Texas Register

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In This Issue...

CONTENTS CONTINUED INSIDE

Table of TAC Titles Affected...Page 9127

Texas Register

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

How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

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

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Sections - 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 18 (1993) is cited as follows: 18 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 TexReg 3."

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

Texas Administrative Code

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

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The ***Official TAC*** also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the ***TAC*** or to inquire about WESTLAW access to the ***TAC*** call West: **1-800-328-9352.**

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 22, April 16, July 13, and October 12, 1993). In its second issue each month the ***Texas Register*** contains a cumulative ***Table of TAC Titles Affected*** for the preceding month. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

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

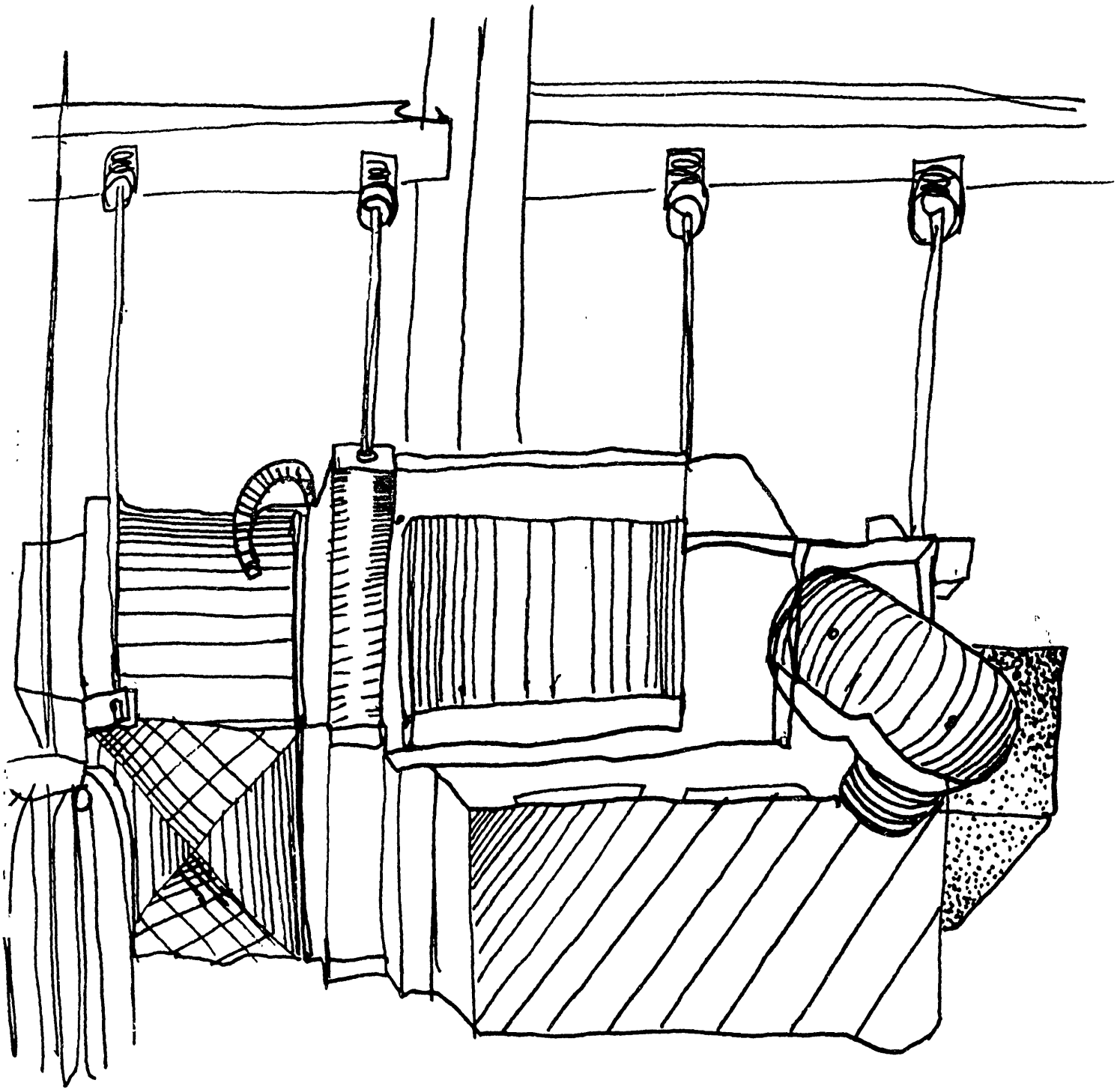
The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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

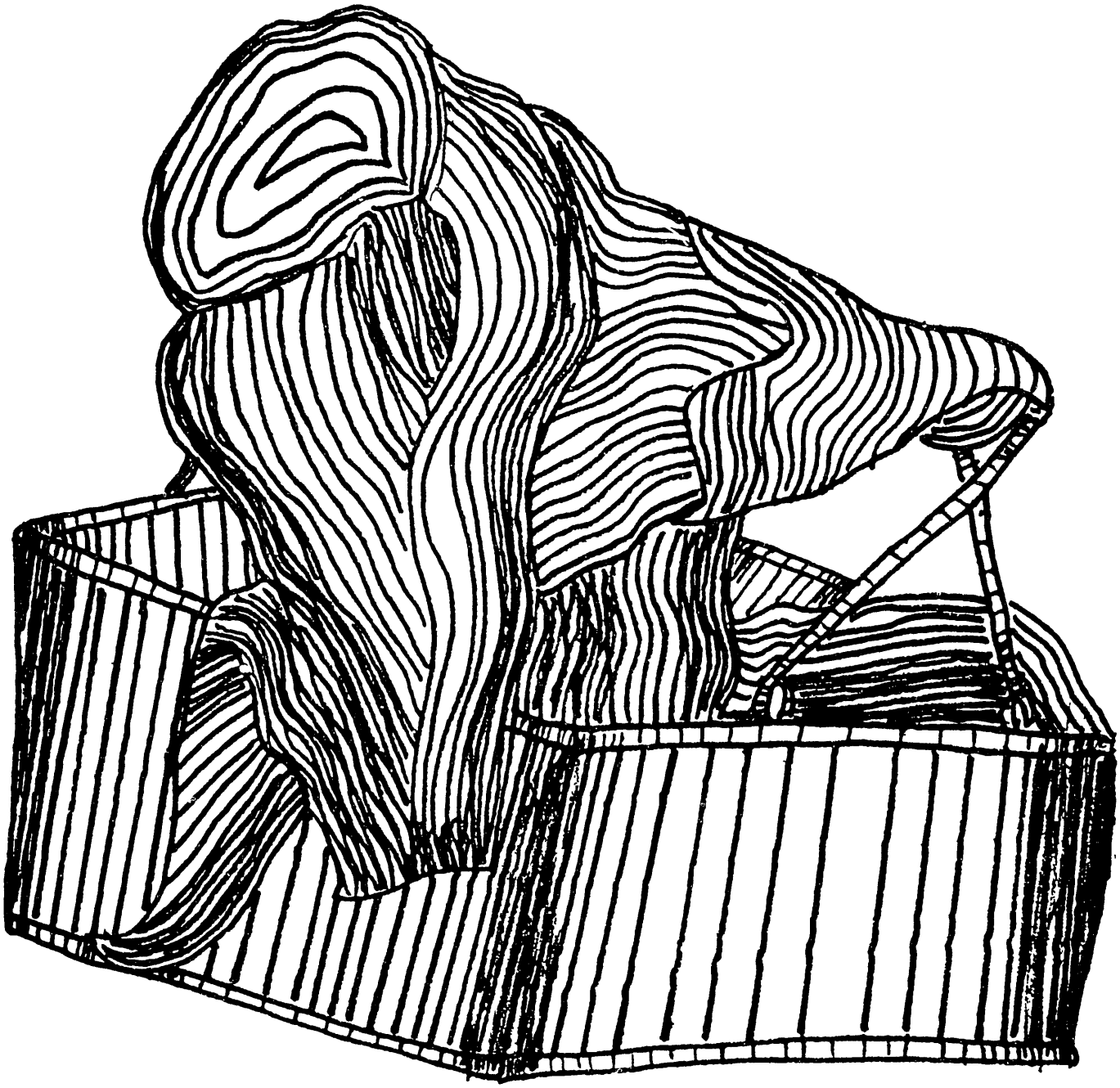
In Addition Sections

Name. Robert Gingrich
Grade: 9
School: Skyline High School, Dallas ISD

Contour: Air & Heat Unit

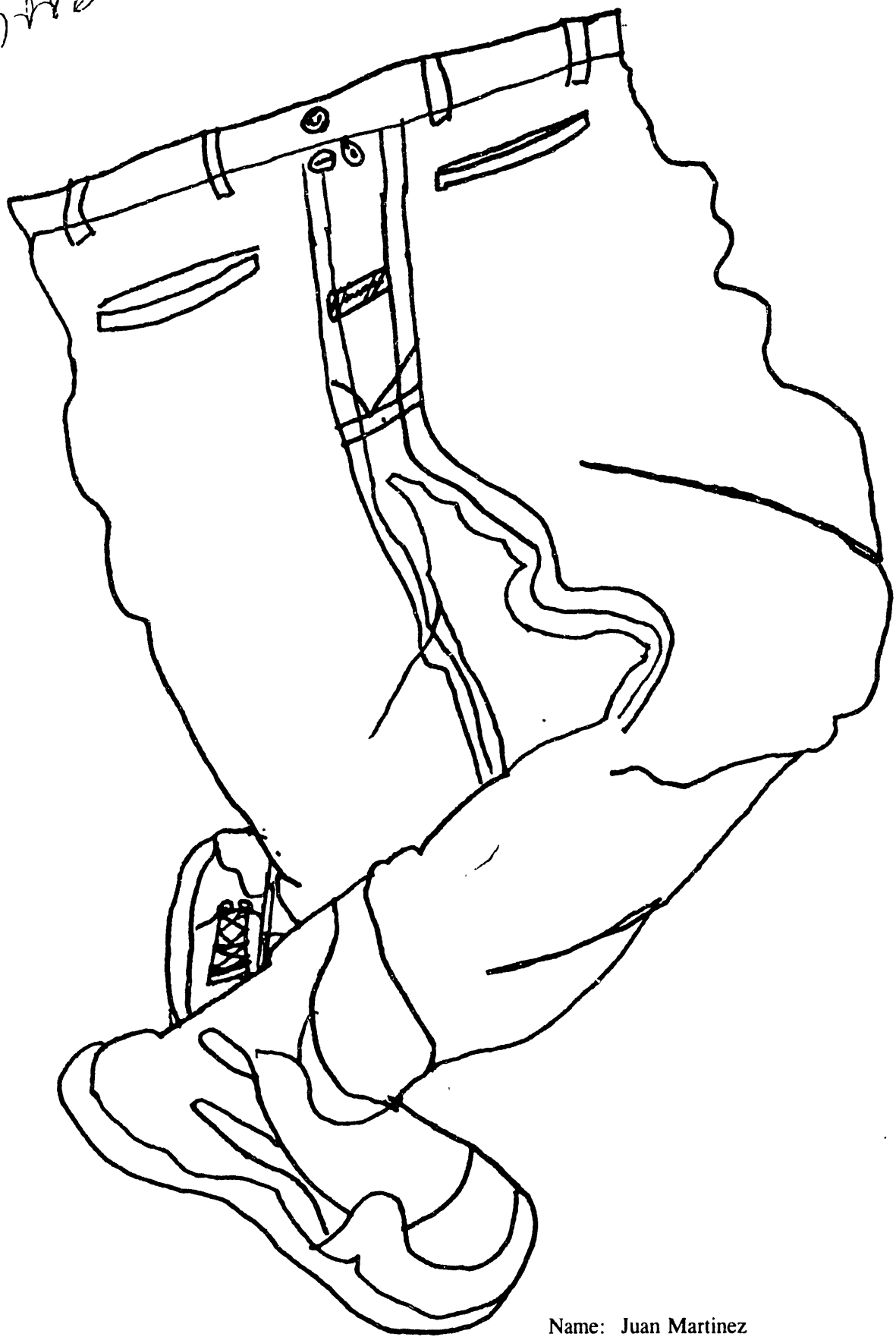


Name: Robert Gingrich
Grade: 9
School: Skyline High School, Dallas ISD



Name: Juan Martinez
Grade: 9
School: Skyline High School, Dallas ISD

Contoar : Hips

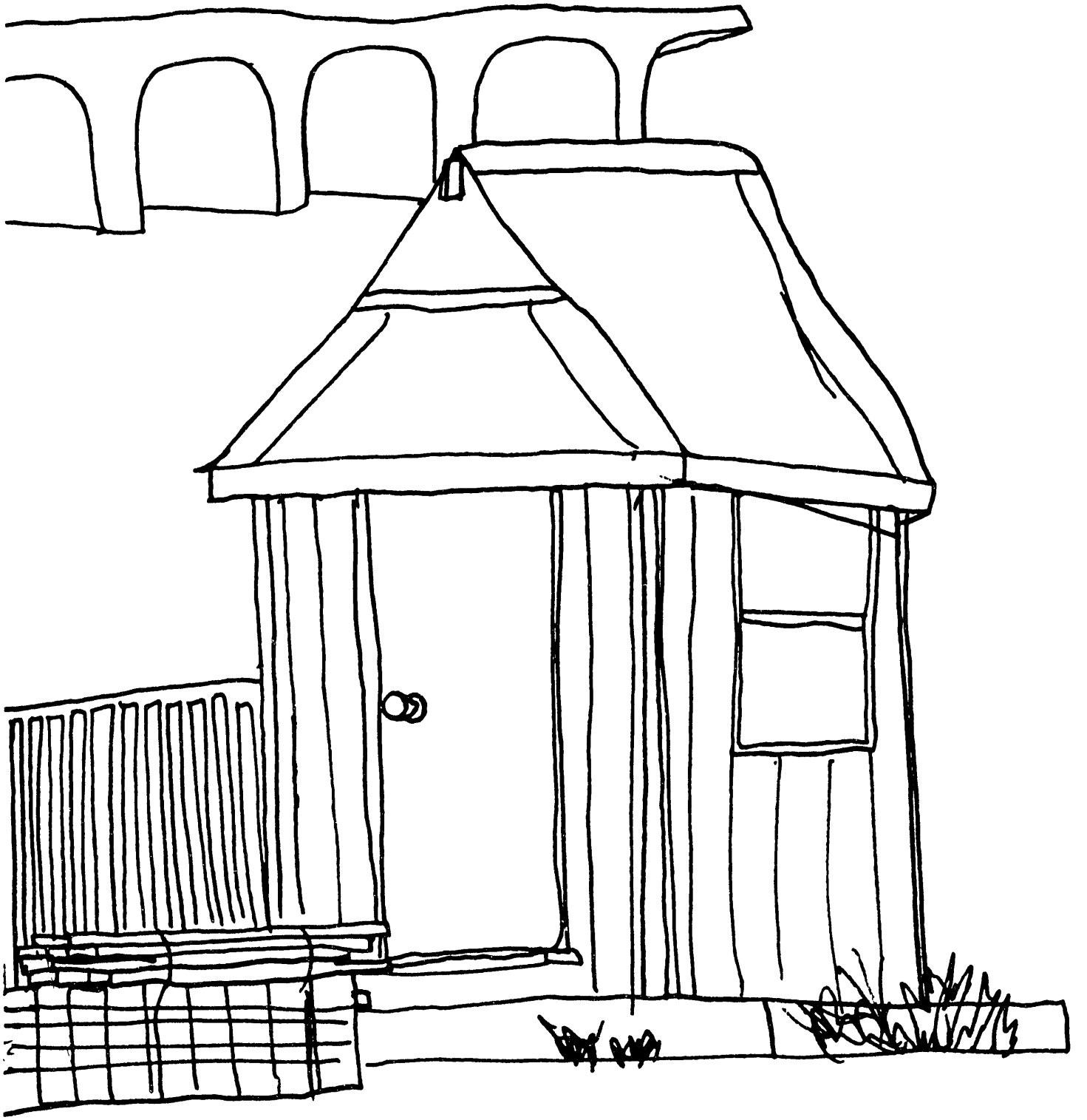


Name: Juan Martinez
Grade: 9
School: Skyline High School, Dallas ISD

Contour: Basket & Cloth

Name: Robert Gingrich
Grade: 9
School: Skyline High School, Dallas ISD

Contour : On location (small house & surroundings)



Name: Robert Gingrich
Grade: 9
School: Skyline High School, Dallas ISD

Proposed Sections

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 any action may be 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 sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 101. General Administration

• 7 TAC §101.4

The State Securities Board proposes an amendment to §101 4, concerning examination of records pursuant to the open records provisions of the Texas Government Code The amendment corrects the citation to the Open Records Act to reflect its codification in the Texas Government Code, effected by Senate Bill 248, 73rd Legislature, 1993

Tom Spradlin, Director of Information Resources and Planning, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule

Mr Spradlin 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 that persons who anticipate requesting examination of records will be apprised of the accurate citation of the relevant portion of the Texas Government Code. 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

Comments on the proposal may be submitted to Rada Lynn Potts, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Securities Act, including rules and regulations governing registration statements and applications; defining terms, classifying securities, persons, and matters within its jurisdiction, and prescribing different requirements for different classes.

Statutes and codes affected none applicable.

§101.4. Examination of Records Upon receipt of a request for examination of records pursuant to the **open records provisions of the Texas Government Code, Title 5, Chapter 552** [Texas Open Records Act, Texas Civil Statutes, Article 6252-17a], Form 133.1 [as prescribed by the Commissioner,] will be furnished to the party requesting the examination. The requesting party shall indicate on the form the specific nature of the documents requested for examination or photocopying, and if photocopying is desired the appropriate fee must accompany the request

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 November 29, 1993

TRD-9332775 Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: January 7, 1994

For further information, please call (512) 474-2233

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Chapter 107. Terminology

• 7 TAC §107.2

The State Securities Board proposes an amendment to §107.2, concerning definitions of terms used in the Securities Act and the rules thereunder to change the citation to the Administrative Procedure and Texas Register Act to reflect its codification in the Texas Government Code, and to change the definition of "contested case" to reflect the requirements of the Texas Government Code, §2003 021.

Denise Voigt Crawford, securities commissioner has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms Crawford also has determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment will be consistency in the terminology used by the Agency and that used in the Texas Government Code 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

Comments on the proposal may be submitted to Rada Lynn Potts, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1 Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Securities Act, including rules and regulations governing registration statements and applications; defining terms, classifying securities, persons, and matters within its jurisdiction, and prescribing different requirements for different classes

Statutes and codes affected none applicable

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

APA or Administrative Procedure Act-The Administrative Procedure [and Texas Register] Act, **Texas Government Code, Title 10, Chapter 2001** [Texas Civil Statutes Article 6252-13a], as amended

Contested case-A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Securities Commissioner, or the Securities Board, after an opportunity for adjudicative hearing, **before an Administrative Law Judge of the State Office of Administrative Hearings.**

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 November 29, 1993.

TRD-9332781 Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption January 7, 1994

For further information, please call. (512) 474-2233

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Chapter 127. Miscellaneous

• 7 TAC §127.3

The State Securities Board proposes an amendment to §127.3, concerning the meaning of the term "state seal" as used in the Securities Act, §30, to reflect the amendment to the Securities Act, §30, effected by House Bill 1463, 73rd Legislature, 1993

Denise Voigt Crawford, securities commis-

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

Ms. Crawford has also 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 consistency of the language in the rule and that in the Securities Act, §30. 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

Comments on the proposal may be submitted to Rada Lynn Potts, State Securities Board, P O. Box 13167, Austin, Texas 78711-3167

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1. Section 28-1 provide the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Securities Act, including rules and regulations governing registration statements and applications; defining terms, classifying securities, persons, and matters within its jurisdiction, and prescribing different requirements for different classes

The proposed amendment affects Texas Civil Statutes, Article 581-30

§127 3 Seal of the State

The term "state seal [of the state]" as used in §30 of The Securities Act includes the official seal of the State Securities Board

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

Issued in Austin, Texas, on November 29, 1993.

TRD-9332780 Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption January 7, 1994

For further information, please call (512) 474-2233

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Chapter 133. Forms

• 7 TAC §133.1

The State Securities Board proposes an amendment to §133 1, concerning the form of requests for publicly available information.

Tom Spradlin, director of information resources and planning, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Spradlin 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 to correct the citation in the Agency's rules to reflect the codification of the Open Records Act in the Texas Government Code. 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.

Comments on the proposal may be submitted to Rada Lynn Potts, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1 Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Securities Act, including rules and regulations governing registration statements and applications, defining terms, classifying securities, persons, and matters within its jurisdiction, and prescribing different requirements for different classes

Statutes and codes affected none applicable

§133.1 Texas Open Records Request. The State Securities Board adopts by reference the Texas Open Records Request Form The form is being changed to correct the citation of the Open Records Act to reflect its codification in the Government Code. The form is available from the State Securities Board, P.O. Box 13167, 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 November 29, 1993.

TRD-9332779 Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: January 7, 1994

For further information, please call: (512) 474-2233

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TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 313. Officials and Rules of Horse Racing

Subchapter D. Running of the Race

Jockeys

• 16 TAC §313.405

The Texas Racing Commission proposes an amendment to §313.405, concerning whips and other equipment. The amendment requires a jockey or apprentice jockey to wear a safety vest while riding a horse in a race

Paula Cochran Carter, 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 the section

Ms Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will be safer for jockeys. There will be no effect on small businesses A safety vest that meets Commission specification costs approximately $200

Comments on the proposal may be submitted on or before January 14, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O Box 12080, Austin, Texas 78711

The amendment is proposed under Texas Civil Statutes, Article 179e, §3 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §6 06, which authorize the commission to adopt rules relating to the operation of racetracks The proposed rule implements Texas Civil Statutes, Article 179e

§313 405 Whips and Other Equipment.

(a)-(d) (No change)

(e) **A jockey or apprentice jockey may not ride in a race unless the jockey or apprentice jockey wears a safety vest.** A safety vest may weigh no more than two pounds and must be designed to provide shock absorbing protection to the upper body of at least a rating of five, as defined by the British Equestrian Trade Association.

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 December 1, 1993

TRD-9332864 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption January 7, 1994

For further information, please call (512) 794-8461

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TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Subchapter B. Registration

Chapter 1. Architects

• 22 TAC §1.21

The Texas Board of Architectural Examiners proposes an amendment to §1. 21, concerning the eligibility of applicants for examination and the processing of applications for examinations The amendment will clarify the process of submitting application records to the board.

LaVonne Garland, interim director, has determined that for the first five-year period the

section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Garland also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide information on the application process for admittance to the examination. There will be no effect on small businesses The anticipated economic cost to persons who are required to comply with the section as proposed will be per applicant a one time fee of $195

Comments on the proposal may be submitted to LaVonne Garland, Interim Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78757, (512) 458-1363

The amendment is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.21. Eligibility.

(a)-(c) (No change)

(d) Effective February 2, 1994, applicants for the 1995 and subsequent Architect Registration Examination administrations shall process IDP records through the National Council of Architectural Registration Boards and not through the board.

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

Issued in Austin, Texas, on November 30, 1993.

TRD-9332855 LaVonne Garland
Interim Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: January 7, 1994

For further information, please call (512) 458-1363

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Subchapter D. Certification and Annual Registration

• 22 TAC §1.69

The Texas Board of Architectural Examiners proposes an amendment to §1. 69, concerning reinstatement of licensure. The amendment will explain the criteria for reinstatement of license.

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

Ms. Garland also has determined that for each year of the first five years the section are in effect the public benefit anticipated as a result of enforcing the section will be to provide information on the conditions that may affect an application for reinstatement There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to LaVonne Garland, Interim Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78757, (512) 458-1363

The amendment is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules

§1 69 Reinstatement

(a)-(b) (No change)

(c) A registrant whose license has been revoked for a period greater than five [three] years **immediately preceding reinstatement application** shall

(1) be reexamined prior to reinstatement, or

(2) **furnish evidence of registration in another jurisdiction within five years of reinstatement application** [apply for reciprocal licensure in accordance with §1 28 of this title (relating to Reciprocal Transfer)]

(d)-(e) (No change.)

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

Issued in Austin, Texas, on November 30, 1993.

TRD-9332854 LaVonne Garland
Interim Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption. January 7, 1994

For further information, please call (512) 458-1363

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Part X. Texas Funeral Service Commission

Chapter 201. Licensing and Enforcement-Practice and Procedure

• 22 TAC §201.14, §201.15

The Texas Funeral Service Commission proposes new §201.14 and §201 15, concerning the Joint Memorandum of Understanding to be entered into by the Texas Funeral Service Commission, the Texas Department of Banking, and the Texas Department of Insurance under Texas Civil Statutes, Article 4582b, §4(I). That statute provides that the Joint Memorandum of Understanding shall be promulgated by rule by each of the affected agencies. Any future revisions to the Joint Memorandum of Understanding will be promulgated as amendments to these sections New §201 14 outlines the statutory requirements and new §201 15 contains the Memorandum of Understanding, which describes the statutory responsibilities of the three agencies and the procedures by which the agencies will coordinate their activities The Joint Memorandum of Understanding sets for the manner in which the three agencies will coordinate their statutory responsibilities in the area of prepaid funeral services and transactions

Debbie Smith, acting executive director of the Texas Funeral Service Commission, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, and there will be no effect on local employment or the local economy

Ms Smith also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is the ability to better regulate prepaid funeral services and insurance, and the ability to provide better services to consumers through better coordination of the complaint processing and regulatory activities of the three agencies There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the sections as proposed

Comments on the proposal may be submitted to Debbie Smith, Acting Executive Director, Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78754

The new sections are proposed under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations Texas Civil Statutes, Article 4582b, §4(I), mandates the Texas Funeral Service Commission, the Texas Department of Insurance, and the Texas Department of Banking to enter into a Joint Memorandum of Understanding and mandates that each agency promulgate the Joint Memorandum of Understanding as a rule

§201 14 Introduction to Joint Memorandum of Understanding

(a) Texas Civil Statutes, Article 4582(b), §4(I), mandates the Texas Department of Banking, the Texas Funeral Service Commission and the Texas Department of Insurance to adopt by rule a Joint Memorandum of Understanding relating to prepaid funeral services and transactions that

(1) outlines the responsibilities of each agency in regulating these services and transactions,

(2) establishes procedures to be used by each agency in referring complaints to one of the other agencies,

(3) establishes procedures to be

used by each agency in investigating complaints;

(4) establishes procedures to be used by each agency in notifying the other agencies of a complaint or of the investigation of a complaint;

(5) describes actions the agencies regard as deceptive trade practices;

(6) specifies the information the agencies provide consumers and when that information is to be provided, and

(7) sets the administrative penalties each agency imposes for violations

(b) Any revisions to the Joint Memorandum of Understanding will be adopted by rule by each agency

(c) The Joint Memorandum of Understanding entered into by the three agencies is found at §201.15 of this title (relating to Joint Memorandum of Understanding).

§201.15. Joint Memorandum of Understanding.

(a) Pursuant to Texas Civil Statutes, Article 4582b, §4(I), the Texas Funeral Service Commission (herein referred to as the "TFSC"), the Texas Department of Insurance (herein referred to as the "TDI"), and the Texas Department of Banking (herein referred to as the "DOB") hereby adopt the following joint memorandum of understanding ("JMOU") relating to prepaid funeral services and transactions. The TFSC, TDI, and DOB intend this memorandum of understanding to serve as a vehicle to assist the three agencies in their regulatory activities, and to make it as easy as possible for a consumer with a complaint to have the complaint acted upon by all three agencies, where appropriate. In order to accomplish this end, where not statutorily prohibited, the three agencies will share information between the agencies which may not be available to the public generally under the Open Records Act, Texas Civil Statutes, Article 6252-17a. Such information will be transmitted between agencies with the notation on the information that it is considered confidential, is being furnished to the other agencies in furtherance of their joint responsibilities as state agencies in enforcing their respective statutes, and that it may not be disseminated to others.

(b) Responsibilities of Each Agency in Regulating Prepaid Funeral Services and Transactions.

(1) The Texas Funeral Service Commission is responsible for the following:

(A) licensing funeral directors and embalmers, apprentice funeral directors and apprentice embalmers (Texas Civil Statutes, Article 4582b, §3) and funeral establishments (Texas Civil Statutes, Article 4582b, §4(A)). The TFSC may refuse to license a person or establishment that violates Texas Civil Statutes, Article 548b, under Texas Civil Statutes, Article 4582b, §3(H)(10);

(B) taking action against any licensee violating Article 548b, under Texas Civil Statutes, Article 4582b, §3(H)(10);

(C) taking action against any funeral director in charge and/or funeral establishment for violations of Article 548b, by persons directly or indirectly connected to the funeral establishment, under Texas Civil Statutes, Article 4582b, §4(D)(1)(f) and §4(E).

(2) The Texas Department of Banking is responsible for administering Texas Civil Statutes, Article 548b, including but not limited to, the following:

(A) issuing permits to sell prepaid funeral services or funeral merchandise pursuant to Texas Civil Statutes, Article 548b, §1 and §3;

(B) approving forms for sales contracts pursuant to Texas Civil Statutes, Article 548b, §2;

(C) canceling or refusing to renew permits pursuant to Texas Civil Statutes, Article 548b, §4; and providing notice of alleged violations to the Attorney General of Texas and to sellers pursuant to Texas Civil Statutes, Article 548b, §9(e) and (f);

(D) approving the release or withdrawal of funds under certain circumstances or for certain purposes, pursuant to Texas Civil Statutes, Article 548b, §§5(3), (4), and (5);

(E) providing for reporting requirements and performing examinations under Texas Civil Statutes, Article 548b, §7 and §8(a),

(F) maintaining a guaranty fund with respect to prepaid funeral benefits owned by trusts, pursuant to Texas Civil Statutes, Article 548b, §8A.

(3) The Texas Department of Insurance is responsible for the following:

(A) regulating licensed insurers that issue or propose to issue life insurance/annuity contracts which may fund prepaid funeral contracts;

(B) regulating individuals/entities that perform the acts of an insurance agent(s) as defined in Insurance Code, Articles 21.02 and 1. 14-1;

(C) regulating insurance/annuity contracts that may fund prepaid funeral contracts;

(D) regulating unfair trade practices relating to the insurance/annuity contracts which may fund prepaid funeral contracts pursuant to Insurance Code, Article 21.21;

(E) regulating unfair claims settlement practices by insurance companies pursuant to Insurance Code, Article 21.21-2.

(c) Procedures Used by Each Agency in Exchanging Information With or Referring Complaint to One of the Other Agencies.

(1) Exchanging information. If, upon receipt of a complaint, or during the course of an investigation, an agency (referred to as the receiving agency) receives any information that might be deemed of value to another of the agencies (referred to as the reviewing agency), the receiving agency will contact the reviewing agency and will forward the relevant information to the reviewing agency at its request.

(2) Referral of complaints for handling. When an agency receiving a complaint refers the complaint to another agency for handling, the receiving agency will contact the complainant in writing informing him or her of the referral, and providing contact information to the reviewing agency, and encouraging the complainant to recontact the receiving agency if she or he has any problem with the reviewing agency's processing of the complaint.

(3) Complaint procedures. The three agencies will work together to establish procedures to ensure complaints will be fully resolved by the reviewing agency.

(d) Procedures to be Used by Each Agency in Investigating a Complaint.

(1) All agencies.

(A) Each agency will develop an internal complaint procedures manual for violations relating to prepaid funeral services and/or transactions. The manual should at a minimum provide for:

(i) cross-checking the other two agencies' lists of licensees against the investigating agency's list;

(ii) background checks on disciplinary proceedings and license eligibility-including background checks into the two other agencies' complaints, disciplinary proceedings, and licensing process involving the same licensee if any, where not prohibited by law;

(iii) outlining of relevant law for each agency with check-point steps to ensure all relevant information has been obtained from complainant and references to applicable legal provisions;

(iv) identification of necessary data and documents to be obtained from the complainant; and

(v) such other steps deemed necessary for the agency to perform an adequate and appropriate investigation.

(B) Each agency will maintain its centralized complaint resolution process with a long-term goal of integrating the complaint resolution process, which includes the complaint tracking system, with the other agencies in the most effective, cost-efficient manner.

(C) Within four months from the final adoption of the JMOU by rulemaking, the DOB, TFSC, and TDI will develop one or more complaint and referral forms that are substantially similar in content and format to be used by each agency in processing complaints relating to prepaid funeral services and/or transactions.

(D) Each reviewing agency will provide periodic, no less than quarterly, status reports on the complaint investigation to the receiving agency or agencies. In addition, the reviewing agency will contact the complainant to inform him or her of the status of the investigation.

(E) Each agency will develop with the other agency, or other two agencies, a written plan for conducting joint investigations where appropriate which, at a minimum, establishes a case manager for the investigation, establishes the divisions of duties among the agencies, and establishes a time-line for completion of the investigation.

(F) As soon as possible following the final adoption of the JMOU by rulemaking the DOB, TFSC, and TDI will each ensure its complaint resolution procedure is accessible to the public by reviewing its procedures, forms, brochures, and letters to determine what steps, if any, are needed to remedy problems of accessibility. The DOB, TFSC, and TDI will implement the needed steps as soon as possible thereafter.

(G) The TDI, DOB, and TFSC commit to a long-term goal with a five-year planning horizon to develop an efficient and cost-effective way to ensure that the three agencies can readily exchange information and that there is effective and easy access by each of the three agencies to the information and data held by the other agencies relating to complaints and information regarding licensees in the prepaid funeral services area.

(2) The Texas Funeral Service Commission.

(A) The TFSC, in accordance with Texas Civil Statutes, Article 4582b, §4(D)(2)(b), will investigate violations of prepaid funeral services only if the investigation does not interfere with or duplicate an investigation conducted by the DOB.

(B) The TFSC will, upon request, assist the DOB and/or the TDI with investigations.

(3) Texas Department of Banking.

(A) Complaints received by the Special Audit Division will be entered into a complaint log and assigned a reference number. If, after agency notice to the subject of the complaint, the complaint is not resolved, the DOB will investigate.

(B) If disciplinary action against a DOB permittee is appropriate, the matter will be referred to the agency's legal staff.

(C) If the complaint involves a matter handled by either the TDI or TFSC, as well as a violation of the DOB statutes or regulations, the DOB will coordinate the investigation with either or both of these agencies, as appropriate. The DOB will, upon request, assist the TFSC and/or TDI with investigations.

(D) In the event that a licensee under the TFSC's jurisdiction is found, after hearing, to have violated one or more provisions of Article 548b, the DOB will inform the TFSC of the violation(s) in writing and provide documentation supporting the occurrence of the violation(s).

(4) Texas Department of Insurance.

(A) Complaints received by the Consumer Services area of the TDI will be logged in and investigated. Other areas of the agency can be called upon for assistance in the investigation of the complaint where appropriate.

(B) If disciplinary action against a licensee of the TDI is found to be appropriate, the matter will be referred to the Compliance Intake Unit of the TDI.

(C) If the complaint involves a matter handled by either the DOB or TFSC, as well as a violation of the TDI statutes or regulations, the investigation will be coordinated with either or both of those agencies.

(D) The TDI will, upon request,assist the TFSC and/or DOB with investigations.

(e) Actions the Agencies Regard as Deceptive Trade Practices.

(1) The TFSC, the DOB, and the TDI regard as deceptive trade practices those actions found under the Texas Business and Commerce Code, §17.46.

(2) With respect to trade practices within the business of insurance, the TDI regards as deceptive trade practices those actions found under Insurance Code, Article 21.21, and other articles of the Code and the regulations promulgated by the TDI thereunder.

(f) Information the Agencies Will Provide Consumers and When That Information Is to Be Provided.

(1) The TFSC, DOB, and TDI will continue to provide consumers with the brochure entitled "Facts About Funerals" developed by TFSC (in Spanish and in English). As soon as possible after the final adoption of the JMOU by rulemaking, the agencies will update the brochure to provide information about insolvency, the guaranty funds, and consumer complaints, and make the brochure accessible under the terms of the Americans with Disabilities Act. The agencies will provide other relevant consumer brochures to each other.

(2) The TDI will maintain its toll-free number, and TFSC and DOB will each work toward consumer access via a toll-free number. Each agency will include its toll-free number as a prepaid funeral consumer protection resource in the respective agencies' consumer information materials. The DOB, TFSC, and TDI will routinely inform consumers of options within the agency's knowledge available to them to resolve the complaint.

(3) The TFSC, DOB, and TDI, as state agencies, are subject to the Open Records Act, Texas Civil Statutes, Article 6252-17a. Upon written request, the three agencies will provide consumers with public information which is not exempt from disclosure under that Act. As noted in the preamble to this JMOU, the agencies may,

where not statutorily prohibited, exchange information necessary to fulfill their statutory responsibilities among each other, without making such information public information under the Open Records Act.

(g) Administrative Penalties Each Agency Imposes for Violations.

(1) All Agencies.

(A) The DOB, TDI, and TFSC will create a working group to develop recommendations concerning the three agencies working together on enforcement actions using the resources of the Attorney General and/or prosecutorial or investigative agencies, where appropriate.

(B) The DOB, TDI, and TFSC will refer DTPA and other such violations to the Federal Trade Commission and/or the Attorney General whenever appropriate.

(2) Texas Funeral Service Commission. The TFSC may impose an administrative penalty, issue a reprimand, or revoke, suspend, or place on probation any licensee who violates Article 548b. The recommended range of administrative penalty for a violation of Article 548b is $500 to $5,000. Also, a funeral establishment may be assessed an administrative penalty of $250 to $5,000 for each violation of Article 548b by a person directly or indirectly connected to the funeral establishment, under §201.11(a)(6) and (25) of this title (relating to Disciplinary Guidelines).

(3) Texas Department of Banking. The DOB may impose the following administrative penalties:

(A) cancel a permit or refuse to renew a permit pursuant to Texas Civil Statutes, Article 548b, §4;

(B) seize prepaid funeral funds and records of a prior permit holder pursuant to Texas Civil Statutes, Article 548b, §8(b).

(4) Texas Department of Insurance. TDI administrative penalties vary based on the violation; TDI sanctions are imposed under Insurance Code, Article 1.10.

(h) Meetings for Developing Cooperative Efforts in Regulation.

(1) The DOB and TDI will develop an insolvency alert among themselves to minimize the drain of trust funds and premiums consistent with their respective statutory provisions. They will also clarify each agency's responsibility to access the respective guaranty fund vis-a-vis the other agency.

(2) The DOB, TDI, and TFSC will develop methods to coordinate the efforts of the agencies to articulate the funeral providers' responsibility in the event of seller and/or insurance company insolvency.

(3) Each agency should seek input from the other agencies on any proposed agency regulations relating to prepaid funeral services and/or transactions; and, where appropriate, legislative recommendations concerning prepaid funeral services and/or transactions.

(4) The three agencies will provide lists of their key contact personnel and their telephone numbers to each other.

(5) In order to better accomplish the exchange of information and coordination of regulation described in this Memorandum of Understanding, the appropriate staff of the TFSC, DOB, and TDI shall meet, at a minimum, once a year, to discuss matters of mutual regulatory concern and share updates of the regulations promulgated by the respective agencies.

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 November 30, 1993.

TRD-9332865 Debbie Smith
Acting Executive Director
Texas Funeral Service Commission

Earliest possible date of adoption: January 7, 1994

For further information, please call: (512) 834-9992

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Part XXIII. Texas Real Estate Commission

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

• 22 TAC §543.4

The Texas Real Estate Commission proposes an amendment to §543.4, concerning forms used to register or amend the registration of a timeshare property.

The amendment adopts by reference two revised application forms. Revised form TSRI-2 would be used to register a timeshare property with the commission. Revised form TSR2-2 would be used to amend the registration of a timeshare property which has been previously registered.

A number of changes are proposed for the forms. Form TSRI-2 would obtain additional information from the timeshare developer, including whether the property is part of a timeshare system, whether the timeshare interest to be sold is a deeded interest or a use interest and whether the state where the property is located allows for the recordation of a timeshare declaration prior to the completion of construction of a project. The form would also be modified to conform with a recent amendment to the Texas Property Code regarding a consumer's right to cancel a timeshare sale and disclosures regarding collection of timeshare fees for a property which is part of a timeshare system. The person completing the form would also would be required to acknowledge having reviewed the provisions of the Texas Timeshare Act and the Contest and Gift Giveaway Act and agree to make available to each owner a written accounting of the operation of the timeshare property or timeshare system as required by the Texas Timeshare Act.

Form TSR2-2 has been expanded to require a new owner of a timeshare property to provide the information about the owner which would have been required for an original registration, such as the nature of the business entity (sole proprietor, corporation, partnership, or other Texas Real Estate Commission Page 2 of 3 Rules Relating to the Provisions of the Texas Timeshare Act entity), confirmation that the entity may transact business in the state, and general information regarding criminal convictions, lawsuits and occupational licensing. The person completing the form would be required to acknowledge having reviewed the provisions of the Texas Timeshare Act and the Contest and Gift Giveaway Act.

Mark A. Moseley, 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.

Mr. Moseley also has determined that for each year of the first five years the section is effect the public benefit anticipated as a result of enforcing the section will be that timeshare developers will be made aware of statutory obligations to Texas consumers. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Texas Property Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms necessary to carry out the provisions of the law.

§543.4. Forms.

(a) The Texas Real Estate Commission adopts by reference revised Application Form TSR 1-2 [1-1] approved by the commission in 1993 [October, 1989]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711- 2188.

(b) The Texas Real Estate Commission adopts by reference revised Applica-

tion Form TSR 2-2 [2-1] approved by the commission in 1993 [October, 1989]. This form is published by and available from the Texas Real Estate Commission, P.O.Box 12188, Austin, Texas 78711-2188.

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 November 29, 1993.

TRD-9332868 Mark A Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: January 7, 1994

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

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 115. Home Health Care Agencies

The Texas Department of Health (department) proposes the repeal of existing §§115.1-115 19; and new §§115.1-115 5, 115.11-115.15, 115.21-115. 28, 115.51-115.54, 115.61, and 115.62, concerning home and community support services agencies. The new sections cover purpose; definitions; licensing fees; exemptions; unregulated agency; application and issuance of temporary license for first-time applicants (unregulated agencies, new agencies, and certain relocations); issuance and renewal of annual license; change of ownership or services; branch office licenses; alternate delivery site licenses; licensure requirements and standards for all home and community support services agencies; standards for licensed home health services; standards for licensed and certified home health services; standards for home dialysis designation; standards for hospice services; standards for personal assistance services; standards for branch offices; standards for alternate delivery sites; surveys and investigation procedures; license denial, suspension, or revocations; complaints; criminal history checks and administrative review; home health aides; and home health medication aides. The new sections contain new language and incorporate existing language presently located in §§115.1-115.15 and §§115.17-115.19, which are being proposed for repeal.

Existing §§115.1-115.15 and §§115 17-115.19 are being repealed for the purpose of reorganizing Chapter 115. As previously mentioned, these sections will be relocated in the proposed new sections; specifically, new §§115. 1-115.5, 115 11-115.14, 115.21-115 25, 115 27, 115 51-115 53, §115.61, and §115 62. Section 115.16 (relating to Access to Records) is repealed because the section is duplicative of the Open Records Act.

The purpose of this proposal is to implement recent legislative mandates in House Bill 1510 and House Bill 1551, passed by the 73rd Texas Legislature, Regular Session, 1993, and to update and clarify the home and community support services agency (H&CSSA) rules. The legislative provisions include renaming of the agencies once known as home health agencies to home and community support services agencies which reflects more accurately the services provided by the agencies; adding hospice and personal assistance services to the categories of services that may be offered by agencies; deleting references to Class A and Class B agencies; adding language that authorizes an agency which provides hospice services to own or operate a residential unit or inpatient unit at the licensed site; recognition of accreditation by the Joint Commission on Accreditation of Healthcare Organizations and the Community Health Accreditation Program and certification by another state agency if those standards meet or exceed the requirement for licensing and inspection purposes; providing for surveys every three years after an agency has been in operation for more than 18 months; creating a memorandum of understanding between the department and other state agencies which are under the Health and Human Services Commission (which must be approved by the Health and Human Services Commission), the purpose of which is to eliminate or reduce duplication of standards or conflicts between standards and of functions in license, certification, or compliance surveys and complaint investigations; establishing a mechanism for immediate suspension or revocation of a license when the health and safety of persons are threatened, establishing a memorandum of understanding between the department and the Board of Nurse Examiners governing the circumstances under which the provision of health-related tasks or services do not constitute the practice of professional nursing; mandating processing of criminal history checks for nonlicensed individuals who are potential employees or employees of a H&CSSA and who will have direct contact with agency clients, a client's family member, or the visitor of a client; and establishing administrative reviews for a person who has a criminal conviction that may bar the person from employment by an agency.

Maurice B. Shaw, acting associate commissioner, Special Health Services, has determined that for the first five-year period the repealed sections and proposed new sections are in effect there will be significant fiscal implications for state government as the result of administering and enforcing the new sections. Additional costs to the department will arise from the statutory duty under House Bill 1510 for the department to conduct criminal history checks. This was formerly a responsibility administered by the Texas Department of Human Services (TDHS) and the department is currently in contract negotiations with TDHS for that agency to continue receiving and electronically transmitting the names to the Texas Department of Public Safety. Until a settlement is reached, the department will perform the collection and electronic transmission of names for criminal history checks. When TDHS administered the program, home health agencies accounted for one-third of the requested criminal history checks which translated to approximately 90,000 names annually. House Bill 1510 expanded the requirement for criminal history checks to include individuals who will have direct contact with a H&CSSA client, a client's family member, or the visitor of a client, such as the agency administrator, receptionist, and billing personnel. In addition, the TDHS has identified approximately 530 attendant care programs. Under the amended statute, the majority of these programs will be required to obtain a H&CSSA license. Attendant care programs are comparable in volume to H&CSSA, therefore an equivalent amount of requests for criminal history checks are expected. Overall, the department estimates 200,000 names will be submitted for criminal history checks annually.

Additional costs will also be incurred in implementing the new administrative review process by a five-member administrative review panel for a person who has a criminal conviction that may bar the person from employment by an agency. Because it is a new requirement of House Bill 1510, the department has no basis for projecting the number of administrative reviews that will be requested and conducted by the administrative review panel. Due to the statute requiring an agency to submit names of potential employees, a person who applies at several agencies will have several agencies submitting their name for a criminal history check Therefore, there is a potential for several administrative reviews if the person is found to have a criminal conviction. Panel members are not reimbursed. In addition to the administrative costs including supplies, postage, photocopying and telephone, the department anticipates conducting hearings in Austin with department staff present to administratively support the panel during appeal hearings.

The department estimates the cost of implementing and administering the program to be approximately $287,000 per year based upon processing 200,000 criminal name checks per year. The Texas Department of Public Safety charges $1.00 for each name check. The projected cost to the department of $287,000 does not include the amount TDHS will charge the department if a contract is negotiated for TDHS to continue receiving and electronically transmitting names to the Texas Department of Public Safety Statutorily, the department is limited to charge agencies $1.00 for each criminal history check.

