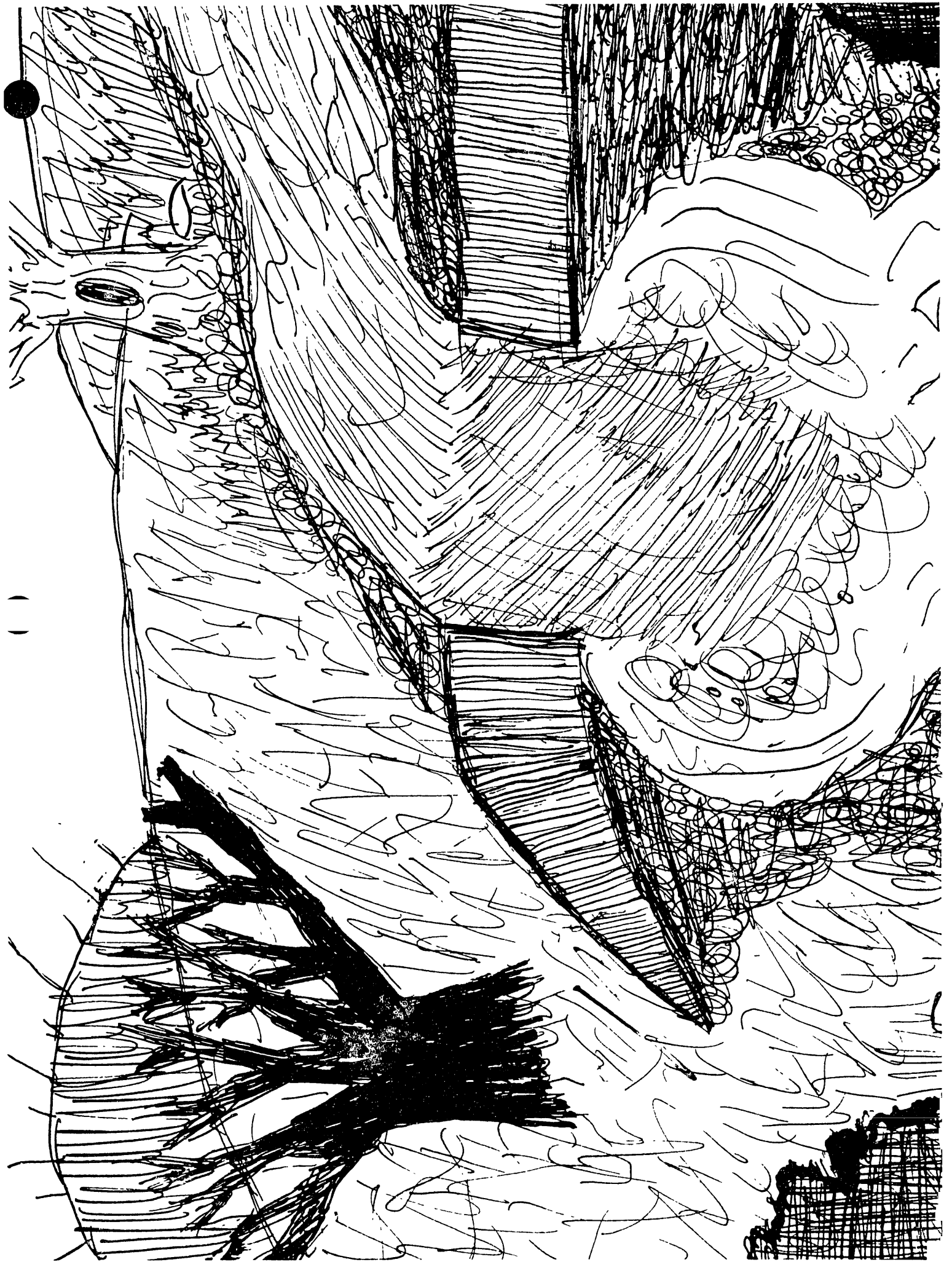
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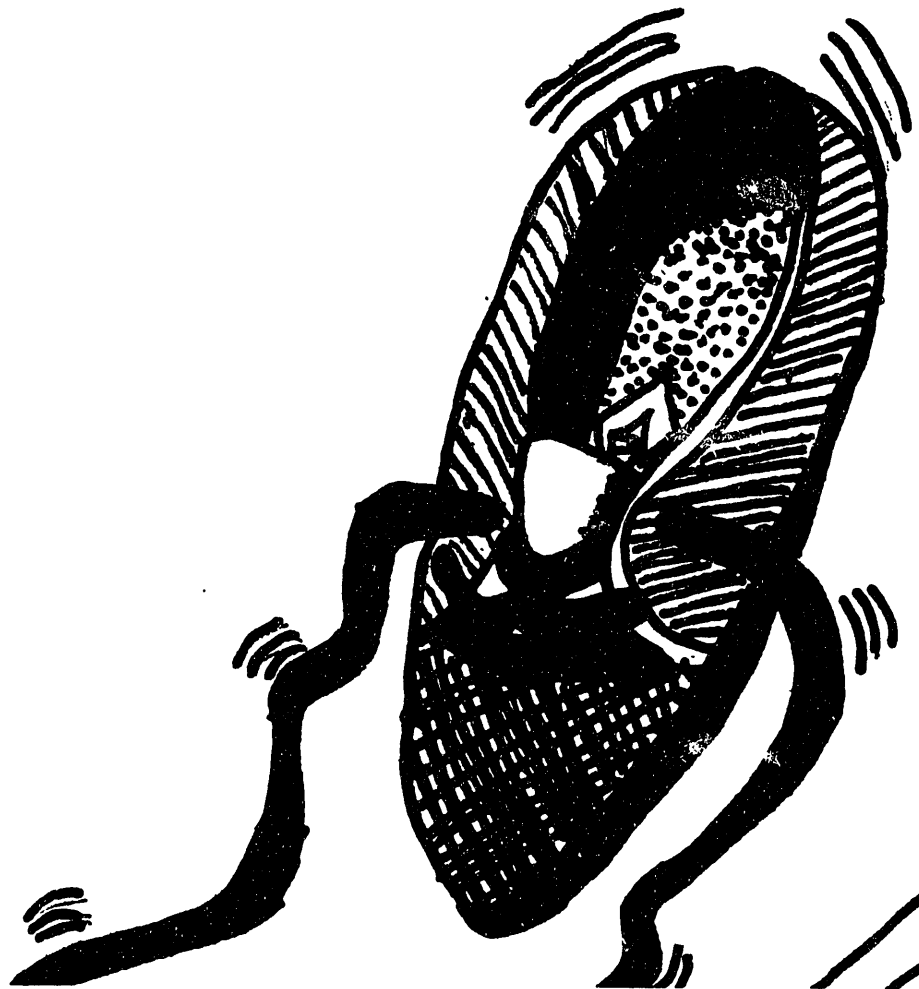
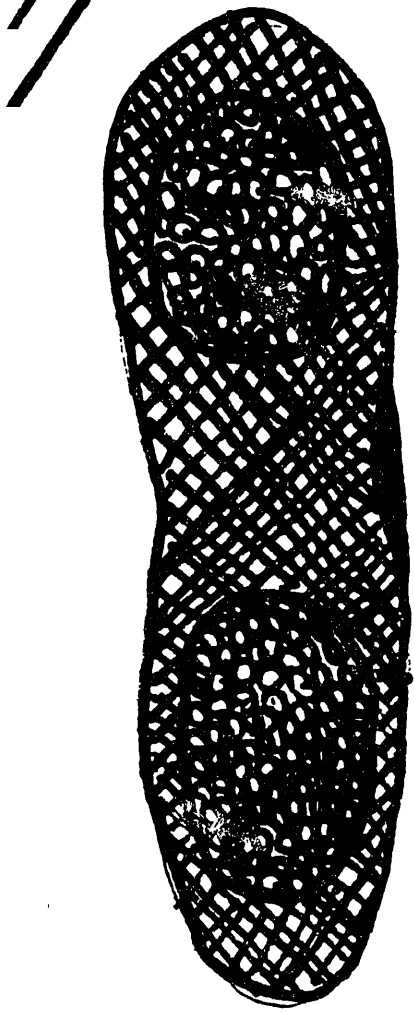
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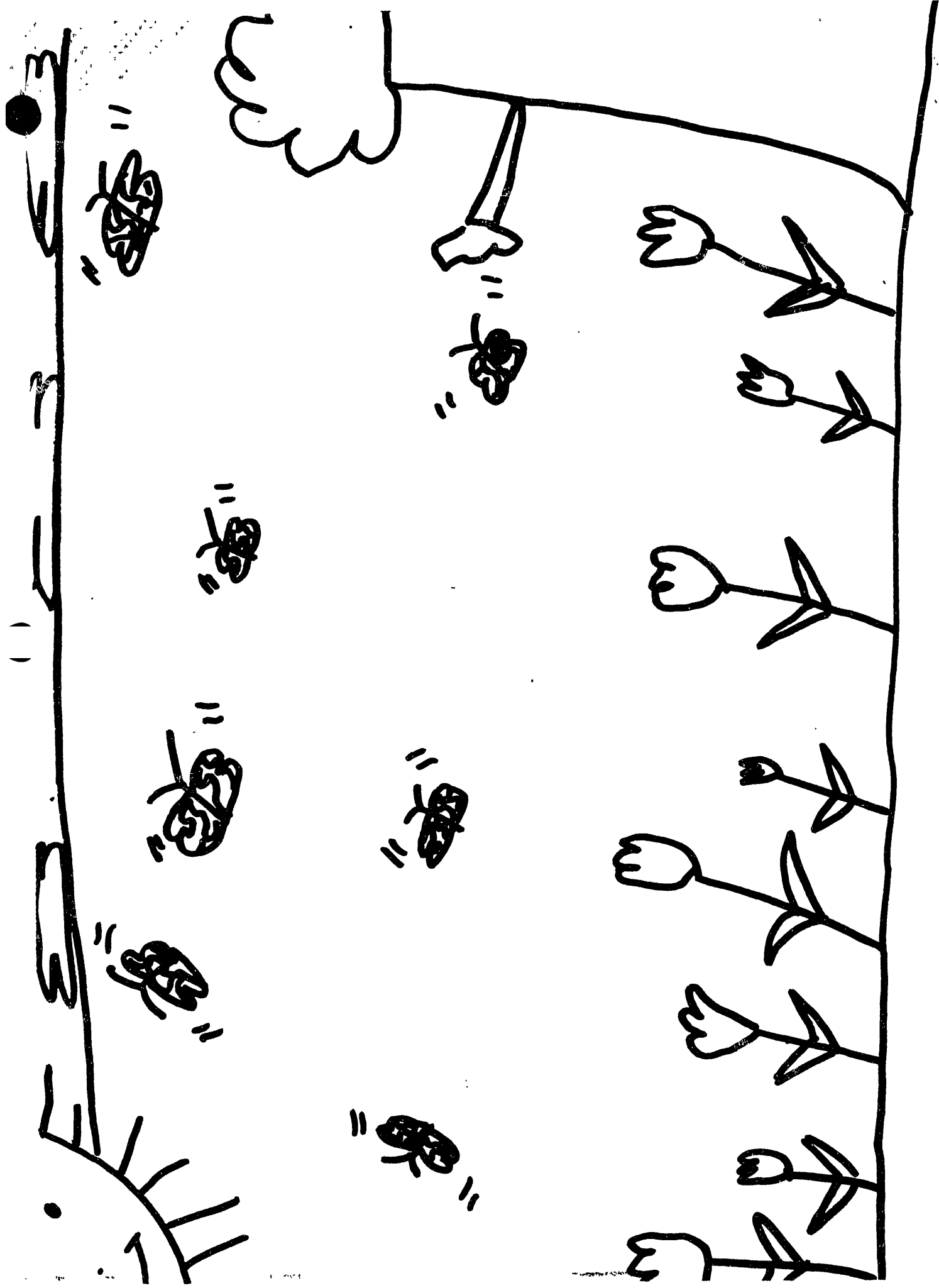
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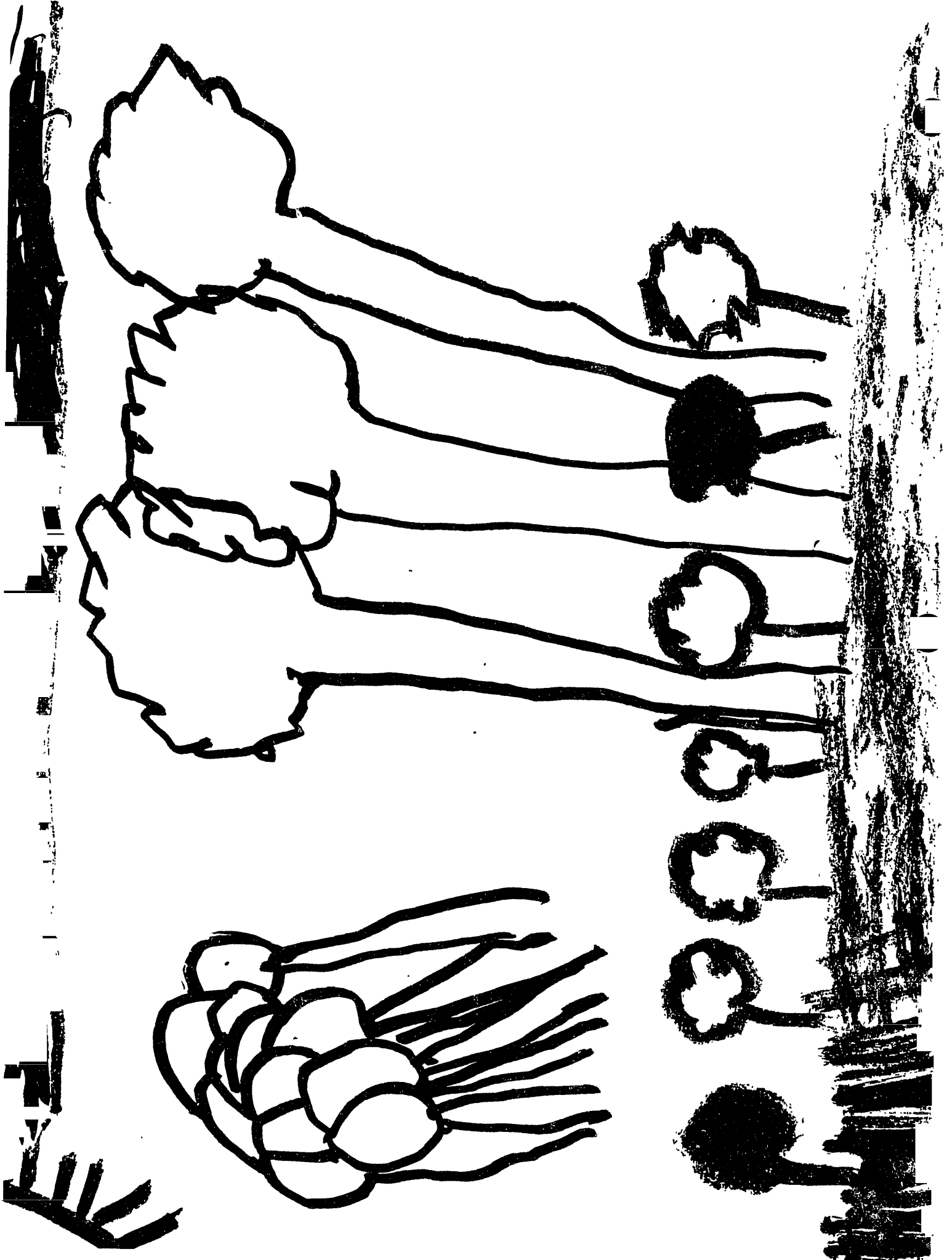
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THE GOVERNOR

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

Appointments Made June 2, 1994

To be a member of the **Advisory Commission on State Emergency Communications** for a term to expire September 1, 1999: The Honorable Wayne Whiteaker, County Judge, Lamb County Courthouse, Room 101, Littlefield, Texas 79339-3366. Judge Whiteaker will be replacing Vaughn R. Aldredge of Austin, whose term expired.

To be a member of the **Advisory Commission on State Emergency Communications** for a term to expire September 1, 1999: John W. (Bill) Munn, Ph.D., 9052 Woodshore Drive, Dallas, Texas 75243. Dr. Munn is being reappointed.

To be a member of the **Texas Board of Criminal Justice** for a term to expire February 1, 1995: Robert B. Wilson, 6711 Hartford, Lubbock, Texas 79413. Mr. Wilson will be filling the unexpired term of Jerry Hodge of Amarillo, who resigned.

Appointments Made June 6, 1994

To be a member of the **Texas Board of Human Services** for a term to expire January 20, 1999: Carlela K. Vogel, 901 Oldgate Road, Fort Worth, Texas 76108. Ms. Vogel will be replacing Karen Heltzel of Duncanville, who resigned.

To be a member of the **Governing Board of the Texas School for the Deaf** for a term to expire January 31, 1999: Kent Allen Kennedy, 11406 Esperanza Drive, Austin, Texas 78739. Mr. Kennedy will be replacing Robert Neely of Dallas, whose term expired.

To be a member of the **Texas State Board of Podiatry Examiners** for a term to expire July 10, 1999: W. Preston Goforth, D.P.M., 3503 Hemlock Court, Temple, Texas 76501. Dr. Goforth is being reappointed.

To be a member of the **Texas Cosmetology Commission** for a term to expire December 31, 1999: Virginia G. Dillman, 11655 Audelia Road, #407, Dallas, Texas 75243. Ms. Dillman will be replacing Lois Mariam Cohen of Graford, who resigned.

To be a member of the **Antiquities Committee** for a term to expire January 31, 1995: James E. Corbin, Ph.D., Box 13047, SFA Station, Nacogdoches, Texas 75962. Dr. Corbin is being reappointed.

To be members of the **Home and Community Support Services Advisory Council** for terms to be determined by lot at the first meeting: Mavis Brewster, Professional Home Care, 1108 Soldier's Field Court, Suite 200 A, Sugar Land, Texas 77478; Marcyllie Jones Combs, Texas Home Health Care, Inc., 2220 San Jacinto, Suite 230, Denton, Texas 76205; Mary B. Durfor, Girling Health Care, Inc., P.O. Box 4294, Austin, Texas 78765; Roberta Anne Forbes, Easter Seal Society of the Gulf Coast, 10700 Northwest Freeway, Suite 105, Houston, Texas 77092; Joyce B. Fox, Spohn Hospital, 600 Elizabeth, Corpus Christi, Texas 78404; Diane M. Gillit, South Plains Community Action Association, Inc., P.O. Box 610, Levelland, Texas 79336; Manuel H. Gonzalez, DARE, 8929 Viscount, Suite 229, El Paso, Texas 79925; Leticia A. Goodrich, Goodrich Home Health Agency, P.O. Box 3337, Amarillo, Texas 79116-3337; Cherry Hershberger, Vitas Healthcare Corporation, Loop Central Three Building, Suite 890, 4828 Loop Central Drive, Houston, Texas 77081; Rose Marie Moore, Houston Department of Health and Human Services, 8000 North Stadium Drive, Houston, Texas 77054; Marjorie D. Mulanax, Hospice Austin, 3710 Cedar Street, Austin, Texas 78705; Sonia Rivera, Valley Association for Independent Living, 105-C East Expressway 83, Pharr, Texas 78577; and Frances C. Sanchez, Americare Professionals, Inc., P.O. Box 68, Orange, Texas 77631.

Appointments Made June 7, 1994

To be a member of the **Texas Board of Professional Land Surveying** for a term to expire January 31, 1999: Paul P. Kuan, 5314 Sunbright Court, Houston, Texas 77041. Mr. Kuan will be replacing Arthur W. Osborn of Tyler, whose term expired.

To be a member of the **Texas Board of Professional Land Surveying** for a term to expire January 31, 1999: James Noble Johnson, 3801 Laurel Ledge Lane, Austin, Texas 78731. Mr. Johnson will be replacing Hank Clements of Dallas, whose term expired.

To be a member of the **Texas Animal Health Commission** for a term to expire September 6, 1999: Marsha Lynn Stein, DVM, P.O. Box 11, Snook, Texas 77878. Dr. Stein will be replacing Dr. Allan C. Oltjen of Canyon, whose term expired.

To be a member of the **Coastal Coordination Council** for a term to expire January 27, 1996: Ray Allen, 3718 Shore Drive, Corpus Christi, Texas 78418. Mr. Allen is being reappointed.

To be a member of the **Governor's Commission for Women** for a term to expire February 1, 1995: Mary Stella Frances Naranjo, P.O. Box 512, Lufkin, Texas 75902. Ms. Naranjo will be filling the unexpired term of Ophelia Camuna of Dallas, who resigned.

To be a member of the **Texas State Board of Medical Examiners** for a term to expire April 13, 1997: Suzanne Peck Low, D.O., 105 Shorecliff, Portland, Texas 78374. Dr. Low will be filling the unexpired term of Dr. Marianne Beard of Grand Prairie, who resigned.

Issued in Austin, Texas, on June 8, 1994.

TRD-9442030

Ann W. Richards
Governor of Texas



Executive Order

AWR 94-19

Appointment of Secretary of State as Chief Officer

WHEREAS, the 103rd Congress passed House Resolution 2, now known as the National Voter Registration Act of 1993; and

WHEREAS, each state in the Union is required to designate a Chief Officer to carry out the duties of the National Voter Registration Act; and

WHEREAS, the Act requires the State of Texas to implement rules and directives in order to comply with such federal law, and

WHEREAS, this Act will not require the State to amend its constitution but only the laws of the State; and

WHEREAS, the Act will take effect in Texas on January 1, 1995; and

WHEREAS, the Legislature will not convene for its regular session until January 10, 1995;

NOW, THEREFORE, I, Ann W. Richards, Governor of Texas, under the authority vested in me, do hereby designate the Secretary of State, who also serves as the Chief Election Officer of Texas, as the Chief Officer in charge of carrying out the duties and requirements of the National Voter Registration Act and ensuring all citizens of Texas that this Act will be implemented in a fair manner.

The Secretary of State, in accordance with this Executive Order and pursuant to the authority given to him by the laws of this state, shall issue any rules, guidelines, or directives necessary for the state to comply with the National Voter Registration Act. The Secretary's directives shall remain in effect until superseded by legislative enactments of the 74th Legislature.

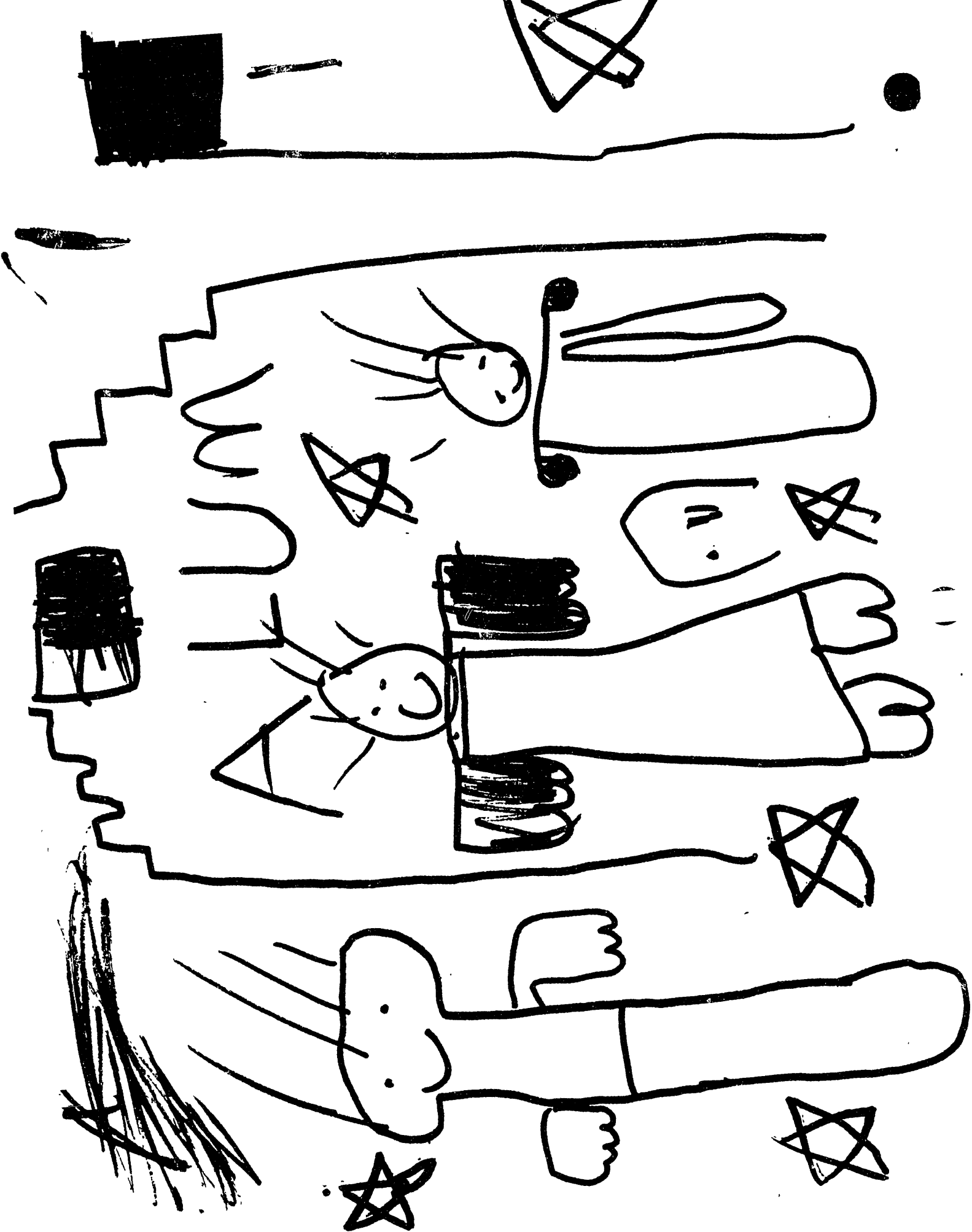
This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Issued in Austin, Texas, on June 8, 1994.

TRD-9442031

Ann W Richards
Governor of Texas





TEXAS ETHICS COMMISSION

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

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

Texas Ethics Commission Opinions

AOR-243. The Texas Ethics Commission has been asked to consider questions about the following hypothetical situation:

A corporation joins a trade association's local chapter. The association's by-laws stipulate that by joining the local chapter, the corporation is automatically granted membership in the association's state organization. The state trade association has a general purpose committee (PAC), as do its local chapters. To advance its political objectives, the corporation also forms its own PAC. Subsequently, the corporation promulgates and distributes among its employees a form to solicit participation in a payroll deduction plan to support the corporation's PAC and/or the trade association's local and state PACs. The solicitation makes it clear that the payroll deduction to support PAC activities is strictly voluntary and there will be absolutely no negative repercussions for declining to participate

The form states that the participant has the right to terminate the payroll deduction at any time, and the actual amount of the deduction is left to the discretion of the employee, who must sign the form to make it valid.

The specific questions are as follows:

1 Under Texas law, may a corporation establish an employee contribution program in support of its own PAC along the lines of the hypothetical example? Is there any factual element in the example including but not limited to the payroll education element, that could pose a legal problem under the Election Code or any other relevant statute under your jurisdiction?

2 Under Texas law, may a corporation that belongs to a local chapter of a trade association establish an employee contribution program in support of the local chapter's PAC along the lines of the hypothetical example? Is there any factual element in the example that could pose a legal problem under the Election Code or any other relevant statute under your jurisdiction?

3 Under Texas law, may a corporation that is automatically granted membership in a state trade association by virtue of its membership in the association's local chapter establish an employee contribution program in support of the state association's PAC along the lines of the hypothetical example? Is there any factual element in the example that could pose a legal problem under the Election Code or any other relevant statute under your jurisdiction?

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800

Issued in Austin, Texas, on June 9, 1994.

TRD-9442115

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed June 10, 1994





CYNTHIA



27



V.D



CYNTHIA

SEKRE GODE



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 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 161. Rural Industrial Development Finance Plan

The Texas Department of Commerce proposes the repeal of §§161.1, 161.11-161.16, 161.31, 161.32, 161.41-161.43, 161.51-161.56, 161.71, 161.72, 161.81, 161.101, and 161.102 of the Rural Industrial Development Finance Plan rules. The repeal is necessary because the Rural Industrial Development Act, which provided the statutory authority for the rules, was repealed by Acts, 1989, 71st Legislature, Chapter 4, §3.03(2), effective September 1, 1989. Repeal of the rules should alleviate any confusion on the part of the public that might exist if the rules were left in place.

Renee Mauzy, staff attorney for the Texas Department of Commerce, has determined that for the first five-year period the repeals are in effect there will be no fiscal impact on state or local government.

Ms. Mauzy also has determined that for the public benefit anticipated as a result of enforcing the repeals is that the public will not be confused by the existence of the rules when there is no longer statutory authority for the Texas Department of Commerce to administer the Rural Industrial Development Finance Plan program. There is no cost to either government or the public which will result from the repeal of the rules. There will be no impact on small businesses. No economic cost is anticipated to persons from the repeal of the Rural Industrial Development Finance Plan rules.

Written comments on the proposed repeal of the rules should be submitted to Renee Mauzy, Staff Attorney, Texas Department of Commerce, 816 Congress Avenue, Suite 1180, Austin, Texas 78701, within 30 days of the publication of the proposed repeals.

Definitions

• 10 TAC §161.1

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

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

The repeal is proposed under the authority of the Texas Government Code, §481.021(a)(1), which authorizes the Texas Department of Commerce to promulgate rules and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993), which prescribes the standards for agency rulemakings.

§161.1. Definitions.

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

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Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

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

General Procedures

• 10 TAC §§161.11-161.16

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

The repeals are proposed under the authority of the Texas Government Code, §481.021(a)(1), which authorizes the Texas Department of Commerce to promulgate rules and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993), which prescribes the standards for agency rulemakings.

§161.11. Mailing and Submission Requirements.

§161.12. General Application Documents.

§161.13. Communications.

§161.14. Meetings and Hearings.

§161.15. Fees.

§161.16. Suspension of Rules

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

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Policy Declaration

• 10 TAC §161.31, §161.32

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

The repeals are proposed under the authority of the Texas Government Code, §481.021(a)(1), which authorizes the Texas Department of Commerce to promulgate rules and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993), which prescribes the standards for agency rulemakings.

§161.31. Commission Policy.

§161.32. Administrative Policies.

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

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Loan Assistance

• 10 TAC §§161.41-161.43

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

The repeals are proposed under the authority of the Texas Government Code, §481.021(a)(1), which authorizes the Texas Department of Commerce to promulgate rules and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993), which prescribes the standards for agency rulemakings.

§161.41. General.

§161.42. Designation of Applicant.

§161.43. Functions of Applicant.

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

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Applications to the Commission

• 10 TAC §§161.51-161.56

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

The repeals are proposed under the authority of the Texas Government Code, §481.021(a)(1), which authorizes the Texas Department of Commerce to promulgate rules and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993), which prescribes the standards for agency rulemakings.

§161.51. Application Information.

§161.52. Required General Information.

§161.53. Required Environmental Data.

§161.54. Required Fiscal Data.

§161.55. Required Engineering Feasibility Data.

§161.56. Required Legal Data.

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

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Formal Action by the Commission

• 10 TAC §161.71, §161.72

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

The repeals are proposed under the authority of the Texas Government Code, §481.021(a)(1), which authorizes the Texas Department of Commerce to promulgate rules and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993), which prescribes the standards for agency rulemakings.

§161.71. Commission Consideration of Application.

§161.72. Action of the Commission on Application.

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

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Legal and Fiscal Document Prerequisites to the Releasing of State Funds Where Loan Assistance is Sought

• 10 TAC §161.81

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

The repeal is proposed under the authority of the Texas Government Code, §481.021(a)(1), which authorizes the Texas Department of Commerce to promulgate rules and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993), which prescribes the standards for agency rulemakings.

§161.81. Required Documents.

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

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General Information

• 10 TAC §161.101, §161.102

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

The repeals are proposed under the authority of the Texas Government Code, §481.021(a)(1), which authorizes the Texas Department of Commerce to promulgate rules and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993), which prescribes the standards for agency rulemakings.

§161.101. Power of the Commission.

§161.102. Requirements of Applicant.

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

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Chapter 179. Texas Rental Rehabilitation Program

Subchapter A. Contract Administration

• 10 TAC §179.1

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

The Texas Department of Commerce proposes the repeal of §179.1 of the Texas Rental Rehabilitation Program rules. The repeal is necessary because the Texas Department of Commerce does not have the authority to administer a rental rehabilitation program. Repeal of the rules should alleviate any confusion on the part of the public that might exist if the rules were left in place.

Renee Mauzy, staff attorney for the Texas Department of Commerce, has determined that for the first five-year period that the repeal is in effect, there will be no fiscal impact on state or local government.

Ms. Mauzy also has determined that the public benefit anticipated as a result of enforcing the repeal is that the public will not be confused by the existence of the rules when there is no longer statutory authority for the Texas Department of Commerce to administer the Texas Rental Rehabilitation Program. There is no cost to either government or the public which will result from the repeal of the rules. There will be no impact on small businesses. No economic cost is anticipated to persons from the repeal of the Texas Rental Rehabilitation rules.

Written comments on the proposed repeal of the rules should be submitted to Renee Mauzy, Staff Attorney, Texas Department of Commerce, 816 Congress Avenue, Suite 1180, Austin, Texas 78701, within 30 days of the publication of the proposed repeal.

The repeal is proposed under the authority of the Texas Government Code, §481.021(a)(1), which authorizes the Texas Department of Commerce to promulgate rules and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993), which prescribes the standards for agency rulemaking.

§179.1. Uniform Administrative Requirements.

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

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

Chapter 186. Smart Jobs Fund Program

Subchapter A. General Provisions

• 10 TAC §186.104

The Texas Department of Commerce proposes an amendment to §186.104, concerning the Smart Jobs Fund Program authorized by Texas Government Code, Chapter 481, Subchapter J, §§481.151-481.161. The rules are proposed under the Texas Government Code, §§481.0044(a), 481.005(d), and 481.153, and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993).

Subchapter A, §186.104, Definitions, includes several changes in definitions. Section 186.104(1) defining authorized employer has been added because it was not defined. Sections 186.104(2), (4), (9), (12), (15), (16), (19), (23), and (25) have been changed in order to clarify and simplify meaning. Sections 186.104(7), (10), (13), and (30) are being deleted because they are not required in administering the program. The definitions are being renumbered so that they will be consecutive when some of the definitions are deleted.

Richard Hall, director of the Smart Jobs Fund Program, has determined that for the first five-year period the section is in effect, there will be no fiscal implications as a result of enforcing or administering the rules. Costs to administer the Smart Jobs Fund program are limited by statute to no more than 5.0% of the Fund.

Mr. Hall also has determined that there will be a public benefit for each of the first five years that the rule is in effect. The anticipated public benefit is that the rules are being made clearer and simpler. The cost to persons complying with the rule will be no different than the costs under the existing rule.

Written comments on the proposed rules should be submitted to Renee Mauzy, Staff Attorney, Texas Department of Commerce, 816 Congress Avenue, Suite 1180, Austin, Texas 78701, within 30 days of publication of the proposed rules.

The amendment is proposed under the authority of the Texas Government Code, Subchapter J, §481.153, and the Administrative Procedure Act, Subchapter B,

Rulemaking (Vernon's Session Laws 1993) which prescribes the standards for agency rulemaking.

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

Authorized employer representative—An individual authorized to bind the company under the terms of the contract.

Benefits—Perquisites paid by an employer to an employee, either voluntarily or by collective bargaining agreement, in addition to the employee's wages[, including]. **Benefits may include items such as** vacation pay, holiday pay, sick leave, health insurance coverage, workers' compensation coverage, retirement or pension plans, [and] life insurance, or other reasonable benefits.

Competencies—The employer's measures of the participant's expected learning gains or skill mastery of the job-related occupational skills or job-related basic skills for which they are being trained. Such competencies may be specified by the employer, by industry associations, or by inclusion in courses approved by the Texas Higher Education Coordinating Board, and be consistent with ISO 9000 certification standards, or other credible sources acceptable to the employer as evidenced by their inclusion in the application. The employer's measures shall be consistent with specifications in its business plan as essential to the business' competitiveness.

Contract—The written agreement between the Department[, the applicant,] and each employer participating in a project that is signed after a project has been approved and a grant awarded, and which details the rights and responsibilities of each of the parties to that agreement.

[**Diversification**—An increase in the variety of products produced.]

Existing job—A position for which there is an incumbent employee or a [an] job opening, [on the day before the date on which the project is to begin and for which the employer has been liable to pay contributions under the Texas Unemployment Compensation Act in the year preceding the day before the project begins.]

[**Expansion**—An increase in the product volume and number of jobs.]

[**Job security**—Reasonable opportunity for continuation in an occupation.]

Job-related basic skills—Basic academic skills such as the knowledge and abilities identified by the federal Department of Labor Secretary's Commission on Achieving Necessary Skills, known as the "SCANS Skills[.]" [including basic academic skills. There are no stand-alone curricula for training for these skills. Rather, they] These skills are to be integrated as part of the job-related vocational (occupa-

tional) skills training curricula and[. These skills specifications shall] be consistent with the requirements of the employer's business plan.

Job-related occupational skills [the same thing as] or job-related vocational skills[. The term]-The knowledge and abilities the employer specifies as necessary for a specific job [or demand occupation] for which a participant is being trained and in which the participant will be employed at the end of the project consistent with the employer's certification. These skills specifications shall be consistent with the requirements of the employer's business plan.

Literacy skills or basic skills-The knowledge and abilities necessary to communication in the workplace. Such skills may include reading, writing, mathematics, [and] language comprehension, and **English as a Second Language** commonly assumed to have been learned in the public schools through the middle school level. Such skills may also include [English as a Second Language or] Spanish as a Second Language necessary for the job in which the participant will be employed at the end of the project consistent with the employer's certification. Literacy skills are considered part of job-related basic skills or SCANS skills.

Matching costs-The dollar value of the private contributions from the employer required under the Smart Jobs Fund Program, whether they be dollar contributions or in-kind contributions. Calculation of the required matching amount is as follows.

(A) (No change.)

(B) An example follows:

(i) \$50,000 total grant amount/.50 [(50% match requirement)] = \$100,000 total project cost.

(ii) (No change.)

New job-A position which did not exist in the employer's business in this state [on the day before the project begins] and a position which had no incumbent employee. [for whom the employer had been liable to pay contributions under the Texas Unemployment Compensation Act in the year preceding the day before the project begins.] **This may include an existing employee retrained for a new position.**

Project-A specific employment training activity for which an [applicant] employer developed and implemented a plan and entered into a contract under the Texas Government Code, Subchapter J, §481.151 et seq.

Provider-A person or entity that provides employment-related training. The term includes employers, employer associations, labor organizations, community-based organizations, training consultants, public and private schools, [technical institutes, ju-

nior or] community colleges, senior colleges, universities, technical colleges, and other higher education entities as defined in the Education Code, §61.003, and proprietary schools as defined in the Texas Education Code, §32.11.

Subcontract-A written agreement between an applicant and a provider of training or administrative services that is signed before [after] a project has been approved and a grant awarded and that details the rights and responsibilities of each party to the agreement.

Total project cost-The sum of the direct training-related costs plus administrative costs funded by a grant awarded under this chapter plus the employer's required matching contribution. It is calculated as follows:

(A) (No change.)

(B) An example follows.
\$50,000 total grant amount/.50 [(50% match requirement)] = \$100,000 total project cost.

[Turnover-The separation of an employee from his or her job.]

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

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Subchapter B. Methodologies for Determining Certain Variables

• 10 TAC §186.201

The Texas Department of Commerce proposes an amendment to §186.201, concerning the Smart Jobs Fund Program authorized by the Texas Government Code, Chapter 481, Subchapter J, §§481.151-481.161. The rules are proposed under the Texas Government Code, §§481.0044(a), 481.005(d), and 481.153, and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993).

Subchapter B, §186.201, Methodologies for Determining Certain Variables, is being changed to include additional information for employers in the application packets and to clarify meaning Section 186.201(a) is being changed to provide that information on the statewide average weekly wage is being included in application packets. Section 186.201(b) is being changed to clarify the

meaning. Section 186.204, Positive Growth to replacement ration, is being repealed because the data is already available and it is not necessary to have the information in the rules to administer the program

Richard Hall, director of the Smart Jobs Fund Program, has determined that for the first five-year period the section is in effect, there will be no fiscal implications of enforcing or administering the rule. Costs to administer the Smart Jobs Fund program are limited by statute to no more than 5.0% of the Fund

Mr. Hall also has determined that there will be a public benefit for each of the first five years that the rule is in effect. The anticipated public benefit is that the rule is being made clearer and simpler. The cost to persons complying with the rule will be no different than the costs under the existing rule

Written comment on the proposed rule should be submitted to Renee Mauzy, Staff Attorney, Texas Department of Commerce, 816 Congress Avenue, Suite 1180, Austin, Texas 78701, within 30 days of publication of the proposed rule.

The amendment is proposed under the authority of the Texas Government Code, Subchapter J, §481.153, and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993) which prescribes the standards for agency rulemaking

§186.201. State Average Weekly Wage, Regional Variances.

(a) Between September 1 and October 1 of each year, the Department shall contact the Texas Employment Commission to determine the state average weekly wage as of September 1 of that year. **This information will be published as part of application packet.**

(b) The Department shall determine the regional variances of the state average weekly wage [in the annual average of the average weekly wage of manufacturing production workers in those regions]. The executive director may adjust the variance on a showing of good cause in accordance with the purposes of the Program. In doing so, the executive director may use information compiled by the United States Department of Labor, the Texas Employment Commission, the State Occupational Information Coordinating Committee, the Department, and any other credible source acceptable to the executive director.

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

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Subchapter C. Application for Grants

• 10 TAC §§186.302, 186.306-186.308

The Texas Department of Commerce proposes amendments to §§186.302, 186.306-186.308, concerning the Smart Jobs Fund Program authorized by the Texas Government Code, Chapter 481, Subchapter J, §§481.151-481.161. The rules are proposed under the Texas Government Code, §§481.0044(a), 481.005(d), and 481.153, and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993).

Subchapter C, §186.302(d)(5), Application requirements, is being deleted because the information is already provided in the application form. Section 186.302(6) and (7) is being changed to clarify meaning and provide additional information on reporting trainee ethnicity which the Department needs to report to the Legislature. Section 186.302(f)(1) is being changed to limit all travel costs to state government in-state rates in order to limit the amount of money that is spent on travel costs. It is also being clarified that the executive director has the authority to determine additional reasonable direct-related training costs. Section 186.302(f)(3) is being changed to clarify the limit on administrative costs for grants. Section 186.302(f)(4) is being changed to clarify the need for information when requesting a waiver on matching costs. Section 186.302(g)(3) and (5) is being changed to streamline application processing time. Section 186.306(d) is being added to provide that the executive director shall attempt to insure that projects which have an international impact receive priority treatment. Section 186.307 is being changed to clarify meaning and to include employers new to Texas as eligible providers. Section 186.308(a) is being changed to be consistent with the new definition of authorized employer's representative and to clarify the contract execution process including reducing the required number of original contracts from four to two.

Richard Hall, director of the Smart Jobs Fund Program, has determined that for the first five-year period the sections are in effect there will be no fiscal implications as a result of enforcing or administering the rules. Costs to administer the Smart Jobs Fund program are limited by statute to no more than 5.0% of the Fund

Mr. Hall also has determined that there will be a public benefit for each of the first five years that the rules are in effect. The anticipated public benefit is that the rules are being made clearer and simpler. The cost to persons complying with the rules will be no different than the costs under the existing rules.

Written comments on the proposed rules should be submitted to Renee Mauzy, Staff Attorney, Texas Department of Commerce,

816 Congress Avenue, Suite 1180, Austin, Texas 78701, within 30 days of publication of the proposed rules.

The amendments are proposed under the authority of the Texas Government Code, Subchapter J, §481.153, and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993) which prescribes the standards for agency rulemaking.

§186.302. Application Requirements.

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

(d) Business and Training Plan. Grant funds awarded hereunder shall pay for job-related occupational skills training and job-related basic skills training that enhance the employer's ability to carry out its business plan. An approved business and training plan will become part of any contract or subcontract for grant funds awarded. The business and training plan will specify a project start date and a project end date. Each business and training plan must contain the information required by the Smart Jobs Fund Program, §481.156(b). Each business and training plan shall also:

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

[(5) specify the number of people to be trained in each curriculum including the number of current employees undergoing retraining for each demand occupation; the number of new hires for each demand occupation; and the number who will occupy new jobs at the completion of training for each demand occupation;]

(5)[(6)] specify the projected cost per person enrolled, trained, hired, and retained in employment[.]. This is based on dividing the total Smart Jobs Fund grant amount by the number of trainees;

(6)[(7)] specify the number and kind of jobs[, specified in terms of demand occupations,] related to the project training that are available at the start of the project, and that will be available at the end of the project; and the wages to be paid to trainees on successful completion of the project[.]. For existing jobs, state the beginning and ending wages;

(7)[(8)] specify the geographic location of all training to be provided with grant funds. All trainee travel will be specified in the proposed budget. All trainee travel outside the geographic location in which the employer is located and all trainee travel to locations outside of Texas will be at the discretion of the executive director as specified in the contract. No trainee travel will be reimbursed from grant funds for any purpose other than training as specified in the employer's business and training plan.

(e) The application shall include the following information:

(1) whether the employer is a small business as defined by the Texas Government Code, §481.101(3); [and]

(2) whether the employer is a woman or minority group member, and if so, to which minority group the employer belongs[.]; and

(3) whether the trainees are women or minority group members, and if so, to which minority groups the trainees belong.

(f) Each application shall include a budget consistent with the requirements of the Smart Jobs Fund Program and these rules. The budget shall include three parts: specification of direct training-related costs; specification of administrative costs; specification of matching contributions. An approved budget will become part of any contract or subcontract for grant funds awarded hereunder.

(1) Direct training-related costs may include: tuition; fees; books and classroom materials; instructor wages and salaries and reasonable benefits if the instructor is not an employee of a public education institution if grant funds are paying tuition and fees; instructor travel and per diem and [reimbursed at the State of Texas allowable rate;] trainee travel outside the employer's specified region of the state as approved by the executive director with per diem expenses not to exceed the State of Texas in-state allowable rates; reasonable equipment lease or rental costs during the term of the project; reasonable costs of pre- and post-training participant assessment, including recruiting and identifying trainees; costs of purchasing approved curricula specified in the applicant's business and training plan if they are not already a course offering at a convenient public education institution for which the grant is paying tuition and fees; costs of job analysis, task analysis, curriculum design, and job development as defined by the Department; wages, salaries, and reasonable benefits of instructional aides and trainees' counselors if such personnel are not employees of a public education institution if grant funds are paying tuition and fees; and such other reasonable direct training-related costs as may be appropriate [such as preparation and printing of training materials, communications, and consumable supplies] as determined by the executive director. Such costs may include reasonable childcare expenses (except for existing employees who participate in training during normal working hours) in cases approved by the executive director and the costs associated with supporting dependent care expenses of trainees undergoing training in an approved curricula with a term of six months to two years. These costs may include reasonable childcare expenses and trainees' public transportation expenses (excluding taxi cab fares) related to training. In

considering whether to include reasonable childcare and transportation expenses, the executive director will consider the ability of the employer to provide matching funds to be used for such expenses and the accessibility of other public and private funds to be used for such expenses. Continued payments of such expenses is contingent on the employer's satisfaction with the participant's progress during training.

(2) (No change.)

(3) Administrative costs may include the lease or rental of facilities excepting those facilities belonging to public education institutions where the curriculum specified in the business and training plan will be provided and for which the grant is paying tuition and fees; salaries, wages, and reasonable benefits paid to personnel assigned to manage or report on the project or the contract agreement; and such other reasonable expenses not included in direct training-related costs as are necessary to the successful completion of the project. **Administrative costs can only be 10% of direct costs incurred by training project.**

(4) Employers with fewer than 50 employees receiving a grant must provide a matching amount of private funds in an amount at least equal to 10% of the total project cost. Projects that provide significant economic benefits to an entire region of the state may have all matching requirements waived at the discretion of the executive director. Such projects must provide information describing the region to which benefits will accrue and projected economic information[, in addition to] which may include other relevant macroeconomic and microeconomic data that shows positive effects on the region's average weekly wage, tax base, employment rates, family income, purchasing power, expenditures on unemployment insurance, Aid to Families with Dependent Children, Medicaid, and other public assistance, and the availability of job openings in demand occupations. Employers may meet matching requirements by providing in-kind contributions. Documentation for in-kind contributions which are submitted as part of the employer's match must specify the dollar value of facilities, equipment, personnel, and consumable supplies contributed to the project. New equipment will be valued at cost. Existing equipment and facilities will be valued on a pro rata basis for the time used for training consistent with the United States Internal Revenue Service depreciation schedules for such assets based on data provided by the employer. Personnel contributions will be valued on a pro rata basis for the time spent on the project. In-kind contributions may not include the value of facilities, equipment, or personnel existing in public education institutions where such resources already are available to the employer as part

of the institution's course offerings and for which the grant is paying tuition and fees. In-kind contributions may match either direct training-related costs or administrative costs. The sum of such contributions will be used to determine the total matching costs required for any grant awarded.

(5) (No change)

(g) Application Process and Timeline

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

(3) Within ten business days [of] after receiving an application, the Department shall notify the applicant whether the application is complete. If the application is incomplete, the Department shall specify in a letter the additional information required to complete the application. With this notification to the applicant, the Department shall identify a contact person on its staff who is available to assist the applicant in completing the application.

(4) (No change)

(5) Within ten business days after the executive director approves an application, the Department will have a contract for the project available for execution by the applicant.]

§186.306 Funding Priorities At least 60% of the money spent under the Program shall be used for projects that assist existing employers

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

(4) The executive director shall attempt to insure that projects which have international impact receive priority treatment.

§186.307. Provider [Registration] Eligibility. Providers shall be required to [register with] demonstrate to the Department with certification that they have been in business for at least one year and that during that one-year period they have met the definition of "existing employer" as set forth in the definitions to the Smart Jobs Fund program. **Hereunder, an employer new to Texas may provide training without meeting definition of "existing employer."**

§186.308 Contracts

(a) The Department shall enter into a contract for an approved application with the grant applicant, and each employer designee participating in the project. Each trainee may be required to enter into an agreement with the employer to remain in the job for which they were trained for 90 days after the completion of the training. The contract will be executed by the authorized employee's representative [grant ap-

plicant's signature authority, employer designee signature authority,] and the Department executive director or executive director designee [(notarized signatures for consortium applicants)]. Two [Four] original contracts will be sent to the [mailed by first class mail to the grant applicant and] employer(s) for signature. [The original contracts must be returned to the Department within 15 days from the date on the contract cover page for execution by the executive director. A An original copy] of the executed contract signed by the executive director will be sent to the employer(s) [employer mailed by first class mail to the grant applicant and each] within five days of receipt of the signed contract from the employer(s) [employer grant applicant or] by the Department. The date of execution by the executive director is the effective date of the contract

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

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

Issued in Austin, Texas, on June 9, 1994

TRD-9442224

Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Earliest possible date of adoption July 18, 1994

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

Chapter 192. Open Records Charges

• 10 TAC §§192.1-192.6

The Texas Department of Commerce proposes new §§192.1-192.6, specifying the charges that the agency will make for copies of public records. These rules are proposed to comply with Chapter 428, Acts, 73rd Legislature, Regular Session (1993), which requires agencies to adopt rules setting forth the charges they will make for copies of public records. As allowed by said Chapter 428 and in accordance with §111.61(b) of the rules of the General Services Commission, except as otherwise set forth in these proposed rules, the Texas Department of Commerce adopts the charges set out in §§111.61-111.70 of the General Services Commission rules.

Section 192.1, General Provisions, contains an introduction to the necessity for the rules and definitions applicable to the rules.

Section 192.2, Charges for Providing Copies of Public Information, sets forth the copy charges for standard and non-standard size copies, the personnel charge to be charged in addition to the copy charge for non-standard size copies in excess of 50 pages, the overhead charge that will be charged for information that is not readily available or which is in

excess of 50 pages, the microfiche and microfilm charge that will be charged for copying microfiche and microfiche, the computer resource charge for the use of computers, the programming time charge that will be charged if a programmer is required to enter data in order to execute a program to provide the requested information, the miscellaneous supplies charge which is designed to recover the cost of miscellaneous supplies consumed in filling the open records request, the postal and shipping charges, which will recover the agency's cost of sending the requested information, and the FAX charge which will apply if the information is FAXed to the requestor. Section 192.2(j) specifies that sales tax will not be added to the cost of providing the requested information. Section 192.2(k) provides that the open records charges may be updated annually in accordance with the General Services Commission's annual re-evaluation and update of charges for public records.

Section 192.3, Access to Information Where Copies Are Not Requested, provides at subsection (a) that no charge will be made for providing standard-size information for inspection so long as the information does not exceed 50 pages. A personnel charge may be made in accordance with §192.2(b) for providing access to information in excess of 50 pages. Section 192.3(b) provides that a personnel charge can be made for providing access to non-standard size information. The charge is to recover the cost of preparing and making the information available. It will not be charged if the information, although non-standard size, is readily available.

Section 192.4, Format for Copies of Public Information, provides that to the extent possible, the requested information will be made available in the format in which it is requested. This section also makes clear that the Texas Department of Commerce is not required to acquire software or programming capabilities that it does not possess in order to accommodate a request.

Section 192.5, Estimates and Waivers of Public Information Charges, provides at subsection (a) that when the Texas Department of Commerce staff believes that it will take considerable time and resources to process a request, it will endeavor to let the requesting party know what may be involved in responding to the request, including an estimate of the date of completion and applicable charges. It provides that the agency will endeavor to fill the information request as efficiently as possible in order to minimize the cost to the requesting party. Section 192.5(a) also provides that full disclosure of the way that the charges were calculated will be provided. Section 192.5(b) enables the Texas Department of Commerce to furnish copies of records without charge or at a reduced charge if it determines that such would serve the public interest. It also provides that no charge will be made for the first set of copies provided to the same requesting party within a 30-day period, which do not exceed 25 standard size pages in length. This provision has been made because the Texas Department of Commerce believes that the public interest is served by not incurring the administrative cost of preparing, mailing and processing

payments of less than \$2.50. Section 192.5(c) enables the Texas Department of Commerce to require a deposit in the amount of estimated charges from a requesting party prior to filling a request that will cost more than \$100 to prepare.

Section 192.6, Requests for Public Records, provides the agency address to which the public may direct requests for copies of public records. Section 192.7, Charge Schedule, is a summary of the charges that will be made by the Texas Department of Commerce for providing copies of public records.

Renee Mauzy, staff attorney for the Texas Department of Commerce, has determined that for the first five-year period that the rules are in effect, there will be fiscal implications for state government as a result of enforcing or administering the rules. The costs cannot be quantified because they depend upon how many copies of a particular type of request are made to the Texas Department of Commerce. The charge for providing standard-size copies is lower under the proposed rules than the charge that the agency is currently charging, however, this will be at least partially offset by the additional charges that can be made under the proposed rules which are not charged currently.

Ms. Mauzy has determined that there will be no effect on local government as a result of enforcing the proposed rules. She has also determined that there will be no significant economic impact on local economies or overall employment as a result of administering the proposed rules.

Ms. Mauzy also has determined that for each year of the first five years that the rules are in effect there will be a cost to the public. The cost, which cannot be quantified because it depends upon the number and type of public records requested, will be incurred only by members of the public who request copies of public records from the Texas Department of Commerce. The benefit to the public is that the cost of copies of public records will be accessible to the public, will be the same to all members of the public, except in instances where the agency determines that the public interest will be served by waiving or reducing the charges, and the charges will be consistent with those made by the General Services Commission, and probably other agencies, for providing copies of public records.

The impact of the proposed rules on small businesses will be no different than it will be for other members of the public.

Written comments on the proposed rules should be submitted within 30 days of publication of the proposed rules to Renee Mauzy, Staff Attorney, Texas Department of Commerce, 816 Congress Avenue, Austin, Texas 78701.

The new sections are proposed under the authority of the Texas Government Code, §481.021(a)(1), which gives the Texas Department of Commerce the authority to adopt rules to carry out its responsibilities, Chapter 428, Acts, 73rd Legislature, Regular Session (1993), which requires the adoption of rules on open records charges, and Subchapter B of Title 10, Chapter 2001 of the Texas Gov-

ernment Code, which prescribes the standards for agency rulemaking.

The rules implement Chapter 428, Acts, 73rd Legislature, Regular Session (1993).

§192.1. General Provisions

(a) Introduction. Chapter 428, Acts, 73rd Legislature, Regular Session (1993) requires state agencies to specify the charges that the agency will make copies of public records. The Texas Department of Commerce prescribes the following sections regarding the charges that will be made for copies of public records. In accordance with Chapter 428, Acts, 73rd Legislature, Regular Session (1993), which provides that the General Services Commission by rule shall specify the methods and procedures that a state agency may use in determining the amounts that the state agency should charge to recover the full cost of providing copies of public records, and in accordance with §111.61(b) of the rules of the General Services Commission, the Texas Department of Commerce adopts the charges set out in §§111.61-111.70 of the General Services Commission rules.

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

(1) Department-Texas Department of Commerce.

(2) Full Cost-The sum of all direct costs plus a proportional share of overhead, or indirect costs. Full cost shall be determined in accordance with generally accepted methodologies. The department may utilize the cost methodology adopted by the Council on Competitive Government to determine full cost.

(3) 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, slides and nonstandard-size paper copies are examples of nonstandard-size copies.

(4) 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, microfilm or slide. Information that requires a substantial amount of time to locate or prepare for release is not readily available information. The department will 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, the department will 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.

(5) 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.

§192.2. Charges for Providing Copies of Public Information.

(a) Copy charge.

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

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

(A) Diskette—\$.00;

(B) Computer magnetic tape—\$.10;

(C) VHS video cassette—\$.25;

(D) Audio cassette—\$.10;

(E) Paper copy—\$.50;

(F) Slides—Actual cost of slide duplication by third party slide processor will be charged to requestor;

(G) Bound bond transcripts and other large volumes—Actual cost of copying charged to the Department by service for copying volumes too large to copy on standard office machine copier.

(3) Charges. The 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.

(b) Personnel charge.

(1) Personnel cost 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 department will prorate the personnel charge to recover the cost for personnel time spent to take requests, locate documents, and reproduce requested information. A charge will be

made to recover the personnel cost associated with retrieving requested documents from a remote site. The personnel charge associated with the retrieval will be in lieu of the remote document retrieval charge allowed by the General Services Commission under its Rule Number §111.63(f).

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

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

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

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

(c) Overhead charge.

(1) In response to a request either for information that is not readily available or for information in excess of 50 pages of readily available information, the department may include in the charges direct and indirect costs, in addition to the personnel charge. This overhead charge will cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities and administrative overhead. The overhead charge will 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.

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

(d) Microfiche and microfilm charge.

(1) If the department has information on microfilm and has copies of the microfilm available, the charge for such copies will be the total cost of making the copy of the fiche or film. If the requestor prefers to have a copy of the film or fiche, rather than a paper copy, and the entirety of the film or fiche can be released by the department, the cost of providing such film or fiche will be the cost of having the copy made.

(2) If the department maintains a master copy of information in microform,

the charge is \$.10 per page for standard size paper plus a charge to cover any personnel time spent in making paper copies.

(e) 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) The computer resource charge for requested information which is taken from the department's Client/Server system is \$1.00 per minute. The computer resource charge for requested information which is taken from the department's PC or LAN system is \$.50 per minute.

(3) The computer resource charge is assessed for the actual time the computer takes to execute a particular program times the applicable rate. It does not apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute the program. This time frame most frequently will be a matter of seconds. If programming is required to comply with a particular request, the charge for programming is set forth in subsection (f) of this section. The department will not charge for computer print-out time. For example, the computer resource charge for a request that takes 20 seconds to execute on a Client/Server systems would be \$.34.

(f) Programming time. If a 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 department will charge \$26 per hour for the programmer's time. Programming charges will be prorated to the nearest quarter hour.

(g) 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.

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

(i) Fax charge. The department may charge \$.10 per page for a fax that is transmitted locally. The department may charge \$.50 per page for a fax that is sent within the 512 area code, which is the department's area code. The department may charge \$1.00 per page for a fax transmitted

to an area code other than the 512 area code.

(j) Sales tax. Sales tax will not be added to the cost of providing the requested information.

(k) Annual re-evaluation of charges. The charges set forth in this §192.2 may change annually in accordance with the General Services Commission's annual re-evaluation and update of charges for public records.

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

(a) Access to information in standard-size form. The department will not charge for making available for inspection information maintained in standard-size form so long as the information does not exceed 50 pages. If the information which is to be inspected exceed 50 pages, the department may assess a personnel charge in accordance with §192.2(b) of this title (relating to Charges for Providing Copies of Public Information).

(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, the department may charge a personnel charge in accordance with §192.2(b) of this title to cover the cost of preparing and making available such information, unless the information is readily available. Preparation includes such items as retrieval of information

from a database and the deletion of confidential information from the requested information prior to making it available for inspection.

§192.4. Format for Copies of Public Information. To the extent possible, the department will attempt to accommodate a requesting party by providing information in the requested format. If a requesting party asks that information be provided on a diskette, and the requested information is electronically stored, the department will provide the information on diskette. The extent to which a requestor can be accommodated depends on the department's technological capability. The department is not required to acquire software or programming capabilities that it does not already possess to accommodate a particular kind of request. To the extent that funds are available, the department will 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.

§192.5. 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. In instances where the department believes that the fulfillment of a particular request will involve considerable time and

resources to process, the department will endeavor 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 from fulfilling the information request. The department will endeavor to process requests as efficiently as possible so that requested information is provided at the lowest possible charge. Full disclosure of how the charges for providing the information were calculated will be made by the department.

(b) The department will furnish public records without charge or at a reduced charge if it determines that waiver or reduction of the fees is in the public interest. The department has determined that the public interest is served by not incurring the administrative costs associated with charging for responding to requests made by the same requestor within a 30-day period for 25 pages or less of standard size records.

(c) The department may require a deposit in the amount of the estimated charges from the requesting party if such charges exceed \$100.

§192.6. Requests for Public Records. Members of the public may request public records by sending a written request to the Texas Department of Commerce, Attention: General Counsel, P.O. Box 12728, Austin, Texas 78711-2728.