The department will experience a significant decrease in license fee collections due to the elimination of the requirement for separate licenses for agencies. Effective July 1, 1994, H&CSSA can provide all categories of services including licensed home health services, licensed and certified home health services, hospice services, and personal assistance services under a single license. The department licenses approximately 1,300 parent agencies, another 200 are pending issuance of a license. Approximately 600 agencies hold both Class A and Class B

licenses; these Class A and Class B agencies operate from the same location. The agencies pay $875 for each license. Effective July 1, 1994, the agencies will be able to offer all categories of services under one license. Therefore, 300 of the 600 licenses currently held by these agencies will be relinquished. The result is a projected reduction in license fee revenue of $262,500.

After July 1, 1994, the department will be licensing attendant care programs previously exempted under the licensure statute. TDHS has identified 188 programs that are primary care and family care programs operated by licensed H&CSSA. The department anticipates these programs will be incorporated as an additional category of service under the existing license and therefore, constitute an additional workload with no revenue to the department. Until the department identifies the licensure requirement of the remaining attendant care programs, a determination regarding a revenue gain, if any, cannot be projected.

Upon the completion of the state agency negotiations for criminal history checks and identification of attendant care programs, the department will be able to project the cost to administer the H&CSSA program and determine if a license fee increase is necessary

The fiscal impact on large and small businesses who presently hold both a Class A and a Class B license will be a decrease in the amount of license fees payable to the department if the agencies relinquish one of the licenses. The businesses will be required to submit $1.00 for each name submitted for a criminal history check.

Mr. Shaw also has determined that for each year of the first five years the repeals and new sections are in effect the public benefit anticipated as a result of enforcing the repeals and new sections will be the cooperation and coordination between state agencies through memorandums of understanding which establish procedures to eliminate or reduce duplication of standards or conflicts between standards and of functions in license, certification, or compliance surveys and complaint investigations and to govern the circumstances under which the provision of health-related tasks or services do not constitute the practice of professional nursing The public will also benefit by the expanded criminal history check requirement. There is no anticipated increase in the economic cost to persons who utilize H&CSSA services There will be no impact on local employment.

Comments on the proposed repeal of existing sections and new sections may be submitted to Nance Stearman, R.N., M S N., Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 834-6650. Comments will be accepted for a period of 30 days after publication of the repeals and new sections in the *Texas Register.*

In addition, the department will hold a public hearing concerning the proposed rules on December 13, 1993, from 9:00 a.m.-12:00 p.m. in the Texas Department of Health Auditorium, located at the Texas Department of Health, 1100 West 49th Street, Austin. If an interpreter is required for the hearing impaired, please contact Julia R. Beechinor at (512) 834-6648 at least two weeks prior to the hearing date.

Licensing and Regulation

• 25 TAC §§115.1-115.19

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

The repeals are proposed under the Health and Safety Code, §142.012, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of home and community support services agencies; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health. The repeal affects the Health and Safety Code, §142.012.

§115.1. Purpose.

§115.2. Definitions.

§115.3. Unregulated Agency.

§115.4 Exemptions.

§115.5. Application and Issuance of Temporary License for First Time Applicants (Unregulated Facilities, New Agencies, and Certain Relocations).

§115.6 Inspections.

§115.7. Issuance and Renewal of Annual License.

§115.8. Conditions of Annual License.

§115.9. Standards for a Class A License.

§115.10. Standards for a Class B License

§115.11. Hospice Designation.

§115.12. License Denial, Suspension, or Revocation

§115.13. Home Health Aides; (Class B Agencies); Training Program and Competency Evaluation Program; Duties.

§115.14. Licensing Fees

§115.15. Complaints.

§115.16. Access to Records.

§115.17. Branch Offices.

§115.18. Standards for Home Dialysis Designation.

§115.19. Home Health Medication Aides.

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 November 30, 1993.

TRD-9332869 Susan K. Steeg
General Counsel
Texas Department of Health

Proposed date of adoption. April 27, 1994

For further information, please call: (512) 834-6650

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Chapter 115. Home and Community Support Services Agencies

Subchapter A. General Provisions

• 25 TAC §§115.1-115.5

The new sections are proposed under the Health and Safety Code, §142.012, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of home and community support services agencies; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health The new sections affect the Health and Safety Code, §142.012.

§115.1 Purpose

(a) The purpose of these sections is to implement the Health and Safety Code, Chapter 142, which requires a home and community support services agency to be licensed by the Texas Department of Health.

(b) These sections provide minimum standards for home and community support services which may include licensed home health services, licensed and certified home health services, home dialysis designation, hospice services or personal assistance services, procedures for granting, denying, suspending, and revoking a license, requirements for permitting home health medication aides, approving home health medication aide programs, home health aide training programs, and criminal history checks

§115.2. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless

the context clearly indicates otherwise.

Accessible and flexible services–Services which are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

Administration of medication–The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including the calculation of a client's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; pouring a quantity of a liquid to be ingested; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

Administrative support site–A facility or site where a home and community support services agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services.

Administrator–A person who is a physician, registered nurse, licensed vocational nurse, physical therapist, occupational therapist, speech pathologist or audiologist, social worker, or nursing home administrator; or has a baccalaureate or postgraduate degree in administration or a health or human services field; or has one year of administrative experience in a health care setting.

Affiliate–With respect to:

(A) a partnership, includes each partner and any parent company;

(B) a corporation, includes each officer, director, principal stockholder, subsidiary, person with a disclosable interest, and parent company;

(C) an individual includes:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, principal stockholder, or a person with a disclosable interest.

Agency–A home and community support services agency.

Alternate delivery site–A facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by a hospice;

(B) that is not the hospice's principal place of business;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

Assistance with medication or treatment regimen–Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid shall not include administration of any medication.

Association–A partnership, limited liability company or other business entity that is not a corporation.

Bereavement–The process by which a survivor of a deceased person mourns and experiences grief.

Bereavement services–Support services offered to a family during bereavement.

Branch office –A facility or site in the geographical area served by a home and community support services agency where home health or personal assistance services are delivered or active client records are maintained.

Care plan–

(A) a written plan prepared by the appropriate health care personnel for a client of the home and community support services agency; or

(B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long and short term goals to be met.

Case conference–A conference among all personnel furnishing services to the client to ensure that their efforts are coordinated effectively and support the objectives outlined in the plan of care or care plan.

Certified agency–A home and community support services agency that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Title XVIII, Social Security Act (42 United States Code (U.S.C.), §1395 et seq.)

Certified copy–A sworn affidavit stating that attached copies are true and correct copies of original documents.

Certified home health services–Home health services that are provided by a certified agency.

Client–An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency.

Clinical note–A dated, written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.

Council–The Home and Community Support Services Advisory Council.

Counselor–An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

Delegation–The act of a registered nurse (RN) authorizing an unlicensed person to provide nursing services while the RN retains accountability for the outcome. It does not include situations in which an unlicensed person is directly assisting an RN by carrying out nursing tasks in the presence of an RN.

Department–The Texas Department of Health.

Dialysis treatment record–For home dialysis designation, a dated, written notation by the person providing dialysis treatment which contains a description of signs and symptoms, machine parameters and pressure settings, medications administered as part of the treatment, and the client's response to treatment.

Dietitian–A person who is currently licensed under the laws of this state to use the titles of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

Director–The director of the Health Facility Licensure and Certification Division of the Texas Department of Health or his or her designee.

End stage renal disease (ESRD)–For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

Freestanding hospice–A licensed or certified facility that provides hospice services, that includes inpatient and respite care.

Functional need–Services which are based on the functional needs of the individual rather than on diagnosis or label.

Health assessment–A determination

of a client's physical and mental status through inventory of systems.

Home health aide–A nonprofessional person who provides hands-on health care and other services for a client in the home under the delegation and supervision of a registered nurse.

Home and community support services agency–A person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

Home health medication aide–A person permitted under the Health and Safety Code, Chapter 142, Subchapter F.

Home health service–The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

Hospice–A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

Hospice services–Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing home, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client.

Independent living environment–A client's individual residence, which may include a group home or foster home, or other settings where a client participates in activities, including school, work, or church.

Individual/family choice and control–Individuals and families who express preferences and make choices about how their support service needs are met.

Inpatient unit–A facility that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with the conditions of participation for inpatient units adopted under Title XVIII, Social Security Act (42 United States Code, §1395 et seq.) and standards adopted under this chapter.

Interdisciplinary team–

(A) for home dialysis designation, the physician, the registered nurse, the dietitian, and the qualified social worker responsible for planning the care delivered to the home staff-assisted dialysis patient; or

(B) a group of individuals who work together in a coordinated manner to provide hospice services and must include a physician, registered nurse, social worker, and counselor.

Intermediate care facility–A Medicaid-certified facility which is primarily engaged in providing skilled nursing care and related services for residents who require medical or nursing care, rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or on a regular basis, health-related care and services to clients who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to clients only through institutional facilities, and is not primarily for the care and treatment of mental diseases.

Investigation–An inspection or survey conducted by a representative of the department to determine if a licensee is in compliance with this chapter.

Licensed vocational nurse–A person who is currently licensed under the laws of this state to use the title licensed vocational nurse.

Long term program–For home dialysis designation, the written documentation of the selection of a suitable treatment modality and dialysis setting which has been selected by the client and the interdisciplinary team.

Manager–A person having a contractual relationship to provide management services to a home and community support services agency.

Management services–Services provided under contract between the owner of a home and community support services agency and a person to provide for the overall operation of a home and community support services agency including administration, staffing, maintenance, or delivery of services.

Management services shall not include contracts solely for maintenance, laundry, or food services.

Medication administration record–A record used to document the administration of a client's medications.

Medication list–A list of a client's medications that includes the recommended dosage and the frequency and method of administration. The medication list is used to identify possible ineffective drug therapy or adverse reactions, significant side effects, drug allergies, and contraindicated medication.

Occupational therapist–A person who is currently licensed under the laws of this state to practice occupational therapy.

Palliative care–Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness.

Parent agency–The agency that develops and maintains administrative controls and provides supervision of branch offices and alternate delivery sites.

Person–An individual, corporation, or association.

Personal assistance services–Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Board of Nurse Examiners through a memorandum of understanding with the department in accordance with the Health and Safety Code, §142.016, and health-related tasks provided by unlicensed personnel under the delegation of a registered nurse.

Physical therapist–A person who is currently licensed under the laws of this state as a physical therapist.

Physician–A person who is currently licensed under the laws of this state to practice medicine and who holds a doctor of medicine or doctor of osteopathy degree.

Place of business–An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. The term does not include an administrative support site.

Plan of care–The written orders of a practitioner for a client who requires skilled services.

Practitioner–A person who is currently licensed in this state as a physician, dentist, or podiatrist.

Presurvey conference–A conference held with department staff and the applicant or his or her representatives to review licensure standards and survey documents and provide consultation prior to the on-site licensure survey.

Progress note–A dated, written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

Psychoactive treatment–The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of psychiatrist that includes one or more of the following:

(A) assessment of alterations in mental status or evidence of suicide ideations or tendencies;

(B) teaching coping mechanisms or skills;

(C) counseling activities; or

(D) evaluation of the plan of care.

Registered nurse (RN)–A person who is currently licensed under the laws of this state as a registered nurse.

Residence–A place where a person resides and includes a home, a nursing home, a convalescent home, or a residential unit. A residence includes a group or a foster home.

Residential unit–A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under the Texas Special Care Facility Licensing Act, the Health and Safety Code, Chapter 248.

Respiratory therapist–A person who is currently licensed under Chapter 123 of this title (relating to Respiratory Care Practitioner Certification) as a respiratory care practitioner.

Respite services–Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

Sections–Chapter 115 of this title (relating to Home and Community Support Services Agency).

Skilled nursing facility–A Medicare certified facility (or a distinct part of a facility) that is primarily engaged in providing to inpatients skilled nursing care and related services for clients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, and is not primarily for the care and treatment of mental diseases.

Skilled services–Services that require the skills of a:

(A) registered nurse;

(B) licensed vocational nurse;

(C) physical, occupational, or respiratory therapist;

(D) speech-language pathologist or audiologist;

(E) social worker; or

(F) a dietitian in accordance with a plan of care.

Social worker–A person who is currently licensed as a social worker under the Human Resource Code, Chapter 50.

Speech-language pathologist or audiologist–A person who is currently licensed under the laws of this state as a speech-language pathologist or audiologist.

Stable and predictable–A situation where the client's clinical and behavioral status and nursing care needs are determined by the RN to be nonfluctuating and consistent, including hospice settings where the client's deteriorating condition is expected. This term does not include any situation where the client's clinical and behavioral status is changing and where frequent reassessment by an RN is needed.

Statute–The Health and Safety Code, Chapter 142.

Supervision–Authoritative procedural guidance by a health professional for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

Support services–Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

Terminal illness–An illness for which there is a limited prognosis if the illness runs its usual course.

Unlicensed person–An individual who is not licensed as a health care provider and who functions in a complementary or assistive role to the RN in providing direct client care or carrying out common nursing functions. The term includes, but is not limited to, home health aides, medication aides permitted by the department, and other individuals providing personal care or assistance in health services.

Volunteer–An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses. For hospice only, a volunteer shall meet the same requirements and standards as an employee of the agency.

§115.3. Licensing Fees.

(a) The schedule of fees for licensure of an agency authorized to provide one or more services is as follows:

(1) initial license fee–$875;

(2) renewal license fee–$875;

(3) initial branch office license fee–$500;

(4) renewal branch office license fee–$300;

(5) initial alternate delivery site license fee–$500; and

(6) renewal alternate delivery site license fee–$300.

(b) The Texas Department of Health (department) will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(c) Fees paid to the department are not refundable.

(d) Any remittance submitted to the department in payment of a required fee must be in the form of a certified check, money order, or personal check made out to the Texas Department of Health.

§115.4. Exemptions.

(a) If a person submits to the Texas Department of Health (department) a written claim for exemption, the claim shall include all documentation supporting the exemption.

(b) The department shall evaluate the claim for exemption and notify the person by certified mail, return receipt requested, of the proposed decision to grant or deny the claim within 30 calendar days following the department's receipt of the claim for exemption. If the documentation submitted is determined to be insufficient by the department, the person shall be so notified in writing within 30 calendar days of the department's receipt of the documentation and shall have ten calendar days to respond. Following receipt of the response, if any, the department shall notify the person in writing within ten calendar days of the proposed denial or the approval of the claim. The department may conduct an on-site investigation to ascertain if home health, hospice, or personal assistance services are provided.

(c) If the claim for exemption is proposed to be denied, the person shall have

the right to request informal reconsideration of the decision by the department. The request shall be made by written letter within ten calendar days of the receipt of the denial and shall include any further documentation supporting exemption.

§115.5. Unregulated Agency.

(a) The authority to determine if a person is subject to regulation under the statute is inherent in the responsibility to regulate agencies that are within the definitions of the statute.

(b) If the director has reasonable cause to believe that a person may be providing home health, hospice, or personal assistance services without a license, the person shall be so notified in writing by certified mail, return receipt requested, and shall submit to the department the following information within ten calendar days of receipt of the notice:

(1) an application for a license and the appropriate license fee; or

(2) an attestation which states one of the following facts:

(A) home health, hospice, or personal assistance services are not being provided. The attestation shall include a statement of the type(s) of services that are provided; or

(B) the person is exempt from licensure. The attestation shall include the citation of the applicable exemption in the statute.

(c) If an application is submitted, the application will be processed in accordance with §115.11 of this title (relating to Application and Issuance of Temporary License for First-Time Applicants (Unregulated Agencies, New Agencies, and Certain Relocations)).

(d) If the person submits an attestation attesting to the fact that home health, hospice, or personal assistance services are not provided, the department will acknowledge in writing if the person's business activities do not meet the definition of an agency requiring a license under the statute.

(e) If a person submits a claim for exemption, the exemption claim will be processed in accordance with §115.4 of this title (relating to Exemptions).

(f) If the person fails to respond to the department's notice, an investigation may be authorized in accordance with §115.53 of this title (relating to Complaints).

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 November 30, 1993.

TRD-9332874 Susan K. Steeg
General Counsel
Texas Department of Health

Proposed date of adoption: April 22, 1994

For further information, please call: (512) 834-6650

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Subchapter B. Application and Issuance of a License

• 25 TAC §§115.11-115.15

The new sections are proposed under the Health and Safety Code, §142. 012, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of home and community support services agencies; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health. The new sections affect the Health and Safety Code, §142.012.

§115.11. Application and Issuance of Temporary License for First-Time Applicants (Unregulated Agencies, New Agencies, and Certain Relocations).

(a) All first-time applications for licensing are applications for a temporary license. The application for a temporary license is also an application for the first annual license.

(b) Upon written request, the Texas Department of Health (department) shall furnish a person with an application form for an agency license.

(c) The applicant shall apply for a license which may include:

(1) licensed and certified home health services;

(2) licensed home health services which may include home dialysis designation;

(3) hospice services which may include residential or inpatient units;

(4) personal assistance services; or

(5) any combination of services.

(d) The applicant shall be at least 18 years of age if the applicant is an individual.

(e) The applicant shall retain a copy of all documentation that is submitted to the department.

(f) The applicant shall submit the following to the department:

(1) an accurate and complete application. The address provided on the application must be the address from which the agency will be operating. The applicant shall provide the address in the State of Texas of its place of business to be licensed by the department;

(2) a nonrefundable license fee;

(3) the name of the owner of the applicant;

(4) a list of names of all persons who own at least a ten percent interest in the applicant;

(5) a list of any businesses with which the applicant subcontracts and in which the owner or owners of the applicant hold as much as 5.0% of the ownership;

(6) if the applicant is a direct or indirect subsidiary of a publicly held corporation, the name of that publicly held corporation and the names of each subsidiary of the publicly held corporation that owns an interest in the applicant;

(7) for an application other than an alternate delivery site or a branch office license:

(A) a proposed budget covering the period of time of the license;

(B) a notarized affidavit attesting to the following:

(i) that neither the agency nor any of its owners have been adjudged insolvent or bankrupt in a state or federal court;

(ii) that neither the agency nor any of its owners are parties in a state or federal court to a bankruptcy or insolvency proceeding with respect to the agency or any of its owners; and

(iii) that the agency has the financial resources to meet its proposed budget, and to provide the services required by the statute and by the department during the term of the license;

(C) its organizational structure, a list of management personnel, and a job description of each administrative and supervisory position. The job description must contain at a minimum the job title, qualifications including education and training, and job responsibilities. The agency must submit a plan to provide annual continuing education and training for management personnel;

(D) a written plan for the orderly transfer of care of the applicant's clients and clinical records if the applicant is unable to maintain services under the license;

(E) a notarized statement attesting that the applicant is capable of meeting the requirements of this chapter for the provision of home health, hospice, or personal assistance services under the statute;

(F) if an applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification that the tax owed to the state under the Tax Code, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171;

(G) if accredited, documentation from the accrediting body indicating the agency is accredited;

(H) if certified by a state agency that has certification standards which meet or exceed the requirements of this chapter and the statute for licensure, documentation from the state agency indicating the agency is certified;

(I) for the two-year period preceding the application date concerning the applicant, an agency, lessor, affiliates, and manager, without regard to whether the data required relates to current or previous events:

(i) denial, suspension, or revocation of an agency license or a license for any health care facility in any state;

(ii) federal or state Medicaid or Medicare sanctions or penalties;

(iii) state or federal criminal convictions which imposed incarceration;

(iv) federal or state tax liens;

(v) unsatisfied final judgments;

(vi) operation of an agency that has been decertified in any state under Medicare or Medicaid;

(vii) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;

(viii) eviction involving any property or space used as an agency in any state;

(ix) unresolved final state or federal Medicare or Medicaid audit exceptions; or

(x) injunctive orders from any court; and

(J) ownership and management information including:

(i) the name and business address of:

(I) each limited partner and general partner if the applicant is a partnership; and

(II) each director and officer if the applicant is a corporation;

(ii) if the applicant has held or holds an agency license or has been or is an affiliate of another licensed agency, the relationship, including the name and current or last address of the other agency and the date such relationship commenced and, if applicable, the date it was terminated;

(iii) if the applicant is a subsidiary of another organization, the names and addresses of the parent organization and the names and addresses of the officers and directors of the parent organization;

(iv) if the facility is operated by or proposed to be operated under a management contract, the names and addresses of any person and organization having an ownership interest of 5.0% or more in the management company; and

(v) the provisions of subparagraphs (I) and (J) of this paragraph shall not apply to an applicant who is a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license will be issued in a fiduciary capacity except for provisions that require disclosure relating to the manager of the agency.

(g) Upon receipt of the application, including the required documentation and the fee, the department shall review the material to determine whether it is complete. All documents submitted with the original application shall be certified copies or originals. The time periods for processing an application shall be in accordance with §113.2 of this title (relating to Time Periods for Processing and Issuing Licenses for Health Care Providers).

(h) Once the application is complete and correct, a presurvey conference may be held at the office designated by the department. All applicants are required to attend a presurvey conference unless the designated survey office waives the requirement. The surveyor shall verify compliance with the applicable provisions of the rules and recommend that the agency be issued a temporary license or that the application be denied pursuant to §115.52 of this title (relating to License Denial, Suspension, or Revocations). If the surveyor recommends issuance of a temporary license, the department will issue a temporary license within 30 calendar days. The temporary license is valid for six months from the date of issuance and is not renewable. The department shall mail the temporary license to the licensee.

(i) If a person is in the process of becoming certified by the Department of Health and Human Services so as to qualify as a certified agency, the person may be issued a temporary license authorizing the person to provide licensed and certified home health services to be effective in accordance with this chapter.

(j) The license will designate the categories of services the agency is authorized to provide at or from the designated place of business.

(k) Continuing compliance with the minimum standards and the provisions of the rules for the services authorized to be provided under the license is required during the temporary licensing period in order for an annual license to be issued.

(l) The agency shall comply with §115.21 of this title (relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies).

(m) If the department determines that compliance with minimum standards and the provisions of the rules is not substantiated after the issuance of a temporary license, the department shall propose to deny the annual license and shall notify the applicant of a license denial as provided in §115.52 of this title.

(n) A department surveyor shall inspect the agency within three months after the issuance of the temporary license. All first time applicants for an annual license must be providing services to one or more clients at the time of the survey. No initial annual license shall be issued until an owner has complied with §115.51 of this title (relating to Surveys and Investigation Procedures).

(o) If an applicant decides not to continue the application process for a temporary, initial annual, or renewal of an annual license, the application may be withdrawn. If a temporary or annual license has been issued, the applicant shall return the temporary or annual license to the department with its written request to withdraw. The department shall acknowledge receipt of the request to withdraw.

(p) If the holder of a temporary license to provide licensed and certified home health services withdraws the holder's application for certification under the Social Security Act, Title XVIII, the department may propose to revoke or suspend the temporary license and to deny the application

for an annual license in accordance with §115.52 of this title.

(q) If the holder of a temporary license to provide licensed and certified home health services has withdrawn the holder's application for certification under the Social Security Act, Title XVIII, and then reapplies for certification the subsequent application is considered a new application for certification and the person must apply for a new temporary license to provide licensed and certified home health services based on the subsequent application for certification. The application for a new temporary license to provide licensed and certified home health services shall be in accordance with this section.

(r) A person may not engage in the business of providing home health, hospice, or personal assistance services, or represent to the public that the person is a provider of home health, hospice, or personal assistance services for pay or other consideration without a license issued under the statute.

§115.12. Issuance and Renewal of Annual License.

(a) A first annual license shall be issued to an agency with a temporary license which meets the minimum standards for a license as determined after a survey or through the successful completion of a survey to determine compliance with the Medicare conditions of participation for licensed and certified home health agencies or certified hospices. The first annual license supersedes the temporary license and shall expire one year from the date of issuance of the temporary license.

(b) An annual license may be issued when an agency has met the requirements for renewal of an annual license. To be eligible for license renewal, the agency must show proof that services have been provided under the license within the previous 12 months. The agency shall document that services have been provided to one or more clients.

(c) The Texas Department of Health (department) will send notice of expiration to an agency at least 60 calendar days before the expiration date of an annual license. If the agency has not received notice of expiration from the department 45 calendar days prior to the expiration date, it is the duty of the agency to notify the department and request a renewal application for a license.

(d) The agency shall submit to the department postmarked no later than 30 calendar days prior to the expiration date of the license:

(1) an application renewal form which includes updated disclosure information and ownership and management information as required by §115. 11(f)(7)(I) and (J) of this title (relating to Application and Issuance of Temporary License for First-Time Applicants (Unregulated Agencies, New Agencies, and Certain Relocations)):

(2) an affidavit of solvency;

(3) the renewal license fee;

(4) if accredited, documents from the accreditation body indicating the agency's accreditation;

(5) if certified by a state agency that has certification standards that meet or exceed the requirements of the statute and this chapter for licensure, documentation from the state agency indicating the agency's certification; and

(6) if an applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification that the tax owned to the state under the Tax Code, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171.

(e) All documents submitted with the renewal application shall be certified copies or originals. The time periods for processing an application shall be in accordance with §113.2 of this title (relating to Time Periods for Processing and Issuing Licenses for Health Care Providers.)

(f) The department shall issue an annual license to an agency which meets the minimum standards for a license.

(g) If the agency fails to submit the application and fee within 15 calendar days prior to the expiration date of the license, the department shall send a certified notice to the agency that the agency must cease operation upon the expiration of the agency's license unless the license is renewed.

(h) If an agency wishes to provide home health, hospice or personal assistance services after the expiration date of its license, it must apply for a temporary license under §115.11 of this title.

(i) If a licensee fails to timely renew his or her license on or after August 1, 1990, because the licensee is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee may renew the license pursuant to this subsection.

(1) Renewal of the license may be requested by the licensee, the licensee's spouse, or an individual having power of attorney from the licensee. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after the expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the licensee is or was on active military duty serving outside the State of Texas shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the licensee shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this section.

(5) A licensee renewing under this subsection shall pay the applicable renewal fee.

(6) A licensee is not authorized to operate the agency for which the license was obtained after the expiration of the license unless and until the licensee actually renews the license.

(7) This subsection applies to a licensee who is a sole practitioner or a partnership with only individuals as partners where all of the partners were on active duty with the armed forces of the United States serving outside the State of Texas.

(j) A license shall not be renewed if renewal is prohibited by the Texas Education Code, §57.491 relating to defaults on guaranteed student loans.

§115.13. Change of Ownership or Services.

(a) No license may be transferred from one person to another person.

(1) A person who desires to receive a license in its name for an agency currently licensed under the name of another person or to change the ownership of any agency must comply with the following provisions.

(A) The person must submit a license application at least 60 calendar days prior to the desired date of licensure. The application shall be, if applicable, in accordance with §115. 11(f) of this title (relating to Application and Issuance of Temporary License for First-Time Applicants (Unregulated Facilities, New Agencies, and Certain Relocations)), §115.14 of this title (relating to Branch Office Licenses) or §115.15 of this title (relating to Alternate Delivery Site Licenses).

(B) The on-site inspection required by §115.11(n) of this title may be waived by the department.

(C) A temporary license issued to the applicant must be effective prior to the change of ownership or the provision of services in the name of the applicant.

of services in the name of the applicant.

(D) The previous license shall be void on the effective date of the new temporary license and must be surrendered to the department.

(2) If a corporate licensee amends its articles of incorporation to revise its name, this subsection does not apply.

(3) The sale of stock of a corporate licensee does not cause this subsection to apply.

(4) A change of ownership of a licensed agency under this subsection occurs when the name of the licensed person or entity as reflected on the license certificate and original application will be changed.

(5) The provisions of this subsection are in addition to any applicable federal law or regulations relating to change of ownership or control.

(b) An agency shall notify the department in writing and within a reasonable period of time of any of the following:

(1) change in state agency certification or accreditation status; and

(2) cessation of operation of the agency, branch office or alternate delivery site. The temporary license or annual license shall be mailed or returned to the department at the end of the day services were terminated.

(c) An agency which wishes to add or delete a category of service to the license shall inform the department in writing 30 calendar days prior to the addition or deletion of the category of service. The department will approve or disapprove the addition of a category of service.

(d) If an agency changes the name under which it is licensed but not the ownership, it must notify the department within five business days after the effective date of the name change. The department shall determine if the change is a transfer under subsection (a) of this section.

§115.14. Branch Office Licenses.

(a) The Texas Department of Health (department) may issue a branch office license to a person who holds a current agency license to provide home health or personal assistance services.

(b) Upon written request, the department shall furnish a license holder with an application for a branch office license.

(c) The applicant shall submit to the department:

(1) a complete application; and

(2) the required license fee.

(d) The applicant shall retain a copy of all documentation that is submitted to the department.

(e) The department shall notify the designated survey office of the agency's request to establish a branch office.

(f) The designated survey office will conduct a review of the applicant's request to establish a branch office. The survey office will recommend to approve or disapprove the branch office request.

(g) If the recommendation is to disapprove the branch office application, the department shall propose denial of the application according to §115.52 of this title (relating to License Denial, Suspension or Revocations).

(h) The department will issue the branch office an annual license, to expire on the same expiration date as the parent agency's annual license and shall be renewed with the parent agency's annual license.

(i) The department will mail the branch office license to the licensee.

§115.15. Alternate Delivery Site Licenses.

(a) The Texas Department of Health (department) may issue an alternate delivery site license to a person who holds a current agency license to provide hospice services.

(b) Upon written request, the department shall furnish a license holder with an application for an alternate delivery site license.

(c) The applicant shall submit to the department:

(1) a complete application; and

(2) the required license fee.

(d) The applicant shall retain a copy of all documentation that is submitted to the department.

(e) The department shall notify the designated survey office of the hospice's request to establish an alternate delivery site.

(f) The designated survey office shall conduct a review of the applicant's request to establish an alternate delivery site. The survey office will recommend to approve or disapprove the alternate delivery site request.

(g) If the recommendation is to disapprove the alternate delivery site application, the department shall propose denial of the application according to §115.52 of this title (relating to License Denial, Suspension, or Revocations).

(h) The department will issue the alternate delivery site an annual license, to expire on the same expiration date as the hospice's annual license, and shall be renewed with the hospice's annual license.

(i) The designated survey office will conduct an on-site expansion survey after a license has been issued to verify compliance with §115.25 of this title (relating to Standards for Hospice Services).

(j) If the designated survey office recommends that the licensed alternate delivery site seek a license as a hospice, a written report supporting the recommendation shall be submitted to the department for review.

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 November 30, 1993.

TRD-9332873

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

Proposed date of adoption: April 22, 1994

For further information, please call: (512) 834-6650

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Subchapter C. Service Standards

• 25 TAC §§115.21-115.28

The new sections are proposed under the Health and Safety Code, §142. 012, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of home and community support services agencies; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health. The new sections affect Health and Safety Code, §142.012.

§115.21. Licensure Requirements and Standards for All Home and Community Support Services Agencies.

(a) A license shall be displayed in a conspicuous place in the designated place of business and must show:

(1) the name and address of the licensee;

(2) the name of the owner or owners, if different from the information provided under paragraph

(1) of this subsection;

(3) the license expiration date; and

(4) the category of services authorized to be provided under the license.

(b) No license may be transferred

section. If an agency is considering relocation, the agency shall notify the department 30 calendar days prior to the intended relocation. The department will provide written notification to the agency amending the annual license to reflect the new location.

(c) The relocation of branch offices and alternate delivery sites to a different parent agency shall require submission of a new application and shall comply with §115.14 of this title (relating to Branch Office Licenses) and §115. 15 of this title (relating to Alternate Delivery Site Licenses) as appropriate.

(d) An agency must notify the department in writing of any change in its telephone number within a reasonable period of time.

(e) An agency shall implement and enforce the provisions of the Human Resources Code, Chapter 102 (relating to Rights of the Elderly), for clients 55 years and older.

(f) An agency shall investigate complaints made by a client or the client's family or guardian or the client's health care provider regarding treatment or care that is (or fails to be) furnished or regarding the lack of respect for the client's property by anyone furnishing services on behalf of the agency and must document the receipt of the complaint and the resolution of the complaint. An agency shall not materially misrepresent the qualifications, abilities, or other attributes of another agency, health care facility, or health care professional.

(g) A license shall not be materially altered.

(h) An agency shall meet the requirements set forth by the department in §§1.131-1.137 of this title (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities). This requirement does not apply to disposition of special waste in a client's place of residence, but would apply to any special waste disposed of from an agency's office location.

(i) An agency shall adopt, implement, and enforce a written policy to ensure compliance of the agency and its employees and contractors with the Health and Safety Code, Chapter 85, Subchapter I, relating to the prevention of the transmission of human immunodeficiency virus and hepatitis B virus.

(j) An agency shall adopt, implement, and enforce a written policy to ensure compliance of the agency and its employees and contractors with the Health and Safety Code, §161.091 et seq relating to the prohibition of illegal remuneration for securing or soliciting clients or patronage. The solicitation of referrals by coercion or harassment is also prohibited.

(k) An agency that provides laboratory services must meet the requirements of Federal Public Law 100-578, Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988). CLIA 1988 applies to all agencies with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(l) An agency shall adopt, implement, and enforce a written policy for publicly known natural disaster preparedness for clients receiving services. The written policy shall include a plan for the reasonable mechanism for triaging clients, the notification of appropriate personnel and clients in the event of a disaster if possible, the identification of appropriate community resources, and the identification of possible evacuation procedures. The plan need not require that the agency actually evacuate, transport, or triage the clients.

(m) A registered nurse (RN) may delegate nursing tasks to unlicensed persons and shall provide supervision of all nursing tasks delegated to unlicensed persons in accordance with this subsection.

(1) When the RN delegates nursing tasks to an unlicensed person, the RN or another equally qualified RN (for the purposes of supervision of an unlicensed person) shall be available in person or by telecommunication and shall make decisions about appropriate levels of supervision as follows.

(A) In situations where nursing care is provided in the client's residence and the RN is required to assess, plan, intervene, and evaluate the client's unstable and unpredictable condition and need for skilled nursing services, the RN shall be responsible for the nursing care rendered and shall make supervisory visits at least every two weeks. The RN shall assess the services provided by the unlicensed person to the client to determine whether health care goals and orders are being met.

(B) In situations where the client is stable and predictable, the RN shall make supervisory visits when, in consultation with the client, and when appropriate, family and significant others, the RN determines it is necessary to assure that safe and effective services are provided. The ability or desire of the client to participate in the supervision of the care provided by the unlicensed person shall be considered when establishing the frequency of supervisory visits.

(C) The degree of supervision shall be determined after a documented evaluation of appropriate factors including, but not limited to:

(i) the stability of the condition of the client;

(ii) the training and capability of the unlicensed person to whom the nursing task is delegated;

(iii) the nature of the nursing task being delegated; and

(iv) the proximity and availability of the RN to the unlicensed person when the nursing task will be performed.

(2) The RN delegating nursing tasks to unlicensed persons shall comply with the following requirements.

(A) The RN must make an assessment of the client's nursing care needs. The RN should, when the client's condition allows, consult with the client to identify the client's nursing needs prior to delegating nursing tasks.

(B) The nursing task must be one that a reasonable and prudent RN would find is within the scope of sound nursing judgment to delegate.

(C) The nursing task must be one that, in the opinion of the delegating RN, can be properly and safely performed by the unlicensed person involved without jeopardizing the client's welfare. The RN delegates nursing tasks based on the needs of the client and the knowledge and skills of the individual selected to perform such tasks.

(D) The nursing task must not require the unlicensed person to exercise nursing judgment or intervention except in emergency situations.

(E) The unlicensed person to whom the nursing task is delegated must be adequately identified. The identification may be by individual or, if appropriate, by training, education, and/or certification of the unlicensed person.

(F) The RN shall have either instructed the unlicensed person in the delegated task or verified the unlicensed person's competency to perform the nursing task.

(G) The RN shall adequately supervise the performance of the delegated nursing task in accordance with the requirements of this subsection.

(H) The RN shall be ac-

countable and responsible for the delegated nursing tasks.

(3) The following nursing tasks are within the scope of sound professional nursing practice to be delegated by an RN to an unlicensed person after consideration of the training and capability of the unlicensed person:

(A) non-invasive and non-sterile treatments unless otherwise prohibited by this subsection;

(B) the collecting, reporting, and documentation of data including, but not limited to:

(i) vital signs, height, weight, intake and output, dip-stick tests for glucose and dip-stick tests for blood results;

(ii) changes from baseline data established by the RN;

(iii) environmental situations;

(iv) client or family comments relating to the client's care; and

(v) client behaviors related to the care;

(C) ambulation, positioning, and turning;

(D) transportation of the client within a facility;

(E) personal hygiene and elimination, including vaginal irrigations and cleansing enemas;

(F) feeding, cutting up of food, or placing of meal trays;

(G) socialization activities;

(H) activities of daily living which include bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer/ambulation, assistance with self-administered medications and reinforcement of health teaching planned and provided by the registered nurse.

(4) The following nursing tasks are not usually within the scope of sound professional nursing practice to delegate and may be delegated by an RN to an unlicensed person only in accordance with paragraph (5) of this subsection:

(A) sterile procedures involving a wound or an anatomical site which could potentially become infected;

(B) non-sterile procedures, such as dressing or cleansing penetrating wounds and deep burns;

(C) invasive procedures such as inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube, unless allowed in paragraphs (3)(E) or

(8) of this subsection; and

(D) care of broken skin other than minor abrasions or cuts generally classified as requiring only first-aid treatment.

(5) The nursing tasks listed in paragraph

(4) of this subsection may be delegated by an RN to an unlicensed person only:

(A) under circumstances where a reasonably prudent RN would find that the delegation does not jeopardize the client's safety or welfare;

(B) if, in the judgment of the RN, the unlicensed person has the appropriate knowledge and skills to perform the nursing task(s) in a safe and effective manner;

(C) if the delegation is in compliance with paragraphs (2) and (7) of this subsection;

(D) if the RN delegating the task is directly responsible for the nursing care given to the client; and

(E) if the agency follows a current written protocol for the instruction and training of unlicensed persons performing nursing tasks under this paragraph and the protocol:

(i) was developed with input from the registered nurses currently employed or under contract by the agency;

(ii) states the manner in which the instruction addresses the complexity of the delegated task;

(iii) states the manner in which the unlicensed person demonstrates competency of the delegated task;

(iv) states the mechanism for reevaluation of the competency;

(v) contains an established mechanism for identifying the unlicensed persons to whom nursing tasks may be delegated under this paragraph; and

(vi) recognizes that the final decision as to what nursing tasks can be safely delegated in any specific situation is within the specific scope of the RN's professional judgment.

(6) The following nursing tasks are not within the scope of sound professional nursing practice to be delegated by an RN to an unlicensed person:

(A) a physical, psychological, or social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

(B) the formulation of a care plan and evaluation of the client's response to the care rendered;

(C) specific tasks involved in the implementation of the plan of care which require professional nursing judgment or intervention, except in emergencies;

(D) the responsibility and accountability for client health teaching and health counseling which promotes client education and involves the client's significant others in accomplishing health goals; and

(E) the administration of medications, including intravenous fluids, except as permitted by paragraph

(7) of this subsection or §115.62 of this title (relating to Home Health Medication Aides).

(7) Independent living environments where the client's clinical and behavioral status is stable and predictable, does not require the regular presence and assessment, intervention and evaluation by an RN and the client has expressed his/her ability and willingness to participate in the management of his/her care, including hospice settings where the client's deteriorating condition is predictable, the RN may delegate the administration of medications. The delegation may only occur after the RN has trained or verified the training of the unlicensed person to administer the medication.

(A) The RN may only delegate medications which are administered orally or via permanently placed feeding tubes, sublingually, or topically, including eye, ear and nose drops and vaginal or rectal suppositories.

(B) An RN shall not delegate the following tasks to any unlicensed person:

(i) calculation of any

medication doses except for measuring a prescribed amount of liquid medication and breaking a tablet for administration, provided the RN has calculated the dose;

(ii) administration of the initial dose of a medication that has not been previously administered to the client;

(iii) administration of medication by any injectable route;

(iv) administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments;

(v) administration of medications by way of a tube inserted in a cavity of the body except as stated in this paragraph;

(vi) responsibility for receiving verbal or telephone orders from a physician, dentist, or podiatrist; and

(vii) responsibility for ordering a client's medication from the pharmacy.

(8) By way of example, and not in limitation, in independent living environments, where the client has stable and predictable health care needs, the RN may delegate activities of daily living and nursing tasks required for maintenance of the client's status. These tasks may only be delegated in accordance with paragraphs

(1) and

(2) of this subsection, when the RN has assessed the client's available support systems and the client has expressed, through traditional or non-traditional means of communication, his/her ability and willingness to share in the management of his/her care. Delegable tasks, in addition to those identified in paragraph

(3) of this subsection include:

(A) medication administration in compliance with paragraph

(7) of this subsection;

(B) assistance with feeding, including tube feeding through permanently placed tubes;

(C) assistance with elimination, including intermittent catheterization; and

(D) assistance with other activities necessary to maintain the independence of the client such as maintenance of skin integrity and mobility.

(n) An agency shall adopt, implement, and enforce a policy on pronouncement of death if that function is carried out by an agency RN. The policy shall be in compliance with the Health and Safety Code, §671.001.

(o) An agency shall adopt, implement, and enforce a written policy to ensure that the agency submits accurate billings and insurance claims.

(p) An agency shall comply with the Nursing Practice Act, Texas Civil Statutes, Articles 4525a and 4525b, relating to peer review and mandatory reporting requirements.

(q) An agency that provides skilled nursing psychoactive treatments under the direction of a psychiatrist shall comply with the following requirements under this subsection.

(1) A registered nurse providing skilled nursing psychoactive treatments must meet one of the following qualifications:

(A) a master's degree in psychiatric or mental health nursing;

(B) a bachelor's degree in nursing with one full-time year of experience in an active treatment unit in a mental health facility or outpatient clinic;

(C) a diploma or associate degree with two full-time years of experience in an active treatment unit in a mental health facility or outpatient clinic; or

(D) a person that has been approved to meet the qualifications of psychiatric nurse by an intermediary under contract with the Health Care Financing Administration (HCFA).

(2) An agency shall have written documentation of qualifications of a registered nurse providing skilled nursing psychoactive treatments under the direction of a psychiatrist.

(3) The initial assessment of a client receiving skilled nursing psychoactive treatments shall include:

(A) mental status including psychological and behavioral status;

(B) sensory and motor function;

(C) cranial nerve function;

(D) language function; and

(E) other criteria established by an agency's policy.

(r) An agency shall adopt, implement, and enforce a policy on a quality assurance program which provides for accountability and desired patient outcomes.

(1) An agency shall conduct an ongoing, comprehensive, integrated, self-assessment of the quality and appropriateness of care provided, including services provided under arrangement. The findings are to be used by the agency to correct identified problems and to revise policies, if necessary.

(2) Those responsible for the quality assurance program shall:

(A) implement and report on activities and mechanisms for monitoring the quality of care;

(B) identify and resolve problems; and

(C) make suggestions for improving care.

(s) An agency furnishing home intravenous therapy directly or under arrangement shall comply with the following.

(1) No home intravenous therapy shall be provided by an agency unless a physician's order is written specifically for home intravenous therapy.

(2) Home intravenous therapy shall be provided by a licensed nurse. To insure that prescribed care is administered safely, the nurse shall have the knowledge and competency to interpret and implement the written order. An agency shall maintain documented evidence of a licensed nurse's knowledge and competency related to intravenous therapy.

(3) An agency shall adopt, implement, and enforce written policies and procedures related to the responsibilities of the home infusion nurse.

(4) Nursing supervision shall be available through all clinical aspects of intravenous administration and available during all hours of operation. The client or caregiver shall be provided with 24-hour access to appropriate health care professionals.

(5) The client or caregiver shall be assessed for the ability to safely administer the prescribed home intravenous therapy based on written criteria of the agency.

(6) The teaching process based on the client or caregiver needs may include written instructions, verbal explanations, demonstrations, evaluation and documentation of competency, proficiency in performing therapy, scope of physical activities and safe disposal of equipment.

(7) Actions shall be implemented prior to and during all home infusion therapy to minimize the risk of anaphylaxis or adverse reactions as stated in the agency's written policy.

(8) An ongoing assessment of client or caregiver compliance in performing therapy-related procedures shall be done at periodic intervals depending on client condition and therapy.

(9) An agency shall adopt, implement, and enforce policies and procedures regarding home intravenous therapy that include, but are not limited to, initiation, medication administration, monitoring, and discontinuation.

(10) An agency shall adopt, implement, and enforce infection control procedures to minimize the potential for infectious complications to clients or staff.

(11) An agency shall adopt, implement, and enforce policies and procedures for safe handling and disposal of hazardous waste and materials.

(t) Personnel policies shall be developed in writing and enforced by the agency and shall contain policies on the following subjects:

(1) orientation of all personnel to the policies and objectives of the agency;

(2) participation by all personnel in appropriate employee development programs;

(3) periodic evaluation of employee performance;

(4) personnel policies;

(5) client care policies;

(6) disciplinary action(s) and procedures;

(7) a job description (statement of those functions and responsibilities which constitute job requirements) and job qualifications (specific education and training necessary to perform the job) for each position within the agency; and

(8) the prohibition of the spread of infectious and communicable disease from agency personnel to clients.

§115.22. Standards for Licensed Home Health Services.

(a) An agency providing licensed home health services shall meet the standards of this section.

(b) Organizational structure and operational policies of the agency must be clearly stated in writing. An agency shall adopt, implement, and enforce its operational policies. The policies must include the lines of authority and delegation of responsibility down to the client care level and the services provided.

(1) The administrator of an agency will administratively supervise the provision of all health services. The administrator shall organize and direct the agency's ongoing functions; employ qualified personnel and insure adequate staff education and evaluations; insure the accuracy of public information materials and activities; and implement an effective budgeting and accounting system. A person who meets the qualifications of an administrator shall be authorized in writing by the administrator to act in his or her absence.

(2) A personnel record shall be maintained on each employee. A personnel record shall include, but not be limited to, the following: job description; qualifications; application for employment; verification of license, permits, reference(s), job experience, and educational requirements as appropriate; performance evaluations and disciplinary actions; or letters of commendation. All information shall be kept current. In lieu of the job description and qualifications for employment, the personnel record may include a statement signed by the employee that the employee has read the job description and qualifications for the position accepted.

(3) If an agency utilizes independent contractors, there shall be a written agreement between such independent contractors (i.e. per hour, per visit) and the agency. The agreement shall be enforced by the agency and clearly designate:

(A) that clients are accepted for care only by the primary agency;

(B) the services to be provided;

(C) the necessity to conform to all applicable agency policies, including personnel qualifications;

(D) the plan of care or care plan, to be carried out as ordered;

(E) the manner in which services will be coordinated and evaluated by the primary agency;

(F) the procedures for submitting clinical and progress notes, scheduling of visits, and periodic client evaluation; and

(G) the procedures for determining charges and reimbursement.

(4) Services provided by an agency under arrangement with another agency or organization must be subject to a written agreement conforming with the requirements specified in paragraph (3) of this subsection.

(c) The agency shall maintain a current roster of clients and have a clinical record for each client which is maintained according to professional standards.

(1) A clinical record shall include appropriate identifying information; name of practitioner; initial assessment, plan of care (which shall include as applicable medication, dietary, treatment, and activities orders) or a care plan; clinical and progress notes; medication list; and record of supervisory visits. The following shall be included if applicable: medication administration record; record of case conference; written statements regarding consumer complaints; acknowledgement of receipt of a copy of the Human Resources Code, Chapter 102, Rights of the Elderly, for clients 55 years or older; client agreement to and acknowledgement of services by home health medication aides; and discharge summary. All entries shall be signed and dated by the person making the entry and supervisory personnel as is necessary.

(2) Records shall be retained for five years and safeguarded against loss and unofficial use. The agency shall have written procedures which are enforced governing the use and removal of records and the release of information.

(3) An agency shall provide a copy of the clinical record to a person who has obtained consent from the client or authorized representative for the release of the record.

(4) The clinical record shall be either an original, a microfilmed copy, an optical disc imaging system copy, or a certified copy. If the clinical record is microfilmed or maintained on an optical disc imaging system, the microfilm and the equipment needed to read the record must be accessible at the time and at the office of the on-site survey of the agency.

(5) Clinical notes are to be written the day service is rendered and incorporated into the clinical record on a timely basis. An agency shall adopt, implement, and enforce a policy on incorporation of clinical notes into the clinical record.

(d) The agency must have the financial ability to carry out its functions.

(e) The agency must have a written contingency plan which is implemented in the event of dissolution for continuity of client care. All records shall be retained even if the agency discontinues operations.

(f) The agency shall accept a client for health services on the basis of a reasonable expectation that the client's medical, nursing, and social needs can be met ade-

quately in the client's residence. The agency shall commence providing licensed home health services to a client within a reasonable time from acceptance of the client. The commencement of licensed home health services shall be based on the client's health service needs.

(1) An initial assessment shall be performed in the client's residence by the appropriate health care professional prior to or at the time that licensed home health services are initially provided to the client. The assessment shall determine whether the agency has the ability to provide the necessary services in the home.

(A) If a practitioner has not ordered skilled care for a client, then the appropriate health care professional shall prepare a care plan. The care plan shall be developed after consultation with the client and the client's family and shall include potential services to be rendered; the frequency of visits or hours of service; identified problems; method of intervention; and date of resolution. The care plan is revised as necessary, but it shall be reviewed and updated by all appropriate staff members involved in client care at least annually.

(B) If a practitioner orders skilled treatment, then the appropriate health care professional shall prepare a plan of care. The plan of care must be signed and approved by a practitioner in a timely manner. The plan of care shall be developed in conjunction with agency staff and shall cover all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits at the time of admission, prognoses, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, and any other appropriate items. The plan of care shall be revised as necessary, but it shall be reviewed and updated at least every six months. An agency shall adopt, implement, and enforce a policy on the time frame for the timely countersignature of a practitioner's verbal orders.

(2) The agency will inform the client or his family in writing of the terms of their agreement for services and obtain an acknowledgement of receipt of the agreement. The agency shall comply with the terms of the agreement. The agreement shall include, but not be limited to, the following:

(A) the Human Resources Code, Chapter 102 (relating to Rights of the Elderly), for clients 55 years of age and older;

(B) health services to be provided;

(C) supervision by the agency of services provided; and

(D) agency charges for services rendered if the charges will be paid in full or in part by the client or his family, or on request.

(g) A clinical record or minutes of care conferences shall show that effective interchange, reporting, and coordination of care occurs. An agency shall adopt, implement and enforce a policy on documentation of coordination of care.

(h) Administration of medication must be ordered by the client's practitioner. An agency shall adopt, implement, and enforce a policy on maintaining a current medication list and medication administration records. A current medication list and medication administration records will be maintained and will be incorporated into the clinical record. A current medication list and medication administration records may be incorporated into one document. Notation will be made in clinical notes of medications not given and the reason. Any untoward action will be reported to a supervisor and documented.

(i) An agency shall provide at least one home health service. All services shall be rendered and supervised by qualified personnel. The appropriate health professional shall be available to supervise as needed, when services are provided.

(1) If nursing service is provided, a registered nurse shall be employed by or under contract with the agency to provide services or supervision.

(2) If physical therapy service is provided, a physical therapist shall be employed by or under contract with the agency to provide services or supervision.

(3) If occupational therapy service is provided, an occupational therapist shall be employed by or under contract with the agency to provide services or supervision.

(4) If speech-language pathology or audiology services are provided, a speech-language pathologist or audiologist shall be employed by or under contract with the agency to provide services or supervision.

(5) If medical social service is provided, a social worker shall be employed by or under contract with the agency to provide services or supervision.

(6) If nutritional counseling is provided, a dietitian shall be employed by or under contract with the agency to provide services or supervision.

(7) If home health aide service is provided, a home health aide shall be employed by or under contract with the agency to provide home health aide service and a registered nurse shall be employed by or under contract with the agency to perform the initial assessment, prepare the client care plan, as appropriate, and supervise the home health aide.

(8) If respiratory therapy service is provided, a respiratory care practitioner shall be employed by or under contract with the agency to provide services.

§115.23. Standards for Licensed and Certified Home Health Services.

(a) An agency providing licensed certified home health services shall comply with the requirements of the Social Security Act and the federal regulations in Title 42 of the Code of Federal Regulations. Copies of the regulations adopted by reference in this section are indexed and filed in the Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

(b) An agency providing licensed and certified home health services that plans to implement a home health aide training and competency evaluation program shall meet the requirements in §115.61(e)-(g) of this title (relating to Home Health Aides).

(c) An agency providing licensed and certified home health services that plans to implement a competency evaluation program shall comply with §115.61(g) of this title.

(d) An agency providing licensed and certified home health services may not use an individual as a home health aide unless:

(1) the individual has met the federal requirements under subsection

(a) of this section;

(2) if the individual qualifies as a home health aide on the basis of a:

(A) training and competency evaluation program, the program meets the requirements of subsection (b) of this section; or

(B) competency evaluation program, the program meets the requirements of subsection (c) of this section; and

(3) the individual is a licensed health care provider or a volunteer.

(e) Since the individual's most recent completion of a training and competency evaluation program or a competency evaluation program, if there has been a

continuous period of 24 consecutive months during which the individual has not furnished home health services as defined by federal law, the individual shall not be considered as having completed a training and competency evaluation program or a competency evaluation program.

(f) If a person who is not an agency providing licensed and certified home health services desires to implement a home health aide training and competency evaluation program or a competency evaluation program, the person shall meet the requirements of this section in the same manner as set forth for an agency.

(g) If there is a conflict between the federal requirements under subsection (a) of this section and the requirements of subsections (b)-(e) of this section relating to home health aides in an agency providing licensed and certified home health services, the federal requirements shall apply.

§115.24. Standards for Home Dialysis Designation.

(a) An agency may only provide peritoneal dialysis and treatments provided by licensed personnel, but shall not provide other home dialysis services unless the agency is licensed and designated to provide home dialysis services. In order to receive a home dialysis designation, the agency shall meet the licensing standards specified in this section and the standards for home health services in accordance with §115.22 of this title (relating to Standards for Licensed Home Health Services) except for the standards §115. 22(f)(1)(A) and (B), (g), and (i)(1)(7). In the event there is a conflict between the standards specified in this section and those specified in §115. 22 of this title the standards specified in this section shall apply to the home dialysis services.

(b) The agency shall have a governing body. The governing body shall appoint a medical director and the physicians who are on the agency's medical staff. The governing body shall annually approve the medical staff policies and procedures, including the appointment and termination of members of the agency's medical staff. The minutes from the governing body of the agency shall be on file.

(c) Provisions concerning written agreements relating to hospital services are as follows.

(1) There must be an effective procedure for the immediate transfer to a local Medicare certified hospital for clients requiring emergency medical care. The agency must have a written transfer agreement with such a hospital, or all physician members of the agency's medical staff must have admitting privileges at such a hospital.

(2) An agency which supplies home staff assisted dialysis shall have a written affiliation agreement with a Medicare certified hospital based End Stage Renal Disease (ESRD) center for the provision of inpatient care and other hospital services. Similar agreements may be made with other hospitals if desired. This agreement must provide for the following:

(A) the responsibility of a client's care;

(B) ready acceptance of clients in emergency situations;

(C) timely acceptance and admission, when determined medically appropriate by the attending physician;

(D) medical information, including the long term program and client care plan, being transferred within one working day; and

(E) security and accountability for a client's personal effects

(d) The agency which supplies home staff assisted dialysis shall have an agreement with a Medicare-certified ESRD center or facility to provide backup outpatient dialysis services.

(e) A home staff assisted dialysis agency must provide for the exchange of medical and other information necessary or useful in the care and treatment of clients transferred between treating facilities. This provision must also include the transfer of the client care plan and long term program.

(f) The agency shall ensure that the names of clients awaiting cadaveric donor transplantation are entered in a participating recipient registry program.

(g) There shall be routine testing to ensure detection of hepatitis in employees and clients. All direct client care employees shall have current CPR certification.

(h) The medical director must be a physician who is licensed in the State of Texas, is eligible for certification or is certified in internal medicine or pediatrics by a professional board, and has at least 12 months' of experience or training in the care of clients at an ESRD facility.

(i) The medical director shall be responsible for:

(1) participating in the selection of a suitable treatment modality for all clients;

(2) assuring adequate training of nurses and technicians in dialysis techniques;

(3) assuring adequate monitoring of the client and the dialysis process; and

(4) assuring the development and availability of a client care policy and procedures manual and its implementation.

(j) All physicians, including the medical director, shall have on file the following:

(1) a curriculum vitae which documents undergraduate, medical school, and all pertinent post graduate training;

(2) evidence of current Texas licensure, and certification of eligibility by the United States Drug Enforcement Administration, the Texas Department of Public Safety, and the appropriate board; and

(3) evidence of 12 months' experience or training in the care of the renal client.

(k) Assessment of the client's residence shall be made to ensure a safe physical environment for the performance of dialysis. The initial admission assessment shall be performed by a qualified registered nurse.

(l) The agency shall develop a long term program for each client admitted to home dialysis. Criteria shall be defined in writing which shall guide the agency in the selection of clients suitable for home staff assisted dialysis and in noting changes in a client's condition which would require discharge from the program.

(m) If home staff assisted dialysis is selected, then the physician shall prepare orders outlining specifics of prescribed treatment. If these orders are received verbally, they must be confirmed in writing within 14 calendar days of the physician's order. Medical orders for home staff assisted dialysis shall be revised as necessary but reviewed and updated at least every six months.

(n) The initial orders for home staff assisted dialysis must be received prior to the first treatment and shall cover all pertinent diagnoses, including mental status, prognosis, functional limitations, activities permitted, nutritional requirements, medications and treatments, and any safety measure to protect against injury. Orders for home staff assisted dialysis shall include frequency and length of treatment, weight to be maintained, type of dialyzer, dialysate, heparin dosage, blood flow rate, and shall specify the level of preparation required for the care given (i.e. qualified dialysis technician, licensed vocational nurse, or registered nurse).

(o) The client care plan shall be developed after consultation with the client or the client's family by the interdisciplinary team. The plan shall implement the

medical orders and shall include potential services to be rendered, such as the identification of problems, methods of intervention, and the assignment of health care personnel. The client care plan shall be personalized for the individual and reflect the ongoing psychological, social and functional needs of the client. The initial client care plan shall be completed by the interdisciplinary team within ten calendar days after the first home dialysis treatment. The plan for non-stabilized clients (i.e. change in modality, lab-values, weight gains, and infections) shall be reviewed at least monthly by the interdisciplinary team. For a stable client, the care plan shall be reviewed every six months. The long term program shall be revised as needed and reviewed annually.

(p) An agency shall provide to each client a statement of client's rights and responsibilities, which shall include the following:

(1) the right to be informed of all rules and regulations governing client conduct and responsibilities, services available in the facility, and the client's medical condition unless medically contraindicated;

(2) the opportunity to participate in planning his or her medical treatment and to be transferred only for medical reasons, the client's welfare or that of other clients, or nonpayment of fees. Clients shall be given advance notice to ensure orderly transfer or discharge;

(3) the right to be treated with consideration, respect, and full recognition of his or her individuality and personal needs;

(4) the right to confidential treatment of his or her personal and medical records; and

(5) the right to have assistance in understanding and exercising his or her rights. There shall be a written grievance mechanism under which a client can participate without fear of reprisal. Steps within the agency must be outlined and instructions provided to allow the client to contact the Texas Department of Health if a dispute is not resolved internally.

(q) Medications will be administered only if such medication is ordered by the client's physician. Qualified dialysis technicians may administer only those medications routinely necessary for the performance of dialysis. Specifically, lidocaine must be administered subcutaneously, and heparin and normal saline must be administered intravenously. Such administration shall be in accordance with the provisions of the Medical Practice Act, Texas Civil Statutes, Article 4495b. The Act, §3.06(d)(1), specifically refers to delegation of medical acts by a licensed physician in the State of Texas. Upon request by a client or his family for assistance with medications, the RN may assign a dialysis technician to assist with administration of oral medications which are ordinarily self-administered. The request shall be documented in the client's clinical record. The record of the administration of drugs routinely given as part of dialysis treatment (i.e. lidocaine, heparin, and normal saline) shall be contained in the dialysis treatment record.

(r) An agency which provides home staff assisted dialysis shall, at a minimum, provide nursing service, nutritional counseling, and medical social service. These services shall be provided as necessary and appropriate at the client's home, by phone, or by a client's visit to the ESRD center or unit. A registered nurse shall be available whenever dialysis treatments are in progress in a client's home. The agency administrator shall designate an alternate to this registered nurse. A qualified social worker and a dietitian shall be employed by or under contract with the agency to provide services.

(1) A qualified registered nurse is a person who is licensed as a registered nurse in Texas and has at least 12 months' experience in clinical nursing and an additional six months of experience in nursing care of a client with permanent kidney failure.

(2) A qualified social worker is a person who:

(A) is currently licensed under the laws of the State of Texas as a social worker and has a master's of science of social work (MSSW) from a graduate school of social work accredited by the Council on Social Work Education; or

(B) has served for at least two years as a social worker, one year of which was in a dialysis unit or transplantation program prior to September 1, 1976, and has established a consultative relationship with a certified MSSW.

(3) A qualified dietitian must meet the definition in §115.2 of this title (relating to Definitions) and:

(A) be eligible for registration by the American Dietetic Association under its requirements in effect on June 3, 1976, and have at least one year of experience in clinical nutrition; or

(B) have a baccalaureate or advanced degree with major studies in food and nutrition or dietetics, and have at least one year of experience in clinical nutrition.

(s) A qualified dialysis technician shall be employed by or under contract with the agency to provide dialysis care for a client in the home under the supervision of an RN or a licensed physician and shall meet the following requirements.

(1) A qualified home dialysis technician shall have:

(A) a minimum of a high school education or GED and two years of full-time dialysis experience; or

(B) a minimum of a high school education or GED and one year full-time dialysis experience with one additional year of direct client care in a hospital.

(2) If the dialysis technician is performing peritoneal dialysis (i.e., intermittent peritoneal dialysis, continuous ambulatory peritoneal dialysis, or continuous cycles peritoneal dialysis), one of the two years of full time experience shall be with peritoneal dialysis.

(3) A dialysis technician shall not:

(A) initiate hemodialysis via subclavian catheter administration;

(B) administer blood products, antibiotics, albumin, or insulin;

(C) perform non-access site venipuncture;

(D) draw arterial blood gases;

(E) administer deferoxamine mesylate;

(F) utilize the technique of tight heparinization; or

(G) initiate home education on dialysis procedures, diagnosis, safety, and medications.

(t) All personnel providing direct client care shall receive orientation and training and demonstrate knowledge of the following:

(1) anatomy and physiology of the normal kidney;

(2) fluid, electrolyte, and acid-base balance;

(3) pathophysiology of renal disease;

(4) acceptable laboratory values for the client with renal disease;

(5) theoretical aspects of dialysis;

(6) vascular access and maintenance of blood flow;

(7) technical aspects of dialysis;

(8) peritoneal dialysis catheter (tenckhoff) and peritoneal dialysis clearance, if applicable;

(9) the monitoring of clients during treatment (treatment initiation and termination);

(10) the recognition of dialysis complications, emergency conditions, and institution of the appropriate corrective action (emergency equipment is available and staff is trained in its use);

(11) psychological, social, financial, and physical complications of the long-term dialysis;

(12) care of the client with chronic renal failure;

(13) dietary modifications and medications for the uremic client;

(14) alternative forms of treatment for ESRD;

(15) the role of renal health team members (physician, nurse, technician, social worker, and dietitian);

(16) performance of laboratory tests (hematocrit, clotting time, and blood glucose); and

(17) the theory of blood products and blood administration.

(u) Physician delegation of medical acts to a dialysis technician shall be as follows.

(1) The medical director shall attest that each dialysis technician demonstrates competency in subsection (t)(1)-(17) of this section. This evidence shall be documented in writing and maintained in each individual dialysis technician personnel file and updated at least annually.

(2) If a physician delegates a medical act to a technician not employed by the agency, the governing body of the agency shall delineate the dialysis technician's privileges according to approved medical staff policies and procedures.

(3) The dialysis technician shall contact the registered nurse if there is a change in the client's condition. The registered nurse shall notify the physician of the client's status to obtain orders if necessary.

(v) The requirements concerning an orientation and training period are as follows.

(1) The agency shall develop an 80-hour written orientation program including classroom theory and direct observation of the dialysis technician or nurse performing procedures on the client in the home. The orientation program shall be provided by a qualified registered nurse. A written skills examination or competency evaluation shall be administered to the dialysis technician or nurse at the conclusion of the orientation program and prior to the time the nurse or technician delivers independent client care.

(2) The nurse or dialysis technician shall complete the required theory of the classroom component as described in subsection (t)(1)-(5), (11)-(15), and (17) of this section and satisfactorily return demonstrate the skills described in subsection (t)(6)-(10) and (16) of this section. The orientation program may be waived by written examination as described in paragraph

(1) of this subsection.

(3) A registered nurse shall complete an orientation competency skills checklist relating to the dialysis technician or nurse in order to reflect the progression of learned skills, as described in subsection (t)(1)-(17) of this section.

(4) Prior to the delivery of independent client care, the qualified registered nurse shall directly supervise the dialysis technician or nurse for a minimum of three dialysis treatments. Dependent upon the trainee's experience and accomplishments on the skills checklist, additional supervised dialysis treatments may be required.

(5) Continuing education for employees shall be quarterly. Performance evaluations shall be annually. The registered nurse shall directly (on-site) supervise the licensed vocational nurse and qualified dialysis technician monthly or more often if necessary.

(w) Records of home staff assisted dialysis clients shall include the following: a medical history and physical, clinical progress notes by the physician, nurse, dietitian, and qualified social worker, dialysis treatment records, laboratory reports, client care plan, long term program, and documentation of supervisory visits.

(x) The agency shall ensure that biohazardous waste (needles, syringes, artificial kidneys, arterial and venous lines, and any other blood contaminated material) is disposed according to state and local regulations and ordinances (i.e. incineration, Type 1 landfill, steam sterilization). If disposal is not attainable at the client's residence, the agency shall remove the biohazardous waste from the client's home for appropriate disposal. The agency shall inform the appropriate waste disposal company or individual of the waste products that will be disposed. The agency shall have on file a letter from the waste disposal company or individual acknowledging acceptance of biohazardous waste and agreement that the disposal method will be in compliance with the state solid waste regulations.

(y) Water treatment for home dialysis shall be as follows.

(1) Water used for dialysis purposes shall be analyzed periodically and treated as necessary to maintain a continuous water supply that is biologically and chemically compatible with acceptable dialysis techniques.

(2) Water used to prepare dialysate shall meet the requirements set forth in §3.2 and §4.2 of the American National Standards for Hemodialysis Systems, published by the Association for the Advancement of Medical Instrumentation (AAMI), 1909 North Fort Meyer Drive, Suite 602, Arlington, Virginia 22209, and approved by the American National Standards Institute, Inc. (ANSI). Additionally, frequency of monitoring water purity shall be in accordance with the suggestions in Appendix B, §B5 of the same standards. Copies of the standards are indexed and filed in the Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 and are available for public inspection during regular working hours.

(3) Records of test results and equipment maintenance shall be maintained at the agency.

(z) Preventive maintenance for home dialysis equipment shall be as follows.

(1) A planned program of preventive maintenance of dialysis equipment shall be established.

(2) Preventive maintenance of home dialysis equipment shall be in accordance with the machine manufacturer's suggestions and on an as needed basis. In the absence of specific manufacturer's recommendations, preventive maintenance shall be in accordance with the guidelines published by the Emergency Care Research Institute in Health Devices, July 1978, Volume 7, Number 9. Copies of the standards are indexed and filed in the Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

(3) In the event that the water used for dialysis purposes or home dialysis equipment is found not to meet safe operating parameters, and corrections can not be effected to ensure safe care promptly, the client shall be transferred to a medicare certified ESRD facility or center until such time as the water or equipment is found to be operating within safe parameters.

(aa) Reuse or reprocessing of disposable medical devices, including but not limited, to dialyzers, end-caps and blood lines shall be in accordance with the medicare conditions of participation for ESRD.

(bb) Provision of laboratory services shall be as follows.

(1) All laboratory services ordered for the client by a physician shall be performed by a medicare certified independent or hospital-based laboratory according to a written arrangement or agreement with the agency.

(2) Copies of all laboratory reports shall be maintained in the client's medical record.

(3) Hematocrit, clotting times, and blood glucose tests may be performed at the client's home by the dialysis technician. Results of these tests shall be recorded in the client's medical record and signed by the technician. Maintenance, calibration, and quality control studies shall be performed according to the equipment manufacturer's suggestions, and the results shall be maintained at the agency.

(4) Blood and blood products shall only be administered to dialysis clients in their homes by licensed personnel.

(cc) Supplies for home dialysis shall meet the following requirements.

(1) All drugs, biologicals, and legend medical devices shall be obtained for each client pursuant to a physician's prescription in accordance with applicable rules of the Texas Board of Pharmacy.

(2) In conjunction with the client's attending physician, it shall be the agency's responsibility to ensure that there are sufficient supplies maintained in the client's home to perform the scheduled dialysis treatments and to provide a reasonable number of back-up items for replacements, if needed, due to breakage contamination or defective products.

(A) All dialysis supplies, including medications shall be delivered directly to the client's home by a vendor of such products.

(B) Agency personnel may transport prescription items from a vendor's place of business to the client's home for the client's convenience, so long as the item is properly labeled with the client's name and direction for use. Agency personnel may transport medical devices for reuse.

(dd) The agency shall have policies and procedures for emergencies addressing fire, natural disaster, and medical emergencies, as follows.

(1) The agency personnel, the client, and his or her family must be familiar with the agency's procedures. Procedures shall be individualized for each client to include the appropriate evacuation from the home and emergency telephone numbers. Emergency telephone numbers shall be posted at each client's home and shall include 911 if available, the number of the physician, the ambulance, the registered nurse on call for home dialysis, and any other phone number deemed an emergency number.

(2) The client or family must be familiar with the procedure disconnecting the dialysis equipment.

(3) The agency personnel and the client shall have knowledge of emergency call procedures.

(4) Home dialysis clients shall have a telephone for immediate access to communicate emergency situations.

(5) In the event of a medical emergency requiring transport to a hospital for care, the physician shall assure the following:

(A) the receiving hospital is given advance notice of the client's arrival;

(B) the receiving hospital is given a description of the client's health status; and

(C) the selection of personnel, vehicle, and equipment are appropriate to affect a safe transfer.

§115.25. Standards for Hospice Services.

(a) An agency providing hospice services shall meet the standards of this section.

(b) Organizational structure and operational policies shall be clearly stated in writing. The hospice shall adopt, implement, and enforce its operational policies. A freestanding hospice that provides inpatient services directly shall comply with subsection (z) of this section.

(c) The hospice shall be primarily engaged in providing the care and services as described: nursing; medical social service; counseling; volunteer care; bereavement counseling; and coordination of short-term inpatient care. The hospice shall provide all other covered services which are available on a 24-hour basis to the extent necessary to meet the needs of clients for care that is reasonable and necessary for the palliation and management of terminal illness and related conditions.

(d) The hospice shall be primarily engaged in providing the care and services described in subsection (c) of this section, and shall also provide nursing services, physician services, and medications which are routinely available on a 24-hour basis. These services shall be provided in a manner consistent with accepted standards of practice.

(e) The hospice shall have a governing body that assumes full legal responsibility for determining, implementing and monitoring policies governing the hospice's total operation. The governing body shall designate an individual who is responsible for the day to day management of the hospice program. The governing body shall ensure that all services provided are consistent with accepted standards of practice.

(f) The medical director shall be a hospice employee who is a doctor of medicine or osteopathy who assumes overall responsibility for the medical component of the hospice's client care program.

(g) Subject to subsections (p) and (u) of this section, the hospice may arrange for another individual or entity to furnish services to the hospice clients. If services are provided under arrangement, the hospice shall meet the following standards.

(1) The hospice program shall assure the continuity of client and family care in home and outpatient and inpatient settings.

(2) The hospice shall have a legally binding written agreement for the provision of arranged services. The agreement shall be signed by authorized representatives of the hospice as well as the contracting party. The legally binding agreement shall include the following:

(A) identification of the services to be provided;

(B) a stipulation that services may be provided only with the express authorization of the hospice;

(C) the manner in which the contracted services are coordinated, supervised and evaluated by the hospice;

(D) the delineation of the role(s) of the hospice and the contractor in the admission process, client and family assessment, and the interdisciplinary team care conferences;

(E) requirements for documentation that services are furnished in accordance with the agreement; and

(F) the qualifications of the personnel providing the services.

(3) The hospice shall retain pro-

fessional management responsibility for arranged services and ensure that they are furnished in a safe and effective manner by persons meeting the qualifications under these standards, and in accordance with the client's plan of care and the other requirements of this subsection.

(4) The hospice shall retain responsibility for payment for services.

(5) The hospice shall ensure that inpatient care is furnished only in a facility which meets the requirements of subsection

(y) of this section, and the hospice's arrangement for inpatient care shall be described in a legally binding written agreement and shall meet the requirements of paragraph (2) of this subsection. The written agreement, at minimum, shall meet the following requirements:

(A) that the hospice furnishes to the inpatient provider a copy of the client's plan of care and specifies the inpatient services to be furnished;

(B) that the inpatient provider has established policies consistent with those of the hospice and agrees to abide by the client care protocols established by the hospice for its clients;

(C) that the medical record includes a record of all inpatient services and events, and that a copy of the discharge summary and, if requested, a copy of the medical record are provided to the hospice;

(D) the party responsible for implementation of the provisions of the agreement; and

(E) that the hospice retains responsibility for appropriate hospice care training of the personnel who provide the care under the agreement.

(h) A written plan of care shall be established and maintained for each client admitted to the hospice program, and the care provided to a client shall be in accordance with the plan.

(1) The plan shall be established by the attending physician, the medical director or physician designee and interdisciplinary team prior to providing care.

(2) The plan shall be reviewed and updated, at intervals specified in the plan, by the attending physician, the medical director or physician designee and interdisciplinary team. These reviews shall be documented.

(3) The plan shall include an assessment of the client's needs and identification of the services including the management of discomfort and symptom relief. The plan shall state in detail the scope and frequency of services needed to meet the client's and family's needs.

(i) The hospice shall not discontinue or diminish care provided to a client because of the client's inability to pay for that care.

(j) The hospice shall demonstrate respect for a client's rights by ensuring that an informed consent form that specifies the type of care and services that may be provided as hospice care during the course of the illness has been obtained for every client, either from the client or representative (a person, who because of the client's mental or physical incapacity, is authorized in accordance with state law to execute or revoke an election for hospice care or terminate medical care on behalf of the terminally ill client). The client or representative shall sign or mark the consent form.

(k) The hospice shall provide a continuing systematic program for the training of its employees. The staff including volunteers shall be properly oriented to tasks performed, and these individuals are informed of changes in techniques, philosophies, goals and products, as it relates to the client's care.

(l) The hospice shall designate an interdisciplinary team or teams composed of individuals who provide or supervise the care and services offered by the hospice.

(1) The interdisciplinary team or teams shall include at least the following individuals who are employees of the hospice:

(A) a physician;

(B) a registered nurse;

(C) a social worker; and

(D) a pastor or counselor.

(2) The interdisciplinary team shall be responsible for:

(A) participation in the establishment of the plan of care;

(B) provision and supervision of hospice care and services;

(C) periodic reviews and updates of the plan of care for each client receiving hospice care; and

(D) establishment of policies governing the day-to-day provision of hospice care and services.

(3) If the hospice has more than one interdisciplinary team, the hospice shall designate in advance the team it chooses to execute the functions described in paragraph

(2)

(D) of this subsection.

(4) The hospice shall designate a registered nurse to coordinate the implementation of the plan of care for each client.

(m) The hospice shall use volunteers in defined roles under the supervision of a designated hospice employee.

(1) The hospice shall provide appropriate orientation and training that is consistent with acceptable standards of hospice practice.

(2) Volunteers shall be used in administrative and direct client care roles.

(3) The hospice shall document active and ongoing efforts to recruit and retain volunteers.

(4) The hospice shall document the cost savings achieved through the use of volunteers. Documentation shall include the following:

(A) the identification of necessary positions which are occupied by volunteers;

(B) the work time spent by volunteers occupying those positions; and

(C) estimates of the dollar costs which the hospice would have incurred if paid employees occupied the positions identified in subparagraph

(A) of this paragraph for the amount of time specified in subparagraph (B) of this paragraph.

(5) The hospice shall provide a level of volunteer activity.

(A) The hospice shall document and maintain a volunteer staff sufficient to provide administrative and direct client care in an amount that at a minimum, equals 5.0% of the total client care hours of all paid hospice employees and contract staff.

(B) The hospice shall document a continuing level of volunteer activity.

(C) The hospice shall record expansion of care and services achieved

through the use of volunteers, including the type of services and the time worked.

(6) The hospice shall make reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to clients who request such visits and shall advise clients of this opportunity.

(n) The hospice and all its employees shall be currently licensed in accordance with applicable federal, state and local laws and regulations.

(o) In accordance with accepted principles of practice, the hospice shall establish and maintain a clinical record for every client receiving care and services. The record shall be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval.

(1) Each clinical record shall contain a comprehensive compilation of information. Entries shall be made for all services provided. Entries shall be made and signed by the person providing the services. The record shall include all services whether furnished directly or under arrangements made by the hospice. Each client's record shall contain:

(A) the initial and subsequent assessments;

(B) the plan of care;

(C) identification data;

(D) consent and authorization and election forms;

(E) pertinent medical history; and

(F) complete documentation of all services and events (including evaluations, treatments and progress notes).

(2) The hospice shall safeguard the clinical record against loss, destruction and unauthorized use.

(p) The hospice shall ensure that substantially all the core services described in subsections (q)-(t) of this section are routinely provided directly by hospice employees. The hospice may use contracted staff if necessary to supplement its employees in order to meet the needs of clients during periods of peak client loads or under extraordinary circumstances. If contracting is used, the hospice shall maintain professional, financial, and administrative responsibility for the services and assure that the qualifications of staff and services provided meet the requirements specified in subsections (q)-(t) of this section.

(q) The hospice shall provide nursing care and services by or under the supervision of a registered nurse.

(1) Nursing services shall be directed and staffed to assure that the nursing needs of the clients are met.

(2) Client care responsibilities of nursing personnel shall be specified.

(3) Services shall be provided in accordance with recognized standards of practice.

(r) Medical social services shall be provided by a social worker under the direction of a physician.

(s) In addition to palliation and management of terminal illness and related conditions, physician employees of the hospice, including physician member(s) of the interdisciplinary team shall meet the general medical needs of the clients to the extent that these needs are not met by the attending physician.

(t) Counseling services shall be available to both the client and the family. Counseling includes bereavement counseling provided after the client's death as well as dietary, spiritual, and any other counseling services for the client and family provided while the client is enrolled in the hospice program.

(1) Bereavement counseling service shall be available to the family.

(A) There shall be an organized program for the provision of bereavement services under the supervision of a qualified professional. Bereavement counseling, may be supervised by the interdisciplinary team, social worker, a mental health professional, counselor, or other person with documented evidence of training and experience in dealing with bereavement and structured training in bereavement counseling. Persons providing bereavement counseling shall have evidence of training must be documented in personnel folders or other written evidence.

(B) The plan of care for these services shall reflect family needs, as well as a clear delineation of services to be provided and the frequency of service delivery (up to one year following the death of the client).

(2) Dietary counseling, when required, shall be provided by a qualified individual. Dietary counseling shall be planned by a registered or licensed dietitian or a person who is eligible for registration by the American Dietetic Association or an individual who has documented equivalency in education or training, and meets specific client needs as described in the client's plan of care. Although a dietitian need not be a full-time employee, there shall be a record of this individual's credentials on file in the hospice.

(3) Spiritual counseling shall include notice to clients as to the availability of clergy as required under subsection (m)(6) of this section. Spiritual counseling may be conducted by a clergy of the client's choice.

(4) Counseling may be provided by other members of the interdisciplinary team as well as by other qualified professionals as determined by the hospice. Counseling, other than bereavement, dietary, or spiritual shall be provided by qualified persons and in accordance with the client's plan of care. The counseling requirements do not preclude other members of the interdisciplinary team or other professionals from serving in the capacity of counselor. If the need is for hand holding, a nonprofessional volunteer may be utilized.

(u) The hospice shall ensure that the services described in subsections (v)-(y) of this section are provided directly by hospice employees or under arrangements made by the hospice as specified in subsection (g) of this section.

(v) Physical therapy services, occupational therapy services, and speech-language pathology services shall be available, and when provided, shall be offered in a manner consistent with accepted standards of practice.

(w) Home health aide and homemaker services shall be available and adequate in frequency to meet the needs of the clients. A home health aide shall be a person who meets the training and competency evaluation requirements or the competency evaluation requirements as specified in §115.61(e)-(g) of this title (relating to Home Health Aides).

(1) A registered nurse shall visit the home site at least every two weeks when aide services are being provided, and the visit shall include an assessment of the aide services. The aide need not be present each supervisory visit.

(2) Written instructions for client care shall be prepared by a registered nurse.

(x) Medical supplies and appliances, including medications, shall be provided as needed for the palliation and management of the terminal illness and related conditions.

(1) All medications shall be administered in accordance with accepted standards of practice.

(2) The hospice shall have and enforce a policy for the disposal of controlled medications maintained in the cli-

ent's home when those medications are no longer needed by the client.

(3) Medications shall be administered only by the following individuals:

(A) a licensed nurse or physician;

(B) a permitted home health medication aide;

(C) the client if his or her attending physician has approved; or

(D) another individual acting in accordance with applicable federal and state laws, or as specified in §115.21(m)(7) of this title (relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies).

(4) The persons who are authorized to administer medications shall be specified in the client's plan of care.

(y) The inpatient care shall be available for pain control, symptom management, and respite purposes and shall be provided in a participating Medicare or Medicaid facility, as appropriate.

(1) Inpatient care for pain control and symptom management shall be provided by:

(A) a hospice that meets the requirements in subsection (z) of this section for providing inpatient care directly; or

(B) a hospital or a skilled nursing facility that also meets the requirements specified in subsection (z)(1) and (5) of this section, regarding 24-hour nursing service and client areas.

(2) Inpatient care for respite purposes shall be provided by:

(A) a provider specified in paragraph (1) of this subsection; or

(B) an intermediate care facility that also meets the requirements specified in subsection (z)(1) and (5) of this section, regarding 24-hour nursing services and client areas.

(3) The total number of inpatient days used by clients who elect hospice coverage in any 12-month period preceding a survey in a particular hospice shall not exceed 20% of the total number of hospice days for clients receiving care.

(z) A freestanding hospice that provides inpatient care directly shall comply with the following standards.

(1) A freestanding hospice that provides inpatient care directly shall have on-site 24-hour nursing service provided by registered nurses and licensed vocational nurses.

(A) The facility shall provide 24-hour nursing services which are sufficient to meet total nursing needs and which are in accordance with the client's plan of care. Each client shall receive treatments, medications, and diet as prescribed, and shall be kept comfortable, clean, well-groomed, and protected from accident, injury, and infection.

(B) Each shift shall include a registered nurse who provides and supervises direct client care.

(2) The hospice shall have a written plan, periodically rehearsed with staff, with procedures to be followed in the event of an internal or external disaster and for the care of casualties (clients and personnel) arising from such disasters.

(3) The hospice shall meet all federal, state, and local laws, regulations, and codes pertaining to health and safety, such as provisions regulating the following:

(A) construction, maintenance, and equipment for the hospice;

(B) sanitation;

(C) communicable and reportable diseases; and

(D) post-mortem procedures.

(4) Except as provided in this subsection, the hospice shall meet the health care occupancy provisions of the 1981 edition of the Life Safety Code of the National Fire Protection Association which is incorporated by reference.

(A) The department recognizes the Health Care Financing Administration (HCFA) waiver of specific provisions of the Life Safety Code required by this paragraph, for a certified hospice, for as long as it considers appropriate, if the waiver would not adversely affect the health and safety of the clients; and rigid application of specific provisions of the Code would result in unreasonable hardship for the hospice. The department may waive specific provisions of the Life Safety Code for a licensed hospice, if the waiver would not adversely affect the health and safety of the clients and rigid application of specific provisions of the Code would result in unreasonable hardship for the hospice.

(B) Any facility of two or more stories that is not of fire-resistive construction and is participating on the basis of a waiver of construction type or height, may not house blind, nonambulatory, or physically disabled clients above the street-level floor unless the facility is one of the following construction types (as defined in the Life Safety Code):

(i) type II (1,1,1)-protected noncombustible;

(ii) fully-sprinklered Type II (0,0,0)-noncombustible;

(iii) fully-sprinklered Type III (2,1,1)-Type III (2,1,1)-protected ordinary;

(iv) fully-sprinklered Type V (1,1,1)-protected wood frame; or

(v) achieves a passing score on the Fire Safety Evaluation System (FSES).

(5) The hospice shall design and equip areas for the comfort and privacy of each client and family member. The hospice shall include the following:

(A) physical space for private client and family visiting;

(B) accommodations for family members to remain with the client throughout the night;

(C) accommodations for family privacy after a client's death;

(D) decor which is homelike in design and function; and

(E) accommodations where clients are permitted to receive visitors at any hour, including small children.

(6) Client rooms shall be designed and equipped for adequate nursing care and the comfort and privacy of clients. Each client's room shall:

(A) be equipped with or conveniently located near toilet and bathing facilities;

(B) be at or above grade level;

(C) contain a suitable bed for each client and other appropriate furniture;

(D) have closet space that provides security and privacy for clothing and personal belongings;

(E) contain no more than four beds;

(F) measure at least 100 square feet for a single room or 80 square feet for each client for a multiclient room; and

(G) be equipped with a device for calling the staff member on duty.

(7) For an existing building, the department recognizes the HCFA waiver for the space and occupancy requirements of paragraph (6)(E) and (F) of this subsection for a certified hospice, for as long as it is considered appropriate, if it finds that the requirements would result in unreasonable hardship on the hospice if strictly enforced, and the waiver serves the particular needs of the clients and does not adversely affect their health and safety. For an existing building, the department may waive the space and occupancy requirements of paragraph (6)(E) and (F) of this subsection for a licensed hospice for as long as it is considered appropriate, if it finds that the requirements would result in unreasonable hardship on the hospice if strictly enforced and the waiver serves the particular needs of the clients and does not adversely affect their health and safety.

(8) The hospice shall provide bathroom facilities. The bathroom facilities shall include the following:

(A) an adequate supply of hot water at all times for client use; and

(B) plumbing fixtures with control valves that automatically regulate the temperature of the hot water used by clients.

(9) The hospice shall have available at all times, a quantity of linen essential for the proper care and comfort of clients. Linens shall be handled, stored, processed and transported in such a manner as to prevent the spread of infection.

(10) The hospice shall make provisions for isolating clients with infectious diseases.

(11) The hospice shall provide and supervise meal service and menu planning. The hospice shall:

(A) serve at least three meals or their equivalent each day at regular times, with not more than 14 hours between a substantial evening meal and breakfast;

(B) procure, store, prepare, distribute, and serve all food under sanitary conditions;

(C) have a staff member trained or experienced in food management or nutrition if the staff member responsible for dietary services is not a dietitian. The person shall be a graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association; or shall be a graduate of a State-approved course that provided 90 or more hours of classroom instruction in food service supervision and shall have experience as a supervisor in a health care institution with consultation from a dietitian; or shall have training and experience in food service supervision and management in a military service equivalent in content to the program in this paragraph. This staff member shall be responsible for:

(i) planning menus that meet the nutritional needs of each client, following the orders of the client's physician and, to the extent medically possible, the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences (Recommended Dietary Allowances (9th ed., 1981)) that is available from the Printing and Publications Office, National Academy of Sciences, Washington, D.C. 20418); and

(ii) supervising the meal preparation and service that is conducted to insure that the menu plan is followed; and

(D) if the hospice has clients who require medically prescribed special diets, shall have the menus for those clients planned by a professionally qualified dietitian who supervises the preparation and serving of meals to insure that the client accepts the special diet.

(12) The hospice shall provide appropriate methods and procedures for dispensing and administering medications. Whether medications are obtained from community or institutional pharmacists or stocked by the facility, the facility shall be responsible for medications for its clients, insofar as they are covered under the program, and for ensuring that pharmaceutical services are provided in accordance with accepted professional principles and appropriate federal and state laws.

(A) The hospice shall employ a licensed pharmacist or have a formal agreement with a licensed pharmacist to advise the hospice on ordering, storage, administration, disposal, and recordkeeping of medications.

(B) A physician shall order all medications for the client.

(C) If the medication order is verbal, the physician shall give it only to a licensed nurse, pharmacist, or another physician.

(D) If the medication order is verbal, the individual receiving the order shall record and sign it immediately and have the prescribing physician sign it in a manner consistent with good medical practice.

(E) Medications shall be administered only by one of the following individuals:

(i) a licensed nurse or physician;

(ii) a permitted home health medication aide or an employee as specified in §115.21(m)(7) of this title (relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies); or

(iii) the client if his or her attending physician has approved.

(F) The pharmaceutical service shall have procedures for control and accountability of all medications throughout the facility. Medications shall be dispensed in compliance with federal and state laws. Records of receipt and disposition of all controlled medications shall be maintained in sufficient detail to enable an accurate reconciliation. The pharmacist shall determine that medication records are in order and that an account of all controlled medications is maintained and reconciled.

(G) The labeling of medications shall be based on currently accepted professional principles, and shall include the appropriate accessory and cautionary instructions, as well as the expiration date when applicable.

(H) In accordance with state and federal laws, all medications shall be stored in locked compartments under proper temperature controls and only authorized personnel shall have access to the keys. Separately locked compartments shall be provided for storage of controlled medications listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 United States Code, §801 et seq and other medications subject to abuse, except under single-unit package medication distribution systems in which the quantity stored is minimal and a missing dose is readily detected. An emergency medication kit shall be kept readily available.

(I) Controlled medications no longer needed by the client shall be disposed of in compliance with state requirements. The pharmacist and registered nurse shall dispose medications and prepare a record of the disposal.

§115.26. Standards for Personal Assistance Services.

(a) An agency providing personal assistance services shall meet the standards of this section.

(b) Personal assistance services are performed by attendants who are at least 18 years of age and who are competent to perform the tasks assigned by the supervisor.

(c) Personal assistance services are designed to meet the non-skilled needs of person with functional disabilities and their families, allowing them to engage in activities of daily living. The following tasks are allowed to be performed under personal assistance services classification:

(1) personal care where it is not provided as support to skilled services in a plan of care (feeding, preparing meals, transferring, toileting, ambulation and exercise, grooming, bathing, dressing, and routine care of hair and skin);

(2) assistance with medications that are normally self-administered, unless it is part of a plan of care;

(3) health-related tasks which may be delegated by an RN and are not a part of a plan of care in accordance with §115.21(m)(3), (7), and (8) of this title (relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies);

(4) assistance with general household activities and chore services necessary to maintain the home in a clean, sanitary, and safe environment (changing bed linens, house cleaning, laundering, shopping, and washing dishes); and

(5) providing protective supervision as temporary relief of the primary caregiver.

(d) Level of supervisor (RN versus non-RN) for personal assistance services is determined in accordance with the memorandum of understanding between the Board of Nurse Examiners and the department.

(e) The agency shall develop organizational, operational, programmatic, and personnel policies consistent with the principles of individual and family choice and control, functional need, and accessible and flexible services.

(f) Organizational structure and operational policies must be stated in writing. An agency shall adopt, implement, and enforce its operational policies. The policies must include the lines of authority and delegation of responsibility down to the client service level and the services provided.

(g) The agency shall have an individual or individuals who assume full legal responsibility for the overall conduct of the agency and are responsible for compliance with all applicable laws and rules of the department.

(1) The administrator of the agency will administratively supervise the provision of services. The administrator organizes and directs the agency's ongoing functions; employs qualified staff; insures adequate education and evaluations; insures the accuracy of public information materials and activities; and implements an effective budgeting and accounting system.

(2) A person who meets the qualifications of an administrator shall be authorized in writing by the administrator to act on his or her absence.

(h) A personnel record shall be maintained on each employee. The employee file shall include a job description; qualifications; application for employment; verification of license, permits, reference(s), and job experience(s); educational requirements (as appropriate); performance evaluations; and disciplinary actions.

(1) All information shall be kept current.

(2) In lieu of the job description and qualifications for employment, the personnel record may include a statement signed by the employee that the employee has read a job description and qualifications for the position accepted.

(i) The agency shall have a procedure providing for back-up services when the employee or contractor is not able to deliver the services.

(j) The agency shall maintain for each client or family a separate file with all entries kept current, dated and signed by the recorder. The file shall include the following:

(1) application for services including, but not limited to: full name; sex; date of birth; name, address, and telephone number of parent(s) of a minor child, or legal guardian, or other(s) as identified by the individual; physician's name and telephone numbers, including emergency numbers; and services requested;

(2) documentation that client or family has received a copy of the client's rights and responsibilities, complaint procedures, and the Human Resources Code, Chapter 102 (relating to Rights of the Elderly), for clients 55 years and older;

(3) documentation of determination of services based on an on-site visit by the supervisor where services will be primarily delivered;

(4) an individualized service plan developed, agreed upon, and signed by the client or family and the agency to include, but not limited to, the following:

(A) types of services, supplies, and equipment to be provided;

(B) locations of services;

(C) frequency and duration of services, including the planned date of service initiation; and

(D) charges for services rendered if the charges will be paid in full or in part by the client or significant other(s), or on request; and

(5) documentation that the services have been provided according to the individualized service plan, including a medication record, if applicable.