§192.7. Charge Schedule. Following is a summary of the charges for public information that have been adopted by the department:

<u>Service Rendered</u>	<u>Charge</u>
Standard-size paper copy	\$.10 per page(no charge for up to 25 pages provided within a 30 day period to the same requestor)
Nonstandard-size copy	
Diskette	\$ 1.00 each
Magnetic tape	\$10.00 each
VHS video cassette	\$ 2.50 each
Audio cassette	\$ 1.00 each
Paper copy	\$.50 each
Slide	Actual cost
Bond transcripts/other	Actual cost
Personnel charge	\$15.00 per hour
Overhead charge	20% of personnel charge
Microfiche or microfilm charge	
Paper copy	\$.10 per page
Fiche or film copy	Actual cost
Computer resource charge	
Client/Server	\$ 1.00 per minute
PC/LAN	\$.50 per minute
Programming time charge	\$26.00 per hour
Miscellaneous supplies	Actual cost
Postage and shipping charge	Actual cost
Fax charge	
local	\$.10 per page
long distance, same area code	\$.50 per page
long distance, other area code	\$ 1.00 per page
Other costs	Actual cost

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

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TRD-9442105

Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Earliest possible date of adoption: July 18, 1994

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



TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 6. State Records

• 13 TAC §6.121

The Texas State Library and Archives Commission proposes an amendment to §6.121 of concerning the fee schedule for micrographics services provided to Texas state and local governments. The State and Local Records Management Division of the Texas State Library operates a full-service micrographics laboratory for Texas state and local governments on a cost recovery basis. Services include archival quality microfilming, preservation microfilming, micropublishing, micro-

fiche production, quality control testing and analysis, and microfilm processing and duplication. The Commission proposes to adopt a revised fee schedule for these services to be effective September 1, 1994, and until superseded.

William L. Dyess, director, State and Local Records Management Division has determined that for each year of the first five years the section is in effect there will be fiscal implications for both state and local government as a result of administering or enforcing the section. The fiscal implications arise from the estimated discretionary expenditure by state agencies and local governments for micrographics services from the State and Local Records Management Division. Mr. Dyess estimates that the additional cost to state government will be \$892,424 in 1994; \$981,667 in 1995; \$1,007,842 in 1996; \$1,034,475 in 1997; and \$1,061,545 in 1998. The estimated increase in revenue for state government will be \$934,958 in 1994;

\$1,028,454 in 1995; \$1,059,308 in 1996; \$1,091,067 in 1997; and \$1,123,819 in 1998. The estimated additional cost to local government will be \$42,534 in 1994; \$48,787 in 1995; \$51,466 in 1996; \$56,612 in 1997; and \$62,274 in 1998.

Mr. Dyess also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be improved access to public information created and maintained by state and local governments through the orderly and systematic preservation of long-term, permanent, archival, and vital records on microfilm. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to William L. Dyess, State and Local Records Management Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711.

The amendment is proposed under the Government Code, §441.032(b)(2), §441.168(b), and §771.007(a), which provide the commission with the authority to provide micrographics services to state and local governments and to recover the costs for such services.

The proposed amendment affects the Government Code, §441.032(b)(2) and §441.168(b).

§6.121. Micrographics Services Fee Schedule. The following fees will be charged for micrographics services provided to state agencies and local governments by the Texas State Library.

(1) Source document microfilming.

(A) The charge per image for source document microfilming on planetary or rotary cameras will be quoted after determining client requirements and specifications and, in some cases, after test filming a sample of the documents to better evaluate format and client needs.

(B) The charge for source document microfilming on fiche at 24X, which includes processing and full edit, is \$5.50.

(C) The charge per image always includes film processing; quality control editing according to client requirements; methylene blue testing; proper targeting and certification; density and resolution readings; and computer-generated container labels and transmittal forms that provide the records series title, roll number, and beginning and ending contents of each roll.

(2) Microfilm (silver halide) processing, including darkroom spot edit.

(A) 16mm, 215' at \$6.50 per roll;

(B) 16mm, 100' at \$3.50 per roll;

(C) 35mm, 100' at \$6.50 per roll;

(D) 105mm, 100' at \$4.50 per roll.

(3) Microfilm (silver halide) duplication, including processing and darkroom spot edit.

(A) 16mm, 215' at \$17.50 per roll;

(B) 16mm, 100' at \$11.50 per roll;

(C) 35mm, 100' direct dupe at \$17.50 per roll;

(D) 35mm, 100' print film at \$19.50 per roll.

(4) Microfilm (diaz) duplication, including processing and darkroom spot edit.

(A) 16mm, 215' at \$8.50 per roll;

(B) 16mm, 100' at \$6.50 per roll;

(C) 35mm, 100' at \$12.50 per roll;

(D) Microfiche, including envelope and label, at \$.45 each.

(5) Methylene blue test at \$28.50 per test or \$252 for 12 tests per year under annual contract.

(6) Jacket loading/updating of 16mm or 35mm film inserted into two to five chamber jackets at \$.80 per jacket.

(7) Preparation of documents for filming, including repairing and arranging them in proper order; purging those not requiring filming; removing fasteners; stamping/coding; and inserting targets, at \$10 per hour.

(8) Postage (3rd or 4th class, as applicable) and handling of 16mm rolls, with a 35mm roll being the equivalent of two 16mm rolls and 34 microfiche being the equivalent of one 16mm roll:

(A) 1-2 rolls at \$4.50;

(B) 3-4 rolls at \$5.50;

(C) 5-10 rolls at \$6.50;

(D) 11-15 rolls at \$7.25;

(E) 16-20 rolls at \$8.00.

(9) The charges for services not listed, including but not limited to, expungements, special editing, density and resolution tests for client-created film, quality inspection reports, processing step test runs, automatic indexing, and first class postage and insurance, will be quoted after determining unique client needs. [The Texas State Library and Archives Commission adopts by reference the Micrographics Services Fee Schedule dated April 1992. Copies may be obtained from the Records Management Division of the Texas State Library, P.O. Box 12927, Austin Texas 78711.]

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 June 8, 1994.

TRD-9442018

Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Proposed date of adoption: September 1, 1994

For further information, please call: (512) 463-5460

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Telephone

• 16 TAC §23.94

The Public Utility Commission of Texas proposes new §23.94, concerning Small Local Exchange Carrier Regulatory Flexibility. The proposed rule establishes structured procedures and pricing guidelines that a small local exchange carrier may use to expedite approval of changes in services and rates. A small local exchange carrier, also known as a SLEC, is defined as a local exchange carrier with 31,000 or fewer access lines, including their affiliates, within the State of Texas or a telephone cooperative, regardless of its size. The proposed rule provides definitions of terms used in the section, filing requirements and timelines, notice requirements, pricing

and rate change guidelines, and establishes those services and rates affected and the procedure to be followed for approval of the filings.

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

Ms. Escobedo 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 proposed rule is to get services to subscribers served by the SLECs more promptly and without the expenditure of large resources for which subscribers ultimately bear the cost. Moreover, the rule facilitates the SLECs' abilities to provide to their subscribers in a timely manner the same technological advances available to consumers in areas of the state served by the larger utilities. The rule permits the provision of services and pricing flexibility that will allow SLECs to compete with larger companies that provide services at lower costs based on their economies of scale. There are no anticipated economic costs to affected persons because use of the simplified process is discretionary, and SLECs may continue to use existing procedures.

Ms. Escobedo also has determined that for each of the 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 (15 copies) may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 11620.

The Commission seeks comment on whether the Commission has authority pursuant to the Public Utility Regulatory Act, §§16, 18, and 43B to promulgate the rule and specifically seeks comment on whether any other provision of the Act authorizes the Commission's enactment of the rule. Comments also are sought on whether administrative review, without opportunity for review by the Commissioners, is an appropriate process for approval of the services and rates addressed by the rule. The Commission also asks for comment on whether the commission can or should, by rule, restrict the right of a single individual, General Counsel, or the Office of Public Utility Counsel to obtain a hearing on a rate change.

The Commission asks also whether the §43 good cause waiver is appropriately applied to the rule's notice provisions. If not, what sort of information will support a showing of good cause for waiver of the Act's §43 notice requirements? Additionally, are any rule provisions, other than the notice provision, affected that require that the presiding officer make a good cause finding or grant a good cause waiver?

The Commission is interested also in receiving specific comments on applicability of the rule to SLECs who exceed the access line

requirement but are locally owned and operated and, therefore, may be considered "small." The Commission requests comments on whether the rates proposed for new or experimental services are reasonable and whether a checklist addressing the rules requirements would facilitate the filing process or would be considered additional paperwork that burdens the procedure.

The new section is proposed under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and §18, which provides that the public interest requires that new rules, policies, and principles be formulated and applied to protect the public interest and to provide equal opportunity to all telecommunications utilities in a competitive marketplace.

The rule affects Substantive Rules §§23.23, 23.24, 23.26, and 23.57 applicable to new or experimental services; restructuring of existing rates, rate decreases, or rate increases; and telecommunications privacy.

§23.94. *Small Local Exchange Carrier Regulatory Flexibility.*

(a) Application. This section applies to any small local exchange carrier (SLEC), as that term is defined in subsection (b) of this section, subject to the jurisdiction of the commission for any service and/or rate change addressed by this rule. Nothing in this section precludes a SLEC from utilizing any other applicable section of the Public Utility Regulatory Act (PURA) or this chapter. Nor does anything in this section exempt a SLEC from complying with any section of the Public Utility Regulatory Act or this chapter not addressed by this section nor prohibit the commission from conducting a review in accordance with the Act, §42.

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

(1) Administrative review—The process whereby an application is reviewed by the commission staff and ruled on by the presiding officer without an evidentiary hearing and without an order signed by the commission.

(2) Class A LEC—Any telephone utility referenced in §23.12(a)(1)(A)(i) of this title (relating to Financial Records and Reports).

(3) Class of service—That service provided customers that denotes the residential versus business nature of use.

(4) Experimental service—That definition given in §23.26(b)(2) of this title (relating to New and Experimental Services).

(5) New service—That definition given in §23.26(b)(1) of this title (relating to New and Experimental Services).

(6) Similar services—Services that have comparable or common characteristics and are provided under comparable circumstances.

(7) Small Local Exchange Carrier—Also referred to as SLEC, any certificated telecommunications utility that provides local exchange service within the state with no more than a total of 31,000 access lines, including the access lines of affiliates of such utilities providing local exchange service within the state, or a telephone cooperative organized pursuant to Texas Civil Statutes, Article 1528c.

(c) Filing. A SLEC may request approval of a new service or an experimental service or a rate change by following the procedures outlined in this section. Twenty-five days before filing the application, the SLEC shall file with the commission and the Office of Public Utility Counsel a letter notifying that the SLEC will use the procedures established in this section and a copy of the notice it will provide as required by subsection (d) of this section. No later than ten days after the SLEC notifies the commission of the proposed filing, the presiding officer assigned to the project shall notify the SLEC of any notice deficiencies or that notice is approved. The notice approved by the commission shall be published in that issue of the *Texas Register* immediately following the presiding officer's approval of the notice for which publication is timely. Before filing the application, the SLEC shall complete notice as required by subsection (d) of this section. Any notice that is not completed as required by subsection (d) of this section shall result in the effective date of the application being postponed for as many days as completion of notice is delayed before filing of the application. No later than 35 days before the proposed effective date of the application, the SLEC shall file with the commission and the Office of Public Utility Counsel an application containing the following information:

(1) a statement of intent to use the procedures established in this section,

(2) a description of the proposed new service, experimental service, or rate change and an affidavit approving the proposed change from the general manager or an officer of the SLEC;

(3) a description of the rates, terms, and conditions under which the proposed new service, experimental service, or rate change is to be implemented, including all applicable tariff sheets;

(4) the proposed effective date of the tariffs addressed by the application;

(5) a statement identifying the type or class of customers that will be affected by the proposed new service, experimental service, or rate change and how the class and type of customers will be affected;

(6) if the proposed new service, experimental service, or rate change is not to be implemented systemwide, an explanation from the SLEC as to why non-systemwide implementation is appropriate and a systemwide implementation schedule as required by subsection (e)(2) of this section;

(7) a copy of the text of the notice required pursuant to subsection (d) of this section;

(8) a notarized affidavit from a representative of the SLEC:

(A) verifying the provision of notice as required by subsection (d) of this section;

(B) verifying the number of access lines the SLEC has in service, including the SLEC's affiliate access lines in the State of Texas;

(C) indicating that the rates for the proposed new service, experimental service, or rate change are within the guidelines provided by this section and have been determined by the SLEC independently; and

(D) explaining the effect on competition of the proposed new service, experimental service, or rate change and that the proposed new service, experimental service, or rate change is not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory, or anticompetitive;

(9) the amount by which the SLEC's total regulated intrastate gross annual revenues will increase or decrease as a result of the rate contained in the application, including the percentage of change in the SLEC's regulated intrastate revenues;

(10) a request for a good cause waiver of the publication of notice requirements in the Act, §43(a) in order to permit the SLEC the ability to provide existing services and introduce new technology and new services in a prompt, efficient, and economical manner to rural and non-metropolitan areas and an explanation of specifically how the good cause waiver applies to the SLEC's filing; and

(11) any other information the SLEC wants considered in connection with the application.

(d) Notice. A SLEC satisfies the notice requirements of this section by completing notice pursuant to the following requirements.

(1) Notice must be provided as set forth in subparagraphs (A)-(E) of this paragraph:

(A) New services require either two weeks published notice in a newspaper of general circulation in each county affected by this application or direct notice or individual bill insert or, in the case of a cooperative, publication in the cooperative's newsletter and by mail to nonmember customers.

(B) Experimental services require either two weeks published notice in a newspaper of general circulation in each county affected by this application or direct notice or individual bill insert or, in the case of a cooperative, publication in the cooperative's newsletter and by mail to nonmember customers.

(C) Restructuring of existing rates requires either two weeks published notice in a newspaper of general circulation in each county affected by this application or direct notice or individual bill insert or, in the case of a cooperative, publication in the cooperative's newsletter and by mail to nonmember customers; provided that a restructuring of an existing rate that involves a rate increase for any customer requires four weeks published notice in a newspaper of general circulation in each county affected by this application and direct notice or individual bill insert.

(D) Rate decreases require two weeks published notice in a newspaper of general circulation in each county affected by this application or direct notice or individual bill insert.

(E) Rate increases require four weeks published notice in a newspaper of general circulation in each county affected by this application and direct notice or individual bill insert.

(2) The presiding officer may require for good cause that notice be provided in addition to that notice proposed by the SLEC or may waive the publication of notice requirement prescribed by this section in an application that involves a rate decrease for all affected ratepayers.

(3) Each notice must include:

(A) a description of the services affected by the proposed change;

(B) a list of rates that are affected by the proposed application and how the rates affect customers;

(C) the effective date of the proposed change;

(D) an explanation of the customer's right to petition the commission for review under subsection (g) of this section, including the number of persons required to petition before a commission review will occur;

(E) an explanation of the customer's right to obtain from the SLEC a copy of the proposed tariff and instructions on how to do so; and

(F) the amount by which the SLEC's total regulated intrastate gross revenues will increase or decrease as a result of the proposed change.

(e) New or Experimental Services. The following requirements shall apply to new or experimental services as the terms are defined in subsection (b) of this section.

(1) Filing. The SLEC must file six copies of the application for new or experimental services with the commission.

(2) Availability. If the application concerns a service that will not be offered systemwide initially, the application shall explain separately for each exchange in which that service will not be offered why the SLEC's facilities in that exchange do not have the technical capability to handle the service. The application also shall include an implementation plan that shall specify the SLEC's plans for making the service available in such exchanges within a reasonable time after receipt by the SLEC of a bona fide request for the service. The SLEC shall specify in its plan what requirements must be met for a request to be considered bona fide. This requirement does not apply to experimental services, but the SLEC shall specify the exchanges in which it proposes to offer the experimental service.

(3) Pricing. A SLEC may price new services at plus or minus 25% of the average of the rates for similar services approved by the commission for Class A local exchange carriers providing the service within the State of Texas. A SLEC may price experimental services at plus or minus 35% of the average of the rates for similar services approved by the commission for Class A local exchange carriers providing the service within the State of Texas. In the event that a new or experimental service proposed by the SLEC has never been approved by the commission, the provisions of this section do not apply

At no time shall a SLEC require that a customer purchase, either directly or indirectly, a new or experimental service as a condition for receiving telephone service.

(4) Expiration. Any experimental service may be offered for no more than a 12-month period. Prior to or at the conclusion of this period, the SLEC may file an application to offer the experimental service as a new service. Such application may be filed pursuant to any other section of this chapter.

(f) Rate Changes. Any application for a rate change shall affect a single rate element, except as provided in paragraph (2) of this subsection.

(1) Filing. A SLEC must file six copies of the application for a rate change with the commission.

(2) Restructure of existing rates. Under this section, a SLEC may restructure, as it determines, its existing rates within a class of service, within a group of rate elements of a specific service, or within a group of custom calling services, provided that the restructured rates are either revenue neutral or result in a revenue decrease for the SLEC.

(3) Rate decreases. Under this section, a SLEC may decrease, as it determines, an existing rate, provided that the presiding officer finds that competition, as described by the SLEC in subsection (c)(8)(D) of this section, is not adversely affected.

(4) Rate increases. Under this section rate increases are permitted, provided that.

(A) the revenue from the rate increase addressed by the application shall not increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2.5% of the SLEC's total regulated intrastate gross annual revenues, provided that the revenue from a proposed increase in the rate of a SLEC, together with any rate changes for existing services that went into effect during the 12 months preceding the proposed effective date of the requested rate increase, including any other proposed rate changes then pending before the commission, shall not result in an increase of more than 5.0% of the SLEC's total regulated intrastate gross annual revenues; and

(B) the revenue from the rate increase addressed by the application shall not increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2.5% of the SLEC's total regulated intrastate gross annual revenues, provided that a rate increase for the basic local access line rate, together with any other change to that rate that went into effect during the 12

months preceding the proposed effective date of the requested change, shall not result in an increase of more than 10% to the SLEC's basic local access line rate; and

(C) the staff has not included the SLEC in the latest earnings monitoring report to the commission as a public utility that requires investigation as a utility that is over-earning or, by final order in a case under the Act, §42 or §43, a SLEC mentioned in such report is found, after the report is presented to the commission, not to be over-earning.

(5) Number of applications.

(A) The rate for any one service, or service element, shall not be changed under this section more than once in any 12-month period, provided that applications for rate decreases are not so limited.

(B) A SLEC may not receive approval of more than six applications under this section in any one 12-month period, provided that applications for rate decreases are not so limited.

(g) Administrative Review.

(1) An application considered under this section shall be reviewed administratively. An application shall be docketed if within 20 days of the filing of the application:

(A) the commission receives a complaint(s) relating to the proposed change signed by the lesser of 5.0% or 1,500 of the affected local service customers to which the proposed change applies; or

(B) the commission receives a complaint from an affected intrastate access customer or group of affected intrastate access customers that in the preceding 12 months the SLEC billed and from which the SLEC received 10% or more of its total intrastate gross access revenues, or

(C) the commission receives a complaint from an affected municipality. or

(D) the SLEC does not comply with the procedural requirements of this section

(2) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application at the request of staff and General Counsel

(3) The application shall be examined for compliance with the require-

ments of this section. No later than five working days after the filing date of the application, General Counsel shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning deficiencies in the application. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the application's filing of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 35 days after the filing of a sufficient application with substantially complete information as required by the presiding officer.

(4) While the commission is reviewing the application and within five working days of the presiding officer's notification to the SLEC of any deficiencies in the proposed application, General Counsel and the Office of Public Utility Counsel may submit requests for information to the SLEC. The SLEC shall provide three copies of all answers to such requests for information to General Counsel and the Office of Public Utility Counsel within five days after receipt of the request by the SLEC. No later than 20 days after the filing date of the application, interested persons may file written comments or recommendations concerning the application. No later than 25 days after the filing date of the application, General Counsel shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.

(5) No later than 35 days after the filing date or the date on which the application was determined to be sufficient, the presiding officer shall complete the administrative review. A notice of approval, approval with modification, or denial of a tariff filing shall be the final determination of the commission regarding the application. The effective date shall be no earlier than 35 days after the filing date of the application.

(h) Approval or denial of application. For its application to be approved, the SLEC must meet all of the requirements in this section. If, based on administrative review, the presiding officer determines that the SLEC has met all requirements, the SLEC shall be permitted to implement its application. If, based on administrative review, the presiding officer decides that the SLEC has not met all requirements, the presiding officer may dismiss or, upon request of the SLEC, shall docket the application. Any application not ruled upon within 35 days shall go into effect by operation of law, unless suspended at the request of General Counsel or pending correction of deficiencies in or docketing of the application.

(i) Review of the application after docketing. If the application is docketed, the operation of the application shall be automatically suspended to a date 150 days after the effective date. The application shall be processed in accordance with the commission's procedural rules applicable to docketed cases.

(j) Privacy Considerations. Notwithstanding the applicability limitations of subsection (b) of §23.57 of this title (relating to Telecommunications Privacy), applies to all applications filed under this section.

(k) Final authority. The commission retains final authority over any matter addressed in this section and is authorized, at any time on its own motion, to hold a hearing to determine the propriety of the matter. An application filed pursuant to this section shall be subject to rehearing pursuant to §22.64 of this title (relating to Rehearing).

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 June 9, 1994

TRD-9442086

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

Earliest possible date of adoption July 18, 1994

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 29. Purchased Health Services

Subchapter CC. Tuberculosis Clinic Services

• 25 TAC §29.2901, §29.2902

On behalf of the State Medicaid Director, the Texas Department of Health (department) proposes new §29.2901 and §29.2902, concerning tuberculosis clinic services. Specifically the sections cover benefits and limitations, and reimbursement methodology.

The new sections provide for Medicaid coverage of tuberculosis clinic services as approved and authorized by the department beginning January 1, 1994. The purpose of these new sections is to expand coverage to include tuberculosis clinic services to current Medicaid recipients.

Jary Bego, health care financing budget director, has determined that for the first five-

year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government will be \$836,755 for fiscal year (FY) 1994, \$1,597,719 for FY 1995; \$1,796,845 for FY 1996, \$1,996,062 for FY 1997; and \$2,195,668 for FY 1998. There will be no fiscal implications for local governments.

Mr. Bego also has determined that for each year of the first five years the sections are in effect the public benefit anticipated will be better access to tuberculosis clinic services for the Medicaid recipients. There is no effect on small businesses to comply with the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There will be no impact on local employment.

Comments on the proposal may be sent to Kay Sterling, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6511. Comments will be accepted for 30 days following publication in the *Texas Register*.

The new rules are proposed under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program, and as authorized under Chapter 15, §107, Acts of the 72nd Legislature, First Called Session (1991). The new sections affect Human Resources Code, §32.021.

§29.2901. Benefits and Limitations

(a) Covered tuberculosis (TB)-related clinic services. Covered TB clinic services include:

(1) physician consultation and evaluation,

(2) lab, x-ray, and diagnostic procedures (which permit the presumptive diagnosis of TB and include services to confirm the presence of infection),

(3) health history, evaluation, assessment, and record maintenance,

(4) treatment and prevention services including counseling and education for prevention and curative therapy, transmission and risk factors,

(5) prescribed drugs,

(6) case coordination, and

(7) monitoring of clients for compliance to and completion of regimes of prescribed drugs including services to directly observe the intake of prescribed drugs and baseline drug toxicity checks.

(b) Provider requirements. Providers of TB-related clinic services must:

(1) be a facility that is not an administrative, organizational, or financial part of a hospital,

(2) be organized and operated to provide TB-related services,

(3) comply with all applicable federal, state and local laws and regulations;

(4) employ or have a contractual agreement/formal arrangement with a licensed physician (Medical Doctor or Doctor of Osteopathy) who assumes professional responsibility for the services provided to the clinic's patients,

(5) adhere to the guidelines issued by the department, under the authority of the Texas Health and Safety Code, Chapters 13 and 81, and ensure that services are consistent with the published recommendations of the American Thoracic Society and the Centers for Disease Control and Prevention,

(6) ensure that services provided to each patient are commensurate with the patient's medical needs based on the patient's assessment/evaluation, diagnostic studies, plan of care, and physician direction and are documented in the patient's medical records,

(7) be enrolled and approved for participation in the Texas Medical Assistance Program,

(8) sign a written provider agreement with the single state agency or its designee. By signing the agreement, the TB-related clinic agrees to comply with the terms of the agreement and all requirements of the Texas Medical Assistance Program including regulations, rules, handbooks, standards, and guidelines published by the department or its designee, and

(9) bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by the single state agency or its designee.

§29.2902. Reimbursement Methodology

(a) Reimbursement methodology for tuberculosis (TB) clinic services. The TB clinic service fees are prospective reimbursement fees for services provided in a TB clinic setting. These fees are jointly developed from state and local departments of health historical costs and from various Medicare or Medicaid fee schedules. The basis for reimbursement for covered TB services includes the following:

(1) The cost associated with physician consultation/evaluation is determined from departments of health historical data using 1993 prevailing practice cost for the base-year database.

(2) The costs associated with lab/x-ray/diagnostic services are developed from the Texas Medicaid Reimbursement Methodology.

(3) The costs associated with health history, evaluation, assessment, record maintenance, treatment, and prevention services including counseling and education both for the prevention and curative therapy/transmission and risk factors, and monitoring for compliance and completion of regimes are determined from Texas Department of Health historical data using 1993 as the base year.

(4) The costs associated with prescription drugs are based upon actual state contract prices.

(5) The costs associated with case coordination are determined from state and local departments of health historical data. These costs were determined using actual costs incurred during 1992 and 1993.

(b) Inflation adjustments. To account for general inflation, those costs which are determined from historical data are annually adjusted by the forecasted rate of change of the Implicit Price Deflator—Personal Consumption Expenditures (IPD-PCE). All other inflation adjustments occur in accordance with updates described elsewhere in the plan.

(1) The automatic inflation adjustment applied to state and local departments of health historical data shall be developed annually and in accordance with the state fiscal year. The initial adjustment shall occur no later than September 1, 1995.

(2) To inflate the historical data, the single state agency or its designee, uses the lowest feasible IPD-PCE forecast consistent with the forecasts of nationally recognized sources available to the department.

(c) Rebasings historical costs. The single state agency or its designee shall review, at least every five years, the historical expenditures associated with providing TB services in TB clinic settings. Should these costs, as described above, deviate from the 1993-based inflated costs by more than 10%, the single state agency or its designee rebases TB clinic service costs with the most recent data available.

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 June 10, 1994.

TRD-9442147 Susan K. Steag
General Counsel
Texas Department of
Health

Earliest possible date of adoption: July 18, 1994

For further information, please call. (512) 338-6511

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 406. ICF/MR Programs

Subchapter A. General Re- quirements

• 25 TAC §§406.1-406.4

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§406.1-406.4, concerning general requirements.

The provisions of the new subchapter concern general requirements for participation in the intermediate care facilities for the mentally retarded program in Texas. The proposed rules are substantially the same as rules of the Texas Department of Human Services (TDHS) contained in §§27.101, 27.103, and 27.105 of Subchapter A, governing the same matters.

The primary difference between the two documents is that agency names have been modified to reflect the changing responsibilities as ICF/MR state operating agency functions are transferred from TDHS to TXMHMR. This transfer is enacted under the authority of the Health and Human Services Commission as the Medicaid single state agency pursuant to House Bill 7 of the 72nd Texas Legislature and the Medicaid State Plan. References to other sections and subchapters throughout the sections have been modified, where appropriate. In addition, new §406.4 has been added which specifies that when used in this and other subchapters within Chapter 406, the term department refers to the Texas Department of Mental Health and Mental Retardation or its agent.

Leilani Rose, director, Financial Services Department, has determined that the sections as proposed are substantially the same as those currently utilized by the Texas Department of Human Services. Therefore, Ms. Leilani has determined that for each year of the first five-year period the sections as proposed are in effect there will be no significant fiscal impact on state or local government as a result of enforcing the sections as proposed. There is no anticipated local economic impact.

Ernest McKenney, director, Medicaid Administration, has determined the public benefit is the adoption of rules that will enable the department, as the mental retardation authority for the state, to assume policymaking responsibility for ICF/MR policy. There will be no effect on small businesses. There is no significant economic cost to persons who are required to comply with the rules as proposed.

A public hearing to accept testimony concerning the proposal of Chapter 406, Subchapter A and other proposed new subchapters concerning the ICF/MR program is scheduled for 1:30 p.m., Thursday, July 7, 1994, in the auditorium of the Central Office of TXMHMR at 909 West 45th Street, Austin. Individuals requiring an interpreter for the hearing impaired should contact Linda Logan, director, Policy Development, at least 72 hours prior to the hearing.

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

The new sections are proposed under the Health and Safety Code, Title 7, §532.015(a), which provide the Texas Mental Health and Mental Retardation Board with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposed new sections would affect Texas Civil Statutes, Article 4413(502), §16.

§406.1. Service Qualifications for the Intermediate Care Facility for the Mentally Retarded (ICF/MR) Program. ICF/MR services consist of services in an institution for individuals with mental retardation or a related condition when:

(1) the primary purpose of the institution is to provide health and rehabilitative services for individuals with mental retardation or persons with related conditions, as defined in §406.202 of this title (relating to Definitions for Level-of-care Criteria);

(2) the institution meets all the standards and requirements for an ICF/MR specified in this chapter; and

(3) the Medicaid client for whom payment is requested is receiving active treatment as specified in 42 Code of Federal Regulations, §483.440.

§406.2. Compliance with Federal and State Standards for Participation.

(a) The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts by reference federal regulations governing conditions of participation for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) as specified in Federal Register Document 88-12250, Volume 53, Number 107, Pages 20488-20505, which constitutes 42 Code of Federal Regulations (CFR), part 483, Subpart D, §§483.400-483.480, as published in the June 3, 1988, issue of the Federal Register with a mandated effective date of October 3, 1988.

(b) To participate in the Title XIX Texas Medical Assistance Program, each ICF/MR must comply with all applicable federal and state standards for participation, including the federal standards for participation, including the federal standards specified in subsection (a) of this section and including requirements set forth in this chapter that are additional to or more restrictive than the federal standards specified in subsection (a) of this section.

(c) In addition to complying with the requirements of this chapter, the facility must meet all applicable provisions of other federal regulations, including, but not limited to, those pertaining to nondiscrimination on the basis of race, color, or national origin in 45 CFR Part 80; nondiscrimination on the basis of handicap in 45 CFR Part 84, 29 CFR Part 1630, and 28 CFR Parts 35 and 36; nondiscrimination on the basis of age in 45 CFR Part 91; protection of human subjects of research in 45 CFR Part 46; and fraud and abuse in 42 CFR Part 455.

§406.3. State Licensing Standards. The facility must meet the Texas Department of Human Services' requirements for a state license to provide health-related care and services on a regular basis to individuals whose mental or physical condition requires services that:

- (1) exceed the level of room and board, and
- (2) can be provided only by an institution.

§406.4. Definitions. The term "the Department" as used in this chapter, Subchapters A-H shall refer to the Texas Department of Mental Health and Mental Retardation and/or its authorized agent.

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 June 13, 1994.

TRD-9442255 Ann K. Utley
 Chairman
 Texas Mental Health and
 Mental Retardation
 Board

Earliest possible date of adoption: July 18, 1994

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

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**Subchapter B. Contracting Re-
quirements**

• 25 TAC §§406.51-406.67

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§406.51-406.67, concerning contracting requirements.

The provisions of the new subchapter concern contracting requirements for the ICF/MR program in Texas. The proposed rules are substantially the same as rules of the Texas Department of Human Services (TDHS) contained in 40 TAC §§27.201, 27.203, 27.205, 27.207, 27.209, 27.211, 27.213, 27.215, 27.217 of Subchapter B and 40 TAC §§69.233, 69.261, 69.268, 69.275, 69.276, 69.277, 69.278, 69.279 governing the same matters.

The primary difference between the two documents is that agency names have been modified to reflect changing responsibilities as ICF/MR state operating agency functions are transferred from TDHS to TXMHMR. This transfer is enacted under the authority of the Health and Human Services Commission as the Medicaid single state agency pursuant to House Bill 7 of the 72nd Texas Legislature and the Medicaid State Plan. In addition, a provision has been added requiring providers to comply with applicable provisions of Chapter 401, Subchapter E of this title governing contracts management, and references to the Plan for New Bed Development in the Texas ICF/MR Program have been changed to reference the Long-Term Care Plan for People with Mental Retardation consistent with revisions by the 73rd Legislature to the Health and Safety Code, §533.062.

Leilani Rose, director, Financial Services Department, has determined that the sections as proposed are substantially the same as those currently utilized by the Texas Department of Human Services. Therefore, Ms. Leilani has determined that for each year of the first five-year period the sections as proposed are in effect there will be no significant fiscal impact on state or local government as a result of enforcing the sections as proposed. There is no anticipated local economic impact.

Ernest McKenney, director, Medicaid Administration, has determined the public benefit is the adoption of rules that will enable the department, as the mental retardation authority for the state, to assume policymaking responsibility for ICF/MR policy. There will be no effect on small businesses. There is no significant economic cost to persons who are required to comply with the rules as proposed.

A public hearing to accept testimony concerning the proposal of Chapter 406, Subchapter B and other proposed new subchapters concerning the ICF/MR program is scheduled for 1:30 p.m., Thursday, July 7, 1994, in the auditorium of the Central Office of TXMHMR at 909 West 45th Street, Austin. Individuals requiring an interpreter for the hearing impaired should contact Linda Logan, director, Policy Development, at least 72 hours prior to the hearing.

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

The new sections are proposed under the Health and Safety Code, Title 7, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposed new sections would affect Texas Civil Statutes, Article 4413(502), §16.

§406.51. Participation Requirements.

(a) To participate in the Title XIX Texas Medical Assistance Program and re-

ceive state and federal reimbursements for services to eligible individuals, Intermediate Care Facilities for the Mentally Retarded (ICF/MR) must satisfy the following conditions.

(1) The facility must have an approved application on file with the ICF/MR section of the Texas Department of Mental Health and Mental Retardation (TXMHMR) to participate as an ICF/MR in the Title XIX Texas Medical Assistance Program, as specified in §§406.52-406.53 of this title (relating to Applications for Enrollment).

(2) The Texas Department of Human Services (TDHS) must have furnished the Texas Department of Mental Health and Mental Retardation (TXMHMR) with a valid certification for the facility.

(3) The facility's owner or authorized representative must have a written contract with the department to provide services to eligible individuals.

(4) When applicable, the facility must be currently licensed under TDHS' minimum licensing standards for facilities serving the mentally retarded, as specified in 40 TAC §§90.211-90.218 and 90.231-90.244.

(5) The facility must have specified in its application to TXMHMR the level of care the facility offers, as provided in §§406.205-406.208 of this title (relating to ICF/MR I Level-of-care Criteria, ICF/MR V Level-of-care Criteria, ICF/MR VI Level-of-care Criteria, and ICF/MR VIII Level-of-care Criteria).

(6) Each individual for whom the facility requests vendor payment must have a valid level of care that matches the level of care of the facility and must be financially eligible for Medicaid.

(b) Each facility must comply with federal and state standards for participation on an ongoing basis as stated in its contract. To continue participating, facilities must immediately correct deficiencies affecting the health and safety of clients. Failure to correct deficiencies under the contract or under federal or state standards within specified time periods is cause for immediate suspension of vendor payments and may result in contract suspension, cancellation, or other actions including, but not limited to:

(1) requesting payment of valid audit exceptions, and

(2) requiring contract compliance by a specified date.

(c) No participating facility may engage in any of the following restrictive practices:

(1) requiring an individual to make a will designating the facility as a legatee or devisee;

(2) requiring an individual to assign life insurance to the facility;

(3) requiring an individual to transfer property to the facility,

(4) requiring an individual to pay a lump-sum entrance fee or make any other payment or concession to the facility beyond TXMHMR's recognized rates for room, board, and care,

(5) restricting an individual, his guardian, or any other responsible party in the use of the individual's personal needs allowance;

(6) prohibiting an individual from leaving the facility at will except as provided by state law;

(7) preventing an individual from applying for Medicaid for a specified period of time,

(8) withholding services from an individual solely because the individual has refused to accept a particular dosage of medication or a particular method of administering it,

(9) denying appropriate care to an individual because of his race, religion, color, national origin, sex, age, handicap, marital status, or source of payment, and

(10) preventing a terminally ill adult from exercising his right to reject life-sustaining procedures

(d) Each contracting facility must comply with the Civil Rights Act of 1964, Title VI (Public Law 88-352), the Rehabilitation Act of 1973, §504 (Public Law 93-112), the Americans with Disabilities Act of 1990 (Public Law 101-336), and all amendments to these Acts and all requirements imposed by the regulations issued under these Acts. These Acts and regulations prohibit persons in the United States from being excluded from participation in, or denied, any aid, care, service, or other benefits provided by federal and/or state funding, or otherwise being subjected to any discrimination on the basis of race, color, national origin, sex, age, disability, or religion. In addition, each facility must comply with the Texas Health and Safety Code, Chapters 81 and 85 (relating to workplace and confidentiality guidelines regarding Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS)), and Title 40, Texas Administrative Code, Chapter 73

(e) Each contracting facility must comply with applicable TXMHMR contracting rules in Chapter 401 Subchapter E of this title (relating to Contracts Management). If there is a conflict between the

applicable sections of that subchapter and the provisions of this subchapter, the provisions of this subchapter will prevail.

§406.52. Application for Enrollment (General Provisions) Potential contractors (providers) must request an application for enrollment from TXMHMR through means established by the respective department program area.

(1) Identifying information At minimum, the applicant for provider enrollment must give the following identifying information:

(A) the provider's business name,

(B) the nature of the business entity (sole proprietorship, general partnership, limited partnership, corporation, or governmental entity),

(C) if the provider is a sole proprietorship, his residence address, date of birth, and Social Security number,

(D) if the provider is a partnership, a copy of the partnership agreement,

(E) if the provider is a limited partnership, a copy of the certificate of limited partnership as filed with the Texas Secretary of State,

(F) If the provider is a corporation, a certificate of incorporation and a Corporate Board of Directors Resolution

(2) Ownership or control information If the provider fails to disclose ownership or control information as required by the department, he is not eligible to contract with the department to provide services

(3) Information on business transactions. A provider must agree to give the department, upon request, the following information related to business transactions

(A) the ownership of any entity with which the provider has had both a subcontract and business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request, and

(B) any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor, during the five-year period ending on the date of the request

(4) Information on persons convicted of crimes. Before the department enters into or renews a contract, or at any time upon written request by the department, the provider must disclose to the department the identity of any person who:

(A) has ownership or controlling interest in the provider agency, or is an agent or managing employee of the provider; and

(B) has been convicted of a criminal offense related to his involvement in any program under Medicare, Medicaid, or the Title XX block grant since the inception of those programs. The department may refuse to enter into or may terminate a provider agreement if it determines that the provider did not fully and accurately disclose the required information concerning persons convicted of crimes.

(5) Denial/termination of provider participation. The department may refuse to enter into or renew an agreement with a provider if any person who has an ownership or controlling interest in the provider agency, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to his involvement in any program established under Medicare, Medicaid, or the Title XX block grant

(6) State certification/licensure. Before the department enrolls a provider, the provider must prove his capability to provide services of a quality acceptable to the department. The provider must be state licensed and/or certified and provide documentation of his licensure and/or certification prior to issuance of a contract.

§406.53 Provider Application Requirements Specific to ICF/MR

(a) The words and terms in paragraphs (1)-(3) of this subsection, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise

(1) Applicant—The individual(s) and/or entities specified on TXMHMR's facility ownership information form who:

(A) operate a for-profit organization,

(B) serve as the authorizing entity for a nonprofit organization, or

(C) have management or ownership control.

(2) Affiliate—An individual or entity associated with the applicant so that

any one of them directly or indirectly controls or has the power to control one another in whole or in part.

(3) Designated representative—The chief executive officer, the chief financial officer, the president or executive director, or other individual who serves in an upper management, decision-making capacity and has financial responsibility for the proposed facility.

(b) All applicants for participation in the Intermediate Care Facility for the Mentally Retarded (ICF/MR) Program must submit an application to the Texas Department of Mental Health and Mental Retardation (TXMHMR) for review and approval. The application must include documentation to verify the applicant's ability to ensure the delivery of quality care and services. The documentation submitted must indicate that:

(1) the persons specified in subparagraphs (A) and (B) of this paragraph will have completed the ICF/MR preapplication training course within six months prior to approval of the application. In some situations, one person may serve in both capacities. If the person's employment status changes prior to approval of the application, approval of the application will be postponed until the appropriate persons complete the training;

(A) the applicant and/or a designated representative, other than a consultant; and

(B) the individual who will be responsible for the direct management of the facility;

(2) the applicant is financially creditable and of good moral character.

(c) All applications are limited to one level-of-care classification (I, V, VI, or VIII) and must meet the requirements specified in paragraphs (1)-(5) of this subsection.

(1) Requested certification is limited to a maximum of six beds per facility. This includes new facilities seeking initial certification and currently certified facilities seeking to increase the certified bed capacity.

(2) The proposed facility is non-contiguous to an already existing residential facility which serves individuals with mental retardation or a related condition. The proposed facility is in compliance with applicable special use permit requirements, local zoning, and/or occupancy code requirements, and §406.3 of this title (relating to State Licensing Standards) and §406.51 of this title (relating to Participation Requirements). The proposed facility must also meet the specifications described in subparagraphs (A) and (B) of this paragraph

(A) The applicant must submit information about the proposed facility which addresses the services, programs, and plans detailed in clauses (i)-(iv) of this subparagraph.

(i) Availability of 24-hour emergency medical services, utility services, fire protection, police and sheriff protection, and waste disposal.

(ii) Plans for providing opportunities and support for the residents to develop and maintain positive relationships with a variety of persons in the community, including identification of the transportation resources available to the individuals who will reside in the proposed facility.

(iii) Plans for providing the programmatic and other support services, as required by 42 Code of Federal Regulations, Part 483, Subpart D, which are appropriate to the individuals who will be residing in the proposed facility

(I) If the proposed facility intends to serve individuals who are eligible for educational services, the application must include documentation to verify that the local school district has been notified of the development of the proposed facility

(II) If the proposed facility intends to serve individuals who are 22 years of age and older, the application must include a description of how the program intends to provide and/or support the delivery of vocational, day habilitation, or supported employment services.

(III) If the services are to be provided by an entity other than the applicant or facility, the service provider must submit documentation of his intent to provide services to the individuals who will be residing in the proposed facility.

(B) The applicant must submit documentation that the proposed facility is located such that no other ICF/MR is within a one-half mile radius of the proposed facility.

(3) A needs assessment has been conducted to include the following.

(A) The applicant must submit a statement concerning the known number of developmentally disabled persons residing in the community and surrounding geographic area who can benefit from the services provided by the facility

(B) The applicant must submit documentation to verify that the Mental Retardation Authority in whose catchment area the proposed facility is located has been notified of the development of the proposed facility and the proposed facility's admission criteria. The applicant must obtain and submit letters which address the need for the facility from at least two of the following sources: the superintendent of the state school and/or the executive director of the MHMR center in whose catchment area the proposed facility is located, advocacy groups, developmental disability service providers and organizations, school districts, and/or other appropriate developmental disability referral sources. Letters from individuals who have a financial interest in the proposed facility are not acceptable. The letters must refer specifically to the proposed facility by name and/or address, be current within six months prior to the submission of the application, and be printed on the letterhead of the acknowledging entity

(C) If the facility serves individuals qualifying for Level-of-Care VIII services, the applicant must additionally submit documentation that verifies that the regional TDHS office and at least two other appropriate developmental disability referral sources have been notified about the development of the proposed facility.

(D) The applicant must submit a written description of the resident group to be served, including admission criteria.

(4) If the applicant plans to serve individuals qualifying for Level-of-Care I or VIII services, the applicant must submit a written description of alternatives for semi-independent and independent living available to the facility for those individuals who successfully complete the active treatment plan and evidence ability to move to a less restrictive placement. In the absence of these alternatives, the applicant must present evidence of having initiated planning for the development of these alternatives.

(5) Facilities requesting to reclassify must withdraw from the program in accordance with TXMHMR's Texas Community ICF/MR Provider Manual and reapply in compliance with the requirements of this section. This includes new facilities seeking to reclassify during the application process prior to initial certification and currently certified facilities.

(d) The applicant has nine months from the date an application for participation in the ICF/MR program has been approved by TXMHMR to obtain a license and certification by the Texas Department

Of Human Services (TDHS). If, at the end of the nine-month period, the provider is unable to obtain a license and certification, the applicant must withdraw the request for program participation and reapply in compliance with the requirements of this section.

(1) TXMHMR may grant applicants a three-month extension for new construction delayed by inclement weather, natural disaster, construction strike, or other causes beyond the provider's control. New construction does not include renovations or modifications to existing structures. The request for the extension must be submitted in writing to TXMHMR at least 60 days prior to the end of the nine-month period and include documentation to support the circumstance which caused the delay.

(2) If there is an agency delay which is not the fault of the applicant and results in failure to obtain licensure and certification within the nine-month period, an extension is granted to enable completion of the process.

(3) If an applicant must change locations following application approval by TXMHMR, the change in location must:

(A) be reported to TXMHMR at least ten days prior to the actual location change; and

(B) be requested within the first 30 days from the date of the original application approval;

(C) meet all requirements set forth in this section and be approved by TXMHMR, ICF/MR Section;

(D) remain within the same geographic region as the previously approved location, as defined in the TXMHMR's Long-Term Care Plan for People with Mental Retardation;

(E) not alter the applicant's ability to obtain a license and certification within the nine-month time period set forth in this subsection.

(e) All applications for participation in the ICF/MR Program will be reviewed within three weeks of receipt in the TXMHMR, ICF/MR Section. Applications must meet all requirements set forth in this section to receive approval for participation and be in compliance with TXMHMR's Long-Term Care Plan for People with Mental Retardation. Applications that have not received approval from TXMHMR within a three-month period from the date submitted will be withdrawn from the review process and returned to the applicant for comple-

tion. TXMHMR reserves the right to postpone the approval of any application if the applicant or an affiliate is currently under investigation or review for potential fraud, abuse, or misutilization of Medicaid funds or for any violation for which a sanction could be taken under §§409.051-409.068 of this title (relating to Fraud and Abuse Involving Medical Providers). As necessary, TXMHMR, ICF/MR Program staff will contact the applicant to facilitate completion of the application process. Upon approval, TXMHMR will notify TDHS that the facility can begin the licensing and certification survey processes. The contract for services is dependent on compliance with the provisions of this section.

§406.54. Disclosure of Information about the Provider.

(a) Each Intermediate Care Facility for the Mentally Retarded (ICF/MR) must supply the Texas Department of Mental Health and Mental Retardation (TXMHMR) with information regarding the facility's status as a legal entity and its ownership, governance, management, and business transactions, as required in subsections (b)-(g) of this section. Failure to provide this information renders the provider ineligible to contract with the Texas Department of Mental Health and Mental Retardation (TXMHMR) to provide services

(b) Each facility must supply TXMHMR with the following information about its ownership and control:

(1) the name of each person who directly or indirectly owns an interest of 5.0% or more in the facility,

(2) the name of each owner of all or part of any property, assets, mortgage, deed of trust, note, or other obligation secured by the facility,

(3) the name of each officer and director, if the facility is organized as a corporation;

(4) the name of each partner, if the facility is organized as a partnership, and a copy of the partnership agreement, excluding the dollar amounts of the partners' capital contributions; and

(5) the name of any and every director, officer, agent, or managing employee who has been convicted of a criminal offense related to his involvement in programs established or operated under Titles XVIII, XIX, or XX of the Social Security Act. TXMHMR may refuse to enter into or may cancel any agreement with a provider that fails to disclose the information required in this paragraph, or that has a director, officer, agent, or managing employee who has been convicted of an offense specified in this paragraph.

(c) If the provider is a for-profit corporation, the provider must supply TXMHMR with a copy of the following material.

(1) the certificate of incorporation, if the provider is incorporated in Texas;

(2) the certificate of authority to do business in Texas, if the provider is incorporated out of state;

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts between TXMHMR and the corporation;

(4) the management contract for the facility, if applicable,

(5) a statement by the president and secretary of the corporation that no stockholder owns, directly or beneficially, 5.0% or more of the corporate stock, if applicable; and

(6) a copy of the Certificate of Good Standing issued by the state comptroller's office

(d) If the provider is a not-for-profit corporation, the provider must supply TXMHMR with a copy of the following material

(1) the certificate of incorporation, if the provider is incorporated in Texas;

(2) the certificate of authority to do business in Texas if the provider is incorporated out of state;

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts between TXMHMR and the corporation,

(4) the management contract for the facility, if applicable, and

(5) an exemption certificate from the state comptroller's office stating no tax due

(e) Providers other than those described in subsections (c) and (d) of this section must supply TXMHMR with a copy of the following material

(1) the charter or other legal basis for operating as a public entity;

(2) the management contract for the facility, if applicable;

(3) the organization's bylaws, if applicable; and

(4) all other information that TXMHMR requires to determine the legal status of the entity that owns the facility.

(f) Within 35 days after the date of a written request from TXMHMR, providers must supply TXMHMR with complete information about the following business

transactions and parties to business transactions:

(1) the ownership of a subcontractor with whom the facility has conducted business transactions totaling more than \$25,000 during the previous 12 months; and

(2) all business transactions during the previous five years between the facility and all subcontractors or wholly owned suppliers.

(g) Providers must promptly report to TXMHMR all changes affecting the information and reporting requirements specified in subsections (a)-(f) of this section. Failure to report these changes may result in contract termination, suspension, or other actions by TXMHMR including, but not limited to, withholding of vendor funds. When TXMHMR withholds vendor funds for failure to report information required in this section, the department denies payment throughout the period beginning on the day after the date the information was due and ending on the day before the date that TXMHMR receives the required information.

§406.55. Duration of the Contract. The Texas Department of Mental Health and Mental Retardation (TXMHMR) enters only into time-limited contracts with Intermediate Care Facilities for the Mentally Retarded (ICF/MR). The term of TXMHMR contracts with ICF/MR cannot extend beyond one year. Five types of contracts are permitted:

(1) a 12-month agreement if there are no deficiencies;

(2) an agreement for the length of time required to correct deficiencies, plus 60 days, but not exceeding 12 months;

(3) a 12-month agreement subject to automatic cancellation 60 days after the final scheduled date for correction of deficiencies, unless the Texas Department Of Human Services (TDHS) determines and notifies TXMHMR that all required corrections have been satisfactorily completed;

(4) a probationary contract of 30 days; and

(5) a contract for a specified period, as determined by TDHS.

§406.56. Initial Contract Effective Date.

(a) If the facility has met all the requirements for an initial certification by the Texas Department Of Human Services (TDHS), has satisfied all federal health and safety standards, and has met all requirements imposed by the Texas Department of Mental Health and Mental Retardation (TXMHMR), the effective date of the pro-

vider contract is the date on which TDHS completes the on-site survey.

(b) If the facility does not meet all the requirements for an initial certification by TDHS, the effective date of the provider contract is either:

(1) the date on which TDHS determines that the facility has met all the requirements for certification, or

(2) the date on which TDHS approves the facility's correction plan and/or waiver request and determines that the facility meets all applicable federal conditions.

(c) If the facility has a current contract and continues to meet the requirements for certification the effective date of the new provider contract is the day after the expiration date of the current contract.

§406.57. Approval of Subcontracts.

(a) Subcontracts are contracts for providing a part or all of the program components. Such contracts are between the party contracting with the department and the subcontractor. Subcontractors for ancillary or support services, such as janitorial services, are excluded.

(b) Contractors must obtain the department's approval of subcontracts. No subcontract will be approved unless it contains a clause that the subcontractor agrees to accept and abide by all terms and conditions imposed on subcontractors under the primary contract between the department and the contractor.

(c) The contractor must agree to require its subcontractor(s), if any, to accept and abide by each of the provisions of the contract with the department.

(d) The contractor must agree to refrain from entering into any subcontract(s) for services without prior approval or waiver of the right of approval in writing by the department of the subcontractor's qualifications to perform and meet the standards fixed by the contract and its attached plans of operation.

§406.58. Change of Ownership. An ownership change is any change in the business organization that changes the legal entity responsible for the operation of the facility.

(1) Obligation of the seller, that is, the existing owner as specified on the contract with the Texas Department of Mental Health and Mental Retardation (TXMHMR). The seller must ensure that TXMHMR receives written notification of a proposed change in ownership at least ten days before the change occurs. Failure to provide this notification may, at TXMHMR's option, result in the seller's liability for contract violations that occur

from the date of the ownership change until TXMHMR receives written notice and establishes an effective date on which TXMHMR recognizes the ownership change. That effective date may be as many as 30 days after the date TXMHMR receives the written notice of ownership change. The seller's vendor payments may be held, at TXMHMR's option, when TXMHMR receives information about a proposed or actual change in ownership. If satisfactory information is received that shows no change of ownership has occurred, the vendor hold will be released; otherwise, release of the vendor hold will be in accordance with §406.59 of this title (relating to Surety Bonds or Letters of Credit).

(2) Obligation of the purchaser. If a change in ownership occurs, TXMHMR issues a new contract to the purchaser effective on the date of the ownership transfer. TXMHMR issues this new contract only if the purchaser has met the requirements in paragraph (1) of this section, the requirements of the new contract, and the standards for participation that are a part of that new contract. If TXMHMR fails to receive prior written notification of the ownership change as specified in paragraph (1) of this section, the contract effective date is established by TXMHMR and may be a date as many as 30 days after the date TXMHMR receives the written notice of ownership change. The purchaser's new contract is subject to the previous owner's contract terms and conditions that were in effect at the time of transfer of ownership, including, but not limited to, the following:

(A) any plan of correction;

(B) an expiration date;

(C) compliance with applicable health and safety standards;

(D) compliance with the ownership and financial interest disclosure requirements of 42 CFR 455.104 and 455.105;

(E) compliance with the civil rights requirements in 45 CFR Parts 80, 84, and 90;

(F) compliance with additional requirements imposed by TXMHMR; and

(G) any sanctions, as specified in §406.62 of this title (relating to Sanction Provisions for Violations of Title XIX ICF/MR Contractual Agreements), including deficiencies, vendor holds, compli-

ance periods, notification for correction of contract violations, probationary contracts, and history of deficiencies.

§406.59. Surety Bonds or Letters of Credit.

(a) If an Intermediate Care Facility for the Mentally Retarded (ICF/MR) undergoes a change in ownership or a voluntary or involuntary termination of contract, the Texas Department of Mental Health and Mental Retardation (TXMHMR) may withhold the selling or terminated facility's vendor payments until an audit is completed. Usually, the amount TXMHMR withholds equals the facility's average monthly payment.

(b) At its sole option, TXMHMR may allow a facility's former owner to obtain one of the following documents in a format acceptable to TXMHMR, in order to obtain release of the vendor hold prior to completion of an audit:

(1) a surety bond or an irrevocable letter of credit;

(2) the buyer's nontransferable written agreement that the buyer has agreed to pay TXMHMR for any liabilities that exist or may be found to exist during the period of the seller's contract with TXMHMR; or

(3) written authority by the seller to withhold and retain funds normally due the seller from other Medicaid contracts the seller may have with the Texas Health and Human Services Commission (HHSC), TDHS, TXMHMR, or other federal or state agencies.

(c) A surety bond or an irrevocable letter of credit must be for a period of three years to cover the adjustments or exceptions resulting from an audit. The three-year period begins with the effective date of the facility's sale, as recognized by TXMHMR according to the provisions of §406.58 of this title (relating to Change of Ownership). TXMHMR specifies the amount of the surety bond or letter of credit. Usually the surety bond equals the average monthly vendor payments paid to the facility. Facilities terminating a contract for ICF/MR services are permitted to furnish a surety bond only if all required cost reports have been filed with TXMHMR. If an acceptable surety bond or letter of credit is presented to TXMHMR, TXMHMR releases the vendor payments. Facilities must ensure that the bond or irrevocable letter of credit is in a format acceptable to TXMHMR and that it does not include stipulations that, as a condition of receiving payment, TXMHMR must:

(1) return the original bond or letter prior to receipt of payment, or

(2) submit a sight draft or any other draft or demand requirement other

than TXMHMR's letter demanding payment.

§406.60. Termination of ICF/MR Participation. An Intermediate Care Facility for the Mentally Retarded (ICF/MR) loses its status as a participating facility when one of the following events occurs.

(1) The facility voluntarily withdraws from the Title XIX Texas Medical Assistance Program. At least 60 days before the withdrawal date, the owner and administrator must give the Texas Department of Mental Health and Mental Retardation (TXMHMR) a written request to withdraw.

(2) The Texas Department of Human Services (TDHS) does not recertify the facility for a new provider agreement.

(3) TDHS decertifies the facility.

(4) The facility's license expires.

(5) TDHS revokes the facility's license for failure to comply with licensure standards.

(6) TXMHMR invokes the cancellation clause because the facility has not corrected deficiencies.

(7) TXMHMR cancels the contract after determining that the facility is in material breach of contract.

§406.61. Notice of Termination.

(a) The department may immediately terminate a contract if the department determines it is in its best interest. The notice at minimum must include the effective date of the termination and a notice of the contractor's right to appeal the adverse action.

(b) The department may immediately terminate a contract for cause if it is not disallowed by law.

(c) Either party, unless stated differently in the contract, may terminate the contract at will if the other party is given a notice of termination at least 31 days before the termination date.

§406.62. Sanction Provisions for Violations of Title XIX ICF/MR Contractual Agreements.

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

(1) Direct or immediate adverse effect—A situation in which a significant, unfavorable risk or source of danger exists.

Direct or immediate adverse effect does not include remote or minimal risk or effect.

(2) Immediate jeopardy—A situation in which a facility's noncompliance with one or more standards for participation poses a serious threat to the health and safety of an individual(s) residing in the facility, making immediate corrective action necessary.

(3) New admission—The admission of an individual who has never been previously admitted to the facility or who, if previously admitted, was discharged or voluntarily left the facility. New admissions do not include:

(A) individuals who lived in the facility before the effective date of denial of payment for new admissions, even if the individuals become eligible for Medicaid after that date; and

(B) individuals who, after a temporary absence from the facility for a therapeutic visit or extended therapeutic visit as described in §406.211 of this title (relating to Payment for Absences from the Facility), are readmitted to beds reserved for them.

(b) The Texas Department of Mental Health and Mental Retardation (TXMHMR) takes the following action(s) when a Title XIX contracted facility fails to meet the requirements specified in this chapter, as cited in writing by the Texas Department Of Human Services (TDHS), which is the state survey agency.

(1) When TDHS notifies TXMHMR in writing that TDHS is terminating the facility's certification because cited deficiencies pose immediate jeopardy to the health and safety of the clients, TXMHMR:

(A) does not offer a compliance period;

(B) imposes an immediate vendor hold on state Medicaid payments to the facility; and

(C) cancels the facility's contract. TXMHMR normally makes no payment for services provided by the facility after the effective date of TDHS's termination of the facility's certification. However, in certain instances, TXMHMR may continue payments for as many as 30 days after the date that TXMHMR cancels or fails to renew the provider contract. Specifically, TXMHMR may continue payments if TDHS notifies TXMHMR in writing that:

(i) the facility is making reasonable efforts to transfer its clients to another facility or into alternate care; and

(ii) additional time is needed to effect an orderly transfer of the facility's clients.

(2) When TDHS recommends a vendor hold on state Medicaid payments to the facility and notifies TXMHMR in writing that cited deficiencies do not pose immediate jeopardy, but do constitute health or safety hazards that have a direct or immediate adverse effect on the facility's residents' health, safety, security, or training as outlined in their individualized plans of care, TXMHMR takes the following actions.

(A) TXMHMR imposes an immediate vendor hold on state Medicaid payments to the facility.

(B) If the cited deficiencies are not corrected within 60 days from the date that TDHS finds the facility in non-compliance after an on-site visit, TXMHMR cancels the facility's contract for breach of contract. If the facility appeals an adverse action by TXMHMR and the adverse action is sustained by a contract appeals committee or judicial proceeding, the effective date of the contract cancellation is the date specified in the notice of contract cancellation. Except as otherwise provided in this paragraph, TXMHMR makes no payment for services provided by the facility after the effective date of the facility's contract termination. In certain instances, TXMHMR may continue payments for as many as 30 days after the date that TXMHMR terminates or fails to renew the provider contract. Specifically, TXMHMR may continue payments if TDHS notifies TXMHMR in writing that:

(i) the facility is making reasonable efforts to transfer its residents to another facility or into alternate care; and

(ii) additional time is needed to effect an orderly transfer of the facility's residents.

(C) When TXMHMR cancels a facility's contract as specified in this paragraph, the department may enter into a probationary contract with the facility, as specified in §406.55(a)(4) of this title (relating to Duration of the Contract). TXMHMR may enter into this contract only after TDHS conducts an on-site, follow-up visit and notifies TXMHMR that:

(i) all previously cited deficiencies have been corrected,

(ii) no other deficiencies have been found that pose immediate jeopardy to the clients; and

(iii) no other deficiencies have been found that constitute health or safety hazards or that relate to the provision of training as outlined in the clients' individualized plans of care.

(D) After the probationary contract period, TXMHMR may enter into a nonprobationary contract as specified in §406.55(a)(1), (2), (3), or (5) of this title (relating to Duration of the Contract). TXMHMR may enter into this contract only after TDHS conducts an on-site, follow-up visit and notifies TXMHMR that

(i) no deficiencies have been found that pose immediate jeopardy to the clients; and

(ii) no deficiencies have been found that constitute health or safety hazards or that relate to the provision of training as outlined in the clients' individualized plans of care.

(3) If a facility is placed on vendor hold three times in any 18-month period for deficiencies in client care, as specified in paragraphs (1) and (2) of this subsection, TXMHMR takes the following actions.

(A) TXMHMR cancels the facility's contract for breach of contract. If the facility appeals an adverse action by TXMHMR and the adverse action is sustained by a contract appeals committee or judicial proceeding, the effective date of the contract cancellation is the date specified in the notice of contract cancellation. Except as otherwise provided in this paragraph, TXMHMR makes no payment for services provided by the facility after the effective date of the facility's contract termination. In certain instances, TXMHMR may continue payments for as many as 30 days after the date that TXMHMR terminates or fails to renew the provider contract. Specifically, TXMHMR may continue payments if TDHS notifies TXMHMR in writing that:

(i) the facility is making reasonable efforts to transfer its clients to another facility or into alternate care; and

(ii) additional time is needed to effect an orderly transfer of the clients

(B) When TXMHMR cancels a facility's contract as specified in this paragraph, the department may enter into a probationary contract with the facility, as specified in §406.55(a)(4) of this title (relating to Duration of the Contract). TXMHMR may enter into this contract only after TDHS conducts an on-site, follow-up visit and notifies TXMHMR that:

(i) all previously cited deficiencies have been corrected;

(i) no other deficiencies have been found that pose immediate jeopardy to the clients; and

(iii) no other deficiencies have been found that constitute health or safety hazards or that relate to the provision of training as outlined in the clients' individualized plans of care.