(k) If an agency utilizes independent contractors, there shall be a written agreement between each independent contractor (i.e., per hour, per visit) and the agency. The agreement shall be enforced by the agency and clearly designate:

(1) that clients are accepted for services only by the agency;

(2) the services to be provided;

(3) the necessity to conform to all applicable agency policies and guiding principles, including any personnel qualifications;

(4) the individualized service plan to be carried out;

(5) the manner in which services will be coordinated and evaluated by the agency;

(6) the procedures for submitting information and documentation regarding the client's needs and services, scheduling and periodic client evaluation as required by agency policy; and

(7) the procedures for determining charges and reimbursement.

(l) Services provided by an agency under arrangement with another agency or organization shall be subject to written agreement conforming with requirements specified in subsection (i) of this section.

(m) The agency shall provide services with personnel who meet the qualifications and competencies to perform requested and agreed upon services of the client or family. The agency is responsible

for the following regarding personnel services:

(1) orientation of personnel to their job responsibilities including, but not limited to: the philosophy and values of community integration and consumer-driven care; report of abuse or neglect; and change in the client's health condition requiring emergency procedures and health services provided by the agency; and

(2) maintenance of sufficient documentation to demonstrate that an individual is competent in those services he or she performs.

(n) Personnel shall be supervised in accordance with the agency's policies and applicable laws.

(1) The agency shall adopt, enforce, and implement a policy on supervision of personnel with input from the client or family on frequency of supervision.

(2) An appropriate individual who is employed by or under contract with the agency shall provide supervision of client services, as required by agency policy. Supervisors shall have at least a high school diploma or general equivalency diploma (GED) with two years of supervisory experience or be a licensed vocational nurse or a registered nurse. Experience equivalent to one year of full-time employment in a supervisory capacity in a health care facility, agency, or community based service agency may be substituted for each year of full time study at an accredited college or university.

(3) Unlicensed persons performing health related tasks that fall within the practice of professional nursing shall be supervised by an RN.

§115.27. Standards for Branch Offices.

(a) A branch office providing licensed home health or personal assistance services shall comply with the requirements of the rules relating to the parent agency and the standards relating to the provided services.

(b) A branch office providing licensed and certified home health services shall comply with the standards for certified agencies in §115.23 of this title (relating to Standards for Licensed and Certified Home Health Services).

(c) A parent agency and a branch office providing home health or personal assistance services shall meet the following requirements.

(1) On-site supervision of the branch office will be conducted by the parent agency at least monthly. More frequent supervision may be required considering the size of the service area and the scope of services provided by the parent agency. Supervision will be provided by the administrator or appropriate licensed professional personnel. The supervisory visits must be documented and include the date of the visit, the content of the consultation, the individuals in attendance, and the recommendations of the staff.

(2) Original personnel files may be kept in any location, as determined by the agency. Original personnel files shall be accessible and readily retrievable for inspection by the department at the site of the survey.

(3) The clinical record shall be an original, a microfilmed copy, an optical disc imaging system copy, or a certified copy. If the clinical record is microfilmed or maintained on an optical disc imaging system, the microfilm and the equipment needed to read the record must be accessible at the time and at the office of the on-site survey of the agency. The clinical record may be kept at the branch or parent agency, as determined by the agency. Duplicate records are not required.

(d) The Texas Department of Health (department) shall issue to or renew a branch office license for applicants who meet the requirements of this section.

(e) A branch office may offer fewer health services than the parent office but may not offer health services that are not also offered by the parent agency.

§115.28. Standards for Alternate Delivery Sites.

(a) An alternate delivery site providing hospice services shall comply with the requirements of §115.25 of this title (relating to Standards for Hospice Services).

(b) An alternate delivery site providing hospice services shall comply with the standards for hospice services in §115.25 of this title (relating to Standards for Hospice Services).

(c) A parent agency and an alternate delivery site providing hospice services shall meet the following requirements.

(1) On-site supervision of the alternate delivery site will be conducted by the parent agency at least monthly. More frequent supervision may be required considering the size of the service area and the scope of approved services provided by the parent agency. Supervision will be provided by the administrator or appropriate licensed professional personnel. The supervisory visits must be documented and include the date of the visit, the content of the consultation, the individuals in attendance, and the recommendations of the staff.

(2) Original personnel files may be kept in any location, as determined by the agency. Original personnel files shall be accessible and readily retrievable for inspection by the department at the site of the survey.

(3) The clinical record shall be an original, a microfilmed copy, an optical disc imaging system copy, or a certified copy. If the clinical record is microfilmed or maintained on an optical disc imaging system, the microfilm and the equipment needed to read the record must be accessible at the time and at the office of the on-site survey of the agency. The clinical record may be kept at the alternate delivery site office or parent agency, as determined by the agency. Duplicate records are not required.

(d) The Texas Department of Health (department) shall issue to or renew an alternate delivery site license for applicants who meet the requirements 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 November 23, 1993.

TRD-9332872

Susan K. Steeg
General Counsel
Texas Department of Health

Proposed date of adoption: April 22, 1994

For further information, please call: (512) 834-6650

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Subchapter D. Enforcement

• 25 TAC §§115.51-115.54

The new sections are proposed under the Health and Safety Code, §142.012, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of home and community support services agencies; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health. The new sections affect Health and Safety Code, §142.012.

§115.51. Surveys and Investigation Procedures.

(a) An on-site survey shall determine if the requirements of the statute and the rules are being met.

(1) The Texas Department of Health (department) or its authorized representatives may enter the premises of a license applicant or license holder at reasonable times to conduct an on-site survey incidental to the issuance of a license, and at other times as it considers necessary to insure compliance with the statute and the rules adopted under the statute. A

standard-by-standard evaluation is required before the initial annual license is issued unless waived in accordance with §115.13(a)(1)(B) of this title (relating to Change of Ownership or Services).

(2) At the discretion of the department, an on-site survey may be conducted for renewal of a license or issuance of a branch office or alternate delivery site license.

(b) Except for the investigation of complaints, an agency licensed by the department is not subject to additional surveys relating to home health, hospice, or personal assistance services while the agency maintains accreditation for the applicable services from the Joint Commission for Accreditation of Healthcare Organizations, the Community Health Accreditation Program, or other accreditation organizations that meet or exceed the standards adopted under this chapter.

(c) The department's authorized representative shall hold a conference with the person who is in charge of an agency prior to commencing the on-site survey or investigation for the purpose of explaining the nature and scope of the survey. The department's representative shall hold a conference with the person who is in charge of the agency when the survey is completed, and the department's representative shall identify any records that were duplicated. Any agency records that are removed from an agency shall be removed only with the consent of the agency.

(d) The department's authorized representative shall fully inform the person who is in charge of the agency of the preliminary findings of the survey and shall give the person a reasonable opportunity to submit additional facts or other information to the department's authorized representative in response to those findings. The response shall be made a part of the survey for all purposes and must be received by the department within ten calendar days of receipt of the preliminary findings of the survey by the agency.

(e) After a survey or investigation of an agency, the department shall provide at the exit conference with the person in charge of the agency specific and timely written notice of the preliminary findings of the survey including:

(1) the specific nature of the survey;

(2) any alleged violations of a specific statute or rule;

(3) the specific nature of any finding regarding an alleged violation or deficiency;

(4) if a deficiency is alleged, the severity of the deficiency; and

(5) if there are no deficiencies found, a statement indicating this fact.

(f) The surveyor shall:

(1) prepare a statement of deficiencies, if any;

(2) obtain a plan of correction for deficiencies which is provided by the agency and indicates the date(s) by which correction(s) will be made;

(3) obtain the signature of the person in charge of the agency acknowledging the receipt of the statement of deficiencies and plan of correction form; and

(4) obtain within ten calendar days of the survey or investigation written comments, if any, by the person in charge of the agency. Additional facts, written comments or other information provided by the agency in response to the findings shall be made a part of the record of the survey for all purposes.

(g) If deficiencies are cited and the plan of correction is not acceptable, the department shall notify the agency in writing and request that the plan of correction be resubmitted within ten calendar days of the agency's receipt of the department's written notice. Upon resubmission of an acceptable plan of correction, written notice will be sent by the department to the agency acknowledging same.

(h) The department will provide upon completion of the review and processing of the survey:

(1) information on the identity, including the signature, of each department representative conducting, reviewing, or approving the results of the survey and the date on which the department representative acted on the matter; and

(2) if requested by the agency, copies of all documents relating to the survey maintained by the department or provided by the department to any other state or federal agency that are not confidential under state law.

(i) If the survey relates to the issuance of the initial annual license, the agency shall come into compliance no later than 30 calendar days prior to the expiration of the temporary license. If evidence of compliance is not provided to the department prior to expiration of the temporary license, an initial annual license shall be denied to the applicant in accordance with §115.52 of this title (relating to License Denial, Suspension, or Revocations).

(j) If the survey relates to the issuance of the renewal license or a complaint investigation, the agency shall come into compliance 30 calendar days prior to the expiration date of the license or no later than the dates designated in the plan of correction, whichever comes first. If evidence of compliance is not provided to the department, an annual license may be revoked, suspended, or denied, in accordance with §115.52 of this title.

(k) The Texas Department of Health (department) shall verify the correction of deficiencies by mail or by an on-site survey.

(l) If a subsequent survey results in evidence of further deficiencies, a plan of correction may be requested in accordance with the provisions of this section or the department may propose action to deny, suspend, or revoke the license.

(m) The department may initiate disciplinary action, even if a plan of correction is accepted and completed.

§115.52. License Denial, Suspension, or Revocations.

(a) The Texas Department of Health (department) may deny, suspend, suspend on an emergency basis, or revoke a temporary, annual, branch office or alternate delivery site license issued to an applicant or agency if the applicant or agency:

(1) fails to comply with any provision of the statute;

(2) fails to comply with any provision of this chapter;

(3) has a provider agreement under the Social Security Act, Title XVIII, which has been terminated by the certifying body, Health Care Financing Administration, or if the agency withdraws its certification or its request for certification. An agency providing licensed and certified home health services that submits a request for a hearing as provided by this section is governed by the requirements of the statute and the rules relating to an agency providing licensed only home health services until suspension or revocation is finally determined by the department or, if the license is suspended or revoked, until the last day for seeking review of the department order or a later date fixed by order of the reviewing court;

(4) commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the agency pursuant to this chapter;

(5) has aided, abetted or permitted the commission of an illegal act; or

(6) fails to comply with an order of the commissioner of health or another enforcement procedure under the statute.

(b) The department may deny a license (temporary or annual) if the applicant or licensee:

(1) fails to provide the required application or renewal information; or

(2) discloses any of the following actions against or by the applicant, licensee, affiliate, or manager within the two-year period preceding the application:

(A) operation of an agency that has been decertified or had its contract cancelled under the Medicare or Medicaid program in any state;

(B) federal Medicare or state Medicaid sanctions or penalties;

(C) state or federal criminal convictions which imposed incarceration;

(D) federal or state tax liens;

(E) unsatisfied final judgement;

(F) eviction involving any property or space used by an agency in any state;

(G) unresolved state Medicaid or federal Medicare audit exceptions;

(H) denial, suspension, or revocation of an agency license or a license for any health care facility or agency in any state; or

(I) a court injunction prohibiting ownership or operation of an agency.

(c) The department may suspend or revoke an existing valid license or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensed agency.

(1) In determining whether a criminal conviction directly relates, the department shall consider the provisions of Texas Civil Statutes, Article 6252-13c.

(2) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to own or operate an agency. These offenses also relate to the holding of a home health medication aide permit or an entity approved under §115.62(o) of this title (relating to Home Health Medication Aides), to conduct a home health medication aide training program:

(A) a misdemeanor violation of the statute;

(B) a conviction relating to deceptive business practices;

(C) a misdemeanor or felony offense involving moral turpitude;

(D) the misdemeanor of practicing any health-related profession without a required license;

(E) a conviction under any federal or state law relating to drugs, dangerous drugs or controlled substances;

(F) an offense under the Texas Penal Code, Title 5, involving a client or client of a health care facility or agency;

(G) a misdemeanor or felony offense under various titles of the Texas Penal Code, as follows:

(i) Title 5, concerning offenses against the person;

(ii) Title 7, concerning offenses against property;

(iii) Title 9, concerning offenses against public order and decency;

(iv) Title 10, concerning offenses against public health, safety, and morals;

(v) Title 4, concerning offenses of attempting or conspiring to commit any of the offenses in clauses (i)-(iv) of this subparagraph; and

(vi) other misdemeanors and felonies which indicate an inability or tendency for the person to be unable to own or operate an agency, hold a permit, or receive program approval under §115. 62(o) of this title (relating to Home Health Medication Aides), if action by the department will promote the intent of the statute, this chapter, or Texas Civil Statutes, Article 6252-13c.

(3) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, the license shall be revoked.

(d) If the department proposes to deny, suspend, or revoke a license, the department shall notify the agency by certified mail, return receipt requested, or personal delivery of the reasons for the proposed action and offer the agency an opportunity for a hearing.

(1) The agency must request a hearing within 30 calendar days of receipt of the notice. Receipt of the notice is presumed to occur on the tenth day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.

(2) The request for a hearing must be in writing and submitted to the Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(3) A hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).

(4) If the agency does not request a hearing in writing within 30 calendar days of receipt of the notice, the agency is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(5) If the agency fails to appear or be represented at the scheduled hearing, the agency has waived the right to a hearing and the proposed action shall be taken.

(e) The department may suspend or revoke a license to be effective immediately when the health and safety of persons are threatened. The department shall notify the agency of the emergency action by certified mail, return receipt requested, or personal delivery of the notice and of the date of a hearing, which shall be within seven calendar days of the effective date of the suspension or revocation. The effective date of the emergency action shall be stated in the notice. The hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).

(f) If a person violates the licensing requirements of the Act, the department may petition the district court to restrain the person from continuing the violation.

(g) If a person operates an agency without a license issued under the Act, the person is liable for a civil penalty of not less than $1,000 nor more than $2,500 for each day of violation.

(h) A person who has had an agency license revoked under this section, may not apply for an agency license for one year following the date of revocation.

(i) If the department suspends a license, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. An authorized representative of the department shall investigate prior to making a determination.

(1) During the time of suspension, the suspended license holder shall return the license to the department.

(2) If a suspension overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in this chapter; however, the department may not renew the license until the department determines that the reason for suspension no longer exists.

(j) If the department revokes or does not renew a license, a person may reapply for a license by complying with the requirements and procedures in this chapter at the time of reapplication. The department may refuse to issue a license if the reason for revocation or nonrenewal continues to exist.

(k) Upon revocation or nonrenewal, a license holder shall return the license to the department.

§115.53. Complaints.

(a) An agency shall provide to each person who receives home health, hospice, or client assistance services a written statement that informs the consumer that a complaint against the agency may be directed to the Texas Department of Health (department). The statement shall be provided at the time of admission and shall direct the consumer to register complaints with the director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, 1-800-228-1570.

(b) A complaint containing allegations which are a violation of the statute or this chapter will be investigated by the department.

(c) A complaint containing allegations which are not a violation of the statute or this chapter will not be investigated by the department but shall be referred to law enforcement agencies or other agencies, as appropriate.

(d) The department shall inform in writing a complainant who identifies himself by name and address of the following information:

(1) the receipt of the complaint;

(2) whether the complainant's allegations allege potential violations of the statute or this chapter warranting an investigation;

(3) whether the complaint will be investigated by the department;

(4) whether and to whom the complaint will be referred; and

(5) the findings of the complaint investigation.

(e) Procedures concerning complaints about permitted home health medication aides, home health medication aide programs or another person shall be as follows.

(1) The initial notification of a complaint may be in writing or by telephone. The complaint may be submitted to the Director, Health Facility Licensure and Certification Division, 1100 West 49th Street, Austin, Texas 78756-3183, 1-800-228-1570.

(2) Anonymous complaints may be investigated by the department if the complainant provides sufficient information.

(3) If the department determines that the complaint does not come within the department's jurisdiction, the department shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.

(4) The department shall at least as frequently as quarterly, notify the parties to the complaint of the status of the complaint until its final disposition.

(5) If the department determines that there are insufficient grounds to support the complaint, the complaint shall be dismissed and written notice of the dismissal shall be given to the home health medication aide permit holder or person against whom the complaint has been filed and the complainant.

(6) If the department determines that there are sufficient grounds to support the complaint, the department may propose to deny, suspend, emergency suspend, revoke, or not renew a home health medication aide permit or rescind a home health medication aide program approval.

§115.54. Criminal History Checks and Administrative Review.

(a) An agency must comply with the Health and Safety Code, Chapter 250, Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities. Failure to comply shall be grounds for denial, suspension, or revocation of the agency's license.

(b) An agency may not employ a person in a position, the duties of which involve direct contact with a consumer, unless the agency has applied for a criminal history check on the applicant for employment and has received a response from the Texas Department of Health (department) unless there is an emergency situation or the 60-day waiting period described in subsection (h) of this section has expired.

(1) The requirement to request a criminal history check only applies if the person to be employed will have direct contact with a consumer in the agency. This means that the person must have direct contact with a client of the agency, the client's family, or the client's visitors or the property of such persons.

(2) A criminal history check is not required if the applicant for employment is licensed under Texas law and will be working within the scope of that license.

(3) Criminal history checks may be requested only for applicants for employment to whom an offer of employment is made or employees. Criminal history checks may not be requested for persons who will not be employed by the agency, such as volunteers or independent contractors. An employee or applicant for employment is a person for whom the agency is or will be required to issue a W-2 form on behalf of the person.

(4) A previous criminal history check on the person done under this section or through other means does not satisfy the requirements of the law or this section. A new criminal history check must be requested for any person each time an offer of employment is made to that person.

(c) An agency may employ an applicant prior to receiving a response to the request for a criminal history check only in an emergency situation requiring immediate employment.

(1) An emergency requiring immediate employment is a situation in which the urgent need to hire an individual exists as a result of a survey deficiency on staffing ratios or the potential of the facility to fall below its desired staff ratio exists, thus putting a client's health and safety at risk.

(2) The prospective employee must furnish to the agency a sworn affidavit stating that he or she has no conviction for an offense described in the Health and Safety Code, §250.005, which lists the types of offenses which bar employment.

(3) The affidavits should be maintained in the agency personnel records at least until the 60-day waiting period described in subsection (h) of this section has expired.

(4) The agency must request the criminal history check within 72 hours of employment for a person employed in an emergency situation.

(d) An agency shall file a request for a criminal history check on official forms of the department. The requests shall be forwarded to the designated representative of the department.

(1) The request must be completely filled out including the mailing address of the applicant or employee.

(2) The request must include a check or money order payable to the department in the amount of one dollar for each name submitted. This amount will cover the fee charged by Department of Public Safety (DPS) for processing each criminal history check.

(3) A request for a criminal history check is not considered to be submitted unless the complete form and fee is received for each name on the request.

(A) Forms which are incomplete will be returned to the agency.

(B) A fee which covers some, but not all, names submitted on a form shall be applied to the names beginning at the top of the form. The names further down on the form, which are not covered by the partial fee, shall be returned to the agency with a request for the full fee.

(e) An agency must inform each person that applies for employment that the agency is required to conduct a criminal history check before it may make an offer of employment to the applicant and that the agency will request a criminal history check on each applicant to whom an offer of employment is made.

(f) The department shall review the criminal history received from the DPS to determine if a conviction on the record bars the person from employment in an agency under the Health and Safety Code, §250.005 or §250.006.

(g) Convictions which are not reflected on the criminal history received from DPS do not trigger the requirements of this section or the Health and Safety Code, Chapter 250.

(h) If no response has been received by the agency from the department within 60 days of submission of the request for a criminal history check, the agency may assume that it is likely that no conviction barring employment was found and that the person is employable by the agency.

(1) No notice will be sent by the department that the person is employable.

(2) Subsections (i) and (j) of this section shall apply to a criminal history received after the 60-day period.

(i) If the department receives a criminal history from DPS that indicates that the person has been convicted of an offense under the Health and Safety Code, §250.005, which bars employment, the department shall notify the person who was the subject of the check and the agency requesting the check of the results.

(1) The notice shall be a preliminary finding that the person is unemployable.

(2) If the person believes that the conviction does not fall within the Health and Safety Code, §250.005, the person (not the agency) may object by filing a written request for informal review with the director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(3) The written request must be submitted to the department not later than 20 days after the date the notice from the department is received by the person. That person is presumed to have received the notice on the tenth day after it was mailed to the person unless another date appears on the United States postal service return receipt.

(4) If the person makes a timely request for informal review, the department shall review the criminal history only to verify that the conviction falls within the Health and Safety Code, §250.005.

(A) If the conviction does fall within that section, the department shall issue a notice of a final finding to the person and the agency that the person is unemployable by the agency.

(B) If the department finds that an error was made and that the person is employable, the department shall notify the person and the agency.

(C) If the department determines that the conviction does not fall under §250.005, but falls under the Health and Safety Code, §250.006, which makes the person potentially unemployable, the department shall follow the procedures in subsection (j) of this section relating to an administrative review panel.

(5) If the person fails to request an informal review, the department shall issue a notice of final finding that the person is unemployable. The notice shall be sent to the person and the agency.

(j) If the conviction is a potential bar to employment under the Health and Safety Code, §250.006, the department will notify the person and the agency of this preliminary finding.

(1) The notice shall allow the person who was the subject of the criminal history check the opportunity to appeal to an administrative review panel established by the department.

(2) The purpose of the panel will be to determine if mitigating circumstances existed at the time of the offense or whether the person has been substantially rehabilitated since that time. The panel will determine whether the person is likely to be a threat to clients, their families or their visitors or the property of such persons.

(3) The person (not the agency) may request appeal to the administrative review panel by submitting a written request to the director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(4) One original and five copies of the request must be submitted to the department no later than 20 days after the date the person receives the notice from the department. The person is presumed to have received the notice on the tenth day after it was mailed to the person unless another date appears on the United States Postal Service return receipt.

(5) The request must include 6 copies of any written documentation which the person wishes to have the administrative review panel consider. Such documentation may include information on the following:

(A) whether the conviction was a misdemeanor or felony;

(B) the person's age when the offense was committed;

(C) the length of time since the offense was committed;

(D) what the person did when he or she committed the offense;

(E) any court imposed punishment and whether the person has completed that punishment;

(F) any rehabilitation since the offense;

(G) any mitigating circumstances when the offense was committed;

(H) any other convictions since the time of the offense;

(I) the person's employment history, especially in a health care facility or agency, since the offense; and

(J) such other matters as the person may wish to submit.

(6) The criminal history received from DPS and the documentation submitted by the person shall be forwarded to the administrative review panel for its review. The panel shall determine whether the person remains potentially unemployable by the agency or is employable.

(A) If the panel decides that the person is now employable by the agency, the person and the agency will be notified of that decision in writing.

(B) If the panel determines that the person remains potentially unemployable by the agency, the person will be notified of the opportunity to personally appear before the panel. The notice shall include the date, time and place where the person can meet with the panel. After the opportunity for an appearance and if the panel determines that the person is unemployable by the agency, the department will notify the agency and the person of the final finding in writing.

(C) The person or the agency may not contact any member of the panel directly except at the personal appearance before the panel.

(D) Quorum of the panel is three members. Any decision of the panel must be by agreement of three members.

(E) Deliberations of the panel are not subject to the Open Meetings Act, Government Code, Chapter 551.

(7) If the person fails to request an administrative review panel after notice that the person is potentially unemployable or if the person fails to exercise his or her opportunity to personally appear before the panel, the department shall send a notice of unemployability to the agency and the person.

(8) If the person fails to appeal to the administrative review panel, the department shall issue a final finding of unemployability to the agency and the person.

(k) The initial notice to the person and the agency under subsection (i) and (j) of this section shall inform the person how corrections to the criminal history may be made by contacting DPS.

(1) Such corrections may include updating or making accurate the conviction information or clarifying that the conviction is actually the conviction of another person.

(2) The department cannot provide assistance in correcting a criminal history; however, the department will receive a copy of any corrected criminal history and will reevaluate the information received in the same manner that the original criminal history was evaluated.

(3) It is the responsibility of the applicant for employment or the employee to correct errors of fact or identity in the criminal history received from DPS. The person should contact DPS directly and provide whatever positive identification information may be required for a verification of the record and request a corrected criminal history.

(4) A person should request a review by the department under subsections (i) or (j) of this section of the finding of potentially unemployable or unemployable at the same time that a correction of the record by DPS is being requested.

(A) The request to the department should indicate that the person is seeking a correction of the records by DPS.

(B) The corrected criminal history should be presented to the department as part of the documentation submitted by the person.

(l) If an agency receives a preliminary finding under subsections (i) or (j) of this section on a person who is no longer employed by the agency or is no longer an applicant with an offer of employment, the agency shall immediately inform the department in writing of this fact.

(A) Since the Health and Safety Code, Chapter 250, and this section do not apply to a person who is not an employee of or an applicant with an offer of employment from the agency requesting the criminal history check, the department shall immediately cease all procedures under this section upon receiving notice from an agency pursuant to this subsection.

(B) The department shall notify the person who was the subject of the criminal history check and the agency of the cessation of procedures.

(m) The special provisions of the Health and Safety Code, Chapter 250, relating to nurse aides and the nurse aide registry do not apply to persons hired as home health aides.

(n) An agency must immediately discharge any employee in a position the duties of which involve direct contact with a client, a client's family, or a client's visitors or the property of such persons if the criminal history reveals a conviction of a crime that bars employment as designated by the department in its letter to the person and the agency with a final finding (not a preliminary finding) of unemployability. The law does not require discharge of an employee when the finding is only preliminary.

(o) It is not necessary for the agency to notify the department of any actions taken in response to the results of the criminal history on any individual.

(p) The criminal history records are for the exclusive use of the department and the requesting agency. The criminal history records and the information they contain may not be released or otherwise disclosed to any person or entity except on court order or with the written consent of the person being investigated.

(1) An agency may not share information with another agency or other providers except with the written consent of the person who is the subject of the criminal history check.

(2) It is a criminal offense to release information in violation of the law.

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 November 30, 1993.

TRD-9332871

Susan K Steeg
General Counsel
Texas Department of Health

Proposed date of adoption: April 22, 1994

For further information, please call: (512) 834-6650

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Subchapter E. Home Health Aides and Medication Aides

• 25 TAC §115.61, §115.62

The new sections are proposed under the Health and Safety Code, §142. 012, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of home and community support services agencies; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health. The new sections affect Health and Safety Code, §142.012.

§115.61. Home Health Aides.

(a) A home health aide may be used by an agency providing licensed home health services if the aide meets one of the following requirements:

(1) a minimum of one year full-time experience in direct client care in an institutional setting (hospital or nursing home);

(2) one year full-time experience within the last five years in direct client care in an agency setting;

(3) satisfactorily completed a training and competency evaluation program which complies with the requirements of this section;

(4) satisfactorily completed a competency evaluation program which complies with the requirements of this section;

(5) submitted to the agency documentation from the director of programs or the dean of a school of nursing that states that the individual is a nursing student who has demonstrated competency in providing basic nursing skills in accordance with the school's curriculum; or

(6) be on the department's nurse aide registry with no finding against the aide relating to client abuse or neglect or misappropriation of client property.

(b) Tasks to be performed by a home health aide shall be assigned by and performed under the supervision of a registered nurse who shall be responsible for the client care provided by a home health aide.

(c) A home health aide may not perform those tasks that are prohibited under §115.21(m) of this title (relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies).

(d) A home health aide may perform those tasks that are delegated and supervised by a registered nurse in accordance with §115.21(m) of this title (relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies).

(e) The training portion of a training and competency evaluation program for home health aides must be conducted by or under the general supervision of a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of home health care. The training program may contain other aspects of learning, but shall contain the following.

(1) a minimum of 75 hours as follows:

(A) an appropriate number of hours of classroom instruction; and

(B) a minimum of 16 hours of clinical experience which will include in-home training and shall be conducted in a home, a hospital, a nursing home, or a laboratory;

(2) completion of at least 16 hours of classroom training before a home health aide begins clinical experience working directly with clients under the supervision of qualified instructors;

(3) if licensed vocational nurse instructors are used for the training portion of the program, the following qualifications and supervisory requirements apply:

(A) a licensed vocational nurse may provide the home health aide classroom training under the supervision of a registered nurse who has two years of nursing experience, at least one year of which must be in the provision of home health care;

(B) licensed vocational nurses, as well as registered nurses, may supervise home health aide candidates in the course of the clinical experience; and

(C) a registered nurse must maintain overall responsibility for the training and supervision of all home health aide training students; and

(4) an assessment that the student knows how to read and write English and carry out directions.

(f) The classroom instruction and clinical experience content of the training portion of a training and competency evaluation program must include, but is not limited to:

(1) communications skills;

(2) observation, reporting, and documentation of a client's status and the care or service furnished;

(3) reading and recording temperature, pulse, and respiration;

(4) basic infection control procedures and instruction on universal precautions;

(5) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(6) maintenance of a clean, safe, and healthy environment;

(7) recognizing emergencies and knowledge of emergency procedures;

(8) the physical, emotional, and developmental needs of and ways to work with the populations served by the agency including, the need for respect for the client and his or her privacy and property;

(9) appropriate and safe techniques in personal hygiene and grooming that include:

(A) bed bath;

(B) sponge, tub, or shower bath;

(C) shampoo, sink, tub, or bed;

(D) nail and skin care;

(E) oral hygiene; and

(F) toileting and elimination;

(10) safe transfer techniques and ambulation;

(11) normal range of motion and positioning;

(12) adequate nutrition and fluid intake;

(13) any other task that the agency may choose to have the home health aide perform in accordance with §115.21(m) of this title (relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies); and

(14) the rights of the elderly.

(g) This section addresses the requirements for the competency evaluation program or the competency evaluation portion of a training and competency evaluation program.

(1) The competency evaluation must be performed by a registered nurse.

(2) The competency evaluation must address each of the subjects listed in subsection (f)(2)-(13) of this section.

(3) Each of the areas described in subsection (f)(3) and (f)(9)-(11) of this section must be evaluated by observation of the home health aide's performance of the task with a client or person.

(4) Each of the areas described in subsection (f)(2), (f)(4)-(8), (f)(12) and (f)(13) of this section may be evaluated through written examination, oral examination, or by observation of a home health aide with a client.

(5) A home health aide is not considered to have successfully completed a competency evaluation if the aide has an unsatisfactory rating in more than one of the areas described in subsection (f)(2)-(13) of this section.

(6) If an aide receives an unsatisfactory rating, the aide shall not perform that task without direct supervision by a registered nurse or licensed vocational nurse until the aide receives training in the task for which he or she was evaluated as unsatisfactory and successfully completes a subsequent competency evaluation with a satisfactory rating on the task.

(7) If an individual fails to complete the competency evaluation satisfactorily, the individual shall be advised of the areas in which he or she is inadequate.

(h) If a person who is not an agency desires to implement a home health aide training and competency evaluation

program or a competency evaluation program, the person shall meet the requirements of this section in the same manner as set forth for an agency.

§115.62. Home Health Medication Aides.

(a) General.

(1) A person may not administer medication to a client unless the person:

(A) holds a current license under state law which authorizes the licensee to administer medication;

(B) holds a current permit issued under this section and acts under the delegated authority of a registered nurse licensed by the Board of Nurse Examiners which authorizes the licensee to administer medication;

(C) performs duties of a qualified dialysis technician within the scope authorized under §115.24 of this title (relating to Standards for Home Dialysis Designation);

(D) administers a medication to a client of an agency in accordance with rules of the Board of Nurse Examiners that permit delegation of the administration of medication to a person not holding a permit under this section; or

(E) administers noninjectable medication under circumstances authorized by the memorandum of understanding between the Board of Nurse Examiners and the department.

(2) A home health medication aide may be utilized in an agency providing licensed and certified home health services, licensed home health services, hospice services, or personal assistance services. If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements which are more stringent shall apply to the licensed and certified home health services agency.

(3) Other exemptions shall be as follows.

(A) A person may administer medication to a client of an agency without the license or permit as required in paragraph

(1) of this subsection if the person is:

(i) a graduate nurse holding a temporary permit issued by the Board of Nurse Examiners;

(ii) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(iii) a graduate vocational nurse holding a temporary permit issued by the Board of Vocational Nurse Examiners;

(iv) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(v) a trainee in a medication aide training program approved by the Texas Department of Health (department) under this chapter who is administering medications as part of the trainee's clinical experience.

(B) An exempt person described in subparagraph (A) of this paragraph shall be supervised as follows.

(i) A person described in:

(I) subparagraph (A)(i) of this paragraph shall be supervised by a registered nurse;

(II) subparagraph (A)(ii) or (iv) of this paragraph shall be supervised by the student's instructor; or

(III) subparagraph (A)(iii) of this paragraph shall be supervised by a registered nurse or licensed vocational nurse.

(ii) Supervision must be on-site.

(C) An exempt person described in this subsection may not be used in a supervisory or charge position.

(b) Required actions.

(1) Upon request by a client or the client's family for administration of medications by a home health medication aide, the registered nurse may assign a home health medication aide to administer medications. If home health medication aide services are provided, a home health medication aide shall be employed by the agency to provide home health medication aide services, and a registered nurse shall be employed by or under contract with the agency to perform the initial assessment; prepare the client care plan; establish the medication list, medication administration record, and medication aide assignment sheet; and supervise the home health medication aide. The registered nurse shall be available to supervise the home health medication aide when services are provided.

(2) The clinical records of a patient utilizing a home health medication aide shall include the following documentation:

(A) a request signed by the client or family for assignment of a home health medication aide; and

(B) a statement signed by the client or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(3) The registered nurse (RN) shall be knowledgeable regarding the rules of the department governing home health medication aides and shall assure that the home health medication aide is in compliance with the statute.

(4) A permit holder must:

(A) function under the supervision of a registered nurse;

(B) function in accordance with applicable law and this chapter relating to administration of medication and operation of the agency;

(C) comply with department rules applicable to personnel used in an agency; and

(D) comply with this section and §115.61 of this title (relating to Home Health Aides) if the person will be used as a home health aide and a home health medication aide.

(5) The practitioner's orders must state whether medications may be administered by a home health medication aide.

(6) The RN shall make a supervisory visit while the medication aide is in the client's residence at least weekly or when any change in medication regimen is ordered if the client is not stable and predictable or the client's medication changes.

(c) Permitted actions. A permit holder is permitted to:

(1) observe and report to the agency's registered nurse and document in the clinical note reactions and side effects to medication shown by a client;

(2) take and record vital signs prior to the administration of medication which could affect or change the vital signs;

(3) administer regularly prescribed medication which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication

aide shall document the administered medication in the client's clinical note;

(4) administer oxygen per nasal cannula or a non-sealing face mask only in emergency. Immediately after the emergency, the permit holder shall verbally notify the supervising registered nurse and appropriately document the action and notification;

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, topical, and rectal medication unless prohibited by subsection (d)(10) of this section; and

(6) administer medications only from the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy.

(d) Prohibited actions. Permit holders shall not:

(1) administer a medication by any injectable route;

(2) administer medication used for intermittent positive pressure breathing (IPPB) treatment or any form of medication inhalation treatments;

(3) administer previously ordered pro re nata (PRN) medication unless authorization is obtained from the agency's registered nurse. If authorization is obtained, the permit holder must:

(A) document in the client's clinical notes symptoms indicating the need for medication and the time the symptoms occurred;

(B) document in the client's clinical notes that the agency's registered nurse was contacted, symptoms were described, and permission was granted to administer the medication and the time of contact;

(C) obtain permission to administer the medication each time the symptoms occur in the client; and

(D) insure that the client's clinical record is co-signed by the registered nurse who gave permission within seven calendar days of incorporation of the notes into the clinical record;

(4) administer the initial dose of a medication that has not been previously administered to a client. Whether a medication has been previously administered shall be determined by the client's current clinical records;

(5) calculate a client's medication doses for administration except that the permit holder may measure a prescribed amount of a liquid medication to be administered or break a tablet for administration to a client provided the registered nurse has calculated the dosage. The client's medication administration record shall accurately document how the tablet must be altered prior to administration;

(6) crush medication unless authorization has been given in the original physician's order or obtained from the agency's registered nurse. The authorization to crush the specific medication shall be documented on the client's medication administration record;

(7) administer medications or feedings by way of a tube inserted in a cavity of the body except as specified in §115. 21(m)(8) of this title (relating to Licensure Requirements and Standards for All Home and Community Support Services Agencies);

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist or podiatrist;

(9) order a client's medication from a pharmacy;

(10) apply topical medications that involve the treatment of skin that is broken or blistered when a specified aseptic technique is ordered by the attending physician;

(11) administer medications from any container other than the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;

(12) steal, divert, or otherwise misuse medications;

(13) violate any provision of the statute or of this chapter;

(14) fraudulently procure or attempt to procure a permit;

(15) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(16) administer medications if the person is unable to do so with reasonable skill and safety to clients by reasons of drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material.

(e) Applicant qualifications. Each applicant for a permit issued under the statute must complete a training program. Prior to enrollment in a training program and prior to application for a permit under this section, all persons:

(1) must be able to read, write, speak, and understand English;

(2) must be at least 18 years of age;

(3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) must be a graduate of a high school or have an equivalent diploma or higher degree; and

(5) must have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under §115.61 of this title (relating to Home Health Aides).

(f) Nursing graduates. A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section; provided, however, the date of graduation from the nursing school must have been no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.

(1) An official application form shall be submitted to the department by the applicant. The applicant must meet the requirements of subsection (e)(1)-(4) of this section.

(2) The application shall be accompanied by the permit application fee.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) The department shall acknowledge receipt of the application by forwarding to the applicant a copy of this chapter and the department's open book examination.

(5) The applicant shall complete the open book examination and return it within 45 calendar days to the department.

(6) The applicant shall complete the department's written examination. The site of the examination shall be determined by the department. Any applicant failing to schedule and take the examination within 45 calendar days of the examination notice may have his or her application voided.

(7) An open book or written examination shall not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, the department will evaluate all application documents submitted by the applicant.

(9) The department shall notify the applicant in writing of the examination results.

(g) Nursing students. A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this section;

(2) successfully completed courses at the nursing school which cover the department's curriculum for a home health medication aide training program;

(3) submits a statement which is signed by the nursing school's administrator or other authorized individual and certifies that the person completed the courses specified under paragraph (2) of this subsection. The administrator is responsible for determining that the courses to which he or she certifies cover the department's curriculum. The statement shall be submitted with the person's application for a permit under this section; and

(4) complies with subsection (f)(1)-(2), and (f)(4)-(9) of this section.

(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application, may request a waiver of the training program requirement.

(1) An official application form shall be submitted to the department by the graduate. The applicant must meet the requirements of subsection (e)(1) -(4) of this section.

(2) The application shall be accompanied by the permit application fee.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of home health medication aides, a copy of the legal authority (law, act, code, section, or otherwise) for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.

(4) The department shall acknowledge receipt of the application by forwarding to the applicant a copy of this chapter and of the department's open book examination.

(5) The department may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant shall complete the department's open book examination and return it within 45 calendar days to the department.

(7) The applicant shall complete the department's written examination. The site of the examination shall be determined by the department. Any applicant failing to schedule and take the examination within 45 calendar days of the examination notice may have his or her application voided.

(8) An open book or written examination shall not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, the department will evaluate all application documents submitted by the applicant.

(10) The department shall notify the applicant in writing of the examination results.

(i) Application by trainees. An applicant under subsection (e) of this section must submit to the department, no later than 30 calendar days after enrollment in a training program, all required information and documentation on official department forms.

(1) The department will not consider an application as officially submitted until the applicant submits the nonrefundable combined permit application and examination fee payable to the Texas Department of Health. The fee required by subsection

(n) of this section must accompany the application form.

(2) The general statement enrollment form shall contain the following application material which is required of all applicants:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all of the requirements in subsection (e) of this section were met prior to the start of the program;

(C) a statement that the applicant understands that application fee submitted in the permit process is nonrefundable;

(D) a statement that the applicant understands that materials submitted in the application process are not returnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to the department; and

(F) the applicant's signature which has been dated and notarized.

(3) A certified copy or a photocopy which has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript or an equivalent GED diploma or higher degree shall be submitted unless the applicant is applying under subsection (f) of this section.

(4) The department will send a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 30 calendar days after the date of the notice shall be voided.

(5) Notice of application acceptance, disapproval, or deficiency shall be in accordance with subsection (q) of this section.

(j) Examination. A written examination shall be given by the department to each applicant at a site determined by the department.

(1) No final examination shall be given to an applicant until the applicant has met the requirements of subsections (e) and (i) of this section, and if applicable, subsections (f), (g), or (h) of this section.

(2) The applicant shall be tested on the subjects taught in the training program curricula and clinical experience. The examination shall cover an applicant's knowledge of accurate and safe drug therapy to an agency's clients.

(3) A training program shall notify the department at least four weeks prior to its requested examination date.

(4) The department shall determine the passing grade on the examination.

(5) An applicant who fails the examination shall be notified in writing by the department.

(A) An applicant under subsection

(e) of this section may be given a subsequent examination, without additional payment of a fee, upon the applicant's written request to the department.

(B) A subsequent examination shall be completed within 45 calendar days from the date of the failure notification. The site of the examination shall be determined by the department.

(C) Another examination shall not be permitted if the student fails the subsequent examination unless the student

enrolls and successfully completes another training program.

(6) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to the department. The examination shall be completed within 45 calendar days from the date of the originally scheduled examination. The rescheduled examination shall be at a site determined by the department.

(7) An applicant, whose application for a permit will be disapproved under subsection (k) of this section is ineligible to take the examination.

(k) Determination of eligibility. The department shall receive and approve or disapprove, all applications. Notices of application approval, disapproval or deficiency shall be in accordance with subsection (q) of this section.

(1) An application for a permit shall be disapproved if the person has:

(A) not met the requirements of subsections (e)-(i) of this section, if applicable;

(B) failed to pass the examination prescribed by the department as set out in subsection (j) of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by the department;

(D) violated or conspired to violate the statute or any provision of this chapter; or

(E) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a permit holder as set out in subsection (r) of this section.

(2) If, after review, the department determines that the application should not be approved, the director shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with subsection (r) of this section.

(l) Permit renewal. Home health medication aides shall comply with the following permit renewal requirements.

(1) When issued, a permit is valid for one year.

(2) A permit holder must renew the permit annually.

(3) The renewal date of a permit shall be the last day of the current permit.

(4) Each permit holder is responsible for renewing the permit before the expiration date. Failure to receive notification from the department prior to the expiration date of the permit shall not excuse failure to file for timely renewal.

(5) A permit holder must complete a seven clock hour continuing education program approved by the department prior to expiration of the permit in order to renew the permit. Continuing education hours are required for the first renewal.

(6) The department shall deny renewal of the permit of a permit holder who is in violation of the statute or this chapter at the time of application for renewal.

(7) Home health medication aide permit renewal procedures are as follows.

(A) At least 30 calendar days prior to the expiration date of a permit, the department will send to the permit holder at the address in the department's records, notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form which the permit holder must complete and return with the required renewal fee.

(B) The renewal form shall include the preferred mailing address of the permit holder and information on certain misdemeanor and felony convictions. It must be signed by the permit holder.

(C) The department shall issue a renewal permit to a permit holder who has met all requirements for renewal.

(D) A permit shall not be renewed if the permit holder does not complete the required seven hour continuing education requirement. Successful completion shall be determined by the student's instructor. An individual who does not meet the continuing education requirement shall complete a new program, application, and examination in accordance with the requirements of this section.

(E) A permit shall not be renewed if renewal is prohibited by the Texas Education Code, §57.491 relating to defaults on guaranteed student loans.

(F) If a permit holder fails to timely renew his or her permit, because the permit holder is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the permit holder may renew the permit pursuant to this subsection.

(i) Renewal of the permit may be requested by the permit holder, the permit holder's spouse, or an individual having power of attorney from the permit holder. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(ii) Renewal may be requested before or after the expiration of the permit.

(iii) A copy of the official orders or other official military documentation showing that the permit holder is or was on active military duty serving outside the State of Texas should be filed with the department along with the renewal form.

(iv) A copy of the power of attorney from the permit holder shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(v) A permit holder renewing under this subsection shall pay the applicable renewal fee.

(vi) A permit holder is not authorized to act as a home health medication aide after the expiration of the permit unless and until the permit holder actually renews the permit.

(vii) A permit holder renewing under this subsection shall not be required to submit any continuing education hours.

(8) A person whose permit has expired for not more than two years may renew the permit by submitting to the department:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year or part of a year that the permit has been expired; and

(D) proof of having earned, prior to expiration of the permit, seven hours in an approved continuing education program as required in subsection (l)(5) of this section.

(9) A permit that is not renewed during the two years after expiration may not be renewed.

(10) Notices of permit renewal approval, disapproval, or deficiency shall be in accordance with subsection (q) of this section (relating to Processing Procedures).

(m) Changes.

(1) Notification of changes shall be reported to the department within 30 calendar days after a change of address or name.

(2) The department will replace a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.

(n) Fees.

(1) The schedule of fees is as follows:

(A) combined permit application and examination fee--$25;

(B) renewal fee-$15; and

(C) permit replacement fee-$5.00.

(2) All fees are nonrefundable.

(3) An applicant whose personal check for the combined permit application and examination fee is not honored by the financial institution may reinstate the application by remitting to the department a money order or cashier's check for the amount within 30 calendar days of the date of the applicant's receipt of the department's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(4) A permit holder whose personal check for the renewal fee is not honored by the financial institution shall remit to the department a money order or cashier's check within 30 calendar days of the date of the licensee's receipt of the department's notice. If proper payment is not received, the permit shall not be renewed. If a renewal card has already been issued, it shall be voided.

(o) Training program requirements.

(1) An educational institution accredited by the Texas Education Agency or Texas Higher Education Coordinating Board which desires to offer a training program shall file an application for approval on an official form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(A) All signatures on official forms and supporting documentation must be originals.

(B) The application shall include:

(i) the anticipated dates of the program;

(ii) the location(s) of the classroom course(s);

(iii) the name of the coordinator of the program;

(iv) a list of instructors and any other person responsible for the conduct of the program. The list must include addresses and telephone numbers for each instructor; and

(v) an outline of the program content and curriculum if the curriculum covers more than the department's established curricula.

(C) The department may conduct an inspection of the classroom site.

(D) Notice of approval or proposed disapproval of the application will be given to the program within 30 calendar days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the statute or of this chapter the reasons for disapproval shall be given in the notice.

(E) An applicant may request a hearing on a proposed disapproval in writing within ten calendar days of receipt of the notice of the proposed disapproval. The hearing shall be in accordance with subsection (r) of this section and the Administrative Procedure Act, Texas Government Code, Chapter 2001. If no request is made, the applicant is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(2) The program shall include, but shall not be limited to, the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in the client's clinical records, including PRN medications;

(E) minimum licensing standards for agencies covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under the Social Security Act, Title XVIII (Medicare) pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the agency, including agency personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of permit holders in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to home health clients;

(K) instruction on universal precautions; and

(L) the provisions of this chapter.

(3) The program shall consist of 140 hours: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, ten hours of clinical experience including clinical observation and skills demonstration under the supervision of a registered nurse in an agency, and ten more hours in the return skills demonstration laboratory in the preceding order. A classroom or laboratory hour shall constitute 50 clock minutes of actual classroom or laboratory time.

(A) Class time shall not exceed four hours in a 24-hour period.

(B) The completion date of the program shall be a minimum of 60 calendar days and a maximum of 180 calendar days from the starting date of the program.

(C) Each program shall follow the curricula established by the department.

(4) At least seven calendar days prior to the commencement of each program, the coordinator shall notify the department in writing of the starting date, the

ending date, the daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by the department prior to the program's effective date of the change.

(6) The program instructors of the classroom hours shall be a registered nurse and registered pharmacist.

(A) The nurse instructor shall have a minimum of two years of full-time experience in caring for the elderly, chronically ill, or pediatric clients or been employed full time for a minimum of two years with a home and community support services agency. An instructor in a school of nursing may request a waiver of the experience requirement.

(B) The pharmacist instructor shall have a minimum of one year of experience and be currently employed as a pharmacist.

(7) The coordinator shall provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the director of nursing of the agency used for the clinical experience.

(A) The clinical experience shall be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of a registered nurse.

(B) The coordinator shall be responsible for final evaluation of the student's clinical experience.

(8) Each program shall issue to each student, upon successful completion of the program, a certificate of completion, which shall include the program's name, the student's name, the date of completion, and the signature of the program coordinator.

(9) Each program shall inform the department of the satisfactory completion for each student within 15 calendar days of completion of the course. The official department class roster form shall be used and signed by the coordinator.

(p) Continuing education. The continuing education training program is as follows:

(1) The program shall consist of at least seven clock hours of classroom instruction.

(2) The instructor shall meet the requirements in subsection (o)(6) of this section.

(3) Each program shall follow the curricula established by the department.

(4) Each program shall inform the department of the name of each permit holder who completes the course within 15 calendar days. The official department class roster form shall be used and signed by the coordinator.

(q) Processing procedures. The department shall comply with the following procedures in processing applications of home health medication aide permits and renewal of permits.

(1) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of an application for a home health medication aide permit-14 working days; and

(B) letter of application or renewal deficiency-14 working days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required documentation and fee have been submitted by the applicant. The time periods are as follows:

(A) the issuance of an initial permit-90 days;

(B) the letter of denial for a permit-90 days; and

(C) the issuance of a renewal permit-20 days.

(3) In the event an application is not processed in the time period stated in paragraphs (1) and (2) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Request for reimbursement shall be made to the director of the Home Health Medication Aide Permit Program. If the director of the Home Health Medication Aide Permit Program does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(4) Good cause for exceeding the time period is considered to exist if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15% or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(5) If a request for reimbursement under paragraph (3) of this subsection is denied by the director of the Home Health Medication Aide Permit Program, the applicant may appeal to the commissioner of the department for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The director of the Home Health Medication Aide Permit Program shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner shall provide written notice of the commissioner's decision to the applicant and the director of the Home Health Medication Aide Permit Program. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(6) The time periods for contested cases related to the denial of initial home health medication aide permits or renewal permits are not included within the time periods stated in this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

(r) Denial, suspension, or revocation.

(1) The department may deny, suspend, emergency suspend, or revoke a permit or program approval if the permit holder or program fails to comply with any provision of the statute or this chapter.

(2) The department may also take action under paragraph (1) of this subsection for fraud, misrepresentation, or concealment of material fact on any documents required to be submitted to the department or required to be maintained or complied by the permit holder or program pursuant to this chapter.

(3) The department may suspend or revoke an existing permit or program approval or disqualify a person from receiving a permit or program approval because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a home health medication aide or training program. In determining whether a conviction directly relates, the department shall consider the elements set forth in §115.52(c) of this title (relating to License Denial, Suspension, or Revocations).

(4) If the department proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, the director shall notify the permit holder or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offer the permit holder or home health medication aide program an opportunity for a hearing.

(A) The permit holder or home health medication aide program must request a hearing within 30 calendar days of receipt of the notice. Receipt of notice is presumed to occur on the tenth day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.

(B) The request must be in writing and submitted to the Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(C) If the permit holder or home health medication aide program does not request a hearing, in writing, within 30 calendar days of receipt of the notice, the permit holder or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(5) The department may suspend a permit to be effective immediately when the health and safety of persons are threatened. The department shall notify the permit holder of the emergency action by certified mail, return receipt requested, or personal delivery of the notice and of the effective date of the suspension and the opportunity for the permit holder to request a hearing.

(6) All hearings shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).

(7) If the permit holder or program fails to appear or be represented at the scheduled hearing, the permit holder or program has waived the right to a hearing and the proposed action shall be taken.

(8) If the department suspends a home health medication aide permit, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. The department shall investigate prior to making a determination.

(A) During the time of suspension, the suspended permit holder shall return his or her permit to the department.

(B) If a suspension overlaps a renewal date, the suspended permit holder may comply with the renewal procedures in this chapter; however, the department may not renew the permit until the department determines that the reason for suspension no longer exists.

(9) If the department revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication.

(A) The department may refuse to issue a permit if the reason for revocation or non-renewal continues to exist.

(B) Upon revocation or non-renewal, a permit holder shall return the license or permit to the department.

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 November 30, 1993.

TRD-9332870 Susan K. Steeg
General Counsel
Texas Department of Health

Proposed date of adoption: April 22, 1994

For further information, please call:(512) 834-6650

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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter H. Designation as Single Portal Authority

• 25 TAC §§401.501-401.511

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §401.501-401.511 concerning the designation of single portal authorities.

Senate Bill 160 of the 73rd Texas Legislature deleted the requirement for a Single Portal Review Committee, but retained the concept of single portal. The procedure for designating a mental health authority as a single portal authority has been included in the proposal of Chapter 402, Subchapter A of this title, concerning admissions, transfers, absences, and discharges-mental health facilities, which was published in the November 9, 1993, issue of the *Texas Register*.

Leilani Rose, director, Office of Budget and Fiscal Service, has determined that there will be no fiscal implications for state or local government. There is no anticipated cost to small businesses as a result of administering the repeal as proposed. There is no anticipated local economic impact.

Steven Shon, M.D., deputy commissioner for mental health services, has determined that the public benefit is the compliance with state law. There is no anticipated cost to persons required to comply with the repeal as proposed.

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

§401.501. Purpose.

§401.502. Application.

§401.503. Definitions.

§401.504. Application Process.

§401.505. Requirements for Designation.

§401.506. Reporting Requirements.

§401.507. Denial, Suspension, or Revocation of Designation.

§401.508. Commitments and Transfers of Clients Involving Single Portal Authorities.

§401.509. Emergency Admission to a Departmental Facility.

§401.510. Distribution.

§401.511. References.

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 November 30, 1993.

TRD-9332825 Ann K. Utley
Chairman
Texas Board of Mental Health and Mental Retardation

Earliest possible date of adoption: January 7, 1994

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

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Chapter 409. Medicaid Programs

Subchapter E. Home and Community-based Waiver Services-OBRA

- **25 TAC §§409.156, 409.166-409.173**

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes amendments to §409.156, and §409.166, and new §§409.167-409.172, concerning home and community-based services-OBRA (HCS-O). The amendments and new sections were adopted on an emergency basis in the September 17, 1993, issue of the *Texas Register* (18 TexReg 6276). An amendment to §409.153 which was incorrectly included in the emergency adoption is not a part of this proposal. A correction appeared in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8624). The proposed sections would affect Texas Civil Statutes, Article 4413(502) §16.

The purpose of the amendments is to update client eligibility criteria, financial eligibility criteria, and spousal impoverishment provisions consistent with the provisions of the waiver; with the current Appropriation Act, Rider 14, Code of Federal Regulations, Part 441, §441.13, which requires the department to maximize collection of federal funds; and with the spousal impoverishment provisions of the Social Security Act, §1924, and as specified in the Medicaid State Plan.

The subchapter being amended and expanded with new sections is part of a number of rules transferred from the Department of Human Services (TDHS) to the Texas Department of Mental Health and Mental Retardation effective October 1, 1993. The amendments and new sections have been approved by the Medical Care Advisory Committee.

The Medicaid HCS-O program serves persons with mental retardation and/or related conditions who have been determined through the Annual Resident Review (ARR) process to require specialized services and be inappropriately residing in nursing facilities. Corrective action and provider sanctions are being proposed to clarify when provider sanctions are implemented and/or when provider on-site follow-up visits will occur before those required concurrently with the recertification review.

The provisions of the new sections for HCS-O are identical to those currently used for corrective action and provider sanctions in the Home and Community-based Services (HCS) program.

Leilani Rose, director, Office of Financial Services, has determined that there will be no significant fiscal implications to state or local government for each year of the first five-year period that the sections as proposed will be in effect.

Karen Hale, director, Planning and Policy Development, has determined the public benefit is the adoption of rules which implement provisions of federal law and regulations and which provide protection and corrective actions for persons with disabilities receiving services through the HCS-O program. There is no significant cost to persons who are required to comply with the sections as proposed.

Written comments on the proposal may be sent 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 amendments and 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 Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

§409.156. Financial Eligibility Criteria.

(a) To be determined financially eligible by the Texas Department of Human Services (TDHS) for home and community-based services through this waiver program, an applicant must:

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

(5) be an individual under 19 years of age for whom the Texas Department of Protective and Regulatory Services (PRS) assumes financial responsibility, in whole or in part (not to exceed Level II foster care payment), and who is being cared for in:

(A) (No change.)

(B) a family foster home which is licensed or certified and supervised by a licensed public or private nonprofit child placing agency. [or]

[(C) a private nonprofit child care institution licensed by PRS; or]

(6) (No change.)

§409.166. Spousal Impoverishment Provisions.

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

[(c) To determine the amount of the recipient's income applicable to payment, TDHS uses the same methodology as if the recipient were residing in an institution, except that the personal needs allowance is equal to the institutional cap.]

§409.167. Corrective Action and Provider Sanction. The guidelines specified in §§409.168-409.173 of this title (relating to Hazards to Health, Safety and Welfare; Level I Action; Level II Action; Level III Action; Unannounced or Intermittent Review Visits; and Discretionary Certification Sanctions) are used by the Texas Department of Mental Health and Mental Retardation (TXMHMR) Home and Community-Based Services-OBRA (HCS-O) program review teams and the TXMHMR HCS program coordination office to determine the need for provider sanctions and/or provider on-site follow-up review visits that occur before those required concurrently with the recertification review. Current certification review corrective action plans required from the provider and related timelines that are referenced in the HCS-O Program Provider Manual remain in effect, if applicable.

§409.168. Hazards to Health, Safety and Welfare. Hazards to health, safety and welfare are any conditions that the review team determines will result in life threatening harm, permanent injury, or death of the individual within 48 hours. These items are designated as such in the Home and Community-Based Services-OBRA certification review report. If the items are corrected during the review visit, the corrections will also be designated in the report.

(1) Immediate Corrective Action. Findings determined to be hazards to health, safety and welfare must be corrected before the exit conference of the respective review visit.

(2) Sanction. If the provider does not correct the hazards to health, safety and welfare:

(A) the provider must not be certified, continue certification, or be recertified; and

(B) the Texas Department of Mental Health and Mental retardation (TXMHMR) coordinates development of alternative services for people enrolled in the provider's program, as appropriate.

§409.169. Level I Action.

(a) Determination. Level I action results if:

(1) 12 or more items of noncompliance from the sections of the Consumer Principles for Evidentiary Certification listed below remain uncorrected at the time of the exit conference:

(A) Service Delivery (Section C);

(B) Interdisciplinary Team Operations (Section D);

(C) Personnel Operations (Section F);

(D) Quality Assurance (Section G) ; or

(2) more than seven of the remaining uncorrected principles are the same principles which were cited and corrected during the previous review visit. These uncorrected principles are called "Repeat Items."

(b) Corrective Action. The provider must complete corrective action within 30 calendar days from the date of the exit conference. The Texas Department of Mental Health and Mental Retardation (TXMHMR) must complete an on-site follow-up review within 15 calendar days following the 30th day.

(c) Vendor Hold. If the provider does not correct all remaining items of noncompliance during the first follow-up visit, vendor hold is implemented. The vendor hold is effective for up to 60 calendar days.

(1) The Home and Community-Based Services (HCS) program coordination office recommends to the Texas Department of Human Services (TDHS) that provider reimbursement be suspended until corrective actions are completed.

(2) TXMHMR completes a second follow-up review visit between 30 and 45 calendar days from the date the vendor hold was implemented.

(3) If the provider corrects all items of noncompliance during the second follow-up visit, the vendor hold is removed effective the date of the exit conference of the visit.

(d) Denial of Certification. Denial of certification results if the provider does not fully correct all items of noncompliance within 60 calendar days of the establishment of vendor hold, as determined by the second follow-up visit by TXMHMR. The HCS program coordination office does not certify the provider and recommends to the appropriate state authority that contract cancellation action be initiated.

§409.170. Level II Action.

(a) Determination. Level II action results if:

(1) eight, nine, ten, or eleven items of noncompliance from the sections of the Consumer Principles for Evidentiary Certification listed in subparagraphs (A)-(D) of this paragraph remain uncorrected at the time of the exit conference:

(A) Service Delivery (Section C);

(B) Interdisciplinary Team Operations (Section D);

(C) Personnel Operations (Section F);

(D) Quality Assurance (Section G); or

(2) four, five, six, or seven of the remaining uncorrected principles are the same principles which were cited and corrected during the previous review visit. These uncorrected principles are called "Repeat Items."

(b) Corrective Action. The provider must complete corrective action within 45 calendar days from the date of the exit conference. The Texas Department of Mental Health and Mental Retardation (TXMHMR) must complete an on-site follow-up review within 15 calendar days following the 45th day.

(c) Second Follow-up Visit. TXMHMR conducts a second follow-up visit if items of noncompliance remain uncorrected after completion of the first follow-up visit.

(1) The provider must complete corrective action for the remaining items of noncompliance within 30 calendar days from the date of the exit conference of the first follow-up review.

(2) TXMHMR must complete the second follow-up visit within 15 calendar days following the 30th day.

(d) Vendor Hold. If the provider does not correct all remaining items of noncompliance during the second follow-up visit, vendor hold is implemented. The vendor hold is effective for up to 60 calendar days.

(1) The Home and Community-Based Services (HCS) program coordination office recommends to the Texas Department of Human Services (TDHS) that provider reimbursement be suspended until corrective actions are completed.

(2) TXMHMR completes a third follow-up review visit between 30 and 45 calendar days from the date the vendor hold was implemented.

(3) If the provider corrects all items of noncompliance during the third follow-up visit, the vendor hold is removed effective the date of the exit conference of the visit.

(d) Denial of Certification. Denial of certification results if the provider does not fully correct all items of noncompliance within 60 calendar days of the establishment of vendor hold, as determined by the third follow-up visit by TXMHMR. The HCS program coordination office does not certify the provider and recommends to the appropriate state authority that contract cancellation action be initiated.

§409.171. Level III Action.

(a) Determination. Level III action results if more than 12 items of noncompliance from the sections of the Consumer Principles for Evidentiary Certification listed below remain uncorrected at the time of the exit conference:

(1) Mission, Development, and Philosophy of Program Operations Section (A);

(2) Consumer Rights (Section B); or

(3) Denials and Service Terminations (Section E).

(b) Corrective Action with Technical Assistance.

(1) The provider must complete corrective action within 60 calendar days from the date of the exit conference.

(2) Formal technical assistance to correct items of noncompliance may be:

(A) given by the Home and Community-Based Services program coordination office during the visit, or

(B) scheduled by the Texas Department of Mental Health and Mental Retardation within 90 days from the date of the exit conference.

§409.172. Unannounced or Intermittent Review Visits.

(a) Determination.

(1) Unannounced or intermittent review visits may occur at any time, with or without prior notice to the provider, at the discretion of the Home and Community-Based Services (HCS) Program Coordination office.

(2) Unannounced or intermittent review visits must have the prior approval of the Texas Department of Mental Health and Mental Retardation HCS director for provider services.

(3) Before leaving an on-site certification visit, the HCS-O review team must ensure that no items of noncompliance remain that suggest:

(A) except for appealing, the HCS-O provider is unwilling to comply with the findings;

(B) there is a likelihood that a hazard will occur at a later date, as the result of the remaining items of noncompliance; or

(C) pervasive patterns of noncompliance exist that indicate a hazard may occur before the next scheduled or indicated follow-up visit, as a direct result of the remaining items of noncompliance.

(i) Pervasiveness is not a prime factor in determining whether a hazardous condition exists because noncompliance can be isolated or widespread.

(ii) Pervasiveness can indicate how difficult the noncompliance items can be for the HCS-O provider to correct and if an intermittent or unannounced review (on-site or desk review) is needed before the scheduled and/or indicated follow-up visits.

(b) Corrective Action and Sanctions. Corrective action and sanctions imposed as a result of unannounced or intermittent review visits may include any of those listed in §409.168 of this title (relating to Hazards to Health, Safety and Welfare; Level I Action; Level II Action; and Level III Action).

§409.173. Discretionary Certification Sanctions.

(a) Sanctions specified in §§409.167-409.172 of this title (relating to Corrective Action and Provider Sanction; Hazards to Health, Safety and Welfare; Level I Action; Level II Action; Level III Action; and Unannounced or Intermittent Review Visits) may be applied on a discretionary basis if the uncorrected items of noncompliance cited during a review visit are of such substantial magnitude or pervasive extent to warrant actions that do not fall under the sanctions listed in this section.

(b) Discretionary certification sanctions require consultation with, and prior approval of, the Home and Community-Based Services director for provider services.

(c) Discretionary certification sanctions may consist of any actions specified in §§409.167-409.172 of this title (relating to Corrective Action and Provider Sanction; Hazards to Health, Safety and Welfare; Level I Action; Level II Action; Level III Action; and Unannounced or Intermittent Review Visits).

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 November 22, 1993.

TRD-9332824 Ann K. Utley
Chairman
Texas Board of Mental Health and Mental Retardation

Earliest possible date of adoption: January 7, 1994

For further information, please call: (512) 465-4516

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter C. Maintenance Taxes

• 28 TAC §1.414

The Texas Department of Insurance will consider at a public hearing under Docket Number 2077 the proposed new §1.414, concerning assessment of maintenance taxes for payment for 1994. The public hearing will be held on January 4, 1994, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building located at 333 Guadalupe Street, Austin. The section is proposed to provide a method of assessment and record the rates of assessment for maintenance taxes for 1994 on the basis of gross premium receipts for calendar year 1993 or on some other statutorily designated basis. Section 1.414 sets rates of assessment and applies those rates to life, accident, and health insurance; motor vehicle insurance; casualty insurance, and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and corporations issuing prepaid legal services contracts. Maintenance tax rates have increased above 1992 levels for all lines of insurance except for life, accident, and health insurance; third party administrators; and prepaid legal services. Rate increases for other lines of insurance are necessary due to a combination of declining revenues and increasing costs. The agency experienced a revenue deficit of several million dollars during fiscal year 1992 due primarily to a decline in taxable premium volumes. The agency also projects several million dollars in new funding needs for fiscal year 1993.

Michael Davis, director of accounting for the department, has determined that for the first five-year period the section is in effect there will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or local economy. The anticipated fiscal impact on state government is estimated income of $51,620,050 to the state's general revenue fund.

Mr. Davis also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be facilitation in the collection of maintenance tax assessments. Based on a cost-per-hour of labor basis, the cost of compliance for small businesses affected by the proposed section should be the same as the cost of compliance for large businesses. Actual reasonable costs for processing and administration may vary among persons required to comply with this proposed section, but should not exceed 5.0% of the amount assessed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Michael Davis, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The new section is proposed under the Insurance Code, Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6, §§21, 23.08, and 1.03A, and the Texas Health Maintenance Organization Act, Article 20A.33, which provide authorization for the Texas Department of Insurance to assess maintenance taxes for the lines of insurance and related activities specified in new §1. 414. The Insurance Code, Article 4.17 establishes a maintenance tax based on insurance premiums for life, accident, and health coverage. Article 5.12 establishes a maintenance tax based on insurance premiums for motor vehicle coverage. Article 5.24 establishes a maintenance tax based on insurance premiums for casualty insurance and fidelity, guaranty and surety bonds coverage. Article 5.49

establishes a maintenance tax based on insurance premiums for fire and allied lines coverage, including inland marine. Article 5.68 establishes a maintenance tax based on insurance premiums for workers' compensation coverage. Article 9.46 establishes a maintenance tax based on insurance premiums for title coverage. Article 21.07-6, §21 establishes a maintenance tax based on the gross amount of administrative or service fees for third party administrators. Article 23.08 establishes a maintenance tax based on gross revenue of corporations issuing prepaid legal service contracts. The Texas Health Maintenance Organization Act, §33 (codified at the Insurance Code, Article 20A.33), provides authorization for the Texas Department of Insurance to assess maintenance taxes for the lines of insurance and related activities specified in proposed §1.414. Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

The following articles of the Insurance Code are affected by this rule: Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6, §§21, 21.46, 21.54, and 23.08; and the Texas Health Maintenance Organization Act, §33 (codified at Article 20A.33).

§1.414. Assessment of Maintenance Tax, 1994.

(a) The following rates for maintenance taxes are assessed on gross premiums of insurers for the calendar year 1993 for the lines of insurance specified as delineated in this section:

(1) for motor vehicle insurance, pursuant to the Insurance Code, Article 5.12, the rate is .069 of 1.0%;

(2) for casualty insurance, and fidelity, guaranty and surety bonds, pursuant to the Insurance Code, Article 5.24, the rate is .295 of 1.0%;

(3) for fire insurance and allied lines, including inland marine, pursuant to the Insurance Code, Article 5.49, the rate is .606 of 1.0%;

(4) for workers' compensation insurance, pursuant to the Insurance Code, Article 5.68, the rate is .386 of 1.0%; and

(5) for title insurance, pursuant to the Insurance Code, Article 9.46, the rate is .187 of 1.0%.

(b) The rate for the maintenance tax to be assessed on gross premiums for the calendar year 1993 for life, health, and accident insurance, pursuant to the Insurance Code, Article 4.17, is .040 of 1.0%.

(c) The following rates for maintenance taxes are assessed for the calendar year 1993 for the entities specified:

(1) for health maintenance organizations, pursuant to the Texas Health Maintenance Organization Act, §33 (codified at the Insurance Code, Article 20A.33), the rate is $.62 per enrollee for single service health maintenance organizations and $1.23 per enrollee for multi-service health maintenance organizations;

(2) for third party administrators, pursuant to the Insurance Code, Article 21.07-6, §21, the rate is .222 of 1.0% of the correctly reported gross amount of administrative or service fees; and

(3) for corporations issuing prepaid legal service contracts, pursuant to the Insurance Code, Article 23.08, the rate is 1.0% of correctly reported gross revenues.

(d) The taxes assessed under subsections (a)-(c) of this section shall be payable and due to the Comptroller of Public Accounts, Austin, Texas 78774-0100, on March 1, 1994.

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

Issued in Austin, Texas, on December 1, 1993.

TRD-9332879 Linda von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 7, 1994

For further information, please call: (512) 463-2765

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• 28 TAC §1.415

The Texas Department of Insurance will consider at a public hearing under Docket Number 2078 the proposed new 28 TAC §1.415, concerning assessment of a maintenance tax surcharge which will be used to service the bond debt for the Texas Workers' Compensation Insurance Fund. The public hearing will be held on January 4, 1994, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building located at 333 Guadalupe Street, Austin. The section is proposed to provide a method of assessment and record the rate of assessment for taxes due in 1994 on the basis of gross premium receipts for calendar year 1993. The Texas Workers' Compensation Commission annually establishes and certifies to the comptroller of public accounts the rate of assessment for the maintenance taxes which are authorized to pay the cost of administering the Texas Workers' Compensation Act. The commissioner of insurance increases the Texas Workers' Compensation Commission tax rate to a rate sufficient to pay all debt service on the bonds issued on behalf of the Texas Workers' Compensation Insurance Fund, subject to the maximum rate established by Texas Civil Statutes, Article 8308-2.22. The proposed section sets a rate of assessment which applies to workers' compensation insurance companies. Timely and accurate payment of maintenance taxes is necessary for support of regulatory functions.

Michael Davis, director of accounting for the department, has determined that for the first five-year period the section is in effect there will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy. The anticipated fiscal impact on state government is estimated income of $33,066,324 generated from the maintenance tax surcharge which will be used to pay bond debt service for $300 million in bonds issued in 1991 by the Texas Public Finance Authority on behalf of the Texas Workers' Compensation Insurance Fund.

Mr. Davis also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the facilitation in the collection of a maintenance tax surcharge assessment for the Texas Workers' Compensation Insurance Fund. Based on a cost-per-hour of labor basis, the cost of compliance for small businesses affected by the proposed section should be the same as the cost of compliance for large businesses. Actual reasonable costs for processing and administration may vary among persons required to comply with this proposed section, but should not exceed 5.0% of the amount assessed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Michael Davis, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The section is proposed under the Insurance Code, Articles 5.76-5, 5.76-3, 5.68, and 1.03A and Texas Civil Statutes, Articles 8308-2.22, 8308-2.23, and 8308-11.09. The Insurance Code, Article 5.76-5 establishes the maintenance tax surcharge. Article 5.76-3 establishes the Texas Workers' Compensation Insurance Fund. Article 5.68 establishes the maintenance tax based on premiums for workers' compensation coverage. Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute. Texas Civil Statutes, Articles 8308-2.22, 8308-2.23, and 8308-11.09 establish the maintenance tax for workers' compensation insurance companies.

The following Texas Statutes are affected by this rule: Insurance Code, Articles 5.12, 5.55C, 5.68, 5.76-3, 5.76-5, 21.46, and 21.54; and Texas Civil Statutes, Articles 8308-2.22, 8308-2.23, and 8308-11.09.

§1.415. Maintenance Tax Surcharge for the Texas Workers' Compensation Insurance Fund, 1994.

(a) The maintenance tax surcharge is levied against each insurance company writing workers' compensation insurance in this state at the rate of 1. 2083% of the correctly reported gross workers' compensation insurance premiums for the calendar year 1993 to cover debt service for bonds issued on behalf of the Texas Workers' Compensation Insurance Fund.

(b) The maintenance tax surcharge shall be payable and due to the Comptroller of Public Accounts, Austin, Texas 78774-0100, on March 1, 1994.

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

Issued in Austin, Texas, on December 1, 1993.

TRD-9332878 Linda von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 7, 1994

For further information, please call: (512) 463-2765

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Chapter 7. Corporate and Financial Regulation

Subchapter J. Examination Expenses and Assessments

• 28 TAC §7.1012

The Texas Department of Insurance will consider at a public hearing under Docket Number 2075 the proposed new §7.1012, concerning assessments to cover the expenses of examining insurance companies. The public hearing will be held on January 4, 1994, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building located at 333 Guadalupe Street, Austin. Assessments will be levied against and collected from each domestic insurance company based on admitted assets and gross premium receipts for the 1993 calendar year, and from each foreign insurance company examined during the 1994 calendar year based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made. The assessments made under authority of this proposed new section will be additional to, and not in lieu of, any other charge which may be made under law, including the Insurance Code, Article 1.16.

Michael Davis, director of accounting for the department, has determined that for the first five-year period the section is in effect there will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy. The anticipated fiscal impact on state government is estimated income of $10,504,242 to the state's general revenue fund.

Mr. Davis 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 section will be the adoption of assessment rates to defray the expenses of examinations and administration of the laws related to examinations during the 1994 calendar year. Mr. Davis has determined that the direct economic cost to persons who are required to comply with the proposed section will vary, depending on the amount of assessment against each company. In the case of domestic companies, this is dependent on rates applied to 1993 admitted assets and gross premium receipts. In the case of foreign insurers, it will depend on whether the company is examined by Texas examiners, on the salary and expenses of the examiners, and on the time it takes for the examination. There will be no difference in rates of assessments between small and large businesses, except that a minimum charge of $25 is proposed to be assessed for domestic companies in this proposal. Based on a cost-per-hour of labor basis, the cost of compliance for small businesses affected by the proposed section should be the same as the cost of compliance for large businesses. Actual reasonable costs for processing and administration may vary among persons required to comply with this proposed section, but should not exceed 5.0% of the amount assessed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Michael Davis, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The new section is proposed under the Insurance Code, Articles 1.16 and 1. 03A. The Insurance Code, Article 1.16(a) and (b) authorizes the commissioner of insurance to make assessments necessary to cover the expenses of examining insurance companies and to comply with the provisions of the Insurance Code, Articles 1.16, 1.17, and 1.18, in such amounts as the commissioner certifies to be just and reasonable. In addition, Article 1.16(c) provides that expenses incurred in the examination of foreign insurers by Texas examiners shall be collected by the commissioner by assessment. Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

The following articles of the Insurance Code are affected by this rule. Articles 1.16, 1.17, 1.17A, 1.18, 1.19, 1.28, 4.10, and 4.11.

§7.1012. Domestic and Foreign Insurance Company Examination Assessments, 1994.

(a) Foreign insurance companies examined during the 1994 calendar year shall pay for examination expenses according to the overhead rate of assessment specified in this subsection in addition to all other payments required by law including, but not limited to, the Insurance Code, Article 1. 16. Each foreign insurance company examined shall pay 34% of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals. The overhead assessment will be levied with each month's billing.

(b) Domestic insurance companies shall pay according to this subsection and rates of assessment herein for examination expenses as provided in the Insurance Code, Article 1.16:

(1) The actual salaries and expenses of the examiners allocable to such examination shall be paid. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 1994. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) An overhead assessment to cover administrative departmental expenses attributable to examination of companies, which shall be paid and computed as follows:

(A) 0.00703 of 1.0% of the admitted assets of the company as of December 31, 1993, upon the corporations or associations to be examined taking into consideration the annual admitted assets that are not attributable to 90% of pension plan contracts as defined in the Internal Revenue Code of 1986, §Code, §818(a)); and

(B) 0.01642 of 1.0% of the gross premium receipts of the company for the year 1993, upon the corporations or associations to be examined taking into consideration the annual premium receipts that are not attributable to 90% of pension plan contracts as defined in the Internal Revenue Code of 1986, §818(a) (26 United States Code, §818(a)).

(3) If the overhead assessment, as computed under paragraph (2)(A) and (B) of this subsection, produces an overhead assessment of less than a $25 total, a minimum overhead assessment of $25 shall be levied and collected.

(4) The overhead assessments are based on the assets and premium receipts reported in the annual statements, except where there has been an understating of assets and/or premium receipts.

(5) For the purpose of applying paragraph (2)(B), the term "gross premium

receipts" does not include insurance premiums for insurance contracted for by a state or federal governmental entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of Title 2, Human Resources Code, of the federal Social Security Act (42 United States Code, §301 et seq).

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 December 1, 1993.

TRD-9332877 Linda von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 7, 1994

For further information, please call: (512) 463-2765

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Chapter 25. Insurance Premium Finance

Subchapter H. Annual Reports, Examinations, and Assessments

• 28 TAC §25.718

The Texas Department of Insurance will consider at a public hearing under Docket Number 2076 the proposed new §25.718, concerning the general administrative expense assessment of insurance premium finance companies for calendar year 1993. The public hearing will be held on January 4, 1994, at 9: 00 a.m. in Room 100 of the Texas Department of Insurance Building located at 333 Guadalupe Street, Austin. This section is proposed to provide a rate of assessment sufficient to meet the expenses of performing the department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under §25.718, the department will levy a rate of assessment to cover fiscal year 1994's general administrative expense and will collect from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 1993 calendar year.

Michael Davis, director of accounting for the department, has determined that for the first five-year period the section is in effect the fiscal impact equivalent on state government will be income estimated at $297,684 to the state's general revenue fund. There is no fiscal implication for local government or employment or the local economy as a result of enforcing or administering the section.

Mr. Davis also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be the facilitation in the collection of an assessment to cover the general administrative expense connected to the regulation of insurance premium finance companies. The cost to persons required to comply with this section is equivalent between small businesses and large businesses on a basis of cost per dollar of loan volume. The minimum cost for compliance based on assessment under the section is $250. Cost of administration or processing of such assessments may vary from company to company, depending on individual procedures, but the reasonable cost of administration and processing should be no greater than 5.0% of the assessment.

Comments on the proposal to be considered by the commissioner of insurance must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Linda K von Quintus-Dorn, Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Michael Davis, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The new section is proposed under the Insurance Code, Articles 24.06(c), 24. 09, and 103A. Article 24.06(c) provides that each insurance premium finance company licensed by the department shall pay an amount assessed by the department to cover the direct and indirect cost of examinations and investigations and a proportionate share of general administrative expense attributable to regulation of insurance premium finance companies. Article 24. 09 authorizes the department to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies. Article 1.03A provides the commissioner with authority to adopt rules and regulations for the conduct and execution of the duties and functions of the department.

The following articles of the Insurance Code are affected by this rule. Articles 24.05, 24.06, 24.08, 24 09, 24.10, and 24 22.

§25.718. General Administrative Expense Assessment for Calendar Year 1993. On or before April 1, 1994, each insurance premium finance company holding a license issued during 1993 by the Texas Department of Insurance pursuant to the Insurance Code, Chapter 24, shall pay an assessment made by the department to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. Payment shall be made to the Texas Department of Insurance, Examinations Division, Mail Code #303-3A, 333 Guadalupe Street, Austin, Texas 78701. The assessment to cover general administrative expenses shall be computed and paid as follows.

(1) The amount of the assessment shall be computed as .0150 of 1.0% of the total loan dollar volume of the company for the calendar year 1993

(2) If the amount of assessment computed under paragraph (1) of this section is less than $250, the amount of the assessment shall be $250.

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 December 1, 1993.

TRD-9332876 Linda von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 7, 1994

For further information, please call: (512) 463-2765

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 353. Introductory Provisions

General Provisions

• 31 TAC §353.14

The Texas Water Development Board (board) proposes new §353 14, concerning the text of a memorandum of understanding (MOU) between the board and the Texas Antiquities Committee (TAC), through the Department of Antiquities Protection (DAP). The MOU is proposed to allow the board to conduct surveys for archeological sites on lands which may be impacted by proposed public works projects that are funded in whole or in part by the board.

Pamela Ansboury, Director of Finance, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section. There will be fiscal implications on local government as a result of enforcing or administering the section with an estimated cost savings of approximately $108,750 for the first year the section will be in effect and approximately $136,875 for each of the next four years.

Ms. Ansboury also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be increased efficiency and effectiveness in conducting and reporting on surveys of archeological sites. 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 The board staff has determined that the rule will have no impact on local economics

Comments on the proposal may be submitted to Suzanne Schwartz, 1700 North Congress Avenue, Room 513, Austin, Texas 78701

The new section is adopted pursuant to the Texas Water Code, §6.104, which authorizes the board to enter into a memorandum of understanding with any other state agency and to adopt by rule any MOU between the board and any other state agency pursuant to Texas Water Code §6.101, which provides that the board has the authority to adopt rules necessary to carry out its powers and duties.

§353.14. Memorandum of Understanding Between Texas Water Development Board and Texas Antiquities Committee.

(a) Introduction:

(1) Whereas, the Texas Water Development Board (hereinafter TWDB) and the Texas Antiquities Committee (TAC)/Department of Antiquities Protection (DAP) desire to enter into a Memorandum of Understanding (MOU) under which TWDB is granted permission under the Antiquities Code of Texas for on-going, long-term surveys by TWDB staff archeologists for all types of archeological sites which relate to proposed development projects funded by the TWDB; and

(2) Whereas, under the provisions of the Texas Natural Resources Code, the TAC is charged with the responsibility of the protection and preservation of the archeological and historical resources of Texas; and

(3) Whereas, under the provisions of the Texas Natural Resources Code, Chapter 191, Subchapter C, §191.051 and §191.053, TAC may contract with or issue permits to other state agencies for the discovery and scientific investigation of archeological deposits; and

(4) Whereas, under the provisions of the Texas Water Code, Chapter 6, §6.104, TWDB may enter into a MOU with any other state agency and shall adopt by rule any MOU between TWDB and any other state agency; and

(5) Whereas, under the provisions of this MOU, an Antiquities Permit is to be issued by TAC to TWDB for each calendar year that this agreement is in effect, subject to fulfillment of stipulated conditions;

(6) Now, therefore, the Texas Water Development Board and the Texas Antiquities Committee agree to enter into this Memorandum of Understanding to provide archeological surveys of all projects to be constructed with financial assistance from the Texas Water Development Board.

(b) Responsibilities. In a systematic manner, TWDB will conduct surveys for all types of archeological sites on lands belonging to or controlled by any county, city, or other political subdivision of the State of Texas which may be impacted by proposed development projects that are funded in whole or in part by TWDB. Where appropriate, all surveys must consist of pedestrian surveys and sample subsurface probing (either shovel or mechanical testing, as appropriate) of proposed construction or development areas that may yield evidence of cultural resources (both historic and prehistoric), including areas that may receive direct impact from construction traffic.

(1) TWDB will comply with Texas Administrative Code requirements for a principal investigator as listed in 13 Texas Administrative Code, §41.5 of the TAC Rules of Practice and Procedure. Each individual, as principal investigator, must be involved in at least 25% of the field investigation performed under the agreement.

(2) TWDB's staff archeologists will send the Department of Antiquities Protection (DAP) advance written notification of the following activities: proposed reconnaissance, 100% pedestrian surveys and/or sample subsurface probing investigations. The notification letters must include information on the type of project development proposed to receive TWDB financial assistance, the kind of archeological investigation proposed, the principal investigator or co-principal investigators intending to conduct the investigation, and the expected dates of the field work.

(3) TWDB staff archeologists will send DAP a report within 30 days of the completion of each investigation, notifying DAP of the findings of the investigation. The report must contain information on the basic scope of the work, findings, a project map showing any cultural site locations recorded, copies of all State Site Survey forms, a project development clearance request where appropriate, and any recommendations for further work. The report should conform with the guidelines for report preparation of the Council of Texas Archeologists. In cases where the scope and/or results of a particular investigation warrant a comparatively lengthy report requiring more than 30 days to prepare, TWDB staff archeologists will send a brief interim report notifying DAP of the findings of the investigation and proposed dates for the completion and submittal of the final report to DAP.

(4) DAP is responsible for responding to the report or the interim report, as appropriate, within 30 days of receipt of such report.

(5) For projects involving federal funds, TWDB field investigations will be conducted, where applicable, consistent with the National Historic Preservation Act, §106, the Secretary of the Interior's Guidelines on Archeology and Historic Preservation, the Regulations of the Advisory Council on Historic Preservation (36 Code of Federal Regulations Part 800), and the Texas Antiquities Code.

(6) A draft annual report summarizing the past calendar year's investigations under each yearly permit will be submitted to DAP by April 1 of the following year. Each project investigation report within the annual report will be concise, but informative, and include the same levels of data required under the rule provisions of 13 TAC §41.24.

(7) Once the draft annual report is approved by DAP, TWDB will submit 20 copies of the final annual report to DAP no later than 90 days after TWDB has received DAP's approval of the draft report. The final annual report should be in a form that conforms to 13 TAC §41.24(a), pertaining to Archeological Permit Reports.

(8) Copies of field notes, maps, sketches, and daily logs, as appropriate, will be submitted to DAP along with the annual report. Where duplicates are impractical, originals may be submitted for microfilming. Upon completion of microfilming, originals will be returned to TWDB.

(9) During preservation, analysis, and report preparation or until further notice by DAP, artifacts, field notes, and other data gathered during investigations will be kept temporarily at the TWDB. Upon completion of annual reports, the same artifacts, field notes, and other data will be placed in a permanent curatorial repository at the Texas Archeological Research Laboratory, The University of Texas at Austin, or other DAP-approved repository, at no cost to the TWDB.

(10) Should the staff archeologist positions at the TWDB be eliminated, TWDB remains responsible for contracting with an individual who meets the requirements of Section Number I.1 of this MOU, to serve as principal investigator to complete the year-end report to the DAP.

(11) The TWDB and/or its applicants for financial assistance may find that a particular project is so extensive or under such constraints of time and need that it is more efficient and effective for the archeological or related investigations to be conducted by a qualified archeologist under contract to the applicant. In such instances, the investigations will require a project specific Antiquities Permit to be obtained by the contracting archeologist.

(12) The following general procedures shall apply for investigation of all projects, including but not limited to the construction of water treatment and storage facilities, wastewater and sludge treatment and disposal facilities, water distribution and wastewater collection facilities, flood control modifications, municipal solid waste facilities, and reservoirs proposed to receive

financial assistance from TWDB. Subject to those exceptions outlined below, the complete project will be investigated.

(A) archival research will be conducted at the Texas Archeological Research Laboratory, The University of Texas at Austin, and other facilities, as appropriate, to determine what cultural resources have been previously recorded in the vicinity of all proposed project construction areas. If the project can be shown to be in areas which have been extensively disturbed by previous development and/or unlikely to contain intact or significant cultural resources, then, based upon this initial review and information provided by the applicant for financial assistance, TWDB may request the DAP to allow the project to proceed to construction without further investigation.

(B) when field investigations are determined to be necessary by TWDB or stipulated by DAP review, the field methodology shall include pedestrian survey of all project areas unless preliminary inspection determines that a particular project area has been substantially altered or is physiographically situated such that it appears highly unlikely that significant cultural resources occur in the area. Appropriate to the type of project and location, TWDB archeologists may undertake limited subsurface probing in the form of mechanical or limited manual excavations in order to identify and/or evaluate buried cultural remains. When field investigations reveal that no significant cultural resources are located in the proposed project areas and, in the opinion of the principal investigator, no damage to significant cultural resources is anticipated, as reflected in a written report to DAP, the project implementation will be allowed to proceed, subject to DAP concurrence with the recommendation under Section Number I.4 of this MOU. In cases where historic and/or prehistoric cultural resources are found in the vicinity of proposed construction areas, the principal investigator will assess the significance of the resources and make recommendations for avoidance, testing, or mitigation of potentially significant resources, as appropriate, in the reports on the investigations. Decisions will be based upon the need to conserve cultural resources without unduly delaying the progress of project implementation.

(13) TWDB will ensure that it does not release funds for political subdivision construction prior to disposition, or formally agreed to disposition, of archeological and/or historical resources in accordance with DAP-approved reports referenced in paragraphs (3), (4), (5), and (11) of this subsection. Conditions of the TWDB financial assistance will provide, consistent with §41.8(b) of TAC Rules, that if an archeological site is discovered during project implementation, work will cease in the area of the discovery, the site will be protected, and the discovery will be reported immediately to the Texas Historical Commission.

(14) Any member or agent of DAP may, with timely notice to TWDB, inspect TWDB investigations in progress subject to the provisions of the MOU and the yearly permit issued to TWDB by DAP.

(15) Said yearly permit is authorization for reconnaissance and 100% pedestrian survey and/or limited subsurface probing of areas of less than 300 acres when one TWDB staff archeologist is to conduct the investigation. When investigations of areas greater than 300 acres are proposed, TWDB shall consult with DAP regarding the need for a project specific permit. The investigation of tracts larger than specified above may require project-specific Antiquities Permits regardless of whether the TWDB has them performed by staff archeologists or by contract with other qualified archeologists. The above limitations do not apply to proposed pipeline or other linear construction projects wherein the total area to be examined may cumulatively exceed the acreage limitations.

(16) Advanced archeological investigations such as archeological testing or mitigative archeological excavations are not covered under the yearly permits, and any such investigation deemed necessary by DAP will require a project-specific Antiquities Permit.

(17) All conditions listed in the permit form remain unaltered by these guidelines.

(c) Permits. An Antiquities Permit is to be issued for each calendar year that this agreement is in effect with the stipulation that the responsibilities as outlined above are to be observed. Failure to comply with the provisions of this MOU could result in cancellation of the yearly permits at the discretion of DAP. The results of the investigations will be evaluated at the end of each permit period. A new permit will be automatically issued to TWDB by DAP by January 15 of each calendar year, assuming all conditions of the previous permit and this MOU have been met.

(d) Term. This Memorandum of Understanding will remain in full force and effect until canceled by the written notice of either party. The MOU may be amended by mutual written agreement between TWDB and DAP.

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 November 30, 1993.

TRD-9332840 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption: January 7, 1994

For further information, please call: (512) 463-7981

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 12. Special Nutrition Programs

Summer Food Service Program

• 40 TAC §12.103

The Texas Department of Human Services (DHS) proposes an amendment to §12.103, concerning eligibility of sponsors and facilities in its Summer Food Service Program. The purpose of the amendment is to implement Senate Bill 714, which mandates school districts in which 60% or more of enrolled children are eligible for the National School Lunch Program to provide or arrange for the Summer Food Service Program by the summer of 1997.

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

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that more eligible children will be served by the Summer Food Services Program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section

Questions about the content of the proposal may be directed to Keith N. Churchill at (512) 467-5837 in DHS's Special Nutrition Program. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-302, 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 33, which provides the department with the authority to administer public and nutritional assistance programs. The amendment implements the Human Resources Code, §§22.001-22.024 and 33.001-33.024.

§12 103. Eligibility of Sponsors and Facilities

(a) To participate in the Summer Food Service Program (SFSP), sponsors must meet the definitions in 7 Code of Federal Regulations, §225.2 and the appropriate requirements of 7 CFR, §225.14.

(b) Public school districts in which 60% or more of the enrolled children are eligible to participate in the National School Lunch Program (NSLP) must provide or arrange for the SFSP in their district in accordance with the Texas Human Resource Code, §33.024.

(c) The Texas Department of Human Services (DHS) considers participation in the NSLP by public schools to be evidence of eligibility to participate in the SFSP.

(d)[(b)] Sponsors that are nonprofit school food authorities, nonprofit private residential camps, or private nonprofit organizations must submit, as proof of eligibility, a letter from the IRS notifying the sponsor that it has been granted tax-exempt status under the Internal Revenue Code of 1954, as amended. Sponsors that are public school food authorities, public residential summer camps, or units of local, municipal, county, or state governments may be required to submit proof of eligibility.

(e) [(c)] Colleges and university sponsors participating in the National Youth Sports Program's drug awareness activities during the academic year will be eligible to participate in the Summer Food Service Program on a year-round basis. They can claim two meals or one meal and a snack. Meal Service, however, can only be claimed for 30 days from October through April.