(C) After the probationary contract period, TXMHMR may enter into a nonprobationary contract as specified in §406.55(a)(1), (2), (3), or (5) of this title (relating to Duration of the Contract). TXMHMR may enter into this contract only after TDHS conducts an on-site, follow-up visit and notifies TXMHMR that:

(i) no deficiencies have been found that pose immediate jeopardy to the clients; and

(ii) no deficiencies have been found that constitute health or safety hazards or that relate to the provision of training as outlined in the clients' individualized plans of care.

(c) TXMHMR takes the following action(s) when a Title XIX contracted facility fails to meet applicable agency rules or contractual provisions that are not specified in this chapter, as cited in writing by TXMHMR or TDHS.

(1) TDHS citations result in the following actions.

(A) At its discretion, TDHS may grant the facility a compliance period of no more than 30 days to correct cited deficiencies. If TDHS finds on a follow-up visit that the cited deficiencies have not been corrected, but the facility has made substantial progress towards correcting them, TDHS may extend the compliance period for a maximum of 15 days. No more than one compliance extension can be granted.

(B) If the cited deficiencies are not corrected within the compliance period, TXMHMR imposes a vendor hold on state Medicaid payments to the facility.

(C) If the cited deficiencies are not corrected within 60 days after the date the facility is placed on vendor hold, TXMHMR cancels the facility's contract for breach of contract. If the facility appeals an adverse action by TXMHMR and the adverse action is sustained by a contract appeals committee or judicial proceeding, the effective date of the contract cancellation is the date specified in the notice of contract cancellation. Except as otherwise provided in this paragraph, TXMHMR makes no payment for services provided by

the facility after the effective date of the facility's contract termination. In certain instances, TXMHMR may continue payments for as many as 30 days from the date that TXMHMR terminates or fails to renew the provider contract. Specifically, TXMHMR may continue payments if TDHS notifies TXMHMR in writing or TXMHMR determines that:

(i) the facility is making reasonable efforts to transfer clients to another facility or into alternate care; and

(ii) additional time is needed to effect an orderly transfer of the clients.

(2) TXMHMR administrative citations result in the following actions.

(A) At its discretion, TXMHMR may grant the facility a compliance period of no more than 30 days to correct deficiencies cited by the Department. If TXMHMR determines during the compliance period that the cited deficiencies have not been corrected, but the facility has made substantial progress towards correcting them, TXMHMR may extend the compliance period for a maximum of 15 days. No more than one compliance extension can be granted.

(B) If the deficiencies cited by the Department are not corrected within the compliance period, TXMHMR imposes a vendor hold on state Medicaid payments to the facility.

(C) If the cited deficiencies are not corrected within 60 days after the date the facility is placed on vendor hold, TXMHMR cancels the facility's contract for breach of contract. If the facility appeals an adverse action by TXMHMR and the adverse action is sustained by a contract appeals committee or judicial proceeding, the effective date of the contract cancellation is the date specified in the notice of contract cancellation. Except as otherwise provided in this paragraph, TXMHMR makes no payment for services provided by the facility after the effective date of the facility's contract termination. In certain instances, TXMHMR may continue payments for as many as 30 days from the date that TXMHMR terminates or fails to renew the provider contract. Specifically, TXMHMR may continue payments if TDHS notifies TXMHMR in writing or TXMHMR determines that:

(i) the facility is making reasonable efforts to transfer clients to another facility or into alternate care; and

(ii) additional time is needed to effect an orderly transfer of the clients.

(d) The facility must not charge Title XIX clients, their families, guardians, or other responsible parties to recoup vendor payments not received because of the imposition of sanctions against the facility. The facility is entitled to collect only the applied income established in the individual's payment plan.

(e) If a facility charges a Title XIX client, any member of his family, or any other party in order to supplement TXMHMR payments or to secure payment for services that TXMHMR disallows, TXMHMR is entitled to cancel the facility's existing contract or to deny its application to participate in the Title XIX Texas Medical Assistance program, unless the department's policies and regulations explicitly permit the charge(s) in question.

(f) State statutes and Title XIX ICF/MR contracts secure providers' rights to appeal when TXMHMR proposes to suspend their vendor payments or cancel their contracts. An aggrieved provider must send a written request for an appeals hearing within 15 calendar days after receiving a TXMHMR letter that notifies the provider of a proposed adverse action. The facility must send the request for a hearing to the deputy commissioner, Management and Support Services, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668 Austin, Texas 78711-2668. Appeals hearings are held in Austin, Texas.

(g) No provider may make an appeal to the Department's administrative law judge unless the department's interpretations of the contract or the ICF/MR standards for participation have caused an adverse action for the provider.

§406.63. Debarment and Suspension of Current and Potential Contractor's Rights.

(a) Applicability. Requirements in this section are applicable to all types of Medicaid contracts with the Texas Department of Mental Health and Mental Retardation (TXMHMR). These requirements are in addition to, and do not supersede, rules in Chapter 409, Subchapter C of this title (relating to Fraud or Abuse and Recovery of Benefits.)

(b) Definitions. The following words and terms when used in §§406.63-406.67 of this title shall have the following meanings, unless the context clearly indicates otherwise.

(1) Contractor and subcontractor—Individuals or legal entities who have existing TXMHMR contracts or are otherwise participating providers, including managers of contractors' operations, such as managers and administrators of ICF/MR facilities.

(2) Debarment—Termination of rights to continue an existing contract, to receive a new contract, to participate as a provider or manager, or to make a bid,

offer, application or proposal for a TXMHMR contract. The debarment is for a specified time commensurate with the seriousness of the violation, the extent of the violation, prior impositions of sanctions or penalties, willingness to comply with program rules and directives, and other pertinent information. The maximum period of debarment is six years, unless a longer time is mandated by requirements other than those in this subchapter.

(3) Potential contractor—Individuals or legal entities who wish to submit a bid, offer, application, or proposal for a TXMHMR contract or subcontract, or otherwise request participation as a provider, including managers of contractors' operations, such as managers and administrators of ICF/MR.

(4) Suspension of contractual rights—Temporary suspension of a contractor's or potential contractor's right to conduct business with TXMHMR. A suspension is in effect until an investigation, hearing, or trial is concluded and TXMHMR can make a determination about:

(A) the contractor's future right to contract or subcontract; or

(B) a potential contractor's future right to have TXMHMR consider its offer, bid, proposal, or application.

(c) Scope. For purposes of both suspension of contractual rights and debarment, TXMHMR may impute the conduct of an individual, corporation, partnership, or other association to the contractor, potential contractor, or the responsible component or entity of the contractor or potential contractor with whom the individual, corporation, partnership, or other association is employed or otherwise associated. Even though the underlying conduct may have occurred while an individual, corporation, partnership, or other association was not associated with the contractor or potential contractor, suspension of contractual rights or debarment may be imposed. Remedial actions taken by the responsible officials of the contractor or potential contractor will be considered in determining whether either suspension of contractual rights or debarment is warranted.

(d) Choice of Sanction. Severe violations of the type specified in §409.64 of this title (relating to Causes and Conditions for Debarment) may be the basis for suspension of contract rights or debarment even if there is only a single occurrence. However, isolated and less severe violations of TXMHMR contract provisions do not necessarily lead to suspension and/or debarment. Sanctions for isolated and less severe violations may be found in TXMHMR's rules governing the specific program area in which the violations occurred.

§406.64 Causes for and Conditions of Debarment.

(a) Causes for debarment. The Texas Department of Mental Health and Mental Retardation (TXMHMR) may remove contractual rights from an individual or legal entity for causes including, but not limited to, the following:

(1) being found guilty, pleading guilty, pleading nolo contendere, or receiving a deferred adjudication in a criminal court, relating to:

(A) obtaining, attempting to obtain, or performing a public or private contract or subcontract;

(B) embezzlement, theft, forgery, bribery, falsification or destruction of records, any form of fraud, receipt of stolen property, or any other offense indicating moral turpitude or a lack of business integrity or honesty;

(C) dangerous drugs, controlled substances, or other drug-related offense.

(D) federal antitrust statutes arising from the submission of bids or proposals; or

(E) any physical or sexual abuse or neglect offense;

(2) being debarred from contracting by any unit of the federal government or any unit of a state government.

(3) violating TXMHMR contract provisions including failing to perform according to the terms, conditions, and specifications or within the time limit(s) specified in the TXMHMR contract, including, but not limited to, the following:

(A) failing to abide by applicable federal and state statutes, such as those regarding persons with disabilities and those regarding civil rights,

(B) having a record of failure to perform or of unsatisfactory performance according to the terms of one or more contracts or subcontracts, if that failure or unsatisfactory performance has occurred within five years preceding the determination to debar. Application of this subsection will be made only for actions occurring after the effective date of these rules. Failure to perform and unsatisfactory performance includes, but is not limited to, the following.

(i) failing to correct contract performance deficiencies after receiv-

ing written notice about them from TXMHMR or its authorized agents;

(ii) failing to repay or make and follow through with arrangements satisfactory to the Department to repay identified overpayments or other erroneous payments, or assessed liquidated damages or penalties;

(iii) failing to meet standards that are required for licensure or certification, or that are required by state or federal law, TXMHMR rule, or TXMHMR policy concerning TXMHMR contractors;

(iv) failing to execute amendments required by TXMHMR;

(v) billing for services or merchandise not provided to the client or TXMHMR;

(vi) submitting cost reports containing costs not associated with and/or not covered by the contract or TXMHMR rules and instructions. Intent to increase individual or statewide rates or fees by submission of unallowable costs must be shown for a single cost report, but intent may be inferred when a pattern of submitting cost reports with unallowable costs is shown.

(vii) submitting a false statement or misrepresentation which, if used, may increase individual or statewide rates or fees.

(viii) charging client or patient fees contrary to TXMHMR rules or policy;

(ix) failing to notify and reimburse TXMHMR or its agents for services TXMHMR paid for when the contractor received reimbursement from a liable third party;

(x) failing to disclose or make available, upon demand, to TXMHMR or its representatives (including appropriate federal and state agencies) any records the contractor is required to maintain;

(xi) failing to provide and maintain services within standards required by statute, regulation, or contract; or

(xii) violating the TXMHMR provisions applicable to the contract or any rule or regulation issued by TXMHMR;

(4) submitting an offer, bid, proposal or application that contains a false statement or misrepresentation or omits pertinent facts or documents that are material to the procurement;

(5) engaging in any abusive or neglectful practice that results in or could result in death or injury to the clients served by the contractor, or

(6) violating any of the provisions outlined in §409.055 of Chapter 409, Subchapter C of this title (relating to Grounds for Fraud Referral and Administrative Sanction). For purposes of this subsection, any reference in Chapter 409, Subchapter C to a violation of the Medicaid (Title XIX), Medicare (Title XVIII), or Title XX programs is expanded to include an identical violation within any programs of federal or state governments;

(7) knowingly and willingly using a debarred person or entity as an employee, independent contractor, or agent to perform a contract with TXMHMR.

(b) Conditions of debarment. Individuals, parts of entities, and entities that have been debarred may not:

(1) receive a contract;

(2) be allowed to retain a contract which has been awarded before debarment;

(3) bid or otherwise make offers to receive a contract or subcontract;

(4) participate in TXMHMR programs which do not require the provider to sign a contract or agreement; or

(5) either personally or through a clinic, group, corporation or other association bill to or receive payment from TXMHMR for any services or supplies provided by the debarred entity on or after the effective date of the debarment. Additionally, TXMHMR will not pay for any services ordered, prescribed, or delivered by the debarred entity for TXMHMR recipients after the date of debarment. No costs associated with a debarred entity, including the salary, fringe benefits, overhead, payments to, or any other costs associated with an employee, owner, officer, director, board member, independent contractor, manager, or agent who was debarred may be included in a TXMHMR cost report or any other document which will be used to determine an individual payment rate, a statewide payment rate, or a fee.

(c) Entities that may be debarred. Debarment may be applied against an individual, an entire legal entity, or a specified part of a legal entity.

§406.65. Causes for and Conditions of Suspension.

(a) Causes for suspension. Texas Department of Mental Health and Mental Retardation (TXMHMR) may place a contractor's or potential contractor's contractual rights in suspension whenever TXMHMR finds that there is a reasonable basis to believe that grounds for debarment as specified in §409.64 of this subchapter (relating to Conditions for and Conditions of Debarment) exists. Suspension may be

imposed immediately following TXMHMR's notification to a contractor or potential contractor. In addition, suspension may be imposed on a potential contractor or subcontractor if he has an outstanding indictment or the department has information about an offense that is grounds for debarment.

(b) Conditions of suspension.

(1) TXMHMR may withhold payments, in whole or in part, to the affected contractor during the period of suspension.

(2) TXMHMR may refuse to accept a bid, offer, application, or proposal from, or to award a contract to, the affected potential contractor during the period of suspension.

(3) TXMHMR may cease referrals of additional clients to the suspended entity.

(4) If TXMHMR determines that the underlying reasons for the suspension have been resolved in favor of the contractor, TXMHMR must, if applicable,

(A) pay the withheld payments for any services that may have been provided during the suspension and which meet the terms of an existing contract, and

(B) resume contract payments.

(5) If TXMHMR determines that underlying reasons for the suspension have not been resolved in favor of the contractor, TXMHMR will institute debarment proceedings.

(6) Individuals and entities whose contractual rights have been placed in suspension may not

(A) receive a contract, or

(B) submit an offer, bid, application or proposal for a contract.

(c) Entities that may be suspended. A suspension may be applied against an individual, an entire legal entity, or a specified part of a legal entity.

§406.66. Proof Required for Debarment and Suspension

(a) Causes identified in §406.64(a)(1) of this title (relating to Causes for and Conditions of Debarment) are established by proof of pleading guilty or nolo contendere, or of the issuance of a deferred adjudication of guilt. If an appeal results in a reversal, contractual rights must be restored upon written request, unless another cause for their removal exists.

(b) Causes identified in §409.64(a)(2) of this subchapter (relating to Causes for and Conditions of Debarment) are based entirely upon the other state or federal agency's official notice that the contractor's or potential contractor's rights have been removed.

(c) The existence of all other causes for debarment or suspension must be established by a preponderance of the evidence.

§406.67. Notice Requirements for Debarment and for Suspension

(a) Contractors' Right of Notice and Appeal. Contractors who have been placed in suspension or who have been debarred or who have been notified of proposed debarment have the appeal rights provided in Chapter 409, Subchapter B of this title (relating to Contract Appeals), governing provider appeal processes for adverse actions.

(b) Potential Contractors' Rights of Notice and Appeal. Potential contractors who are placed in suspension or who have been debarred have all the notice and appeal rights provided in Chapter 409, Subchapter B of this title (relating to Contract Appeals), governing provider appeal processes for adverse actions.

(c) Required Content for Notices of Suspension and Debarment. In addition to information required in the notice of adverse actions specified in Chapter 409, Subchapter B (relating to Contract Appeals), notices must include the following, when applicable:

(1) the grounds for the action (if an indictment or information is pending or has been returned, the nature of the irregularities is described in general terms without disclosing evidence);

(2) the length of the suspension or debarment,

(3) a statement explaining the effect of the suspension or debarment, and

(4) a statement of whether the suspension or debarment is in effect throughout TXMHMR.

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 June 13, 1994

TRD-9442254

Ann K Utley
Chairman
Texas Mental Health and
Mental Retardation
Board

Earliest possible date of adoption July 18, 1994

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

Subchapter C. Vendor Payments

• 25 TAC §§406.101-406.107

The Texas Department of Mental Health and Mental Retardation proposes new §§406.101-406.107, concerning vendor payments.

The provisions of the new subchapter concern vendor payments for the ICF/MR program in Texas. The proposed rules are substantially the same as rules of the Texas Department of Human Services (TDHS) contained in §§27.301, 27.303, 27.305, 27.307, and 27.309, and §§69.286 and 69.288, governing the same matters.

The primary difference between the two documents is that agency names have been modified to reflect the changing responsibilities as ICF/MR state operating agency functions are transferred from TDHS to TXMHMR. This transfer is enacted under the authority of the Health and Human Services Commission as the Medicaid single state agency pursuant to House Bill 7 of the 72nd Texas Legislature and the Medicaid State Plan. References to other sections and subchapters throughout the sections have been modified, where appropriate.

Leilani Rose, director, Financial Services Department, has determined that the sections as proposed are substantially the same as those currently utilized by the Texas Department of Human Services. Therefore, Ms. Leilani has determined that for each year of the first five-year period the sections as proposed are in effect there will be no significant fiscal impact on state or local government as a result of enforcing the sections as proposed. There is no anticipated local economic impact.

Ernest McKenney, director, Medicaid Administration, has determined that the public benefit is the adoption of rules that will enable the department, as the mental retardation authority for the state, to assume policymaking responsibility for ICF/MR policy. There will be no effect on small businesses. There is no significant economic cost to persons who are required to comply with the rules as proposed.

A public hearing to accept testimony concerning the proposal of Chapter 406, Subchapter C and other proposed new subchapters concerning the ICF/MR program is scheduled for 1:30 p.m., Thursday, July 7, 1994, in the auditorium of the Central Office of TXMHMR at 909 West 45th Street, Austin. Individuals requiring an interpreter for the hearing impaired should contact Linda Logan, director, Policy Development, at least 72 hours prior to the hearing.

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

The new sections are proposed under the Health and Safety Code, Title 7, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which

provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposed new sections would affect Texas Civil Statutes, Article 4413(502), §16

§406.101. Eligibility Period for Vendor Payments

(a) The department or its authorized agent makes vendor payments only for periods of time in which all of the following conditions are met

(1) the Texas Department of Mental Health and Mental Retardation (TXMHMR) has approved the facility's application to participate in the Title XIX Texas Medical Assistance Program;

(2) the Texas Department of Human Services (TDHS) has licensed, if applicable, and certified the facility for operation,

(3) the facility has a signed contract with TXMHMR to provide services to eligible Title XIX recipients, and

(4) TDHS has determined that the facility is in compliance with federal and state standards for participation

(b) TDHS determines the effective date of eligibility for participation

§406.102 Applied Income and the Daily Reimbursement Rate

(a) The department calculates the daily reimbursement rate for each Title XIX client by

(1) multiplying the established daily rate for the individual's level of care (LOC) times the number of days in the month,

(2) subtracting the individual's applied income for the month, and

(3) dividing the result by the number of days in the month

(b) The department does not reimburse a facility for an individual's care unless the individual has a valid LOC that matches the LOC classification of the facility or of the distinct part of the facility in which the individual resides

(c) The facility is entitled to collect from the individual only the monthly amount of applied income specified on the individual's payment plan.

(d) When an individual's payment plan requires correction or revision, the facility contacts the department to request a plan change. The facility must not collect an increased amount of applied income from the individual unless and until the department changes the payment plan

(e) If an individual does not have a payment plan, the facility contacts the de-

partment to determine how much applied income the individual must pay. If the department subsequently determines that the individual's correct payment amount is lower than initially specified, the facility must immediately return the amount overpaid and notify the department of the refund

(f) No facility may collect a sum of Medicaid and applied income payments that exceeds the vendor rate. A violation of this requirement is also a violation of Public Law 95-142, which makes solicitation of supplementation a felony punishable by a fine of up to \$25,000 or imprisonment for up to five years or both. Texas Department of Human Services regional staff must report all apparent violations of this requirement. If an investigation verifies an apparent violation, the department is entitled to withhold vendor payments, terminate or suspend the contract, take other contract actions, and/or refer the matter to a court of law

§406.103 Special Provisions Regarding Reduced, Denied, and Incorrect Vendor Payments

(a) If the department or its agent inadvertently makes vendor payments for services performed during a period in which a facility is not participating in the Title XIX Texas Medical Assistance Program, the facility must refund the inadvertent payments to the department

(b) Providers of Title XIX services must not charge or penalize Medicaid clients, their family members, or their representatives for any claim that the department denies or reduces as a result of the provider's failure to comply with the department rules, regulations, or procedures

§406.104 Full Payment and Contributions

(a) Participating providers must accept as payment in full the amounts paid under the department fee structure for ICF/MR services

(b) Each facility must inform its Medicaid clients and their families in writing that their right to ICF/MR services is not contingent on contributions. The facility must give written notice of this policy to each client and to each client's family representative or other responsible party.

(c) If a client, family member, or guardian makes a free-will contribution to a facility, the facility must execute a dated statement for signature by both the contributor and the facility's administrator. The statement must specify that the facility's services are not predicated on contributions and the donor's gift is a free-will contribution

§406.105 Compliance Audits.

(a) The department or its authorized agent periodically audits all Intermediate Care Facilities for the Mentally Retarded (ICF/MR). The department notifies each facility of the department's audit plans and gives each facility a report of its final audit findings. If the department discovers discrepancies in a facility's vendor payment records during an audit, the Nursing Home Billing Services Section of Texas Department of Human Services' Provider Services Division works with the facility to reconcile the discrepancies. If the department's audit findings show that refunds are due to clients or their responsible parties, the department staff help the facility to reconcile the findings. On receipt of an audit exception, the facility must provide additional documentation, reach a final agreement with the department, make restitution within 60 days, or request a hearing within ten days

(b) If a facility does not pay the amount of a refund owed to a client within 60 days, the department may immediately withhold funds from the facility without advance notice. The department releases these funds when the facility documents that it has refunded the proper amount to the individual or responsible party

(c) At the department's discretion, the department may require a facility to release to the department the amount of a refund owed to a client, plus the department's anticipated handling costs including personnel costs. The department then makes the refund to the individual or responsible party

§406.106 Computing Interest on Unpaid Audit Charges

(a) The department charges interest on all unpaid debts related to audits. Interest is computed pursuant to Texas Civil Statutes, Article 5069-1.05 on the unpaid balance due on a simple interest basis.

(b) If the recoupment amount is not paid in full within 30 days of receiving the demand letter, interest begins to accrue on the 31st day and continues to accrue during any appeal process.

(c) Interest accrues during any administrative appeal process that extends beyond the thirty-first day of receiving the demand letter. If the appeal is found in the appellant's favor, the interest that accrued against the portion of the exception found in his favor is dismissed. The department collects the interest on any other exception still owed

(d) The department charges and collects interest on installment payments.

§406.107. Audit Appeals Process.

(a) To request an audit appeal, the contractor must file a written request for a hearing according to Chapter 409, Subchapter B.

(b) If the contractor rejects a settlement offer from the department, the department may demand the entire amount of the exception.

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 June 13, 1994.

TRD-9442253
Ann K. Utley
Chairman
Texas Mental Health and
Mental Retardation
Board

Earliest possible date of adoption. July 18, 1994

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

Subchapter D. Reimbursement Methodology

• 25 TAC §§406.151-406.160

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§406.151-406.160 of new Chapter 406, Subchapter D governing reimbursement methodology

The provisions of the subchapter concern provisions regarding reimbursement methodology for the ICF/MR program in Texas. The proposed rules are substantially the same as rules of the Texas Department of Human Services (TDHS) contained in §§27.401, 27.403, 27.405, 27.407, 27.409, 27.411, 27.413, 27.415, 27.419, and 27.421, governing the same matters.

The primary difference between the two documents is that agency names have been modified to reflect the changing responsibilities as ICF/MR state operating agency functions are transferred from TDHS to TXMHMR. This transfer is enacted under the authority of the Health and Human Services Commission as the Medicaid single state agency pursuant to House Bill 7 of the 72nd Texas Legislature and the Medicaid State Plan. Where appropriate, references are made to "TXMHMR or its authorized agent." References to other sections and subchapters throughout the sections have been modified, where appropriate. In §406.157 (formerly 40 TAC §27.413), concerning rate-setting methodology, the required scores have been revised for the level-of-care assessment form.

Leilani Rose, director, Financial Services Department, has determined that the sections as proposed are substantially the same as those currently utilized by the Texas Department of Human Services. Therefore, Ms. Leilani has determined that for each year of the first five-year period the sections as proposed are in

effect there will be no significant fiscal impact on state or local government as a result of enforcing the sections as proposed. There is no anticipated local economic impact.

Ernest McKenney, director, Medicaid Administration, has determined the public benefit is the adoption of rules that will enable the department, as the mental retardation authority for the state, to assume policymaking responsibility for ICF/MR policy. There will be no effect on small businesses. There is no significant economic cost to persons who are required to comply with the rules as proposed.

A public hearing to accept testimony concerning the proposal of Chapter 406, Subchapter D, and other proposed new subchapters concerning the ICF/MR program is scheduled for 1:30 p.m., Thursday, July 7, 1994, in the auditorium of the Central Office of TXMHMR at 909 West 45th Street, Austin. Individuals requiring an interpreter for the hearing impaired should contact Linda Logan, director, Policy Development, at least 72 hours prior to the hearing.

Written comments on the proposal may be submitted to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication. The sections are proposed under the Health and Safety Code, Title 7, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposed new sections would affect Texas Civil Statutes, Article 4413(502), §16.

§406.151. General Reimbursement Information. The Texas Department of Mental Health and Mental Retardation (TXMHMR) reimburses Texas Medicaid contracted providers for care provided to recipients in intermediate care facilities for the mentally retarded (ICF/MR) receiving ICF/MR I, ICF/MR V, ICF/MR VI, and ICF/MR/RC VIII levels of care. The Texas Board of Human Services determines reimbursement rates that are statewide and uniform by class of service as specified in §409.001 and §409.002 of this title (relating to General Specifications and Methodology).

(1) Uniform rates. Except for demonstration or pilot projects involving experimental classes as specified in §406.157 of this title (relating to Rate Setting Methodology), reimbursement rates are uniform statewide for the same class of service.

(2) Classes of service. Classes of service are based upon the individual's level of care and the facility size category.

§406.152 Cost Reporting Procedures.

(a) Cost reports. Each provider must submit financial and statistical information on cost report forms provided by the Texas Department of Mental Health and Mental Retardation (TXMHMR) or its authorized agent or on facsimiles which are formatted according to TXMHMR's or its authorized agent's specifications and are preapproved by TXMHMR or its authorized agent.

(b) Accounting methods. Except for governmental entities operating on a cash basis, or where otherwise specified in §406.154 and §406.155 of this title (relating to List of Allowable Costs and List of Unallowable Costs), all information submitted on cost reports must be based on the accrual method of accounting.

(c) Chart of accounts. Providers must complete cost reports according to TXMHMR or its authorized agent's prescribed chart of accounts.

(d) Recordkeeping requirements. Each provider must maintain records according to the requirements in Chapter 406, Subchapter G, of this title (relating to Additional Facility Responsibilities). Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and statistical information contained in the cost report.

(e) Noncompliance with recordkeeping and chart of accounts requirements. Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and other statistical information contained in the cost report. Failure to maintain records that support the information submitted on the cost report in a form which is in compliance with TXMHMR or its authorized agent's chart of accounts for long-term care providers constitutes an administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in §406.62(c)(2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF/MR Contractual Agreements).

(f) Allowable and unallowable costs. Providers must complete cost reports according to TXMHMR or its authorized agent's statements of allowable and unallowable costs.

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

(h) Due date. Providers must submit cost reports by either of the following deadlines (whichever is latest):

(1) no later than three months following the end of the provider's fiscal year; or

(2) no later than three months after the date that TXMHMR or its authorized agent mails the cost report to the provider

(i) Extension of due date. TXMHMR may grant extensions of due dates for good cause. A good cause is defined as one that the provider could not reasonably be expected to control. Providers must submit requests for extensions in writing to TXMHMR or its authorized agent before the cost report due date. TXMHMR or its authorized agent must respond to requests for extensions within 10 workdays of their receipt

(j) Cost report supplements. TXMHMR or its authorized agent may at times require additional financial and statistical information to ensure the fiscal integrity of the Texas Medicaid ICF/MR Program. Each provider must submit additional information to TXMHMR or its authorized agent upon request, unless the information is not at the provider's disposal

(k) Failure to file an acceptable cost report. Failure to file an acceptable cost report by the cost report due date constitutes an administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in §406.62 of this title (relating to Sanction Provisions for Violations of Title XIX ICF/MR Contractual Agreements).

(l) Review of cost report. As specified in §409.003 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports) TXMHMR or its authorized agent reviews each cost report to ensure that the financial and statistical information submitted conforms to all applicable rules and instructions. Cost reports not completed according to TXMHMR's instructions or rules are returned to the provider for proper completion

(m) On-site cost report audits. TXMHMR or its authorized agent conducts on-site cost report audits as follows

(1) Number of on-site audits to be performed. TXMHMR or its authorized agent performs a sufficient number of on-site audits each year to ensure the fiscal integrity of the Texas Medicaid Long-Term Care Program. The number of on-site audits performed each year may vary. TXMHMR or its authorized agent arranges on-site audits to ensure that as many on-site audited cost reports as possible are available for use in cost projections

(2) On-site audit standards. TXMHMR or its authorized agent performs on-site cost report audits in a manner con-

sistent with the generally accepted auditing standards (GAAS) approved by the American Institute of Certified Public Accountants and included in Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the United States Comptroller General.

(3) Access to records. Each provider or its designated agent(s) must allow access to any and all records necessary to verify information submitted to TXMHMR or its authorized agent on Medicaid cost reports. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider. Failure to allow inspection of pertinent records within 10 workdays following written notice from TXMHMR or its authorized agent constitutes an administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in §406.62 of this title (relating to Sanction Provisions for Violations of Title XIX ICF/MR Contractual Agreements). If a central office or other entity pertaining to a multi-facility operation refuses access to records, then the penalties are extended to all related parties having Medicaid contracts with TXMHMR. Additional rules regarding access to records that are out of state may be found in Chapter 409, Subchapter A, of this title (relating to General Reimbursement Methodology for Medical Assistance Programs).

(4) Reviews of cost report disallowances. A provider who disagrees with disallowances of items in a cost report may request an informal review and, when necessary, an administrative hearing as specified in §409.007 of this title (relating to Reviews and Administrative Hearings).

(n) Notification of exclusions and adjustments. TXMHMR or its authorized agent notifies providers of exclusions and adjustments to reported expenses made during the department's desk reviews and on-site audits of cost reports, as specified in §409.005 of this title (relating to Notification).

§402.153. Allowable and Unallowable Costs.

(a) General information. TXMHMR defines allowable and unallowable costs in order to identify expenses that are reasonable and necessary when an economical and efficient provider cares for Medicaid recipients. The primary objective of the cost reporting process is to determine fair and reasonable reimbursement rates. To achieve this objective, TXMHMR compiles a rate base consisting, if possible, only of allowable cost information. When TXMHMR classifies a particular type of expense as unallowable for purposes of compiling a rate base, the classification

does not mean that individual providers must not make expenditures of this type. Allowable costs included in the rate base reflect only the costs and maximum reimbursement rates associated with an economical and efficient operator. TXMHMR Medicaid-contracted providers must report costs in accordance with the generally accepted accounting principles (GAAP) of the American Institute of Certified Public Accountants. However, if particular TXMHMR cost reporting requirements conflict with GAAP, with Internal Revenue Service requirements, or with other authorities, the TXMHMR requirements take precedence for Medicaid provider cost reporting purposes.

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

(1) Allowable costs—Those expenses that are reasonable and necessary in the normal conduct of operations relating to recipient care in an ICF/MR. Whenever possible, only allowable costs are included in the rate base.

(A) The word "reasonable" applies 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.

(B) The word "necessary" applies to the relationship of the cost to the provision of care. To qualify as a necessary expense, a cost must be one that is usual and customary in the operation of an ICF/MR, and must meet all of the following requirements.

(i) The expenditure is not for personal or other activities not specifically related to the provision of long-term care.

(ii) The cost does not appear on the list of specific unallowable costs.

(iii) The cost bears a significant relationship to client care. The test of significance in this case is whether there would be an adverse impact on the individual's health, safety, or general well-being if the expenditure were eliminated.

(iv) The expense was incurred in the purchase of materials, supplies, or services provided directly to the recipients or staff of individual ICF/MR in the conduct of normal operations relating to client care.

(v) The costs are not unallowable under other federal, state, or local laws or regulations.

(C) The phrase "normal conduct of operations relating to client care" applies to costs for, but not limited to, the following.

(i) Expenses for facilities, materials, supplies, or services not used by an ICF/MR solely for providing long-term client care. Whenever otherwise allowable costs are attributable partially to personal or other business interests and partially to ICF/MR client care, the latter portion may be allowed on a pro rata basis if the proportion used for ICF/MR client care is well-documented.

(ii) Related-party transactions. Allowable costs are those which result from arm's-length transactions involving unrelated parties. In related-party transactions, the allowable cost to the ICF/MR is the cost to the related party. Allowable costs in this regard are limited either to the actual purchase prices paid by the related party or to the usual and customary charges for comparable goods or services, whichever is less. Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other. This affiliation or association can be based on common ownership, past or present mutual interests in long-term care or other types of enterprises, or family ties.

(2) Unallowable costs—Expenses that are not reasonable or necessary for the provision of client care in an ICF/MR, in accordance with the criteria specified in paragraph (1) of this subsection. Unallowable costs are not included in the rate base used for determining recommended reimbursement rates.

§406.154. List of Allowable Costs The following list of allowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is not an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in §406.153 of this title (relating to Allowable and Unallowable Costs).

(1) Compensation of ICF/MR employees. This allowable cost includes compensation of only those employees who provide services directly to the client or staff of individual ICF/MR in the normal conduct of operations relating to client care: Qualified Mental Retardation Professionals (QMRPs); director of nursing; registered nurses; licensed vocational nurses, trainers, aides, and other salaried direct care staff; medical clerks; food service supervisor;

cooks and other food service personnel; laundry and housekeeping staff; recreational staff; social workers; administrator; assistant administrator; houseparents; accountants and bookkeepers; other clerical and secretarial staff; and buildings, equipment, and grounds maintenance staff. Compensation includes:

(A) wages and salaries,

(B) payroll taxes and insurance, including Federal Insurance Contributions Act (FICA) or social security contributions, unemployment compensation insurance, and workmen's compensation insurance; and

(C) employee benefits, including employer-paid health, life, accident, and disability insurance for employees; uniform allowances and meals provided to employees as part of an employment contract, contributions to an employee retirement fund, and deferred compensation. The allowable portion of deferred compensation is limited to the dollar amount that an employer contributes during a cost reporting period. 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 recipients or staff of individual facilities, and

(iii) must not represent a form of profit sharing.

(2) Compensation of owners, partners, or stockholders, other than the facility administrator or assistant administrator, who provide services directly to the clients or staff of individual facilities. If the owners, partners, or stockholders are involved in other income-earning activities outside the individual facilities, the allowable compensation expense is limited to the pro rata portion of the actual working time spent in the facility.

(3) Compensation of outside consultants. This includes medical director, registered nurse, social worker, pharmacist, audiologist, psychologist, recreational therapist, records librarian, physical therapist, occupational therapist, dentist, speech therapist, psychiatrist, and Qualified Mental Retardation Professional (QMRP).

(4) Management fees paid to unrelated parties.

(5) Management fees paid to related parties, cash management expenses, and other home-office overhead expenses. Cash management expenses, other home-office overhead expenses, and management

fees paid to a related organization must be clearly derived from the actual cost of materials, supplies, or services provided directly to an individual facility. A facility that is owned, operated, or controlled by another individual(s) or organization(s) may report the allowable portion of costs for materials, supplies, and services provided directly to that facility. The allowable portion of such costs to a given facility is limited to those expenses that can be directly attributed to the individual establishment.

(A) In multifacility organizations where the clear separation of costs to individual facilities is not always possible, the allowable portion of actual costs for materials, supplies, and services may be allocated to individual Texas facilities on a pro rata basis. Although the preferred allocation method for these costs is a resident-day-of-service basis, providers who wish to use a pro rata cost basis may do so. Once a provider has chosen an allocation method; however, he must consistently use that method in subsequent cost reports.

(B) In organizations with multiple levels of management, costs incurred at levels above the individual facility in Texas are allowable only if the costs are incurred in the purchase of materials, supplies, or services directly used by facility staff in the conduct of normal operations relating to recipient care. In addition, the facility must furnish adequate documentation to demonstrate that the costs adhere to the following criteria:

(i) Of the functions that Medicare and Medicaid both cover, only those required for participation in Medicaid in Texas and not reimbursed from non-Medicaid sources are allowable.

(ii) The expense does not duplicate other expenses.

(iii) The expense is not incurred for personal or other activities not specifically related to the provision of client care.

(iv) The expense does not exceed the amount that a prudent business operator seeking to contain costs would incur.

(C) Adequate documentation consists of all materials necessary to demonstrate the relationship of personnel, supplies, and services to the provision of client care. These materials may include, but are not limited to, accounting records, invoices, organizational charts, functional job descriptions, other written statements, and direct interviews with staff, as deemed necessary by auditors of TXMHMR or its authorized agent to perform required tests.

of allowability. During the course of an audit, the facility must furnish any reasonable documentation requested by TXMHMR or its authorized agent's auditors within 30 calendar days of the request. If the provider does not present the requested material within 30 days or during the course of the audit, whichever is longer, the audit is closed and TXMHMR or its authorized agent's automatically disallows the costs in question.

(D) Expenses for private aircraft are allowable only if:

(i) all criteria in subparagraphs (B) and (C) of this paragraph are satisfied;

(ii) flight logs are maintained, including dates, mileage, passenger lists, and destinations, to demonstrate that trips are related to client care in Texas; and

(iii) the provider furnishes documentation demonstrating that the expenses for travel via private aircraft are not greater than those for commercial alternatives.

(6) Utilization review committee This includes professional fees.

(7) Materials and supplies This includes food and nonalcoholic beverages, dietary supplements; food service supplies; cooking utensils; laundry and housekeeping supplies; office supplies; and materials and supplies for the operation, maintenance, and repair of buildings, grounds, and equipment.

(8) Utilities. This includes electricity, natural gas, fuel oil, water, waste water, garbage collection, telephone, and telegraph

(9) Buildings, equipment, and capital expenses. It is generally expected that buildings, equipment, and capital are used by an ICF/MR solely in the course of normal operations in the provision of client care, and not for personal business. Whenever this is not the case, the portion of the costs relating directly to the provision of ICF/MR client care may be allowed on a pro rata basis, if the proportion of use for recipient care is documented

(A) Depreciation and amortization expense. Property owned by the provider and improvements to owned, leased, or rented ICF/MR property 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%. Since rates are uniform by class of service, all buildings are uniformly depreciated on a

30-year-life basis regardless of the actual date of construction or purchase. In other words, allowable depreciation is calculated by deducting 10% from the allowable historical basis of the asset and dividing the remainder by 30. Exceptions to this rule are permissible when providers choose a useful-life basis in excess of 30 years.

(ii) building equipment; buildings and grounds improvements and repairs; durable medical equipment, furniture, and appliances; and power equipment and tools used for buildings and grounds maintenance; minimum schedules consistent with Estimated Useful Lives of Depreciable Hospital Assets, published by the American Hospital Association.

(iii) transportation equipment used for the transport of individuals residing in the ICF/MR, or materials and supplies utilized by the ICF/MR: a minimum of three years for passenger automobiles; five years for light trucks and vans; and seven years for buses with a minimum salvage value of 10%.

(B) Provider-owned property. Property owned by the provider 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.

(C) Rental and lease expense Rental and lease expense paid to a related party is limited to the actual allowable cost incurred by the related party. This includes buildings, building equipment, transportation equipment used for the transport of individuals residing in the ICF/MR, or materials and supplies utilized by the ICF/MR, durable medical equipment, furniture and appliances, and power equipment and tools used for buildings and grounds maintenance.

(D) Interest expense.

(i) Interest expenses are allowable on loans for the acquisition of allowable items, subject to all of the requirements for allowable costs plus two additional requirements.

(I) the loan must be evidenced in writing; and

(II) the loan must be made in the name of the provider entity as maker or co-maker of the note

(ii) Interest expenses on related-party loans are limited to the lesser of

(I) the cost to the provider entity, which is the cost to the related party; or

(II) the prevailing national average prime interest rate during the year in which the loan contract was finalized, as reported by the U.S. Department of Commerce, Bureau of Economic Analysis, in the Survey of Current Business and the Business Conditions Digest.

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

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

(10) Contract services by outside vendors. This includes daily direct care services, food service, laundry and linen service, housekeeping service, and professional services such as those of accountants and attorneys.

(11) Business and professional association dues This cost is limited to associations devoted primarily to issues of client care.

(12) Outside training costs. These costs are limited to direct costs of transportation, meals, lodging, and registration fees for training personnel who render services directly to the clients or staff of individual facilities To qualify as an allowable cost, the training must:

(A) take place in the continental United States, and

(B) be related directly and primarily to recipient care.

(13) Expenses for pre-vocational training When these services are provided jointly to a variety of individuals in such a way that they may be classified as prevocational training or active treatment for some individuals and as vocational training for others, the allowable portion of the expenses is the portion that qualifies as active treatment. The allowable portion must be determined on a pro rata resident-day-of-service basis. It includes the cost of buildings, utilities, supplies, and staff utilized in the provision of such services.

§406.155. List of Unallowable Costs. The following list of unallowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does

not necessarily mean that it is an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in §406.153 of this title (relating to Allowable and Unallowable Costs).

- (1) vocational training expenses;
- (2) expenses for educational services;

(A) educational services are unallowable if they are:

(i) provided in the buildings, rooms, or areas designated or used as a school or educational facility;

(ii) included in the individualized education plans (IEPs) of the individuals receiving them, or required by federal and state educational statutes and regulations; and

(iii) provided to students under 22 years of age.

(B) When the services are provided jointly to a variety of individuals and may be classified differently depending upon the characteristics of individuals, the allowable portion of the pertinent expenses must be determined on a pro rata resident-day-of-service basis as specified in §406.154(13) of this title (relating to List of Allowable Costs).

(3) compensation in the form of salaries, benefits, or any form of perquisite provided to owners, partners, officers, directors, stockholders, employees, or others who do not provide client-care-related services directly to the clients or staff of individual facilities;

(4) personal expenses not directly related to the provision of client care in an ICF/MR;

(5) forms of compensation that are not clearly enumerated as to dollar amount or which represent profit distributions;

(6) management fees paid to a related organization that are not clearly derived from the actual costs of materials, supplies, or services provided directly to an individual facility;

(7) advertising expenses except for yellow pages advertising, advertising to recruit employees, and advertising to meet statutory or regulatory requirements;

(8) business expenses not directly related to the care of individuals in an ICF/MR. This includes business investment activities, stockholder and public relations activities, and farm and ranch operations;

(9) political contributions;

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

(11) trade discounts of all types;

(12) donated facilities, materials, supplies, and services;

(13) dues to all types of political and social organizations and to professional associations not directly and primarily concerned with client care;

(14) entertainment expenses except those incurred for entertainment provided to the staff of an ICF/MR as an employee benefit;

(15) expenses for medical services not provided to Medicaid clients;

(16) expenses incurred for services provided in an ICF/MR but not related to client care. This includes meals not provided to clients or to ICF/MR employees as part of an employment contract, nonmedical rentals, barber and beauty shop operations, canteens and gift shops, and vending machines;

(17) boards of directors fees;

(18) fines and penalties for violations of regulations, statutes, or ordinances of any type;

(19) fund raising and promotional expenses;

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

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

(22) insurance premiums pertaining to items of unallowable cost;

(23) accrued expenses that are not legal obligations 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;

(24) planning and evaluation expenses for the purchase of depreciable assets, except where purchases are actually made and the assets are put into service in the provision of client care;

(25) motor vehicles that are not generally suited or are not commonly used to transport clients or facility supplies. This includes motor homes and recreational vehicles; sports and luxury automobiles; motor-

cycles; heavy trucks, tractors, and equipment used in farming, ranching, and construction; and other activities unrelated to the provision of client care;

(26) values assigned to the services of unpaid workers and volunteers;

(27) returns, allowances, and refunds;

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

(29) out-of-state travel expenses, except for provision of client-care-related services to ICF/MR personnel including training and quality assurance functions;

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

(31) any expense incurred because of imprudent business practices;

(32) expenses which cannot be adequately documented;

(33) any expense not allowable under other pertinent federal, state, or local laws and regulations;

(34) 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;

(35) federal, state, and local income taxes, and all expenses related to preparing and filing income tax forms; and

(36) any expenses, and corresponding revenues, that are reimbursed directly through Medicaid voucher payment systems which are outside of the per diem rate payment system.

§406.156. Cost-Finding Methodology.

(a) Exclusion of and adjustments to certain reported expenses. Providers must eliminate unallowable expenses from the cost report.

(1) TXMHMR or its authorized agent excludes from the rate base any unallowable expenses included in the cost report and makes adjustments to expenses reported by providers to ensure that the rate base reflects costs that:

(A) are reasonable and necessary for the provision of client care,

(B) represent economic and efficient use of resources; and

(C) are consistent with federal and state Medicaid regulations.

(2) When there is reasonable doubt about the accuracy or allowability of a significant part of the information reported, TXMHMR or its authorized agent may eliminate individual cost reports from the rate base. These adjustments include, but are not necessarily limited to, the following:

(A) Revenue offsets. TXMHMR or its authorized agent offsets against reported expenses certain types of nonoperating revenues, after reasonable allowances for overhead costs. Types of revenues offset against costs include: income from beauty and barber shop operations, prior year overpayments, vending machine proceeds, gift shop receipts, and payment for meals by employees and guests. Interest income is used to offset working capital interest expense, not to exceed total interest costs. An exception is interest income from funded depreciation accounts or qualified pension funds, which is not treated as a revenue offset item. For facilities reporting central office overhead expenses, interest income is offset against interest expenses before the allocation of central office costs to individual ICFs/MR.

(B) Fixed capital asset costs. TXMHMR or its authorized agent defines a historical base for fixed capital asset costs, which consists of allowable buildings depreciation, mortgage interest, and buildings rental and lease expense. The initial values constituting the starting point of the historical base are the allowable amounts of fixed capital asset costs as of July 18, 1984, as determined from pertinent cost report data. For newly constructed facilities contracted after July 18, 1984, and for others where historical cost information is not available from TXMHMR or its authorized agent's records, fixed capital asset expenses are based on the historical cost to the first Medicaid provider of record after July 18, 1984. Annual increases in fixed capital asset costs to be included in the rate base are limited consistent with current Medicaid regulations, the Deficit Reduction Act of 1984, and the Consolidated Omnibus Reconciliation Act of 1985 in the following manner.

(i) Increases in building depreciation and rental or lease expense for buildings rented or leased from a related party are allowed when facilities undergo changes in ownership, and are limited to the lesser of:

(I) the current expense reported by the provider; or

(II) the previous allowable expense from the historical base

adjusted by a capital asset inflation index as specified in §409.004 of this title (relating to Determination of Inflation Indices).

(ii) If capital assets have undergone ownership changes since the previous reporting period, an increase in mortgage interest expense included in the rate base is limited to the lesser of:

(I) the actual mortgage interest expense incurred by the new owner of record during the current cost reporting period; or

(II) an amount based on allowable buildings depreciation and an appropriate index of interest rates pertaining to the year of sale. TXMHMR or its authorized agent determines an interest rate index appropriate for this purpose as specified in §409.004 of this title (relating to Determination of Inflation Indices).

(iii) Increases in rental or lease expense on buildings not rented or leased from related parties are limited to the lesser of:

(I) the current expense reported by the provider; or

(II) the allowable expense from the historical base adjusted by a capital asset inflation index as specified in §409.004 of this title (relating to Determination of Inflation Indices).

(C) Limits on other facility and administration costs. To ensure that the results of the cost analyses accurately reflect the costs that an economic and efficient provider must incur, TXMHMR or its authorized agent may place upper limits or caps on expenses for specific line items and categories of line items included in the rate base for the administration and facility cost centers. TXMHMR or its authorized agent sets upper limits at the 90th percentile in the array of all costs per unit of service or total annualized cost, as appropriate, for a specific line item or category of line item, as reported by all contracted facilities, unless otherwise specified. The specific line items and categories of line items that are subject to the 90th percentile cap are:

(i) total buildings and equipment rental or lease expense;

(ii) total other rental or lease expense for transportation, departmental, and other equipment;

(iii) building depreciation;

(iv) building equipment depreciation;

(v) departmental equipment depreciation;

(vi) leasehold improvement amortization;

(vii) other amortization;

(viii) total interest expense;

(ix) total insurance for buildings and equipment;

(x) facility-administrator salary, wages, and/or benefits, with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xi) assistant administrator salary, wages, and/or benefits, with the cap based on an array of nonrelated-party assistant administrator salaries, wages, and/or benefits;

(xii) facility-owner, partner, or stockholder salaries, wages, and/or benefits, (when the owner, partner, or stockholder is not the facility administrator or assistant administrator), with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xiii) other administrative expenses including the cost of professional and facility malpractice insurance, advertising expenses, travel and seminar expenses, association dues, other dues, professional service fees, management consultant fees, interest expense on working capital, management fees, other fees, and miscellaneous office expenses; and

(xiv) total central-office overhead expenses or individual central-office line items. Individual line-item caps are based on an array of all corresponding line items.

(D) Occupancy adjustments. TXMHMR or its authorized agent adjusts the facility and administration costs of providers with occupancy rates below a target occupancy rate. The target occupancy rate is the lower of:

(i) 85%, or

(ii) the overall average occupancy rate by class of provider for contracted beds included in the rate base during the cost reporting periods included in the base.

(E) Cost projections. As specified in §409.004 of this title relating to Determination of Inflation Indices), TXMHMR or its authorized agent projects certain expenses in the rate base to normalize or standardize the reporting period and to account for cost inflation between reporting periods and the period to which the prospective rate applies.

(b) Cost determination by class of provider. "Class of provider" incorporates references to large and small facilities: large facilities are those with more than six Medicaid-contracted beds; small facilities are those with six or fewer Medicaid-contracted beds. For rate determination purposes, TXMHMR or its authorized agent establishes four classes of ICF/MR providers:

- (1) large ICF/MR V, and large ICF/MR VI community-based providers;
- (2) ICF/MR I, small ICF/MR V and small ICF/MR VI community-based providers;
- (3) state schools; and
- (4) ICF/MR VIII community based providers.

(c) Cost determination by cost centers for large ICF/MR V, and large ICF/MR VI community-based providers. TXMHMR or its authorized agent combines adjusted expenses from the rate base into the following cost centers for large ICF/MR V, and large ICF/MR VI community-based providers:

(1) Resident care cost center. The resident care cost center includes all direct resident care expenses: nursing care; and consultant, social service, activity, training, laundry and housekeeping expenses.

(2) All other cost center. This composite cost center combines:

(A) dietary costs, consisting of food, food service, and dietary consultant expenses;

(B) facility costs, consisting of expenses to operate and maintain buildings, equipment, and capital necessary to provide client care; and

(C) administration costs, consisting of administrative salaries, supplies, and interest on working capital loans

(d) Cost determination by cost centers for ICF/MR I, small ICF/MR V, and small ICF/MR VI community-based providers. TXMHMR or its authorized agent combines adjusted expenses from the rate base into the following cost centers for ICF/MR I, small ICF/MR V and small ICF/MR VI community-based providers:

(1) Labor cost center. The labor cost center includes all staff salaries and wages for persons working at the facility, regardless of the function of those staff, central office salaries and wages, and all consultant and contracted expenses.

(2) All other cost center. The all other cost center is comprised of all

expenses not included in the labor cost center.

(e) Cost determination by cost centers for state schools. TXMHMR or its authorized agent combines adjusted expenses from the rate base into the following cost centers for state schools:

(1) Resident care cost center. The resident care cost center includes all direct care expenses: nursing care; and consultant, social service, activity, training, laundry, and housekeeping expenses.

(2) Dietary care cost center. The dietary care cost center includes food, food service, and dietary consultant expenses

(3) Facility cost center. The facility cost center includes expenses to operate and maintain the buildings, equipment, and capital necessary to provide resident care.

(4) Administration cost center. The administration cost center includes administrative salaries, supplies, and interest on working capital loans

(5) Comprehensive medical cost center. The comprehensive medical cost center includes medical expenses for services provided directly to state school residents. Since these services are not provided directly to community-based residents by ICF/MR providers, reimbursement for this cost center is limited to those state schools providing comprehensive medical care.

§406.157. Rate-Setting Methodology.

(a) Classes of providers. Reimbursement rates are determined separately by level of care within each of the four classes of ICF/MR providers.

(b) Classes of service. A separate set of reimbursement rates corresponding to classes of service is determined within each provider class. The classes of service for state schools are ICF/MR I, ICF/MR V, and ICF/MR VI. The classes of service for community-based providers are ICF/MR I, large ICF/MR V facilities, small ICF/MR V facilities, large ICF/MR VI facilities, small ICF/MR VI facilities, and small ICF/MR VIII facilities. Large facilities are those with more than six Medicaid-contracted beds. Small facilities are those with six or fewer Medicaid-contracted beds.

(c) Rate determination. The Texas MHMR Board determines general reimbursement rates for medical assistance programs for Medicaid recipients under the provisions of Chapter 409, Subchapter A, of this title (relating to Reimbursement Methodology). The Texas MHMR Board determines particular reimbursement rates for each class of ICF/MR provider by class of service based on the consideration of the recommendations by TXMHMR staff or

TXMHMR's authorized agent. To develop a separate set of reimbursement rate recommendations for each class of service within each provider class, TXMHMR or its authorized agent applies the following procedures.

(1) For each class of service, a cost component for each cost center is calculated at the adjusted per diem expense corresponding to the provider delivering the median day of service. (In calculating the median day of service, days of service delivered by each provider included in the rate base are summed cumulatively in the order which corresponds to the array of adjusted per diem costs, from lowest to highest.)

(2) The cost component for each cost center is multiplied by an incentive factor, and the resulting rate components are summed by class of service to calculate the recommended total reimbursement rates. The Texas MHMR Board determines the incentive factor based on consideration of staff recommendations and input from interested parties. The incentive factor must not exceed 1.07.

(3) Alternate children's facility reimbursement rates for selected children's facilities are determined as follows, effective January 1, 1992.

(A) Definition of children. When referred to in this section, children are persons under 22 years of age.

(B) Determination of eligibility. To be considered eligible for alternate children's facility reimbursement rates, a facility must be one of the selected facilities listed in clause (i) of this subparagraph and must meet the definition of a large children's facility as defined in clause (ii) of this subparagraph.

(i) Selected facilities. Selected facilities must be one of the following facilities covered by the Royal Thomas v Marlin Johnston lawsuit Settlement Agreement

(I) Ada Wilson Hospital, Vendor Number 3730;

(II) The Children's Center of Austin, Vendor Number 3731;

(III) Thomas Care Center, Vendor Number 3747;

(IV) Human Development Center, Vendor Number 3751; and

(V) Denton Development Center, Vendor Number 3764.

(ii) Definition of children's facility. When referred to in this section, a children's facility is a facility which maintains a census of no less than 85% children and maintains at least seven Medicaid-contracted beds. A selected facility will automatically lose eligibility and be paid under the uniform statewide reimbursement rate when the facility's census falls below 85% children, or when the facility's number of Medicaid-contracted beds falls below seven.

(C) Determination of alternative children's facility rates. An eligible children's facility is reimbursed in the following manner:

(i) Facilities with projected total per diem costs which are less than the total uniform rate for the facility's class of service are reimbursed at that uniform rate.

(ii) Facilities with projected total per diem costs which are greater than the total uniform rate for the facility's class of service, but less than or equal to 110% of that uniform rate, receive their projected total per diem costs multiplied by an incentive factor of 1.03.

(iii) Facilities with projected total per diem costs which are greater than 110% of the total uniform rate for the facility's class of service receive their projected total per diem costs only, with no incentive factor, up to a maximum of 150% of the total uniform rate for the facility's class of service.

(iv) Facilities with projected total per diem costs which are greater than 150% of the total uniform rate for the facility's class of service are reimbursed at 150% of the total uniform rate for that class of service.

(D) Additional supplemental reimbursement. Since provision is made to ensure that reasonable and necessary costs are covered, and an opportunity for an incentive is provided, the selected children's facilities covered by the Royal Thomas v. Marlin Johnston lawsuit Settlement Agreement do not qualify for additional supplemental reimbursement for heavy care clients as determined under subsection (c) of this section.

(d) Experimental class. TXMHMR may define experimental classes of service

to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless the Texas MHMR Board and the Health Care Financing Administration (HCFA) approve the experimental methodology.

(e) Supplemental reimbursement rate determination. The reimbursement rate for community based ICF/MR VI individuals whose needs require a significantly greater than normal amount of care is supplemented on an individual client basis when the appropriate score is indicated for all of the six criteria on the level-of-care assessment form.

(1) The level-of-care assessment form must indicate the client meets the qualifying criteria by having the following scores on all of the items indicated:

Item	Qualifying Score
51	5
53	4
55	3, 4, or 5
56	3, 4 or 5
59	3, 4 or 5
60	4 or 5

(2) The department determines the appropriate amount of supplemental reimbursement in the following manner.

(A) The estimated time required by the class of direct care personnel is derived from appropriate and applicable time studies to determine the delivery cost for the supplemental ICF/MR VI rate. Each time estimate is multiplied by a projected hourly wage rate and by class personnel, including a factor for payroll, taxes and benefit expenses. The employee compensation costs are estimated from Medicaid provider cost reports and wage-and-hour survey data.

(B) The portion of the ICF/MR VI class rate which covers em-

ployee compensation costs for direct care personnel is determined.

(C) The amount of the ICF/MR VI supplemental reimbursement rate is determined by calculating the difference between the amounts in subparagraphs (A) and (B) of this paragraph.

§406.158. ICF/MR/RC VIII Experimental Class.

(a) ICF/MR/RC VIII facility class. The Texas Department of Mental Health and Mental Retardation (TXMHMR) defines as an experimental class community-based facilities that are certified as intermediate care facilities for the mentally retarded/related conditions (ICF/MR/RC VIII) and that have no more than six Medicaid-

contracted beds. Cost reports from facilities in this experimental class will not be included in the cost arrays that are used to determine reimbursement rates for other classes of providers.

(1) Facilities in the ICF/MR/RC VIII class receive per diem rates based on pro forma budgets for operation of facilities in this class. TXMHMR staff develop rates for this class of providers on a pro forma budget because of a lack of cost report information about the cost of client care by this class of provider. TXMHMR staff develop pro forma budgets based on a base rate and supplemental amounts.

(2) The base rate is intended to capture the standard costs of providing care and active treatment in a comparable six-bed facility. The base rate is comprised of

the small facility ICF/MR V rate and estimated additional costs for augmentative communication devices. Augmentative communication devices supplement or augment speech. These devices help an individual carry on a conversation and make basic needs known. These devices include, but are not limited to, personal computers, communication boards, speech synthesizers, and communication software packages. The base rate and supplemental payments were developed in close consultation with staff of the Texas Department of Mental Health and Mental Retardation (TXMHMR) and other professionals experienced in direct service delivery and program monitoring.

(3) The supplemental amounts target specific client characteristics that are known to require additional facility space, equipment, staffing intensity, or professional staff time. Costs for additional facility space or equipment are derived from the median cost reported on the most recently submitted ICF/MR provider fiscal year cost reports. Additional staffing costs are estimated from the most recent ICF/MR wage and hour survey. Wage and hour information is collected at least annually in the ICF/MR provider fiscal year cost report. Wage and hour surveys other than those collected in the cost report may be used. As specified in §409.004 of this title (relating to Determination of Inflation Indices), costs from wage and hour surveys and cost reports are projected from the cost report or wage and hour survey base period to the rate period.

(b) ICF/MR/RC VIII rate determination. The Board of Human Services revises ICF/MR/RC VIII rates at least annually based on anticipated cost increases. The board continues to set rates for this class in this manner until enough Medicaid cost-report data become available to determine rates on the basis of cost reports. The base rate and supplemental rates are uniform statewide rates. Payment rates vary by clients, based on their eligibility for supplemental payments.

(c) Supplemental rate determination. In order to obtain a Level-of-Care VIII assignment, the ICF/MR/RC facility must complete the level-of-care assessment form for every Medicaid client living in the facility. TXMHMR reimbursement rates for the ICF/MR/RC program vary according to the assessed characteristics of each client. Each client is eligible for a base rate. The reimbursement rate for persons whose needs require a significantly greater than normal amount of care is composed of the base rate plus one or more supplemental payment rates. These supplemental payments are determined on an individual basis when criteria are met for selected items on the level-of-care assessment form.

(1) The supplemental rate classification system. The ICF/MR/RC rate structure consists of a base rate and seven

separate supplemental amounts. The base rate is based on the standard costs of providing care and active treatment in a six-bed facility. The supplemental amounts target specific characteristics of certain related conditions that are known to require more facility space or equipment, additional staffing time, or additional professional staff time.

(A) All Medicaid-eligible persons residing in an ICF/MR/RC facility will receive the base rate. Persons who meet specific criteria based on the level-of-care assessment form will be eligible for supplemental payments up to a specified maximum rate. The first supplemental payment will pay the cost of all additional services, space, or equipment. The second and successive supplemental payments will pay only for costs other than direct care costs since the necessary direct care costs have already been factored into the first supplemental payment.

(B) The seven supplemental rate classifications are based on the following criteria on the level-of-care assessment form:

(i) Supplement 514 is applicable when Item 74 = 4 or 5; and Item 53 = 3.

(ii) Supplement 515 is applicable when Item 51 = 4 or 5; and Item 53 = 4 or Item 44 and 45 = 4.

(iii) Supplement 516 is applicable when Item 56 = 4 or 5.

(iv) Supplement 517 is applicable when Item 63 = 4; and Item 64 = 3, 4, or 5.

(v) Supplement 518 is applicable when Item 71 = 4 or 5; or Item 72 = 4 or 5; or Item 73 = 4 or 5; or Item 74 = 4 or 5.

(vi) Supplement 519 is applicable when Item 74 = 7.

(vii) Supplement 520 is applicable when Item 41 = 3.

(2) Supplemental rate determination effective periods. The effective periods of supplemental rate classifications are as follows. A supplemental rate classification and associated per diem rate payment remain in effect until the individual's next required continued-stay review, unless one of the following events takes place:

(A) the individual is discharged and subsequently qualifies for a new admission assessment,

(B) a provider submits an off-cycle assessment as specified in para-

graph 3 of this subsection.

(C) a provider submits an assessment requesting a change in level of care and the Texas Department Of Human Services (TDHS) approves it,

(D) a provider submits an assessment requesting a change in supplemental rate status and TDHS approves it, or

(E) a TXMHMR reviewer revises the level-of-care assessment and rate classification under the provisions of paragraph 4 of this subsection.

(3) Individual assessment. The level-of-care assessment form is completed to determine ICF/MR/RC program eligibility. This assessment establishes the rate payment for which the individual is eligible. The continued-stay review periods are determined as follows:

(A) The preadmission assessment establishes the rate for the individual and sets a continued-stay review period.

(B) A continued stay review assessment establishes a new rate and continued-stay review period for the individual.

(C) If an individual's characteristics change to the extent that he qualifies for a different rate category, the provider may submit an off-cycle assessment. Only two off-cycle assessments for any one individual may be submitted by the facility per year, one for the period from January-June, and one from July-December. An off-cycle assessment establishes a new rate classification only if the individual qualifies for a new supplemental rate category. The assessment sets a new continued-stay review period.

(D) The level-of-care assessment form may be submitted for the purpose of allowing a provider to correct errors previously made in the assessment portion of the forms. This does not change the continued-stay review period or necessarily change the rate. Corrections must be submitted within 60 days from the date of assessment. Requests for changes after the 60 days will not be accepted. Submit a copy of the level of care assessment form containing the error and a new corrected form to TXMHMR, Attention: ICF/MR Program Director, P.O. Box 12668, Austin, Texas, 78711.

(4) Individual assessment reviews.

(A) TXMHMR Staff conduct desk reviews and in-depth, on-site reviews of samples of the level-of-care assessment form completed by providers for the ICF/MR/RC program. TXMHMR staff will, at their discretion, perform as many desk reviews and on-site reviews as needed to ensure the integrity of the ICF/MR/RC program.

(B) When a reviewer identifies an error or an inconsistency on an assessment form, the reviewer will discuss the error with facility staff, and make appropriate corrections. The reviewer will verbally inform the facility staff of any changes that he or she makes to the level of care assessment form. The facility administrator will be notified of the changes by certified mail. If, as a result of the change, there is a reduction in the amount of Medicaid funds due the ICF/MR/RC, TXMHMR shall recoup the funds previously paid to the provider under the incorrect and/or erroneous TXMHMR level-of-care assessment form. Similarly, if any change in the level-of-care assessment form increases the amount of Medicaid funds due the ICF/MR/RC facility, TXMHMR will pay the ICF/MR/RC facility the increase. The change and the associated per diem rate become effective with the "effective date" of the level-of-care assessment form under review. This change is made when the reviewer determines that the level-of-care assessment form is not substantiated and/or does not accurately reflect the recipient's status. Changes remain in effect until a new assessment is submitted as specified in subsection (c)(3) of this section.

(5) Informal reviews and administrative hearings. In order to resolve any differences, a provider who disagrees with the TXMHMR on-site reviews or adjustments must follow the procedures for informal reviews and administrative hearings set forth in this section. Only contracted providers are permitted to file for informal reviews and administrative hearings. Providers may be represented in these reviews and hearings by attorneys who are currently licensed to practice law in Texas.

(A) Informal reviews. A provider who does not agree with decisions regarding the assignment of a client into a particular supplemental payment rate category may request an informal review of the decision. The review is an informal meeting rather than a formal administrative hearing. Within 15 calendar days following notification of the decision, the provider must request a review by writing Texas Department Of Human Services Attention ICF/MR Program Specialist, Mail Code W-519, P.O. Box 149030, Austin, Texas 78714-9030. A request for a review must be

postmarked within 15 days of the notification of the decision. At the earliest possible date for all parties concerned, TDHS will arrange for a review at which the provider may present information supporting his argument with the decisions in question. Staff members from TXMHMR and TDHS will consider the provider's case and render a written decision within 30 days of the review by certified mail, return receipt requested. When necessary, TXMHMR, TDHS, or the provider may request the services of an expert in a specific developmental disability to assist in the informal review.

(B) Administrative hearings. If a provider does not agree with the result of an informal review, the provider may request a formal administrative hearing. The provider must file a written request for a hearing with the Hearings Department, Texas Department Of Human Services, Mail Code E-605, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days after receiving the review panel's decision. A provider may not request an administrative hearing before receiving TDHS's written review decision as specified in subparagraph (A) of this paragraph. The administrative hearing is limited to the issues that were considered in the informal review process. TDHS conducts administrative hearings according to the provisions of 40 TAC §§79.1605-79.1614 (relating to Request for a Hearing, Effective Dates of Adverse Actions, Administrative Law Judge, Hearing Guidelines, Withdrawal of Hearing Request and Informal Disposition, Conduct of Hearings-General Requirements, Prehearing Procedure, Evidence and Depositions, Deliberation, and Decisions). If there is a conflict between the applicable sections of 40 TAC Chapter 79 (relating to Legal Services) and the provisions of this chapter, the provisions of this chapter will prevail.

§406.159. Chart of Accounts for Large Level V and Large Level VI Providers A chart of accounts is a listing of account titles indicating the method of classifying financial and other statistical data in accounting records. Each participating provider must maintain records according to the department's chart of accounts for long-term care providers. The detailed items in the department's chart of accounts are as follows.

(1) Assets.

(A) Current assets.

(i) Cash.

(ii) Cash, individual's trust funds (fiduciary account not to be added to facility asset total).

(iii) Short-term investments.

(iv) Accounts receivable.

(v) Notes and other receivables.

(vi) Inventory.

(vii) Prepaid expenses.

(viii) Other current assets.

(B) Noncurrent assets.

(i) Long-term investments.

(ii) Buildings and equipment.

(iii) Land and land improvements.

(iv) Other tangible assets.

(v) Leasehold improvements: leasehold improvements, accumulated amortization-leasehold improvements.

(vi) Other intangible assets. Pre-opening and other organizational costs, miscellaneous tangible assets, accumulated amortization-other intangible assets.

(vii) Other assets.

(2) Liabilities and capital

(A) Current liabilities.

(i) Accounts payable.

(ii) Accounts payable-individual's trust fund (fiduciary account not to be added to facility liability total).

(iii) Notes payable.

(iv) Salaries, wages, and employee benefits payable.

(v) Payroll taxes and insurance payable.

(I) FICA taxes payable.

(II) Federal income taxes withheld.

(III) Other payroll insurance payable.

(vi) Other taxes payable.

(I) Texas ad valorem taxes payable.

(II) Texas franchise taxes payable.

able.	(III) Other taxes payable.	(D) Other gross revenue.	(III) Medical supplies and nonlegend drugs.
	(B) Other current liabilities.	(i) Gifts, grants, donations, endowments, and trusts.	(IV) Contract or outside services
	(C) Long-term liabilities.	(ii) Room, bed holds, and reservations.	(V) Other expenses.
payable.	(i) Long-term mortgages	(iii) Drugs and medications.	(iii) Noncontracted ICF/MR beds.
able.	(ii) Long-term notes payable.	(iv) Meals: employees and guests.	(I) Salaries and wages: professional staff.
liabilities.	(iii) Other long-term liabilities.	(v) Rentals: medical.	(II) Salaries and wages: other staff.
	(D) Capital.	(vi) Rentals: nonmedical.	(III) Medical supplies and nonlegend drugs.
	(i) Capital: nonprofit organizations or governmental units. Principal fund balance.	(vii) Interest sources.	(IV) Other expenses.
	(ii) Capital: business corporation	(viii) Barber and beauty shop.	(B) Consultant service expense (except dietary).
	(I) Capital stock.	(ix) Vending machines.	(C) Durable medical equipment (DME) expense.
contributed capital.	(II) Additional contributed capital.	(x) Canteen and gift shop.	(i) Purchased DME.
ings.	(III) Retained earnings.	(xi) Social service and activity service.	(ii) Leased DME.
clared.	(IV) Dividends declared.	(xii) Other revenues.	(D) Training expense.
loss).	(V) Net income (or loss).	(E) Adjustments to gross revenue.	(i) Salaries and wages.
or sole proprietorship.	(iii) Capital: partnership or sole proprietorship.	(i) Allowance for uncollectibles-Medicaid.	(ii) Supplies.
	(I) Capital.	(ii) Other adjustments to gross revenue.	(iii) Contract or outside services
	(II) Net income (or loss).	(4) Expense accounts.	(iv) Other expenses.
	(III) Drawings.	(A) Routine daily service expense.	(E) Social services expense.
(3) Revenue accounts.		(i) ICF/MR VI contracted beds.	(i) Salaries and wages.
beds.	(A) ICF/MR VI contracted beds.	(I) Salaries and wages: professional staff.	(ii) Supplies.
	(i) ICF/MR VI-Medicaid	(II) Salaries and wages: other staff.	(iii) Contract or outside services.
	(ii) Other clients.	(III) Medical supplies and nonlegend drugs.	(iv) Other expenses.
beds.	(B) ICF/MR V contracted beds.	(IV) Contract or outside services	(F) Activity service expense.
	(i) ICF/MR V-Medicaid	(V) Other expenses.	(i) Salaries and wages.
	(ii) Other clients.	(ii) ICF/MR V contracted beds.	(ii) Supplies.
	(C) Noncontracted ICF/MR beds (all other clients).	(I) Salaries and wages: professional staff.	(iii) Contract or outside services.
		(II) Salaries and wages: other staff.	(iv) Other expenses.
			(G) Laundry, linen, and housekeeping expense.
			(i) Salaries and wages.

- (ii) Supplies.
- (iii) Contract or outside services.
- (iv) Linen and bedding.
- (v) Other expenses.

(H) Dietary expense.

- (i) Salaries and wages supervisory and professional staff.
- (ii) Salaries and wages chefs, cooks, and other food service staff.
- (iii) Food.
- (iv) Supplies (dishes, flatware, napkins, utensils).
- (v) Consultant service. dietician/nutritionist
- (vi) Contract or outside services.
- (vii) Other services.

(I) Operation and maintenance expense.

- (i) Salaries and wages
- (ii) Gas, electricity, water, and wastewater.
- (iii) Telephone and telegraph.
- (iv) Garbage disposal.
- (v) Supplies
- (vi) Maintenance and repairs buildings, building equipment, and grounds.
- (vii) Maintenance and repairs transportation equipment
- (viii) Maintenance and repairs departmental equipment.
- (ix) Gasoline and oil.
- (x) Pest control service
- (xi) Security service.
- (xii) Contract or outside services.
- (xiii) Other expenses

(J) Buildings, equipment, and other capital expense

- (i) Current year assessed valuation of property from local tax district.
- (ii) Cost to acquire the facility by the present owner.
- (iii) Rental or lease expense building and fixed equipment.
- (iv) Rental or lease expense transportation equipment

(v) Rental or lease expense: other equipment.

(vi) Depreciation: building.

(vii) Depreciation: building equipment.

(viii) Depreciation: land improvements.

(ix) Depreciation: departmental equipment.

(x) Depreciation: transportation equipment.

(xi) Amortization: leasehold improvements.

(xii) Amortization pre-opening and other organization expense

(xiii) Amortization: other.

(xiv) Interest: mortgage loans

(xv) Interest: working capital loans

(xvi) Interest other

(xvii) Taxes ad valorem

(xviii) Taxes Texas corporate franchise.

(xix) Taxes other.

(xx) Insurance: building, contents, and grounds.

(xxi) Insurance: transportation expense

(xxii) Insurance other

(K) General administrative expense

(i) Salaries and wages administrator

(ii) Employee benefits administrator.

(iii) Salaries and wages assistant administrator

(iv) Employee benefits assistant administrator

(v) Salaries and wages: owner, partners, or stockholders (if not administrator or assistant administrator)

(vi) Employee benefits owner, partners, or stockholder (if not administrator or assistant administrator)

(vii) Salaries and wages professional administrative staff

(viii) Salaries and wages clerical and secretarial staff

(ix) Insurance professional and facility malpractice

(x) Insurance: other

(xi) Advertising.

(xii) Travel and seminars.

(xiii) Dues: Associations which represent the interests of Medicaid facilities in Texas.

(xiv) Dues: other.

(xv) Fees: professional services.

(xvi) Fees: other.

(xvii) Miscellaneous office expense.

(xviii) Central office overhead

(I) Salaries and wages

(II) Payroll taxes.

(III) Employee benefits

(IV) Advertising

(V) Travel and seminars

(VI) Dues: association

(VII) Dues: other.

(VIII) Fees: professional services

(IX) Fees: other

(X) Miscellaneous office expense

(XI) Rental or lease expense.

(XII) Depreciation and amortization expense

(XIII) Interest expense.

(XIV) Taxes: ad valorem.

(XV) Taxes: Texas corporate franchise.

(XVI) Taxes: other.

(XVII) Insurance expenses

(XVIII) Operation and maintenance expense.

(XIX) Other.

(L) Facility payroll tax and employee benefit expense.

(i) FICA contributions: all facility employees.

(ii) Unemployment insurance: all facility employees.

(iii) Worker's compensation insurance: all facility employees.

(iv) Employee benefits: all facility employees except administrator, assistant administrator, owner, partner, or stockholder (if not administrator or assistant administrator).

(5) Purchases of services, facilities, and supplies from related organizations.

(A) Purchases of facilities and supplies from related parties.

(i) Price paid by facility.

(ii) Cost to related organization.

(B) Purchases of services from related parties.

(i) Price paid by facility.

(ii) Prevailing price in area for same service.

(C) Loans from related parties.

(i) Principal payments during reporting period.

(ii) Remaining liability at end of reporting period.

(iii) Interest expense during reporting period.

(6) Other statistical accounts.

(A) Fixed assets land—number of acres.

(B) ICF/MR VI contracted beds—Resident days of service provided.

(i) ICF/MR VI—Medicaid.

(ii) Other clients.

(C) ICF/MR V contracted beds—Resident days of service provided.

(i) ICF/MR V—Medicaid.

(ii) Other clients.

§406.160. Chart of Accounts for Level I Providers, Small Level V and Small Level VI Providers, and Level VIII Providers. A chart of accounts is a listing of account titles indicating the method of classifying financial and other statistical data in accounting records. Each participating provider must maintain records according to the department's chart of accounts for long-term care providers. The detailed items in the department's chart of accounts for the providers identified above are as follows.

(1) Assets.

(A) Current assets.

(i) Cash.

(ii) Cash; individual's trust funds (fiduciary account not to be added to facility asset total).

(iii) Short-term investments.

(iv) Accounts receivable.

(v) Notes and other receivables.

(vi) Inventory.

(vii) Prepaid expenses.

(viii) Other current assets.

(B) Noncurrent assets.

(i) Long-term investments.

(ii) Buildings and equipment.

(iii) Land and land improvements.

(iv) Other tangible assets.

(v) Leasehold improvements: leasehold improvements, accumulated amortization—leasehold improvements.

(vi) Other intangible assets: Pre-opening and other organizational costs, miscellaneous tangible assets, accumulated amortization—other intangible assets.

(vii) Other assets.

(2) Liabilities and capital.

(A) Current liabilities.

(i) Accounts payable.

(ii) Accounts payable—individual's trust funds (fiduciary account not to be added to facility liability total).

(iii) Notes payable.

(iv) Salaries, wages, and employee benefits payable.

(v) Payroll taxes and insurance payable.

(I) FICA taxes payable.

(II) Federal income taxes withheld.

(III) Other payroll insurance payable.

(vi) Other taxes payable.

(I) Texas ad valorem taxes payable.

(II) Texas franchise taxes payable.

(III) Other taxes payable.

(B) Other current liabilities.

(C) Long-term liabilities.

(i) Long-term mortgages payable.

(ii) Long-term notes payable.

(iii) Other long-term liabilities.

(D) Capital.

(i) Capital: nonprofit organizations or governmental units. Principal fund balance.

(ii) Capital: business corporation

(I) Capital stock.

(II) Additional contributed capital.

(III) Retained earnings.

(IV) Dividends declared.

(V) Net income (or loss).

(iii) Capital: partnership or sole proprietorship.

- (I) Capital.
- (II) Net income (or loss).
- (III) Drawings.
- (3) Revenue accounts.
 - (A) ICF/MR contracted beds.
 - (i) Medicaid.
 - (ii) Other clients.
 - (B) Noncontracted ICF/MR beds (all other clients).
 - (C) Other gross revenue.
 - (i) Gifts, grants, donations, endowments, and trusts.
 - (ii) Room bed holds and reservations.
 - (iii) Meals: employees and guests.
 - (iv) Rental or lease: DME.
 - (v) Interest sources.
 - (vi) Miscellaneous.
 - (vii) Prior year overpayments, life insurance proceeds, etc.
 - (D) Adjustments to gross revenue.
 - (i) Allowance for uncollectibles—Medicaid.
 - (ii) Other adjustments to gross revenue.
 - (4) Expense accounts.
 - (A) Staff salaries and wages.
 - (i) Professional staff.
 - (ii) Other staff.
 - (iii) Central office staff.
 - (B) Consultant and contracted expenses.
 - (i) Outside consultant fees.
 - (ii) Contracted expenses.
 - (C) Payroll tax and employee benefit expense: all facility employees.
 - (i) FICA contributions.
 - (ii) Unemployment insurance.
 - (iii) Worker's compensation insurance.
 - (iv) Alternate employee injury insurance.
 - (D) Employee benefits.
 - (i) Health insurance.
 - (ii) Life insurance.
 - (iii) Bonuses, retirement contributions, etc.: available only to administrator, C.E.O., assistant administrator, owners, partners, or stockholders.
 - (iv) Bonuses, retirement contributions, etc.: available to employees other than administrator, C.E.O., assistant administrator, owners, partners, or stockholders.
 - (E) Supplies expenses.
 - (i) Medical supplies and nonlegend drugs.
 - (ii) Hepatitis B vaccine (for staff).
 - (iii) Food.
 - (iv) Special dietary supplements/supplies.
 - (v) Linen and bedding.
 - (vi) Training supplies and materials.
 - (vii) Office supplies.
 - (viii) Miscellaneous supplies.
 - (F) Activities and recreational expenses.
 - (G) Durable medical equipment.
 - (i) Purchased DME.
 - (ii) Leased DME.
 - (H) Buildings, equipment, and other capital expense.
 - (i) Current year assessed valuation of property from local tax district.
 - (ii) Cost to acquire the facility by the present owner.
 - (iii) Rental or lease expense: building and fixed equipment.
 - (iv) Rental or lease expense: transportation equipment.
 - (v) Rental or lease expense: household equipment.
 - (vi) Rental or lease expense: other equipment.
 - (vii) Depreciation: building equipment.
 - (viii) Depreciation: building equipment.
 - (ix) Depreciation: land improvements.
 - (x) Depreciation: departmental equipment.
 - (xi) Depreciation: transportation equipment.
 - (xii) Amortization: leasehold improvements.
 - (xiii) Amortization: pre-opening and other organization expense.
 - (xiv) Amortization: other.
 - (xv) Interest: mortgage loans.
 - (xvi) Interest: working capital loans.
 - (xvii) Interest: other.
 - (xviii) Taxes: ad valorem.
 - (xix) Taxes: Texas corporate franchise.
 - (xx) Taxes: other.
 - (xxi) Insurance: building, contents, and grounds.
 - (xxii) Insurance: transportation expense.
 - (xxiii) Insurance: other.
 - (I) Miscellaneous expenses.
 - (i) Travel and seminar expense.
 - (ii) Association and other dues.
 - (iii) Advertising expense.
 - (iv) Maintenance and repairs: buildings, building equipment, and grounds.
 - (v) Maintenance and repairs: household equipment.
 - (vi) Maintenance and repairs: transportation equipment.
 - (vii) Gasoline and oil: motor vehicles.
 - (viii) Miscellaneous.
 - (J) Central office overhead expenses.
 - (i) Advertising.
 - (ii) Travel and seminars.
 - (iii) Dues: association.
 - (iv) Dues: other.
 - (v) Miscellaneous office expense.

(vi) Rental or lease expense.

(vii) Depreciation and amortization expense.

(viii) Interest expense.

(ix) Taxes: ad valorem

(x) Taxes: Texas corporate franchise

(xi) Taxes other.

(xii) Insurance expenses

(xiii) Operation and maintenance expense.

(xiv) Other

(5) Purchases of services, facilities, and supplies from related organizations

(A) Purchases of facilities and supplies from related parties.

(i) Price paid by facility.

(ii) Cost to related organization

(B) Purchases of services from related parties

(i) Price paid by facility

(ii) Prevailing price in area for same service

(C) Loans from related parties

(i) Principal payments during reporting period

(ii) Remaining liability at end of reporting period

(iii) Interest expense during reporting period.

(6) Other statistical accounts

(A) Fixed assets, land-number of acres

(B) ICF/MR contracted beds-resident days of service provided

(i) ICF/MR-Medicaid

(ii) Other clients

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 June 13, 1994

TRD-9442252

Ann K Utley
Chairman
Texas Mental Health and
Mental Retardation
Board

Earliest possible date of adoption July 18, 1994

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

Subchapter E. Eligibility and Review

• 25 TAC §§406.201-406.217

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§405.201-406.217, concerning eligibility and review

The provisions of the new subchapter concern eligibility and review requirements for the ICF/MR program in Texas. The proposed rules are substantially the same as rules of the Texas Department of Human Services (TDHS) contained in §§27.501, 27.503, 27.505, 27.507, 27.509, 27.511, 27.513, 27.515, 27.517, 27.518, 27.519, 27.521, 27.523, 27.525, 27.527, 27.529, and 27.531 governing the same matters

The primary difference between the two documents is that agency names have been modified to reflect the changing responsibilities as ICF/MR state operating agency functions are transferred from TDHS to TXMHMR. This transfer is enacted under the authority of the Health and Human Services Commission as the Medicaid single state agency pursuant to House Bill 7 of the 72nd Texas Legislature and the Medicaid State Plan. Other differences include language that has been revised in §406.202 (formerly 40 TAC §27.503) concerning definitions for level-of-care criteria to specify that adaptive behavior levels are to be determined based on codes outlined on the level-of-care assessment form instead, several terms and definitions have been omitted from §406.202 (formerly 40 TAC §27.503) including "ambulatory," "mobile nonambulatory," and "nonmobile," the definition of "mental retardation" is revised to reflect current TXMHMR usage, language throughout the sections has been revised to reflect TXMHMR's adherence to the principle of people-first language.

Leilani Rose, director, Financial Services Department, has determined that the sections as proposed are substantially the same as those currently utilized by the Texas Department of Human Services. Therefore, Ms. Leilani has determined that for each year of the first five-year period the sections as proposed are in effect there will be no significant fiscal impact on state or local government as a result of enforcing the sections as proposed. There is no anticipated local economic impact.

Ernest McKenney, director, Medicaid Administration, has determined the public benefit is the adoption of rules that will enable the department, as the mental retardation authority for the state, to assume policymaking responsibility for ICF/MR policy. There will be no effect on small businesses. There is no significant economic cost to persons who are required to comply with the rules as proposed.

A public hearing to accept testimony concerning the proposal of Chapter 406, Subchapter E and other proposed new subchapters concerning the ICF/MR program is scheduled for 1:30 p.m., Thursday, July 7, 1994, in the

auditorium of the Central Office of TXMHMR at 909 West 45th Street, Austin. Individuals requiring an interpreter for the hearing impaired should contact Linda Logan, director, Policy Development, at least 72 hours prior to the hearing.

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

The sections are proposed under the Health and Safety Code, Title 7, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposed new sections would affect Texas Civil Statutes, Article 4413(502), §16

§406.201 Purpose The rules in this subchapter state the requirements for an assignment of a level of care in the Intermediate Care Facility for Mentally Retarded (ICF/MR) program. These criteria are used in determining a level of care for individuals who apply for admission to the ICF/MR Program and in the redetermining of a level of care during the continued-stay review.

§406.202 Definitions for Level-of-care Criteria The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Active treatment—Continuous aggressive, consistent implementation of a program of habilitation, specialized and generic training, treatment, health services, and related services. The program must be directed toward:

(A) the acquisition or maintenance of the behaviors necessary for the individual to function with as much self-determination and independence as possible, and

(B) the prevention or deceleration of regression or loss of current optimal functional status. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

Adaptive behavior level (ABL)—The effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group. Assignment of an adaptive behavior level includes assessment of any maladaptive behavior. Maladaptive behaviors may influ-

ence the individual's independence in skills performance, self-motivation, and acceptability within his community. Maladaptive behaviors are inappropriate behaviors, emotional disturbances, or personality disorders. For the purposes of these rules, adaptive behavior levels are determined by codes outlined on the level-of-care assessment form.

Cerebral palsy—A group of disabling conditions that results from nonprogressive damage to the central nervous system which usually occurs before, during, or shortly after birth. The disability is characterized by an inability to fully control motor functions.

Continued-stay review—The individual client review conducted by the Texas Department Of Human Services (TDHS) no later than six months following the individual's admission to an ICF/MR facility and at least every six months thereafter. The purpose of each review is to determine if the individual continues to need the care and services provided by the ICF/MR Program and if the level-of-care assignment is appropriate. The Texas Department Of Human Services may determine that the individual no longer needs the care and services provided by the ICF/MR Program or that the level-of-care assignment is not appropriate. In this case, TDHS staff members make a new level-of-care assignment.

Epilepsy—A paroxysmal transient disturbance of brain function that may be manifested as episodic impairment or loss of consciousness, abnormal motor phenomena, psychic or sensory disturbances, and perturbation of the autonomic nervous system. Symptoms are the result of paroxysmal disturbance of the electrical activity of the brain.

Medical care plan—A plan developed by a physician, in cooperation with licensed nursing personnel, for an individual who requires 24-hour supervision by licensed nurses.

Mental retardation—Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period. Subaverage general intellectual functioning refers to measured intelligence on standardized psychometric instruments. Developmental period means the period of time from conception to 18 years. Arrest or deterioration of intellectual ability that occurs after this period is functional retardation and does not meet the definition of mental retardation.

Persons with Related Conditions—Individuals who have a severe, chronic disability that:

- (A) is attributed to:
 - (i) cerebral palsy or epilepsy; or
 - (ii) any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of gen-

eral intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for mentally retarded persons.

(B) is manifested before the person reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitations in at least three of the following areas of major life activity;

- (i) self-care;
- (ii) understanding and use of language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction;
- (vi) capacity for independent living.

§406.203. Eligibility for Level-of-care Assignment.

(a) The ICF/MR Program provides services to the following three classes of individuals who have the developmental disability of mental retardation or a related condition.

(1) Individuals with mental retardation. These individuals must have an IQ of 69 or below as measured by a standardized psychometric instrument.

(2) Individuals with related conditions as defined in §406.202 of this title (relating to Definitions for Level-of-care Criteria) who have IQs of 75 or below and deficits in adaptive behavior. These individuals' related condition(s) must be diagnosed through formal testing and evaluation.

(3) Individuals with related conditions as defined in §406.202 of this title (relating to Definitions for Level-of-care Criteria). These individuals' related condition(s) must be identified through formal evaluation, and meet all five conditions listed in the summary of "Related Conditions Eligibility Screening Instrument." Assessments of IQ are not needed.

(b) Individuals must be in need of and able to benefit from the active treatment provided in the 24-hour supervised residential setting of an ICF/MR facility. This must be evidenced by information submitted for a level-of-care assignment and determined by the Texas Department of Human Services.

(c) For a facility to be paid for services, individuals must meet the Title XIX Medicaid financial eligibility criteria and

the level-of-care criteria. The level-of-care determination is made independently of the financial need determination.

§406.204. Level-of-care Determination.

(a) The level-of-care determination is performed by the Texas Department of Human Services according to the level-of-care criteria in this subchapter. Information submitted to the Texas Department of Human Services must be based on current data obtained from standardized evaluations and formal assessments which include physical, emotional, social, and cognitive factors

(b) If an individual or someone legally empowered to act on his behalf does not agree with the level-of-care determination, the level-of-care decision may be appealed according to the Texas Department Of Human Services' fair hearing procedures.

(c) The ICF/MR Program has four levels of care: ICF/MR I, ICF/MR V, ICF/MR VI, and ICF- MR/RC VIII. Level-of-care determinations for the ICF/MR I, ICF/MR V, and ICF/MR VI levels of care are based on the individual's intellectual functioning. Level-of-care determinations are based on the following variables regarding the developmental needs of each individual:

- (1) adaptive behavior; and
- (2) health status.

(d) A single, specific deficit or developmental need does not necessarily indicate a need for active treatment.

(e) If an I.Q. score cannot be obtained for a person with severe or profound deficits in intellectual functioning, a social composite score (S.C.) obtained on the Vineland Adaptive Behavior Scale or other professionally accepted scale must be submitted. Documentation must be available that an assessment of intelligence with a standardized instrument was attempted.

(f) An individual is not eligible for the ICF/MR Program if he.

(1) has been medically diagnosed as having "brain death," which includes no evidence of sensory receptivity or sensory responsiveness on a permanent basis; or

(2) does not respond in any way to his environment, but needs continuous care for medical reasons.

(g) Some individuals may have special health care needs that necessitate placement in a facility which meets provisions of the National Fire Protection Association's Life Safety Code, 1985 edition, for accommodating special health care needs. When this occurs, placement in a facility that meets appropriate Life Safety Code require-

ments takes precedence over placement in a facility that matches the individual's level of care. Regardless of his level-of-care assignment, an individual who requires a 24 hour medical care plan is eligible for residence only in a facility that meets the provisions of either chapter 12 or chapter 13 of the 1985 Life Safety Code.

(h) If the Texas Department of Human Services determines that information submitted for a level of care was not correct, the level-of-care assignment is reevaluated. If information originally submitted has changed, the level-of-care assignment is also re-evaluated.

(i) If an individual's IQ, adaptive behavior level, and/or health status are such that he does not meet all the criteria for any one level of care, TDHS conducts a special review of his application for a level of care. TDHS may ask him to submit current psychological, social, medical, and/or other evaluations.

(j) The criteria for each level of care include a profile of typical developmental needs for that level of care. Based on I.Q., adaptive behavior level, and health status, an individual may meet the criteria for two levels of care. In this situation, application is made for the level of care that best meets the individual's developmental needs. This determination is based on the profile that most closely describes the individual. A single deficit in any of the categories of skills noted in a profile does not necessarily make the individual ineligible for that level of care.

§406.205. ICF/MR I Level-of-care Criteria. The individual eligible for the ICF/MR I Program must have the potential to participate in a training program that will prepare him for eventual placement in a less structured living setting. The individual requires services to assist him or her to function with as much self-determination and independence as possible. These services may include training and assistance in maintaining the home, managing money, using community resources, acquiring independence, and improving skills and/or behaviors related to self-care, socialization, cognitive development, sensory-motor functions, communications, and work (when appropriate to the individual's age).

(1) Intellectual functioning. The individual functions in the mild to moderate range of mental retardation as evidenced by a full scale I.Q. score within the range of 35 to 69 obtained by formal assessment. If the individual has been diagnosed as having a related condition as defined in §406.202 of this title (relating to Definitions for Level-of-care Criteria), the individual must have a full scale I.Q. score within the range of 35 to 75 obtained by formal assessment. If the

individual has a sensory or motor handicap for which a specialty standardized intelligence test or a certain portion of a standardized intelligence test is appropriate, then that score must be reported as the I.Q. score for compliance with this criterion.

(2) Adaptive behavior level. The individual exhibits mild to moderate deficits in adaptive behavior with an adaptive behavior level of I or II noted on the level-of-care assessment form.

(3) Health status. The individual's health status does not interfere with participation in the active treatment program.

§406.206. ICF/MR V Level-of-care Criteria. The individual eligible for the ICF/MR V Program may need assistance and supervision in the refinement of self-help skills. The individual may require training in socialization skills, work skills and behaviors (if appropriate to the individual's age), motor skills, care of belongings and personal area, and group recreation skills. The individual may require daily supervision and management to ensure completion of scheduled activities and compliance with staff requests. The individual may have maladaptive behaviors that require programmatic intervention. The individual may also have health care needs requiring daily supervision by licensed nursing personnel.

(1) Intellectual functioning. The individual functions in the mild to severe range of mental retardation as evidenced by an I.Q. score within the range of 20 to 69 obtained by formal assessment. If the individual has been diagnosed as having a related condition as defined in §406.202 of this title (relating to Definitions for Level-of-care Criteria), the individual must have a full scale I.Q. score within the range of 20 to 75 obtained by formal assessment. If the individual has a sensory or motor handicap for which a specialty standardized intelligence test or a certain portion of a standardized intelligence test is appropriate, then that score must be reported as the I.Q. score for compliance with this criterion.

(2) Adaptive behavior level. The individual exhibits moderate to severe deficits in adaptive behavior with an adaptive behavior level of II or III noted on the level-of-care assessment form.

(3) Health status. The individual's health status does not interfere with participation in the active treatment program. The individual may have health care needs requiring daily supervision by licensed nursing personnel.

§406.207. ICF/MR VI Level-of-care Criteria. The individual eligible for the

ICF/MR VI Program requires extensive supervision and assistance in the completion of self-help activities. The individual requires a highly structured environment with ongoing supervision. The individual may also have medical needs requiring close supervision and nursing intervention. Training is necessary in basic self-help skills, sensory-motor development, compliance with daily routines and group activities, and socially appropriate behaviors. Maladaptive behaviors often are present and require active programmatic intervention.

(1) Intellectual functioning. The individual functions in the severe to profound range of mental retardation as evidenced by a full scale I.Q. score of 39 or below obtained by formal assessment. If the individual has a sensory or motor handicap where a specialty standardized intelligence test or a certain portion of a standardized intelligence test is appropriate, then that score must be reported as the I.Q. score for compliance with this criterion. If an I.Q. score cannot be obtained for a severely or profoundly retarded individual, a social composite score (S.C.) obtained on the Vineland Adaptive Behavior Scale or other professionally accepted scale must be submitted. Documentation must be available that an assessment of intelligence with a standardized intelligence test was attempted.

(2) Adaptive behavior level. The individual exhibits extreme deficits in adaptive behavior with an adaptive behavior level of III or IV noted on the level-of-care assessment form.

(3) Health status. The individual's health status does not interfere with participation in the active treatment program. The individual may require close daily supervision and nursing intervention. The individual, however, must be able medically to be out of the bedroom/ area for active treatment during waking hours.

§406.208. ICF/MR/RC VIII Level-of-care Criteria

(a) The individual eligible for the ICF/MR/RC VIII program:

(1) does not have mental retardation, but does have a related condition as defined in §406.202 of this title (relating to Definitions for Level-of-care Criteria);

(2) requires services to assist him or her to function with as much self-determination and independence as possible. These services may include training and assistance in maintaining the home, managing money, using community resources, acquiring independence, and improving skills and/or behaviors related to self-care, socialization, cognitive development, sensory-motor functions, communica-

tions, and work (when appropriate to the individual's age);

(3) requires habilitative or medical interventions to prevent or decelerate loss of current functional status. These interventions may include physical, occupational, rehabilitative, and speech therapy services;

(4) may need augmentative communication devices and corrective, orthodontic, prosthetic, and support devices to improve his functional status;

(5) may have medical, dental, or nursing needs that require close supervision, or maladaptive behaviors that require programmatic intervention.

(b) Except as specified in §406.204(i) of this title (relating to Level-of-care Determination), individuals must meet all the following criteria to qualify for the ICF/MR/RC VIII level of care.

(1) Related condition. The individual has a related condition as defined in §406.202 of this title (relating to Definitions for Level-of-care Criteria). An IQ score is not required to qualify for this level of care.

(2) Primary diagnosis of a related condition. The determination that the individual has a related condition is evidenced by an appropriate primary diagnosis on the level-of-care assessment form. The primary diagnosis must be one of a group of TXMHMR approved diagnoses.

(3) Adaptive behavior level. The individual exhibits moderate to extreme deficits in adaptive behavior as evidenced by an adaptive behavior level of II, III, or IV noted on the level-of-care assessment form.

(4) Health status. The individual's health status does not prevent participation in the active treatment program. Although the individual may require close daily supervision and nursing intervention, he must be medically able to participate in active treatment outside the bedroom area during waking hours.

§406.209. Retroactive Level-of-care Determination. Private-pay individuals living in Medicaid-certified ICF/MR facilities who do not receive SSI cash benefits may be eligible for "three-months prior" vendor payments. To ensure that vendor payments begin on the date that an individual's financial resources are exhausted, the potential recipient must have a valid level of care and the ICF/MR facility staff should maintain his records in compliance with the Medicaid Utilization Review (UR) requirements.

(1) To be in compliance with UR requirements, potential recipients' records must be maintained and reviewed as follows.

(A) Facility staff must conduct an interdisciplinary team evaluation before the applicant's admission to the Medicaid program. The team, which consists of health-care professionals and includes a QMRP, must make a comprehensive medical, social, and psychological evaluation of the applicant's need for ICF/MR services. If the evaluation indicates the applicant's needs could be met by alternative services, facility staff must document this fact in the applicant's record and must document attempts to locate the services. Facility staff must comply with 42 Code of Federal Regulations §§456.370 and 456.371.

(B) The potential client must have a current individual program plan. The physician's certification of need for ICF/MR services must be dated no more than 30 days before the date that the facility administrator learned about the resident's application for Medicaid assistance, or before authorization for vendor payment.

(C) The physician's recertification must be obtained as described in §406.216 of this title (relating to Preadmission and Admission Process).

(2) If an individual is found to be otherwise eligible for vendor payments for all or part of the three months prior to the date of his application for Medicaid assistance, facility staff may use either of the options described in subparagraphs (A) and (B) of this paragraph to ensure that the individual has a valid level of care.

(A) When the facility administrator or QMRP learns about an individual's need for Medicaid assistance, facility staff submit a level-of-care (LOC) assessment form to the TDHS MR program unit requesting a preadmission LOC evaluation. For individuals who are assigned a level I, V, or VI LOC, the preadmission LOC must be updated every 30 days until the resident's financial eligibility is established. For individuals who are assigned a level-of-care VIII, the preadmission must be updated every 90 days.

(B) If an individual's preadmission LOC has not been maintained as described in subparagraph (A) of this paragraph, and Texas Department of Mental Health and Mental Retardation (TXMHMR) or its authorized agent's Medicaid-eligibility staff notifies the facility about an applicant's potential eligibility for all or part of the three-month-prior coverage, facility staff must review the applicant's records to ensure that they meet the UR requirements and submit a LOC assessment

form for the retroactive period. Facility staff must ensure that the form:

(i) indicates potential eligibility for Medicaid;

(ii) clearly identifies, in the form's comment section, the applicable retroactive period(s) for which payment is requested; and

(iii) includes, in the form's comment section, a statement of certification that the applicant required ICF/MR services during the applicable period(s).

(3) If an applicant meets all other eligibility criteria for three-months-prior coverage, TXMHMR or its authorized agent makes retroactive vendor payments according to:

(A) the assigned LOC on the preadmission LOC assessment submitted by the facility as described in paragraph (2)(A) of this subsection, or

(B) the assigned LOC for the period indicated on the second LOC assessment form submitted by the facility as described in paragraph (2)(B) of this subsection.

(4) TXMHMR or its authorized agent makes retroactive vendor payments for only those months during which physician's certification, individual program plan, and level-of-care requirements are met. The TDHS MR program staff verifies, during the first inspection-of-care visit to the facility after establishment of any retroactive level of care, that the applicant's record includes the physician's certification, recertification, and individual program plans, and that the plans were reviewed as required during the applicable period(s).

(5) The effective date of the new level of care for the retroactive period of eligibility is the first day of the earliest month in which the applicant qualified for a level of care.

§406.210. Reconsideration of Level-of-Care Determination and Effective Dates. When a facility provides care for an individual for a period of time not covered by an effective level-of-care (LOC) determination or an incorrect LOC assignment, the Texas Department of Mental Health and Mental Retardation (TXMHMR) will reconsider the LOC effective dates.

(1) Individuals eligible for reconsideration of LOC effective dates must have the following, prior to the submission of a request for reconsideration:

(A) financial eligibility established;

(B) admission to the Medicaid ICF/MR Vendor Payment System on TXMHMR's Resident Transaction Notice form; and

(C) a current LOC determination using TXMHMR's Level-of-Care form.

(2) Requests for reconsideration are limited to days that:

(A) are not covered by a valid LOC determination; and

(B) occur after January 1, 1993. For the period of January 1, 1986, through December 31, 1992, TXMHMR will process claims for payment if received not later than August 31, 1993, according to the procedures in its policy letter dated February 22, 1993.

(3) Requests for reconsideration for periods of time already denied an LOC determination by TDHS's appeal process are not accepted.

(4) The request for reconsideration must be stamped in by the ICF/MR Section, Texas Department of Mental Health and Mental Retardation (TXMHMR) before the 95th day after the last day services were provided without the individual having LOC effective dates. The ICF/MR Section, TXMHMR, will accept a request after the 95th day and up to one year following the last day that service was provided only when the facility experiences circumstances beyond its control. These circumstances must be documented in a letter to the Director of the ICF/MR Section who will determine whether the criteria stated in this section are met when submission of a request is received after the 95th day.

(5) To be eligible for reconsideration of LOC determination, the following documentation must be submitted to the ICF/MR Section, TXMHMR:

(A) a letter requesting reconsideration, signed by the Qualified Mental Retardation Professional;

(B) a completed Level-of-Care form, using Purpose Code E, that describes the individual's need for care during the period of time services were delivered and there was no valid LOC determination in effect. The requested effective dates must include the beginning and ending dates to be considered in the comment section of the Level-of-Care form. A physician's signature is required to certify that the person re-

quired ICF/MR and/or ICF/MR/RC services during the time the person did not have a valid LOC determination. The physician must initial the requested effective dates on the Level-of-Care form, thereby acknowledging the reconsideration request.

(C) a copy of the following information from the client's record during the period for which reconsideration is requested:

(i) all Interdisciplinary Team (IDT) meeting notes and recommendations, including the Individual Program Plan (IPP);

(ii) all progress notes and program review records regarding objectives contained in the IPP that validate the provision of active treatment; and

(iii) all orders by the physician.

(6) The TXMHMR must notify the facility of the results of the reconsideration within 45 days. The facility may initiate an appeal, when reconsideration is denied, by submitting a request in writing as outlined in 40 TAC Chapter 79 (relating to Legal Services). The facility must initiate the appeal within ten workdays of receipt of notification that a reconsideration was denied.

(7) The facility may neither charge nor take any other recourse against Medicaid recipients, their family members, or their representatives for any claim denied or reduced because of the facility's failure to comply with any TXMHMR rule, regulation, or procedure pertaining to reimbursement.

§406.211. Payment for Absences from the Facility.

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

(1) Day. A 24-hour period extending from midnight to midnight. For counting days of absence from a facility, the first day is the first 24-hour period beginning at midnight after the individual's departure.

(2) Extended therapeutic visit. An individual's absence from a facility for as many as ten consecutive days for therapeutic purposes.

(3) Therapeutic visit. An individual's absence from a facility for as many as three consecutive days for therapeutic purposes.

(b) The Texas Department of Mental Health and Mental Retardation (TXMHMR) or its authorized agent makes

vendor payments for ICF/MR clients who are absent from a facility for therapeutic or extended therapeutic visits when the following criteria are met.

(1) The individual program plan must provide for therapeutic or extended therapeutic visits or both.

(2) The individual's Qualified Mental Retardation Professional (QMRP) must authorize and document each therapeutic and extended therapeutic visit, subject to the approval of the physician.

(3) Each individual is permitted an unlimited number of therapeutic visits per calendar year. However, if a particular therapeutic visit exceeds the three-day limit, the facility must submit a discharge form effective on the fourth day of absence.

(4) Each individual is permitted one extended therapeutic visit per calendar year. The individual, a responsible member of his family, or another responsible party must document in writing the specific days selected for an extended therapeutic visit. When an extended therapeutic visit begins during one calendar year and extends into the next, the absence constitutes the individual's extended therapeutic visit for the calendar year in which the visit begins. If an extended therapeutic visit exceeds the ten-day limit, the facility must submit a discharge form effective on the 11th day of absence.

(5) Facility staff must be available to the individual during therapeutic and extended therapeutic visits, even if all the residents are away from the facility at the same time.

(6) The facility must make and maintain an accurate record of each therapeutic and extended therapeutic visit and must ensure that these records are available to TXMHMR for review. For each therapeutic or extended therapeutic leave, the facility must record the following information on TXMHMR's Record of Therapeutic Leaves form: the name of the individual who will be absent; the date and time of the individual's departure from the facility; and the date and time of the individual's return to the facility. The facility's records must include documentation regarding the number of visits for which vendor payments have not been made. When TXMHMR or its authorized agent audits the facility, it reviews the facility's documentation of therapeutic and extended therapeutic visits and verifies the facility's compliance with the provisions of this subsection.

(c) TXMHMR does not make vendor payments when a Title XIX client is absent from a facility for:

(1) an inpatient hospitalization;

(2) a therapeutic visit that exceeds three consecutive days;

(3) an extended therapeutic visit that exceeds ten consecutive days; or

(4) an unauthorized departure.

(d) An individual or the party responsible for an individual may voluntarily enter into a written agreement with a facility to hold a bed during a temporary absence from the facility. The written agreement must be signed and dated by the facility administrator or QMRP and by the individual or his responsible party each time a bed is held. The facility may charge the recipient to hold the bed as long as the amount charged does not exceed TXMHMR's daily vendor rate for the recipient's level of care at the time he leaves the facility. When TXMHMR or its authorized agent audits the facility, it reviews the facility's bed-hold charges to ensure that:

(1) the facility documents each bed-hold charge in the individual's financial record at the time the bed is held; and

(2) the facility complies with §406.253 of this title (relating to Protection of Funds) whenever it makes a bed-hold charge against the individual's personal funds account at the facility.

(e) When an individual is absent from a facility for special activities such as the Special Olympics and camping trips, TXMHMR or its authorized agent makes vendor payments if:

(1) the need for the special activity is documented in the Individual Program Plan (IPP) as part of the IPP training;

(2) enough facility personnel are present at the special activity to meet the staff requirements for direct care specified in 42 Code of Federal Regulations §483.430(d)(2) and;

(3) the facility continues to incur the usual costs for caring for the individual, including, but not limited to, costs for meals, lodging, staff, supervision, and administration of medication; and

(4) the facility continues to provide the active treatment program specified in the IPP.

§406.212. Discharge and Transfer.

(a) If an individual is discharged from a facility or transferred to a section of a facility providing a different level of care, the administrator of the facility must complete a resident transaction notice to document the change. Within 72 hours of the discharge or transfer, the facility must submit the resident transaction notice to the Nursing Home Billing Services Section of the Texas Department of Mental Health and Mental Retardation (TXMHMR) or its au-

thorized agent and to the appropriate TDHS Medicaid eligibility worker. The facility must include the individual's post discharge address, if known, on the resident transaction notice.

(b) If an individual is discharged to another Title XIX facility, the admitting facility must initiate a level-of-care assessment if:

(1) more than 30 days have elapsed since the discharge;

(2) the individual's current level of care has expired; or

(3) the admitting facility's level of care is different from the individual's current level of care.

(c) If an individual is discharged from and subsequently readmitted to a facility, the facility must initiate a level-of-care assessment if:

(1) more than 30 days have elapsed between the discharge and readmission, or

(2) the individual's current level-of-care assignment has expired

§406.213. Utilization Control. Utilization control (UC) includes patterns of care and services provided by an Intermediate Care Facility for the Mentally Retarded (ICF/MR), including the provision of active treatment. Reviewers consider necessity, appropriateness, and availability of the facility's services. UC consists of:

(1) inspection of care, that is, inspection of services provided by the facility;

(2) a physician's certification or recertification of an individual's-resident's need for ICF/MR care; and

(3) utilization review (UR) consisting of preadmission, admission, and continued-stay review of the individual's eligibility for services.

§406.214. Utilization Review.

(a) Utilization review (UR) plans and procedures must conform with policies of the Department of Health and Human Services, as required by 42 Code of Federal Regulations, §456. The Texas State Plan for Title XIX requires a UR process for ICF/MR facilities participating in the Texas Medical Assistance Program.

(b) ICF/MR Program teams of the Texas Department of Human Services (TDHS), acting as inspection-of-care teams, perform the UR functions for Title XIX clients in the facility

(c) The Texas Department of Mental Health and Mental Retardation

(TXMHMR) is responsible for developing and maintaining level-of-care criteria to evaluate the necessity for each individual's continued stay. These level-of-care criteria are specified in §§406.205-406.208 of this title.

(d) UR-plan objectives are to:

(1) promote quality care and to promote training that meets individual needs;

(2) determine whether needed services are available and are provided on a continuing basis;

(3) ensure that the services provided are necessary; and

(4) review the individual program plan.

§406.215. Inspection of Care.

(a) An inspection of care (IOC) includes, but is not limited to, a review of the level of services provided to a recipient to meet his individual care and training needs.

(b) TDHS conducts an annual IOC at each facility. The IOC review is conducted according to policies of TXMHMR. A review team must include at least a registered nurse and other appropriate health and social-services personnel. At least one of these team members must be a qualified mental retardation professional. A physician is available to the review team for consultation about UR activities.

(c) ICF/MR facility staff must cooperate with the professional review team and must provide pertinent information regarding individuals.

§406.216. Preadmission and Admission Process.

(a) The Texas Department of Human Services (TDHS) performs preadmission and admission level-of-care assessments when it receives notification that a Medicaid applicant or client has requested vendor assistance for care in a contracted facility. An ICF/MR I, ICF/MR V, and ICF/MR VI preadmission level-of-care assessment is valid for 30 days or until the individual assessed is admitted to an ICF/MR facility, whichever is sooner. An ICF/MR/RC VIII preadmission level-of-care assessment is valid for 90 days or until the individual assessed is admitted to an ICF/MR/RC facility, whichever is sooner. An admission level-of-care assessment is valid for 180 days after the date of admission

(b) Before an individual's admission, an interdisciplinary team of health care professionals, including a QMRP, must conduct a comprehensive medical, nutritional, social, and psychological review of

the individual's status and need for ICF/MR care. If the evaluation indicates that the individual's needs could be met by alternative services, facility staff must enter this fact in the individual's record and document attempts to locate the services.

(c) A physician must certify that each applicant or Medicaid client needs ICF/MR services at the time of admission to the Medicaid program and every six months thereafter. This certification is documented on the level-of-care assessment form for each individual. TDHS processes only those level-of-care assessment forms that include physicians' signatures. This physician certification is part of each individual's record and is reviewed annually as part of the inspection-of-care process. Facility staff must ensure that the recertification states: "I hereby certify that this individual continues to require ICF/MR care."

§406.217. Continued-stay Review.

(a) The Texas Department of Human Services (TDHS) conducts a continued-stay review 180 days after the initial admission level-of-care assessment specified in §406.216 of this title (relating to Preadmission and Admission Process), and every 180 days thereafter. Each continued-stay review includes a certification of the individual's continuing need for ICF/MR services and an assessment of his continuing eligibility for a level of care under the criteria specified in this subchapter. Each review reestablishes the individual's level of care for the next 180 days.

(b) TDHS conducts continued-stay reviews based on the documentation that the Texas Department of Mental Health and Mental Retardation (TXMHMR) or its authorized agent requires the facility to furnish. To ensure that TXMHMR's vendor payments are uninterrupted, the facility must submit all required forms to TDHS before an individual's current level-of-care assignment expires.

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 June 13, 1994.

TRD-9442251

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

Earliest possible date of adoption: July 18, 1994

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

Subchapter F. Personal Finances and Funds

• 25 TAC §§406.251-406.254

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§406.251-406.254, concerning personal finances and funds.

The provisions of the new subchapter concern the personal finances and funds of individuals being served through the ICF/MR program in Texas. The proposed rules are substantially the same as rules of the Texas Department of Human Services (TDHS) contained in 40 TAC §§27.601, 27.603, 27.605, and 27.607 governing the same matters.

The primary difference between the two documents is that agency names have been modified to reflect the changing responsibilities as ICF/MR state operating agency functions are transferred from TDHS to TXMHMR. This transfer is enacted under the authority of the Health and Human Services Commission as the Medicaid single state agency pursuant to House Bill 7 of the 72nd Texas Legislature and the Medicaid State Plan. Where appropriate, references are made to "TXMHMR or its authorized agent." References throughout the sections to other sections and subchapters have been modified, where appropriate.

Leilani Rose, director, Financial Services Department, has determined that the sections as proposed are substantially the same as those currently utilized by the Texas Department of Human Services. Therefore, Ms. Leilani has determined that for each year of the first five-year period the sections as proposed are in effect there will be no significant fiscal impact on state or local government as a result of enforcing the sections as proposed. There is no anticipated local economic impact.

Ernest McKenney, director, Medicaid Administration, has determined the public benefit is the adoption of rules that will enable the department, as the mental retardation authority for the state, to assume policymaking responsibility for ICF/MR policy. There will be no effect on small businesses. There is no significant economic cost to persons who are required to comply with the rules as proposed.

A public hearing to accept testimony concerning the proposal of Chapter 406, Subchapter F and other proposed new subchapters concerning the ICF/MR program is scheduled for 1:30 p.m., Thursday, July 7, 1994, in the auditorium of the Central Office of TXMHMR at 909 West 45th Street, Austin. Individuals requiring an interpreter for the hearing impaired should contact Linda Logan, Director, Policy Development, at least 72 hours prior to the hearing.

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

The new sections are proposed under the Health and Safety Code, Title 7, §532.015(a), which provides the Texas Mental Health and

Mental Retardation Board with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds

The proposed new sections would affect Texas Civil Statutes, Article 4413(502), §16

§406.251. Personal Funds.

(a) The facility must have written policies and procedures that protect the financial interests of each person.

(b) If large sums of money accrue to an individual, the facility must ensure that its policies and procedures provide for appropriate protection of these funds and for counseling the individual about their use

(c) The facility must permit each individual to possess and use money in normal ways, or ensure that he learns to do so to the extent of his abilities.

(d) The facility must maintain a current, written financial record for each Medicaid client. On request, the facility must make the financial record available to the individual, his guardian, his representative payee, or the person legally responsible for him or his finances. The facility must ensure that the financial record includes written receipts for all:

(1) personal possessions and funds received by or deposited with the facility on his behalf, and

(2) disbursements made to or on behalf of the individual.

(e) The facility is responsible for meeting the needs of its clients. The facility must accept the Texas Department of Mental Health and Mental Retardation (TXMHMR) vendor payment as payment in full for providing the care and services that the clients need.

(f) The facility must furnish its clients with basic personal items and supplies. These items include, but are not limited to.

- (1) toothbrush;
- (2) toothpaste;
- (3) shampoo;
- (4) shaving cream;
- (5) razors;
- (6) facial tissues;
- (7) razor blades;
- (8) sanitary napkins;
- (9) comb or hair brush;
- (10) soap;
- (11) body lotion;

(12) clothing, if unavailable from another source, and

(13) school supplies, if unavailable from another source.

(g) If an individual makes an informed choice to use a specific type or brand of a personal need item instead of the item that the facility furnishes under the provisions of subsection (f) of this section, the individual may use his personal funds to purchase the item, provided that at the time the purchase is made the conditions listed in paragraphs (1)-(3) of this subsection are met. Each personal need item that an individual purchases is reserved for that individual's sole use, regardless of how the individual makes the purchase. The facility must ensure that each such item is labeled inconspicuously with the individual's name. However, the facility is not responsible for labeling personal need items that have been brought into the facility without being reported to the management. If the individual has a legal guardian, the guardian must authorize the purchase for the individual.

(1) the individual must be at least 18 years of age and must not have been adjudicated as incompetent,

(2) the facility interdisciplinary team has determined through a formal assessment process the degree to which an individual is capable of making financial decisions, including the amount of money that the individual can handle responsibly; and

(3) the facility has documented:

(A) that the individual has the cognitive ability to make an informed choice concerning the management of personal funds;

(B) for each purchase of an alternate type or brand of a personal need item, the specific type or brand and that the individual made an informed choice and requested the alternate type or brand; and

(C) the authorization by the individual and/or guardian for the facility to manage the individual's personal funds, as described in §406.253(b)(3)(D) of this title (relating to Protection of Funds).

(h) The facility must have written policies and procedures for the purchase of items and services with the individual's personal funds. At a minimum, the facility must ensure that these policies and procedures include the following elements:

(1) appropriate participation by the individual, his guardian, or the responsible party in the selection of the items or services purchased;

(2) a system for ensuring that all purchases are either necessary to meet individual needs or to respond to a direct request by the individual, the guardian, or the responsible party;

(3) a method of procurement that ensures that items and services are purchased at a reasonable cost to the individual and at a cost comparable to the costs of similar items and services generally available in the community; and

(4) assurances that personal funds are not used to purchase items and services that are available through Medicaid, Medicare, or other public assistance programs.

(i) Appropriate uses of an individual's personal funds include, but are not limited to, the following expenditures:

(1) soft drinks;

(2) personal clothing;

(3) a personal television or stereo;

(4) an allowance of spending money; and

(5) transportation for home visits.

§406.252. Expenditures of Personal Funds

(a) Individuals' personal funds must not be expended for services, supplies, or equipment that are allowable costs to the facility as specified in §406.153 and §406.154 of this title (relating to Allowable and Unallowable Costs and to List of Allowable Costs) or that are otherwise reimbursed by Medicaid.

(b) Items and services that are the responsibility of the facility and that must not be charged to the individual's personal funds include, but are not limited to:

(1) personal need items, including diapers, as specified in §406.251(f) of this title (relating to Personal Funds);

(2) noncosmetic dental services including, but not limited to, initial and annual comprehensive intra- and extra-oral examinations, prescribed dental treatments and follow-up visits, dentures, braces, crowns, toothbrushes, mouthwash, floss, disclosing solution, and other dental supplies,

(3) transportation expenses to program, recreation, and health care services, including sheltered workshop programs,

(4) banking charges when individuals' personal fund accounts are pooled,

(5) prescriptions not covered by other Medicaid services;

(6) prescribed laboratory services not covered by other Medicaid services,

(7) repairs to and maintenance of the facility's physical plant;

(8) meals, snacks, special diets, and sack lunches;

(9) behavioral reinforcers used in behavior modification programs, including, but not limited to, candy, cigarettes, soft drinks, cereal, coffee, toys, and magazines;

(10) purchase, repair, and maintenance of specialized equipment and adaptive devices not covered by other Medicaid services;

(11) prescribed medical equipment and supplies not covered by other Medicaid services, including, but not limited to, nasogastric tubes, feeding pumps, catheters, sheepskins, and egg crate pads,

(12) medical services and therapies not covered by other Medicaid services, including, but not limited to, initial and annual physical exams, physical therapy, occupational therapy, and nutritional, speech, audiological, psychological, social, and medical evaluations,

(13) recreational evaluation services and general recreational activities for the facility population whether provided at the facility or in the community,

(14) all training and habilitation services, including, but not limited to, vocational training, sheltered workshop services, and day activity center services, whether provided in-house or through contractual arrangements,

(15) eye exams;

(16) eyeglasses not covered by other Medicaid services, except for the difference between the Medicaid payment and the actual cost of the eyeglasses when the individual requests a specific style or feature not provided by the facility or Medicaid,

(17) laundering of personal clothing;

(18) haircuts, basic hairstyling, shaves, and shampoos, whether provided in the facility or in the community, and

(19) special activities, including, but not limited to, meals, lodging, staff supervision, registrations, and tickets.

(c) Individuals' personal funds may be expended for the following items and services

(1) personal need items when the individual requests a specific type or brand other than the one furnished by the facility,

- (2) clothing;
- (3) cosmetic dental procedures;
- (4) public transportation when the individual is traveling on the individual's own initiative without staff supervision, and public transportation to and from home visits;
- (5) banking charges if the individual's personal funds are in an individual account;
- (6) prescribed over-the-counter medications when the individual wants another brand or type than the one furnished by the facility;
- (7) damages or replacement at cost of other clients' personal property after approval by the facility's specially constituted committee;
- (8) snacks or meals when the individual chooses items other than those provided by the planned menu;
- (9) a budgeted amount disbursed to the individual in accordance with the facility's policies and procedures and in accordance with the formal functional assessment of the individual by the facility interdisciplinary team as described in §406.251(g)(2) of this title (relating to Protection of Funds) and 42 Code of Federal Regulations §483.440(c), (3)(c), (3)(v), and (f)(2) as long as access to the individual's personal funds is not restricted without the written consent of the individual or the individual's legal guardian;
- (10) recreational activities that are away from the facility and that are independently chosen by the individual, or activities that the individual elects which are not part of the facility's general recreation program and which are provided without facility staff;
- (11) the difference between the Medicaid payment and the actual cost for eyeglasses when the individual requests a specific style or feature other than the one furnished by the facility or Medicaid;
- (12) dry cleaning of the individual's personal clothing;
- (13) professional barber and cosmetology services, such as but not limited to, styling, hair setting, permanent waves, hair color treatments, manicures, pedicures, and facials; and supplies, such as hair rollers, hair spray, cosmetics, perfume, and hair dryers.
- (14) bed reservation fees as long as the individual, the individual's legal guardian, or other responsible party gives written consent and as long as the charge does not exceed the daily Medicaid vendor rate, and
- (15) school supplies, school fees, and other educational expenses.

§406.253. *Protection of Funds.*

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

(1) Receipt—A cash register tape or seller's sales statement (other than a canceled check) which shows the following:

- (A) the individual's name,
- (B) the date the receipt was written or created,
- (C) the amount of money spent,
- (D) the specific item(s) purchased,
- (E) the name of the seller, and
- (F) the individual's signature or witnessed mark

(2) Witness—A third party who is present at a financial transaction and who attests to its having taken place. No person who is responsible for client trust funds or who supervises anyone responsible for such funds may act as witness to a financial transaction that includes an individual's personal funds.

(3) Trust fund accounts—All accounts in the facility's control or safekeeping that contain the personal funds of individuals. This definition includes an individual's personal banking account if the facility's staff or consultants in any way help the individual to use it.

(4) Written request—A request for a specific amount of cash that is written and signed legibly by the individual, guardian, or responsible party. Such a request must be initiated by the individual, not by facility staff, and must be dated. Personal checks may be considered written requests for cash if they are written and signed by the individual. Dually signed checks do not meet this criteria.

(b) At the time of admission, the facility must provide to each individual, the individual's guardian, and/or other legally responsible parties a written statement that meets the following specifications

(1) The statement lists all of the facility's services and charges, distinguishing between services included in the facility's basic rate and services excluded from the basic rate which, if used, are charged to the individual

(2) The statement indicates that the individual is under no obligation to deposit funds with the facility.

(3) The statement explains the individual's right to decide how the individual's personal funds are to be handled. The explanation must include the options described in subparagraphs (A)-(D) of this paragraph, and the facility must document which options the individual, the legal guardian, or the legally responsible party selects. The facility must hold, safeguard, and account for the individual's personal funds upon receipt of the written authorization of the individual, the guardian, or other legally responsible party.

(A) The individual may receive, retain, and manage personal funds himself or have a legal guardian receive, retain, and manage such funds on the individual's behalf

(B) The individual or the guardian may have the Social Security Administration appoint a representative payee for receipt of the individual's federal benefits, if any.