(f) [(d)] Sponsors must be able to perform under the stipulations of 7 Code of Federal Regulations, §§225.6, 225.14, and 225.15.

(g)[(e)] The Texas Department of Human Services (DHS) approves applications of applicants that do not provide a year-round service to the community it proposes to serve, according to 7 Code of Federal Regulations, §225.6(b)(4), if the applicant is otherwise eligible and if:

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

(h)[(f)] When two or more sponsors propose to serve the same area or the same enrolled children, DHS selects sponsors according to 7 Code of Federal Regulations, §225.6.

(i)[(g)] Sponsors must ensure that all meal service sites meet the appropriate definitions concerning areas in which poor economic conditions exist, camps, rural areas, and sites as specified in 7 Code of Federal Regulations, §225.2.

(j)[(h)] DHS requires sponsors to submit documentation of compliance with the requirements of the Single Audit Act. Sponsors must submit as proof of eligibility one or more of the forms of documentation of compliance specified in paragraphs (1)-(3) of this subsection:

(1)-(3) (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 November 30, 1993.

TRD-9332829

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

Proposed date of adoption: March 1, 1994

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

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Withdrawn Sections

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

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 405. Client (Patient Care)

Subchapter E. Electroconvulsive Therapy

• 25 TAC §405.104

The Texas Department of Mental Health and Mental Retardation has withdrawn from consideration for permanent adoption a proposed amendment to §405.104, which appeared in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8757). The effective date of this withdrawal is November 30, 1993.

Issued in Austin, Texas, on December 12, 1993.

TRD-9332841 Ann K. Utley
Chair
Texas Department of Mental Health and Mental Retardation

Effective date: November 30, 1993

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Placement Planning

• 37 TAC §85.23

The Texas Youth Commission has withdrawn from consideration for permanent adoption a proposed amendment to §85.23, which appeared in the October 5, 1993, issue of the *Texas Register* (18 TexReg 6803). The effective date of this withdrawal is December 21, 1993.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332821 Ron Jackson
Executive Director
Texas Youth Commisaion

Effective date: December 21, 1993

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

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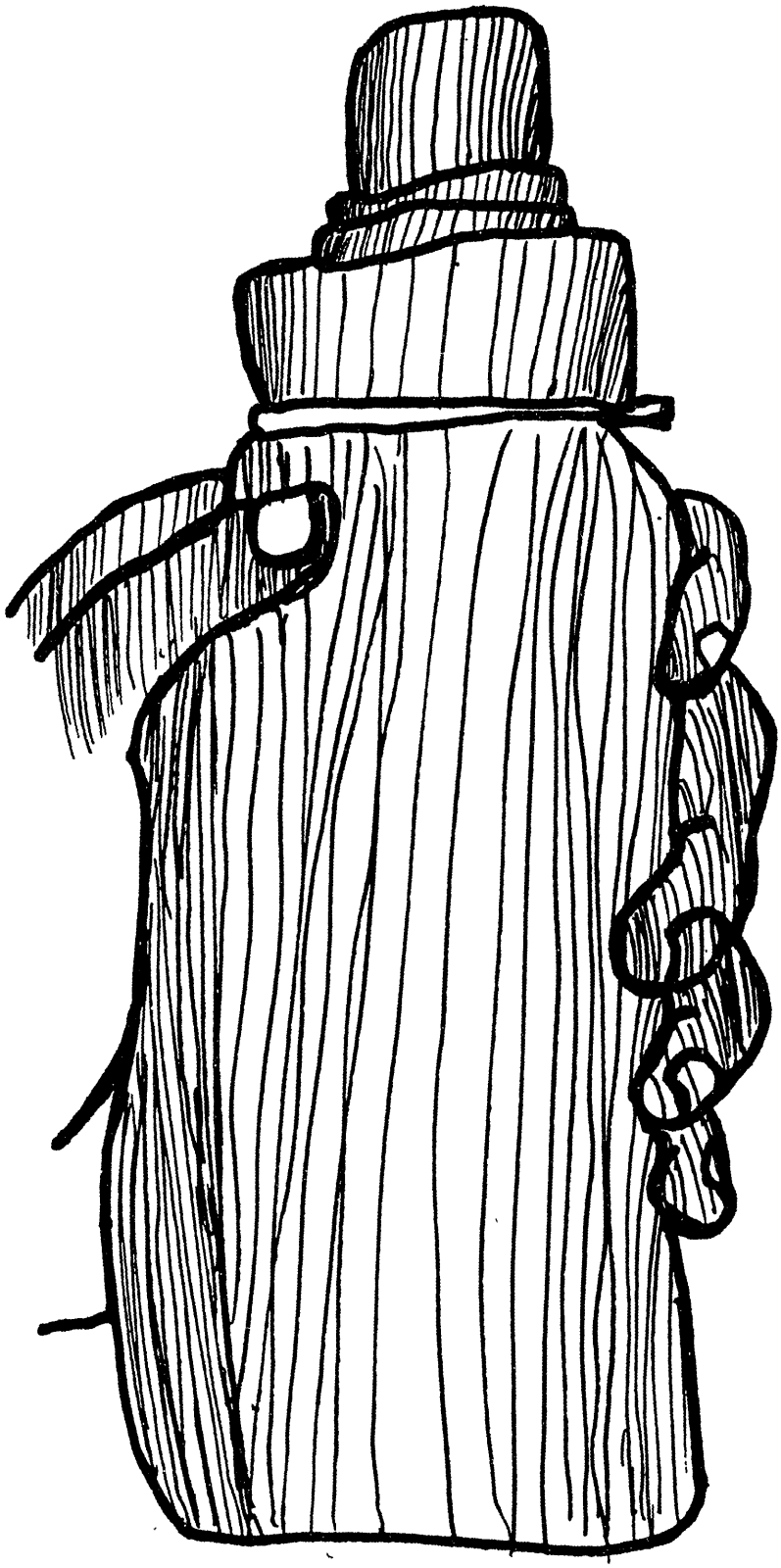

Name: Lewis Broderick
Grade: 9
School: Skyline High School, Dallas ISD

Adopted Sections

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 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 101. General Administration

• 7 TAC §101.5

The State Securities Board adopts amendments to §101.5, concerning an increase in the cost of copies of public records made available pursuant to the open records provisions of the Texas Government Code, Title 5, Chapter 552, with changes to the proposed text as published in the August 10, 1993, issue of the *Texas Register* (18 TexReg 5293). The citation to the Open Records Act contained in the proposal was changed to reflect its codification in the Texas Government Code effected by Senate Bill 248, 73rd Legislature, 1993.

The rule will now reflect the increased cost for copies of public records mandated by House Bill 1009, 73rd Legislature, 1993.

The rule will place persons on notice of the costs associated with obtaining copies of public records.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Securities Act, including rules and regulations governing registration statements and applications; defining terms, classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

§101.5 Cost of Copies of Public Records. The cost to any person requesting photocopied reproductions of any readily available records of the State Securities Board, comprised of pages up to legal size, which are subject to public examination pursuant to the open records provisions of the Texas Government Code, Title 5, Chapter 552, shall be as follows.

(1) For noncertified copies:

(A) $ .12 per page for requests totaling 50 pages or less;

(B) $ .98 for the first page and $ .17 for each additional page for requests totaling 51 pages or more.

(2) For certified copies the charge shall be $1.15 per page plus a $5.00 certification fee.

(3) (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 November 29, 1993.

TRD-9332774 Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: December 20, 1993

Proposal publication date: August 10, 1993

For further information, please call: (512) 474-2233

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Chapter 109. Transactions Exempt From Registration

• 7 TAC §109.17

The State Securities Board adopts an amendment to §109.17, concerning the meaning of the term "savings banks" under the Securities Act, §5.L., without changes to the proposed text as published in the August 10, 1993, issue of the *Texas Register* (18 TexReg 5293).

The amendment adds Texas chartered savings banks to the list of financial institutions recognized in the Securities Act, §5.L, which is appropriate in view of the enactment of the new Texas Savings Bank Act as set forth in Senate Bill 396, 73rd Legislature, 1993.

The rule will give parity of treatment for purposes of the Securities Act, §5.L, to savings banks chartered under the new Texas Savings Bank Act, and will accord them the same treatment as state chartered savings and loan associations for purposes of the exemption.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1 Section 28-1 provide the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

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 November 29, 1993.

TRD-9332778 Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date. December 20, 1993

Proposal publication date: August 10, 1993

For further information, please call: (512) 474-2233

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Chapter 123. Open-End Investment Companies

• 7 TAC §123.3

The State Securities Board adopts an amendment to §123.3, concerning a conditional exemption for money market funds, with changes to the proposed text as published in the August 10, 1993, issue of the *Texas Register* (18 TexReg 5293). Changes were made to the proposed text to correct grammar. Subsection (b)(8)(A) was changed to facilitate reliance on the exemption by two-tier money market funds.

The rule provides a conditional exemption for money market funds which takes into account current rules of the Securities and Exchange Commission (SEC) and the National Association of Securities Dealers (NASD) as they relate to the Securities Commissioner's designation of open-end investment companies as "money market funds."

Open-end investment companies designated by the Securities Commissioner as "money market funds" pursuant to the rule are subject to reduced registration fees.

Two comments were received on the rule proposal. The Investment Company Institute commented in favor of the rule proposal. Federated Investors submitted a comment urging the Board to reconsider the appropriateness of using service fee levels as the criterion for access to the reduced fee structure.

The Agency disagrees with the comment concerning the use of service fee levels and believes that using service fee levels as the

criterion for access to the reduced fee structure is consistent with both the original intent of the rule and with recent SEC and NASD interpretations regarding no-load money market funds.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

§123.3. Conditional Exemption for Money Market Funds.

(a) (No change.)

(b) Definition. In this section, a "money market fund" or "fund" is an open-end investment company which must meet all of the following conditions.

(1) The fund must engage in a continuous offering of its securities.

(2) The fund must hold itself out to be a money market fund or an equivalent to a money market fund and must be in compliance with the Investment Company Act of 1940, Rule 2a-7, as made effective in Securities and Exchange Commission Release Number IC-13380 and as amended in Release Numbers IC-14606, IC-14983, IC-18005, and IC-18177.

(3) The fund must not pay or charge sales commissions or redemption fees except nominal exchange fees which may not be used for sales expenses or in lieu of initial sales charges or redemption fees.

(4) The fund's total charges against net assets for sales distribution activities and/or the servicing of shareholder accounts must not be in excess of .25% of average net assets per annum.

(5) With the exception of mergers, consolidations, or acquisitions of assets, or as noted in paragraph (6) of this subsection, the fund's investments in other investment companies must be limited to:

(A) 10% of the fund's total assets;

(B) other investment companies with substantially similar investment objectives; and

(C) other investment companies with charges and fees substantially similar to those set forth in paragraphs (3) and (4) of this subsection.

(6) In the case of a master/feeder fund structure:

(A) feeder fund(s) must meet, or invest in a master fund which meets, paragraphs (1)-(4) of this subsection;

(B) when viewed together, the master/feeder fund(s) must meet paragraphs (3) and (4) of this subsection; and

(C) all feeder funds must have investment objectives substantially similar to those of the master fund.

(7) A currently registered fund which has been granted money market status is not required to comply with this subsection until the fund files its Year End Report of Sales by a Money Market Fund on Form 133.27, but it is required to comply with the subsection as it was in effect at the time that the fund was designated a money market fund for purposes of this section.

(c) Request for Determination.

(1) At the time an applicant applies for registration of securities issued by an open-end investment company under the Act, §7, or at any time thereafter, the applicant may request the Commissioner to determine that the issuer is a money market fund as defined in this rule. The request shall be made in writing on Form 133.26, of this title (relating to Request for Determination of Money Market Fund Status). The Commissioner shall review the request and any other information the Commissioner deems relevant and shall determine if the issuer is a money market fund for purposes of this section.

(2) If the request is made after the issuance of the fund's original permit, an amendment fee of $10 will be required. Additional sales information also will be required since only the securities registered and sold after the date the Commissioner determines that the issuer is a money market fund will be subject to the reduced registration fees under subsection (d) of this section.

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

(g) Year End Reports. All funds must file a Year End Report of Sales on Form 133.27 of this title (relating to Year End Report of Sales by Money Market Fund) in January of each year which reflects the amount of securities sold in the previous year, the balance of fees paid for registration of any unsold balance in the previous year and the recalculated balance of authorized securities at the beginning of the current year. In calculating fees applied to sales during the previous year, fees will first be applied at the higher rates specified in the reduced registration fee schedule in subsection (d)(5) of this section, and then at more reduced rates as sales volume increases, and not vice versa. Funds should consult the examples contained in Form 133.27 in determining how to compute fees.

(h) -(j) (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 November 29, 1993.

TRD-9332777 Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: December 20, 1993

Proposal publication date: August 10, 1993

For further information, please call: (512) 474-2233

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Chapter 133. Forms

• 7 TAC §133.26

The State Securities Board adopts new §133.26, concerning requests for determination of money market fund status, with changes to the proposed text as published in the August 17, 1993, issue of the *Texas Register* (18 TexReg 5439). Changes were made to the form to mirror the changes made to §123.3.

The new form will make it easier to request money market status determination from the Securities Commissioner.

The new rule provides the form on which an applicant may request determination of money market fund status from the Securities Commissioner.

No comments were received regarding adoption of the new section.

The new rule is adopted under Texas Civil Statutes, Article 581, §28-1. Section 28-1 provide the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

§133.26. Request for Determination of Money Market Fund Status. The State Securities Board adopts by reference the request for determination of money market fund status form. Changes were made to the form to mirror the changes made to §123.3. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711.

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 November 29, 1993.

TRD-9332776 Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: December 20, 1993

Proposal publication date: August 17, 1993

For further information, please call: (512) 474-2233

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission

Chapter 23. Substantive Rules

Rates

• 16 TAC §23.21

The Public Utility Commission of Texas adopts an amendment to §23.21, with changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register*, (18 TexReg 6176). The amendment makes a number of minor changes and clarifications to the existing rule concerning billing adjustments made pursuant to House Bill 11, 72nd Legislature, First Called Special Session. First, the amendment would clarify that a utility may make a mid-course correction to its billing adjustment factor. Second, the amendment authorizes rolling a surcharge or refund into the following year's true-up if the refund or surcharge is small. Third, the amendment clarifies a reference to the interest rate to be used. Fourth, the amendment clarifies how interest on the refund or surcharge is to be calculated. Fifth, the amendment moves a misplaced sentence. Sixth, the amendment delays the true-up filing by two and one-half months in order to allow utilities to have year-end numbers. Finally, the amendment deletes a reference to dominant carriers.

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

Comments were filed by the Texas Statewide Telephone Cooperative, Inc. (TSTCI), Central and South West Corporation (CSW) on behalf of Central Power and Light Company, Southwestern Electric Power Company, West Texas Utilities Company, and Houston Lighting and Power Company (HL&P). All three commenters supported the amendment, but recommended some minor changes to the language.

CSW commented that the rule should provide for any under- or over- refund or surcharge resulting from the true-up to be rolled into the next year's true-up. The Commission disagrees and believes that it is unnecessary to true-up the true-up. The Commission is confident that any difference between the actual refund or surcharge and what should have been refunded or surcharged as a result of the true-up will be inconsequential.

CSW also commented that the true-up filing should be delayed another month from that proposed, February 1, until the first business day after March 1. The Commission finds merit in this proposal, but is concerned that a utility may not be able to make a timely refund or surcharge to seasonal customers if the true-up filing is not done until March. In response to CSW's comment and this concern, the language of the proposal has been changed to require the true-up filing "on or before the first working day after March 1." This will allow additional time and also give the flexibility to utilities that need to file earlier. The earliest possible date for the hearing has also been changed to recognize the flexibility in the filing. Rather than specifying a date, the language has been changed to "no earlier than 45 days after the filing of the utility's testimony".

HL&P suggested that the language allowing a utility to carry forward a small refund or surcharge should be changed so as to allow the carry forward to go on until the utility has a refund or surcharge greater than $ .50 per customer. The Commission agrees and the language has been modified; however, HL&P's proposed language has been changed slightly to show that the refund or surcharge can be carried forward until a year in which the cumulative refund or surcharge is greater than $ .50 per customer as opposed to that particular year's refund or surcharge. TSTCI suggested that the amount of the true-up that qualifies to be carried forward to the next year be changed from "less than $ .50 per customer" to "less than $10,000."

TSTCI urged this change because some of the small local exchange companies would be required to refund or surcharge amounts so small that it would cost more to perform the refund or surcharge than the amount of the surcharge. The Commission finds merit in the proposal, but believes $10,000 is too high a threshold because it could lead to carryforwards of several dollars per customer. The amount of $5,000 is more appropriate. The language has been changed to allow a carryforward if "the refund or surcharge amount is less than either $5,000 in total or $ .50 per customer...."

The statutes affected by the adopted section are Texas Civil Statutes, Article 1446c, §§16, 17, 37, 38, and the Government Code, §2001.004.

§23.21. Cost of Service.

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

(d) Adjustment for House Bill 11, Acts of 72nd Legislature, First Called Special Session 1991.

(1) Each utility that is subject to the commission's rate setting jurisdiction, pays state franchise taxes, and has not had a rate proceeding under the Act, §42 or §43, in which the effects of House Bill 11 were considered in the setting of rates shall be subject to this subsection. Except as provided in the following sentence, on or before December 1 of each year, each utility subject to this subsection shall file with the commission a tariff sheet, or tariff sheets, applicable to each rate class setting forth an interim House Bill 11 tax adjustment factor. If a utility chooses not to request an increase under this subsection or if the utility has otherwise limited itself by agreement to recovering tax changes that are the subject of this subsection by a method different from that prescribed in this subsection, the utility need not file tariff sheets but shall make an informational filing showing its calculations, including an explanation and all underlying supporting documentation showing the effect of House Bill 11 on its taxes. If the adjustment is a decrease that amounts to less than $ .50 cents per customer for electric utilities or access line for telephone utilities on an annual basis, the tariff shall not include a factor, but shall state that the reduction will be applied against the adjustment for future years. In all other tariffs, the factors set forth in the tariff sheets shall be calculated as set forth in the following paragraphs. Utilities that are required to file tariff sheets shall include an explanation of how the interim factor was calculated as well as showing all the calculations. For state taxes to be paid during 1992, all utilities subject to this subsection shall make the initial filing as soon as practical, but no later than 90 days, after the adoption of this rule.

(2) If the adjustment is a decrease requiring a factor or the utility affirmatively requests that an adjustment be made to its billings to account for the effect of House Bill 11 on its state taxes, the tariff filing will be docketed and will automatically go into effect on January 1 of the year following the filing. If the adjustment is a decrease being carried forward to future years, the filing will be treated as a tariff filing except that it shall take effect on January 1 of the year following the filing. A utility may amend a tariff filed under this subsection to make mid-course corrections as necessary. For all amended filings, all tariffs will take effect on the date specified by the utility, but in no event earlier than ten days after the filing.

(3) The interim House Bill 11 tax adjustment factor shall be calculated by allocating the effect on the utility's state taxes for the next calendar year of House Bill 11 as provided in paragraph (6) of this subsection. The effect on the utility's state taxes for the coming calendar year shall be calculated by subtracting the estimated state taxes that would be attributable to the calendar year if the law prior to House Bill 11 was still in effect from the estimated state taxes that will be due or are attributable to the calendar year under House Bill 11. In calculating the state taxes that would be due during the calendar year if the law prior to

House Bill 11 was still in effect, four-twelfths of the franchise tax paid or that would have been paid in the previous year and eight-twelfths of the franchise tax that would have been paid in the calendar year in question will be considered attributable to the calendar year in question. For 1992 alone, the taxes attributable to the calendar year under House Bill 11 shall also include four-twelfths of the franchise taxes paid in 1991. In performing the calculation, the various fees imposed by House Bill 11 will not be considered taxes. In calculating the taxes that are estimated to be paid, changes resulting from audits or amended returns for previous periods that were covered by this rule shall be considered. The state franchise tax imposed by House Bill 11 will be considered to be a franchise tax and not an income tax regardless of the method of calculation.

(4) If an interim factor goes into effect, it shall be subject to surcharge or refund to the extent it differs from the factor finally set by the commission. If a surcharge or refund is necessary, a credit or surcharge will be made to the existing customers' bills. If the refund or surcharge amount is less than either $5,000 in total or $ .50 per customer, calculated by dividing the total refund or surcharge by the total number of customers, the utility may make the refund or surcharge by carrying it forward until a year when the cumulative total refund or surcharge is not less than either $5,000 or $ .50 per customer. Simple interest will be added to the amount due at the rate set by the commission for overbillings and underbillings starting at the beginning of the month in which the obligation accrued and ending on the last day of the month preceding the refund or surcharge. The month, or months, in which the obligation accrues will be determined by comparing the collections each month under the tariff filed by the utility with the amount that should have been collected had the utility been able to precisely predict its tax bill and its sales. The number of days in each month shall be considered for purposes of the interest calculation. Interest will be added to decreases that are carried to future years and will be calculated by the same method.

(5) The utility shall file, on or before the first business day after March 1 of the year following the year that a particular factor was in effect, testimony supporting the final adjustment factor that it is requesting to account for the effect of House Bill 11 on its state taxes for that year. The utility's filing will include a copy of the Franchise Tax Return filed with the Comptroller's Office and the details of their computation of the tax that would have been due had House Bill 11 not been enacted. The hearing on the merits for purposes of setting the final factor, if necessary, shall be convened no earlier than 45 days after the filing of the utility's testimony and shall be strictly limited to issues under this subsection. For purposes of administrative efficiency, the hearings examiner assigned to a case may grant a utility's request that the final hearing on a particular year's factor be delayed for up to three years; however, if such a request is granted, any interest to be paid by the utility shall be at the utility's cost of capital as determined in the utility's last rate case.

(6) The billing adjustment should apply over the entire year; however, if the adjustment necessary to account for the effect of House Bill 11 is so small that it would be difficult to apply on a monthly basis, the utility may make the billing adjustment during a single month. Cost allocation and rate design are as follows.

(A) Electric utilities. For electric utilities, if the adjustment factor results in a lower cost to the ratepayers, the revenue decrease shall be allocated to the customers on the same basis as the franchise taxes were allocated in the utility's last rate case. If the adjustment factor results in a greater cost to the ratepayers, the revenue increase will be allocated to the customers in the same manner as were federal income taxes in the utility's last rate case. The factor for each customer within a class will then be calculated based on expected kilowatt-hour (kwh) sales and charged on a per kwh basis, except that the factor for each customer within an industrial class served at transmission-level voltage will be calculated as a percentage of the base revenues (excluding fuel, any applicable PCRF charges, and add-on revenue taxes) received from that class during the most recent 12-month period.

(B) Telephone utilities. Any increase or decrease will be allocated to each customer class and service based on the revenues from that class or service. For purposes of determining revenues, the period to be used will be the same as that for the federal tax return used to compute the state taxes. The adjustment factor will be billed as a percentage of the customer's bill except that coin telephone local calling shall not be billed any adjustment. Such percentage shall be determined by computing the ratio of a class's or service's allocated franchise tax to its historic revenues. The adjustment on the customer bill will be rounded to the nearest cent.

(7) The utility shall separately list the adjustment on each customer's bill and label the adjustment "cost of service surcharge" if the adjustment is an increase or "cost of service credit" if the adjustment is a decrease.

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 November 30, 1993.

TRD-9332842 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Effective date: December 21, 1993

Proposal publication date: September 14, 1994

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

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• 16 TAC §23.23

The Public Utility Commission of Texas adopts an amendment to §23.23, with changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register*, (18 TexReg 6177). The amendment requires utilities to use a commission application when filing fuel factor and reconciliation cases. Also, it allows the presiding officers to set a schedule of longer than a year for a reconciliation case if deadlines result in a number of utilities filing contemporaneously. Finally, the amendment corrects an error regarding the effective date of the January, 1993, amendments.

The amendment is adopted pursuant to §16(a), of the Public Utility Regulatory Act, which provides the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction.

Comments were filed by Southwestern Public Service Company (SPS), Houston Lighting and Power Company (HL&P), the Lower Colorado River Authority (LCRA), the Office of Public Utility Counsel (OPC), Texas Utilities Electric Company (TUEC) and the Central and South West Corporation operating companies that operate in Texas, that is, Central Power and Light Company, Southwestern Electric Power Company, and West Texas Utilities Company (CSW). TUEC and SPS limited their comments to the proposed filing packages.

None of the commenters opposed the changes in the proposed amendment that provided for a fuel factor and reconciliation filing packages; however, several offered changes to the proposed filing packages. The filing packages and the comments on them are being addressed concurrently, but separately, from the amendments to §23.23(b).

OPC suggested that the language that allows the presiding officer to set a schedule that takes more than one year be expanded to allow the presiding officer to allow for more than a year to process a reconciliation case under three other circumstances: complex issues that require additional discovery, complex issues that require more hearing time, and staff and intervenor workload demands. The Commission agrees that the circum-

stance identified by OPC are instances in which it may be appropriate to take more than a year to process a reconciliation case. OPC is correct that already under the rule the Commission may, when presented with an appeal, set a schedule for a reconciliation that will take more than a year. Furthermore, the circumstances identified by OPC may constitute good cause for waiver of the rule. However, notwithstanding whatever merit OPC's suggestions may have, the Commission believes that OPC's proposal's so expands the published amendment that it would be inappropriate to adopt the OPC's proposal at this time. Interested parties were only on notice that the Commission may make amendments to address the workload problem caused by the deadline; they were not on notice that the Commission may make other exceptions to the one-year requirement

HL&P and CSW offered different solutions and language to address the potential workload problem of a number of utilities filing reconciliation proceedings at the same time HL&P expressed concern that unreasonable delays may result under the proposed language in the processing of a reconciliation case, and toward that end, suggested that either a schedule for filings be specified by the rule or a deadline of 455 days be set for processing cases in which the one year limitation of the rule would not apply. HL&P also suggested that the Commission specify the number of utilities that must file within 45 days of each other in order to trigger the authority of the presiding officer to set a longer schedule. CSW commented that a more appropriate way of addressing the problem would be to require the General Counsel to negotiate a schedule for the filing of reconciliations and to extend the deadline for their filing until December 1, 1994. The Commission believes that there is merit to specifying a schedule, but CSW's proposal, and any such schedule, effectively changes another provision of the rule, the transition provision. Because no changes were proposed to that provision of the rule, it would be inappropriate to adopt CSW's proposal.

HL&P's suggestion to impose a deadline of 455 days does not adequately address the problem. The additional 90 days may not be enough to allow coordination of the cases that may be filed.

The Commission declines to adopt the suggestion of HL&P that a trigger number, i e. "4," should be specified. The number of utilities that file at a time is less important than the total magnitude of the cases filed in the aggregate. In other word, two reconciliation cases may represent far more work than four other reconciliation cases.

The Commission finds the original proposal to be the best solution at this time. It is within the scope of the original publication and allows the Commission the flexibility to schedule the workload as needed depending on what filings are made. However, if a schedule can be developed that will allow the utilities, staff, and intervenors to better address the reconciliations, the Commission would be receptive to considering either another amendment adopting the schedule or a petition seeking a declaration of a good cause exception to the deadline

The LCRA commented that there is an inconsistency between §23.23(b)(2)(C) and §23.23(b)(2)(E) in that the former specifies that a fuel factor petition must be filed on the first business day of the month and the latter says during the first five business days. LCRA suggests that the latter was what was intended by the Commission. The Commission agrees with LCRA, but declines to correct the matter because no change was originally proposed to §23.23(b) (2)(C). This correction will have to be made at a latter date.

Similarly, LCRA recommends the deletion of §23 23(b)(3)(A)(i) because it is unnecessary given the filing packages Whatever merit there might be to that comment, the Commission does not believe it would be appropriate to delete the sentence when such was not originally proposed.

The Statutes affected by the adopted section are Texas Civil Statutes, Article 1446c, §§16, 17, 37, and 38, and the Government Code, §2001 004

§23.23. Rate Design.

(a) (No change.)

(b) Recovery of Fuel and Purchased-Power Costs

(1) Purpose. The commission will set an electric utility's rates at a level that will permit the utility a reasonable opportunity to earn a reasonable return on its invested capital and to recover its reasonable and necessary expenses, including the cost of fuel and purchased power. The commission recognizes in this connection that it is in the interests of both utilities and their ratepayers to adjust customer charges in a timely manner to account for changes in certain fuel and purchased-power costs. Pursuant to The Public Utility Regulatory Act (the Act), §43(g)(2), this subsection establishes a procedure for setting and revising fuel factors and purchased-power cost recovery factors and a procedure for regularly reviewing the reasonableness of the fuel expenses recovered through fuel factors

(2) Fuel factors.

(A) Use and calculation of fuel factors. A utility's fuel costs will be recovered from the utility's customers by the use of a fuel factor that will be charged for each kilowatt-hour (kwh) consumed by the customer.

(i) Fuel factors are determined by dividing the utility's projected net eligible fuel expenses, as defined in subparagraph B of this paragraph, by the corresponding projected kilowatt-hour sales for the period in which the fuel factors are expected to be in effect. Fuel factors must account for system losses and for the difference in line losses corresponding to the type of voltage at which the electric service is provided. A utility may have different fuel factors for different times of the year to account for seasonal variations. A different method of calculation may be allowed upon a showing of good cause by the utility.

(ii) A utility may initiate a change to its fuel factor as follows:

(I) A utility may petition to adjust its fuel factor as often as once every six months according to the schedule set out in subparagraph (E) of this paragraph.

(II) A utility may petition to change its fuel factor at times other than provided in the schedule if an emergency exists as described in subparagraph (G) of this paragraph

(III) A utility's fuel factor may be changed in any general rate proceeding.

(iii) Fuel factors are in the nature of temporary rates, and the utility's collection of revenues by fuel factors is subject to the following adjustments:

(I) The reasonableness of the fuel costs that a utility has incurred will be periodically reviewed in a reconciliation proceeding, as described in paragraph (3) of this subsection, and any unreasonable costs incurred will be refunded to the utility's customers.

(II) To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary or convenient to refund overcollections or surcharge undercollections. Refunds or surcharges may be made without changing a utility's fuel factor, but requests by the utility to make refunds or surcharges may only be made at the times allowed by this paragraph. A utility may petition to make refunds or surcharges at the specified times that these rules allow a utility to change its fuel factor irrespective of whether the utility actually petitions to change its fuel factor at that time. A utility shall petition for a surcharge at the next date allowed for setting a fuel factor by the schedule set out in subparagraph (E) of this paragraph when it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. A utility shall petition to make a refund at any time that it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection "Materially" or "material", as used in this paragraph, shall mean that the cumulative amount of over- or under-recovery, includ-

ing interest, is 4.0% of the annual estimated fuel cost figure most recently adopted by the commission, as shown by the utility's fuel filings with the commission.

(B) Eligible fuel expenses. Eligible fuel expenses include expenses properly recorded in the Federal Energy Regulatory Commission Uniform System of Accounts, numbers 501, 503, 518, 536, 547, 555, and 565, as modified in this subparagraph, as of September 30, 1992 and the items specified in clause (vi) of this subparagraph. Any later amendments to the System of Accounts are not incorporated into this subparagraph. Subject to the commission finding special circumstances under clause (v) of this subparagraph, eligible fuel expenses are limited to:

(i) For any account, the utility may not recover, as part of eligible fuel expense, costs incurred after fuel is delivered to the generating plant site, for example, but not limited to, operation and maintenance expenses at generating plants, costs of maintaining and storing inventories of fuel at the generating plant site, unloading and fuel handling costs at the generating plant, and expenses associated with the disposal of fuel combustion residuals. Further, the utility may not recover maintenance expenses and taxes on rail-cars owned or leased by the utility, regardless of whether the expenses and taxes are incurred or charged before or after the fuel is delivered to the generating plant site. The utility may not recover an equity return or profit for an affiliate of the utility, regardless of whether the affiliate incurs or charges the equity return or profit before or after the fuel is delivered to the generating plant site. In addition, all affiliate payments must satisfy the Act, §41(c)(1).

(ii) For Accounts 501 and 547, the only eligible fuel expenses are the delivered cost of fuel to the generating plant site excluding fuel brokerage fees. For account 501, revenues associated with the disposal of fuel combustion residuals will also be excluded.

(iii) For Accounts 518 and 536, the only eligible fuel expenses are the expenses properly recorded in the Account, excluding brokerage fees. For Account 503, the only eligible fuel expenses are the expenses properly recorded in the Account, excluding brokerage fees, return, non-fuel operation and maintenance expenses, depreciation costs, and taxes.

(iv) For Account 555, the utility may not recover demand or capacity costs.

(v) Upon demonstration that such treatment is justified by special circumstances, a utility may recover as eligible fuel expenses fuel or fuel related expenses otherwise excluded in clauses (i)-(iv) of this subparagraph. In determining whether special circumstances exists, the commission shall consider, in addition to other factors developed in the record of the reconciliation proceeding, whether the fuel expense or transaction giving rise to the ineligible fuel expense resulted in, or is reasonably expected to result in, increased reliability of supply or lower fuel expenses than would otherwise be the case, and that such benefits received or expected to be received by ratepayers exceed the costs that ratepayers otherwise would have paid or otherwise would reasonably expect to pay.

(vi) In addition to the expenses designated above, unless otherwise specified by the commission, eligible fuel expenses shall include:

(I) revenues from steam sales included in Accounts 504 and 456 to the extent expenses incurred to produce that steam are included in Account 503; and

(II) revenues from wheeling transactions; and

(III) revenues from off-system sales in their entirety.

(C) Petitions to revise fuel factors. On the first business day of the months specified in subparagraph (E) of this paragraph, each utility using one or more fuel factors may file a petition requesting revised fuel factors. A copy of the filing shall also be delivered to the General Counsel and the Office of Public Utility Counsel. Each petition must be accompanied by the commission prescribed fuel factor application and supporting testimony that includes the following information:

(i) for each month of the period in which the fuel-factor has been in effect up to the most recent month for which information is available;

(I) eligible fuel expenses incurred, listed by the types of fuel used;

(II) purchased power and energy delivered to the utility, listed by source and showing the demand component and energy and/or fuel-expense component associated with the purchases;

(III) kilowatt-hour sales to system utility customer classes;

(IV) generation by plant, and if available, by unit;

(V) off-system kilowatt-hour sales, and associated fuel costs and revenues;

(VI) the revenues collected pursuant to fuel factors by customer class;

(VII) any other items that to the knowledge of the utility have affected fuel factor revenues and eligible fuel expenses; and

(VIII) the difference, by customer class, between the revenues collected pursuant to fuel factors and the eligible fuel expenses incurred.

(ii) For each month of the period for which the revised fuel factors are expected to be in effect:

(I) estimated eligible fuel expenses, listed by the types of fuel expected to be used;

(II) estimated purchased-power and energy deliveries, listed by source and showing the demand component and energy and/or fuel-expense component associated with the estimated purchases;

(III) estimated kilowatt-hour sales by customer class;

(IV) generation by plant, and if available, by unit;

(V) estimated off-system kilowatt-hour sales, and associated fuel costs and revenues; and

(VI) system energy input and sales, accompanied by the calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the type of voltage at which the electric service is provided.

(D) Fuel factor revision proceeding. Burden of proof and scope of proceeding are as follows:

(i) In a proceeding to revise fuel factors, a utility has the burden of proving that:

(I) the expenses proposed to be recovered through the fuel factors are reasonable estimates of the utility's eligible fuel expenses during the period that the fuel factors are expected to be in effect;

(II) the utility's estimated monthly kilowatt-hour system sales and off-system sales are reasonable estimates for the period that the fuel factors are expected to be in effect; and

(III) the proposed fuel factors are reasonably differentiated to account for line losses corresponding to the type of voltage at which the electric service is provided;

(ii) The scope of a fuel factor revision proceeding is limited to the issue of whether the petitioning utility has appropriately calculated its estimated eligible fuel expenses and load.

(E) Schedule for filing petitions to revise fuel factors. A petition to revise fuel factors may be filed with any general rate proceeding. Otherwise, except as provided by subparagraph (G) of this paragraph, which addresses emergencies, petitions by a utility to revise fuel factors may only be filed during the first five business days of the month in accordance with the following schedule:

(i) January and July: El Paso Electric Company and Central Power and Light Company;

(ii) February and August: Texas Utilities Electric Company and Brazos Electric Power Cooperative, Inc.;

(iii) March and September: West Texas Utilities Company and Gulf States Utilities Company;

(iv) April and October: Houston Lighting and Power Company and Southwestern Electric Power Company;

(v) May and November: Southwestern Public Service Company and Lower Colorado River Authority; and

(vi) June and December: Texas-New Mexico Power Company, South Texas Electric Cooperative, Inc., San Miguel Electric Cooperative, Inc., and any other electric utility not named in this subparagraph that uses one or more fuel factors.

(F) Procedural schedule. Upon the filing of a petition to revise fuel factors in a separate proceeding, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows:

(i) within 60 days after the petition was filed, if no hearing is requested within 30 days of the petition; and

(ii) within 90 days after the petition was filed, if a hearing is requested within 30 days of the petition. If a hearing is requested, the hearing will be held no earlier than the first business day after the 45th day after the application was filed.

(G) Emergency revisions to the fuel factor. If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have resulted in a material underrecovery of eligible fuel costs, the utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests shall state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission shall issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the utility shall refund all excessive collections with interest calculated on the cumulative monthly ending under- or over-recovery balance in the manner and at the rate established by the commission for overbilling and underbilling in §23.45(g) of this title (relating to Billing). If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such overcollections may also be imposed on investor-owned utilities.

(3) Reconciliation of fuel expenses. Utilities shall file petitions for reconciliation on a periodic basis so that any petition for reconciliation shall contain a maximum of three years and a minimum of one year of reconcilable data and will be filed no later than six months after the end of the period to be reconciled. However, notwithstanding the previous sentence, a reconciliation shall be requested in any general rate proceeding under the Act, §43, and may be performed in any general rate proceeding under the Act, §42. Upon motion and showing of good cause, a fuel reconciliation proceeding may be severed from or consolidated with other proceedings.

(A) Petitions to reconcile fuel expenses. In addition to the commission prescribed reconciliation application, a fuel reconciliation petition filed by a utility must be accompanied by supporting testimony that includes the following information:

(i) for the period being reconciled, historical data corresponding to the monthly data required to be included in petitions to revise fuel factors;

(ii) summaries of all contracts under which the utility or a fuel-supplying affiliate of the utility purchased fuel, power, and/or energy during the reconciliation period, the costs of which are includible in the utility's eligible fuel expenses. Each contract summary must include the following information:

(I) the name of the supplier, the contract number or other designation, and the type of fuel or purchased power involved;

(II) the date on which the contract was originally signed and the dates on which any amendments were signed;

(III) the date on which the fuel or purchased-power was first supplied pursuant to the contract;

(IV) the term of the contract;

(V) the pricing mechanism under the contract;

(VI) the provisions of any take-or-pay obligations under the contract;

(VII) the maximum amount of deliveries available under the contract;

(VIII) the terms of any economic-out provisions in the contract;

(IX) the delivery points under the contract;

(X) the provisions for transportation of the fuel or transmission of the purchased power under the contract; and

(XI) the quality or measurement of the fuel or purchased power under the contract.

(iii) the quantities purchased and the unit prices and total prices paid under any contract during the reconciliation period;

(iv) if the utility's eligible fuel expenses for the period included an item or class of items supplied by an affiliate of the utility, the prices charged by the supplying affiliate to the utility were reasonable and necessary and no higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items;

(v) a summary description of all generating-unit outages and partial outages during the reconciliation period. The utility must make available information stating in detail the reason or cause for any outage, the beginning and ending time and date of the outage or partial outage, and the amount of capacity reduction during any partial outage;

(vi) a summary of significant, atypical events that occurred during the reconciliation period that constrained the economic dispatch of the utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints;

(vii) a general description of typical constraints that limit the economic dispatch of the utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints; and

(viii) the reasonableness and necessity of the utility's eligible fuel expenses and its mix of fuel used during the reconciliation period.

(B) Fuel reconciliation proceedings. Burden of proof and scope of proceeding are as follows:

(i) In a proceeding to reconcile fuel factor revenues and expenses, a utility has the burden of showing that:

(I) its eligible fuel expenses during the reconciliation period were reasonable and necessary expenses incurred to provide reliable electric service;

(II) if its eligible fuel expenses for the reconciliation period included an item or class of items supplied by an affiliate of the utility, the prices charged by the supplying affiliate to the utility were reasonable and necessary and no higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items; and

(III) it has properly accounted for the amount of fuel-related revenues collected pursuant to the fuel factor during the reconciliation period.

(ii) The scope of a fuel reconciliation proceeding includes any issue related to determining the reasonableness of the utility's fuel expenses during the reconciliation period and whether the utility has over- or under-recovered its reasonable fuel expenses. The scope does not include those issues precluded by subsection (a)(7) of this section.

(C) Refunds. All refunds and surcharges shall be made using the following methods.

(i) Interest will be calculated on the cumulative monthly ending under- or over-recovery balance in the manner and at the rate established by the commission for overbilling and underbilling in §23.45(g) of this title

(ii) Rate class as used in this subparagraph shall mean all customers taking service under the same tariffed rate schedule, or a group of seasonal agricultural customers as identified by the utility.

(iii) Interclass allocations of refunds and surcharges, including associated interest, shall be developed on a month-by-month basis and shall be based on the historical kilowatt-hour usage of each rate class for each month during the period in which the cumulative under- or over-recovery occurred, adjusted for line losses using the same commission-approved loss factors that were used in the utility's applicable fixed or interim fuel factor.

(iv) Intraclass allocations of refunds and surcharges shall depend on the voltage level at which the customer receives service from the utility. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the utility shall be given refunds or assessed surcharges based on their individual actual historical usage recorded during each month of the period in which the cumulative under- or over-recovery occurred, adjusted for line losses if necessary. All other customers shall be given refunds or assessed surcharges based on the historical kilowatt-hour usage of their rate class.

(v) Unless otherwise ordered by the commission, all refunds and surcharges shall be made through a one-time bill credit or charge. However, refunds may be made by check to municipally-owned utility systems if so requested. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the utility shall be given a lump-sum credit or assessed a lump-sum surcharge. All other customers shall be given a credit or assessed a surcharge based on a factor which will be applied to their kilowatt-hour usage over a one-month period. This factor will be determined by dividing the amount of refund or surcharge allocated to each rate class by forecasted kilowatt-hour usage for the class during the month in which the refund or surcharge will be made.

(D) Procedural schedule. Upon the filing of a petition to reconcile fuel expenses in a separate proceeding, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within one year after a materially complete petition was filed. However, if the deadlines imposed by paragraph (6) of this subsection result in a number of utilities filing cases within 45 days of each other, the presiding officers shall schedule the cases in a manner to allow the commission to accommodate the workload of the cases irrespective of whether such procedural schedule enables the commission to issue a final order in each of the cases within one year after a materially complete petition is filed.

(4) Notice of fuel proceedings. In addition to the notice required by the Administrative Procedure Act (APA) to be given by the commission, the utility is required to give notice of fuel proceeding at the time the petition is filed.

(A) Method of notice. Notice of fuel proceedings will be given by the utility as follows.

(i) Notice in all proceedings involving refunds, surcharges, or a proposal to change the fuel factor, shall be by one-time publication in a newspaper having general circulation in each county of the service area of the utility or by individual notice to each customer;

(ii) Notice in all reconciliation proceedings shall be by publication once each week for two consecutive weeks in a newspaper having general circulation in each county of the service area of the utility and by individual notice to each customer;

(iii) Notice of proceedings solely involving the certification of long-term fuel contracts is covered by subsection (a) of this section

(B) Contents of notice. Notice whether by publication or by individual notice to each customer shall state the date the petition was filed and include a general description of the customers, customer classes, and territories affected by the petition; and the relief requested Notices to revise fuel factors must also state the proposed fuel factors by type of voltage and the period for which the proposed fuel factors are expected to be in effect. Notices to revise fuel factors, to refund, or to surcharge must contain the statement that, "these changes will be subject to final review by the commission in the utility's next reconciliation," unless, in the case of refunds or surcharges, the change is a result of a reconciliation proceeding. Notices to

reconcile fuel expenses must also state the period for which final reconciliation is sought. In addition, all notices must state: "Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Commission's Public Information Office at (512) 458-0256 or (512) 458-0221 (telecommunications device for the deaf)."

(C) Proof of notice may be demonstrated by appropriate affidavit. In fuel proceedings initiated by a person other than a utility, the notice required in this paragraph must be provided in accordance with a schedule ordered by the presiding officer.

(5) Reports; confidentiality of information. Matters related to submitting reports and confidential information will be handled as follows:

(A) The commission will monitor each utility's actual and projected fuel-related costs and revenues on a monthly basis. Each utility shall maintain and provide to the commission, in a format specified by the commission, monthly reports containing all information required to monitor monthly fuel-related costs and revenues, including generation mix, fuel consumption, fuel costs, purchased power quantities and costs, and system and off-system sales revenues.

(B) Contracts for the purchase of fuel, fuel storage, fuel transportation, fuel processing, or power are discoverable in fuel proceedings, subject to appropriate confidentiality agreements or protective orders.

(C) The utility shall prepare a confidentiality disclosure agreement to be included as part of the fuel reconciliation petition. The format for the agreement shall be the same as that contained in the commission approved rate filing package. In addition to the agreement itself, Attachment 1 of the agreement shall present a complete listing of the information required to be filed which the utility alleges are confidential. Upon request and execution of the confidentiality agreement, the utility shall provide any information which it alleges is confidential. If the utility fails to file a confidentiality agreement, the deadline for a commission final order in the case is tolled until a protective order is entered or a confidentiality agreement is filed. Use of the confidentiality disclosure agreement does not constitute a finding that any information is proprietary and/or confidential under law, or alter the burden of proof on that issue. The form of agreement contained in the commission-approved rate filing package does not bind the examiner or the commission to accept the language of the agreement in the consideration of any subsequent protective order that may be entered.

(D) A party that cannot view a confidential document without receiving advantage as a competitor or bidder may hire outside counsel and consultants to view the document subject to a protective order.

(6) Effective date of the January, 1993, amendments; transition period. The January, 1993, amendments to this subsection are effective May 1, 1993. However, with respect to individual utilities, all fuel-related revenues collected through a fuel factor in effect before the effective date of a fuel factor established under the 1993 amendments shall be reconciled under commission rules and orders in effect before the effective date of the 1993 amendments. Notwithstanding paragraph (3) of this subsection, no utility shall be required to file a separate fuel reconciliation petition earlier than one year after the effective date of this subsection, and utilities for which fuel expenses have been reconciled for any of the 18 months preceding the effective date of this subsection shall not be required to file a separate fuel reconciliation petition earlier than two years after the effective date of this subsection. The definition of eligible fuel expense in this section shall apply except to the extent the definition is inconsistent with a commission order signed (before or after promulgation of this rule) in connection with a case filed before the effective date of this section, in which case such order shall apply to fuel expenses incurred until a final order is signed in the utility's first base rate case after the effective date of this section.