(C) The individual or the guardian may designate, in writing, another person to manage the individual's personal funds (except for the individual's federal benefits when a representative payee has been appointed).

(D) The individual may decide to allow the facility to hold, safeguard, and account for the individual's personal funds, and, if he chooses this option, the individual may elect to have his funds kept in a separate account or may elect to have his funds pooled with those of other individuals residing in the facility

(4) The statement explains that the cost to the facility for handling an individual's personal funds is included in the facility's basic rate.

(5) The statement indicates that the facility must have the written permission of the individual or the individual's legal guardian to handle the individual's personal funds

(6) The statement declares that the facility is required to notify the Department of Human Services' (TDHS's) regional Medicaid eligibility worker if the individual

(A) becomes incapable of managing his personal funds himself,

(B) has no representative payee, and

(C) has no responsible party to manage the individual's personal funds on the individual's behalf

(7) The statement declares that the facility will make available a complete accounting of facility-managed accounts upon the request of the individual, legal guardian, or other legally authorized individual, within 72 hours of receiving the request.

(c) The facility must provide updated lists of services and charges to the individual, guardian, and/or other legally responsible party, when applicable, and to responsible family members whenever there is a change in either services or charges during the individual's stay or upon the request of the individual, guardian, or family member.

(d) The facility must maintain a separate, current, written record of all financial transactions involving an individual's personal funds held in the facility's trust. The facility must keep this record according to the generally accepted accounting principles of the American Institute of Certified Public Accountants. At a minimum, the record must include the following information

(1) the individual's name;

(2) identification of the individual's guardian, representative payee, and all other responsible parties, as applicable;

(3) the date of the individual's admission to the facility,

(4) all earned interest; and

(5) the date and amount of each deposit and withdrawal, the name of the person accepting the withdrawn funds, and the balance after each transaction. Except as noted in this paragraph, the record must also include a written receipt for the expenditure of each withdrawal. This receipt must be signed by the individual and/or a witness. A witnessed receipt must show the witness's relationship to the individual. A written receipt is not required in any of the following circumstances

(A) a written request for a specific amount to be withdrawn is submitted by the individual, by the individual's guardian or by another responsible party, or by a person who has the client's written authorization and is not employed by the facility,

(B) the withdrawn funds are used to make purchases from vending machines,

(C) the expenditure is \$3 or less, limited to four withdrawals per month not to exceed \$3 each (the total allowable withdrawals without receipts may not exceed \$12 per month), or

(D) the amount does not exceed a specific budget amount set by the facility interdisciplinary team, provided that:

(i) the individual has been formally assessed in the area of money management, and

(ii) it has been determined through formal assessment that the individual possesses the skills necessary to handle the sum of money independently, and

(iii) the facility interdisciplinary team, based on the formal assessment described in clauses (i) and (ii) of this subparagraph, has set a specific budget amount to be distributed to the individual on a weekly or monthly basis.

(e) Unless TXMHMR has given prior written approval, it does not accept alternate types of documentation, including affidavits, to verify expenditures of individuals' personal funds or to demonstrate compliance with the requirements in this subchapter regarding individuals' personal funds.

(f) When a facility holds an individual's personal funds in trust, it must provide a written statement to the individual, guardian, representative payee, or other responsible party upon receipt of a verbal or written request. In addition to reporting on funds that the facility has deposited in an account on the individual's behalf, the statement must report on any of the individual's funds that the facility holds in a petty cash account. At a minimum, the statement must include the following information:

(1) the identification number and location of all accounts in which the individual's personal funds have been deposited;

(2) the balance in each account at the beginning of the statement period;

(3) all deposits and withdrawals,

(4) all interest earned; and

(5) the ending balance in each account.

(g) The facility must keep funds received from clients for holding, safeguarding, and accounting separate from the facility's funds. The separate account for these funds must be identified "Trustee (Name of Facility), Clients' Trust Fund Account." The facility may commingle the trust funds of Medicaid clients and private-pay clients. If these trust funds are commingled,

the facility must provide, on request, the following information to TXMHMR, the Texas Department Of Human Services (TDHS), the Texas Department of Health (TDH) the Texas attorney general's Medicaid Fraud Control Unit, and the United States Department of Health and Human Services.

(1) For each private-pay client whose funds are commingled, the facility must provide a copy of a release form that the client, his guardian, or other responsible party has signed and dated. The facility must obtain each client's signed release form upon his admission or within 30 days of the effective date of the adoption of this subsection. The release form must require the facility to maintain trust fund records for private-pay clients in the same way that it maintains such records for Medicaid clients. The form must also include a provision permitting the agencies referenced in this subsection to inspect the private-pay client's trust fund records.

(2) The facility must provide legible copies of the trust fund records of private-pay clients whose funds are commingled

(h) The facility must observe the following policies regarding types of trust fund accounts and distribution of interest.

(1) The facility may keep a client's money in an account or petty cash fund that does not bear interest.

(2) The facility may deposit a client's money in an interest-bearing account.

(3) The facility may either keep a separate trust fund account for each client or pool the funds it holds for clients in a single account. If the facility pools client trust funds in a single account, the account must individually identify each client's funds. Each client trust fund account must clearly indicate that the facility has no ownership interest in the funds. Each account must be insured under federal or state law.

(4) The facility must distribute all interest earned on a pooled account in one of the following two ways, at its own discretion:

(A) the facility prorates interest to each client on an actual interest-earned basis, or

(B) the facility prorates interest to each client on the basis of the average monthly balance for the quarter of proration.

(i) The facility must observe the following policies with regard to banking charges on trust fund accounts.

(1) Charges for checks, deposit slips, and banking services for pooled checking accounts are the facility's responsibility and must not be charged to the client, his guardian, family, or other responsible party. The facility may include these charges, however, as allowable costs in its cost report to TXMHMR or its authorized agent.

(2) Because individual checking accounts promote the dignity and independence of clients and exist for their personal use, charges for checks, deposit slips, and banking services may be deducted from these accounts.

(3) The facility must not charge the client, his guardian, family, or other responsible party for its administrative expenses in handling either individual or pooled client trust fund accounts. However, the facility may include its handling expenses as allowable costs in its cost report to TXMHMR or its authorized agent.

(4) If the facility invests client funds in saving accounts, certificates of deposit, or in other situations in which the funds accrue interest or other benefits, the facility must distribute the interest or other benefits to each participating client on an equitable basis by depositing the investment income in the clients' pooled or individual checking accounts, as appropriate.

(j) The facility must return to the client, his guardian, or other legally responsible party the full balance of the client's personal funds within 30 days of the client's request or of his discharge or transfer. The facility must observe this policy regarding individual access to trust funds whether the client's funds are held in the facility or outside it.

(k) If a facility's ownership changes, the previous owner must transfer to the new owner all client trust fund bank balances and all client trust funds held in the facility, along with a complete list of the clients and their current balances. For auditing purposes, the previous owner must get and keep a receipt from the new owner for the transfer of these funds.

(l) When an individual dies, the facility must make a good faith effort to locate the individual's guardian or other responsible party or the heir to the individual's estate. Within 45 days after the individual's death, the facility must clear the individual's account according to the following procedures.

(1) To hold the deceased individual's money in trust, the facility must either establish a new trust fund account or deposit the money in an already existing trust fund account.

(2) After TXMHMR or its authorized agent verifies that the deceased

individual's money is on hand and held in trust, the facility gives TXMHMR or its authorized agent a notarized affidavit that presents the following information:

(A) the individual's name;

(B) the amount of money being held;

(C) documentation of the facility's efforts to locate the individual's guardian, other responsible party, or heir(s);

(D) a statement acknowledging that the money being held is solely the property of the deceased individual's estate; and

(E) a statement that the facility will hold the money in trust either until the guardian, other responsible party, or legal heirs are located or until the money escheats to the state. TXMHMR or its authorized agent reviews the trust account each time the facility is audited. TXMHMR or its authorized agent considers the account cleared upon receipt of the affidavit specified in this paragraph.

(3) If a facility decides not to hold a deceased individual's money in trust, the facility must send it to the Fiscal Services Section, Texas Department of Mental Health and Mental Retardation P.O. Box 12668, Austin, Texas 78711-2668, at any time before the money escheats to the state. The facility must identify the money as escheatable funds and must include with it a notarized affidavit that contains the information required in paragraph (2)(A)-(C) of this subsection.

§406.254. Refunds.

(a) The facility must refund all private payments it receives for periods covered by Medicaid, including retroactive periods of Medicaid coverage, whenever.

(1) the facility has accepted the Medicaid vendor payment; or

(2) the Texas Department of Human Services (TDHS) has notified the facility about an individual's eligibility for Medicaid, and the individual, his guardian, or another responsible party makes an oral or written request for a refund for the period that Medicaid covers.

(b) The facility must make the refund within 30 days of receiving vendor payment for the covered period

(c) When the facility becomes aware of the need for a refund as indicated in subsection (a) of this section, facility staff must write to the individual, his guard-

ian, or other responsible party to notify him about his right to a refund and the amount due. The written notification must include a statement to be signed by the individual or his responsible party to acknowledge receipt of the notification. Facility staff must file the signed acknowledgment in the individual's financial record

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 June 13, 1994

TRD-9442250

Ann K Utley
Chairman
Texas Mental Health and
Mental Retardation
Board

Earliest possible date of adoption July 18, 1994

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

◆ ◆ ◆ Subchapter G. Additional Facility Responsibilities

◆ ◆ ◆ • 25 TAC §§406.301-406.310

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§406.301-406.310, concerning additional facility responsibilities

The provisions of the new subchapter concern additional responsibilities for facilities providing services through the ICF/MR program in Texas. The proposed rules are substantially the same as rules of the Texas Department of Human Services (TDHS) contained in 40 TAC §§27.701, 27.703, 27.705, 27.707, 27.709, 27.711, 27.713, 27.715, 27.717, and 27.719 governing the same matters

The primary difference between the two documents is that agency names have been modified to reflect the changing responsibilities as ICF/MR state operating agency functions are transferred from TDHS to TXMHMR. This transfer is enacted under the authority of the Health and Human Services Commission as the Medicaid single state agency pursuant to House Bill 7 of the 72nd Texas Legislature and the Medicaid State Plan. Language has been incorporated in §406.308 which more specifically describes the types of records which must be retained and the timeframes for retention to support claim for services and cost reports. References throughout the sections to other sections and subchapters have been modified, where appropriate

Leilani Rose, director, Financial Services Department, has determined that the sections as proposed are substantially the same as those currently utilized by the Texas Department of Human Services. Therefore, Ms. Leilani has determined that for each year of the first five-year period the sections as proposed are in effect there will be no significant fiscal impact on state or local government as a result of enforcing the sections as proposed. There is no anticipated local economic impact

Ernest McKenney, director, Medicaid Administration, has determined the public benefit is the adoption of rules that will enable the department, as the mental retardation authority for the state, to assume policymaking responsibility for ICF/MR policy. There will be no effect on small businesses. There is no significant economic cost to persons who are required to comply with the rules as proposed.

A public hearing to accept testimony concerning the proposal of Chapter 406, Subchapter G and other proposed new subchapters concerning the ICF/MR program is scheduled for 1:30 p.m., Thursday, July 7, 1994, in the auditorium of the Central Office of TXMHMR at 909 West 45th Street, Austin. Individuals requiring an interpreter for the hearing impaired should contact Linda Logan, director, Policy Development, at least 72 hours prior to the hearing.

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

The sections are proposed under the Health and Safety Code, Title 7, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposed new sections would affect Texas Civil Statutes, Article 4413(502), §16.

§406.301. Agreements with Local School Districts

(a) As a condition of contracting to participate in the Title XIX Texas Medical Assistance Program, a facility that serves individuals between the ages of three and 21, inclusively, must meet the following requirements:

(1) The facility must establish a written agreement with the local school district. The agreement must contain the responsibilities, functions, objectives, and other terms agreed to by both parties.

(2) The facility must develop written policies and procedures to ensure that each eligible individual between the ages of three and 21, inclusively, is enrolled in an education program approved by the Texas Education Agency (TEA), unless the individual has already successfully completed or graduated from the required program.

(3) The facility must abide by the Memorandum of Understanding Relating to School-Age Residents of Intermediate Care Facilities for the Mentally Retarded as published by the Texas Education Agency under 19 Texas Administrative Code §89.243.

(b) To provide and administer its own educational program(s), a facility must secure and maintain TEA certification as a nonpublic school.

(c) In accordance with the requirements of 42 Code of Federal Regulations §483.410(d)(3) and §483.440(a), each facility must ensure that each individual's educational services are integrated with the other components of his treatment program.

§406.302. Vocational, Prevocational, and Day Program Services (CFR)

(a) In accordance with the requirements of 42 Code of Federal Regulations §483.410(d)(3) and §483.440(a), each facility must ensure that all vocational, prevocational, and day program services provided to an individual are integrated with the other components of the individual's active treatment program.

(b) When an independent service provider furnishes vocational, prevocational, or day program services to a facility's resident(s), the facility must establish and maintain a written agreement with the service provider in accordance with 42 CFR §483.410(d)(1)-(3).

(c) A provider of vocational services must maintain the appropriate certification required by the United States Department of Labor if subminimum wages are paid to an ICF/MR client.

§406.303. Facility Capacity. The number of individuals that a facility admits must not exceed its rated capacity or its programming capabilities.

§406.304. Release from the Facility.

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

(1) *Emergency release*—The individual is absent from the facility for more than 24 hours for reasons specified in subsection (d)(1) of this section. The nature of the release prevents the facility from accomplishing prerelease planning.

(2) *Mental retardation authority (MRA)*—The Texas Department of Mental Health and Mental Retardation (TXMHMR) entity that directs, operates, facilitates, or coordinates services required by state law and TXMHMR for persons with mental retardation in a local service area. A local service area consists of one or more counties.

(3) *Permanent release*—The individual moves from the facility to another residence and the facility does not intend that the individual return for continued ser-

vices, or the individual is absent from the facility for more than 30 days. TXMHMR state schools comply with permanent-release requirements when an individual is placed on extended furlough status (a furlough longer than 30 days).

(4) *Temporary release*—The individual is absent from ICF/MR care for more than 24 hours but no longer than 30 days from the date of departure. The absence is for reasons other than a therapeutic visit, or for a therapeutic visit that exceeds the allowed length of stay. The facility intends that the individual return for continued services and provides a bed upon his return.

(5) *Therapeutic visit or extended therapeutic visit*—An individual's absence from the facility meets the criteria stated in §406.211 of this title (relating to Payment for Absences from the Facility).

(b) Requirements for temporary release are as follows:

(1) The facility may temporarily release an individual if:

(A) the individual, parent, or legal guardian requests the release;

(B) the interdisciplinary team plans or approves the absence,

(C) the individual transfers to an acute care medical setting, or

(D) the individual's absence is not authorized. This includes, but is not limited to, an individual who leaves without permission or is being held by legal authorities.

(2) The facility must notify the individual's family, parent, if individual is a minor, or legal guardian about the release.

(3) The facility must document the temporary release in the individual's record, including the date of departure, the circumstances causing the absence, and the date of return.

(4) Upon the individual's return, the facility must conduct an interdisciplinary team meeting attended by the QMRP and any other appropriate team member. The purpose of the meeting is to review the individual program plan, identify new needs, and make necessary changes to the plan.

(5) If the individual's absence from the facility exceeds 30 days, the facility must permanently release him.

(c) Requirements for permanent release are as follows:

(1) The facility must complete permanent-release requirements in any of the following situations.

(A) The individual makes a planned move to an alternate living arrangement, including, but not limited to, another facility, apartment, foster home, or home.

(B) The individual, parent, if individual is a minor, or legal guardian requests the release

(C) The individual loses financial (Medicaid) eligibility for ICF/MR services, and the facility chooses to release him.

(D) The facility stops operating or voluntarily withdraws from the Medicaid program.

(E) The individual does not pay allowable fees including but not limited to applied income and bed-hold charges, and the facility chooses to release him

(F) The individual's temporary release exceeds 30 days.

(2) Except in cases when an individual's temporary release exceeds 30 days, the facility must meet the following requirements before release. When an individual's temporary release exceeds 30 days, the facility must complete the following items within seven calendar days after the individual's permanent release.

(A) Except in cases when an individual makes a planned move as described in paragraph (1)(A) of this subsection, the facility must notify the individual, parent, if individual is a minor, legal guardian, or other family members about the proposed release. When an individual makes a planned move, the facility must provide the notification at least 30 days before release

(B) The facility must counsel the individual, parent (if the individual is a minor), or legal guardian about the advantages and disadvantages of the release. These persons should participate in release planning whenever possible

(C) The facility must notify the mental retardation authority (MRA) of the catchment area in which the individual will live regarding the release and the reason for it.

(D) The facility must develop a plan for providing appropriate services, including protective supervision and

other follow-up services. The facility must ensure that the individual's record contains the following documentation from service agencies identified in the plan as responsible for providing after-care services

(i) letters of intent to provide the services identified in the plan; or

(ii) signatures of service-agency representatives verifying their attendance at the interdisciplinary team meeting in which the plan is developed; or

(iii) letters of attempts to secure such services, if service agencies have not provided documentation described in clauses (i) and (ii) of this subparagraph

(3) When the facility must release an individual because of maladaptive behavior(s) that the facility is unable to address successfully, the facility must provide evidence, in the individual's record, of the interdisciplinary team's attempts to manage the behavior(s). These attempts must include active participation of the facility's psychologist or psychiatrist and review by the facility's specially constituted committee.

(4) Within seven calendar days after the individual's release, the facility must ensure that the individual's record contains a release summary including the following:

(A) the reason for permanent release If the individual is released to another residence, the facility must include an explanation of why the facility is no longer appropriate or no longer able to provide services;

(B) a description of findings, events, and progress of the individual during residence. If the individual is released because of behaviors or active treatment needs the facility is unable to address, the facility must ensure that the summary describes the actions taken by the interdisciplinary team to meet those needs before discharge planning was initiated,

(C) a comprehensive statement of the individual's service needs, the plan for addressing those needs, and the agency(ies) and other service providers responsible for providing the services.

(5) The facility must send a copy of the release-summary to the individual, parent, if individual is a minor, or legal guardian; to the local MRA in whose catchment area the client will live, and to any alternative residence, if requested and legal consent is obtained.

(6) The psychologist must participate in the release planning if the reason for release is the individual's display of

maladaptive behavior that the facility is unable to address successfully

(7) If the facility voluntarily withdraws from the Medicaid program or ceases to operate, the facility implements a release plan for each individual, in cooperation with TXMHMR

(8) If the individual dies, the facility must complete a release-summary as described in paragraph (4)(A) and (B) of this subsection

(d) Requirements for emergency release are as follows

(1) The facility may release the individual on an emergency basis for any of the following reasons

(A) The individual, parent, if individual is a minor, or legal guardian requests an immediate permanent release. The facility must counsel the party(ies) about the advantages and disadvantages of the release

(B) The individual's physician determines that failure to release the individual will threaten the individual's health and safety or the health and safety of others

(C) The individual requires an acute-care medical setting

(2) The facility must notify, at least orally, the individual's family, parent, if individual is a minor, or legal guardian before the release unless the individual's well-being will be jeopardized. If the individual's well-being will be jeopardized, the facility must attempt to contact the family, parent, or legal guardian within 24 hours of the release. The facility must document in the individual's record all contacts or attempted contacts

(3) If the release is temporary, the facility must comply with subsection (b)(3)-(5) of this section

(4) If the release is permanent, the facility must comply with subsection (c) of this section. The facility must notify the local MRA within 72 hours of the individual's release

(e) When an individual is absent from the facility for 24 hours or more, except for purposes of a therapeutic visit, the facility must meet the requirements for termination of state reimbursement for services as described in §406.212 of this title (relating to Discharge and Transfer)

§406.305 Health and Hygiene Services

(a) The facility must

(1) weigh each individual quarterly;

(2) measure the height of each individual quarterly until the individual reaches the age of maximum growth, and

(3) maintain weight and height records for each individual

(b) An individual who is incontinent must be bathed or cleaned immediately upon voiding or soiling unless specifically contraindicated by the training program, and all soiled items must be changed

(c) If a facility requires a licensed vocational nurse (LVN) to practice the techniques of venipuncture or of insertion of a naso-gastric tube or a gastrostomy tube, the facility must

(1) verify that the LVN has received sufficient instructions in the techniques and is qualified to perform the specific procedures needed, and

(2) maintain documentation of the qualifying training in the LVN's record

§406.306 Requirements for Self-administration of Medication.

(a) The facility must develop policies and procedures governing the self-administration of medication. The policies must ensure adequate supervision of the individual and describe the facility's training program for self-administration of medication.

(b) Individuals who meet the requirements stated in 42 Code of Federal Regulations §483.460(k) may remove medications from their pharmacy-labeled containers and place the selected medications in an individual container that holds a seven-day supply or less

(c) A container that holds transferred medications as specified in subsection (b) of this section must be labeled with

(1) the name of the individual,

(2) the name and strength of the medications,

(3) the name of the physician, and

(4) the address of the facility

(d) Authorization to transfer medications as permitted in subsection (b) of this section must be included in the individual program plan

§406.307 Medical Transportation

(a) The facility must provide each individual with normal transportation to medical services outside the facility when the attending physician orders the services

(b) Throughout this section, the term "normal transportation" refers to transportation to and from the medical care provider of an individual's choice, as long as the provider is generally available and used

by residents of the locality for medical care covered by the Texas Medical Assistance Program. When there is no Title XIX provider in the locality, the term "transportation" refers to transportation to and from the nearest appropriate Title XIX provider that the individual chooses. The term "locality" refers to the service area surrounding the facility from which individuals ordinarily come or are expected to come for inpatient or outpatient services

(c) The facility is responsible to pay transportation charges, including non-emergency, routine ambulance services, related to an individual's certification or recertification.

(d) The facility must not charge the Texas Department of Human Services' (TDHS's) insuring agent, the Medicaid client, his family, or any other party responsible for the Medicaid client for normal transportation as defined in this section. Normal transportation charges are covered in the monthly vendor rate. The facility is not permitted to use TXMHMR's community-based Title XIX Medical Transportation Program.

(e) The facility is not responsible for charges for medically necessary ambulance services when they are properly documented with a physician's authorization and when they conform to TDHS's health insuring agent's guidelines for payment of ambulance services. These services are payable by TDHS's insuring agent as Medicaid benefits. The services include

(1) emergency ambulance services, and

(2) nonemergency ambulance services (except for certification or recertification) for individuals who must be transported by litter or who require a life-sustaining support system. This group includes severely disabled individuals who must be transported by ambulance and individuals who are unable to use other means of transportation for stated medical reasons.

(f) Ambulance services that are reimbursable by TDHS's health insuring agent are not the responsibility of the Medicaid client, his family, or any other party responsible for the Medicaid client.

§406.308 Record Retention and Other Related Record Requirements

(a) The facility must promptly make records and supporting documents available for review by the following agencies at any time without prior notification or consent

(1) the United States Department of Health and Human Services,

(2) the Texas Department of Health;

(3) the Texas Department of Mental Health and Mental Retardation,

(4) the Texas Attorney General's Medicaid fraud control unit,

(5) the Texas Department of Human Services; and

(6) the Comptroller General of the United States

(b) The contractor must keep financial and supporting documents, statistical records, and any other records pertinent to the services for which a claim or cost report was submitted to the department or its agent. The records and documents must be kept for a minimum of three years and 90 days after the end of the contract period or for three years after the end of the federal fiscal year in which services were provided (if a provider agreement/contract has no specific termination date in effect). If any litigation, claim, or audit involving these records begins before the three-year period expires, the provider must keep the records and documents for not less than three years and 90 days or until all litigation, claims, or audit finds are resolved. The case is considered resolved when a final order is issued in litigation, or the department and contractor enter into a written agreement. The contractor must keep records of nonexpendable property acquired under the contract for three years after the final disposition of the property. In this section, contract period means the beginning date through the ending date specified in the original agreement/contract, extensions are considered separate contract periods

(c) After medical services end, the contractor must keep the recipient's medical records for five years as stated in the provider agreement/contract. The facility must keep the records of an individual under age 18 for three years beyond his 18th birthday even if this retention period exceeds the five year retention period

(d) The facility must retain financial records in their original form during the applicable retention period. Microfilming and other methods of data storage are not acceptable

§406.309 Abuse and Neglect Reporting Requirements In accordance with 42 Code of Federal Regulations §483.420(d)(2), the facility must immediately report to the facility administrator, and to other officials, all allegations and suspected incidents of mistreatment, neglect, or abuse, as well as injuries of unknown source, in accordance with state law and through established procedures, as follows

(1) Facilities licensed by the Texas Department Of Human Services (TDHS) must report each allegation and suspected incident of mistreatment, abuse, or neglect to TDHS in accordance with Texas Civil Statutes, Article 4442(c). Additionally, allegations of physical, verbal, or sexual abuse shall be reported immediately to the local law enforcement agency. The facility must have a current copy of TDHS's procedure for reporting abuse and neglect and must make this procedure known to appropriate staff. TDHS's reporting procedure is available from TDHS, Bureau of Long Term Care, Complaints Management and Public Disclosure Section, 1100 West 49th Street, Austin, Texas 78756-3199.

(2) Texas Department of Mental Health and Mental Retardation (TXMHMR) facilities must report investigative findings about each suspected incident of abuse or neglect to Texas Department of Protective and Regulatory Services, P O Box 149030 Austin, Texas 78714-9030.

§406.310 Consent to Treatment by Surrogate Decision-Makers. The facility must comply with Chapter 405, Subchapter J of this title (relating to surrogate decision-making for community-based ICF/MR and ICF/MR/RC Facilities).

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 June 13, 1994.

TRD-9442249 Ann K Utley
Chairman
Texas Mental Health and
Mental Retardation
Board

Earliest possible date of adoption July 18, 1994.

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

Subchapter H. Dental Program

• 25 TAC §406.351, §406.352

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §406.351 and §406.352, concerning the ICF/MR dental program.

The provisions of the new subchapter concern eligibility requirements for the dental program for individuals receiving services through the ICF/MR program in Texas. The proposed rules are substantially the same as rules of the Texas Department of Human Services (TDHS) contained in 40 TAC §27.801 and §27.803 governing the same matters.

The primary difference between the documents is the inclusion of language which references the TDHS requirements for

compliance with the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program contained in 40 TAC §27.801 and §27.863.

Leilani Rose, director, Financial Services Department, has determined that the sections as proposed are substantially the same as those currently utilized by the Texas Department of Human Services. Therefore, Ms. Leilani has determined that for each year of the first five-year period the sections as proposed are in effect there will be no significant fiscal impact on state or local government as a result of enforcing the sections as proposed. There is no anticipated local economic impact.

Ernest McKenney, director, Medicaid Administration, has determined the public benefit is the adoption of rules that will enable the department, as the mental retardation authority for the state, to assume policymaking responsibility for ICF/MR policy. There will be no effect on small businesses. There is no significant economic cost to persons who are required to comply with the rules as proposed.

A public hearing to accept testimony concerning the proposal of Chapter 406, Subchapter H and other proposed new subchapters concerning the ICF/MR program is scheduled for 1:30 p.m., Thursday, July 7, 1994, in the auditorium of the Central Office of TXMHMR at 909 West 45th Street, Austin. Individuals requiring an interpreter for the hearing impaired should contact Linda Logan, director, Policy Development, at least 72 hours prior to the hearing.

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

The new sections are proposed under the Health and Safety Code, Title 7, §532.015(a), which provide the Texas Mental Health and Mental Retardation Board with rulemaking powers, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposed new sections would affect Texas Civil Statutes, Article 4413(502), §16.

§406.351 Program Basis. Intermediate Care Facilities for the Mentally Retarded (ICF/MR) must ensure that Medicaid clients in their facilities receive comprehensive dental services, as specified in 42 Code of Federal Regulations (CFR), §483.460. The Texas Department Of Human Services (TDHS) reimburses participating dental providers for services to ICF/MR Medicaid clients who are 21 years old or older through the Texas Department of Human Services' ICF/MR dental program. Services to ICF/MR clients under age 21 are reimbursed through the EPSDT Dental Program in accordance with 40 TAC §§27.801-27.863.

§406.352 Eligibility. To be eligible for

the Texas Department Of Human Services (TDHS's) Intermediate Care Facilities for the Mentally Retarded (ICF/MR) dental program, a person must:

(1) be a current Texas recipient of Title XIX ICF/MR services;

(2) have a current Texas Medical Care Identification Card that indicates eligibility with a "Y" or an "R" in the ICF/MR dental blank, or have a Medicaid Verification Letter,

(3) be 21 years old or older; and

(4) reside in a community-based ICF/MR.

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 June 13, 1994.

TRD-9442247 Ann K Utley
Chairman
Texas Mental Health and
Mental Retardation
Board

Earliest possible date of adoption July 18, 1994.

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

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident, and Health Insurance and Annuities

Subchapter Y. Minimum Standards for Benefits for Long-Term Care Coverage under Individual and Group Policies

• 28 TAC §3.3841

The Texas Department of Insurance proposes new §3.3841 concerning standard claim forms for long-term care insurance. The new rule is proposed to provide a simplified claims process and to reduce administrative costs for doctors, hospitals, insurers, and insureds. The proposed standard claim forms, HCFA 1450 (UB-92) and HCFA 1500, have been adopted by the Health Care Financing Administration of the United States government (HCFA) (42 CFR §424.32), and are currently used for Medicare and Medicaid claims by hospitals and doctors. The HCFA 1450 (UB-92) is used for hospital claims, and HCFA 1500 is used for doctors' claims. Doctors and hospitals that treat elderly and disabled persons participating in either of these programs are already familiar with the forms and would not have to incur costs to train their workers to process them.

Rhonda Myron, deputy commissioner, Life/Health, has determined that for the first five year period the proposed section will be in effect there will be no fiscal implications for local or state government, as a result of enforcing or administering the section. There will be no effect on local employment or the local economy.

Ms. Myron also has determined that for the first five year period the proposed section is in effect the public benefit anticipated as a result of enforcing the section as proposed will be a simplified claims process and reduced administrative costs for doctors, hospitals, insurers, and insureds. Doctors and hospitals that treat elderly and disabled persons on Medicare and Medicaid are already familiar with the forms and would not have to incur costs to train workers to process the forms. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with this proposed section, other than possibly minimal printing costs.

To be considered by the Commissioner of Insurance, comments on the proposed section must be submitted in writing within 30 days after publication of the proposed section in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Rhonda Myron, Deputy Commissioner, Life/Health, Texas Department of Insurance, Mail Code 106-1A, P.O. Box 149104, Austin, Texas 78714-9104.

The new section is proposed under the Insurance Code, Articles 3.70-12, §3 and §7, and 1.03A. The Insurance Code, Article 3.70-12, §3, authorizes the State Board of Insurance to promulgate rules to establish standard claim forms for long-term care insurance policies. The Insurance Code, Article 3.70-12, §7, authorizes the State Board of Insurance to adopt reasonable rules that are necessary and proper to carry out Article 3.70-12. New Article 1.03A, as enacted by the 73rd Legislature in House Bill 1461, provides that the Commissioner of Insurance may adopt rules and regulations for the conduct and execution of the duties and functions of the Department.

The Insurance Code, Article 3.70-12 is affected by this proposed section.

§3.3841. Standard Claim Forms. Any insurer subject to this subchapter shall use the standard claim forms prescribed by the Health Care Financing Administration of the United States government (42 CFR §424.32); the HCFA 1450 (UB 92) and the HCFA 1500, or any successor to such standard claim forms, as prescribed by the Health Care Financing Administration or its successor.

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 June 9, 1994.

TRD-9442065

D. J. Powers
Legal Counsel to the
Commissioner
Texas Department of
Insurance

Earliest possible date of adoption: July 18, 1994

For further information, please call: (512) 463-6327

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 114. Control of Air Pollution From Motor Vehicles

• 30 TAC §114.23

The Texas Natural Resource Conservation Commission (TNRCC) proposes an amendment to §114.23, concerning Transportation Control Measures (TCMs). The amendment is proposed as a revision to the State Implementation Plan (SIP) for the control of ozone in the Houston/Galveston, Dallas/Fort Worth, Beaumont/Port Arthur, and El Paso nonattainment areas. This revision is necessary under the 1990 Federal Clean Air Act Amendments to ensure the effective and complete implementation of TCMs included in SIP revisions.

The amendment contains TCM-specific definitions; designations of affected Metropolitan Planning Organizations (MPOs) responsible for TCM development, funding, and implementation; requirements that MPOs submit specific information provided by agencies or entities responsible for implementation of TCMs and a quantification of the emission reduction benefits; requirements that MPOs maintain and provide specific information regarding the status of TCM implementation; requirements that the MPO modify the Transportation Improvement Program for the area, as necessary, to correct implementation deficiencies; and prescribed enforcement actions to be taken if deficiencies remain unresolved or if egregious or knowing violations of TCM commitments occur.

Originally, the TCMs Rule, 30 TAC §114.23, was proposed in the September 21, 1993, issue of the *Texas Register* (18 TexReg 6424). When this rule was adopted by the Commission on October 27, 1993, and published in the November 23, 1993, issue of the *Texas Register* (18 TexReg 8700), two subsections were omitted by error. This amendment is being proposed to correct the previous deletion and to complete the section, as originally intended.

Stephen Minick, Budget and Planning Division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local govern-

ment as a result of enforcing or administering the rule.

Mr. Minick also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be reduced aggregate emissions from automobiles in the Houston/Galveston, Dallas/Fort Worth, Beaumont/Port Arthur, and El Paso areas from the effective implementation of TCMs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

The TNRCC will hold a public hearing on the proposal on June 28, 1994 at 10:00 a.m. in Room 201S of Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC Central Office in Austin through June 28, 1994. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on June 28, 1994 will be considered by the Commission prior to taking final action on the proposal. Copies of the proposal are available at the central office of the TNRCC, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. Please mail written comments to the Regulation Development Section, Air Quality Planning, P.O. Box 13087, Austin, Texas 78711-3087. For further information, contact Teresa Hardin at (512) 239-0599.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1457. Please make all requests as far in advance as possible.

The amendment is proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment affects the Health and Safety Code, §382.017.

§114.23. Transportation Control Measures

(a) (No change)

(b) The MPO for any designated nonattainment area shall be responsible for the identification, evaluation, coordination, tracking, and periodic revision, as necessary, of TCMs required for inclusion in the Texas State Implementation Plan (SIP) adopted by the TNRCC. The MPO shall obtain and submit to the TNRCC the necessary commitments from applicable implementing agencies and shall ensure adequate,

timely funding of such projects through the development, management, and annual revision of the Transportation Improvement Program (TIP) and, through the long-range transportation plan, ensuring conformity of the regional transportation network with the SIP. Such implementing agency commitments shall include, but not be limited to, the following information:

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

(3) evidence that funding has been, or will be, obligated to implement the measure;

(4)-(6) (No change.)

(c) (No change.)

(d) The responsible MPO shall obtain information from implementing agencies responsible for TCMs included in the SIP; shall maintain complete and accurate records for at least five years; and shall make such records available to representatives of the TNRCC, the United States Environmental Protection Agency, the Federal Highway Administration, the Federal Transit Administration, the TxDOT, and local air pollution agencies having jurisdiction in the area, upon request. The information in the records shall be sufficient to accurately reflect the effectiveness of the TCM program and shall include, but [shall] not be limited to, the following:

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

(e) If information regarding the status of the program of TCMs in the SIP indicates that any TCM included in the SIP has not been adequately implemented in accordance with the projected schedule, the responsible MPO shall within the next 12 months after TIP approval by the MPO or regional transportation policy body:

(1) (No change.)

(2) develop, submit, and initiate an alternative TCM in coordination with the same or other responsible implementing agencies, which, as part of the program of TCMs in the SIP, demonstrates at least an equivalent emission reduction, in the same time frame, to the existing program;

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

(f) If the TNRCC makes a determination that the process described in subsection (e) of this section has not resolved the identified deficiency, or that an egregious or knowing failure to comply with the TCM commitments included in the SIP has occurred, the MPO:

(1) shall amend the TIP to facilitate the expeditious implementation of contingency measures previously identified by the MPO and approved by the TNRCC; and

(2) shall withhold all or part of the funding for non-TCM projects

from the applicable implementing agency.

(g) The TNRCC shall seek a financial penalty against the MPO or an implementing agency only in the case of an egregious or knowing violation of the provisions of this section.

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

Issued in Austin, Texas, on June 2, 1994.

TRD-9442230

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

Proposed date of adoption: July 29, 1994

For further information, please call (512) 239-0615

TITLE 31. ECONOMIC REGULATION

Part X. Texas Water Development Board

Chapter 355. Research and Planning Fund

Subchapter B. Economically Distressed Areas Facility Planning

• 31 TAC §355.71

The Texas Water Development Board (the board) proposes an amendment to §355.71. The current rule specifies certain criteria pursuant to which the board determines the percentage of the costs of facility engineering plans incurred by eligible applicants to be funded by the board. Sources of funds other than those historically used by the board to fund facility engineering plans may become available to the board to provide to applicants for preparation of facility engineering plans. The board has ascertained that presently there may be available for facility engineering planning purposes approximately \$167,000 from federal sources. Pursuant to the terms of the agreements to receive such alternative sources, the board may be required to provide applicants a greater percentage of the costs associated with the preparation of facility engineering plans than is permitted by the current rule of the board. This amendment will permit the board, to the extent required or allowed under agreements to receive additional funds, to provide to applicants a percentage, up to the full amount, of the costs associated with the preparation of the facility engineering plans.

Pamela Ansboury, the director of finance, has determined that there will be fiscal implications as a result of administering the rule, based on the board actually receiving the \$167,000 that may be available to the board. Ms. Ansboury has determined that there will

be no fiscal implications for state government or small businesses as a result of enforcing or administering the section. Ms. Ansboury has determined there will be no additional costs to local governments for the first five years that the amendment is in effect, that there will be no reduction in costs to local governments for the first year that the amendment is in effect, but that in the second year the amendment is in effect, costs to local government will be reduced approximately \$31,830. Ms. Ansboury has determined that there is no effect for each of the next three years. Ms. Ansboury has determined that for each of the first five years the amendment to §355.71 is in effect, there will be no effect on small businesses.

Ms. Ansboury also has further determined that for each year of the first five years that the proposed amendment to §355.71 is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be an increase in the amount of funds made available to eligible applicants to prepare facility engineering plans to address the water and wastewater needs of economically distressed areas. Ms. Ansboury has determined that there is no anticipated economic cost to persons who are required to comply with this amendment as proposed. Board staff has determined that for the first five years that the rule is in effect there will be no economic impact on local economies.

Comments on the proposals may be submitted within 30 days from the date of the publication hereof to Jonathan Steinberg, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, (512) 475-2051.

The amendments are proposed under the Texas Water Code, §6.101 and Texas Water Code, §15.403 which requires the Board to adopt rules to carry out the powers and duties of the board and of the Texas Water Code.

Texas Water Code, §15.407, is the only provision affected by the proposed amendment of either rule.

§355.71. Purposes and Policy.

(a) Availability. The board will make funds available through the research and planning fund or development fund to political subdivisions in affected counties for up to 100% of the cost of facility planning for water and wastewater facilities to serve economically distressed areas. The determination of the amount of grant made available by the board shall be made under the following criteria:

(1) If an applicant has unrestricted cash reserves in an amount that is more than one and one-half times than the preceding year's average monthly operation and maintenance expenses, the board may fund 75% of the cost of the facility planning, with the applicant providing at least 50% of the remaining cost of the facility planning in the form of cash.

(2) Upon written request of an applicant for a greater grant percentage and if the applicant has unrestricted cash reserves of less than one and one-half times but equal to or greater than one times the preceding year's average monthly operation and maintenance expenses, the board may fund 87.5% of the cost of the facility planning, with the applicant providing for the remaining portion of the facility planning by providing in-kind services or any combination of cash and in-kind services.

(3) Upon written request of an applicant for a greater grant percentage and if the applicant has unrestricted cash reserves of less than one times the preceding year's average monthly operation and maintenance expenses, the board may fund 87.5% of the cost of the facility planning, with the applicant providing for the remaining portion of the facility planning by providing in-kind services; provided however, upon certification by the applicant that the applicant does not have the staff or that the applicant's staff lacks sufficient expertise to perform any in-kind contribution, the board may provide 100% of the cost of the facility planning, or

(4) Funds made available to the board pursuant to an agreement which specifies terms and conditions under which the board may distribute such funds shall be provided to eligible applicants based on the availability of the funds and pursuant to the criteria and in the manner set forth in such funding agreements. Any such agreements shall be available upon request.

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

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

Issued in Austin, Texas, on June 13, 1994.

TRD-9442237 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Proposed date of adoption: July 21, 1994

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

◆ ◆ ◆
Chapter 363. Financial Assistance Programs

Subchapter A. General Provisions

General Application Procedures
• 31 TAC §363.16

The Texas Water Development Board (the board) proposes a new §363.16, which will specify that the board may provide grants from the Water Loan Assistance Fund for projects to serve areas that do not receive water or sewer services that meet the standards set by the Texas Natural Resource

Conservation Commission. Texas Water Code, §15.102 authorizes the board to use the Water Loan Assistance Fund to provide grants for projects that include supplying water and wastewater services in "economically distressed areas." The Texas Water Code, §15.001 defines "economically distressed area" as an area in which water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules. The new section will specify that the board may provide grants from the Water Loan Assistance Fund for projects to provide water supply and wastewater service to areas in which the water supply and sewer services are inadequate to meet the minimal needs of residential users in that those services do not meet the applicable standards of the Texas Natural Resource Conservation Commission

Pamela Ansbury, the director of finance, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the new section

Ms Ansbury also has further determined that for each year of the first five years that the new section is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be clarity in applicability of the Water Loan Assistance Fund to applicants. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted within 30 days of publication hereof to Jonathan Steinberg, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, (512) 475-2051.

The new section is proposed under Texas Water Code, §6.101 and Texas Water Code, §15.403 which require the board to adopt rules to carry out the powers and duties of the board and the Texas Water Code

Texas Water Code, §15.001 and §15.102 are the only statutory provisions affected by the proposed new section

§363.16. *Water Loan Assistance Fund.* The Board may provide grants from the Water Loan Assistance Fund for projects that include supplying water or wastewater service to areas in which:

(1) water supply services:

(A) from a community water system, do not provide drinking water of a quality that meets the standards set forth by the Commission in §§290.01-290.26, 290.38-290.51, and any applicable standards of any governmental unit with jurisdiction over such area,

(B) from individual wells, after treatment, do not provide drinking water of a quality that meets the standards set forth by the Commission in §§290.3, 290.4, 290.10, and 290.13, and any applicable standards of any governmental unit with jurisdiction over such area, or

(C) do not exist or are not provided; and

(D) the financial resources are inadequate to provide water supply or sewer services that meet the standards and requirements of the Commission as set forth herein; or

(2) sewer services

(A) from any organized sewage collection and treatment facilities, do not comply with the standards and requirements set forth by the Commission in 30 TAC Chapter 305,

(B) for on site sewerage facilities, do not comply with the standards and requirements set forth by the Commission in 30 TAC Chapters 285 and 313, or

(C) do not exist or are not provided, and

(D) the financial resources are inadequate to provide water supply or sewer services that meet the standards and requirements of the Commission as set forth herein, or

(E) for purposes of any federal funds for colonias deposited in the water assistance fund, an area that meets the federal criteria for use of such funds

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

Issued in Austin, Texas, on June 13, 1994.

TRD-9442236 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Proposed date of adoption July 21, 1994

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

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 10. Family Self-Support Services

The Texas Department of Human Services (DHS) proposes the repeal of §§10.1004, 10.1007, 10.1008, 10.3403, 10.3408, 10.3414-10.3419, 10.3422-10.3424,

10.3432, 10.3433, 10.3441, 10.3443, 10.3444, 10.3447, and 10.3454; amendments to §§10.3406, 10.3420, 10.3426, 10.3435, 10.3437, 10.3445, 10.3453, and 10.3463-10.3465, and new §§10.3403, 10.3408, 10.3414-10.3419, 10.3422-10.3424, 10.3432, 10.3433, 10.3441, 10.3443, 10.3444, 10.3447, and 10.3479-10.3484, concerning eligibility determination and child care services in its Self-support Services chapter, formerly titled Family Self-support Services. The purpose of the repeals, amendments, and new sections is to delete obsolete language, clarify current concepts, and include new concepts for child care services. References in this proposal to §§10.3413, 10.3460, 10.3461, and 10.3469 refer to the subdivisions as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3438).

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

Mr. Raiford also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that public funds will be appropriately spent for child care services by holding clients, vendors, and contractors accountable for the use or misuse of public funds. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals.

Questions about the content of the proposal may be directed to Shelley Bjorkman at (512) 450-4174 in DHS's Child Care and Development Unit. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-161, Texas Department of Human Services W-402, P O Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Eligibility Determination

- 40 TAC §§10.1004, 10.1007, 10.1008

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 44, which provides the department with the authority to administer public assistance and federally established day care programs.

The repeals implement the Human Resources Code §22.002 and §44.002.

§10.1004 *Citizenship and Residency*

§10.1007 *Definition of a Family*

§10.1008 *Income Inclusions*

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 June 13, 1994.

TRD-9442246 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption November 1, 1994

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

Child Care Management Services Statewide Implementation

- 40 TAC §§10.3403, 10.3408, 10.3414-10.3419, 10.3422-10.3424, 10.3432, 10.3433, 10.3441, 10.3443, 10.3444, 10.3447, 10.3454,

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 44, which provides the department with the authority to administer public assistance and federally established day care programs.

The repeals implement the Human Resources Code §22.002 and §44.002.

§10.3403 *Child Care Management Services (CCMS) Child Care Advisory Council.*

§10.3408 *Vendor Training and Technical Assistance.*

§10.3414 *Exceptions to Eligibility*

§10.3415 *Waiting Lists.*

§10.3416 *Child Care for Abused and Neglected Children*

§10.3417 *Employment, Education and Training Related Child Care.*

§10.3418 *Transitional Child Care During Employment Interruption*

§10.3419 *Job Opportunities and Basic Skills Training (JOBS) Child Care While Awaiting Approved Activities.*

§10.3422 *Sanctions*

§10.3423. *Time Limits for Education or Training Related Child Care.*

§10.3424. *Parent Fees.*

§10.3432. *Audits of Child Care Management Services (CCMS) Contractors.*

§10.3433 *Cost Reimbursement in Child Care Management Services (CCMS) Contracts*

§10.3441. *Transportation.*

§10.3443. *Collection of Assessed Parent Fees.*

§10.3444. *Nonpayment of Assessed Parent Fees.*

§10.3447. *Vendor Agreements.*

§10.3454. *Rates for Self-Arranged Child Care.*

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 June 13, 1994

TRD-9442276 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption November 1, 1994

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

Chapter 10. Self-support Services [Family Self-Support Services]

Child Care Services [Child Care Management Services Statewide Implementation]

- 40 TAC §§10.3403, 10.3406, 10.3408, 10.3414-10.3420, 10.3422-10.3424, 10.3426, 10.3432, 10.3433, 10.3435, 10.3437, 10.3441, 10.3443-10.3445, 10.3447, 10.3453, 10.3463-10.3465 10.3479-10.3484

The amendments and new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 44, which provides the department with the authority to adminis-

ter public assistance and federally established day care programs.

The amendments and new sections implement the Human Resources Code §22. 002 and §44.002.

§10.3403. Child Care Management Services (CCMS) Child Care Advisory Council.

(a) The CCMS contractor must organize and maintain a child care advisory council.

(b) The CCMS child care advisory council provides recommendations to the CCMS contractor on services provided by the CCMS contractor.

(c) The advisory council must represent the area served by the CCMS contractor and must be balanced geographically, ethnically, economically, and by provider type.

(d) The advisory council must include parents and child care providers. The advisory council must also include representatives of the following groups, if the group exists in a particular CCMS service delivery area:

- (1) resource and referral agencies;
- (2) early childhood intervention (ECI) programs;
- (3) public school education programs;
- (4) Head Start programs;
- (5) employment and training programs;
- (6) child care associations;
- (7) child care staff training providers; and
- (8) other agencies that provide services or funding for child care.

(e) The Texas Department of Human Services (DHS) oversees operation of the advisory council, and approves the composition of the membership.

(f) A DHS regional staff person must attend meetings of the advisory council as an ex-officio member.

(g) The CCMS child care advisory council must meet at least three times per year; and as deemed necessary by the advisory council chair in order to address advisory council business.

(h) Notice of all advisory council meetings must be posted in a public place at least 72 hours in advance of the scheduled meeting

(i) The CCMS child care advisory council may be reimbursed for travel and related expenses

§10.3406. Requirements for Child Care Management Services (CCMS) Subcontracts

(a) CCMS contractors are not permitted to subcontract with other entities for complete provision of a primary CCMS function of client services, vendor management, or financial management [agencies to provide services other than child care].

(b) (No change)

(c) The CCMS contractor must receive DHS approval before procuring and documenting subcontracts.

§10.3408. Child Care Management Services (CCMS) Contractor's Provision of Training and Technical Assistance to Vendors.

(a) The CCMS contractor must provide orientation, technical assistance, and ongoing training to vendors regarding

(1) vendor requirements which are specified in the CCMS Vendor Agreement and Vendor Manual, and

(2) the Designated Vendor Program which is specified in the CCMS Contractor Manual

(b) The CCMS contractor must also provide orientation, technical assistance or training on other topics or special projects as required by the Texas Department of Human Services

(c) The CCMS contractor must ensure that orientation, training, and technical assistance required in subsections (a) and (b) of this section are accessible to all vendors in the CCMS service delivery area

§10.3414. Exceptions to Eligibility. The Child Care Management Services (CCMS) contractor grants eligibility exceptions to allow eligible families to access services funded by Title XX Social Services Block Grant, General Revenue, Title IV-A At Risk and Child Care and Development Block Grant if funds are available in the following situations

(1) a child has a sibling living in the same household who is currently enrolled in child care paid for by the Texas Department of Human Services, or

(2) an eligible teen parent needs child care in order to complete high school or the equivalent and her parent (the grandparent) is not employed or in training and refuses to care for the child. A waiver must be submitted to allow the teen parent to receive child care

§10.3415 Waiting Lists

(a) The Child Care Management Services (CCMS) contractor must maintain the following waiting lists for eligible children

(1) a short term funding list for children who have been funded and are waiting for care to be arranged,

(2) a long term funding list for children waiting for care and funding due to lack of space or lack of funds,

(3) a short term vendor list for clients in care who have requested transfer to a specific vendor with space that has just become available, and

(4) a long term vendor list for clients in care who have requested transfer to a specific vendor with no space available

(b) The CCMS contractor must use the CCMS automated system to maintain waiting lists

§10.3416 Child Care for Abused and Neglected Children.

(a) The Texas Department of Protective and Regulatory Services (TDPRS) purchases child care from the Texas Department of Human Services (DHS) for abused and neglected children who are in either

(1) protective cases managed by a TDPRS Child Protective Services (CPS) caseworker, or

(2) CPS cases managed by a CPS Family Preservation contract provider.

(b) TDPRS CPS caseworkers or CPS Family Preservation contract providers must authorize child care for these clients. They must use the forms and procedures required by TDPRS and DHS

(c) Child protective services clients receive child care for the following reasons

(1) to enable the child to remain in the home while the parent(s) pursues rehabilitation,

(2) to reduce the detrimental effects of abuse and neglect by providing the child with developmentally appropriate experiences in the areas of physical, social, emotional, cognitive, and language development,

(3) to allow foster parents to work, or

(4) to prevent disruption or relocation of a foster care or adoption placement

(d) In-home CPS clients must be enrolled with a Child Care Management Services (CCMS) designated vendor. CPS clients in foster care may be enrolled in vendor facilities or may self-arrange care in regulated facilities

§10.3417 Evaluation of a Parent's Need for Child Care

(a) When evaluating the need for child care for parents who meet the requirements stated in §10.3460(c) of this title (relating to Verification and Determination of Client Eligibility for Purchased Child

Care Services) the Child Care Management Services (CCMS) contractor must consider if:

(1) there are other sources of child care available, and

(2) the parent needs the child care in order to participate in training, education, or employment activities

(b) The CCMS contractor authorizes child care for the number of hours needed to support the parent's participation in employment, education, or training activities

(c) In order for a two-parent family to be eligible to receive child care, both parents must be employed or in training unless one parent is permanently incapacitated

§10 3418 Child Care During Employment Interruption If the employment of a parent receiving Texas Department of Human Services (DHS) child care is interrupted, DHS allows child care to continue beginning on the first day of the interruption for up to

(1) four weeks while the parent is waiting to begin subsequent employment and the parent is receiving child care funded by Title XX, Child Care and Development Block Grant (CCDBG), Title IV-A At Risk, or Transitional Child Care (TCC) funds,

(2) four weeks while the parent seeks new employment and the parent is receiving child care funded by Title XX or CCDBG funds, and

(3) two months if the parent becomes temporarily incapacitated and the parent is receiving child care funded by Title XX, CCDBG, Title IV-A At Risk, or TCC funds

§10 3419 Job Opportunities and Basic Skills Training (JOBS) Child Care While Waiting To Enter An Approved Initial JOBS Component The Texas Department of Human Services provides JOBS-related child care for up to two weeks for children whose parent is waiting to enter an approved initial JOBS component. The two weeks of child care is allowed when

(1) child care is available that meets the needs of the child and the parent, and

(2) enrollment will prevent loss of the placement

§10 3420 Job Opportunities Basic Skills (JOBS) Child Care During On the Job Training (OJT) The Texas Department of Human Services allows eligible parents to receive JOBS-related child care during OJT unless the parent's OJT earnings cause the

denial of an Aid to Families with Dependent Children (AFDC) grant. [When AFDC is denied because of earnings, DHS allows child care as a transitional child care benefit rather than as a JOBS benefit]

§10 3422 Sanctions. Job Opportunities and Basic Skills participants who have been recommended for sanction are not eligible to receive child care supportive services during the period of recommendation.

§10 3423 Time Limits for Education or Training-Related Child Care The Texas Department of Human Services (DHS) limits the time a parent is permitted to receive child care related to education or training as follows.

(1) parents whose eligibility is determined by DHS as stated in §10 3460(a) of this title (relating to Verification and Determination of Client Eligibility for Purchased Child Care Services), receive education and training-related child care as follows:

(A) parents participating in a Job Opportunities and Basic Skills Training (JOBS) case plan receive education and training-related child care until their JOBS case is closed, and

(B) parents in non-JOBS counties who are participating in approved self-initiated education or training that meets JOBS criteria are eligible to receive JOBS child care until their participation ends

(2) Parents whose eligibility is determined by the Child Care Management Services (CCMS) contractor according to §10 3460(c) of this title (relating to Verification and Determination of Client Eligibility for Purchased Child Care Services), may receive education and training-related child care until they have completed one of the following

(A) an associate degree,

(B) 65 semester hours of college credit, or

(C) a maximum of two years of post high school education or training

§10 3424 Assessing Required Parent Fees

(a) The Child Care Management Services (CCMS) contractor must assess parent fees to all parents or caretakers based on the family's gross monthly income, with the following exceptions

(1) parents or caretakers who receive aid to families with dependent children (AFDC). In families where the

child(ren) is the only AFDC recipient, a parent fee is assessed;

(2) parents or caretakers who receive supplemental security income (SSI). In families where the child, rather than the parent or caretaker, is the SSI recipient, a parent fee is assessed;

(3) parents or caretakers who participate in the Food Stamp Employment and Training program, and

(4) parents or caretakers who receive child protective services (CPS) unless the Texas Department of Protective and Regulatory Services (TDPRS) CPS caseworker or the CPS Family Preservation contract provider authorizes the CCMS contractor to assess fees to a parent.

(b) Teen parents who live with their parents and who are not covered under exceptions outlined in subsection (a) of this section are assessed a parent fee based solely on the teen parent's income.

(c) The parent fee must be 9.0% of the family's gross monthly income if there is one child receiving Texas Department of Human Services (DHS) paid child care. If there are two or more children receiving DHS paid child care, the parent fee is 11% of the family's gross monthly income. The family's gross monthly income is the amount recorded on the most recent eligibility certification.

(d) The CCMS contractor is not permitted to assess a parent fee that exceeds the cost of care.

(e) Parents who receive a child care subsidy from other state or federal programs such as the Job Training Partnership Act (JTPA) must pay that amount in addition to the assessed parent fee. The CCMS contractor must request documentation of child care subsidies from the parent

§10.3426 Vendor Payment Based on Child Care Enrollment [Enrollment in Child Care]

(a)-(c) (No change)

[(d) For a child to be enrolled in child care, the child's parent must comply with both the department's and the vendor's enrollment requirements and sign a statement of understanding. The CCMS contractor may drop a child from enrollment if the parent does not meet these requirements. The vendor may also drop a child from enrollment if the parent does not comply with vendor requirements.]

§10 3432. Audits of Child Care Management Services (CCMS) Contractors.

(a) All CCMS contractors are subject to audit or review by the Texas Department of Human Services (DHS). DHS may

audit all relevant records or statistically sample records and project findings, including overpayments, based on that sample DHS may also audit cost or rate study data submitted by the CCMS contractor

(b) CCMS contractors subject to the Single Audit Act must have an independent audit performed in compliance with either the Office of Management and Budget Circular A-128 or A-133. The audit must be approved by the cognizant agency for the CCMS contractor, with a copy provided by the CCMS contractor to DHS for review by DHS. The CCMS contractor may be reimbursed by DHS for the CCMS share of audit expenses if funding is available, the audit is found to be acceptable upon review by DHS, and the audit and reimbursement request follow DHS policies and procedures specified in the CCMS Contractor Manual.

(c) Operations expense is subject to additional review as part of the CCMS contractor's organization-wide single audit or audit by DHS or other authorized agencies, as determined and approved by DHS.

§10.3433 Basis of Payment for Child Care Management Services (CCMS) Contractor Operations Expense

(a) The Texas Department of Human Services (DHS) uses a cost-based methodology as the basis of payment for the operating expenses of CCMS contractors. Under this method, there is a different budget and treatment for each major category of expense. The major expense categories for operations are direct staffing, direct staff fringe benefits, and other operating expense.

(b) The CCMS contractor and DHS negotiate budgets for each of the major cost categories to form the basis of payment for the operating expenses of the CCMS contractor.

(c) The maximum reimbursed for a contract period is the lesser of the total budgeted operations cost or actual, reasonable, allowable, properly allocated cost. Shifts between budget categories and line items are allowed subject to the terms of the contract and the Contractor Manual. At the end of each contract period, the CCMS contractor must reconcile payments from DHS to actual, reasonable, allowable, properly allocated cost, subject to the overall limitation of the total amount budgeted for CCMS operations.

(d) Costs are determined to be reasonable, allowable, and properly allocated in accordance with Office of Management and Budget Circular A-21, A-87, and A-122, and other applicable federal and state statutes and regulations. There is no provision for profit in budgeting, payment, or reimbursement of CCMS operations expense.

(e) For direct staffing, DHS pays the CCMS contractor on a budget-based cost reimbursement basis. Each month, the CCMS contractor bills DHS for the actual, reasonable, allowable, properly allocated expense for direct staff performing CCMS operations functions. The cumulative amount paid for the contract period must not exceed the direct staffing budgeted amount.

(f) For direct staff fringe benefits, DHS pays the CCMS contractor on a budget-based rate basis. Each month, the CCMS contractor bills DHS a set rate(s) based on the actual CCMS salary and wage expense and/or the number of CCMS full-time equivalent positions. At the end of the contract period, the CCMS contractor reconciles actual, reasonable, allowable, properly allocated fringe benefit expense to billed fringe benefit expense. If the amount paid by DHS was less than the actual, reasonable, allowable, properly allocated fringe benefits expense, the CCMS contractor is entitled to payment for the difference, up to the budget limit. If the actual, reasonable, allowable, properly allocated fringe benefits expense is less than the amount paid by DHS, the CCMS contractor must refund the difference.

(g) For other CCMS operations expenses, such as occupancy, telephone, equipment, indirect, and miscellaneous, DHS pays the CCMS contractor on a budget-based fixed-fee basis. The budget for these expenses is divided by the number of months in the contract period to determine a monthly fee to be billed by the CCMS contractor to DHS each month during the contract period. At the end of the contract period, the CCMS contractor reconciles billed amounts to the actual, reasonable, allowable, properly allocated cost for the contract period. If the amount paid by DHS is less than the actual, reasonable, allowable, properly allocated other CCMS operations expense, the CCMS contractor is entitled to payment for the difference, up to the budget limit. If the actual, reasonable, allowable, properly allocated other expense is less than the amount paid by DHS, the CCMS contractor must refund the difference.

(h) All categories of CCMS operating expense are subject to billing on a cost reimbursement basis when the DHS determines that the CCMS contractor has overbilled or failed to document expenses.

(i) DHS may use cost reimbursement or a modified cost-based fixed fee basis of payment for the expense associated with special projects.

§10.3435 Client Registration

(a) The Child Care Management Services (CCMS) contractors must register onto the Social Services Management Sys-

tem (SSMS) all children receiving child care services purchased by the Texas Department of Human Services on the Social Services Management System [department].

(b) (No change.)

§10.3437 Units of Service in Child Care

(a) (No change.)

(b) Time in care begins when the facility assumes responsibility for the child and includes no [but does not include] more than two hours of transportation a day, excluding field trips.

§10.3441 Vendor Reimbursement for Transportation The Child Care Management Services (CCMS) contractor reimburses vendors who offer transportation as follows:

(1) If the CCMS vendor includes transportation in its published rate, the CCMS contractor pays the vendor that rate.

(2) If the CCMS vendor charges a separate rate for transportation, the CCMS contractor pays the transportation rate only for those CCMS-referred children receiving transportation services.

§10.3443 Vendor Collection of Assessed Parent Fees and Child Care Subsidies

(a) Vendors must collect assessed parent fees before child care services are delivered. Fees must be collected at least monthly but may be prorated for payment on a more frequent basis. Vendors keep the fees collected.

(b) Vendors must also collect the child care subsidies parents receive from other state or federal programs.

(c) Vendors must notify the Child Care Management Services (CCMS) contractor when parents have not paid the parent fee and/or the child care subsidy.

(d) Vendors' collection of parent fees and child care subsidies will be monitored by the CCMS contractor.

(e) Failure on the part of vendors to collect parent fees or child care subsidies or to notify the CCMS when parent fees have not been paid may result in corrective or adverse action being taken against the vendor.