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

(c)-(e) (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 November 30, 1993.

TRD-9332843 **John M. Renfrow**
Secretary of the Commission
Public Utility Commission of Texas

Effective date: December 21, 1993

Proposal publication date: September 14, 1993

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

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Part VIII. Texas Racing Commission

Chapter 311. Conduct and Duties of Individual Licensees

Subchapter B. Specific Licensees

Licensees for Horse Racing

• 16 TAC §311.153

The Texas Racing Commission adopts the repeal of §311.153, concerning workers' compensation, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7086).

The repeal is adopted to ensure the commission's rules are consistent with applicable state law.

The repeal eliminates the requirement that trainers provide workers' compensation insurance for their employees

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on December 1, 1993.

TRD-9332861 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 1, 1994

Proposal publication date. October 15, 1993

For further information, please call (512) 794-8461

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Chapter 313. Officials and Rules of Horse Racing

Subchapter D. Running of the Race

Jockeys

• 16 TAC §313.409

The Texas Racing Commission adopts an amendment to §313.409, concerning jockey mount fees, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7086).

The amendment is adopted to ensure that funds will be available to pay jockeys for their services.

The amendment requires the losing jockey

mount fee to be on deposit with the horsemen's bookkeeper before a horse is eligible to start in a race.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

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 December 1, 1993

TRD-9332862 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 1, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 794-8461

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Subchapter E. Training Facilities

• 16 TAC §§313.501-313.507

The Texas Racing Commission adopts new §§313.501, 313 502, 313 504, 313. 506, and 313.507, concerning training facilities, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7086). The Commission also adopts §313.503 and §313. 505 with changes.

The sections are adopted to ensure that wagerers have accurate workout information on horses on which they are wagering and that racehorses participating in pari-mutuel racing are fit and ready to compete.

The sections establish the licensing procedures and operational requirements for training facilities and their employees. The changes in §313.503 and §313.505 correct errors in designating subsections.

Comments in favor of the proposal were received from the Diamond D Ranch, Bill Leach Racing Stables, and an individual in Brady. Comments against the proposal were received from Crabtree Training Center, which disagreed with the amount of the license fee and the minimum specifications for the racetrack. The Commission disagrees with these comments on the grounds that the amount of the license directly reflects the actual costs anticipated to be incurred by the Commission in regulating training facilities, which is the appropriate criteria for setting the fee under Texas Civil Statutes, Article 179e, §3. 021(c). The Commission further disagrees with the comments on the grounds that minimum specifications for a racetrack at a training facility are necessary to ensure the safety of the racehorses obtaining an official workout and the safety of the jockeys riding the horses. Comme ts were received from several individuals in the form of a petition indicating their desire for the Commission to expand the number of facilities at which official workouts may be obtained. The Commission believes that by adopting the new rules as proposed, there will be an increase in the number of facilities available to provide official workouts.

The new sections are adopted under Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.021, which authorizes the commission to adopt rules for the licensing and regulation of training facilities and to charge an annual fee for training facility licenses; §7.02, which authorizes the commission to adopt categories of occupational licenses; and §7.05, which authorizes the commission to set the amount of occupational license fees by rule.

§313.503. Physical Plant.

(a) To be eligible for a training facility license, the facility must provide the equipment and facilities prescribed by this section.

(b) The racetrack at a training facility must have a chute at least 250 yards long from the back of the chute to the finish line. The racetrack must be an oval that is at least:

(1) five-eighths mile in length;

(2) 45 feet wide on each straightaway;

(3) 45 feet wide on each turn.

(c) The dimensions of the racetrack at the training facility must be surveyed by a certified land surveyor, including the distances from each distance pole to the finish line. The results of the survey must be submitted in writing with the application for a training facility license. If neither the track dimensions nor the distance poles have been altered since the date an original training facility license was granted, the general manager or chief executive officer of the training facility may submit a sworn affidavit stating that fact in lieu of a new survey. If the track dimensions or distance poles have been altered since the date the original training facility license was granted, the racetrack must be surveyed by a certified land surveyor and the results submitted to the commission in writing with the application for license renewal.

(d) A training facility shall provide an inside contour rail and an outside rail, both of which must be approved by the commission or the commission staff. The turns on the racetrack must be banked to a degree approved by the commission or the commission staff. A training facility shall provide a padded starting gate approved by the commission or the commission staff. The training facility shall provide timing equipment that is capable of recording the time of a horse in at least hundredths of a second. The timing equipment is subject to testing and approval by the commission or the commission staff.

(e) The racetrack at a training facility must have distance poles indicating the distance from the pole to the finish line as follows:

(1) 1/16 poles with black and white stripes;

(2) 1/8 poles with green and white stripes; and

(3) 1/4 poles with red and white stripes.

(f) A training facility is not required to have:

(1) facilities for the public to observe the workouts; or

(2) concessions.

§313.505. Workout Requirements.

(a) All official workouts must be supervised by the following officials, who must be licensed and approved by the commission:

(1) a timer/clocker;

(2) a horse identifier; and

(3) a starter.

(b) The person riding a horse in an official workout and the person bringing a horse to a licensed training facility for an official workout must hold a valid commission license in the appropriate category.

(c) The horse identifier shall identify each horse before each official workout. The original registration papers for each horse that is to work, or a copy that satisfies the horse identifier, must be submitted to the horse identifier before the horse's initial workout at the facility to permit the identifier to record the horse's color, gender, markings, and tattoo number, if applicable. The horse identifier shall inspect all documents of ownership, registration, or breeding necessary to ensure the proper identification of the horse. The identification procedures used at the training facility are subject to the approval of the executive secretary. The individual serving as the horse identifier may serve as timer or starter also, with the approval of the executive secretary.

(d) A training race may be used as an official workout. The distance of an official workout must be at least:

(1) 220 yards for a quarter horse;

(2) two furlongs, for a two-year old thoroughbred; and

(3) three furlongs, for a thoroughbred three years of age or older.

(e) A workout must be timed on a stopwatch that is accurate to within .01 of a second. Times for quarter horses shall be rounded to tenths of one second and times for thoroughbred horses shall be rounded to fifths of one second.

(f) An individual may not ride a horse in an official workout unless the individual is wearing a properly fastened helmet of a type approved by the commission.

(g) Each official workout must be recorded on a form prescribed by the commission. Not later than 24 hours after the day of an official workout, a training facility shall transmit the results of the workout to:

(1) the official past performance publisher;

(2) the commission; and

(3) each pari-mutuel horse racetrack in this state that is:

(A) conducting a live race meeting for the same breed of horse as the horse that was worked; or

(B) will, in 45 days or less after the date of the workout, commence a live race meeting for the same breed of horse as the horse that was worked.

(h) A horse may not have more than one official workout on a calendar day.

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 December 1, 1993.

TRD-9332863 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 1 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 794-8461

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TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Mandatory Continuing Education

- **22 TAC §535.71, §535.72**

The Texas Real Estate Commission adopts amendments to §535.71 and §535.72, concerning mandatory continuing education (MCE) for real estate licensees, without changes the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7283).

The amendment to §535.71 eliminates a requirement that MCE providers pay filing fees by cashier's checks. The amendment also adds a new core real estate course on the law of agency to the list of courses which may be accepted for MCE credit.

The amendment to §535.72 simplifies the reporting process for MCE providers by eliminating a requirement that providers insert the course completion card number for each student on the course completion roster or alphabetized list of students filed with the commission. Providers who wish to insert student course completion numbers for additional verification may do so at their own discretion.

The amendments are necessary to conform the sections with current law and simply filing requirements.

No comments were received regarding adoption of the amendments.

The amendments are 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.

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 November 29, 1993.

TRD-9332867 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Effective date: December 21, 1993

Proposal publication date. October 19, 1993

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

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Licensed Real Estate Inspectors

- **22 TAC §§535.205, 535.208, 535.212, 535.214, 535.216, 535.218, 535.221, 535.224, 535.226**

The Texas Real Estate Commission adopts amendments to §§535.205, 535 208, 535.212, 535.214, 535.216, 535.218, 535.221, 535.224, and 535.226, concerning licensed real estate inspectors, without changes the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6898).

The amendments substitute the statutory terms "professional inspectors," "real estate inspector," and "licensed apprentice inspector" for the respective previous terms "real estate inspector," "inspector-in-training," and "registered apprentice inspector" and clarify the type of license involved in the sections.

The amendment to §535.224 conforms the section with a provision in recent legislation which permits the commission to authorize the Texas Real Estate Inspector Committee, an advisory committee of 12 inspectors appointed by the commission, to conduct administrative hearings or recommend the entry of final orders, or both, in contested cases involving inspectors. The amendment to §535.224 also substitutes new statutory terms for the inspector licenses issued by the commission.

The amendments are necessary to conform the sections with current law.

No comments were received regarding adoption of the amendments.

The amendments are 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.

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 November 30, 1993.

TRD-9332866 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Effective date. December 21, 1993

Proposal publication date: October 8, 1993

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

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty

Subchapter E. Texas Catastrophe Property Insurance Association

- **28 TAC §5.4501**

The State Board of Insurance of the Texas Department of Insurance adopts an amendment to §5.4501, concerning the adoption by reference of a new manual of rules governing the writing of windstorm and hail insurance through the Texas Catastrophe Property Insurance Association (TCPIA), with changes to the proposed manual and text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6915).

The new TCPIA manual is necessary to incorporate new rules based on recent amendments to the Insurance Code, Article 21.49, enacted in House Bill 1461 by the 73rd Texas Legislature, that amended the rating for residential risks insured through the TCPIA and mandated that the association provide coverages for indirect losses caused by windstorm

and hail. The new manual is also needed to incorporate all changes in the manual rules that have previously been approved by the State Board of Insurance and is reformatted and simplified for easier use. Implementation of the new manual rules will result in greater availability of residential insurance in the voluntary market for Texas coastal residents since most windstorm and hail coverage will be excluded from the residential policy written in the voluntary market, and coverages for both direct and indirect losses caused by windstorm and hail will be provided in the TCPIA policy

Proposed §5.4501 as published, which provided for an effective date of December 1, 1993, for the new rules manual, is amended to provide for an effective date of January 1, 1994. This change is necessary to comply with the Administrative Procedure Act requirement that a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state (the Government Code, §2001.036(a)) and to allow time for the printing and distribution of the new manual.

New Rules II.E 5 and II.E.6, which were not part of the proposed manual, are incorporated into the adopted manual to provide indirect loss coverage under a TCPIA policy for condominium owners (Forms HO-CON-B and HO-CON-C) with the remaining items under Rule II.E. renumbered as Rule II.E.7 through II.E.11. Rules III.E.1 and III.E.2 as proposed are amended in the adopted manual to provide proper rating for indirect loss coverages for condominium owners when TCPIA Forms 326 (HO-CONDO) and 328 (HO-CONDO) are attached to a TCPIA policy. Rule I.J.5 in the TCPIA manual as proposed is reworded in the adopted manual to more closely follow the statute (the Insurance Code, Article 21.49, §8D(e) , regulating liability limits of TCPIA policies), and the new wording is moved to be an exception under Rule I.J.2.a since the provisions of Rule I.J.5 apply only to those risks referenced under Rule I.J.2.a. This amendment as adopted does not change the intent or application of Rule I.J.5 as proposed but simply clarifies the application of the rule. Typographical errors in Rule III.F are corrected in the adopted manual.

The new manual contains rules that are based on recent amendments to the Insurance Code, Article 21 49, enacted in House Bill 1461 by the 73rd Texas Legislature, that amended the rating for residential risks insured through the TCPIA and mandated that the association provide coverages for indirect losses caused by windstorm and hail. The proposed manual changes reflect the proper method of rating an association policy when insuring a dwelling risk using the board approved benchmark rates with an added factor not greater than +30%, but not less than +25%. The proposed manual changes also provide for the attachment of endorsements providing coverages for indirect losses caused by windstorm and hail and provide the appropriate rating for such coverages. In addition, the new manual incorporates all changes in the manual rules that have previously been approved by the State Board of Insurance and is presented in a new simplified format for easier use

During the comment period, the Texas Department of Insurance received written comments on the proposal from the Texas Association of Insurance Agents and Zapp Insurance Agency.

Comment: One commenter stated that the exclusion of primary residential townhouses and condominium units from the indirect loss coverage provisions was not in keeping with the intent of the Insurance Code, Article 21.49, as amended by the 73rd Texas Legislature in House Bill 1461, which was to encourage insurance companies to increase their writings in coastal areas by eliminating coverage for certain wind-related exposures from residential property policies and providing coverage for these same exposures in the TCPIA policy. The commenter pointed out that because of this exclusion condominium unit owners will continue to experience a lack of availability in the voluntary market. The commenter proposed amending Rules II.E.2 and II.E.3 of the TCPIA manual to include HO-CON-B and HO-CON-C policies to provide for the use of indirect loss coverage endorsements for condominium owners and amending Rule III.E.1 in the last sentence for rating purposes.

Response: The Department agrees with the commenter's reasoning in the explanation of the legislative intent of the amendments to Article 21.49 as added in Section 8D. The Department disagrees that primary residential townhouses have been excluded from the proposal because any individually owned townhouse unit insured by the owner is defined as a dwelling in the TCPIA manual and is eligible to be covered under a TCPIA policy for indirect loss coverage based on the exclusion of such coverage from the companion homeowners or dwelling policy issued in the voluntary market to insure the individually owned townhouse unit. The Department agrees that condominium owners insured by the TCPIA should be provided with indirect loss coverages. The Department did not include such coverage in the proposal because while the newly enacted statute provides this coverage for condo renters, it does not address condo owners. However, it is the Department's position that the legislative intent is clear that certain indirect loss coverages for all residential risks were to be provided by the TCPIA policy when such coverages were excluded from a residential property policy written in the voluntary market. The State Board of Insurance pursuant to the authority granted in the Insurance Code, Article 21.49, §§5A, 7, and 8 may provide for such coverages, and the rule as adopted provides for two additional endorsements to provide condo owners with certain indirect loss coverages The Department, however, does not agree with the commenter that TCPIA Endorsement Forms 315 and 320 can be used for this purpose because these endorsements cannot be revised to properly correspond to the indirect loss coverages that must be provided for insuring condominium owners. As a result, the Board has adopted TCPIA Form 326 (HO-CONDO) to be attached to a TCPIA Windstorm and Hail policy if a HO-CON-B companion homeowners policy has been issued which excludes the coverages provided by the attached endorsement and TCPIA Form 328 (HO-CONDO) to be attached to a TCPIA Windstorm and Hail policy if a HO-CON-C companion homeowners policy has been issued which excludes the coverages provided by the attached endorsement. The Department has added new Rules II.E.5 and II.E.6, and amended Rules III.E.1 and III.E.2 accordingly.

Comment: This same commenter suggested that Rule III.F. of the TCPIA manual should be amended to include the words "Association limit or the deductible amount" following the phrase "When the value exceeds the maximum".

Response: The Department responds that this was a typographical error, and it has been corrected in the adopted manual.

Comment: This same commenter suggested that while Rule I.K. of the manual lists mobile homes as excluded property, rules regarding the rating and writing of mobile homes should be included in the manual because the TCPIA provides coverage for mobile homes

Response: The Department agrees and will prepare a mobile home rules and rates supplement to the manual for Board consideration and adoption in a separate rulemaking procedure.

Comment: Both commenters suggested that Rule I.J.5 of the manual does not accurately reflect the intent of the Insurance Code, Article 21 49, §8D(e) and that the rule should be changed to track the statutory language verbatim.

Response: The Department's wording of the rule is based on the statutory interpretation that the maximum limit of liability for a risk insured after September 1, 1991, may not be required to be reduced if the risk was insured by the TCPIA for a greater maximum limit of liability on September 1, 1991. The Department does not agree with the commenters' proposal in its entirety because the Department believes that there needs to be clarification that the pertinent statute applies only to risks insured by TCPIA and not to risks insured by the voluntary market. However, the Department agrees that Rule I.J. 5 in the TCPIA manual as proposed should be reworded to more closely follow the statute (the Insurance Code, Article 21 49, §8D(e) regulating liability limits of TCPIA policies) and yet still provide that it applies only to risks insured by TCPIA and not to risks insured by the voluntary market. Also, the Department believes that for clarification purposes the new wording should be moved from Rule I.J.5, as proposed, to be an exception under Rule I.J.2.a since the provisions of Rule I J 5 apply only to those risks referenced under Rule I J.2 a. These changes are incorporated into the adopted manual. This amendment as adopted does not change the intent or application of Rule I.J.5 as proposed but simply clarifies the application of the rule. If the commenters disagree with the Department's interpretation that the pertinent statute applies only to risks insured by TCPIA and not to risks insured by the voluntary market, this matter should be resolved in a separate rulemaking procedure because Rule I J 5 was proposed for inclusion in the manual because it was previously adopted by the Board and

was not proposed as new language under this rule.

Comment: Both commenters suggested that Rule III.F. of the TCPIA manual should be amended to include the words "coinsurance requirements and charge a" following the phrase "the association may waive the".

Response: The Department responds that this was a typographical error, and it has been corrected in the adopted manual.

Comment: One commenter disagreed with the proposed changes in the manual predicting that these changes will greatly complicate matters for agents, add a whole layer of underwriting review for the TCPIA staff, and result in a surge of applications returned for corrections or explanations.

Response: The Department responds that the new rules and procedures are the result of new legislation. The Department agrees that the newly enacted amendments to the Insurance Code, Article 21.49 create complications for administering the change; however, it is the Department's opinion that regardless of how those changes are implemented administering the changes will be complicated.

The amendment is adopted pursuant to the Insurance Code, Article 21.49, §1.23 of House Bill 1461 and the Government Code, §2001.004 et seq. Article 21.49, §5A authorizes the State Board of Insurance to issue any orders which it considers necessary to carry out the purposes of Article 21.49. Article 21.49, §7 requires the State Board of Insurance to prepare endorsements and forms applicable to the standard policies which it has promulgated providing for the deletion of coverages available through the Texas Catastrophe Property Insurance Association (TCPIA) and to promulgate the applicable reduction of premiums and rates for the use of such endorsements and forms. Article 21.49, §8 authorizes the State Board of Insurance to approve every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing for use by the TCPIA. Article 21.49, §8B requires the TCPIA to provide coverage for indirect losses caused by windstorm or hail when a companion policy issued in the voluntary market specifically excludes such coverage and authorizes the promulgation of rules. Section 1.23 of House Bill 1461 (Act of May 27, 1993, 73rd Legislature, Regular Session, Chapter 685, 1993 Texas Session Law Service 2575 (Vernon)) provides that as of September 1, 1993, that the State Board of Insurance relinquish authority over all areas of activity of the Texas Department of Insurance except the promulgation and approval of rates and policy forms and endorsements and rules related to these activities and that the Board may exercise such authority until no later than September 1, 1994. The Government Code, §2001.004 et seq authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state administrative agency.

§5.4501. Rules and Regulations for Texas Catastrophe Property Insurance Association (association). The Texas Department of Insurance adopts by reference a rules manual for the association as amended effective January 1, 1994. Copies of the rules manual may be obtained by contacting the Property/Casualty Division, Mail Code 103-1A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

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 November 24, 1993.

TRD-9332717 Linda von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 7, 1994

For further information, please call: (512) 463-2765

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 290. Water Hygiene

The Texas Natural Resource Conservation Commission (TNRCC) adopts the repeal of §290.51 and adopts new §290.51, concerning fees for services to drinking water systems. The repeal of §290.51 and new §290 51 are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7129). The fees will provide the Commission the additional revenue needed to satisfy the increased sampling, inspection and other requirements mandated by the Safe Drinking Water Act.

A public hearing was held on October 28, 1993, and two individuals presented testimony. One commenter expressed concern that the monies gained from the fee increase would be used to create an inefficient bureaucracy. The other commenter questioned the formula to determine the fee amount.

The Commission received several comment letters during the comment period in opposition to the proposed fee increase. Two commenters stated that the timing the agency chose to increase fees conflicted with the fiscal year of most municipalities, thereby causing financial hardships. They requested that in the future, the agency present their proposals for fee increases well before the end of the fiscal year (October 1-September 30) to allow municipalities to prepare their budgets. Several commenters stated that the formula favors larger systems. A commenter expressed concern that the increase would cause medium-sized water systems economic problems. This letter added that the State should be aware that, by increasing fees, monies that could be used to upgrade the water system are reduced. The letter suggested the agency improve procedures that would allow water systems to increase rates, so they can pass the increases on to their customers. Several commenters believed that the proposed increase in fees was excessive. Two commenters questioned whether it was fair that those systems that purchase treated water should pay twice because wholesalers would also increase their rates to cover the fee increase Some commenters requested that fee bills be itemized and that the agency consider assessing a per connection based fee as opposed to a formula. Another commenter complained that utilities should only be charged for and when services are actually provided.

One comment was received in support of the new fee and urged the Commission to make every effort to maximize the benefits the fee is designed to provide.

Comments were received from the following: Texas Municipal League, West Wise Rural Water, Goodyear Tire & Rubber Company, City of McKinney, Guadalupe Blanco River Authority, City of Petersburg, Rusk Rural WSC, City of Nacogdoches, Sebestas Hitchin Post, City of Mason, The Ridge Subdivision, City of Crawford, El Dorado Mobile Home, City of Georgetown, Kerrville South Water Company, Ricardo WSC, Nueces WSC, Dallas County Water Control District 6, Rancho Oaks MHP, Frio Communities Improve, Twin Forks Estates, Lake LBJ MUD, Bayou Forest Village Utility, Lakeway MUD, Little G Court, City of Odessa, Kingsland WSC, and City of Dallas.

Rules and Regulations for Public Water System

- **30 TAC §290.51**

The repeal is adopted under the Texas Water Code, §5.103, which authorizes the Texas Natural Resource Conservation Commission to adopt any rules necessary to carry out its powers, duties, and policies, and §341.041 of the Health and Safety 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 November 30, 1993

TRD-9332847 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date December 21, 1993

Proposal publication date. October 15, 1993

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

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The new section is adopted under the Texas Water Code, §5.103, which authorizes the Texas Natural Resource Conservation Commission to adopt any rules necessary to carry

out its powers, duties, and policies, and §341.041 of the Health and Safety 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 November 30, 1993.

TRD-9332846 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: December 21, 1993

Proposal publication date: October 15, 1993

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XVII. Texas State Soil and Water Conservation Board

Chapter 523. Agricultural and Silvicultural Water Quality Management

• 31 TAC §§523.1-523.4

The Texas State Soil and Water Conservation Board adopts new §§523. 1-523.4. Sections 523.2-523.4 are adopted with changes to the proposed text as published in the September 28, 1993, issue of the *Texas Register* (18 TexReg 6625) and the Correction of Error in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6767). Section 523.1 is adopted without changes and will not be republished.

The purpose of the new sections is to provide specific details and requirements for implementation of provisions in Senate Bill 503, Acts of the 73rd Legislature, regarding management of agricultural and silvicultural nonpoint source pollution, water quality management plan certification program, and complaints concerning agricultural and silvicultural nonpoint source pollution. The sections define a water quality management plan and establish the process for setting criteria and for landowners and operators to obtain water quality management plans. The sections establish procedures for investigation of complaints relative to agricultural and silvicultural nonpoint source pollution, development of corrective action plans when required, and referral to the Texas Natural Resource Conservation Commission if corrective actions fail to be implemented. The sections define what a person must do to obtain a water quality management plan, what the effect of having an activated water quality management plan will be, and how complaints relative to agricultural and silvicultural nonpoint source pollution will be processed.

Section 523.2(b)(4) has been changed to clarify that other existing programs and entities will be utilized to obtain data and information relative to the identification and delineation of problem areas.

Section 523.3(f) was redesignated as subsection (b) and all following subsections redesignated accordingly. Subsection (b)(1) has been expanded to reflect a concern that encouragement and assistance will be provided to landowners and operators that request the development of a water quality management plan. Redesignated subsection (c)(1) has been changed to clarify that the practices to be selected are those practices eligible for water quality management planning. Subsection (c)(3) was expanded to reference the Coastal Zone Act Reauthorization Amendments (CZARA). Redesignated subsection (d)(3) was expanded to include local underground water conservation districts and others as determined by the State Board as necessary to help develop practice standards. Redesignated subsection (e)(3) was revised to clarify the priority of practices within an implementation schedule.

Section 523.4(1)(C) was added to clarify that those operations that have applied for a water quality management plan would also be investigated if complaints made it necessary. Subsequent paragraphs were renumbered. Paragraph (2)(D) was reworded to clarify complainants will be informed of the outcome of a determination following an investigation but the report need not be a formal process. Paragraph (3)(B) has been expanded to clarify that corrective action plans are developed in the same manner as prescribed for a water quality management plan development. Paragraph (3)(C) was expanded to include local underground water conservation districts as a source of technical expertise that may be utilized to help develop corrective action plans. Paragraph (4) was reworded to clarify the use of the term warranted.

The public comment period closed on October 29, 1993. The Soil and Water Conservation Board received nine written comments on the proposed rules. Generally, the comments raised questions concerning the inclusion in the program of or coordination with various entities and suggested changes in the language to clarify various points. All written comments were submitted by groups, associations, or public entities. One soil and water conservation district requested changes by verbal communication.

Two commenters supported the rules as written.

One commenter pointed out the omission of a subparagraph (C) in §523.4.

Three commenters suggested adding local underground water conservation districts and the Texas Alliance of Groundwater Districts to those assisting with practice standards, corrective action plans, and providing data and information on identification of areas.

One commenter made six suggestions for revisions, deletions, and additions to §523.3, Water Quality Management Plans, including the deletion of the requirement for a report to complainants.

One commenter made the suggestion that State Water Quality Standards be subject to evaluation in terms of the actual benefits derived from meeting standards, and that acceptability of management plans should not be determined based on mathematical modeling of water quality.

One commenter suggested that the Board's authority need not be limited to private property as suggested in the preamble.

One commenter suggested that the rule does not reflect the intent of Senate Bill 503 in that the potential for agricultural and silvicultural nonpoint source pollution areas in the "Coastal Zone" is not specifically addressed.

One commenter suggested that the rule should specifically take into account the potential effect on the Board's water quality management plan certification program of the CMP goals and policies currently under development by the CCC and the guidelines adopted pursuant to §6217(g) of CZARA.

One commenter suggested that §523.2(a) specifically allow any person to petition for delineation, or at least, consider a petition from other state resource agencies including those represented on the CCC.

One commenter suggested that §523.2(b)(1) and (3) allow any person to submit data or information to the Board relating to potential nonpoint source pollution problem areas or at least other agencies, including studies conducted by the TNRCC, a National Estuary Program, or any other studies done by or for another state or federal resource agency.

One commenter suggested that §523.2(c)(1) specifically require the Board to consult with agencies represented on the CCC in identifying areas in the coastal zone which constitute a known problem.

One commenter suggested that §523.3(c)(3) reflect the need for coordination between the Board and CCC member agencies.

One commenter suggested that the rule specify that the Board can require a water quality management plan.

One commenter stated that it was not clear how the size or location consideration are relevant to CAFO's identification as point or nonpoint sources.

One commenter suggested the statement that all CAFO's "not required to obtain a permit from TNRCC will be nonpoint sources" appears to conflict with present TNRCC rules.

One commenter suggested that the rule clarify that aquaculture operations/activities that discharge to the waters of the State require a TNRCC permit.

One commenter suggested that in §523.2, Identification of Problem Areas, the rule more clearly emphasize the integration of problem delineations performed by the State Board and the State's water quality inventory.

One commenter suggested addition of the following references to §523.2(b) (4); §106 of the Clean Water Act; the Federal Safe Drinking Water Act; the Federal Insecticide, Fungicide, and Rodenticide Act; and data collected

by state and federal groundwater protection entities."

One commenter suggested limiting allocation of resources under §523.2(c) to corrective action plans.

One commenter asked if the considerations for allocation of resources under §523.2(c)(1)-(3) represent a prioritized sequence of factors to be considered and suggested that the consideration of "benefit to water quality" under §523.2(c)(3) be given more consideration or the terms "First," Second, " and "Third," be deleted from subsection (c)(1)-(3).

One commenter suggested deleting the reference to corrective action plans in §523.2(c)(3).

One commenter noted that the term "no-discharge" is not used in §523.3, Water Quality Management Plans, and asks if plans are developed that allow for a discharge that does not comply with TNRCC and EPA regulations, will that facility be referred to TNRCC, and asks how the Board will address odor issues.

One commenter suggested that water quality management plan development and implementation in impaired or threatened water bodies be consistent with the State's water quality management plan.

One commenter TNRCC suggested deleting the term "Insofar as practicable" from §523.3(b)(3) and that practices should also be consistent with §6217 of the Coastal Zone Management Act and the Federal Insecticide, Fungicide, and Rodenticide Act.

One commenter suggested that management practices should be selected based upon an analysis of implications to both surface water and groundwater quality.

One commenter suggested the rule provide for an implementation schedule that incorporates development of total maximum daily loads in accordance with 40 CFR, §130.

One commenter asked if there was a provision in the rule to refer producers who fail to meet implementation schedules to TNRCC.

One commenter suggested deletion of the phrase "To the extent allowed by available technology" under §523.3(e), regarding applicability of water quality standards, and suggested that wording be added to incorporate the total maximum daily load process into the rules.

One commenter suggested replacing "landowners" with "facility owners and/or operators" in §523.3(b)(1)(as revised).

One commenter suggested deletion of "taking into account the state of the existing technology, economic feasibility, and water quality needs" in §523. 3(b)(3) and asserts that the Texas Water Code does not allow for considerations of technological development or economic feasibility.

One commenter suggested replacing "operations" with "facilities" in §523. 4(1)(B).

One commenter suggested adding "facilities that have applied for a Board Water Quality Management Plan" under §523 4(1)(B).

One commenter suggested deletion of "when warranted" under §523.4(4).

One commenter requested that soil and water conservation district rules in plan development and complaint investigation be clarified.

The groups and associations in support of the proposed rule as published were the Texas Citrus and Vegetable Association and the Texas Farm Bureau. No one opposed the rules as published but the following entities submitted written suggestions for changes: Texas Water Development Board, Texas Alliance of Groundwater Districts, Barton Springs/Edwards Aquifer Conservation Districts, Riverside and Landowners Protection Coalition, Inc., Foard County Soil and Water Conservation District (SWCD), General Land Office, and Texas Natural Resource Conservation Commission. The Hutchinson SWCD requested changes by verbal communication.

The Texas Water Development Board pointed out the omission of a subparagraph (C) in §523.4. The State Board corrected the omission.

Texas Alliance of Groundwater Districts suggested the following addition to §523 3(d)(3) "Practice standards will be developed in consultation with the local soil and water conservation district, the local underground water conservation district, with assistance and advice of the USDA, the Soil Conservation Service, Texas Agricultural Extension Service, Texas Forest Service, Texas Agricultural Experiment Station, the Texas Alliance of Groundwater Districts, and others as determined to be needed by the State Board." The Barton Springs/Edwards Aquifer Conservation District expressed the same comment as Texas Alliance of Groundwater Districts relative to adding groundwater districts to §523.3(d)(3). The State Soil and Water Conservation Board and soil and water conservation districts have a special relationship since the Board administers the law that districts operate under and is responsible for coordinating district programs. The assistance of underground water conservation districts will be greatly appreciated in implementation of this program. The rules were modified to reflect this.

The Barton Springs/Edwards Aquifer Conservation District requested that the following language be added to §523.2(b). "data, information collected, and studies performed by local groundwater districts." and suggested adding the local groundwater district to those entities providing assistance on corrective action plans under §523.4(3)(C). Language was added to accommodate this suggestion in §523 2(b)(4) and in §523.4(3)(C).

Riverside and Landowners Protection Coalition, Inc. (RLPC) suggested that §523.3(f)(4) be revised to reflect: "Landowners and operators will be assisted by their soil and water conservation district to find ways to incorporate Board requirements into their plans. Should Board requirements not be deemed feasible by the landowner, the landowners will be assisted in preparing an appeal of district decisions to the Board" and suggested moving §523.3(f) to §523 3(b) and redesignating the subsections that follow. The State Board feels that adequate provisions exist for any landowner to appeal district decisions However, requiring districts to assist with appeals would quickly overwhelm existing resources. Considerable assistance will be available through the water quality management plan development process. §523 3(f) was moved and redesignated as 3(b) and those subsections that follow were redesignated accordingly.

RLPC suggested that wording be added in §523 3(b)(1) to reflect: "Landowners, following consultation with their soil and water conservation district, will be encouraged and aided in working with the district in the preparation of a plan based on Board standards to prevent or abate their nonpoint source pollution." The rule was modified accordingly.

RLPC recommended that all complaints, regardless of source, be reduced to writing and contain as many details as will support the complaint, that signed and dated complaints be delivered to the appropriate district, and that district personnel be encouraged to review the complaint and interview the complainant for details that may be lacking in the written complaint They further recommend that district personnel confer with the owner of the land from which nonpoint source pollution is alleged to be occurring to confirm or negate the allegation, and to develop a plan if needed, and if the landowner does not agree with the district, then the file, along with district recommendations be sent to the Board for a determination relative to the need for action They suggested that the requirement to report to complainants be taken out of the rules

Senate Bill 503 directs the State Board, in cooperation with the local district, to investigate complaints, and upon completion of the investigation, in consultation with the district, to determine that further action is not warranted or to develop a corrective action plan Soil and water conservation districts will be relying on assistance from the State Board to carry out the provisions of Senate Bill 503 and therefore most activities will be conducted jointly between the State Board and districts It is felt that the rules, as written, will accommodate the intent of this comment since corrective action plans are to be developed in the same manner as water quality management plans Section 523 4(3)(B) was reworded to clarify this point It is felt that the requirement to report findings to the complainant is necessary to make the process credible in the eyes of the public Section 523 4(2)(D) and (E) was reworded to clarify that the report need not be a formal process

Foard County Soil and Water Conservation District suggested that State Water Quality Standards be subject to evaluation in terms of the actual benefits derived from meeting standards and suggested that acceptability of management plans should not be determined based on mathematical modeling of water quality

Water Quality Standards are established by the Texas Natural Resource Conservation Commissions pursuant to federal law The process contains provisions for economic evaluation through establishment of designated use and other means and also allows

for public participation. It is outside the authority of the State Board to address this comment. Mathematical modeling is a tool that can be used to determine impacts on water quality caused by different types of activities. However, modeling will not play a major role in determining acceptability of water quality management plans since those standards and criteria will be set through the Field Office Technical Guides currently used to set practice standards.

The Texas General Land Office (GLO) suggested the Board's authority need not be limited to private property as suggested in the preamble. The rule does not limit the program to private property. The preamble has been reworded to remove the reference to private property. The State Board and districts do work on public property when called for and will continue to do so.

GLO commented the rule does not reflect the intent of Senate Bill 503 in that the potential for agricultural and silvicultural nonpoint source pollution areas in the "Coastal Zone" is not specifically addressed. GLO suggests the rule should specifically take into account the potential effect on the Board's water quality management plan certification program of the CMP goals and policies currently under development by the CCC and the guidelines adopted pursuant to §6217(g) of CZARA. Senate Bill 503 is being implemented on a statewide basis. Implementation within the coastal zone will be accomplished the same way as in other areas of the state. Coordination with the Coastal Coordination Council should be a part of this. Section 523.2(b)(4) has been revised to clarify coordination. As written, the rule requires that the water quality management plan certification program be consistent with the "Agricultural and Silvicultural Nonpoint Source Pollution Management Program" developed pursuant to §319 of the Federal Clean Water Act. This document, currently under revision, incorporates all guidelines published to date pursuant to §6217(g) of CZARA, provides for necessary coordination between the General Land Office, Coastal Coordination Council, and State Board to effectively administer a nonpoint source program in the coastal areas of Texas. At the appropriate time, the "Coastal Nonpoint Source Program" for Agricultural and Silviculture will be developed pursuant to §6217(g) of CZARA, consistent with and complementary to our existing programs.

GLO suggests that §523 2(a) specifically allow any person to petition for delineation, or at least, consider a petition from other state resource agencies including those represented on the CCC and suggests that §523.2(b) (1) and (3) allow any person to submit data or information to the Board relating to potential nonpoint source pollution problem areas or at least other agencies, including studies conducted by the TNRCC, a National Estuary Program, or any other studies done by or for another state or federal resource agency

The need for delineation of an area can be made known to the Board through many processes. Specifically, §523 2(b)(4) allows the Board to consider such needs Section 523 2(b)(1) provides for the special relationship between the State Board and soil and water conservation districts, which are an integral part of the program. Section 523.2(b)(2) provides for in-house activities of the Board, which include administration of the nonpoint source coordinating committee, made up of state and federal resource agencies including those on the CCC, and is in place for the purpose of coordinating programs. Section 523. 2(b)(3) allows for the Board and districts to conduct studies to develop needed information not obtainable otherwise. Section 523.2(b)(4) as revised allows for submission of data and information through appropriate channels.

GLO suggests that §523.2(c)(1) specifically require the Board to consult with agencies represented on the CCC in identifying areas in the coastal zone which constitute a known problem and suggests that §523.3(c)(3) reflect the need for coordination between the Board and CCC member agencies.

The identification of problem areas is addressed through several processes included in §523.2(b)(4). Agencies on the CCC are already involved or could be involved in these processes. Section 523.2(c) allows the Board to allocate resources based upon program needs and priorities The rule requires the program to be consistent with the State Agricultural and Silvicultural Nonpoint Source Management Program, which provides for needed coordination. The rule has been modified to clarify the Agricultural Nonpoint Source Management Program pursuant to the Federal Clean Water Act, §319, and the Coastal Zone Act Reauthorization Amendments, §6217.

GLO suggested that the rule specify that the Board can require a water quality management plan. Senate Bill 503 does not authorize the Board to require water quality management plans.

The Texas Natural Resource Conservation Commission (TNRCC) indicated it was not clear how the size or location considerations are relevant to CAFO's identification as point or nonpoint sources and suggested the statement that all CAFO's "not required to obtain a permit from TNRCC will be nonpoint sources"appears to conflict with present TNRCC rules TNRCC stated their rules require a permit for facilities that hold more than a certain number of animals, or meet certain other conditions regarding discharges. A permit is not necessarily required for facilities that hold less than a specified number of animals, however these facilities are still regulated by rule. TNRCC asserts their rules parallel federal rules regarding definition of CAFO's.

Federal regulations (40 CFR, Part 122) defines the terms "Animal Feeding) Operation" and "Concentrated Animal Feeding Operation." Concentrated animal feeding operations are defined as point sources and subject to the NPDES Program, animal feeding operations are not TNRCC rules do not distinguish between the two, but refer to both as concentrated animal feeding operations. Under federal regulations, the determining factors for establishing whether a feedlot is an animal feeding operation or a concentrated animal feeding operation involves size and location. Since TNRCC rules include all feedlots under the terms concentrated animal feeding operation, the State Board rule refers to all feedlots as concentrated animal feeding operations to avoid inconsistency with TNRCC rules, even though there is a distinction between point and nonpoint sources in regard to concentrated animal feeding operations. The problem being experienced is the result of inconsistencies between federal regulations and TNRCC rules. Under federal regulations, animal feeding operations, which do not require federal permits, are treated as nonpoint sources. The Soil and Water Conservation Board has been required by EPA to develop best management practices and strategies to deal with these since mid-1970. This has been accomplished through the State's Water Quality Management Plan. A "Control Strategy for Agricultural Nonpoint Source Pollution" was developed, certified by the governor, and approved by EPA. The control strategy establishes how agricultural nonpoint sources are to be addressed, and is part of the State's Water Quality Management Plan. Senate Bill 503 parallels these procedures. The intent of Senate Bill 503 is clearly to address those animal feeding operations considered nonpoint sources. A Memorandum of Agreement between TNRCC and TSSWCB is nearing completion, which will clarify roles and responsibilities and provide for an effective, efficient program.

TNRCC suggested that the rule clarify that aquaculture operations/activities that discharge to the waters of the State require a TNRCC permit The State Board contends aquaculture operations involving animals should be treated similar to CAFO's.

TNRCC suggested that in §523.2, Identification of Problem Areas, the rule more clearly emphasize the integration of problem delineations performed by the State Board and the State's water quality inventory and suggested addition of the following references to §523.2(b)(4); "§106 of the Clean Water Act; the Federal Safe Drinking Water Act; the Federal Insecticide, Fungicide, and Rodenticide Act; and data collected by state and federal groundwater protection entities "

Section 523.2 provides for the State Board to identify and delineate problem areas based on the most accurate and up-to-date information that is available. Currently, federal guidance calls for use of the assessment performed under §319 of the Clean Water Act for program direction. The State Board supports and encourages better integration of all assessment activities, and will be working toward accomplishing that. Section 523.2(b)(4) was revised to include the references suggested.

TNRCC suggested limiting allocation of resources under §523 2(c) to corrective action plans and asks if the considerations for allocation of resources under §523.2(c)(1)-(3) represent a prioritized sequence of factors to be considered

The allocation of resources is much broader than corrective action plans. Section 523.2(c)(1)-(3) correspond to categories of nonpoint source problem identification under §319 of the Federal Clean Water Act and will serve as a prioritized sequence of factors to be considered.

TNRCC suggested that the consideration of "benefit to water quality" under §523.2(c)(3) be given more consideration, or that the terms "First," Second, " and "Third," be deleted from (c)(1)-(3), and suggested deleting the reference to corrective action plans in §523.2(c)(3).

The terms "known' and "potential" are terms used and agreed upon in the State Nonpoint Source Management Program developed pursuant to §319 of the Federal Clean Water Act and are in themselves respective of water quality benefits. The phrase "benefits to water quality" in (c)(3) refers only to corrective action plan consideration

TNRCC noted that the term "no-discharge" is not used in §523.3, Water Quality Management Plans, and asks, if plans are developed that allow for a discharge that does not comply with TNRCC and EPA regulations, will that facility be referred to TNRCC, and asks how the Board will address odor issues.

Water Quality Management Plans called for in Senate Bill 503 are to address agricultural and silvicultural nonpoint source in general and are not limited to CAFO's for which the no discharge provision is written. The Board will be working diligently with TNRCC and EPA to assure that water quality standards are met. Odor control will be an integral part of the program in so far as practice standards are concerned, keeping in mind this is a water quality program.

TNRCC suggested that water quality management plan development and implementation in impaired or threatened water bodies be consistent with the State's water quality management plan The strategy for control of agricultural and silvicultural nonpoint sources was developed by the State Board and incorporated into the State water quality management plan many years ago. The nonpoint source management program for agriculture and silviculture developed by the State Board pursuant to §319 of the Clean Water Act is consistent with the strategy. Both have been certified and approved by EPA. Senate Bill 503 implements a program consistent with both.

TNRCC suggested deleting the term "Insofar as practicable" from 523 3(b)(3) and that practices should also be consistent with §6217 of the Coastal Zone Management Act and the Federal Insecticide, Fungicide, and Rodenticide Act. The term "insofar as practicable" is used because nonpoint source technology is not yet perfected There may be areas where in the best interest of water quality, slight deviations may need to be made. The rule has been modified to include the references to §6217, CZARA. These provisions are clarified in the nonpoint source management program under §319, CWA The Federal, Insecticide, Fungicide, and Rodenticide Act is consulted in development of the management program

TNRCC suggested that management practices should be selected based upon an analysis of implications to both surface water and ground water quality and suggested the rule provide for an implementation schedule that incorporates development of total maximum daily loads in accordance with 40 CFR, §130

The agricultural and silvicultural nonpoint source management program, through which practices are developed, addresses both surface and groundwater. A priority with the Board will be to incorporate the development of total maximum daily loads where appropriate into this program. Considerable work remains to be done before we could begin to work on load allocations The State Board will be working toward this goal and will consider a rule at such time as technology is in place for its implementation

TNRCC asked if there was a provision in the rule to refer producers who fail to meet implementation schedules to TNRCC. The development and implementation of water quality management plans is voluntary on behalf of the producer. In order to obtain the benefits from a plan, however, the producer would have to meet the implementation schedule. Provisions for referral to TNRCC are associated with complaint resolution under §523.4.

TNRCC suggested deletion of the phrase "To the extent allowed by available technology" under §523.3(e) regarding applicability of water quality standards, and suggested that wording be added to incorporate the total maximum daily load process into the rules.

The State Board notes that §26.121 of the Texas Water Code provides, in enforcement of the prohibition against discharges as it relates to nonpoint sources, that"consideration shall be given to the state of existing technology, economic feasibility, and the water quality needs of the water that might be affected." This rule must recognize that the state of existing technology in many cases is currently inadequate to address nonpoint source impacts. It is very critical that the State Board and TNRCC work together as technology develops to assure that water quality standards reflect nonpoint source impacts and that the total maximum daily load concept is employed as appropriate. The program authorized by Senate Bill 503 will provide the avenue to address load allocations for agricultural and silvicultural nonpoint sources, when nonpoint source loads can be quantitatively associated with water quality impacts and water quality standards. The rule will be amended as these processes develop

TNRCC suggested replacing "landowners" with "facility owners and/or operators"in §523 3(b)(1).

The program deals with agricultural and silvicultural nonpoint sources (farmers, ranchers, and timber growers, which includes dairy operators, etc.) "Facility owners" is not consistent with terminology in common usage in the agricultural sector but would be included in the term "landowner and/or operators" which the rule has been revised to specify

TNRCC suggested deletion of "taking into account the state of the existing technology, economic feasibility, and water quality needs" in §523 3(b)(3) and asserts that the water code does not allow for considerations of technological development or economic feasibility

The State Board notes that §26.121, of the Texas Water Code specifically calls for these types of considerations, therefore, the language is consistent with the Texas Water Code.

TNRCC suggested replacing "operations" with "facilities" in §523.4(1)(B) and suggested adding "facilities that have applied for a Board Water Quality Management Plan" under §523.4(1)(B).

The term "facilities" is not consistent with terminology in common usage in the agricultural sector. The term "operation" is inclusive of the meaning of the term "facility " The rule has been amended by adding §523.4(1)(C) to incorporate the suggestion.

TNRCC suggested deletion of "when warranted" under §523.4(4).

Use of the term "when warranted" implies that a corrective action is warranted. The rule has been revised to clarify meaning

The new sections are adopted pursuant to the Texas Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the Soil and Water Conservation Board to promulgate rules necessary to carry out the powers and duties under provision of the Texas Agriculture Code, and §201.026, which further authorizes the Soil and Water Conservation Board to establish nonpoint source pollution abatement programs

§523.2. Identification of Problem Areas

(a) On its own petition or on the petition of a soil and water conservation district, the State Board may delineate an area having the potential to develop agricultural or silvicultural nonpoint source water pollution problems.