§10.3444 Parent Payments of Assessed Parent Fees and Child Care Subsidies

(a) Parents or caretakers must pay Child Care Management Services (CCMS) vendors parent fees which have been assessed by the CCMS contractor according to §10.3424 of this title (relating to Assess-

ing Required Parent Fees) Failure on the part of the parent to pay the assessed parent fee may result in termination of child care services, unless the parent has.

(1) notified the CCMS contractor, and

(2) requested a reduction in the parent fee within three days beginning the day the fees were due

(b) Parents and caretakers must also pay CCMS vendors any child care subsidies they have received according to §10.3424(e) of this title (relating to Assessing Required Parent Fees)

§10.3445 Vendor Requirements. [Selection of Vendors] To become a vendor under a Child Care Management Services (CCMS) contractor, the child care provider must [meet the following requirements]

(1) be licensed or registered by the Texas Department of Protective and Regulatory Services (TDPRS) Child Care Licensing Division [Texas Department of Human Services (DHS) Licensing Division] or, if operating as a day camp, be licensed by the Texas Department of Health (TDH) as a youth camp,

(2) not be currently in corrective or adverse action with TDPRS [DHS] or TDH, and

(3) be willing to sign a vendor agreement and abide by its terms, and]

(3)[(4)] carry \$300,000 or more per occurrence of liability insurance depending upon licensed capacity

§10.3447 Child Care Management Services (CCMS) Vendor Agreements and Vendor Manuals

(a) Vendors must have a written and signed vendor agreement with a CCMS contractor in order to be paid for providing child care services to CCMS-referred children

(b) To be a valid vendor agreement, both the vendor and the CCMS contractor must sign and date the CCMS vendor agreement on or before the effective date of the agreement

(c) The vendor will not be paid for providing child care services to CCMS-referred children on any day before the effective date or after the termination date of a valid CCMS Vendor Agreement

(d) The CCMS contractors must use the vendor agreement required by the Texas Department of Human Services (DHS)

(e) The CCMS contractor must also ensure that every vendor receives a copy of the most current CCMS Vendor Manual as

part of the agreement with the CCMS vendor and sends revised copies to the vendor upon receiving the revision from DHS.

§10.3453 Parent Payments [Reimbursement] for Self-Arranged Care

(a) (No change.)

(b) The CCMS contractor must not pay parents for self-arranged care if the CCMS contractor discovers that the provider chosen is not eligible according to requirements listed in §10.3465(d) of this title (relating to Self-Arranged Child Care) [does not meet the age requirements as specified by DHS and all applicable state and local laws]

§10.3463 Eligibility for Title XX-Funded Child Care

(a) The Texas Department of Human Services (DHS) provides Title XX-funded child care to clients who meet the criteria listed in §§10.3413(c), 10.3416, 10.3469, 10.3479, and 10.3484, [§§10.1007, 10.1008, 10.1009, and 10.3416] of this title (relating to Eligibility for Title IV-A Funded Child Care Services, Child Care for Abused and Neglected Children, Eligibility for Child Care Services Based on Income, Determination of Family Members in the Child Care Program, and Income Inclusions for Child Care Eligibility Determination [Definition of a Family, Income Inclusions, Determination and Redetermination of Income Eligibility, and Child Care for Abused and Neglected Children]).

(b) DHS gives priority for intake services [service] to children who are receiving Child Protective Services

(c) Clients eligible for Title IV-A (Job Opportunities and Basic Skills Training, Transitional Child Care, and At-risk Child Care), Food Stamp Employment and Training, or Child Care and Development Block Grant funding access Title XX funds only after these other funding sources are depleted

(d) (No change.)

(e) Clients whose Transitional Child Care eligibility ends may be transferred to Title XX funded child care and continue to receive child care for one year, provided that the family income does not exceed 185% of the FPIL]

§10.3464 Eligibility for Child Care and Development Block Grant (CCDBG) Funded Child Care The Texas Department of Human Services (DHS) uses Child Care and Development Block Grant (CCDBG) funds to purchase child care for clients who meet the requirements stated for the following client groups

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

(3) Children whose Transitional Child Care ends may receive CCDBG-funded child care as defined in §10.3413(c) of this title (relating to Eligibility for Title IV-A Funded Child Care Services). [eligibility has ended and whose family income does not exceed 185% of the FPIL. These children may be transferred to CCDBG funded child care and continue to receive child care for one year after Transitional Child Care ends.]

(4) (No change.)

(5) Children receiving [DHS-purchased] child care as specified in §10.3416 of this title (relating to Child Care for Abused and Neglected Children). This group may receive CCDBG-funded child care without regard to income on a case by case basis for up to six months after they are no longer eligible to receive child care purchased by the Texas Department of Protective and Regulatory Services (TDPRS). [Title XX funded protective services child care.] The TDPRS [Texas Department of Protective and Regulatory Services (TDPRS)] child protective services (CPS) caseworkers or CPS Family Preservation contract providers [in-home case management contractors] must authorize child care for these clients. They must use the forms and procedures required by TDPRS and the DHS child care program.

§10.3465. Self-Arranged Child Care.

(a) The Texas Department of Human Services (DHS) uses all available funding sources, except those used for Texas Department of Protective and Regulatory Services (TDPRS) in-home Child Protective Services (CPS) cases, to reimburse eligible parents for payments made to an eligible provider for self-arranged child care.

(b) (No change.)

(c) Clients who use foster care child care are only eligible for SACC with providers who are licensed or registered by TDPRS [PRS] child care licensing or another approved state regulating body and are subject to routine monitoring.

(d) (No change.)

(e) Clients who receive reimbursement, prior to the effective date of this section, for care arrangements with providers who do not meet the conditions in subsection (c) or (d) of this section may continue to receive reimbursement for these care arrangements as long as the clients remain eligible or until the eligible clients select alternate care arrangements [Any provider selected by these clients for self-arranged child care on or after September 7, 1991, must meet the criteria in subsection (c) or (d) of this section.]

§10.3479. Determination of Family Members in the Child Care Program. The Texas Department of Human Services (DHS) includes the following persons when determining family membership for child care services:

(1) parent or caretaker-an adult responsible for the care and supervision of the child(ren) identified as the child's natural, adoptive, or stepparent or legal guardian;

(2) second parent or caretaker-a second adult responsible for the care and supervision of the child(ren) identified as the child's natural, adoptive, or stepparent, or parent's spouse including common-law spouse or legal guardian;

(3) children-children must be under 18 years of age or age 18, regularly attend high school or its equivalent full time and expect to graduate before or during the month of their 19th birthday. Children include:

(A) natural children of either or both parents or caretakers;

(B) adopted children of either or both parents or caretakers;

(C) children for whom either or both parents or caretakers have legal responsibility granted by court,

(D) children for whom either or both parents or caretakers physically provide supervision and care,

(E) children of a teen parent for whom either or both of the teen's parent(s) are the legal guardian(s), or caretaker(s), and

(F) children who are the siblings of either parent or caretaker and for whom either or both are legal guardian(s) or caretaker(s).

(4) teen parents or caretakers are considered as a separate family unit in the following situations:

(A) the teen is under 18 years of age and has children or siblings and as a group they live alone or with people who are not their parents, legal guardians, or caretakers,

(B) the teen lives with her parent(s) but is 18 years of age and has child(ren), and

(C) the teen lives with her parent(s) but is under 18 years of age, is or has been married and has children.

(5) other adults in the household are included in the household only if considered as a dependent for income tax purposes

§10.3480 Child Care During Interruptions to Education or Training Activities. If the education or training activity of a parent receiving Texas Department of Human Services (DHS) child care is interrupted, DHS allows child care to continue beginning the first day of the interruption for up to:

(1) four weeks if the parent is waiting to begin a subsequent education or training activity and the parent is receiving child care funded by JOBS, Title XX, Food Stamp Employment and Training, or Child Care Development Block Grant (CCDBG) funds, and

(2) up to two months if the parent has become temporarily incapacitated and the parent is receiving child care funded by Title XX or CCDBG funds

§10.3481. Deduction of Parent Fees and Child Care Subsidies from Child Care Management Services (CCMS) Vendor Reimbursements. The CCMS reimbursement to the vendor:

(1) is reduced by an amount equal to the parent fees assessed by the CCMS contractor according to §10.3424 of this title (relating to Assessing Required Parent Fees),

(2) is reduced by an amount equal to any child care subsidy received by the parent from other state or federal programs according to §10.3424 of this title (relating to Assessing Required Parent Fees) The vendor reports the amount of the subsidies collected to the CCMS contractor,

(3) is adjusted when parent fees are reduced; and,

(4) is paid in full, if the vendor notifies the CCMS contractor

(A) that a parent has not paid a parent fee as required by §10.3443(d) of this title (relating to Collection of Assessed Parent Fees), and

(B) makes the notification within three days beginning the day the fees were due

§10.3482 Administrative Requirements for Child Care Management Services (CCMS) The Texas Department of Human Services (DHS) and the CCMS contractor must comply with Office of Manage-

ment and Budget Circular A-102 or A-110 as clarified by federal regulations and DHS guidelines These circulars contain administrative requirements, applicable to entities receiving federal funds, such as property management and procurement

§10.3483. Citizenship and Residency Requirements to Receive Child Care Services. The Texas Department of Human Services and contracted provider staff do not deny services based on citizenship or duration of residency

§10.3484 Income Inclusions for Child Care Eligibility Determination

(a) The family's monthly gross income is the total of the following

(1) the family's total gross earnings before deductions are made for taxes. These earnings include money, earnings of a child 14 years old or older, wages, or salary the family member receives for work performed as an employee. Wages or salary include armed forces pay (including allotments from any armed forces received by a family group from a person not living in the household), commissions, tips, piece-rate payments, and cash bonuses earned. Overtime pay is estimated based on the person's history of receiving this pay,

(2) net income from non-farm self-employment. These earnings include gross receipts minus business-related, expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Gross receipts include the value of all goods sold and services given. Expenses include costs of purchased goods, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes or self-employment Social Security tax), and similar costs. The value of salable merchandise used by the owners of retail stores is not included as part of net income,

(3) net income from farm self-employment. These earnings include gross receipts minus operating expenses from operation of a farm by the client or the client and his partners. Gross receipts include the value of products sold, governmental crop loans, and incidental receipts from the sale of wood, sand, mineral royalties, gravel, and similar items. Operating expenses include the cost of feed, fertilizer, seed and other farming supplies, cash wages paid to farm workers, depreciation, cash rent, interest on farm mortgages, repairs of farm buildings, farm-related taxes (not personal income taxes or self-employment Social Security tax), and similar expenses. The value of fuel, food, or other farm-related products used for the family's living expenses is not included as part of net income,

(4) social security and railroad retirement benefits These benefits include Social Security pensions and survivor's benefits, permanent disability insurance payments made by the Social Security Administration (before deductions for medical insurance), and railroad retirement insurance checks from the federal government Gross benefits from these sources are the amounts before deductions for Medicare insurance,

(5) dividends and interest These earnings include dividends from stock holdings or membership in associations, interest on savings or bonds, and periodic receipts from estates or trust funds, and net royalties These earnings are averaged for a 12-month period,

(6) net income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers These earnings include net income from rental property which is calculated by prorating and subtracting the following from gross receipts

(A) prorated property taxes,

(B) insurance payments,

(C) bills for repair and upkeep of property, and

(D) interest on mortgage payments on the property Capital expenditures and depreciation are not deductible;

(7) interest income from mortgages or contracts These payments include interest income the buyer promises to pay in fixed amounts over a period of time until the principal of the note is paid,

(8) public assistance payments. These payments include AFDC, refugee assistance, SSI, and general assistance (cash payments from a county or city),

(9) pensions, annuities, and irrevocable trust funds These payments include pensions or retirement benefits paid to a retired person or his survivors by a former employer or by a union, either directly or through an insurance company Also included are periodic payments from annuities, insurance, or irrevocable trust funds Gross benefits from civil service pensions are benefits before deductions for health insurance,

(10) veterans' pensions, compensation checks, and GI benefits These benefits include money paid periodically by the Veterans Administration to disabled veterans of the armed forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training and refunds paid to ex-

servicemen as GI insurance premiums The Texas Department of Human Services (DHS) or the contracted provider includes only that part of the educational allowance that is used for current living costs,

(11) educational loans and grants These payments include money received by students as scholarships for educational purposes. DHS includes only that portion of the money actually used for current living costs;

(12) unemployment compensation This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits from union funds paid to people while they are unemployed or on strike,

(13) worker's compensation and disability payments These payments include compensation received periodically from private or public insurance companies for on-the-job injuries,

(14) alimony These payments are support paid to a divorced person by a former spouse,

(15) child support These payments include court-ordered child support, any maintenance or allowance used for current living costs provided by parents to a minor child who is a student, or any informal child support payments made by an absent parent for the maintenance of a minor,

(16) cash support payments These payments are regular cash support payments from friends or relatives received on a periodic basis more than three times a year,

(17) inheritance This is net income from the client's share of an inheritance,

(18) foster care payments The total payment made to a client on behalf of a legally assigned foster child or foster adult is counted as income,

(19) sale of property This includes capital gains from sale of property

(b) Income to the family that is not included in paragraphs (1)-(19) of this section is excluded in determining monthly gross income

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 June 13, 1994

TRD-9442244

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

Proposed date of adoption November 1, 1994

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

Chapter 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) proposes amendments to §15 441 and §15 501, concerning real property resources and vendor living arrangements, in its Medicaid Eligibility rule chapter. The purpose for the amendment to §15 441 is to allow the exemption of the value of home property placed for sale for clients in certain living arrangements The amendment to §15 501 specifies that DHS will consider a client who has been discharged directly to any 1915(c) home and community-based waiver program before the client completes 30 consecutive days in a nursing facility to have met the 30-consecutive day requirement for Medicaid eligibility

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

Mr Raiford also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendment to §15 441 will be that clients will remain eligible for Medicaid until the sale of home property is final and proceeds are available to the client The amendment to §15 501 will allow Medicaid to pay nursing facilities for short-term stays by nursing facility waiver clients There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the proposed amendments

Questions about the content of the proposal may be directed to Judy Coker at (512) 450-3227 in DHS's Long-Term Care Unit Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-150, Texas Department of Human Services W-402, P O Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*

Subchapter D. Resources

• 40 TAC §15.441

The amendments are 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 provides the Health and Human Services Commission with the authority to administer federal medical assistance funds

The proposal implements the Human Resources Code, §§22 001-22 024 and §§32 001-32 042

§15.441. Real Property.

(a) Home. The value of a home that is a client's or his spouse's principal place of residence is not a resource of the client or spouse.

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

(10) exemption of home property placed for sale. The value of home property, including life estates and remainder interests in the property, is exempt if the client places the property for sale. The exemption continues until the proceeds of the sale are available to the client. This policy applies only to clients in institutional living arrangements and to clients in home and community-based waiver programs and demonstration projects.

(b) Other real property. The equity value of a client's ownership or part ownership in real property other than the home is a resource.

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

(3) Conditions for retaining life estates and remainder interests. A client may, without affecting his eligibility, maintain his life estate or remainder interest in property if

(A) the property is his home and can be excluded under the exclusion rule for homesteads,

(B) a contract restriction exists that prevents the client from disposing of his interest; [or]

(C) the property is producing income and may be excluded under §15.443 of this title (relating to Resources Essential to Self-support (Real and Personal Properties)); or

(D) the property is placed for sale and the client is in a long-term care institutional living arrangement, home and community-based waiver program, or demonstration project.

(4)-(6) (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 June 9, 1994

TRD-9442083 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption September 1, 1994

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

Subchapter F. Budgets and Payment Plans

• 40 TAC §15.501

The amendments are 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 provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposal implements the Human Resources Code §§22.001-22.024 and §§32.001-32.042.

§15.501. Vendor Living Arrangements.

(a) (No change.)

(b) If a client dies before he has lived for 30 consecutive days in a Title XIX long-term care facility, or is discharged directly to any 1915(c) home and community-based waiver program, he is considered to have met the 30-consecutive-day requirement. Three-day therapeutic home visits or admissions to hospitals are not considered discharges from the institutional setting

(c) If an individual (or couple) dies before 30 consecutive days of institutionalization have passed but is not discharged to a noninstitutional setting other than a 1915(c) home and community-based waiver program before his death, the department considers the individual (or couple) to be in a vendor living arrangement. The department uses the special income limit to establish the eligibility of individuals and couples living in vendor living arrangements who have countable income that exceeds the reduced SSI payment standard. Using the special income limits, the department determines the individual's or couple's eligibility for medical assistance only until the individual or couple is discharged to home or a non-Title XIX facility. Three-day therapeutic home visits or admissions to hospitals are not considered discharges for this purpose

(d)-(l) (No change)

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

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

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

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

Subchapter G. Resident Assessment

• 40 TAC §19.604

The Texas Department of Human Services (DHS) proposes an amendment to §19.604, concerning Preadmission Screening and Annual Resident Review (PASARR), in its Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification rule chapter. The purpose for the amendment is to comply with a directive of the Health Care Financing Administration (HCFA) that DHS consider individuals with a medical necessity determination eligible for nursing facility services. In addition, DHS has streamlined the PASARR process by placing most of the assessment and determination functions under DHS

DHS initially proposed subsection (b)(5), concerning the Long-Term Care Assessment Pilot Project, in the April 27, 1994, issue of the *Texas Register* (19 TexReg 3142). As of the date of this filing, DHS has not adopted that proposal

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

Mr. Raiford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the availability of nursing facility services to more needy individuals and a more streamlined process for making PASARR determinations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment

Questions about the content of the proposal may be directed to Maxcine Tomlinson at (512) 450-3169 in DHS's Institutional Policy Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-167, 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

The amendment implements the Human Resources Code, §§32.001-32.042

§19.604 Preadmission Screening, and An

nual Resident Review (PASARR)

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

(1) **Acute inpatient care**-An acute institutional setting that provides medical care, such as a hospital, but does not include inpatient psychiatric care.[Advanced years-A chronological age of greater than 64 years of age or a chronological age of greater than 50 years along with a chronic or acute medical condition that is likely to significantly diminish life expectancy as documented by a physician]

(2) -(13) (No change)

(14) **Mental illness**-A current primary or secondary diagnosis of a major mental disorder (as defined in the **Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987 (DSM-III-R)**) This mental disorder is a schizophrenic, mood, paranoid, panic, or other severe anxiety disorder, personality disorder, other psychotic disorder, or another mental disorder that may lead to a chronic disability and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder) The disorder results in functional limitations in major life activities within the past three to six months that would be appropriate to the individual's developmental stage The individual typically has at least one of the following characteristics on a continuing or intermittent basis serious difficulty in the areas of interpersonal functioning, and/or concentration, persistence, and/or pace, and/or adaption [to change] Within the past two years, the disorder has required psychiatric treatment more intensive than outpatient care and/or the individual has experienced an episode of significant disruption to the normal living situation for which supportive services were required to maintain functioning at home or in a residential treatment environment which resulted in intervention by housing or law enforcement officials

(15) **Mental retardation**-A diagnosis of mental retardation (mild, moderate, severe, and profound) and[as described in the American Association on Mental Deficiency's Manual on Classification in **Mental Retardation (1983)** In this manual mental retardation is] significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period

(16)-(20) (No change)

(21) **QMHP-Qualified Mental Health Professional. An individual who has at least one year of experience working with persons with mental illness.**

(22) **QMRP-Qualified Mental Retardation Professional. An individual who has at least one year experience working with persons with mental retardation and/or a related condition.**

(23)[(21)] **Parkinson's Disease**-A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the **Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM)**.

(24)[(22)] **PASARR-Preadmission screening and annual resident review**

(25)[(23)] **PASARR determination**-A decision made by Texas Department of Human Services (DHS)[Mental Health and Mental Retardation (TXMHMR)] PASARR Determination Program professional staff to establish if an individual requires the level of services provided in a nursing facility as contrasted with other settings and if the individual has the need for specialized services for mental illness, mental retardation, and/or a related condition. The decisions are based on information included in the Level II PASARR Assessment [document]

(26)[(24)] **Readmission**-An individual who is readmitted to a nursing facility in which he has resided following a temporary absence for acute care hospitalization or for therapeutic leave

(27)[(25)] **Related condition**-A severe, chronic disability as defined in 42 Code of Federal Regulations §435 1009, that meets all of the following conditions:

(A) it is attributable to

(i) cerebral palsy or epilepsy, or

(ii) any other condition including autism, but excluding mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for these persons.

(B) it is manifested before the person reaches age 22,

(C) it is likely to continue indefinitely,

(D) it results in substantial functional limitations in three or more of the following areas of major life activity

(i) self-care,

(ii) understanding and use of language,

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(28)[(26)] **Specialized services for individuals with mental illness**-The implementation of an individualized plan of care developed under and supervised by a physician, provided by a physician or other qualified mental health professionals, that prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of severe mental illness, which necessitates supervision by trained mental health personnel.

(29)[(27)] **Specialized services for individuals with mental retardation or a related condition**- A continuous program for each client, which includes aggressive, consistent implementation of specialized and generic training, treatment, health services and related services that is directed toward:

(A) the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible, and

(B) the prevention or deceleration of regression or loss of current optimal functional status Specialized services do[does] not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous specialized services program

(30)[(28)] **Substantial risk of serious harm to self and/or others**-Harm which may be demonstrated either by a person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty, as determined by a court of law.

(31)[(29)] **Ventilator dependent**-Reliance upon a respirator or respiratory ventilator as a life support system to assist with breathing.

(b) **Preadmission Screenings**

(1) **Purpose** All new admissions (private pay, Medicare beneficiaries, and Medicaid recipients) must have a **Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE)** form (Purpose Code I or P) and be screened prior to admission to a nursing facility to determine if

(A) (No change)

(B) the individual needs nursing facility services, as defined by medical necessity[nursing facility placement is appropriate in contrast to other settings, not to exclude settings or services not currently in existence or available at this time:]; and

(C) (No change.)

(2) Nonadmission. A nursing facility must not admit any individual who has met the conditions of subparagraphs (1)(A)(1)(C) of this section, and for whom facility placement is not appropriate in contrast to other settings.]

(2)(3) Readmissions The following individuals are not subject to preadmission screenings:

(A) readmissions following hospitalizations; and

(B) individuals who

(i) are admitted to the nursing facility directly from a hospital after receiving acute inpatient care at the hospital,

(ii) require nursing facility services for the condition for which the individual received care in the hospital; and

(iii) have been certified by their attending physician prior to admission to the nursing facility that they are likely to require less than 30 days of nursing facility services.

(C) residents who

(i) transfer from their current nursing facility residence to a new nursing facility residence,

(ii) have not had any interruption in[intervening days of] continuous nursing facility residence other than for acute care hospitalization;

(iii) have not had any change in their mental condition; and

(iv) have met the PASARR requirements as

(I) stipulated in this section in their current nursing facility residence; and

(II) documented in their DHS CARE form and PASARR determination notification letter

(3)(4) Level I Identification Screening Individuals are identified as having mental illness, mental retardation, or a related condition (MI/MR/RC) through use of DHS's CARE form, Item 34

(A) The attending physician makes a positive response to CARE form Item 34 for the presence of MI if the individual meets two of the three following criteria:

(i) has a diagnosis of MI (excluding a primary diagnosis of Alzheimer's disease or dementia),

(ii) has a level of impairment that results in functional limitations in major life activities within the past three to six months in the areas of interpersonal functioning, concentration, persistence, pace and/or adaptation[adapton] to change, or

(iii) within the last two years, due to the mental disorder, has had psychiatric treatment more intensive than outpatient care more than once and/or experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials

(B) The attending physician makes a positive response to Item 34 for the presence of MR and/or RC if the individual

(i) has a diagnosis of MR and/or RC,

(ii) has any history of MR and/or RC identified in the past,

(iii) presents any evidence (cognitive or behavioral functioning) that may indicate the presence of MR and/or a RC, or

(iv) has been determined eligible and is referred by an agency that serves people with MR and/or RC,

(C) A positive response to CARE form Item 34 requires that an individual must receive a Level II assessment prior to admission to a nursing facility

(D) An individual, who has medical necessity, may be immediately admitted to or continue residing in a nursing facility if

(i) Item 34 of DHS's CARE form is marked no,

(ii) an individual is in the nursing facility for convalescent care,

(iii) an individual is comatose, functioning at the brain stem level, ventilator dependent, terminally ill, or has a serious medical condition such as chronic obstructive pulmonary disease, anencephaly, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis,

and congestive heart failure which result in an impairment so severe that the individual could not be expected to benefit from specialized services,

(iv) an individual has a primary diagnosis of dementia and is not MR and/or RC, or

(v) an individual has Alzheimer's disease and no other diagnosis of MR and/or RC,

(vi) an individual is determined by DHS[TDH] during the Level II Assessment process not to have MI/MR/RC

(4)(5) Level II Assessment DHS[TDH] staff must contact the attending physician to verify the information marked on DHS's CARE form, Item 34. The physician contact sheet will be used by the assessors to allow the resident's treating physician to have input into the assessment

(A) The assessment process consists of a

(i) PASARR nursing facility assessment,

(ii) PASARR mental illness assessment (as appropriate),

(iii) PASARR mental retardation and related conditions assessment (as appropriate)

(B) Depending on the mental and/or physical condition, DHS[TDH] sends either a

(i) MI assessment team consisting of

(I) a registered nurse who is a qualified mental health professional [(at least one year experience working directly with persons with mental illness)], and

(II) other qualified mental health professionals,

(ii) MR Assessment team consisting of

(I) a registered nurse who is a qualified mental retardation professional [(at least one year experience with direct services in a professional capacity working with people who have a developmental disability)], and

(II) a psychologist who is also a qualified mental retardation professional with at least a Master's degree

(C) DHS[TDH] will have

other professionals on staff and/or on a consultant basis who have the expertise in the evaluation of individuals with related conditions.

[(D) All assessment data are reviewed by TDH staff for completeness and accuracy and sent to TXMHMR for PASARR determination as specified in subsection (c) of this section.]

(D) [(E) If Item 34 indicates "No" on the CARE form, or Item 34 is blank, but Items 16-20 indicate a diagnosis of MI, MR, or RC, it is the responsibility of the nursing facility to contact the PASARR unit of DHS[TDH] and request screening by an assessment team

[(F) The nursing facility is required to notify TDH if it receives a DHS CARE form with Item 34 blank.]

(5) Long-Term Care Assessment Pilot Project. Beginning March 1994, DHS is conducting the Long Term Care Assessment Pilot Project in counties approved by the Texas Board of Human Services. All Medicaid eligible/Medicaid applicants in pilot site locations who seek admission to a nursing facility must contact the local DHS office to arrange for a long term care assessment. This assessment meets PASARR requirements stated in this section and meets medical necessity requirements stated in §19.1601 of this title (relating to Medical Necessity (MN) and Utilization Review (UR)). Nursing facilities located in the pilot project locations may not admit new residents until a final PASARR determination and/or medical necessity has been made by the long term care assessor.

(c) Annual Resident Reviews.

(1) All current nursing facility residents with an indication of MI/MR/RC must be identified by DHS[TDH] through on-site visits which includes chart reviews and interviews with residents.

(2) The nursing facility is required to assist DHS[TDH] in identifying all residents who may be MI/MR/RC by providing CARE forms on all residents (Medicaid, Medicare, and private pay) and making residents' records available

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

(5) If an individual who enters a nursing facility as an exempted hospital discharge and is later found to need more than 30 days of nursing facility care, the NF must request DHS[TDH] to conduct an annual resident review within 40 calendar days of admission.

(d) Determination Process

(1) The assessment data is analyzed by a qualified mental health and/or mental retardation professional[TXMHMR reviews the assessment data gathered by TDH] in order to determine whether:

(A) Nursing facility services are needed, as described in §19.1609 and §19.1610 of this title (relating to General Qualifications for Medical Necessity Determinations and Criteria Specific to a Medical Necessity Determination)[appropriate in contrast with other services not to exclude settings or services not currently in existence or available at this time].

(B) An individual requires specialized services for mental illness[his mental and/or physical condition]. The presence of verbalizations or behaviors which indicate a person may pose a substantial risk of serious harm to self or others is evidence that the person requires specialized services.

(C) An individual requires specialized services for mental retardation or a related condition. The presence of response by a person to the environment is evidence that the person requires specialized services.

(2) [Determinations are based on criteria established by TXMHMR under 25 Texas Administrative Code, Chapter 402, Subchapter E.] One of the following determinations is made:

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

(D) Nursing facility services are not needed and specialized services are not needed. Those individuals may not be admitted to or continue residing in a nursing facility. Those individuals who are current nursing facility residents must be alternately placed, according to discharge procedures stated under §19.302 of this title (relating to Transfer and Discharge).

(3) If a nursing facility resident has 30 or more months of continuous residence in a nursing facility preceding the PASARR determination, the resident may choose to remain and receive specialized services in the nursing facility, or seek alternate placement. [This choice will be given annually]

(4) If during the determination process DHS[TXMHMR] ascertains that a person does not have MI/MR/RC, the PASARR determination process will be discontinued and the individual may be admitted to the nursing facility.

(5) DHS[TXMHMR] will notify all individuals of the results of their PASARR determination through a letter sent to them, the nursing facility administrator, the attending physician, and the local MHMR authorities, the Texas Department on Aging (TDoA), and the local Medicaid eligibility unit. Individuals who have undergone a preadmission screening will be notified within ten calendar days of the determination and for individuals who have undergone an annual review, they will be notified within 30 calendar days of the determination

(6) Any individual, or his legal representative or responsible party, not in agreement with the PASARR determination may file an appeal with DHS[TXMHMR] to receive a DHS fair hearing according to Chapter 79 of this title (relating to Legal Services).

(A) When the hearing officer reverses DHS's[TXMHMR's] determination regarding nursing facility admission, the individual seeking entry into the nursing facility may be admitted immediately; and as long as the individual meets all other eligibility requirements, the facility may receive vendor payments. Current residents who have met all eligibility criteria may continue to reside in the facility and receive Medicaid reimbursement retroactive to the date when medical and financial eligibility were in effect.

(B) When the hearing officer sustains DHS's[TXMHMR's] determination regarding nursing facility admission, the individual seeking entry into the nursing facility may not enter the facility and may not be Medicaid-certified for nursing facility placement. Current residents who have met all eligibility criteria may[must] be alternately placed [, unless excepted by paragraph (3) of this subsection].

(e) Specialized Services [and alternate placement].

(1) TXMHMR contracts with the local MHMR authority to purchase case management, specialized services, and alternate placement for persons determined by DHS [TXMHMR] as requiring specialized services [and alternate placement].

(2) A case manager will be assigned for those residents who require specialized services [and/or must be alternately placed].

(3) DHS provides specialized rehabilitative services, as stated under §19.1103(a) of this title (relating to Specialized Services).

(4)[(3)] An interdisciplinary team will be constituted by the case manager in order to develop a plan for special-

ized services. This team will identify those additional services required for specialized services that are not already being provided by the nursing facility and covered in the nursing facility daily vendor rate. The following persons must be invited to participate on the team.

(A) the Director of Nurses or another appropriate nursing facility representative,

(B) primary physician,

(C) other professionals deemed appropriate, such as, but not limited to, an occupational therapist, physical therapist, or speech-language pathologist;

(D) the individual and/or his guardian, legal representative, or responsible party, and

(E) family members, if the individual or legal representative agrees

(5)(4) The case manager will determine how TXMHMR specialized services will be provided by the MHMR authority and will facilitate provision of those services. Those services provided by TXMHMR must meet the relevant portions of TXMHMR's community service standards

(6)(5) The case manager will report monthly to the primary or attending physician and to the nursing facility regarding the delivery of specialized services.

(6) The case manager will locate alternate placement in consultation with the individual or his legal representative if required]

(7) (No change)

(8) Specialized services and nursing facility services are to be coordinated and integrated for maximum benefit to the resident. A nursing facility must allow for the MHMR authority or a subcontracted provider to provide specialized services within the facility. If a nursing facility accepts individuals or has individuals who require specialized services for their mental condition, it must establish and maintain a written cooperative agreement with the local MHMR authority that includes

(A)-(C) (No change)

(D) a provision allowing the nursing facility staff to participate in or provide information to the MHMR authority case manager during each resident's specialized services[active treatment] plan-

ning; and

(E) (No change.)

(9)-(11) (No change.)

(12) If the individual requires specialized rehabilitation services, the facility must cooperate in obtaining the screening or evaluation. [All providers of specialized services, including the nursing facility, must meet the relevant portions of TDMHMR's Community Service Standards for the delivery of specialized services.]

(f) Alternate Placement.

(1) (No change)

(2) The local MHMR authority assigns a case manager for those residents who request[require] alternate placement.

(3) An interdisciplinary team as described in subsection (e)(4) [(e)(3)] of this section will be constituted

(4)-(5) (No change)

(6) For those residents who have been determined to not need nursing facility services[be inappropriately placed] and to need specialized services and who have 30 continuous months of nursing facility residence, a choice will be offered to either seek alternate placement or remain in the nursing facility. If the resident chooses alternate placement, the following alternate placement activities occur:

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

(7) For those residents determined not to need nursing facility services or to be inappropriately placed in a nursing facility and to need specialized services but who do not have 30 months continuous residence, the resident will be discharged according to procedures stated under §19.302 of this title (relating to Transfer and Discharge). [following alternate placement activities occur:

(A) The MHMR authority must present a specific placement alternative after notification. The resident or his legal representative must approve the alternate placement. If the resident or his legal representative does not approve the placement, the authority must present another. If the second placement is rejected, then a third placement is offered. The MHMR authority must present all three specific placement alternatives within six months after notification unless a waiver of the six months is granted by the TXMHMR PASARR Determination Program Office in accordance with 25 Texas Administrative Code §402.159(d)(3)

(B) If the resident or his le-

gal representative refuses all three alternate placement options and is not granted a waiver, then the TXMHMR PASARR Determination Program Office notifies the resident of the potential for discharge and loss of Medicaid benefits and the procedure for requesting a fair hearing.

[(C) The case manager must provide to the nursing facility with documentation of the basis for refusing the alternate placement options

[(D) If the resident or his legal representative refuses all alternate placement options and is not granted a waiver, then the nursing facility must begin discharge planning procedures with the MHMR case manager and other interdisciplinary members unless a request for a fair hearing has been filed, as described in paragraph (7)(E) of this subsection. The nursing facility is responsible for discharging the resident, according to §19.302 of this title (relating to Transfer and Discharge).

[(E) Any resident or his legal representative not in agreement with the decision described in paragraph (7)(B) of this subsection may file a request with TXMHMR to receive a DHS fair hearing according to Chapter 79 of this title (relating to Legal Services). If the resident files a request for a fair hearing within ten days of the notice, he may continue to reside in the nursing facility and receive specialized services pending the fair hearing results.

[(i) If the fair hearing results do not support the resident's or his legal representative's position:

[(I) the resident must accept the alternate placement offered, if it is still available, or the next alternate placement offered, or if refused,

[(II) the Medicaid eligibility worker is informed by TXMHMR that alternate placement is refused, and the 30-day discharge notice period begins.

[(ii) If the fair hearing results support the resident's or his legal representative's position, the resident may remain in the nursing facility and receive specialized services until the case manager locates an alternate placement. The resident or his legal representative may appeal alternate placement decisions until the resident or his legal representative agrees upon an alternate placement, or the fair hearing results support the location of an alternate placement]

(g) Nursing facilities who admit or retain individuals that have not been screened by DHS[TXMHMR] or who admit

or retain individuals for whom nursing facility placement has been found to be inappropriate and who require specialized services will not be reimbursed for that individual as described in §19.1708 of this title (relating to Limitations on Provider Charges to Patients).

(h) (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 June 9, 1994.

TRD-9442084 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption. September 1, 1994

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



Texas Department of Insurance Exempt Filing

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

(Editor's note As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code Board action taken under these articles is not subject to the Administrative Procedure Act

The text of the material being adopted will not be published, but may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin

The Commissioner of Insurance will hold a public meeting on July 5, 1994, at 1:30 p.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider a staff petition proposing Texas Personal Lines Manual rules and an amendatory Foundation Exclusion/Limited Coverage Endorsement to the Homeowner's Policy, Texas Dwelling Policy, Farm and Ranch Owner's Policy, and Texas Farm and Ranch Policy to exclude coverage for damage to foundations or slabs of the insured dwelling, other than loss caused by fire, lightning, smoke, windstorm, hurricane, hail, explosion, aircraft, vehicles, vandalism, malicious mischief, riot, civil commotion, and falling objects. The attachment of the proposed endorsement to a policy would eliminate coverage for any damage to the insured's foundation or slab caused by broken water pipes. An insurer could attach this endorsement only if the insured dwelling is more than ten years old. The proposed endorsements, which are mandated by the Insurance Code, Article 5.35-2, include Endorsement Number HO-150 to be attached to Homeowner's Policy Forms HO-A with Endorsement Number HO-170 attached, HO-B,

and HO-C; Endorsement Number TDP-022 to be attached to the Texas Dwelling Policy Forms 2 and 3, Endorsement Number FRO-450 to be attached to Farm and Ranch Owner's Policy Form FRO-A with Endorsement FRO-470 attached and Form FRO-B, and Endorsement Number TFR-075 to be attached to Texas Farm and Ranch Policy Forms 2 and 3.

The Commissioner will also consider adoption of Texas Personal Lines Manual rules to amend the Homeowner's Section (Rule IV.A.20), Dwelling Section (Rule IV.O), Farm and Ranch Owner's Section (Rule IV.A.21), and the Farm and Ranch Section (Rule IV.R). The proposed rules address when the endorsement may be attached and application of the premium reduction resulting from this exclusionary endorsement. The endorsement may be attached only to policies insuring dwellings that are more than ten years old and is void if attached to a policy insuring a dwelling that is ten years old or less as of the inception date of the policy. The proposed rules provide that the determination of whether a dwelling is more than ten years old is to be made by using the period from the date of completion of the construction of the dwelling to the inception date of the latest policy insuring the dwelling. The proposed rules also provide that the reduction in premium is determined by reducing the basic premium by a certain specified percentage, which will be determined at this year's residential property insurance benchmark rate hearing, require that the premium reduction be shown separately on the declaration page, and require that the percentage reduction be applied to the basic premium after any adjustments to the basic premium.

The rules and endorsements are proposed to become effective on the effective date of the 1994 residential property insurance benchmark rate.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35-2, 5.35, 5.96, and 5.98.

Copies of the full text of the proposed rules and amendatory endorsements are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number P-0694-141).

Anyone wishing to comment for or against the adoption of the proposed manual rules and amendatory endorsement is requested to submit written comments to the Office of the Chief Clerk prior to the July 5, 1994 meeting.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure Act.

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

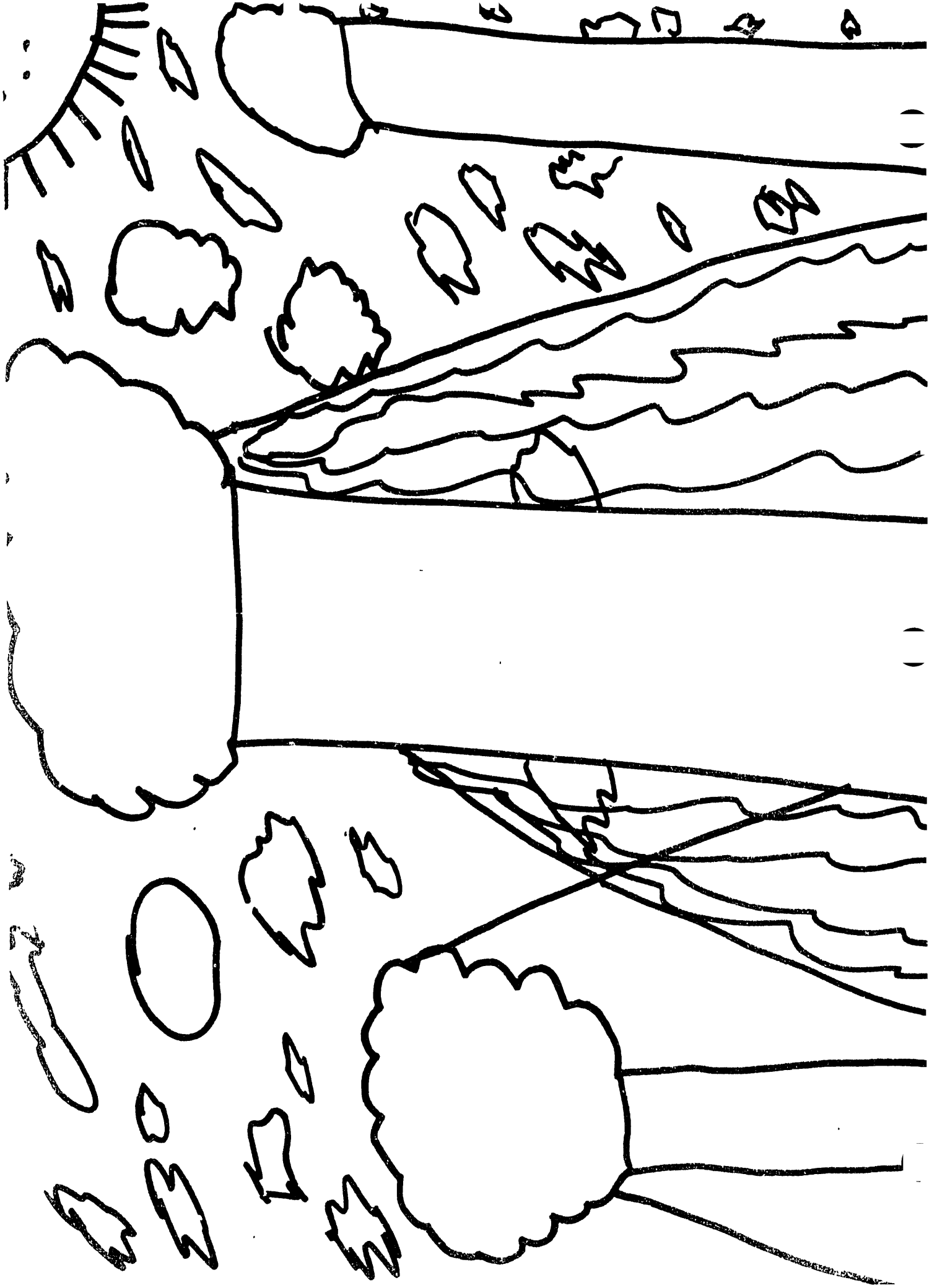
Issued in Austin, Texas, on June 9, 1994

TRD-9442066 D J Powers
Legal Counsel to
Commissioner
Texas Department of
Insurance

For further information, please call: (512) 463-6327







ADOPTED RULES

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

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

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 91 Texas Register

The Office of the Secretary of State, Texas Register, adopts amendments to §§91.1, 91.21, 91.23-91.25, 91.28, 91.42, 91.43, 91.73-91.75, 91.97, 91.112, 91.113, and 91.135, new §91.51 and the repeal of §91.51, concerning policies and procedures. Sections 91.1, 91.21, 91.22, 91.28, and 91.51 are adopted with changes to the proposed text as published in the May 3, 1994, issue of *Texas Register* (19 TexReg 3309). Sections 91.24, 91.25, 91.42, 91.43, 91.73-91.75, 91.97, 91.112, 91.113, 91.135, and the repeal of §91.51 are adopted without changes and will not be republished.

The amendments are being adopted to clarify policies and procedures for submitting documents. Section 91.51 is being repealed and adopted new to implement standards for electronic submissions of documents.

The Texas Register held workshops during the weeks of May 2-6 and May 9-13, to educate agencies on the new procedures that the Register will implement in July. Two oral comments were received during the two week workshops and one written comment was received.

In §91.21(b), §91.28(b)(d) and (h) and in §91.51(e) the Register is deleting cites to the Texas Register Form and Style Manual as it conflicts with this office's policy for referencing guidelines and manuals that are not adopted by rules.

In §91.21(b) an agency submitted a written comment requesting that when a document is rejected by the Register the agency be notified by phone or fax. The Register agrees in part and has changed subsection (b) to reflect that the issuing agency will be notified by fax if the agency listed its fax number on the submission form.

In §91.23(b) an individual commented orally that the wording was confusing. The Register agrees with this comment and is adopting the section with changes.

In §91.23(h) the Register has deleted the last sentence because it is redundant.

In §91.28(i) an individual commented orally that the timesteps mentioned in subsection (i) are not the most commonly used on word processors and that we should replace Courier, Times, or Helvetica with Serif and San Serif. The Register agrees and is adopting this section with changes. In subsection (g) the Register changed the word "graphic" to "figure" in referring to designation of graphic material in miscellaneous documents so that this will be consistent with the requirements for graphic material in rules.

In §91.51(c)(7) the Register added the option to file documents via a modem using 9600 and 14,400 baud rate.

An individual from West Publishing Company commented that the definition for "Administrative Code" should contain the words "established by the Government Code." The Register agrees and the section is being republished.

Definition of Terms

• 1 TAC §91.1

The amendment is adopted under the Government Code, Chapter 2002, Subchapter B, Texas Register, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

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

Administrative Code. The Texas Administrative Code, as established by the Government Code, Chapter 2002, Subchapter C, §2002.051, also referred to as TAC.

APA Administrative Procedure Act. Government Code, Chapter 2001.

Certify. To assure that submitted documents have been reviewed by legal counsel, whose responsibility it is according to the Administrative Procedure Act (APA) to determine whether the action is within the agency's legal authority.

Certifying official. A person authorized by an agency to certify documents submitted for filing with the Texas Register, Office of the Secretary of State.

Register. The Texas Register established by the Government Code, Chapter 2002, Subchapter B.

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 June 10, 1994

TRD-9442333

Machree Garrett Gibson
Assistant Secretary State
Office of the Secretary of
State

Effective date July 5, 1994

Proposal publication date May 3, 1994

For further information, please call (512) 463-5561

Filing of Documents

• 1 TAC §§91.21, 91.23-91.25, 91.28

The new section and amendments are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

§91.21 Compliance, Nonacceptance of Documents

(a) (No change)

(b) Agencies shall file all documents with the Texas Register, Office of the Secretary of State, in accordance with the format, content, and procedural requirements specified by the Government Code, Chapters 2001 and 2002, and by these rules. The Office of the Secretary of State has the authority to administer the governing laws cited in this section as they relate to the Texas Register. Under the requirements contained in the Government Code, Chapter 551, Chapter 2001, Chapter 2002, Chapter 2254, as they relate to the Texas Register contained in this chapter, the Texas Register, Office of the Secretary of State, may reject for filing and publication any document that does not conform to these requirements. If the Texas Register rejects a document, the staff of the Texas Register shall notify the liaison of the issuing agency by fax (if fax number is known) and/or by letter and explain why the document was

rejected. After filing a document with the Texas Register, the liaison or alternate shall be available to answer questions about the document. If the Register fails to reach the liaison, the Register may reject or postpone publication of the document.

§91.23 Filing Procedures

(a) Agencies shall submit all documents except open meeting notices in electronic format. Documents submitted on paper may be subject to a later publication date without notice by the Texas Register. Agencies may submit documents in electronic format by diskette or telecommunication. See §91.51 of this title (relating to Electronic Format). Agencies may submit open meeting notices on paper or by fax. See §91.28 of this title (relating to Procedure for Filing Notice of Open Meeting).

(b) Agencies may submit more than one rule number on the same submission form, if the rules share the same chapter, subchapter, and undesignated head. Repeals may be grouped the same way, but on a separate submission form. Submission forms shall contain one chapter, subchapter, and undesignated head title.

(c) Agency policies based in whole or part upon opinions or similar determinations of the attorney general of Texas shall be promulgated and filed with the Texas Register, Office of the Secretary of State as rules when applicable.

(d) Rules rendered obsolete or invalid by legislation, constitutional amendment, or court decision shall be formally revised or repealed in accordance with rulemaking procedures and filed with the Texas Register, Office of the Secretary of State.

(e) If legislation transfers rulemaking authority from one agency to another, an agency may request the Texas Register to administratively transfer rules. Requests shall be in writing to the director of the Texas Register stating the legislation that requires this transfer, a copy of the legislation, effective date of the transfer, and a conversion chart with all old and new chapters, subchapters, undesignated headings and rules that are affected. The Texas Register will notify the agencies of the transfer notice publication date.

(f) All graphic material submitted for rules by an issuing agency will be published in an appendix section of the Texas Register. Each graphic will be labeled with a reference code indicating the word Figure, the TAC citation, and the level of the rule that references the material. Example: "Figure 1 TAC §91.3(a)(1)". The rule will reference the same label at the appropriate level. If multiple materials are contained within this level the label should reflect the

order in which they occur by adding the number after the word Figure. Example: "Figure 1 1 TAC §91.31(a)(1), Figure 2 1 TAC §91.31(a)(1)".

(g) All graphic material submitted for miscellaneous items will be published with the submission. Each figure will be labeled with the agency code, title of document, and a unique figure number. Example: 004-Request for Proposal-figure 1. If multiple materials are contained in the submission, the label should reflect the order in which they occur by adding a number after the word graphic. Example: 004-Request for Proposal-figure 1 and 004-Request for Proposal-figure 2.

(h) Rules submitted must incorporate any substantive changes made by the Texas Register staff as published in the Texas Register. If the rules are submitted without accounting for these changes, the document will be rejected.

§91.28 Procedure for Filing Notice of Open Meeting

(a) (No change)

(b) Notice of an open meeting shall be submitted on two copies of Form TR-3, Submission Form-Notice of Open Meeting or by faxing one copy of the Form TR-3.

(c) If the complete agenda cannot be stated in the space provided on the submission form, the agency shall summarize the agenda in the space provided. The agency shall then attach two copies of the complete agenda for filing, one copy attached to each submission form. When an agenda is summarized, the Register shall publish with the notice a statement that the agenda is summarized for publication purposes. When agencies fax open meeting notices to the Texas Register, they shall fax only one copy. Agencies may not fax documents with more than a five-page agenda. The agency shall not follow-up a faxed open meeting notice by mailing a duplicate.

(d) The submission forms shall be certified by an authorized agency official.

(e) (No change)

(f) An agency is not required by the Open Meetings Law to file and post a cancellation notice of a meeting which has previously been filed and posted. However, if an agency desires, it may notify the Texas Register in writing of a meeting cancellation. The Texas Register will then remove the notice from the bulletin board.

(g) (No change)

(h) Open meetings that are rescheduled for a new day/date, time, and/or location shall be submitted according to the requirements of this rule.

(i) The text of open meeting notices are published in the Texas Register as submitted by the issuing agency. The meetings must be typed using serif and sans serif typestyles, 10 or 12 picas point size, and only on the front page of the submission form. Agencies are discouraged from using nonstandard abbreviations.

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 June 10, 1994

TRD-9442334

Machree Garrett Gibson
Assistant Secretary State
Office of the Secretary of
State

Effective date July 5, 1994

Proposal publication date May 3, 1994

For further information, please call (512) 463-5561

Adoption By Reference: Adoption Under Federal Mandate

• 1 TAC §91.42, §91.43

The amendments are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

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 June 10, 1994

TRD-9442335

Machree Garrett Gibson
Assistant Secretary State
Office of the Secretary of
State

Effective date July 5, 1994

Proposal publication date May 3, 1994

For further information, please call (512) 463-5561

Document Format

• 1 TAC §91.51

The repeal is adopted under the Government Code, §2002.017, which authorizes the Secretary of State to adopt rules to ensure the effective administration of the subchapter, including rules prescribing paper size and the format of documents required to be filed for publication.

The repeal does not affect other statutes, articles or codes.

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 June 10, 1994

TRD-9442336

Machree Garrett Gibson
Assistant Secretary State
Office of the Secretary of
State

Effective date July 5, 1994

Proposal publication date May 3, 1994

For further information, please call (512) 463-5561

Format

• 1 TAC §91.51

The new section is proposed under the Government Code, §2002.017, which authorizes the Secretary of State to adopt rules to ensure the effective administration of the subchapter, including rules prescribing paper size and the format of documents required to be filed for publication.

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

§91.51 Electronic Format

(a) Agencies shall submit documents (except submission forms and notices of open meetings) in electronic format using a modem or on 5-1/4" or 3-1/2" diskettes. Files shall conform to the American Standard Code for Information Interchange (ASCII) format. Files shall be named using the date of the submission, a decimal point, and the agency code. If an agency submits more than one file on the same day, the agency shall insert an alphabetic letter in sequence after the date and before the decimal point. For example, 715.004 indicates that this file was sent on July 15 by the Office of the Secretary of State, 715b.004 would indicate a second file was sent on July 15th.

(b) Codes to designate boldface, italics, new paragraph, and other formatting commands shall be enclosed in "<>" brackets. The codes are as follows:

(1) <+>-This code will be used in place of the section symbol.

(2) <p>-This code indicates a new paragraph.

(3) <i>-This code indicates italics in the preamble.

(4) <h>-This code indicates regular type in the preamble.

(5) <etb>-This code indicates boldface type in the text except in the preambles.

(6) <et>-This code indicates regular type in all text except preambles.

(7) <eti>-This code indicates italics in all text except preamble.

(8) </sup>-This code indicates a superscript and is inserted before the number, </sup> shall be inserted after the superscripted number.

(9) </sub>-This code indicates a subscript and is inserted before the number, </sub> shall be inserted after the subscripted number.

(10) Deleted text shall be indicated by square brackets []

(11) *n-This code indicates the end of a document within a file.

(c) Agencies using telecommunications to submit their documents shall do the following:

(1) A password shall be established by contacting the staff of the Register. This password allows the user to access the system.

(2) The necessary submission forms that correspond to the files being sent shall be faxed to the Register before transmitting.

(3) Files shall be named in accordance with subsection (a) of this section.

(4) If files are compressed using PKZip software, the issuing agency shall contact the staff of the Register before transmitting.

(5) Agencies shall not submit files larger than 200,000 bytes uncompressed.

(6) Graphic material shall be delivered to the Texas Register before the deadlines as specified in §91.113 of this title (relating to Deadlines).

(7) Files may be transmitted using 1200, 2400, 9600, or 14,400 baud rate.

(d) Agencies submitting their documents on diskettes shall do the following:

(1) The diskette shall be hand-delivered or mailed with the appropriate submission forms attached, including any graphic material properly marked as specified in §91.23(e) of this title (relating to Filing Procedures).

(2) Files shall be named in accordance with subsection (a) of this section.

(3) Diskettes shall be formatted using DOS 3.1 or newer version of the operating system. The Texas Register accepts high- and low-density diskettes, but high-density is preferred.

(4) Diskettes shall contain only the files being submitted. Diskettes containing files not relating to the submission may be rejected.

(5) Files may be compressed using PKZip software. A notation on the diskette is required notifying the Register of this.

(6) The Register will not return diskettes to the issuing agency. An agency upon submission may request a diskette in exchange for the submitted diskette, or go through the Register files periodically to retrieve its diskettes.

(7) Agencies shall attach a label to the diskette identifying the submitting agency and the date of the submission.

(e) Electronic files submitted by an agency shall follow the requirements set forth in this rule.

(f) If the Register is unable to access a file, if the files do not match the submission forms, or if an error occurred in the creation of the ASCII file, the issuing agency will be contacted immediately. The agency will be asked to resubmit their files, if time allows for processing of documents without delaying the production of the Texas Register. If there is not sufficient time, the submission will be retained for the next issue of the Texas Register.

(g) Training sessions will be given periodically by the Register staff to all agencies. Agencies may request individual training sessions.

(h) Agencies will be notified at least one month prior to any changes being made to the Register programs or computer systems.

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

Issued in Austin, Texas, on June 10, 1994

TRD-9442337

Machree Garrett Gibson
Assistant Secretary State
Office of the Secretary of
State

Effective date July 5, 1994

Proposal publication date May 3, 1994

For further information, please call (512) 463-5561

Classification Systems

• 1 TAC §§91.73-91.75

The amendments are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

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 June 10, 1994

TRD-9442338 Machree Garrett Gibson
Assistant Secretary State
Office of the Secretary of
State

Effective date July 5, 1994

Proposal publication date May 3, 1994

For further information, please call (512)
463-5561

Submission Forms

• 1 TAC §91.97

The amendment is adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

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 June 10, 1994.

TRD-9442339 Machree Garrett Gibson
Assistant Secretary State
Office of the Secretary of
State

Effective date July 5, 1994

Proposal publication date May 3, 1994

For further information, please call (512)
463-5561

Publication Schedule

• 1 TAC §91.112, §91.113

The amendments are adopted under the Government Code, Chapter 2002, Subchapter B, Texas Register, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code

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 June 10, 1994

TRD 9442340 Machree Garrett Gibson
Assistant Secretary State
Office of the Secretary of
State

Effective date July 5, 1994

Proposal publication date May 3, 1994

For further information, please call (512)
463-5561

Miscellaneous Provisions

• 1 TAC §91.135

The amendment is adopted under the Government Code, Chapter 2002, Subchapter B, Texas Register, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code

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 June 10, 1994

TRD-9442341 Machree Garrett Gibson
Assistant Secretary State
Office of the Secretary of
State

Effective date July 5, 1994

Proposal publication date May 3, 1994

For further information, please call (512)
463-5561

TITLE 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 162. Texas Exporters Loan Fund

• 10 TAC §§162.1, 162.3-162.6, 162.8-162.10

The Texas Department of Commerce adopts amendments to §§162.1, 162.3-162.6, and 162.8-162.10, concerning the Texas Exporters Loan Fund, without changes to the proposed text as published in the April 29, 1994, issue of the *Texas Register* (19 TexReg 3216)

Section 162.1 contains the General Provisions of the rules. Section 162.3 contains the Eligibility Requirements for the Texas Exporters Loan Fund. Section 162.4 contains the Filing Requirements and Consideration of Applications. Section 162.5 contains the requirements for Contents of Application, while §162.6 contains the General Terms and Conditions of Department's Financial Commitment. Section 162.8 contains the Loan Administration provisions for the Fund. Section 162.9 concerns the Loan Review Committee, and §162.10 sets forth the requirements for Eligible Lenders.

The amendments are necessary to ensure consistency with the Texas Exporters Loan Fund Act. The amendments function by clarifying citations and standardizing language, deleting references to agency offices that no longer exist, enabling the Executive Director to make committee appointments, including the Executive Director on the list of persons to whom conflict of interest provisions apply, enabling the Department to assist export businesses that have not found lenders, increasing the loan amount the Department can guarantee, allowing the Executive Director to appoint the Loan Review Committee, and requiring lenders seeking to make loans for export transactions to specify the interest rate being charged.

No comments were received regarding the adoption of the rules.

The amendments are adopted under the authority of the Texas Government Code, §481.021(a)(1), which gives the Texas De-

partment of Commerce the authority to adopt rules to carry out its responsibilities, the Texas Government Code, Subchapter D, Chapter 481, which contains the Texas Exporter Loan Fund Act, and Title 10, Subchapter B, Chapter 2001, which prescribes the standards for rulemaking by state agencies.

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 June 9, 1994

TRD-9442107 Deborah C. Kastin
Executive Director
Texas Department of
Commerce

Effective date July 1, 1994

Proposal publication date April 29, 1994

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

Chapter 195 Memoranda of Understanding

• 10 TAC §§195.1-195.12

The Texas Department of Commerce adopts new §§195.1-195.12, concerning Memoranda of Understanding with the Texas Education Agency, the Higher Education Coordinating Board, the Texas Department of Human Services, the Alternative Fuels Council, the Texas Department of Housing and Community Affairs, the Texas Parks and Wildlife Department, the General Services Commission, the Texas Department of Agriculture, the Texas Historical Commission, the Texas Employment Commission, the Comptroller of Public Accounts and the Texas General Land Office, without changes to the proposed text as published in the April 29, 1994, issue of the *Texas Register* (19 TexReg 3046).

The new rules are necessary to comply with changes made to the Government Code §481.028, enacted by the 73rd Legislature requiring the Department to enter into memoranda of understanding with the previously mentioned agencies, in program planning and budgeting.

Section 195.1 contains the Memorandum of Understanding with the Texas Education Agency.

Section 195.2 contains the Memorandum of Understanding with the Higher Education Coordinating Board.

Section 195.3 contains the Memorandum of Understanding with the Texas Department of Human Services.

Section 195.4 contains the Memorandum of Understanding with the Alternative Fuels Council.

Section 195.5 contains the Memorandum of Understanding with the Texas Department of Housing and Community Affairs.

Section 195.6 contains the Memorandum of Understanding with the Texas Parks and Wildlife Department.

Section 195 7 contains the Memorandum of Understanding with the General Services Commission

Section 195 8 contains the Memorandum of Understanding with the Texas Department of Agriculture

Section 195 9 contains the Memorandum of Understanding with the Texas Historical Commission

Section 195 10 contains the Memorandum of Understanding with the Texas Employment Commission

Section 195 11 contains the Memorandum of Understanding with the Comptroller of Public Accounts

Section 195 12 contains the Memorandum of Understanding with the Texas General Land Office

There were no comments regarding adoption of the rules

The new rules are adopted under the authority of the Texas Government Code, §481 021(a)(1), which gives the Texas Department of Commerce the authority to adopt rules to carry out its responsibilities, §481 028(d), which directs that the memoranda of understanding be adopted as rules of the agencies, and Title 10, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies

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 June 9, 1994

TRD-9442106
Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Effective date July 1, 1994

Proposal publication date April 22, 1994

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

TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 129. Student Attendance

Subchapter B. Student Attendance Accounting

• 19 TAC §129.21

The Texas Education Agency (TEA) adopts an amendment to §129.21, concerning requirements for student attendance accounting for state funding purposes, without changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2165)

Many school districts have adjunct staff members supervising and/or directing school-approved activities. The amendment allows

students to be considered in attendance if they are under the direction of professional or adjunct staff members of the school district. The adjunct staff member must meet certain requirements.

No comments were received regarding adoption of the rule.

The amendment is proposed under the Texas Education Code, §16 005, which authorizes the commissioner of education, in accordance with the rules of the State Board of Education, to take such action and require such reports consistent with the terms of this chapter as may be necessary to implement and administer the Foundation School Program.

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

Issued in Austin, Texas, on June 10, 1994

TRD-9442235
Crisis Cloudt
Associate Commissioner,
Policy Planning and
Evaluation
Texas Education Agency

Effective date July 4, 1994

Proposal publication date March 29, 1994

For further information, please call (512) 463-9701

TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate Act

Licensed Real Estate Inspectors

• 22 TAC §535.222

The Texas Real Estate Commission adopts an amendment to §535.222, concerning standards of practice for real estate inspectors, with changes to the proposed text as published in the February 22, 1994, issue of the *Texas Register* (19 TexReg 1314). The amendment requires certain items or conditions which may be found by the inspector to be reported as in need of repair.

The proposed amendment would have required the inspector to report as in need of repair any visible existing or recognized hazard found by the inspector. Comments opposing the proposal were received from the Texas Association of Realtors, the Texarkana Board of Realtors, Inc., the Grayson County Association of Realtors, the Building Officials Association of Texas and a number of individuals. The comments suggested that the proposal was overbroad in scope and would pose special hardships on owners of older properties. Most commenters suggested that the proposal would tend to cause current building codes to be applied to older proper-

ties, which are typically grandfathered from compliance if construction predates adoption of the building codes.

The commission concurred in part with the comments and modified the text to limit the conditions which would be reported as in need of repair to those recommended by the Texas Real Estate Inspector Committee, the advisory committee which developed the proposal. Specifically, the inspector will be required to report as in need of repair water heater temperature and/or pressure relief valve drain or discharge lines smaller than the outlet fitting of the valve, gas-fired water heaters installed in a garage where the burners or burner ignition sources are less than 18 inches above the floor, or the absence, improper installation or improper operation of ground fault circuit interrupter devices in bathrooms, exterior kitchens (within six feet of a sink) or in swimming pool locations. Each of these conditions is considered a hazard in the minimum inspection standards. The commission did not agree with comments that the amendment as adopted would impose building code compliance on older properties or that the potential cost to the homeowner outweighed the need for the buyer to know that the hazardous conditions should be corrected by repairs. In most transactions, the homeowner is obligated to perform repairs not to exceed an agreed cost negotiated as part of the purchase contract, the homeowner is not necessarily compelled by the amendment to make any repairs. Adoption of the amendment is necessary to ensure that prospective buyers are aware of the necessity of repairing hazards posing the threat of personal injury or loss of property.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.222. Standards of Practice.

(a) (No change.)

(b) Scope. The standards of inspection practice established by this section are the minimum levels of inspection practice required of inspectors for the accessible parts, components and systems typically found in improvements to real property, excluding outbuildings and fences. The inspection is of conditions which are present and visible at the time of the inspection. All mechanical and electrical equipment, systems, and appliances are operated in normal modes and operating range at the time of the inspection. The inspector shall observe, render an opinion and report which of the parts, components, and systems present in the property and required for inspection by subsections (e)-(g) of this section have or have not been inspected and if the parts, components, and systems are not functioning at the time of the inspection or are in need of repair and report on visible existing or recognized hazards. The inspector shall report as in need of repair water heater

temperature and/or pressure relief valve drain or discharge lines smaller than the outlet fitting of the valve, gas-fired water heaters installed in a garage where the burners or burner ignition sources are less than 18 inches above the floor, or the absence, improper installation or improper operation of ground fault circuit interrupter devices in bathrooms, exterior, kitchens (within six feet of a sink) or in swimming pool locations. All written inspection reports must contain the name and license number of the inspector who performed the inspection. The inspector may provide a higher level of inspection performance than required by this section and may inspect parts, components and systems in addition to those described by this section. In the event of conflict between a specific provision and a general provision, the specific provision shall control. These standards do not apply to the following:

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

(c)-(h) (No change.)

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

Issued in Austin, Texas, on June 10, 1994.

TRD-9442135 Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: July 1, 1994

Proposal publication date: February 22, 1994

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part V. Texas Board of Pardons and Paroles

Chapter 141. General Provisions

Board of Pardons and Paroles

• 37 TAC §§141.1-141.10

The Texas Board of Pardons and Paroles adopts the repeal of §§141.1-141.10, concerning general provisions of the Board of Pardons and Paroles, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3422).

The sections are being repealed because they are obsolete under current statutory law and new updated rules dealing with the same subject matter are being adopted as §§141.1-141.5.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442190 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

• 37 TAC §141.1

The Texas Board of Pardons and Paroles adopts new §141.1, concerning the Chairmanship of the Board of Pardons and Paroles, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3422).

The new section is adopted because it updates the scope of authority granted to the Chairman of the Board of Pardons and Paroles to conform to new statutory law.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442153 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

• 37 TAC §141.2

The Texas Board of Pardons and Paroles adopts new §141.2, concerning general provisions of the board relating to quorum of the Board of Pardons and Paroles and its parole panels, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3422).

The new section is adopted because it deletes information found in the current rule

dealing with Quorum (§141.4) which is not relevant to the topic of Quorum.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442162 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

• 37 TAC §141.3

The Texas Board of Pardons and Paroles adopts new §141.3, concerning general provisions of the board relating to voting requirements necessary for board and parole panel actions, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3423).

The new section is necessary to comply with statutory language found at Code of Criminal Procedure, Article 42.18, §7(g).

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442163 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

• 37 TAC §141.4

The Texas Board of Pardons and Paroles adopts new §141.4, concerning general provisions of the board relating to meetings of the board, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3423).

The new section is adopted because it has been updated to comply with current statutory law.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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 June 10, 1994

TRD-9442164

Michael F Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §141.5

The Texas Board of Pardons and Paroles adopts new §141.5, concerning general provisions of the board relating to parliamentary authority, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3423).

The new section is adopted because it is being renumbered to create consecutively numbered sections. By a separate submission current §141.9 which is identical in text is being repealed.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442165

Michael F Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
Parole Panels

• 37 TAC §§141.41-141.45

The Texas Board of Pardons and Paroles adopts the repeal of §§141. 41-141.45, con-

cerning parole panels, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3423).

The sections are being repealed because the information contained in these rules duplicates statutory law.

No comments were received regarding adoption of the repeals

The repeals are adopted under Texas Code of Criminal Procedure, Article 42 18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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 June 10, 1994

TRD-9442191

Michael F Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date July 1, 1994

Proposal publication date May 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
Rulemaking

• 37 TAC §§141.51-141.57

The Texas Board of Pardons and Paroles adopts the repeal of §§141. 51-141.57, concerning various facets of rulemaking and procedures for rulemaking applicable to the Board of Pardons and Paroles, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3424).

The sections are being repealed to enable the board to simultaneously adopt new rules pertaining to rulemaking which better conform to current statutory law

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Code of Criminal Procedure, Article 42. 18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442192

Michael F Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date May 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
• 37 TAC §141.51

The Texas Board of Pardons and Paroles adopts new §141.51, concerning the Use and Effect of Rules passed by the Board of Pardons and Paroles, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3424)

The new section is adopted because the office of parole commissioner has been abolished by statutory law and the new rule deletes all references to parole commissioners

No comments were received regarding adoption of the new section

The new section is adopted under Texas Code of Criminal Procedure, Article 42 18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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 June 10, 1994

TRD-9442166

Michael F Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date May 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
• 37 TAC §141.52

The Texas Board of Pardons and Paroles adopts new §141.52, concerning the Suspension of Rules of the Board of Pardons and Paroles, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3424)

The new section is adopted because it is being renumbered to provide for a sequence of continuously numbered rules. The text of new §141.52 is currently found at §141.54 which is being repealed by a separate submission

No comments were received regarding adoption of the new section

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442167

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512)
406-5613

◆ ◆ ◆
• 37 TAC §141.57

The Texas Board of Pardons and Paroles adopts new §141.57, concerning the Petition for the Adoption of Rules which states who may petition the Board for the adoption of rules and the procedure to be followed in the petition process, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3425).

The new section is adopted because the board has changed the address to which communications are to be sent.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442168

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512)
406-5613

◆ ◆ ◆
Records and Reports

• 37 TAC §§141.71-141.74

The Texas Board of Pardons and Paroles adopts the repeal of §§141.71-141.74, concerning records and reports of the board, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3425).

The sections are being repealed because the board is simultaneously adopting new rules pertaining to this topic which are more consistent with current statutory law.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such rea-

sonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442193

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512)
406-5613

◆ ◆ ◆
• 37 TAC §141.71

The Texas Board of Pardons and Paroles adopts new §141.71, concerning the minutes of the board and board records relating to decisions made by the board and its component panels and the conditions under which such materials are available to the public, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3425).

The new section is adopted to better conform to current statutory law.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442169

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512)
406-5613

◆ ◆ ◆
• 37 TAC §141.72

The Texas Board of Pardons and Paroles adopts new §141.72, concerning the recording of parole panel decisions, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3426).

The new section is adopted because it conforms to current statutory law by deleting reference to the position of parole commissioner which has been abolished.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442170

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512)
406-5613

◆ ◆ ◆
Registration of Visitors and
Fee Affidavits

• 37 TAC §141.81, §141.82

The Texas Board of Pardons and Paroles adopts the repeal of §141.81 and §141.82, concerning the registration of visitors and fee affidavits, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3426). These rules require advocates appearing before the board to register with the board and to file a fee affidavit disclosing compensation for their services before the board.

The sections are being repealed because they refer to obsolete statutory law in that the position of parole commissioner no longer exists and these rules must be replaced by new rules reflecting current law.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442194

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512)
406-5613

◆ ◆ ◆
• 37 TAC §141.81

The Texas Board of Pardons and Paroles adopts new §141.81, concerning registration

requirements for visitors who appear before the board, board members, or employees of the board to present information or arguments for or in behalf of any person within the jurisdiction of the board, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3426).

The new section is adopted to conform to current statutory law by deleting references to the position of parole commissioner which has been abolished.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442171 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

37 TAC §141.82

The Texas Board of Pardons and Paroles adopts new §141.82, concerning the requirement that persons appearing before the board, or any of its members, or employees, to present information or arguments for or in behalf of a person within the board's jurisdiction must file a fee affidavit specifying the existence of, and amount of compensation to be paid to the advocate, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3427).

The new section is adopted to comply with current statutory law found in Code of Criminal Procedure, Article 42.18, §11.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442172 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

Interviews

• 37 TAC §§141.91-141.94

The Texas Board of Pardons and Paroles adopts the repeal of §§141.91-141.94, concerning the discretionary granting of interviews by board members and their designates to persons who wish to present information and arguments for and in behalf of any person within the board's jurisdiction, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3427).

The sections are being repealed because they are being updated to conform to current statutory law by means of a separate submission of proposed new rules.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442195 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

• 37 TAC §141.91

The Texas Board of Pardons and Paroles adopts new §141.91, concerning the discretionary authority of the board to grant interviews to persons who wish to submit information to the board, and the nature of such interviews, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3427).

The new section is adopted to reflect current statutory law and the fact that the position of parole commissioner no longer exists.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994

TRD-9442173 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call (512) 406-5613

• 37 TAC §141.92

The Texas Board of Pardons and Paroles adopts new §141.92, concerning the requirement that a record of interviews of the type described in §141.91 be created and maintained as a part of a parole file, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3428).

The new section is adopted to conform to Code of Criminal Procedure, Article 42.18, §18, which makes components of a parole file confidential, subject to specific exceptions.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442174 Michael F. Miller
General Counsel
Texas Board of Pardons
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Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

• 37 TAC §141.94

The Texas Board of Pardons and Paroles adopts new §141.94, concerning prohibitions against the board or any of its members from making any binding parole, revocation, or executive clemency decisions during the course of interviews of persons providing information before and in behalf of any person within the jurisdiction of the board, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3428).

The new section is adopted to reflect current statutory law by deleting reference to the office of parole commissioner which has been abolished.

No comments were received regarding adoption of the new section

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994

TRD-9442175 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

Chapter 145. Parole

Parole Process

• 37 TAC §§145.1-145.3

The Texas Board of Pardons and Paroles adopts the repeal of §§145.1-145.3, concerning parole panels, standard parole guidelines, and the tentative parole date because each related to obsolete statutory law, without changes to the proposed text as published in the January 4, 1994, issue of the *Texas Register* (19 TexReg 57)

The sections are being repealed because they will be replaced by new sections which relate to current statutory law

No comments were received regarding adoption of the repeals

The repeals are adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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 June 10, 1994

TRD-9442196 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: January 4, 1994

For further information, please call: (512) 406-5613

• 37 TAC §145.1

The Texas Board of Pardons and Paroles adopts new §145.1, concerning who is authorized to make parole decisions, without

changes to the proposed text as published in the January 4, 1994, issue of the *Texas Register* (19 TexReg 58). This rule specifies that generally the parole decision maker is a parole panel consisting of three board members, however in cases involving capital felonies committed after the effective date of Senate Bill 1067, the entire membership of the board must vote to grant or deny parole.

The new section is adopted to conform to current statutory law.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442176 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: January 4, 1994

For further information, please call: (512) 406-5613

• 37 TAC §145.2

The Texas Board of Pardons and Paroles adopts new §145.2, concerning standard parole guidelines to be utilized by the parole decision-maker as an aid to investigation and research in the area of parole selection, without changes to the proposed text as published in the January 4, 1994, issue of the *Texas Register* (19 TexReg 58).

The new section is adopted to comply with current statutory law found in Code of Criminal Procedure, Article 42.18, §8(a) and §8(f)(5).

Comments opposing the adoption of new §145.2 and §145.3 were originally made in writing and later made orally at a public hearing on April 7, 1994 by one commenter.

The commenter's written comments characterized the proposed sections as rigid eligibility rules that should be applicable only to inmates who committed violent crimes, but not to inmates who had no history of violence.

The commenter's arguments were as follows:

The percentage of paroles has declined sharply while the number of parole eligible inmates has increased. The largest decrease in parole involves non-violent inmates so TDCJ prisons are becoming overcrowded with non-violent inmates. Because of prison overcrowding, less secure county jails are having to house inmates who should be in prison and are overcrowding county jails

At the April 7th public hearing, the commenter suggested that any proposed new rules dealing with parole release should be coordinated

with the Texas Department of Criminal Justice to reduce prison population pressures, however he did not explain how new §145.2 or §145.3 are rigid, unfair, or illegal.

The board disagrees with the commenter. New rules §145.2 and §145.3 are fair, flexible and responsive to the board's statutory duties found at Code of Criminal Procedure, Article 42.18, §8(a) and §8(f)(5): to parole if the parole panel determines that the person's release will not increase the likelihood of harm to the public and to place a prisoner on parole only when the panel believes that he is willing and able to fulfill the obligations of a law abiding citizen.

The Board of Pardons and Paroles has no jurisdiction to manage inmate populations; so it has no authority to use parole as an inmate population management tool.

Statutory law makes no distinction between the parole worthiness of violent or non-violent inmates. If an inmate of either category cannot or will not act as a law abiding citizen and his parole would be likely to harm the public, he is unworthy of parole.

Any policy to parole inmates categorized as non-violent for the purpose of reducing inmate populations is illegal under current law.

Contrary to the commenter's assertions, the board feels that new §145.2 and §145.3 will help parole panels to determine with more flexibility and accuracy whether an inmate is willing and able to be a law abiding citizen on parole.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442177 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: January 4, 1994

For further information, please call: (512) 406-5613

• 37 TAC §145.3

The Texas Board of Pardons and Paroles adopts new §145.3, concerning policy statements of the Board of Pardons and Paroles to be used by the Board in its analysis and research of parole release decisions, with a change to the proposed text as published in the January 4, 1994, issue of the *Texas Register* (19 TexReg 59).

A list of penal institutions whose inmates would be affected by the policy statements, found in the proposed preamble was modified to conform to the list of facilities and pro-

grams under the board's jurisdiction found in Code of Criminal Procedure, Article 42.18.

The new section is adopted because according to Article 42.18 the board has jurisdiction in parole release matters.

There were two commenters to new §145.3. One commenter, the police chief of one of Texas' largest cities, is in favor of the new section as written. He commented that by returning parole violators to prison and by prohibiting inmates with disciplinary violations from parole consideration for the periods established in this rule, convicted criminals will have an incentive to exercise some self control.

The other commenter was opposed to new §145.3 and the basis for his opposition is that this rule will exacerbate inmate overcrowding. He commented in writing and later at an April 7, 1994 public hearing where he was the sole commenter. The board agrees with the first commenter and disagrees with the second one. The board has no authority to use parole as a prison population management tool. Prison population management is the duty of other state agencies. Code of Criminal Procedure, Article 42.18, §8, makes it clear that the focus of a parole decision is to be on the ability and willingness of an inmate to fulfill the obligations of a law abiding citizen, not on managing inmate populations.

The components of new §145.3 assist the board in making accurate parole decisions, because they are based upon the promise that if an inmate is unable or unwilling to meet his duties and obligations in a relatively structured prison/jail environment; it is reasonable to believe that he will be unable or unwilling to meet his obligations as a law abiding citizen or parolee in free society.

The commenter opposing §145.3 never explained at the April 7, 1994 public hearing how new §145.3 is rigid, unfair, or illegal.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.3. Policy Statements Relating to Parole Release Decisions by the Board of Pardons and Paroles. To aid the Board of Pardons and Paroles in its analysis and research of parole release, the board adopts the following policies.

(1) Release to parole is a privilege, not an inmate right, and the parole decision-maker is vested with complete discretion to grant, or to deny parole release as defined by statutory law.

(A) Candidates for parole are to be evaluated on an individual basis.

(B) There are no mandatory rules or guidelines for analysis or set release criteria that must be followed in every case because each inmate is unique.

(C) Since the board has the statutory duty to make release decisions which are only in the best interest of society, and when it thinks an inmate is able and willing to be a law-abiding citizen, set guidelines are merely optional tools to aid in the completely discretionary parole decision.

(2) An inmate will be considered for parole when he becomes statutorily eligible and meets the following criteria dealing with his behavior while incarcerated:

(A) The inmate must not have had a major disciplinary misconduct report as defined by the Texas Department of Criminal Justice in the six-month period prior to the date he is reviewed for parole.

(B) At the time he is reviewed for parole, the inmate must be classified in the same or higher time-earning status assigned all inmates during the initial phase of the TDCJ-ID diagnostic process.

(C) If any inmate who has received an affirmative vote to parole and following the vote is either reduced in classification status or loses good time, the parole decision will be reviewed and re-voted by the parole decision-maker.

(D) An administrative release violator (parole or mandatory supervision violator) who has been revoked for technical reasons will be eligible for release to parole when he has been incarcerated for 12 months, calendar time, to be computed from his date of return to custody as an administrative release violator.

(E) An administrative release violator (parole or mandatory supervision violator) with a new felony conviction or convictions will be eligible for parole when he has served 12 months calendar time or has accumulated sufficient time to become eligible for parole on the new sentence, whichever is greater.

(F) An inmate who is convicted of a felony offense committed while confined in the TDCJ-Institutional Division, or in any facility under the supervision of the TDCJ, or under contract to the TDCJ, in a jail in this state, a federal correctional institution, or a jail or a correctional institution in another state, will be considered eligible for parole after the inmate has served either three years flat time from the date the offense occurred or has served the new sentence in calendar days, whichever is less.

(G) An inmate who is otherwise statutorily eligible for parole and who is charged with a felony offense committed while in the TDCJ, any facility under its supervision, or a facility under contract to the TDCJ will not be released to parole until the felony charge is finally adjudicated and the Board notified of the final disposition for appropriate Board action.

(H) An offender may be approved for parole under the condition that the offender complete special treatment/educational programs In-Prison Therapeutic Communities (IPTC), Substance Abuse Felony Punishment Facility (SAFPF) and any requirements of those programs, such as after-care. An offender approved for parole under these conditions will be reconsidered if he fails to complete the requirements of a special treatment/educational program, to include after-care components of the program.

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

Issued in Austin, Texas, on June 10, 1994

TRD-9442178

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: January 4, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
• 37 TAC §§145.4, 145.5, 145.7,
145.8

The Texas Board of Pardons and Paroles adopts the repeal of §§145.4, 145.5, 145.7, and 145.8, concerning consideration for parole, and the establishment of the tentative parole date, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3428).

The sections are being repealed because the Board of Pardons and Paroles no longer has the statutory authority to determine the tentative parole date.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442197 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call (512)
406-5613

◆ ◆ ◆
• 37 TAC §§145.9, 145.10,
145.12-145.16

The Texas Board of Pardons and Paroles adopts the repeal of §§145.9, 145.10, and 145.12-145.16, concerning the parole process, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3429)

The sections are being repealed because of changes made in statutory law which make them obsolete. The board intends to simultaneously adopt new sections

No comments were received regarding adoption of the repeals

The repeals are adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442198 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call (512)
406-5613

◆ ◆ ◆
• 37 TAC §145.9

The Texas Board of Pardons and Paroles adopts new §145.9, concerning the discretionary authority of the Board of Pardons and Paroles to grant interviews, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3429)

The new section is adopted to conform to current statutory law because the position of parole commissioner has been abolished and institutional parole officers are no longer employees of the Board of Pardons and Paroles under current statutory law

No comments were received regarding adoption of the new section

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons

and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442179 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512)
406-5613

◆ ◆ ◆
• 37 TAC §145.12

The Texas Board of Pardons and Paroles adopts new §145.12, concerning the alternative actions that a parole panel may take upon initially reviewing a case for parole consideration, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3429).

The new section is adopted because it updates agency rules to reflect the existence of new rehabilitation programs and release options created by statutory law.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442180 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512)
406-5613

◆ ◆ ◆
• 37 TAC §145.16

The Texas Board of Pardons and Paroles adopts new §145.16, concerning the alternative actions that a parole panel, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3430)

The new section is adopted to update this section to current statutory law.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442181 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

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Proposal publication date: May 6, 1994

For further information, please call: (512)
406-5613

◆ ◆ ◆
• 37 TAC §§145.17-145.21

The Texas Board of Pardons and Paroles adopts the repeal of §§145.17-145.21, concerning the parole process relating to parole plans, actual date of release, the parole certificate and parole in absentia, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3430).

The sections are being repealed because §§145.17-145.19 are obsolete under current statutory law and because the board intends to simultaneously adopt new versions of §145.20 and §145.21.

No comments were received regarding adoption of the repeals

The repeals are adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442199 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512)
406-5613

◆ ◆ ◆
• 37 TAC §145.20

The Texas Board of Pardons and Paroles adopts new §145.20, concerning the issuance of parole certificates, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3431). This section lists the necessary conditions for the issuance of a parole certificate, and release on parole.

The new section is adopted to conform to current statutory law by reflecting the fact that the position of parole commissioner has been abolished

No comments were received regarding adoption of the new section

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994

TRD-9442182

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date July 1, 1994

Proposal publication date May 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
• 37 TAC §145.21

The Texas Board of Pardons and Paroles adopts new §145.21, concerning parole in absentia which involves the parole of prisoners not in actual physical custody of the Texas Department of Criminal Justice-Institutional Division prisons, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3431)

The new section is adopted to reflect the fact that the former Texas Department of Corrections has been renamed the Texas Department of Criminal Justice-Institutional Division.

No comments were received regarding adoption of the new section

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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

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TRD-9442183

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date July 1, 1994

Proposal publication date May 6, 1994

For further information, please call (512) 406-5613

Terms and Conditions of Parole

• 37 TAC §145.24

The Texas Board of Pardons and Paroles adopts the repeal of §145.24, concerning the rules of parole which are applicable to out-of-state parolees who are supervised in Texas, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3433).

The section is repealed because it cites another section of this code which will be renumbered by means of a separate adoption

No comments were received regarding adoption of the repeal

The repeal is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994

TRD-9442200

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date July 1, 1994

Proposal publication date May 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
The Texas Board of Pardons and Paroles adopts new §145.24, concerning the rules of parole applicable to parolees from outside the State of Texas who are supervised in Texas, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3433). This type of parolee is required to obey the terms and conditions of parole imposed by both the sending state and the state of Texas

The new section is adopted to specify that this category of parolee is required to obey those terms and conditions listed in proposed §145.22 which are imposed.

No comments were received regarding adoption of the new section

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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 June 10, 1994

TRD-9442184

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date July 1, 1994

Proposal publication date. May 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
• 37 TAC §145.26

The Texas Board of Pardons and Paroles adopts the repeal of §145.26, concerning the annual report status for parolees, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3433)

The section is being repealed because the board intends to adopt a new §145.2 which will increase the term that a person must be on parole before becoming eligible for consideration for annual report status

No comments were received regarding adoption of the repeal

The repeal is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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

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TRD-9442201

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date July 1, 1994

Proposal publication date May 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
The Texas Board of Pardons and Paroles adopts new §145.26, concerning various facets of "annual report" status, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3433) This section describes the characteristics of annual report status, including rules pertaining to eligibility and termination of annual report status

The new section is adopted because the board wants to increase the eligibility requirements for annual report status

No comments were received regarding adoption of the new sections

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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 June 10, 1994.

TRD-9442185

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call. (512) 406-5613

◆ ◆ ◆
**Standards and Certification
Procedures for Community
Residential Facilities**

• 37 TAC §§145.81-145.100

The Texas Board of Pardons and Paroles adopts the repeal of §§145.81-145.100, concerning standards and certification procedures for community residential facilities, without changes to the proposed text as published in the January 4, 1994, issue of the *Texas Register* (19 TexReg 60).

The sections are being repealed because the sections proposed for repeal have become obsolete under current statutory laws which have abolished the board's jurisdiction over community residential facilities

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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 June 10, 1994

TRD-9442202

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: January 4, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
**Chapter 149. Mandatory
Supervision**

**Rules and Conditions of Man-
datory Supervision**

• 37 TAC §149.1

The Texas Board of Pardons and Paroles adopts new §149.1, concerning the rules and conditions of mandatory supervision, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3434). The text of the proposed rule is currently found at §197.21.

The new section is adopted to reposition this rule as required by the Texas Administrative Code Classification process. This rule is being repositioned with other Board rules relevant to mandatory supervision.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442186

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call. (512) 406-5613

◆ ◆ ◆
• 37 TAC §149.6

The Texas Board of Pardons and Paroles adopts the repeal of §149.6, concerning non-reporting status for Mandatory Supervisions Releasee, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3435).

The section is being repealed because Board of Pardons and Paroles no longer statutory authority to grant non-reporting status to releasees.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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 June 10, 1994.

TRD-9442203

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

**Selection for Mandatory Super-
vision**

• 37 TAC §149.11

The Texas Board of Pardons and Paroles adopts the repeal of §149.11, concerning mandatory supervision release orders, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3436).

The section is being repealed because the statutory citation found in the section is obsolete. The board intends to simultaneously adopt a new rule with correct citation.

No comments were received regarding adoption of the repeal

The repeal is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442204

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
The Texas Board of Pardons and Paroles adopts new §149.11, concerning release order to be issued in granting mandatory supervision, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3436).

The new section is adopted to update the statutory citation referred to in the text of this section

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994.

TRD-9442187

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call. (512) 406-5613

◆ ◆ ◆
• 37 TAC §§149.12-149.14

The Texas Board of Pardons and Paroles adopts the repeal of §§149.12-149.14, concerning the mandatory supervision interview and the eligibility date for release to mandatory supervision, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3436).

The sections are being repealed because changes in statutory law have made these rules obsolete. Various components of the Texas Department of Criminal Justice now have the authority to carry out the functions described in these sections, not the Board of Pardon and Paroles.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994

TRD-9442205 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §149.16

The Texas Board of Pardons and Paroles adopts the repeal of §149.16, concerning mandatory supervision release certificates, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3436).

The section is being repealed because it refers to obsolete statutory law in that the position of parole commissioner no longer exists.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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 June 10, 1994.

TRD-9442206 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: July 1, 1994

Proposal publication date: May 6, 1994

For further information, please call. (512) 406-5613

◆ ◆ ◆
The Texas Board of Pardons and Paroles adopts new §149.16, concerning mandatory supervision release certificate, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3437).

The section is adopted to replace the current §149.16 which is statutorily obsolete and which by means of a separate submission is being repealed

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 June 10, 1994

TRD-9442188 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date July 1, 1994

Proposal publication date. May 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
Chapter 150. Board Policy
Statements; Memoranda of
Understanding

Board of Policy Statements

• 37 TAC §150.56

The Board of Pardons and Paroles adopts new §150.56, concerning Policies Pertaining to the Administration of the Agency which continues certain policies currently found in §150.56, namely, subsection (a), (e), and (f) which vest overall managerial responsibility in the board, an designates the board chairman as the agency's legislative liaison and agency spokesman, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3437). By means of a separate adoption the current version of §150.56 is being repealed to delete parts of the rule made obsolete by statutory law

The new section is adopted to reflect current statutory law; reference to the positions of parole commissioners and executive director have been deleted.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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 June 10, 1994.

TRD-9442189 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date July 1, 1994

Proposal publication date May 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
TITLE 40. SOCIAL SER-
VICES AND ASSIS-
TANCE

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) adopts an amendment to §48.9808, without changes to the proposed text as published in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2472)

The justification for 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.

The amendment will function by providing a better reflection of the way reimbursement is determined for case management and respite care services in the Community Living Assistance and Support Services (CLASS) program

During the comment period, DHS received comments from Vita Living, Inc., ARC of Austin, ARC of San Antonio, Rehabilitation Management, Inc., Valley Association for Independent Living, United Cerebral Palsy (UCP) of Metropolitan Dallas, Easter Seal Society, Shaffer's, and numerous program participants. A summary of the comments and DHS's responses follow.

Comment One commenter supported the right of the CLASS case management provider to choose the reimbursement methodology that the provider prefers.

Response Staff of the Health Care Financing Administration indicated that federal regulations will not allow providers to choose between two different reimbursement methodologies for the same service

Comment Four CLASS case management providers (Vita Living Inc., ARC of Austin, ARC of San Antonio, Rehabilitation Management, Inc) and two participants submitted comments in favor of the monthly rate. The case management providers indicated they supported a monthly rate because over time, the participants' need for case management should decrease or stabilize, putting pressure on the provider to generate revenue through the delivery of case management service units to that participant. A participant's needs for case management vary over time and the monthly rate would provide a steady and predictable source of revenue. Under the monthly reimbursement rate, participants would retain the ability to determine the number of hours of case management services they need. Case Management providers noted that some participants may have to purchase a little more for case management from their cost ceiling amount as a result of the monthly rate, however, this monthly cost would pay for continuous availability.

Response DHS acknowledges and appreciates the comments. In September 1992, a CLASS Task Force was formed to address various issues and concerns related to the CLASS program model and reimbursement methodology. One of the recommendations of the task force was to change the reimbursement methodology for case management services from a fee-for-service to a monthly rate

with a minimum of one contact per month with the participant. The department continues to support the Task Force recommendation. The majority of case management providers support the monthly reimbursement methodology.

Under a monthly reimbursement rate, participants will continue to have the ability to determine the amount of case management services they need. Individual plans of care will continue to be developed which include the case management services necessary to be delivered for the participant to remain in the community.

Comment Four CLASS case management providers (Valley Association for Independent Living, UCP of Metropolitan Dallas, Easter Seal Society, Shaffer's), 73 participants, and the parents of a CLASS participant were against changing to a monthly rate. The case management providers and participants indicated they did not support a monthly rate because it would not allow participants the freedom and personal empowerment to determine the amount of case management services they need. Also, the monthly rate would reduce the "benefits of aggressive case management services" to the participant when it is requested. The flat monthly rate would not account for regional or caseload differences, as well as differences in the way case management services are delivered.

Response The department has met extensively with the CLASS case management providers to examine the issues and merits of both the fee-for-service and monthly reimbursement methodologies. There are positive arguments to support both types of reimbursement methodologies, depending on the case manager's philosophy for service delivery and on the degree of utilization of services by participants. There are service

delivery benefits to the participants found in both methodologies.

The department continues to support the monthly reimbursement rate. The majority of case management providers also support the monthly reimbursement methodology. Under a monthly reimbursement rate, participants will continue to have the ability to determine the amount of case management services they need. Individual plans of care will continue to be developed which include the case management services necessary to be delivered for the participant to remain in the community.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.024 and 32.001-32.042 of the Human Resources Code.

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

Issued in Austin, Texas, on June 9, 1994.

TRD-9442085

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

Effective date: July 1, 1994

Proposal publication date: April 8, 1994

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

◆ ◆ ◆

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Animal Health Commission

Wednesday, June 22, 1994, 10:00 a.m.

2105 Kramer Lane

Austin

According to the complete agenda, the Feedlot Committee will consider discussion on quarantine feedlots and public comment.

Notice: Persons with disabilities attending this meeting who may need auxiliary aids or services such as interpreters, readers, large print or Braille, are requested to contact Melissa Nitsche at (512) 719-0714 two working days prior to the meeting so appropriate arrangements can be made.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714.

Filed: June 10, 1994, 4:02 p.m.

TRD-9442156

Wednesday, June 22, 1994, 1:00 p.m.

2105 Kramer Lane

Austin

According to the complete agenda, the Finance Committee will consider discussion on user fees and public comment.

Notice: Persons with disabilities attending this meeting who may need auxiliary aids or services such as interpreters, readers, large print or Braille, are requested to contact Melissa Nitsche at (512) 719-0714 two

working days prior to the meeting so appropriate arrangements can be made.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714

Filed: June 10, 1994, 4:02 p.m.

TRD-9442155

June 23, 1994, 8:30 a.m.

2105 Kramer Lane

Austin

According to the agenda summary, the Texas Animal Health Commission will approve minutes of previous meeting and actions of the executive director; presentation of awards to employees; brucellosis program update; report on emergency preparedness-foreign animal disease; progress report on Sunset review of agency; discuss field study project for fever tick field test site; consideration for adopting amendments to regulations-brucellosis (vaccination requirements) and fever ticks (quarantine line); consideration for proposing amendments to regulations-brucellosis (indemnity), tuberculosis (requirements for entry from foreign countries, entry requirements for Holsteins, and quarantined feedlots); and equine (equine infectious anemia), reports from EIA Advisory Committee, Finance Committee, and Feedlot Committee, consideration of and possible action on proposal for decision-in the matter of the appeal of David Hamilton; consideration for petition for rulemaking-§36.2 (Exotic Livestock and Fowl); and public comment.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714

Filed: June 10, 1994, 4:02 p.m.

TRD-9442154

Texas Catastrophe Property Insurance Association

Tuesday, June 21, 1994, 8:30 a.m.

The San Luis Conference Center, 5222 Seawall Boulevard

Galveston

According to the complete agenda, the Board of Directors will call to order-reminder of antitrust statement, approval of the minutes of April 19, 1994 board meeting, report of chairman, report of underwriting manager, report of claims manager, report of operations manager, report of general manager, Frost Bank presentation, plan of operation changes, mobile home limits, any other business that may come before the board, and adjourn

Contact: Charles F McCullough, 281 South Interregional, Austin, Texas 78741, (512) 444-7007

Filed: June 9, 1994, 12:14 p.m.

TRD-9442054

Texas Certified Self-Insurer Guaranty Association

Tuesday, June 21, 1994, 11:00 a.m.

4000 South IH-35, Zippy Foster Meeting Room 910

Austin

According to the agenda summary, the Board will call to order; approval of minutes for the public meeting of June 8, 1994; discussion, consideration, and possible action on the initial applications for Jeld-Wen, Inc., General Motors Corporation, and Poly-America, Inc., discussion, consideration, and possible action of the renewal applications for Sisters of Charity of the Incarnate Word, Houston, Texas and Subsidiary, Sisters of Saint Joseph Hospital doing business as St Mary of the Plains Hospital, Texaco Inc and Subsidiaries, Mercy Hospital of Laredo doing business as Mercy Regional Medical Center, and J B Hunt Transport, Inc., discussion, consideration, and possible action on the Officers and Directors Liability Insurance, other business; discussion of future public meetings, and adjournment.

Contact: Judy Roach, 1600 San Jacinto Center, 98 San Jacinto, Boulevard, Austin, Texas 78701

Filed: June 10, 1994, 4 03 p.m.

TRD-9442159

Children's Trust Fund of Texas Council (CTF)

Tuesday, June 15, 1994, 10:30 a.m.

W P Clements Building, Room 204B, 300 West 15th Street

Austin

According to the complete agenda, the Fiscal Advisory Committee will discuss welcome and introductions; report on CTF council recommendations; discussion of workplan, action plans; and adjourn.

Contact: Sue Marshall, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78701, (512) 458-1281.

Filed: June 9, 1994, 4 07 p.m.

TRD-9442092

Texas Commission on Children and Youth

Monday, June 27, 1994, 9:00 a.m.

1400 Congress Avenue, Capitol Extension, Room E1.004

Austin

According to the agenda summary, the Texas Commission on Children and Youth will discuss organizational matters; guest speakers; public testimony; lunch; and public testimony continues.

Contact: Ginny McKay, P.O. Box 13106, Austin, Texas 78711, (512) 305-9056.

Filed: June 9, 1994, 3:09 p.m.

TRD-9442078

Friday, June 17, 1994, 11:00 a.m.

300 West 15th Street, One Capital Square, Committee Room Five, Fifth Floor

Austin

According to the agenda summary, the Prevention/Intervention Work Group will hold a work group meeting.

Contact: Ginny McKay, P.O. Box 13106, Austin, Texas 78711, (512) 305-9056.

Filed: June 9, 1994, 3:10 p.m.

TRD-9442079

Friday, June 17, 1994, 10:00 a.m.

209 West 14th Street, Price Daniel Building, Room G-04

Austin

According to the agenda summary, the Juvenile Justice Work Group will hold a work group meeting.

Contact: Ginny McKay, P.O. Box 13106, Austin, Texas 78711, (512) 305-9056.

Filed: June 9, 1994, 3:11 p.m.

TRD-9442080

Office of Consumer Credit Commissioner

Monday, June 27, 1994, 9:00 a.m.

4900 North Lamar Boulevard

Austin

According to the complete agenda, the Office of Consumer Credit Commissioner will conduct a public hearing pursuant to Texas Civil Statutes, Article 5069-51 09(b) for the purpose of receiving oral testimony, evidence, data, or arguments and written testimony, evidence, data, or arguments on proposed Rules of Operation of Pawnshops, 7 TAC §§85.21, 85.31, 85.41, 85.51, 85.61, 85.71, and 85.81, as filed with the *Texas Register* on June 6, 1994.

Contact: Allo B. Crow, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1280.

Filed: June 13, 1994, 3:14 p.m.

TRD-9442284

Texas State Board of Examiners of Professional Counselors

Saturday, June 18, 1994, 9:00 a.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the agenda summary, the Texas State Board of Examiners of Professional Counselors will discuss and approve the minutes of April 2, 1994, and discuss and possibly act on: persons wishing to appear before the board; committee reports: (Application Committee (application requests)); Complaints Committee (agreed board orders); Testing and Continuing Education Committee (ratification of contract between the Ohio Counselors Licensing Board and the board concerning Ohio's use of the Texas Licensed Professional Counselor (LPC) examination; and request from the State of New Mexico to use the Texas LPC examination); Rules Committee (proposed amendments; comments to proposed amendments; final adoption of proposed amendments; whether or not certain practices are the practice of counseling; and interpretation of §681.32(g) and §2(7)(A) of the LPC Act); Administrative and Finance Committee (approval of for board members and executive secretary to attend conference; partial per diems for others to attend conference; and financial report through May 31, 1994); public and professional relations); and setting of the next meeting date.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler at (512) 458-7695 or T. D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 9, 1994, 4:07 p.m.

TRD-9442089

Friday, June 17, 1994, 1:00 p.m.

Suite S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Complaints Committee will discuss and possibly act on agreed board orders concerning J.R., T.L.P., and G.L.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler (512) 458-7695 or T. D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 9, 1994, 4:07 p.m.

TRD-9442090

Friday, June 17, 1994, 8:30 a.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Rules Committee will discuss and possibly act on: proposed amendments to 22 Texas Administrative Code (TAC), Chapter 681; comments to proposed amendments to 22 TAC, Chapter 681; final adoption of proposed amendments to 22 TAC, Chapter 681; whether or not certain practices are the practice of counseling; and request for interpretation of §681.32(g) and §2(7)(A) of the Licensed Professional Counselors Act relating to the definition of the practice of counseling.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 9, 1994, 4:07 p.m.

TRD-9442091

Texas Office for Prevention of Developmental Disabilities

Thursday, June 16, 1994, 10:00 a.m.

4900 North Lamar Boulevard, Room 2301 Austin

According to the complete agenda, the Bicycle Helmet Coalition will call to order; introductions of members/special guests; legislation; coalition reports; bicycle grant reports; other business; coalition newsletter; meeting schedule; special meeting schedule—July 18, 1994, evening, guest speaker, Philip L. Graitcer, Emory University, WHO Helmet Initiation, 6:30-8:30 p.m.; and adjournment.

Contact: Terry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: June 10, 1994, 1:43 p.m.

TRD-9442125

Texas Education Agency

Monday, July 11, 1994, 9:30 a.m.

Texas Rehabilitation Commission, Brown/Healy Building, 4900 North Lamar Boulevard

Austin

According to the complete agenda, the Advisory Task Force on the Education of Homeless Children and Youth will welcome and make introductions; update on homeless education issues; review previously identified barriers and measure progress that has been made; identify new barriers and propose solutions; and adjournment.

Contact: Barbara Wand, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9695.

Filed: June 13, 1994, 10:59 a.m.

TRD-9442266

Advisory Commission on State Emergency Communications

Tuesday, June 21, 1994, 9:00 a.m.

1101 Capital of Texas Highway South, Suite B-100

Austin

According to the complete agenda, the One-Call Implementation Issues Subcommittee will call the meeting to order and recognize guests; hear public comment; discuss and consider implementation issues for One-Call; discuss and consider recommendations to One-Call Legislation Committee; and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: June 13, 1994, 3:34 p.m.

TRD-9442288

Tuesday, June 21, 1994, 1:00 p.m.

1101 Capital of Texas Highway South, Suite B-100

Austin

According to the complete agenda, the One-Call System Design Subcommittee will call the meeting to order and recognize guests; hear public comment; discuss and consider One-Call System Design issues; discuss and consider recommendations to One-Call Legislation; and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911

Filed: June 13, 1994, 3:46 p.m.

TRD-9442292

Wednesday, July 13, 1994, 10:30 a.m.

1101 Capital of Texas Highway South, Suite B-100

Austin

According to the agenda summary, the Poison Control Coordinating Committee will call the meeting to order and recognize guests; hear public comment; consideration of May 13, 1994 committee meeting minutes; report of subcommittee on Medical Management and Protocols; report of Subcommittee on Operations; report of Subcommittee on Education; report of Subcommittee on Finance; report of Subcommittee on Telecommunications; report on status of NTIA grant application; report on projects and timetables from strategic planning workshop in El Paso; discussion concerning contract and grant preparations; naming of network; selection of 800 telephone number, and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: June 13, 1994, 3 27 p m.

TRD-9442287

State Employee Charitable Campaign

Wednesday, June 15, 1994, Noon.

24th and Maple, Abilene State School, Administration Building, Conference Room

Abilene

According to the complete agenda, the Local Employee Committee-Abilene will give the organization a local name, budget, appeals, and the June 18th meeting in Austin.

Contact: Bill Waddill, 24th and Maple, Abilene, Texas 79604, (915) 692-4053.

Filed: June 10, 1994, 1 46 p m.

TRD-9442127

Saturday, June 18, 1994, 8:00 a.m.

6000 Middle Fiskville

Austin

According to the complete agenda, the State Policy Committee will review appeals for local organizations and local federations

Contact: Becky Prince, 2000 East MLK Boulevard, Austin, Texas 78702, (512) 472-6267 or FAX: (512) 482-8309

Filed: June 10, 1994, 8:58 a.m.

TRD-9442113

Wednesday, June 15, 1994, 3:00 p.m.
Texas Tech University Health Sciences
Center, Room 2AB101
Lubbock

According to the complete agenda, the Local Employee Committee-Lubbock will discuss local budget to be presented to State Policy Committee and discussion of Fall 1994 campaign plans.

Contact: Jim Bob Jones, 800 West Fourth, Room 2B140, Odessa, Texas 79763, (915) 335-5111.

Filed: June 10, 1994, 8:54 a.m.

TRD-9442110

Employees Retirement System of Texas

Tuesday, June 21, 1994, 9:00 a.m.

Texas Department of Health, Room M-739,
1100 West 49th Street

Austin

According to the agenda summary, the Board of Trustees will discuss approval of minutes; investment of system assets; appeals of contested cases; firm selection as claim administrator to the Flexible Benefits (Cafeteria Plan) Program; consideration of Supplemental Benefits; executive director's report; next trustee meeting date; and adjournment.

Contact: William S. Nail, 18th and Brazos, Austin, Texas 78701, (512) 867-3336.

Filed: June 13, 1994, 9:28 a.m.

TRD-9442226

Texas Employment Commission

Tuesday, June 21, 1994, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

According to the agenda summary, the Texas Employment Commission will discuss prior meeting notes; staff reports; consideration and possible approval of architect selection to provide professional services for renovation of agency-owned building in Garland; internal procedures of Commission Appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 25; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: June 13, 1994, 4:09 p.m.

TRD-9442294

Office of the Governor, Criminal Justice Division

Thursday, June 23, 1994, 3:00 p.m.

Texas Capitol Extension, 1400 Congress Avenue, Room E1.030

Austin

According to the complete agenda, the Juvenile Justice and Delinquency Prevention Advisory Board will call to order; approval of minutes; recommend final draft changes in Title III, Texas Family Code, as they relate to the mandates of the Juvenile Justice and Delinquency Prevention Act; public comment; and adjourn.

Contact: Jim Kester, P.O. Box 12428, Austin, Texas 78701, (512) 463-1919.

Filed: June 14, 1994, 9:46 a.m.

TRD-9442308

Texas House of Representatives

Thursday, June 23, 1994, 1:00 p.m.

E1.026, Capitol Extension

Austin

According to the agenda summary, the Public Safety Subcommittee on Oversight will study and review the legislative reporting requirements of all agencies listed in Rule 3, §25 of the House Rules to identify the areas where reporting could be streamlined and agency accountability improved. The subcommittee shall make specific recommendations to the full committee about the continuation modification or elimination of required legislative reports. Furthermore, the subcommittee will examine the accuracy of and completeness of reports of convictions to the Texas Department of Public Safety for purposes of driver license and criminal history checks. This subcommittee report shall also be reported to the full committee.

Contact: Kevin Cooper, P.O. Box 2910, Austin, Texas 78768, (512) 463-0849.

Filed: June 9, 1994, 4:07 p.m.

TRD-9442093

Monday, June 27, 1994, 1:00 p.m.

E2.028, Capitol Extension

Austin

According to the agenda summary, the Business and Industry Subcommittee on Legislative Reporting Requirements will

call to order; roll call; explanation of charge and opening remarks; invited testimony; public testimony; closing remarks; set date for next meeting; and adjourn.

Contact: Mance Bowden, P.O. Box 2910, Austin, Texas 78768, (512) 463-0766.

Filed: June 9, 1994, 4:07 p.m.

TRD-9442094

Texas Department of Human Services

Monday, June 20, 1994, 11:00 a.m.

701 West 51st, Public Hearing Room

Austin

According to the complete agenda, the Texas Board of Human Services will consider approval of minutes of May 20, 1994, meeting; chair's comments and announcements; EBT retailer requirements in the AFDC and food stamp programs; assisted living services/residential care and assisted living services/residential care respite care rates for the nursing facility waiver program; rate ceilings for emergency response services program and emergency response services for the nursing facility waiver program; reimbursement rules for ICF-MR select Level V children's class; proposed fiscal year 1995 operating plan and fiscal year 1996-1997 Legislative Appropriation Request; and commissioner's report.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3048.

Filed: June 9, 1994, 2:12 p.m.

TRD-9442061

Texas Incentive and Productivity Commission

Monday, June 20, 1994, 10:00 a.m.

Clements Building, 15th and Lavaca, Fifth Floor, Committee Room #5

Austin

Revised Agenda

According to the agenda summary, the Texas Incentive and Productivity Committee will add an additional item to the agenda: consideration of 1994 agency applications for productivity bonus program awards: Comptroller of Public Accounts.

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: June 10, 1994, 9:13 p.m.

TRD-9442114

Texas Department of Insurance

Monday, June 20, 1994, 1:00 p.m.

State Office of Administrative Hearings,
300 West 15th Street, Fifth Floor, Suite 502
Austin

According to the agenda summary, the Texas Department of Insurance will consider the application of Peter Cantu, Jr., Austin, Texas, for a Texas Resident Adjuster's License 454-94-829C 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: June 9, 1994, 10:57 a.m.

TRD-9442045

Wednesday, June 22, 1994, 9:00 a.m.

State Office of Administrative Hearings,
300 West 15th Street, Fifth Floor, Suite 502
Austin

According to the agenda summary, the Texas Department of Insurance will consider the application of Robert Siti, Houston, Texas, for an Insurance Adjustor's license 454-93-999.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: June 9, 1994, 10:57 a.m.

TRD-9442046

Lamar University System

Monday, June 20, 1994, 1:30 p.m.

John Gray Institute, 855 Florida
Beaumont

According to the complete agenda, the Finance and Audit Committee will call to order—chair's report; Item 1014—receive fiscal year 1995 operating budgets for Lamar University-Beaumont, Lamar University-Port Arthur, Lamar University-Orange, Lamar University Institute of Technology, John Gray Institute, and Lamar University System Office; executive session in conjunction with salary administration (pursuant to Chapter 551 of the Government Code, §551.074, Personnel Matters); reconvene open meeting; and adjourn.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: June 13, 1994, 9:06 a.m.

TRD-9442225

Texas State Board of Medical Examiners

Monday, June 20, 1994, 8:30 a.m.

1812 Centre Creek Drive, Suite 300
Austin

According to the agenda summary, the Reciprocal Endorsement Committee will review March, 1994, Special Purpose Examination statistics; review of endorsement applicants to be considered for permanent licensure; review of endorsement applicants referred to Endorsement Committee by the Executive Director for further review; and discussion, with possible action, on sections of the Medical Practice Act and applications.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 10, 1994, 4:57 p.m.

TRD-9442219

Monday, June 20, 1994, 8:30 a.m.

1812 Centre Creek Drive, Suite 300
Austin

According to the agenda summary, the Examination Committee will review examination applicants, discussion and action on proposed rule changes, and review of examination applicants referred to the committee by the Executive Director.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 10, 1994, 4:57 p.m.

TRD-9442218

Monday, June 20, 1994, 8:30 a.m.

1812 Centre Creek Drive, Suite 300
Austin

According to the complete agenda, the Disciplinary Process Review Committee will call to order; executive session to review selected files, two year old cases, and cases dismissed by Informal Settlement Conference; April and May 1994 endorsement reports; and discussion regarding Investigation Division's hiring practices.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 10, 1994, 4:56 p.m.

TRD-9442217

Monday-Wednesday, June 20-22, 1994,
11:00 a.m., 10:00 a.m., and 9:00 a.m.,
respectively.

1812 Centre Creek Drive, Suite 300
Austin

According to the agenda summary, the Texas State Board of Medical Examiners will hear two speakers, Senator Mike Moncrief and G. Douglas Talbott, M.D., Talbott-Marsh Recovery Campus; probation appearances; requests for termination of suspension; public hearing regarding rule changes; a request for reinstatement; approval of orders and minutes; recommendation on rule changes; discussion of inactive status, corporate practice of medicine, retired status; and the executive director's report.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 10, 1994, 4:56 p.m.

TRD-9442216

Monday, June 20, 1994, 3:00 p.m.

1812 Centre Creek Drive, Suite 300
Austin

According to the complete agenda, the Legislative Committee will call to order; roll call; introduce and discuss issues for presentation to the Legislature; and adjourn.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 10, 1994, 4:56 p.m.

TRD-9442215

Monday, June 20, 1994, 4:00 p.m.

1812 Centre Creek Drive, Suite 300
Austin

According to the complete agenda, the Finance Committee will call to order; roll call; review financial reports/documents; review legislative appropriation request; and adjourn.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 10, 1994, 4:56 p.m.

TRD-9442214

Monday, June 20, 1994, 4:30 p.m.

1812 Centre Creek Drive, Suite 300
Austin

According to the complete agenda, the Ad Hoc Committee for Ethical Issues will call to order; roll call; discussion of advertising guidelines; discussion of informed consent/paternalism; and adjourn.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 10, 1994, 4:57 p.m.

TRD-9442220

Tuesday, June 21, 1994, 8:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

According to the agenda summary, the Public Information Committee will discuss changes to complaint procedure notification rules; committee goals; public presentation; and budget for public awareness.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 13, 1994, 10:58 a.m.

TRD-9442263

Tuesday, June 21, 1994, 9:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

According to the complete agenda, the Long Range Planning Committee will review and vote on final board strategic plan.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 13, 1994, 10:58 a.m.

TRD-9442262

Tuesday, June 21, 1994, 11:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

According to the complete agenda, the Executive Committee will discuss issues related to intractable pain.

Contact: Pat Wood, P.O. Box 149124, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 13, 1994, 10:58 a.m.

TRD-9442261

Wednesday, June 22, 1994, 8:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

According to the agenda summary, the Standing Orders Committee will discuss consideration of waivers; recommendations from Board of Acupuncture Examiners regarding rule changes and licensure applicants; recommendations from Physician Assistant Advisory Council regarding rule changes; and discussion of rules related to continuing medical education for physicians.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 13, 1994, 10:58 a.m.

TRD-9442259

Wednesday, June 22, 1994, 8:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

According to the complete agenda, the Medical School Committee will call to order; roll call; update on 1993-1994 medical school visits; discussion of preceptorship programs; and adjourn.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 13, 1994, 10:58 a.m.

TRD-9442260

◆ ◆ ◆
**Texas Natural Resources
Conservation Commission**

Tuesday, July 19, 1994, 10:00 a.m.

TNRCC, 12124 Park 35 Circle, Building C, Room 107W

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will discuss an application by Williams and Peters Construction Company, Inc., Proposed Permit Number 24389, to construct and operate a hot mix asphalt plant. The proposed plant will be located one-fourth mile east of the intersection of 84th and Martin Luther King Boulevard, in Lubbock, Lubbock County, Texas.

Contact: Earl Jones, P.O. Box 13087, Austin, Texas 78711, (512) 239-1351.

Filed: June 10, 1994, 11:55 p.m.

TRD-9442118

◆ ◆ ◆
**Texas Board of Pardons and
Paroles**

**Monday-Wednesday, June 20-22, 1994,
1:30 p.m.**

Palestine

According to the agenda summary, the Panel(s) of the Board of Pardons and Paroles composed of three board member(s) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 10, 1994, 3:14 p.m.

TRD-9442141

**Monday-Friday, June 20-24, 1994, 9:30
a.m.**

1212 North Velasco, Suite 201

Angleton

According to the agenda summary, the Panel(s) of the Board of Pardons and Paroles composed of three board member(s) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 10, 1994, 3:14 p.m.

TRD-9442143

**Monday-Friday, June 20-24, 1994, 1:30
p.m.**

2503 Lake Road, Suite Two

Huntsville

According to the agenda summary, the Panel(s) of the Board of Pardons and Paroles composed of three board member(s) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 10, 1994, 3:15 p.m.

TRD-9442144

**Thursday-Friday, June 23-24, 1994, 9:30
a.m.**

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the Panel(s) of the Board of Pardons and Paroles composed of three board member(s) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 10, 1994, 3:13 p.m.

TRD-9442140

Thursday-Friday, June 23-24, 1994, 1:00 p.m. and 9:00 a.m., respectively.

According to the agenda summary, the Panel(s) of the Board of Pardons and Paroles composed of three board member(s) will receive, review and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 10, 1994, 3:14 p.m.

TRD-9442142

◆ ◆ ◆
Texas Property and Casualty Insurance Guaranty Association

Wednesday, June 22, 1994, 9:00 a.m.

9420 Research Boulevard, Echelon III, Suite 400

Austin

According to the agenda summary, the Board of Directors will call the meeting to order; approve April 26, 1994 minutes; hear public participation, personnel update, discuss and take possible action to authorize staff to proceed with plans to relocate the Dallas Regional Office from the ECC building to an alternative site; discuss and take possible action on plans to elect and close pre-1992 estates and acquire and process their claims; discuss and take possible action on strategy for TPCIGA funding mechanisms in the event of a major catastrophe; discuss and take possible action on the financial report, discuss and take possible action on bank signature authority resolutions; and briefing on TPCIGA's national directive.

Contact: Marvin Kelly, 9420 Research Boulevard, Echelon III, Suite 400, Austin, Texas 78759, (512) 345-9335.

Filed: June 14, 1994, 8:57 a.m.

TRD-9442302

Texas State Board of Examiners of Psychologists

Thursday-Friday, June 30-July 1, 1994, 10:00 and 8:00 a.m. respectively.

9101 Burnet Road, Suite 212

Austin

According to the agenda summary, the Psychological Associate Advisory Council will meet to consider public comments, development of minutes, election of officers, policies and procedures, the appointment of committees, scheduling of future meetings, reports on the budget, rules, and applications, planning for the next meeting, and to seek legal advice in Executive Session pursuant to Title 5, Chapter 551, Government Code, §551.071.

Contact: Rebecca E Forkner, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

Filed: June 10, 1994, 3:13 p.m.

TRD-9442139

◆ ◆ ◆
Texas Department of Public Safety

Friday, June 24, 1994, 1:00 p.m.

5805 North Lamar Boulevard, Room #101 (DPS Headquarters)

Austin

According to the complete agenda, the Public Safety Commission will discuss approval of minutes; budget matters; internal audit report; personnel matters; pending and contemplated litigation; real estate matters; public comment; miscellaneous; and other unfinished business.

Contact: James Wilson, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 465-2000, Ext. 3700.

Filed: June 14, 1994, 8:53 a.m.

TRD-9442301

◆ ◆ ◆
Public Utility Commission of Texas

Monday, June 20, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference on the merits in Docket Number 13058-application of Lufkin-Conroe Telephone Exchange Inc, for authority to recover lost revenues and cost of implementing expanded local calling service.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 10, 1994, 4:55 p.m.

TRD-9442212

Wednesday, August 24, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 13050-application of Rayburn Country Electric Cooperative, Inc. for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 9, 1994, 10:57 a.m.

TRD-9442049

◆ ◆ ◆
Railroad Commission of Texas

Wednesday, June 22, 1994, 2:00 p.m.

1701 North Congress Avenue, 12th Floor, Conference Room, 12-126

Austin

According to the agenda summary, the Railroad Commission of Texas will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's Office.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729.

Filed: June 9, 1994, 2:56 p.m.

TRD-9442075

◆ ◆ ◆
Texas County and District Retirement System

Thursday-Friday, June 23-24, 1994, 1:30 p.m. and 9:00 a.m. respectively.

303 West 15th Street

Austin

According to the agenda summary, the Board of Trustees (chairman) will open meeting; approve minutes of March 24-25, 1994 regular board meeting and May 25-26, 1994 special board meeting; consider and pass on applications for service and disability retirement benefits, approval financial statements; consider independent auditor's report; receive reports from actuary, chairman, director, legal counsel, and investment counsel; approve 1993 annual

report; consider and act on investment policies, practices, and personnel; set date and location of September 1994 meeting; and adjourn meeting.

Contact: Terry Horton, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651

Filed: June 14, 1994, 9:49 a.m.

TRD-9442309

Texas Senate

Thursday-Friday, June 23-24, 1994, 10:00 a.m. and 9:00 a.m. respectively.

400 Rose Park Drive, Rose Garden Center
Tyler

According to the agenda summary, the Joint Select Committee to Review the Central Education Agency will meet on Thursday-call to order, report from staff on alternative education settings, discussion of proposed preliminary conclusions, and public testimony. On Friday-discussion of proposed preliminary conclusions, update from commission memo on the revision of the Education Code; report from staff on Senate Bill 7 court proceedings and implementation, and adjournment.

Contact: David Wingard, P.O. Box 12068, Austin, Texas 78711, (512) 463-0355.

Filed: June 9, 1994, 3:09 p.m.

TRD-9442077

Supreme Court of Texas

Wednesday, June 22, 1994, 2:00 p.m.

Texas Supreme Court Courtroom, First Floor, 201 West 14th Street

Austin

According to the complete agenda, the Task Force on Judicial Ethics will report on discussion of Code of Judicial Conduct at Regional Judicial Conferences and any further code revisions; operation and possible recommendations concerning Commission on Judicial Conduct; and petition by the Washington Legal Foundation

Contact: Irene Luvaul, P.O. Box 12248, Austin, Texas 78711, (512) 463-1344

Filed: June 10, 1994, 4:55 p.m.

TRD-9442208

Texas Department of Transportation

Tuesday, June 28, 1994, 10:00 a.m.

200 East Riverside Drive, Room 102

Austin

According to the agenda summary, the Bicycles Rules Advisory Committee will hear open remarks and introduction of committee members; approve minutes; department's response to committee's comments regarding bicycle use rules; final review of proposed rulemaking concerning Bicycle Advisory Committee, policies governing authorized signs on highway and right-of-way, and policies governing bicycle road use; and committee recommendations concerning inclusion of bicycle facility in potential parkway from Beaumont to Tyler.

Contact: Paul Douglas, 125 East 11th Street, Austin, Texas 78701, (512) 416-3125.

Filed: June 13, 1994, 9:36 a.m.

TRD-9442227

University Interscholastic League

Wednesday-Friday, June 15-17, 1994 (Wednesday: 2:00 p.m. and Thursday-Friday: 9:00 a.m.)

Holiday Inn Town Lake, 20 IH-35

Austin

Emergency Meeting

According to the agenda summary, the Legislative Council will meet to discuss proposed rule changes brought by the public

Reason for emergency: Waiting for proposals which came in June 13 a.m. mail

Contact: Bonnie Northcutt or Barbara Jones, 3001 Lake Austin Boulevard, Austin, Texas 78703, (512) 471-5883

Filed: June 13, 1994, 10:56 a.m.

TRD-9442257

University of Texas Health Science Center at San Antonio

Wednesday, June 22, 1994, 3:00 p.m.

Room 422A in the President's Conference Room in the Medical School Building, 7703 Floyd Curl Drive

San Antonio

According to the agenda summary, the Institutional Animal Care and Use Committee will approve minutes, protocols for review, subcommittee report, and other business

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7822, (512) 567-3717

Filed: June 10, 1994, 3:04 p.m.

TRD-9442134

On-Site Wastewater Treatment Research Council

Tuesday, June 28, 1994, 10:30 a.m.

Texas Natural Resource Conservation Commission, Building E, Room 201-S, 12100 Park 35 Circle

Austin

According to the agenda summary, the council will convene, call roll of members, and hear and act on previous meetings minutes. Reports will be made by chairman, executive secretary, and TNRCC staff. Other agenda items to be discussed will be the fiscal year 1994-1995 Symposia; fiscal year 1994-1995 budget, council administrative rules; requests for proposals; Texas Water Resources Institute Newsletter; update on current contracts and the scheduling of future meetings

Contact: Theodore Johns, P.O. Box 13087, Austin, Texas 78711, (512) 463-3109

Filed: June 14, 1994, 10:12 a.m.

TRD-9442310

Texas Workers' Compensation Insurance Facility

Monday, June 20, 1994, 9:45 a.m.

Guest Quarters Hotel, 303 West 15th

Austin

According to the agenda summary, the Governing Committee will discuss approval of May 9, 1994 minutes; consideration and possible action on 1993 financial audit report, recommendations from Accounting Committee, setting amount of assessments or rebates to member companies 1993 and other years, servicing company requests for reimbursements, and recommendations from Appeals Committee, 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, #310, Austin, Texas 78759, (512) 345-1222.

Filed: June 10, 1994, 8:57 a.m.

TRD-9442112

Monday, June 20, 1994, 11:30 a.m.

Guest Quarters Hotel, 303 West 15th

Austin

According to the agenda summary, the Governing Committee will discuss approval of minutes of the annual meeting on June 23, 1993, annual report of the chairman of the Governing Committee and of the executive director of the facility, and consideration and possible approval of amended by-laws

Contact: Peter Potemkin, 8303 MoPac Expressway North, #310, Austin, Texas 78759, (512) 345-1222

Filed: June 10, 1994, 8:57 a.m.

TRD-9442111

◆ ◆ ◆
**Texas Council on Workforce
and Economic Competitive-
ness**

Wednesday, June 22, 1994, 7:00 a.m.

Higher Education Coordinating Board, 7700 Chevy Chase Drive, Building I, Room 1100

Austin

According to the complete agenda, the Consolidation Task Force will call to order, announcements, staff presentations on material requested by the members of the Task Force, Task Force deliberations on issues, break, Task Force deliberations on issues (continued), presentation by staff of the Comptroller of Public Accounts, and ad-

— persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Kevin Faulkner, P.O. Box 2241, Austin, Texas 78769, (512) 305-7000

Filed: June 13, 1994, 12:11 p.m.

TRD-9442273

◆ ◆ ◆
Regional Meetings

Meetings Filed June 9, 1994

The Alamo Area Council of Governments Management Committee met at 118 Broadway, Suite 420, San Antonio, June 14, 1994, at 10:00 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201 TRD-9442056

The Andrews Center Board of Trustees met in the Board Room, Tyler Bank and Trust, Tyler, June 14, 1994, at 9:00 a.m. Information may be obtained from Richard DeSanto, P.O. Box 4730, Tyler, Texas 5702, (903) 597-1351 TRD-9442051

The Atascosa County Appraisal District Appraisal Review Board met at Fourth and Avenue J, Poteet, June 15, 1994, at 8:00 a.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591 or FAX: (210) 742-3044. TRD-9442087.

The Bi-County Water Supply met at FM Road 2254, Pittsburg, June 14, 1994, at 7:00 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9442052.

The Bosque County Central Appraisal District Board of Directors met at 202 South Highway 6, Meridian, June 16, 1994, at 8:00 p.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9442053

The Central Appraisal District of Rockwall County Board of Directors met at the Rockwall County Appraisal Office, 106 North San Jacinto, Rockwall, June 14, 1994, at 7:30 p.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034. TRD-9442047.

The Central Texas Council of Governments Work Force Development Board of Central Texas will meet at 321 North Penelope, Belton, June 23, 1994, at 10:00 a.m. Information may be obtained from Susan Kamas, P.O. Box 729, Belton, Texas 76513, (817) 939-3771. TRD-9442055.

The Colorado County CAD Board of Directors met in the County Courtroom, Colorado County Courthouse, 400 Spring, Columbus, June 14, 1994, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9442067.

The Colorado County CAD Board of Directors met in the County Courtroom, Colorado County Courtroom, 400 Spring, Columbus, June 14, 1994, at 2:00 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9442068.

The Denton Central Appraisal District Board of Directors will meet at 3911 Morse Street, Denton, June 23, 1994, at 4:00 p.m. Information may be obtained from John Brown, 3911 Morse Street, Denton, Texas 76202, (817) 566-0904. TRD-9442057.

The Education Service Center, Region One Board of Directors met at the Region One Education Service Center, 1900 West Schunior, Edinburg, June 14, 1994, at 7:00 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas (210) 383-5611 TRD-9442048.

The Education Service Center, Region XVI Board of Directors will meet in the

Texas Empire Room, Amarillo Club, 30th Floor, Bank One Building, Seventh and Tyler, Amarillo, June 24, 1994, at 12:30 p.m. Information may be obtained from Jim Holmes, P.O. Box 30600, Amarillo, Texas 79120, (806) 376-5521. TRD-9442074.

The El Oso Water Supply Corporation Board of Directors met at their office on FM Road 99, Karnes City, June 14, 1994, at 8:00 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539 TRD-9442081.

The Guadalupe-Blanco River Authority Board of Directors met at 933 East Court Street, Seguin, June 15, 1994, at 10:00 a.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9442062.

The Harris County Appraisal District Board of Directors met at 2800 North Loop West, Eighth Floor, Houston, June 15, 1994, at 9:30 a.m. Information may be obtained from Margie Hillard, P.O. Box 920975, Houston, Texas 77292-0975, (713) 957-5291. TRD-9442050

The Middle Rio Grande Development Council Texas Review and Comment System Committee met in the Sage Room, Holiday Inn, 920 East Main, Uvalde, June 15, 1994, at 3:30 p.m. Information may be obtained from Dora Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533 TRD-9442058

The Texas Municipal Asset Pool Board of Directors met in the Conference Room, Riverway Bank, First Floor, Five Riverway, Houston, June 15, 1994, at 8:00 a.m. Information may be obtained from Jamie D. Hall, P.O. Box 56572, Houston, Texas 77256, (713) 552-2618 or FAX: (713) 552-2623 TRD-9442088

The Texas Natural Resource Conservation Commission Galveston Bay National Estuary Program-Management Committee met in the Forest Room, University of Houston/Clear Lake, 2700 Bay Area Boulevard, Houston, June 15, 1994, at 9:30 a.m. Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937. TRD-9442071

The Riceland Regional Mental Health Authority Board of Trustees Joint Committee met at 3007 North Richmond Road, Wharton, June 16, 1994, at 11:00 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3098 TRD-9442095.

The South Plains Association of Governments Executive Committee met at 1323 58th Street, Lubbock, June 14, 1994, at 9:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730,

Lubbock, Texas 79452-3730, (806) 762-8271 TRD-9442069.

The South Plains Association of Governments Board of Directors met at 1323 58th Street, Lubbock, June 14, 1994, at 10:00 a.m. Information may be obtained from Jerry D Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730, (806) 762-8271 TRD-9442070.

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Meetings Filed June 10, 1994

The Alamo Area Council of Governments (Revised Agenda) Management Committee met at 118 Broadway, Suite 420, San Antonio, June 14, 1994, at 10:00 a.m. Information may be obtained from Al J Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201 TRD-9442123

The Austin-Travis County MHMR Center Planning and Operations Committee will meet at 1430 Collier Street, Board Room, Austin, June 17, 1994, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141 TRD-9442211.

The Bastrop Central Appraisal District Board of Directors met at 1200 Cedar Street, Bastrop, June 16, 1994, at 7:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925 TRD-9442126

The Capital Area Rural Transportation System CARTS Board of Directors met at 2010 East Sixth Street, Austin, June 16, 1994, at 3:00 p.m. Information may be obtained from Edna M. Burroughs, P.O. Box 6050, Austin, Texas, 78702, (512) 389-1011 TRD-9442161

The Cass County Appraisal District Appraisal Review Board met at Cass County Appraisal District Office, 502 North Main Street, Linden, June 14, 1994, at 9:00 a.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9442128

The Dallas Area Rapid Transit Committee-of-the-Whole met in the Conference Room "C", 1401 Pacific Avenue, Dallas, June 14, 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 or FAX: (214) 749-3651 TRD 9442158

The Dallas Area Rapid Transit Board met at 1401 Pacific Avenue, Dallas, June 14, 1994, at 6:30 p.m. Information may be obtained from Vanessa A Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371 or FAX: (214) 749-3651 TRD 9442157

The Denton Central Appraisal District (Revised Agenda) Board of Directors will meet at 3911 Morse Street, Denton, June

23, 1994, at 4:00 p.m. Information may be obtained from John Brown, 3911 Morse Street, Denton, Texas 76202, (817) 566-0904. TRD-9442132.

The East Texas Council of Governments Private Industry Council met at ETCOG Office, Kilgore, June 16, 1994, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9442136

The Golden Crescent Private Industry Council Oversight Committee met at 2401 Houston Highway, Victoria, June 13, 1994, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9442109.

The Golden Crescent Private Industry Council Executive Committee met at 2401 Houston Highway, Victoria, June 15, 1994, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872 TRD-9442108.

The Gonzales County Appraisal District Board of Directors met at 928 Saint Paul Street, Gonzales, June 16, 1994, at 6:00 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879. TRD-9442213.

The Gulf Coast State Planning Region Transportation Policy Council will meet at 3555 Timmons Lane Second Floor Conference Room A, Houston, June 24, 1994, at 9:30 a.m. Information may be obtained from Rosalind Hebert, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9442133

The Hockley County Appraisal District Board of Directors met at 1103-C Houston Street, Levelland, June 13, 1994, at 7:00 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79363, (806) 894-9654. TRD-9442160

The Hood County Appraisal District Appraisal Review Board met at 1902 West Pearl, District Office, Granbury, June 16, 1994, at 10:00 a.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471 TRD-9442209.

The Hood County Appraisal District Appraisal Review Board will meet at 1902 West Pearl, District Office, Granbury, June 23-24, 1994, at 9:00 a.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9442210.

The Lometa Rural Water Supply Corporation Board of Directors met at 506 West Main Street, Lometa, June 13, 1994, at 7:00 p.m. Information may be obtained from

Levi G. Cash or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505 TRD-9442122

The Lower Colorado River Authority Retirement Benefits Committee met at 3700 Lake Austin Boulevard, Miller Building, Room Number M206, Austin, Travis County, June 14, 1994, at 1:30 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9442131

The Mason County Appraisal District Appraisal Review Board will meet at 202 Westmoreland, Mason, June 21, 1994, at 9:00 a.m. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989. TRD-9442116.

The North Texas Municipal Water District Board of Directors will meet at June 23, 1994, at 4:00 p.m. Information may be obtained from Carl W. Riehn, 505 East Brown Street, Wylie, Texas 75098, (214) 442-5405. TRD-9442130

The Nueces-Jim Wells-Kleberg-Kenedy Soil and Water Conservation District Board of Director's will meet at SCS Office, 548 South Highway 77, Suite B, Robstown, June 21, 1994, at 2:00 p.m. Information may be obtained from Denise Lawhon, 548 South Highway 77, Suite B, Robstown, Texas 78380, (512) 668-8363 TRD-9442129.

The Region IV Education Service Center Board of Director's met in Board Room, Region IV Education Service Center, 7145 West Tidwell, Houston, June 14, 1994, at 6:00 p.m. Information may be obtained from W. L. McKinney, 7145 West Tidwell, Houston, Texas 77092-2096, (713) 744-6534. TRD-9442121.

The Region 14 Education Service Center Board of Directors met at 1850 Highway 351, Abilene, June 16, 1994, at 5:30 p.m. Information may be obtained from Taressa Huey, 1850 Highway 351, Abilene, Texas 79601, (915) 675-8608 TRD-9442120.

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Meetings Filed June 13, 1994

The Appraisal District of Jones County Appraisal Review Board will meet at the District's Office, 1137 East Court Plaza, Anson, June 24, 1994, at 8:30 a.m. Information may be obtained from Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422 TRD-9442242

The Blanco County Appraisal District (Emergency Meeting.) 1994 Appraisal Review Board met at the Blanco County Courthouse Annex, Johnson City, June 15-16, 1994, at 10:00 a.m. (Reason for emergency So that taxpayers protest's could be heard.) Information may be ob-

tained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868-4013, Fax: (210) 868-7788. TRD-9442264

The Brazos River Authority Lake Management Committee, Board of Directors will meet at the Lake Supervisor's Office, Possum Kingdom Lake, June 17, 1994, at 10.00 a m Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441 TRD-9442238

The Burnet County Appraisal District Appraisal Review Board will meet at 223 South Pierce, Burnet, June 28, 1994, at 8:30 a m Information may be obtained from Barbara Ratliff, P O Drawer E, Burnet, Texas 78611, (512) 756-8291 TRD-9442271

The Burnet County Appraisal District Appraisal Review Board will meet at 223 South Pierce, Burnet, June 29, 1994, at 8:30 a m Information may be obtained from Barbara Ratliff, P O Drawer E, Burnet, Texas 78611, (512) 756-8291 TRD-9442270

The Central Plains Center for MHMR and SA Board of Trustees met at 208 South Columbia, Plainview, June 16, 1994, at 5 00 p m Information may be obtained from Gail P Davis, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636 TRD-9442283

The Central Texas Council of Governments Executive Committee will meet at 302 East Central, Belton, June 23, 1994, at 12 45 p m Information may be obtained from A C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD-9442272

The Coastal Bend Quality Work Force Planning Association will meet at the Corpus Christi Army Depot, Naval Air Station, Corpus Christi, June 22, 1994, at 1:00 p.m. Information may be obtained from Raquel Moreno, 1616 Martin Luther King, Corpus Christi, Texas 78401, (512) 889-5300. TRD-9442239.

The Colorado County CAD Appraisal Review Board will meet at the Colorado County Courthouse (County Courtroom), 400 Spring, Columbus, June 16, 22, and 24, at 2 30 p m., and July 1 at 10.00 a m. Information may be obtained from Billy Youens, P O Box 10, Columbus, Texas 78934, (409) 732-8222 TRD-9442277

The Coryell City Water Supply District Board of Directors met at the District Office, FM Road 929, Coryell City, June 16,

1994, at 7:30 p.m. Information may be obtained from Helen Swift, Route 2, Box 93, Gatesville, Texas 76528, (817) 865-6089. TRD-9442258.

The Dallas Central Appraisal District Appraisal Review Board will meet at 2949 North Stemmons Freeway, Dallas, June 17, 1994, at 11:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons, Dallas, Texas 75247, (214) 631-0520. TRD-9442221.

The Education Service Center, Region XVI (Revised Agenda.) Board of Directors will meet in the Texas Empire Room, Amarillo Club, 30th Floor, Bank One Building, Seventh and Tyler, Amarillo, June 24, 1994, at 12.30 p.m. Information may be obtained from Jim Holmes, P.O. Box 30600, Amarillo, Texas 79120, (806) 376-5521. TRD-9442280.

The Elm Creek WSC Board met at the Willow Grove Baptist Church, Moody, June 13, 1994, at 7.00 p.m. Information may be obtained from Paulette Richardson, Route 1, Box 564, Moody, Texas 76557, (817) 853-2339. TRD-9442278.

The Erath County Appraisal District (Emergency Meeting.) Appraisal Review Board met at 1390 Harbin Drive, Stephenville, June 14-16, 1994, at 9 00 a m (Reason for emergency: Couldn't get fax to go through and wasn't enough time to mail.) Information may be obtained from Mitzi Meekins, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434, Fax. (817) 965-5633. TRD-9442298

The Grayson Appraisal District Board of Directors will meet at 205 North Travis, Sherman, June 22, 1994, at Noon Information may be obtained from Angie Keaton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9442241

The Grayson Appraisal District (Revised Agenda.) Board of Directors will meet at 205 Travis, Sherman, June 22, 1994, at Noon. Information may be obtained from Angie Keaton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9442274.

The Jack County Appraisal District Appraisal Review Board met in the JCAD Conference Room, 210 North Church Street, Jacksboro, June 16, 1994, at 10.30 a m Information may be obtained from Gary L. Zeitler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76056, (817) 567-6301. TRD-9442265.

The Kempner Water Supply Corporation Board of Directors met at the Kempner

Water Supply Corporation Office, Highway 190, Kempner, June 16, 1994, at 7.00 p.m. Information may be obtained from Doug Lavender, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9442281

The Liberty County Central Appraisal District (Revised Agenda.) Board of Directors will meet at 315 Main Street, Liberty, June 22, 1994, at 9. 30 a m Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722 TRD-9442285

The Mason County Appraisal District Board of Directors will meet at 202 Westmoreland, Mason, June 28, 1994, at 5:30 p.m. Information may be obtained from Deborah Geistweidt, Box 1119, Mason, Texas 76856, (915) 347-5989 TRD-9442269

The Middle Rio Grande Service Delivery Area MRG-PIC Private Industry Council met at the Uvalde Holiday Inn, East Main Street, Uvalde, June 15, 1994, at 1 00 p m Information may be obtained from Leodoro Martinez, P O Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533 TRD-9442293

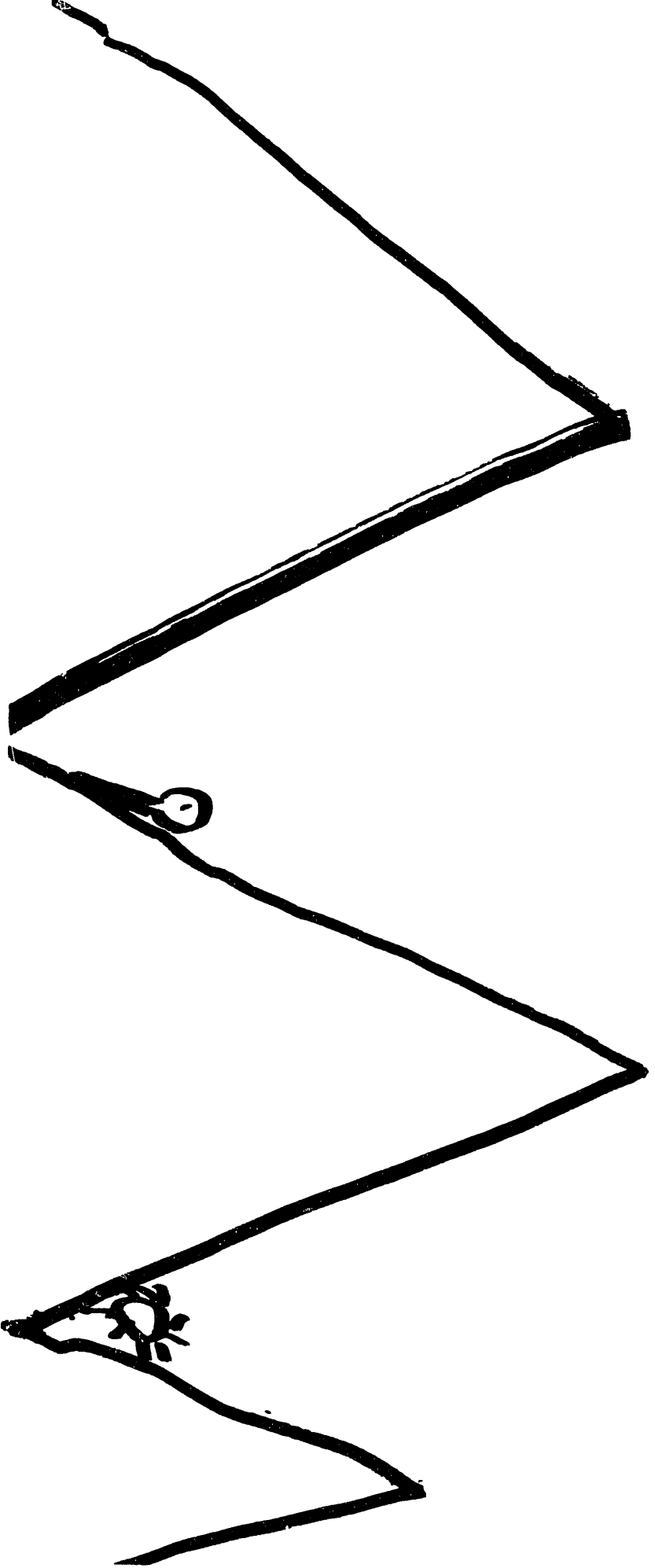
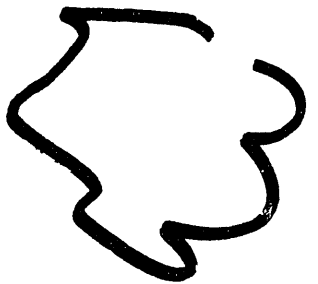
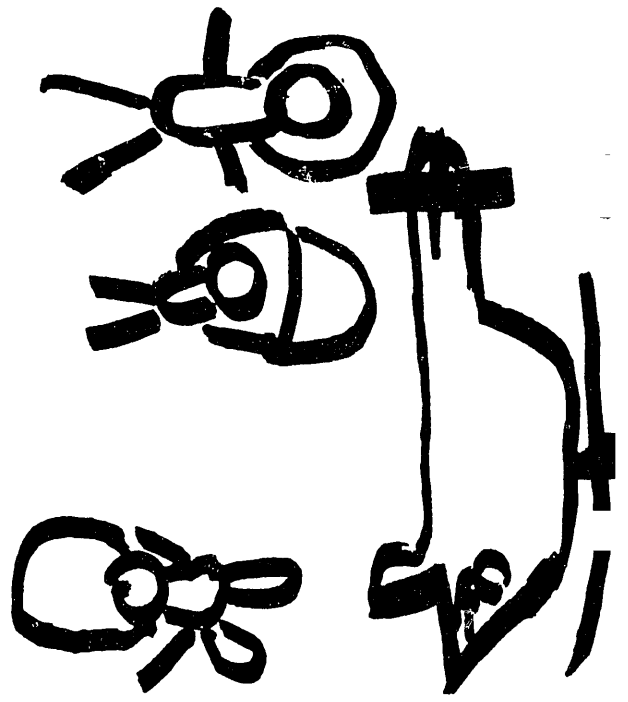
The Parmer County Appraisal District Board of Directors will meet at 305 Third Street, Bovina, July 14, 1994, at 7 00 p m Information may be obtained from Ronald E Procter, Box 56, Bovina, Texas 79009, (806) 238-1405 TRD-9442240

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, June 20, 1994, at 5 00 p.m Information may be obtained from Linda Lewis, P O Drawer 9, Woodville, Texas 75979, (409) 283-3736 TRD-9442243

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Meetings Filed June 14, 1994

The Appraisal District of Jones County Appraisal District Review Board will meet at the District's Office, 1137 East Court Plaza, Anson, June 24, 1994, at 8 40 a m Information may be obtained from Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422 TRD-9442299

The Central Appraisal District of Rockwall County Appraisal Review Board will meet at the Rockwall County Appraisal Office, 106 North San Jacinto, Rockwall, June 17, 1994, at 9 30 a m Information may be obtained from Ray E Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034 TRD-9442300



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.

State Banking Board

Notice of Hearing

The State Banking Board has accepted a domicile change application from Citizens State Bank, Miles, Texas. The bank proposes to relocate from Second and Robinson, Miles, Texas, to a new location at 111 South Robinson, Miles, Texas. Upon reasonable notice, the public may inspect and copy all portions of the application, other than those made confidential by law, at the Texas Department of Banking, Third Floor, 2601 North Lamar Boulevard, Austin, Texas 78705, during regular business hours, Monday-Friday, excluding holidays, 8.00 a.m. to 5:00 p.m.

A public hearing on the application is tentatively set for July 15, 1994, at 9:30 a.m. Anyone wishing to speak at the hearing, to make written comments, or to protest the application, should file any written comments or protest or given written notice of their intention to speak on or before July 5, 1994. Copies of written comments, protests, and written notice of intention to speak at the hearing should be sent United States mail, postage prepaid, to the applicant's representative: Mark Heinze, P.O. Box 305, Miles, Texas 76861.

If no protests are received by July 5, 1994, the Board may cancel the hearing without further public notice and consider the application on the basis of the written record. The Board may also postpone or otherwise reschedule the hearing without further public notice. Therefore, anyone planning to attend, should first verify scheduling information. Anyone planning to attend who may need special accommodations due to disabilities should notify the Board at least three days prior to the hearing so that appropriate arrangements may be made. The Texas Department may be reached by telephone at AC (512) 475-1300 or by mail at the address given previously.

Issued in Austin, Texas, on June 8, 1994.

TRD-9442072

Lynda A. Drake
Director of Corporate Activities
Texas Department of Banking

Filed: June 9, 1994

Comptroller of Public Accounts

Notice of Intent to Purchase Automated Clearinghouse Services for State Electronic Funds Transfer System

The Comptroller of Public Accounts (Comptroller) and the Texas State Treasurer (Treasurer) announce that they in-

tend to procure automated clearinghouse services as a part of the State's electronic funds transfer (EFT) system, under the "catalogue purchase procedure." The catalogue purchase procedure is a newly established procurement method enacted by the legislature, and set forth in Texas Civil Statutes, Article 601b, §3.081. The catalogue method is generally mandated for use by state agencies purchasing "automated information systems" as defined in Article 601b, §1.02(4), and related services. The Comptroller and Treasurer have determined that these services come within this definition. The General Services Commission (GSC) has adopted rules delineating the procedures for becoming qualified to sell particular products and/or services to the State under the catalogue method. These rules may be found in the Texas Administrative Code at 1 TAC §13.19. Prospective vendors should review the requirements for participation in a catalogue purchase as set forth in the statute and rules.

Summary of Catalogue Purchase Procedure. Potential qualified information systems vendors should submit an application (including a catalogue) to the GSC for approval. For information regarding how to become a qualified information systems vendor with GSC, please contact GSC's Purchasing Division at (512) 463-3445.

Qualified information systems vendors interested in this procurement should include only those services being purchased herein pursuant to this notice in their catalogue. The Comptroller and Treasurer note that no determination has been made as to the applicability of the catalogue method to other services that may be offered by applicants. If and when a determination is made that the catalogue method applies to other services that may be offered by an applicant, the applicant may supplement its catalogue at that time. The application will receive GSC approval only if all criteria established by statute are met.

The applicant will receive a letter from GSC notifying them of approval or disapproval. In the case of disapproval, the letter will state the reason(s) for such disapproval. The applicant will be given an opportunity to correct any deficiencies. In this regard, applicants are advised that this procurement will proceed on a compact time frame, and are encouraged to work closely with GSC during the approval process.

Under the catalogue process, the Comptroller and Treasurer may negotiate with one or more qualified vendors as to additional terms and conditions relative to the services being procured, and based on specific agency needs. Any additional terms and conditions will become part of the contract with the successful vendor.

Closing Date. The Comptroller and Treasurer will consider only information systems vendors with catalogues approved by GSC on or before July 20, 1994. Offers from

vendors who fail to receive GSC approval by this date will not be considered.

How to Submit an Offer. Vendors interested in this procurement will be required to submit an offer that specifically responds to a document containing terms and conditions for the services being solicited through the catalogue procedure. The solicitation document will be available for distribution beginning 4:00 p.m. Central Zone Time (CZT) on June 17, 1994. Prospective vendors may pick up this document in person at the Comptroller's Office, LBJ Building, 111 East 17th Street, Room 113, Austin, Texas. To receive a copy of the document by mail, prospective offerors should contact Eva Kelly at (512) 476-0866, or fax a written request to (512) 475-0279. Other questions regarding this procurement should be directed to Walter Muse, Legal Counsel, Comptroller's Office, by phone at (512) 475-0498, or fax at (512) 475-0279.

The anticipated schedule of events is as follows. Issuance of document with terms and conditions of services being solicited—June 17, 1994, at 4:00 p.m. (CZT); Deadline to become qualified information systems vendors—July 20, 1994, by 4:00 p.m. (CZT); Deadline to submit offers—July 20, 1994, by 4:00 p.m. (CZT); and Contract Execution—July 25, 1994, or as soon thereafter as practical.

The Comptroller and Treasurer anticipate commencing negotiations with qualified information systems vendors on or about July 21, 1994.

Issued in Austin, Texas, on June 13, 1994.

TRD-9442248 Arthur F. Lorton
Senior Legal Counsel
Comptroller of Public Accounts

Filed: June 13, 1994

Texas Commission for the Deaf and Hearing Impaired

Correction of Error

The Texas Commission for the Deaf and Hearing Impaired submitted a request for proposals, which appeared in the June 3, 1994, *Texas Register* (19 TexReg 4357).

Due to an error by the agency, the deadline for submission of proposals was published as "June 29, 1993." The deadline is June 29, 1994.

Notice of BEI Board Vacancy

The Board for Evaluation of Interpreters (BEI) is announcing an opening for a Board position. This position requires a person who is deaf or hard of hearing. To qualify the applicant must have Level III, IV, or V certification issued by the Commission; be a resident of the State of Texas; be an interpreter who has engaged in the profession of interpreting for people who are deaf, or must be actively engaged in the profession of providing interpreting services to people who are deaf at the time of appointment.

Interested individuals should submit a resume and letter of intent to David W. Myers, Texas Commission for the Deaf and Hearing Impaired, P.O. Box 12904, Austin, Texas 78711.

Applicants should be involved or willing to be involved with the Texas Commission for the Deaf and Hearing

Impaired certification system, and be willing to attend regularly scheduled meetings of the Board for Evaluation of Interpreters. The Board consists of five members who oversee the certification program. Board meetings are held every two months.

Letters of intent for Board service must be received by TCDHI no later than July 5, 1994. The current members, residence, and when the term expires are as follows: Cathy Blasingame, Chair, Austin, March 31, 1995; Brian Kilpatrick, Houston, March 31, 1995; JoAnn Taylor, Houston, March 31, 1997; and Deidra Brown, Austin, March 31, 1996.

Issued in Austin, Texas, on June 10, 1994.

TRD-9442124 David W. Myers
Executive Director
Texas Commission for the Deaf and
Hearing Impaired

Filed: June 10, 1994

Texas Education Agency

Correction of Error

The Texas Education Agency proposed new 19 TAC §67.39, concerning State Adoption, Acquisition, and Custody of Instructional Materials. The rule appeared in the June 3, 1994, *Texas Register* (19 TexReg 4310).

Due to an error by the *Texas Register* the word "a" was incorrectly inserted in subsection (h) as follows. "...from at least a two-thirds of the total membership...."

The Texas Education Agency submitted a notice of contract award for publication in the June 7, 1994, *Texas Register* (19 TexReg 4439). Due to a typesetting error by the *Texas Register* there is a misprint that reads "Issue in Austin, Texas...." The document was issued in San Antonio.

On page 4440 under the Notice of Public Hearings, paragraph 10, the word "from" should read "for" as follows. "...establishes goals for Texas public education...."

Notice of Public Hearings

The State Board of Education (SBOE) Committee on Long-Range Planning will hold a series of public hearings to obtain input on the development of the Long-Range Plan for Public Education, 1995-1999. The hearings will be held at the following times and places listed. Hearings may adjourn before the stated ending time if all who pre-registered or registered on-site have been called to give testimony.

Hearings will be held at the following locations:

Monday, June 27, 1994 from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m., at Region 19 Education Service Center, Rooms 616 and 618, 6611 Boeing Drive, El Paso, Texas;

Tuesday, June 28, 1994 from 3:00 p.m. until 5:00 p.m., at Harris County Department of Education, Room 100 (A, B, and C), 6300 Irvington Boulevard, Houston, Texas;

Tuesday, June 28, 1994 from 6:30 p.m. until 8:30 p.m., at Region 4 Education Service Center, 7145 West Tidwell, Room J, Houston, Texas;

Thursday, August 18, 1994 from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m., at Region 2 Education Service Center, 209 North Water Street, Room 2D, Corpus Christi, Texas;

Tuesday, August 23, 1994 from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m., at Region 13 Education Service Center, 5701 Springdale Road, Rooms 202 and 203, Austin, Texas;

Thursday, August 25, 1994 from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m., at Region 17 Education Service Center, 1111 West Loop 289, Room 229 North, Lubbock, Texas; and

Tuesday, August 30, 1994 from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m., at Region 5 Education Service Center, 2295 Delaware Street, Rooms A and B, Beaumont, Texas.

The State Board of Education periodically reviews the educational needs of the state, establishes goals for Texas public education, and adopts and promotes a long-range plan for meeting those goals. The goals developed for this Long-Range Plan will carry Texas public education to the next century. The hearings are conducted to gather comment about the educational needs of the state, proposed goals for Texas public education, and how those goals can best be achieved.

In order to allow the committee to hear from as many groups as possible, professional associations and education advocacy organizations are encouraged to coordinate proposals within their memberships and make one presentation on behalf of the group.

Individuals desiring to present testimony to the Committee on Long-Range Planning are asked to register for the hearing by calling the Texas Education Agency Office of Policy Planning and Evaluation, at (512) 463-9701, by 5:00 p.m. on the last working day prior to the public hearing at which they wish to speak. To accommodate as many speakers as possible, individuals are asked to limit their testimony to the committee to three minutes. Speakers will be asked to testify in the order in which their calls were received.

Individuals may also register on-site the day of the hearing. These individuals will be allowed to give testimony on a first-come, first-served basis following those who have pre-registered.

Speakers needing translation services or other special accommodations should notify the Office of Policy Planning and Evaluation by 5:00 p.m. at least five working days prior to the public hearing at which they wish to speak.

Speakers are encouraged to provide 15 written copies of their testimony for distribution to the committee. Written information for the committee can be sent to the Office of Policy Planning and Evaluation at any time.

Additional information concerning these hearings may be obtained from the Division of Policy Planning and Evaluation, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, or at (512) 463-9701.

Issued in Austin, Texas, on June 10, 1994

TRD-9442234

Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: June 13, 1994

Texas Department of Health

Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 TAC §289.112), has revoked the following certificates of registration: R. Kelly Roberts, D.D.S., Lufkin, R04405, June 1, 1994; Gary William Ward, D.D.S., San Antonio, R07633, June 1, 1994; Martin L. Anderson, D.D.S., Houston, R12699, June 1, 1994; Jorge Gutierrez, D.D.S., Houston, R17051, June 1, 1994, Mobile Technology, Inc., Converse, R17691, June 1, 1994; Jim B. Hales, D.D.S., Argyle, R18295, June 1, 1994; Steven Skinner, D.C., Lubbock, R18618

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 10, 1994.

TRD-9442145

Susan K. Steeg
General Counsel
Texas Department of Health

Filed June 10, 1994

Notice of Revocation of Radioactive Material Licenses

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 TAC §289.112), has revoked the following radioactive material licenses: North Belt Medical Imaging Center, Houston, L04182, June 1, 1994; Bearden Industrial Services, Inc., Point Comfort, L04541, June 1, 1994.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 10, 1994.

TRD-9442146

Susan K. Steeg
General Counsel
Texas Department of Health

Filed June 10, 1994

Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission in Texas for Preferred Health Plans, Inc., a foreign third party administrator. The home office is in Colorado Springs, Colorado.

Issued in Austin, Texas, on June 9, 1994.

TRD-9442064

D. J. Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

Filed: June 9, 1994

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**Texas Natural Resource Conservation
Commission**
Consultant Proposal Request

This Request for Proposal (RFP) is filed pursuant to the Government Code, Chapter 2254, Subchapter B, that delineates the statutory requirements governing the use of private consultants by state agencies.

I. Overview. The Texas Natural Resource Conservation Commission (TNRCC) is requesting offers from qualified companies/organizations to provide consulting services relating to development of a strategic plan to assist the TNRCC in the management of air programs stationary source information collection and management. The first notice of intention to issue requests for information and, possibly, invitations for bid for this project was published in the March 5, 1993, issue of the *Texas Register* (18 TexReg 1445). Subsequently a Request for Information for this project was issued in May 1993 (with a closing date of May 28, 1993) titled "Request for Information: Strategic Plan for Emissions Inventory Data Management", but no solicitation for bids was ever issued as a consequence of that information gathering process.

II. Scope of Work. The predominant objective of this project is to improve the collection and management of stationary point source information that is submitted to the TNRCC for use in air quality problem analysis and control strategy implementation. The purpose of this project is to develop both short term and long-range strategic plans to guide the TNRCC in the development of an efficient, cost effective, accurate, and comprehensive stationary source information management system capable of meeting customer needs in a timely manner.

This study and formulation of a strategic plan will be funded by a \$250,000 allocation of general revenues made available by the legislature as a segment of the Coastal Oxidant Assessment for Southeast Texas (COAST) Project.

III. Procedure for Selecting Consultant. Proposal requirements will be set forth more fully in a Request for Proposal: Strategic Plan for Air Programs Stationary Source Information Management. Proposals will be evaluated on the basis of the following criteria: technical strategy and approach including schedule for deliverables-30%; demonstrated ability and experience to perform the study-25%; demonstrated understanding of requirements and goals of this study-15%; qualifications and references of assigned personnel-10%; itemized budget-10%; and reasonableness of the fee (cost-effectiveness of the proposal)-10%.

IV. Proposal Closing. Responses must be received no later than 3:00 p.m., July 17, 1994. Responses received after this date and time will not be considered. We anticipate

V. Disclosure by Former Employees of a State Agency. Any individual who responds to this RFP and offers consulting services to the TNRCC, and who has been employed by the TNRCC, or by another agency at any time during the two years preceding the making of the offer shall disclose in the offer: the agency name, the date of termination of the employment, and the annual rate of compensation for the employment at the time of resignation.

The TNRCC reserves the right to accept or reject any, or all, offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any offer received. TNRCC is under no legal obligation to enter into a contract with any proposer on the basis of this request and intends any material provided herein only as a means of identifying the scope of services requested.

The TNRCC assumes no responsibility for expenses incurred in preparing a proposal response to this solicitation.

VI. Obtaining Request for Proposal. Copies of the RFP may be obtained in any of the following manners: by sending a regular or certified letter, telefax, express/overnight letter (including a self-addressed, prepaid return envelope) requesting a copy to: Mike Fishburn, Emissions Inventory, Re: COAST Project: Strategic Plan, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, telefax. (512) 239-1515.

Please address all responses to the RFP to this same address.

Issued in Austin, Texas, on June 7, 1994.

TRD-9442228

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

Filed: June 13, 1994

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Extension of Deadline

The Corpus Christi Bay National Estuary Program (CCBNEP) extends the deadline for interested parties to submit proposals for the "Inventory and Analysis of Bay Management Structure."

The notice of this Request For Proposal was published in the June 7, 1994, issue of the *Texas Register* (19 TexReg 4451). This notification extends the proposal due date to July 28, 1994.

All requirements still apply as stated in the June 7, 1994, issue of the *Texas Register*. Any questions regarding these projects or the review process should be directed to Richard Volk, CCBNEP, Program Director, at (512) 985-6767.

Issued in Austin, Texas, on June 13, 1994

TRD-9442233

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

Filed: June 13, 1994

Notice of Application for Waste Disposal Permits

Attached are Notices of Application for waste disposal permits. These notices were issued during the period of May 30-June 10, 1994.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations, and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to Kerry Sullivan, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7908.

ACME Brick Company, its Plants II Clay Mines; one mile north of the Town Butler and approximately 3/4 mile west of FM Road 696, Bastrop County, Texas, renewal; 00444.

Bell County Water Control and Improvement District Number 2; the Academy Wastewater Treatment Facilities; immediately west of State Highway 95, approximately 700 feet south of the intersection of State Highway 95 and FM Road 436 in Bell County, Texas; renewal, 11090-01.

Bell County Water Control and Improvement District Number 2; the Little River Wastewater Treatment Facilities; immediately east of the Missouri-Kansas-Texas Railroad, approximately 2,000 feet south of FM Road 436 in Bell County, Texas, renewal; 11091-01.

City of Carthage, the Hoggs Bayou Wastewater Treatment Facilities, east of the City of Carthage and south of Hoggs Bayou, and approximately 1.5 miles east of the intersection of U.S. Highways 59 and 79 in Panola County, Texas; amendment, 10074-03.

Circle Tree Feedyards, Inc.; the feedlot, on the west side of County Road "I" approximately one and a half miles south of the intersection of Highway 60 and County Road

"I." This intersection is four miles southwest of Hereford on Highway 60 in Castro County, Texas; amendment; 01831.

Crown Central Petroleum Corporation; an oil refinery; south of the Houston Ship Channel at 111 Red Bluff Road in the City of Pasadena, Harris County, Texas; renewal; 00574.

Elgin Butler Brick Company, a clay mine facility, five miles east of the City of Elgin and one mile north of U.S. Highway 290 on FM Road 696 in the Town of Butler, Bastrop County, Texas, renewal, 01414

City of Humble; the South Wastewater Treatment Facilities; approximately 3,000 feet south of the intersection of Jetero Boulevard and U.S. Highway 59, on the western bank of Garner's Bayou and within the city limits of Humble in Harris County, Texas, renewal, 10763-02

ISK Biotech Corporation; the Greens Bayou Agricultural Chemical Plant; at 2239 Haden Road in the extraterritorial jurisdiction of the City of Houston, Harris County, Texas, amendment; 00749

Liquid Carbonic Industries Corporation, a liquid Carbon Dioxide manufacturing facility, at 1800 Grant Avenue, approximately 1/2 mile north of the intersection of Grant Avenue and Texas Highway 341 in the City of Texas City in Galveston County, Texas, renewal, 02750

Carson and Mark Loving, a dairy, on the west side of an unnamed gravel county road, just south of its intersection with FM Road 219, south of Lingleville, in Erath County, Texas, new; 03692

Plains Cooperative Oil Mill, Inc., a cotton seed oil mill, at the northeast corner of the intersection of Avenue A (U.S. Highway 87) and East 34th Street (FM Road 835) in the City of Lubbock, Lubbock County, Texas; renewal; 01920

Renner Feed Yard, Inc.; a feedyard, on the west side of an unpaved private road approximately 1/2 mile north of State Highway 86 and approximately 1-1/2 mile east of the intersection of FM Road 214 and State Highway 86 in Parmer County, Texas; new, 03688

Pat Robbins, a feedlot, on the west side of FM Road 1055, approximately 5.3 miles south of the Deaf Smith/Castro County line, in Castro County, Texas; new, 03657

Saroc Oil Company, doing business as Redfish Unlimited, a mariculture facility for the production of redfish, on the eastern side of FM Road 3280 where FM Road 3280 terminates at Matagorda Bay, approximately six miles south-southwest of the City of Palacios, Matagorda County, Texas, new; 03660.

City of Silsbee, wastewater treatment facilities; approximately 400 feet east and 800 feet south of the intersection of U.S. Highway 96 and Third Street in the southern portion of the City of Silsbee in Hardin County, Texas; renewal; 10282-01.

City of Sour Lake; wastewater treatment facilities; approximately 1/2 mile southwest of the City of Sour Lake, approximately 3/4 mile west of State Highway 326 in Hardin County, Texas, amendment, 10703-01.

Spring Recreation, Inc.; wastewater treatment facilities, approximately 1,400 feet east of Interstate Highway 45 and 3,000 feet south of Spring-Cypress Road near the City of Spring in Harris County, Texas; renewal; 11886-01.

Spring West Municipal Utility District; wastewater treatment facilities; approximately 1,000 feet east of the intersection to FM Road 2920 and Foster Road in Harris County, Texas; renewal; 12579-01.

TCI-El Campo Rice Mill, Limited Partnership; a rice milling and rice parboiling facility; at 605 South Street in the City of Louise, Wharton County, Texas; new, 03659.

Texas Ecologists, Inc., a nonhazardous and hazardous waste disposal facility; approximately 1/2 mile southwest of the intersection of FM Road 892 and FM Road 2826 about four miles south of the City of Robstown, Nueces County, Texas; renewal, 02888.

Texzona Cattle Feeders General Partnership; a feedlot; on the east side of FM Road 179, approximately one mile north of the intersection of FM Road 179 and FM Road 1914 in Hale County, Texas; amendment; 01551.

Trinity River Authority of Texas; the Red Oak Creek Wastewater Treatment Facilities; on Bell Chapel Road on the north side of Red Oak Creek, two miles east of Interstate 35 E and two miles south of the City of Red Oak in Ellis County, Texas; renewal; 13415-01.

United States Department of the Navy; the Kingsville Naval Air Station Wastewater Treatment Facilities; west of San Fernando Creek, on the east side of the Kingsville Naval Air Station in Kleberg County, Texas; renewal; 12035-01.

West Campus Cogeneration Company; a water chilling station; on the west side of the West Campus Utilities Plant Number 1 (Building Number 1498) which is north of Joe Routt Boulevard (also known as Horticulture Road) and west of Beef Cattle Road (also known as Agronomy Road) on the West Campus of the Texas A&M University in the City of College Station, Brazos County, Texas, new; 03690.

Issued in Austin, Texas, on June 10, 1994.

TRD-9442117
Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: June 10, 1994

Notice of Opportunity to Comment on Permitting Actions

The following applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing", a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed conditions which would satisfy your concerns and cause you to

withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Application of City of San Marcos to transfer water CCN Number 11991 from K & H Water Supply and Estates of San Marcos Water Company, Inc.; and to cancel Water CCN Number 11991 in Hays County, Texas.

Application of W. E. Vlasek doing business as Vlasek Pump Company doing business as Shalako Estates Water System to transfer water CCN Number 12685 from Perry Bushong doing business as Shalako Estates Water System in Kerr County, Texas.

Issued in Austin, Texas, on June 10, 1994.

TRD-9442119
Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed June 10, 1994

Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017 (Vernon's 1990); Texas Government Code, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIPs), the Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony concerning revisions to Chapter 114 and the SIP.

The TNRCC proposes an amendment to §114.23, concerning enforcement of transportation control measures. Although the TNRCC published a previous amendment to this rule in the November 23, 1993, issue of the *Texas Register* (18 TexReg 8700), it inadvertently omitted three paragraphs from that adoption, and is therefore proposing the current amendment to correct the oversight. The new amendment does not differ substantially from the version proposed on September 21, 1993.

The TNRCC will hold a public hearing on the proposal on June 28, 1994 at 10:00 a.m. in Room 201S of Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted; however, a TNRCC staff member will discuss the proposal 30 minutes prior to the hearing, and will be available to answer questions informally.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin through

June 28, 1994. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on June 28, 1994 will be considered by the Commission prior to taking final action on the proposal. Copies of the revision are available at the central office of the TNRCC, located at 12118 North I-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. Please mail written comments to the Regulation Development Section, Air Quality Planning, P.O. Box 13087, Austin, Texas 78711-3087. For further information, contact Teresa Hardin at (512) 239-0599.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1457. Please make all requests as far in advance as possible.

Issued in Austin, Texas, on May 25, 1994

TRD-9442229

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

Filed June 13, 1994

Request for Proposals

The Corpus Christi Bay National Estuary Program (CCBNEP) invites interested parties to submit proposals for variety of projects to be conducted during fiscal year 1995 starting September 1, 1994.

The CCBNEP is funded through a Cooperative Agreement between the Texas Natural Resource Conservation Commission (TNRCC) of the State of Texas and the United States Environmental Protection Agency (EPA). The EPA provides for 75% of the Program's funding and requires a 25% match of non-Federal funds. All contracts will be with the TNRCC. Contractors are encouraged, but not required, to provide cost sharing. The CCBNEP and TNRCC anticipate receiving funds in the amounts indicated for each project.

Current status and historical trends in ambient water, sediment, fish and shellfish tissue quality in the CCBNEP study area will receive in funding approximately \$80,000.

Current status and historical trends of living resources in the CCBNEP study area will receive in funding approximately \$100,000.

Current status and historical trends in freshwater inflows to the CCBNEP study area will receive in funding approximately \$40,000.

Current and historical estuarine circulation in the CCBNEP study area will receive in funding approximately \$30,000.

Current and status and historical trends of brown tide and red tide phytoplankton blooms in the CCBNEP study area will receive in funding approximately \$30,000.

Current status and historical trends in the incidence of marine/bay debris in the CCBNEP study area will receive in funding approximately \$20,000.

Characterization of the human use of the CCBNEP study area will receive in funding approximately \$40,137.

Development of a conceptual ecosystem model of the CCBNEP study area will receive in funding approximately \$20,000.

Potential contractors must submit 40 copies of a Proposal Work Plan for each project for which they wish to be considered. The Proposal Work Plan should describe the potential contractor's approach to the project and should be submitted to the CCBNEP Program Office by no later than 5:00 p.m., July 28, 1994. It is the responsibility of the potential contractor to verify that the Proposal Work Plan has been received by the Program Office by the deadline. Faxed Proposal Work Plans will not be accepted.

Appropriate Management Conference Committees will review the Proposal Work Plans and forward initial recommendations to the Management Committee for award. The Management Committee will then require verbal summary presentations of Proposal Work Plans which meet the minimum requirements as described in the "Contract For Consulting Services" and the Guidelines for Proposal Work Plans. Presentations to the Management Committee are scheduled to occur during their August 1994 meeting.

Copies of the Contract For Consulting Services, Guidelines for Proposal Work Plans, and Guidelines for Verbal Presentation may be obtained by contacting the Program Office. Any and all expenses incurred during the development and/or presentation of Proposal Work Plans shall be the responsibility of the potential contractor. Contract execution is contingent upon funding appropriation to the granting agency.

Send copies of Proposal Work Plan by 5:00 p.m., July 28, 1994 to Corpus Christi Bay National Estuary Program, TAMU-CC, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412. ATTN: Proposal Work Plan (FY 1995).

Any questions regarding these projects or the review process should be directed to Richard Volk, CCBNEP Program Director, at (512) 985-6767.

Issued in Austin, Texas, on June 13, 1994

TRD-9442231

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

Filed June 13, 1994

The Texas Natural Resource Conservation Commission (TNRCC) announces that the deadline for applications for the Used-Oil Collection Grants, announced in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3977) has been extended to 5:00 p.m., Friday, September 2, 1994. This available grant funding is to support the establishment and implementation of programs or activities designed to maximize the collection, handling, and reuse or recycling of automotive used oil generated by vehicle owners/operators who change their own automotive oil. Eligible applicants are local governments, public agencies, districts, and authorities having legal authority to manage the collection and/or recycling of municipal solid waste. To be eligible to receive a grant under this request for proposal (RFP), prospective recipients must not be in arrears in the payment of any municipal solid waste or hazardous waste fee owed the State of Texas.

No award under this RFP will be less than \$4,500 or more than \$20,000. The projects are expected to start November 1, 1994. The deadline for applying for a grant under this RFP will be 5:00 p.m., Friday, September 2, 1994.

In order to be considered for funding, applications must be prepared and submitted in accordance with the printed guidelines that are available from the TNRCC as part of Grant Application Packet Number 94-OIL. Please note that a sample contract will be included in the Grant Application Packet in an effort to expedite the negotiation of contracts. Although the TNRCC recognizes particular needs of various public entities, major deviation from the sample contract should not be expected. Those desiring to receive this grant application packet are encouraged to write or call Fred Wiley, Office of Pollution Prevention and Recycling, Texas Natural Resource Conservation Commission, P O Box 13087, Austin, Texas 78711-3087, (512) 239-5648 or the CLEAN TEXAS 2000 Environmental Information Center at 1-800-64-TEXAS and request Grant Application Packet Number 94-OIL.

Issued in Austin, Texas, on June 13, 1994

TRD-9442232 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed June 13, 1994

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**Texas State Board of Examiners of
Psychologists**

Correction of Errors

The State Board of Examiners of Psychologists adopted an amendment to 22 TAC §461.3, concerning Violation of the Code of Ethics, and new §466.31, concerning Board Review of Discovery Orders. The rules appeared in the June 3, 1994, *Texas Register* (19 TexReg 4338 and 4340).

Due to a typographical error by the *Texas Register* the word "psychologists" was misprinted as "psychologist" in the second paragraph of the preamble to §461.3.

Due to an error by the agency in §466.31 the word "within" was misprinted as "with" as follows: "If the Board chair does not make a ruling on the appeal *within* 15 days after the filing..."

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Public Utility Commission of Texas
**Notice of Application to Locate and
Maintain Records Outside the State of
Texas**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application for a waiver of Public Utility Commission Substantive Rule 23.14, which requires public utilities to keep all records necessary for regulation within the State of Texas.

Docket Title and Number Application of Western Farmers Electric Cooperative for Authority to Locate and Maintain Records Outside the State of Texas. Docket Number 13062.

The Application. Western Farmers Electric Cooperative is requesting approval to maintain customer records and finance and accounting records in Anadarko, Oklahoma.

Persons 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 Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before June 22, 1994.

Issued in Austin, Texas, on June 10, 1994.

TRD-9442149 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed June 10, 1994

◆ ◆ ◆
**Notice of Intent to File Pursuant to
Public Utility Commission Substantive
Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for the City of Fort Worth, Fort Worth, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a 217-Station Addition to the Existing Plexar-Custom Service for the City of Fort Worth pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 101.

The Application. Southwestern Bell Telephone Company is requesting approval of a 217-station addition to the existing Plexar-Custom Service for the City of Fort Worth. The geographic service market for this specific service is the Fort Worth, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 10, 1994

TRD-9442148 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed June 10, 1994

◆ ◆ ◆
Notice of Meeting

The Public Advisory Committee created by the Public Utility Commission of Texas to monitor the resource planning activities of Texas Utilities Electric Company related to its pilot project on integrated resource planning will hold a meeting on June 21, 1994, at 9:00 a.m., in the offices of the Public Utility Commission, 7800 Shoal Creek Blvd, Austin, Texas. This meeting will not be an open meeting of the Commission. The Public Advisory Committee has met periodically to receive information and ask questions of representatives of Texas Utilities Electric Company concerning this pilot project, and this meeting is the latest in this series of meetings. Persons with questions about the meeting may contact Mr. Jess Totten, Assistant General Counsel of the Commission at telephone number 512-458-0365.

Issued in Austin, Texas, on June 9, 1994

TRD-9442152

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

Filed: June 10, 1994

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**Notice to Southwestern Public Service
Company Customers**

On April 25, 1994, Southwestern Public Service Company ("Southwestern") filed a request with the Public Utility Commission of Texas for a declaratory order that its proposed activities to return two existing certificated generating units to service do not constitute construction of "new" generating plants under Section 54(d) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c and related Commission rules. The two plants are Southwestern's Moore County Unit 3 Generating Facility, located approximately 8.5 miles northeast of Dumas, Moore County, Texas, and its Riverview Generating Facilities located approximately 3 miles north, northwest of Borger, Hutchinson County, Texas.

The Moore County Unit 3 Generating Facility is a natural gas-fueled steam electric generating facility with a net capacity of 48 MW. Southwestern intends to return the Moore County Unit 3 Generating Facility to service by June, 1996. The estimated cost of the project is \$3,686,000.

The Riverview Generating Facility is a simple cycle gas turbine with a capacity of 25 MW. Southwestern intends to return the Riverview Generating Facility to service by June, 1997. The estimated cost of the project is \$1,850,000.

The Commission's proceeding to review this request has been assigned Docket No. 12959, Petition of Southwestern Public Service Company for a Declaratory Order that Activities do not Constitute Construction of New Generating Plants.

Persons with questions about this project should contact Kathleen Bailey at (806) 378-2165. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission Public Information Office at (512) 458-0388, or (512) 458-0221 teletypewriter for the deaf. The deadline for intervention in the proceeding is July 5, 1994.

Issued in Austin, Texas, on June 10, 1994.

TRD-9442151

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

Filed: June 10, 1994

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**Petition of City of
Blessing/Elmaton/Midfield Exchange
for Expanded Local Calling Service to
the Bay City and Markham Exchanges
Docket Number 12413**

On December 30, 1993, a Petition to Extend Local Service (ELS) to the Blessing/Elmaton/Midfield exchange was filed pursuant to Public Utility Commission Substantive Rule 49(c). The Blessing/Elmaton/Midfield exchange sat-

isfied the balloting requirements to the Bay City and Markham exchanges.

This petition has been docketed and assigned Docket No. 12413. The purpose of this docket is to take evidence on community of interest and to consider whether to direct GATESW and SWB to apply for a waiver of the restriction precluding them from transporting interLATA traffic.

Persons who wish to intervene or comment on these proceedings should notify the Commission by June 20, 1994. 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) 458-0388, or (512) 458-0221 teletypewriter for the deaf.

Issued in Austin, Texas, on June 10, 1994

TRD-9442150

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

Filed: June 10, 1994

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**Railroad Commission of Texas
Correction of Errors**

The Railroad Commission of Texas proposed an amendment to 16 TAC §3.66, concerning spill and leak reports provided to the commission by common carrier pipelines. The rule appeared in the June 3, 1994, *Texas Register* (19 TexReg 4305).

Due to a typesetting error by the *Texas Register*, the preamble incorrectly attributes the statements concerning the rule's effect on small businesses and economic cost to persons who are required to comply with the section as proposed. These statements were attributed to Barbara Epstein. They belong to Rita E. Percival.

Due to a typesetting error by the *Texas Register*, the section heading was misprinted as "Pipeline Tariffs." It should read "Pipeline Tariffs."

In paragraph (19)(C), the closing parentheses was omitted after the word "requested" as follows: "(C) Common carrier pipelines shall mail (return receipt requested) or hand deliver...."

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Invitation for Bids

The Railroad Commission of Texas, Surface Mining and Reclamation Division (hereinafter referred to as the commission), is soliciting bids for revegetation of approximately 205 acres at the Butler-Weddington (Area One) Abandoned Mine Land (AML) site. The site is located in Karnes County, 11 miles southwest of Fall City, Texas, off of FM Road 791.

The Butler-Weddington (Area One) AML Revegetation Project will establish vegetative cover on bare ground resulting from a separate reclamation earthwork contract (Butler-Weddington (Area One) AML Regrade Project). Work is estimated to begin as early as the fall 1994 or as late as winter/spring 1995. Maintenance of revegetated areas, in the form of shredding/mowing, herbicide application, and erosion repair, is also included in the scope of the Revegetation Project.

As the designated state agency for implementation of the "Surface Mining Control and Reclamation Act of 1977" (30 United States Code, §1201 et seq), the commission will award a unit price contract to the lowest and best bidder for completion of this work. Sealed bids will be received until 2:00 p.m., August 9, 1994, at which time the bids will be publicly opened and read at the following address. A mandatory pre-bid conference will be held at the site at 10:00 a.m., July 13, 1994. Construction work items will include Mobilization, Seedbed Preparation, Fertilization, Seeding and Sprigging, Mulching; Vegetation Maintenance, Insecticide Application, Herbicide Application, Erosion Repair, Grassed Waterway Construction, and Fences.

Copies of the specifications, drawings, and other contract documents are on file in Austin at the following address. The complete bid package may be obtained for \$15 from the following mailing address: Butler-Weddington (Area One) AML Revegetation Project, Surface Mining and Reclamation Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-1967, Attention: Melvin B. Hodgkiss, P.E., Director. All questions concerning the work or bid document must be received by 5:00 p.m., July 21, 1994.

Issued in Austin, Texas, on June 9, 1994

TRD 9442076 Mary Ross McDonald
Assistant Director, Legal Division-Gas
Utilities/LP Gas
Railroad Commission of Texas

Filed June 9, 1994

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Waco Urban Transportation Study Metropolitan Planning Organization

Request for Proposal

The Metropolitan Planning Organization (MPO) for the Waco Urban Transportation Study is requesting proposals from qualified sources to perform a Vehicle Miles of Travel Program Study for the cities of the WUTS MPO area.

The WUTS MPO is comprised of the Cities of Bellmead, Beverly Hills, Hewitt, Lacy-Lakeview, Northcrest, Robinson, Waco, and Woodway, McLennan County and the Texas Department of Transportation. Other participating agencies include the Heart of Texas Council of Governments, the Federal Highway Administration, and the Federal Transit Administration. The study area includes the above named cities as well as part of Golinda and unincorporated areas in the county. The area encompasses 261 square miles and supports a population of approximately 151,272 (see attached map). The City of Waco is the designated grantee for the MPO and receives funding from the TxDOT and FTA.

The purpose of this request is to solicit proposals from qualified consultants to provide volume counts and estimate vehicle miles of travel by lane miles, center lines miles and functional classification on local and collector streets in the above listed cities. This inventory will assist in developing short-term and long-term goals for transportation improvements.

To receive a copy of or ask questions concerning this RFP packet, contact Anna K. Hayes, MPO Coordinator, City of Waco, P.O. Box 2570, Waco, Texas 76702-2570, (817) 750-5655.

The MPO and the City of Waco reserve the right to accept or reject any or all proposals as a result of this request, to negotiate with all qualified sources, or to cancel in part or its entirety if found to be in the best interest of the MPO or the City of Waco. This RFP does not commit the MPO or City of Waco to award a contract or to pay cost incurred for the preparation of proposals.

An original and five copies of the written proposal must be received by the City no later than 5:00 p.m. on July 18, 1994. They should be addressed to Anna K. Hayes, MPO Coordinator, City of Waco, P.O. Box 2570, Waco, Texas 76702-2570, or shipped to Anna K. Hayes, MPO Coordinator, City of Waco, 400 Austin Avenue, Fourth Floor, Waco, Texas 76701.

Proposals will be evaluated by a staff committee. Each proposal will be evaluated for acceptability with emphasis on the various factors enumerated below, assigning to that factor a numerical weight. The scores will be used to develop a list of proposers with whom negotiations may be conducted. Additional documentation shall be at the discretion of the MPO and City of Waco. Interviews, if necessary, will be conducted. The staff committee recommendation is subject to approval by the Waco City Council. The criteria and maximum points are as follows: Firm and Staff Experience 30, Project Approach 30, Demonstrated Past Performance Success 20, Current Workload 10, Conformance with RFP Requirements 10, Total Points 100.

The firm selected to provide this study must be approved by the Waco City Council. The MPO and City of Waco may authorize contract negotiations to begin without further discussion with the proposers, therefore, each proposal should be submitted as completely as possible. The MPO and City of Waco reserve the right to request additional data or oral discussions/presentations in support of the written proposal. Contracts shall be awarded on the basis of the best interest of the MPO and City of Waco, price, content, and other factors being considered in the RFP.

Issued in Austin, Texas, on June 9, 1994

TRD-9442063 Anna K. Hayes
MPO Coordinator
Waco Urban Transportation Study
Metropolitan Planning Organization

Filed June 9, 1994

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Texas Water Development Board Applications Received

Pursuant to the Texas Water Code, §6195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Edinburg, 210 West McIntyre, Edinburg, Texas 78540, received March 1, 1994, application for financial assistance in the amount of \$9,622,734 from the Economically Distressed Areas Account.

City of Alton, P.O. Drawer 9004, Mission, Texas 78572, received March 2, 1994, application for financial assistance in the amount of \$8,442,264 from the Economically Distressed Areas Account.

City of Dayton, 111 North Church Street, Dayton, Texas 77535, received April 5, 1994, application for financial assistance in the amount of \$1,760,000 from the State.

Water Pollution Control Revolving Fund and the Water Supply Account of the Water Development Fund.

White Oak Bend Municipal Utility District, 11011 White Oak Bend, Houston, Texas 77064, received January 3, 1994, application for financial assistance in the amount of \$1,620,000 from the State Water Pollution Control Revolving Fund and Water Quality Enhancement Account.

City of Edinburg, P.O. Box 1079, Edinburg, Texas 78540-1079, received April 20, 1994, application for financial assistance in an amount not to exceed \$46,285.71 from the Research and Planning Fund.

City of Gatesville, 110 North Eighth Street, Gatesville, Texas 76528-1499, received February 25, 1994, application for financial assistance in an amount not to exceed \$52,188 from the Research and Planning Fund.

Additional information concerning this matter may be obtained from Craig D. Pedersen, Executive Administrator, P.O. Box 13231, Austin, Texas 78711.

Issued in Austin, Texas, on June 8, 1994

TRD-9442073 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Filed: June 9, 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