(b) Problem areas may be delineated based on the following criteria

(1) data and information submitted by soil and water conservation districts,

(2) data and information obtained by the State Board,

(3) studies conducted by the State Board or soil and water conservation districts,

(4) assessments, special studies and programs, and research conducted relative to surface and underground water quality pursuant to the Federal Clean Water Act, §§106, 305b, 314, and 319, the Coastal Zone Act Reauthorization Amendments (CZARA), §6217, the National Estuary Program, the Federal Insecticide, Fungicide, and Rodenticide Act, the Texas Water Code, §26.0135, the Texas Clean Rivers Program, and data and information collected or obtained by other local, state, or federal governmental entities,

(5) guidelines developed and promulgated by the State Board

(c) Allocation of resources will be based on priority considerations In allocating program resources, the State Board will consider the following

(1) first, known problems, where the State Board has determined that adequate data show the existence of a water quality problem caused by agricultural or silvicultural nonpoint sources;

(2) second, potential problems, where the State Board has determined that the intensity and location of certain agricultural and silvicultural activities requires program implementation to prevent pollution problems caused by agricultural and silvicultural nonpoint source activities,

(3) third, corrective action plans needing to be implemented, the economic impact on producers and benefits to water quality.

§523 3 Water Quality Management Plans.

(a) A water quality management plan is a site-specific plan for agricultural or silvicultural lands which includes appropriate land treatment practices, production practices, management measures, technologies, or combinations thereof which achieve a level of pollution prevention or abatement determined by the State Board in consultation with the local soil and water conservation district and Texas Natural Resource Conservation Commission to be consistent with state water quality standards.

(b) Process for obtaining a Water Quality Management Plan.

(1) Landowners and operators may request the development of a plan by the local soil and water conservation district. Landowners and operators, following consultation with their soil and water conservation district, will be encouraged and aided in working with the district in the preparation of a plan based on standards adopted by the State Board to prevent or abate their nonpoint source pollution

(2) The soil and water conservation district will determine the priority of plan development and subsequently cause the development and approval of the plan.

(3) Landowners and operators may appeal district decisions relative to practices and practice standards to the State Board in the manner prescribed by the Board

(4) When determined to be consistent with state water quality standards, taking into account the state of existing technology, economic feasibility and water quality needs, the State Board will certify the plan

(c) Practice selection

(1) Practices eligible for water quality management planning will be selected by the State Board in consultation with the soil and water conservation district

(2) Practices will address activities determined by the State Board in consultation with the soil and water conservation district to be in need of pollution prevention or abatement.

(3) Insofar as practicable, those practices shall be consistent with the Agricultural and Silvicultural Nonpoint Source Management Program developed by the State Board pursuant to the Federal Clean Water Act, §319 and CZARA, §6217.

(d) Practice standards.

(1) Practice standards will be based on specific local conditions.

(2) Practice standards will be based on criteria in the Soil Conservation Service, Field Office Technical Guide; however, modification of those practice standards to ensure consistency with state water quality standards and the state agricultural and silvicultural nonpoint source management program will be made as necessary.

(3) Practice standards will be developed in consultation with the local soil and water conservation district, with assistance and advice of the USDA, the Soil Conservation Service, Texas Agricultural Extension Service, Texas Forest Service, Texas Agricultural Experiment Station, Texas Natural Resource Conservation Commission, the local underground water conservation district, and others as determined to be needed by the State Board.

(e) Implementation schedule.

(1) A Water Quality Management Plan must contain an implementation schedule

(2) The implementation schedule will, as far as is practicable, balance the state's need for protecting water quality with need of agricultural and silvicultural producers to have sufficient time to implement practices in an economically feasible manner.

(3) Highest priority will be given to the implementation of the most cost effective and most needed pollution abatement practices.

(4) The State Board in consultation with affected soil and water conservation districts will conduct an annual status review of plan implementation.

(f) Applicability of state water quality standards. To the extent allowed by available technology, water quality management plan development, approval, and certification will be based on state water quality standards as established by the Texas Natural Resources Conservation Commission.

§523 4 Resolution of Complaints. Complaints concerning the violation of a Water Quality Management Plan or a violation of a law or rule relating to nonpoint source pollution will be addressed as follows:

(1) The State Board will investigate complaints regarding:

(A) agricultural and silvicultural nonpoint sources;

(B) operations with a certified Water Quality Management Plan;

(C) operations that have applied for a Water Quality Management Plan;

(D) nonpoint source problems related to operations needing a Water Quality Management Plan; and

(E) general complaints regarding agricultural and silvicultural nonpoint source related pollution.

(2) Determination of the need for action

(A) The State Board, in consultation with the soil and water conservation district, will make a determination relative to the need for action.

(B) To the extent practicable, the complainant will be interviewed by the State Board and the soil and water conservation district prior to an investigation.

(C) The State Board in consultation with the local soil and water conservation district will, based on complainant interviews and investigations, including are view of Water Quality Management Plans on file with the State Board and/or the soil and water conservation district, determine whether or not the need for corrective action exists.

(D) The State Board will inform the complainant of the outcome of a determination upon completion of the investigation and it is determined whether the need for corrective action exists.

(E) Upon completion of an investigation by the State Board and all pertinent soil and water conservation districts, and provision of the final investigative determination to all complainants and operators interviewed and investigated, any complainant or operator interviewed or investigated shall be provided an opportunity for a hearing before members of the soil and water conservation district or districts involved in the investigation.

(F) Subsequent to a hearing before members of the local soil and water conservation district or districts involved in the investigation, any complainant or operator interviewed or investigated may request a hearing before the State Board. The State Board may provide for the requested hearing at its discretion.

(3) Corrective action plan. Once the determination of the need for action is made, a corrective action plan will be developed.

(A) The corrective action plan must meet all requirements of a certified Water Quality Management Plan.

(B) The corrective action plan will be developed in consultation with the soil and water conservation district in the same manner as a water quality management plan is developed.

(C) The corrective action plan will be developed with the technical assistance from the Soil Conservation Service, Texas Agricultural Extension Service, Texas Forest Service, the local underground water conservation district, and/or State Board as appropriate.

(4) If the person upon whom the complaint was filed fails or refuses to take warranted corrective action, the State Board shall refer the complaint to the Texas Natural Resources Conservation Commission.

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 Temple, Texas, on November 29, 1993.

TRD-9332853 Robert G Buckley
Executive Director
Texas State Soil and Water Conservation Board

Effective date: December 22, 1993

Proposal publication date: September 28, 1993

For further information, please call: (817) 773-2250

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 79. Legal Services

The Texas Department of Human Services (DHS) adopts amendments to §§79.401-79.404 and the repeal of §79.405, without changes to the proposed text as published in the October 29, 1993, issue of the *Texas Register* (18 TexReg 7529).

The justification for the amendments and repeal is to formalize operational procedures for advisory committees, reduce the number of advisory committee members, specify abolishment dates for each committee, and require reporting with the biennial legislative appropriations request

The amendments and repeal will function by maintaining the public's ability to participate in DHS's rulemaking process.

No comments were received regarding adoption of the amendments and repeal.

Subchapter E. Advisory Committees

• 40 TAC §§79.401-79.404

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The amendments implement the Human Resources Code, §22.009 and Texas Revised Civil Statutes, Article 6252-33. the department to serve as a non-voting member.

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 November 30, 1993.

TRD-9332830 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: January 1, 1994

Proposal publication date: October 29, 1993

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

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• 40 TAC §79.405

The repeal is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The repeal implements the Human Resources Code, §22.009.

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 November 30, 1993.

TRD-9332831 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: January 1, 1994

Proposal publication date: October 29, 1993

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

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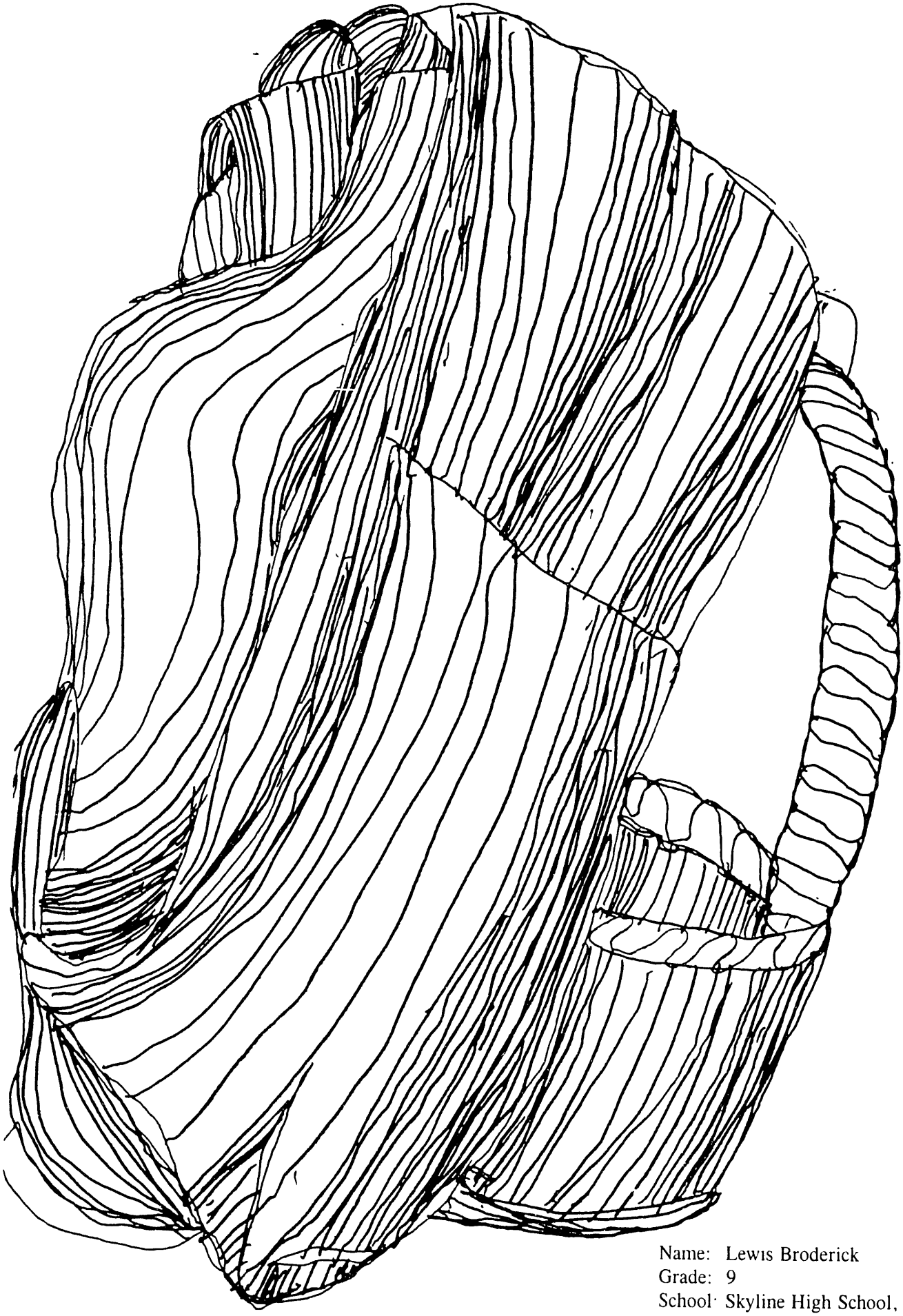

Name: Lewis Broderick
Grade: 9
School: Skyline High School, Dallas, ISD

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to 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 named 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. Emergency meeting notices filed by all 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 more detailed agenda than what is published in the *Texas Register.*

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Friday, December 10, 1993, 9:00 a.m.

Harvey Hotel, 3100 I-40 West

Amarillo

According to the agenda summary, the Texas Corn Producers Board will call the meeting to order; act on minutes; financial statements, discussion and action on hiring policies; establish and take action on policies for TCPB Promotional E85 car, presentation and action on voting regions; funding to Texas FFA Foundation; research reports; 1994 request for funding; 1993 research report; 1994 request for funding; presentation on 1993 research report; any late 1993 research reports; activity reports; other business; date and location of next meeting; and adjourn.

Contact: Carl King, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

Filed: December 1, 1993, 4:13 p.m.

TRD-9332902

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Texas School for the Deaf

Friday, December 10, 1993, 8:30 a.m.

1102 South Congress Avenue, Temporary Building Two, Conference Room

Austin

According to the agenda summary, the Curriculum Committee will discuss purpose/role of Board Curriculum Committee, legal framework for TSD curriculum; TSD's Curriculum Committee, TSD program structure and curriculum requirements; the ARD Committee (admission, review and dismissal) as determinant of the IEP, Curriculum, and graduation plan; relationship between curriculum and evaluation, suggestions for future meetings; and plan/schedule for future meetings.

Contact: Marvin B. Sallop, P.O. Box 3538, Austin, Texas 78764, (512) 440-5332.

Filed: December 1, 1993, 4 24 p.m.

TRD-9332905

Friday, December 10, 1993, 8:30 a.m.

1102 South Congress Avenue, Temporary Building Three, Conference Room

Austin

According to the complete agenda, the Policy Committee will discuss policy amendments; and policy review.

Contact: Marvin B. Sallop, P.O. Box 3538, Austin, Texas 78764, (512) 440-5332

Filed: December 1, 1993, 4.24 p.m.

TRD-9332906

Friday, December 10, 1993, 3:00 p.m.

601 Airport Boulevard, Large Conference Room

Austin

According to the agenda summary, the Governing Board will call the meeting to order; approval of minutes for October 23, 1993, business for information purposes; business requiring board action; comments by board members; and adjournment.

Contact: Marvin B. Sallop, P.O Box 3538, Austin, Texas 78764, (512) 440-5332.

Filed: December 1, 1993, 4:24 p.m.

TRD-9332907

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Advisory Commission on State Emergency Communications

Wednesday, December 8, 1993, 10:00 a.m.

ACSEC, 1101 Capital of Texas Highway South, B-100

Austin

According to the agenda summary, the ACSEC/Poison Control Committee will call the meeting to order; recognize guests; hear public comment; discuss and consider filing as Rule ACSEC/TDH criteria for contractual arrangements with Poison Control Centers; review and consider the process to be used for PCAPs' funding applications and approvals; discuss and consider poison control answering points (PCAPs) telephone network planning and system design; discussion ACSEC/poison activities; 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.

Reason for Emergency: The emergency status is necessary due to family illness and meeting was not filed in a timely fashion

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: December 1, 1993, 12:10 p.m.

TRD-9332881

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Texas Higher Education Coordinating Board

Friday, December 17, 1993, 10:00 a.m.

Texas A&M University Campus, Rudder Building

College Station

According to the complete agenda, the Campus Planning Committee will meet with officials regarding Bush Library Complex (new construction); West Campus thermal plant, additional chiller (R&R); and airport runway seal coating (R&R).

Contact: Landrum Hickman, P.O. Box 12788, Austin, Texas 78711, (512) 483-6250.

Filed: December 2, 1993, 9:13 a.m.

TRD-9332915

Friday, December 17, 1993, 1:00 p.m.

Lamar University-Port Arthur Campus, Administration Building

Port Arthur

According to the complete agenda, the Campus Planning Committee will meet with officials regarding Education Center.

Contact: Landrum Hickman, P.O. Box 12788, Austin, Texas 78711, (512) 483-6250.

Filed: December 2, 1993, 9:13 a.m.

TRD-9332916

Friday, December 17, 1993, 3:00 p.m.

University of Houston-Clear Lake Campus, Developmental Arts Building

Clear Lake

According to the complete agenda, the Campus Planning Committee will meet with officials regarding arts building.

Contact: Landrum Hickman, P.O. Box 12788, Austin, Texas 78711, (512) 483-6250.

Filed: December 2, 1993, 9:13 a.m.

TRD-9332917

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Texas Incentive and Productivity Commission

Tuesday, December 14, 1993, 10:00 a.m.

Reagan Building, First Floor, Room #103, 15th and Congress

Austin

According to the agenda summary, the commission will call the meeting to order; members present; approval of minutes of previous meeting; discussion of Council on Competitive Government; approval to adopt proposed changes to state employee incentive rules; approval to publish for comment procedural rules regarding cost of copies of open records; election of vice-chair; consideration of employee suggestions for approval; consideration of 1994 productivity plans; report on administrative matters; and adjournment.

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: December 2, 1993, 9:01 a.m.

TRD-9332909

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Texas Board of Professional Land Surveying

Friday, December 10, 1993, 9:00 a.m.

7701 North Lamar Boulevard, Suite 400

Austin

According to the agenda summary, the Board will meet to approve the minutes of the previous meeting; hear a presentation concerning the reissuance of a license, conduct interviews; to hear and take action on: complaints presented; committee reports; correspondence; old business; new business and to set future meeting dates. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Sandy Smith at (512) 452-9427 two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Sandy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: December 1, 1993, 9:16 a.m.

TRD-9332857

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Texas State Library and Archives Commission

Thursday, December 9, 1993, 10:00 a.m.

1201 Brazos Street, Lorenzo de Zavala State Archives and Library Building, Room 314

Austin

According to the complete agenda, the commission will approve minutes of the October 1, 1993, commission meeting; consider Access Texas, final report of the Joint Planning Committee on Statewide Library Development; consider the agency's Self Evaluation Review for the Texas Sunset Commission; resolution regarding master lease purchases for 1994-1995; and hear committee reports.

Contact: Raymond Hitt, P.O. Box 12927, Austin, Texas 78711, (512) 463-5440.

Filed: November 30, 1993, 10:48 a.m.

TRD-9332826

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Texas Department of Protective and Regulatory Services

Friday, December 10, 1993, 9:00 a.m.

1100 West 49th Street, Moreton Building, Room M739

Austin

According to the complete agenda, the Texas Board of Protective and Regulatory Services will conduct a work session on minimum standards for day care, PRS policy review and vision for the future statement; beginning at 2:00 p.m., the board will discuss: approval of the minutes of November 18-19, 1993, meeting; excused absences of board members; public testimony; chair's comments and announcements; comments and announcements from the board; executive director's report; publication of proposed rule changes for AIDS policies; summary of previous studies of policies and practices for PRS programs; and PRS policy review process. The board will then go into closed executive session to meet with its attorney concerning pending litigation; reconvene in open session to take action, if necessary, resulting from discussion in executive session;

Contact: Michael Gee, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030, (512) 450-3645.

Filed: December 1, 1993, 12:10 p.m.

TRD-9332884

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Public Utility Commission of Texas

Tuesday, December 14, 1993, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12508-petition of the General Counsel to inquire into the reasonableness of the rates and services of United Telephone Company of Texas, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1993, 4:22 p.m

TRD-9332903

Friday, December 17, 1993, 5:30 p.m.

Waco Convention Center, Bosque Theater, 100 Washington Avenue

Waco

According to the complete agenda, the commission will hold a regional hearing in Docket Number 11735-application of Texas Utilities Electric Company for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1993, 4:26 p.m.

TRD-9332908

Thursday, December 16, 1993, 6:00 p.m.

University of Texas Health Science Center, Main Hospital Building, Hundall Auditorium, U.S. Highway 271 North at State Highway 155

Tyler

According to the complete agenda, the commission will hold an interactive-video regional hearing in Docket Number 11735-application of Texas Utilities Electric Company for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1993, 4:12 p.m

TRD-9332900

Thursday, December 16, 1993, 6:00 p.m.

University of Texas Permian Basin, Mesa Building, Room 291, 4901 East University Drive

Odessa

According to the complete agenda, the commission will hold an interactive-video regional hearing in Docket Number 11735-application of Texas Utilities Electric Company for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1993, 4:12 p.m.

TRD-9332899

Thursday, December 16, 1993, 6:00 p.m.

University of Texas College of Education Building, Room 323, Speedway at M. L. King Boulevard (Northwest Corner)

Austin

According to the complete agenda, the commission will hold an interactive-video regional hearing in Docket Number 11735-application of Texas Utilities Electric Company for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1993, 4:11 p.m.

TRD-9332898

Friday, December 17, 1993, 1:30 p.m. and 5:30 p.m.

Waco Convention Center, Bosque Theater, 100 Washington Avenue

Waco

According to the complete agenda, the commission will hold an interactive-video regional hearing in Docket Number 11735-application of Texas Utilities Electric Company for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1993, 4:12 p.m

TRD-9332901

Monday, December 20, 1993, 1:30 p.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the commissioners will consider Docket Number 11735-application of Texas Utilities Electric Company for authority to change rates and investigation of the General Counsel into the accounting practices of Texas Utilities Electric Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1993, 12:10 p.m.

TRD-9332882

Monday, January 6, 1994, 1:30 p.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12517-complaint of Gene Burlner against Texas Utilities Electric.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1993, 4:11 p.m.

TRD-9332897

Monday, April 11, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 10921-Brazos Electric Power Cooperative, Inc. standard avoided cost calculation for the purchase of firm energy and capacity from qualifying facilities pursuant to Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1993, 12:10 p.m.

TRD-9332883

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Texas Guaranteed Student Loan Corporation

Thursday, December 9, 1993, 10:30 a.m.

12015 Park 35 Circle, Suite 300

Austin

According to the agenda summary, the Personnel Committee will meet in executive session: management salary review; health insurance update; pension plan options; salary incentives/performance bonuses; policy on annual performance review; and adjourn

Contact: Peggy Irby, 12015 Park 35 Circle, Suite 300, Austin, Texas 78754, (512) 835-1900.

Filed: December 1, 1993, 2.08 p m.

TRD-9332885

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Teacher Retirement System of Texas

Thursday, December 9, 1993, 9:00 a.m.

1000 Red River Street, Fifth Floor Board Room

Austin

According to the agenda summary, the Investment Advisory Committee will discuss approval of September 9, 1993 minutes; discussion and selection of advisor for alternative assets; investment outlook and market conditions; consideration of recommended allocation of cash flow for current quarter; review of investments; consideration of changes to approved common stock lists; review of portfolio performance; and report of Real Estate Finance Committee

Contact: Mary Godzik, 1000 Red River Street, Austin, Texas 78701-2698, (512) 397-6400.

Filed: December 1, 1993, 9.52 a.m.

TRD-9332875

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Texas Workers' Compensation Insurance Facility

Monday, December 13, 1993, 9:45 a.m.

Guest Quarters Hotel, 303 West 15th Street

Austin

According to the agenda summary, the Governing Committee will discuss approval of November 8, minutes; consideration and possible action on: 1994 operating budget, servicing company reimbursement requests,

and recommendations from the Appeals Committee; executive director's report; and executive session(s) regarding: personnel matters, including the annual evaluation of the executive director and his compensation, 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, and possible approval of changes in compensation for the executive director.

Contact: Russell R. Oliver, 8303 MoPac Expressway, Suite 310, Austin, Texas 78759, (512) 345-1222.

Filed: December 1, 1993, 3:08 p.m.

TRD-9332895

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Regional Meetings

Meetings Filed November 30, 1993

The Bexar-Medina-Atascosa Counties Water Control and Improvement District Number One Board of Directors will meet at 226 Highway 132, Natalia, December 13, 1993, at 8:00 a.m. Information may be obtained from John W. Ward III, P.O. Box 170, Natalia, Texas 78059, (210) 663-2132. TRD-9332838.

The Brazos Valley Development Council Board of Directors will meet at the Brazos Center, 3232 Briarcrest, Suite 102, Bryan, December 8, 1993, at 1:30 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, (409) 775-4244. TRD-9332837.

The Central Texas Area Consortium Bluebonnet Health and Human Services, Inc met at 205 East Third Avenue, Belton, December 3, 1993, at noon. Information may be obtained from Wynonah Wineman, P.O. Box 937, Belton, Texas 76513, (817) 933-8663. TRD-9332828.

The Education Service Center, Region VI ESC Board of Directors will meet at the College Station Hilton, College Station, December 9, 1993, at 5:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9332839.

The Education Service Center, Region 20 Board of Directors will meet at 1314 Hines Avenue, San Antonio, December 15, 1993, at 2:00 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208, (210) 299-2472. TRD-9332827.

The Golden Crescent Quality Work Force Planning Full Committee will meet at the Cuero Community Hospital, Yoakum Highway, Cuero, December 7, 1993, at noon. Information may be obtained from Carol Matula, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9332832.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, December 9, 1993, at 4:00 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9332850.

The Upshur County Appraisal District Board of Directors will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, December 13, 1993, at 1:00 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644, (903) 843-3041. TRD-9332836.

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Meetings Filed December 1, 1993

The Education Service Center, Region XV Board of Directors will meet at the ESC Region XV, 612 South Irene Street, Conference Room One, San Angelo, December 9, 1993, at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76903, (915) 658-6571. TRD-9332887.

The Fisher County Appraisal District Board of Directors will meet at the Fisher County Appraisal/Tax Office, Roby, December 13, 1993, at 6: 00 p.m. Information may be obtained from Betty H Mize, P.O. Box 516, Roby, Texas 79543, (915) 776-2733. TRD-9332904.

The Gulf Coast State Planning Region Transportation Policy Council will meet at 3555 Timmons Lane, Second Floor Conference Room A, Houston, December 10, 1993, at 9:30 a.m Information may be obtained from Rosalind Hebert, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200.

The Hays County Appraisal District Board of Directors will meet at 632A East Hopkins, San Marcos, December 7, 1993, at 3:00 p.m. Information may be obtained from Lynnell Sedlar, 632A East Hopkins, San Marcos, Texas 78666, (512) 754-7400, TRD-9332888

The Hays County Appraisal District Board of Directors will meet at 632A East Hopkins, San Marcos, December 9, 1993, at 1:00 p.m. Information may be obtained from Lynnell Sedlar, 632A East Hopkins, San Marcos, Texas 78666, (512) 754-7400, TRD-9332889.

The Hays County Appraisal District Board of Directors will meet at 632A East Hopkins, San Marcos, December 9, 1993, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 632A East Hopkins, San Marcos, Texas 78666, (512) 754-7400, TRD-9332890.

The Martin County Appraisal District Board of Directors will meet at the Appraisal Office, 308 North St. Peter, Stanton, December 9, 1993, at 7:00 p.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756-2823. TRD-9332894.

The Region VII Education Service Center Board of Directors will meet at Johnny Cace's Restaurant, Highway 80 West, Longview, December 8, 1993, at 7:00 p.m. Information may be obtained from Dr. Eddie J. Little, 818 East Main Street, Kilgore, Texas 75662, (903) 984-3071. TRD-9332880.

The Region 14 Education Service Center Board of Directors will meet at 1850 Highway 351, Abilene, December 16, 1993, at 5:30 p.m. Information may be obtained from Taressa Huey, 1850 Highway 351, Abilene, Texas 79601, (915) 675-8608. TRD-9332891.

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Meetings Filed December 2, 1993

The Archer County Appraisal District Board of Directors will meet at 101 South Center, Archer City, December 8, 1993, at 5:00 p.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172. TRD-9332913.

The East Texas Council of Governments JTPA Board of Directors will meet at the Kilgore Community Inn, Kilgore, December 9, 1993, at 11:30 a. m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9332910.

The Region One Education Service Center Board of Directors will meet at the Embassy Suites Hotel, 1800 South Second Street, McAllen, December 7, 1993, at 7:00 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, (210) 383-5611. TRD-9332918.

The Swisher County Appraisal District Board of Directors will meet at 130 North Armstrong, Tulia, December 9, 1993, at 7:30 a.m. Information may be obtained from Rose L. Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9332914.

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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 Cancellation

In the Matter of the Application For Change of Domicile For BOK-Texas Trust Company, Dallas, Dallas County, Before the State Banking Board, Austin, Travis County.

As no opposition has been noted in the application for domicile change by the BOK-Texas Trust Company, Dallas, the hearing previously scheduled for Monday, December 6, 1993, has been cancelled.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332859 Lynda A. Drake
Director of Corporate Activities
Texas Department of Banking

Filed: December 1, 1993

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Comptroller of Public Accounts

Correction of Error

The Comptroller of Public Accounts submitted Texas Lottery Game Procedures Instant Game Number 21 which was published in the "In Addition" section of the November 9, 1993, issue of the *Texas Register* (18 TexReg 8259).

The following corrections are made to "WIN FOR LIFE" Instant Game Number 21 (the added text is in bold).

2.2 Procedure for Claiming Prizes.

B. To claim a "WIN FOR LIFE" Instant Game prize of $1,000 a week for life, the player must sign the winning ticket and present it at Lottery Headquarters in Austin. If the claim is validated by the Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. **If a player who is not an individual is entitled to a "WIN FOR LIFE" Instant Game Prize of $1,000 a week for life, the total maximum amount paid shall be one million dollars.** When paying a prize of $600 of more, the Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Lottery, the claim shall be denied and the player shall be notified promptly.

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

Types of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer (1)/Agricultural/ Commercial (2) thru $250,000	Commercial(2) over $250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	11/29/93-12/05/93	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on November 22, 1993

TRD-9332782 Al Endsley
Consumer Credit Commissioner

Filed: November 29, 1993

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The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02 as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Types of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer (3)/Agricultural/ Commercial (4) thru $250,000	Commercial(4) over $250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	12/06/93-12/12/93	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(1)	12/01/93-12/31/93	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	01/01/94-03/31/94	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11(3)	01/01/94-03/31/94	18.00%	N.A.
Lender Credit Card Quarterly Rate - Art. 15.02(d)(3)	01/01/94-03/31/94	14.00%	N.A.
Standard Annual Rate - Art. 1.04(a)(2)(2)	01/01/94-03/31/94	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11(3)	01/01/94-03/31/94	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	12/01/93-12/31/93	10.00%	10.00%

(1)For variable rate commercial transactions only. (2)Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S. (3)Credit for personal, family or household use. (4)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332858 Al Endsley
Consumer Credit Commissioner

Filed: December 1, 1993

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Texas Department of Health

Correction of Error

The Texas Department of Health proposed amendments to 25 TAC §§141.1-141. 6, 141.8, 141.10-141.13, and 141.15-141.20, concerning the regulation of massage therapists, massage establishments, massage schools, and instructors; and proposes new §141.23, concerning workshops and seminars The rules appeared in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8105).

The following errors were due to an error in the agency's submission.

In §141.12(f), the word "independent" should be bolded to indicate new language. "A massage school or an **independent** MTI may not offer a course..."

In §141.17(d), the subsection should also be bolded to indicate new language. "**A registrant shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.**"

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Public Hearings

The Texas Department of Health will hold a public hearing at 9:00 a.m., Monday, December 20, 1993, in Room S-400 at the Texas Department of Health, the Exchange Building, 8407 Wall Street, Austin. The hearing will be in regards to the proposed massage therapists rules that were published in the *Texas Register* on November 9, 1993, beginning on page 8105. (18 TexReg 8105).

For further information regarding the hearing or the proposed rules, please contact Becky Berryhill at (512) 834-6615

Issued in Austin, Texas, on November 30, 1993.

TRD-9332834 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: November 30, 1993

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The Texas Department of Health will hold a public hearing at 9.00 a.m. on Tuesday, December 14, 1993, in Room T-607 at the Texas Department of Health, 1100 West 49th Street, Austin. The hearing will be in regards to the statewide comprehensive plan as proposed in the Texas application for fourth year funding of Ryan White/Title II activities.

For further information regarding the hearing or the statewide comprehensive plan, please contact Judith Harper-Riney at (512) 458-7207.

Issued in Austin, Texas, on November 30, 1993.

TRD-9332833 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: November 30, 1993

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Texas Higher Education Coordinating Board

Notice of Hearings

A public hearing will be conducted by the Texas Higher Education Coordinating Board, State Postsecondary Review Entity (SPRE) program on Monday, December 13, 1993, from 9:00 a.m. until 3:00 p.m. at the Green Oaks Inn, 6901 West Freeway, Fort Worth. The purpose of the hearing is to gather comments to use in developing Texas review standards and procedures to determine if postsecondary education institutions are in compliance with federal student aid standards. In addition, comments on developing a complaint system will be gathered. Copies of draft review standards specified by the federal legislation are available from the Coordinating Board, Universities and Health Affairs Division. For additional information please contact Colleen Klein at (512) 483-6207.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332784 Sharon Jahsman
Administrative Secretary
Texas Higher Education Coordinating Board

Filed: November 29, 1993

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A public hearing will be conducted by the Texas Higher Education Coordinating Board, State Postsecondary Review Entity (SPRE) program on Tuesday, December 14, 1993, from 9:00 a.m. until 3:00 p.m. at the Harvey Hotel-Dallas, 7815 LBJ Freeway, Dallas. The purpose of the hearing is to gather comments to use in developing Texas review standards and procedures to determine if postsecondary education institutions are in compliance with federal student aid standards. In addition, comments on developing a complaint system will be gathered. Copies of draft review standards specified by the federal legislation are available from the Coordinating Board, Universities and Health Affairs Division. For additional information please contact Colleen Klein at (512) 483-6207.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332783 Sharon Jahsman
Administrative Secretary
Texas Higher Education Coordinating Board

Filed: November 29, 1993

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Houston-Galveston Area Council

Requests for Proposal for Project Readiness Criteria

The Houston-Galveston Area Council (H-GAC) is seeking qualified consultants to assist staff in evaluating approximately 150 projects in the Transportation Improvement Program (TIP). This evaluation will include assessments of a project's potential for implementation regarding completeness of project planning, completeness of environmental assessment, completeness of right-of-way acquisition as well as an overall assessment of project readiness based on all three criteria. Each respondent is requested to discuss their expertise in each of the areas. A Selection Panel consisting of H-GAC representatives will review the responses to the RFP on the basis of the respondent's documented competence and technical qualifications which are to be received by the designated closing date of December 15, 1993, at 5:00 p.m. If you have any questions regarding any of the activities or would like to request a copy of the RFP, please contact Jacqueline J. Baly at (713) 627-3200. Written inquiries may be directed to: Jacqueline J. Baly, TIP/Financial Planner, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332858 Jack Steele
Executive Director
Houston-Galveston Area Council

Filed: December 1, 1993

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Texas Department of Insurance

Correction of Error

The Texas Department of Insurance submitted an Open Meeting notice that was published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8246).

The meeting date was published incorrectly. The date was published as "November 18, 1993, 9:00 a.m.", it should have read "December 2, 1993, 9:00 a. m."

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Texas Department of Mental Health and Mental Retardation

Correction of Error

The Texas Department of Mental Health and Mental Retardation proposed new §§402.51-402.67, concerning continuity of services-mental health. The rules appeared in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8136).

A sentence was inadvertently deleted from §402.54 of proposed new Chapter 402, Subchapter B (governing Continuity of Services-Mental Health). Subsection (c) should be added to the text as follows:

"(c) Each MHA shall follow procedures outlined in §401.164 (relating to Notification and Appeals Process) of Chapter 401, Subchapter G of this title (concerning Community Mental Health and Mental Retardation Centers)".

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission adopted an amendment to §115.10. The rule appeared in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8569).

On page 8569 the definition of Automotive basecoat/clearcoat system (used in automobile refinishing). An incorrect formula was inserted under this definition. The correct formula is as follows:

$$VOC\ T_{bc/cc} = \frac{VOC_{bc} + (2 \times VOC_{cc})}{3}$$

where:

Issued in Austin, Texas, on November 22, 1993.

TRD-9332820 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: November 30, 1993

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On page 8597, §115.950(a)(1), paragraph one, line one, "Installation of the control equipment of implementation...," the second "of" should be "or."

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Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding Clarksville Oil and Gas Company, Inc. (TNRCC Facility I.D. 5138; Enforcement I.D. E10323) on November 12, 1993, assessing $600 in administrative penalties with $100 deferred and foregoned pending completion of recommendations.

Information concerning any aspect of this order may be obtained by contacting Christopher T. Wilson, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2044.

An agreed enforcement order was entered regarding David Hunziker (Docket Number WWD 94-03) on November 10, 1993, assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Bourbon, Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

An agreed enforcement order was entered regarding Jose Martinez (Docket Number WWD 94-02) on November 10, 1993, assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Bourbon, Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding Bouma Dairy Number Two (No Permit) on November 15, 1993, assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Martinez, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8098.

An agreed enforcement order was entered regarding James Campbell (TNRCC Facility I.D. 62673) on November 15, 1993, assessing $1,575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Greg Pfeifer, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2048.

An agreed enforcement order was entered regarding Hector J. Escobar doing business as Horizon Truck Wash (Permit Number 03033) on November 15, 1993, assessing $600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Martinez, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8098.

An agreed enforcement order was entered regarding the City of Teague and the City of Fairfield (Permit Number 13579-01) on November 15, 1993, assessing $17,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 475-2261.

Issued in Austin, Texas, on November 24, 1993.

TRD-9332848 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: November 30, 1993

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Public Hearing Notice (I/M)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017; the Texas Government Code, Subchapter B, Chapter 2001; 30 Texas Administrative Code, §103.11(4); and Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIPs), the Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony concerning a revision to the SIP.

The TNRCC proposes a revision to the Vehicle Emissions Inspection/Maintenance (I/M) Program and the control strategy for ozone in the Houston/Galveston and El Paso nonattainment areas. The control strategy is proposed as a revision to the I/M SIP to enable these areas to meet EPA performance standards for enhanced I/M programs. The proposal adds model-years of vehicles that will be subjected to high-technology tests (IM240) in Harris, El Paso, Chambers, Liberty, Galveston, Waller, Fort Bend, Brazoria, and Montgomery counties.

A public hearing on the proposal will be held December 16, 1993, at 10:00 a. m. in the Auditorium (Room 201S) of the TNRCC Central Office, located at 12118 North IH-35, Park 35 Technology Center, Building E, 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 December 31, 1993. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on December 31, 1993, will be considered by the Commission prior to any 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 Sherry Bryan, Mobile Source Section, Office of Air Quality, P.O. Box 13087, Austin, Texas 78711-3087. For further information contact Ms. Bryan at (512) 908-1519.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on November 8, 1993.

TRD-9332849 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: December 1, 1993

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Texas Department of Public Safety

Notice of Amended Consultant Contract

The Texas Department of Public Safety (DPS), in accordance with provisions of the Texas Government Code, Chapter 2254, files this notice of an amended consultant contract.

On January 29, 1991, Roland R. Sutfin, Information Systems Engineering, 9250 Wagner Creek Road, Talent, Oregon 97540, entered into a contract with the DPS to support the detailed implementation and acceptance testing processing for the Automated Fingerprint Identification System (AFIS), for both central repository and latent applications within the DPS and a network of fingerprint access terminals in other law enforcement agencies throughout the state. The consultant contract award was published in the February 8, 1991, issue of the *Texas Register* (16 TexReg 796).

Notice is given that the contract has been amended by extending the expiration date to March 31, 1994, at no increase in the total contract price. The amendment is based upon delays in the final acceptance test schedule.

Issued in Austin, Texas, on November 23, 1993.

TRD-9332785 James R Wilson
Director
Texas Department of Public Safety

Filed: November 29, 1993

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Public Utility Commission of Texas

Notices 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 Dallas Independent School District, Dallas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Dallas ISD pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 12509

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Dallas ISD. The geographic service market for this specific service is the Dallas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332845 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 30, 1993

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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 Accord Medical Management, Inc., San Antonio.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Accord Medical Management, Inc. pursuant to Public Utility Commission Substantive Rule 23. 27(k). Docket Number 12515.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Accord Medical Management, Inc.. The geographic service market for this specific service is the San Antonio area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332844 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 30, 1993

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Requests for Comments on Amendments to §23.54 and §23.55

The Public Utility Commission of Texas has established a project (Project Number 12468) to explore possible amendments to Public Utility Commission Substantive Rules 23.54 and 23.55, which govern Private Pay Telephones and Operator Service Providers (OSPs). The Commission seeks comments from interested parties in response to the following question. Parties should include their reasons supporting the response to each question. The Commission requests that parties respond to the questions in the order in which they are presented below and encourages parties to include an executive summary of their comments.

1. Should the Commission amend §23.55(d)(1) to include a requirement that Aggregators, such as hotels and hospitals, must post instructions at the telephone set for accessing Interexchange Carriers (IXCs) from a PBX? If yes, how should the rule read after amendment? What specific information should the posting include?

2. Should a database be maintained containing the names and operating areas of all the available IXCs, including any instructions on how to access each IXC operator within specific exchanges in the state of Texas? If yes, who should maintain the database and how would the costs of providing the database be recovered? What information should be included in the database?

3. How do IXCs currently educate customers about how to access their preferred long-distance carrier while away from home?

4. Should the Commission amend 23.55(j)(3) to require all Local Exchange Companies (LECs) to make available "O-" transfer service to any IXC that wishes to subscribe? If yes, how should the rule read after amendment?

5. Should the Commission amend 23.54(d)(5)(A)(i) to require that there be no other charge for directory assistance calls from pay telephones? If yes, should the Commission address any similar policies regarding public pay telephones? If yes, how should it read after amendment?

6. Should the Commission amend 23.54(d)(5)(A)(ii) to cap the charges for local collect, local third-number billed, and local credit card calls? If yes, how should it read after amendment?

7. Should the Commission require LECs to compel private pay telephone providers to update new Extended Area Service NXX codes in a timely manner to avoid inappropriate toll charges?

8. Should the Commission amend 23.54(d)(4)(A) and 23.55(i)(1)(A) to require Operator Service Providers to execute consistently expedient access to local exchange carrier operators without undue pauses that would discourage such connections? If so, how should the rule read after amendment?

9. Should the Commission amend its 23.54 and 23.55 to change references to dominant and nondominant carriers as a result of the expiration of the Commission's regulatory authority over AT&T?

10. Should the LEC pay-telephone property be excluded from the rate base of the telephone utility? If so, why and how should this be accomplished?

11. Should the Commission adopt rules allowing providers of pay-telephone service to designate certain pay telephones as public interest telephones? If so, should the Commission be able to require the placement of public interest pay telephones in certain locations? What criteria should be applied in any rule making such a determination?

12. Should the Commission amend or repeal any other sub-sections of 23.54 or 23.55 to provide more reasonable regulation of Private Pay Telephones and OSPs? Please identify any section that should be amended or repealed and indicate how the rule should read after amendment.

13. Should the Commission adopt rules allowing providers of pay telephone service to designate hours of operation for its pay telephones in certain locations? If so, should access to 911 service and a local operator be available during the off-hours?

The Commission staff and the General Counsel will review the comments and use them in preparing a recommendation to the Commission for further action, including possible amendments to the Commission's Substantive Rules.

Comments (13 copies) should be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757 within 30 days of the date of publication of this notice. Comments should refer to Project Number 12468. The names and mailing addresses of commenters will be used to compile a service list for this project. The service list will be used to notify commenters of future proceedings in this project.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332801 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 29, 1993

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Requests Comments on Implementation of Senate Bill 377

The Public Utility Commission of Texas has established a project (Project Number 12194) to implement the provisions of Senate Bill 377, 73rd Legislature, Regular Session (Acts 1993, 73rd Legislature, Chapter 350, effective September 1, 1993; hereinafter, "SB 377"). The Commission seeks comments from interested parties in response to the following questions. Parties should include their reasons supporting the response to each question. The Commission requests that parties respond to the questions in the order in which they are presented below and encourages parties to include an executive summary of their comments.

1. Should the Commission amend 23.21(c)(2)(B)(iii)(V) of its Substantive Rules to comply with the provisions of Senate Bill 377? If yes, how should the rule read after amendment?

2. Should the Commission amend 23.21(d)(1) of its Substantive Rules to comply with the provisions of SB 377? If yes, how should the rule read after amendment?

3. Should the Commission amend or repeal 23.25 of its Substantive Rules to comply with the provisions of SB 377? If the rule should not be repealed, how should it read after amendment?

4. Should the Commission amend or repeal 23.29 of its Substantive Rules to comply with the provisions of SB 377? If the rule should not be repealed, how should it read after amendment?

5. Should the Commission amend 23.61(a)(25) or the registration and reporting requirements contained in 23.61(i)-(k) of its Substantive Rules to comply with the provisions of SB 377? If yes, how should the rule read after amendment?

6. Given that the Public Utilities Regulatory Act (PURA), §3(c)(2)(B), has been amended to exclude from the term "dominant carrier" an interchange carrier that is not a certificated LEC, can the Commission under PURA, §18(c) (2), identify an interexchange carrier that is not a certificated LEC as a dominant carrier in the intraLATA interexchange industry?

7. Should the Commission, because of the enactment of SB 377, establish a policy regarding statewide average rates pursuant to PURA, §18(c)(4)? If yes, should the Commission require nondominant telecommunications utilities to maintain statewide average rates? If yes, should any services be excluded from this requirement? Which services should be excluded, and why? How should the Commission define "statewide average rates"? What test(s) should the Commission apply to determine if a carrier's rates meet this standard? Can banded rates meet the standards? If a nondominant carrier sets rates for a service on an individual customer basis, would this practice automatically violate the standard?

8. Should the Commission amend or repeal any other sections of its Substantive Rules, or should other sections be added, to comply with the provisions of SB 377? Please identify any section that should be amended or repealed or any issue that should be addressed in a new section and indicate how the rule should read after adoption or amendment.

9. Are there procedures that the Commission should establish, discontinue, or amend to implement the provisions of SB 377? Please describe fully the current procedure and suggested changes.

10. Please indicate other matters, if any, the Commission should consider in order to fully implement the provisions of SB 377.

The Commission staff and the General Counsel will review the comments and use them in preparing a recommendation to the Commission for further action, including possible amendments to the Commission's Substantive Rules (16 TAC §23.1 et seq).

Comments (13 copies) should be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757 within 30 days of the date of publication of this notice. Comments should refer to Project Number 12194. The names and mailing addresses of commenters will be used to compile a service list for this project. The service list will be used to notify commenters of future proceedings in this project.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332802 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 29, 1993

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Requests Comments on Proposed Rule for Certification of Foreign Utility Company Ownership by Utility Holding Companies

In October, 1992, Congress passed, and the President signed, the Energy Policy Act of 1992 (Public Law Number 102-486, 106 Statute 2776) (EPACT), which, among other things, amends the Public Utility Holding Company Act (PUHCA) to exempt foreign utility company (FUCO) investments made by utilities not affiliated with a registered holding company from PUHCA restrictions "if every state commission with authority over retail electric rates of the affiliated utility has certified to the (Securities and Exchange Commission (SEC)) that is has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise such authority." (Section 33(a)(2) of PUHCA.)

The Public Utility Commission of Texas has established Project Number 12123 to examine questions regarding the extent to which the Commission may make such certification to the SEC. The Commission seeks comments from interested parties in response to the following questions. Parties should include reasoning supporting the response to each question. Parties are requested to respond to the questions in the order in which they are presented below, by number, and encouraged to include an executive summary of their comments.

1. What does the history of §33 of PUHCA, and of relevant actions in other States, indicate about the purposes of that statute and possible State responses?

2. What authority and power does the PUC have under PURA, Article 1446c, to inquire into affairs of regulated utility companies and their holding companies and affiliates, regarding the effect on ratepayers of investments by any of those companies in FUCOs?

3. How can the Commission protect Texas ratepayers from paying a higher cost of capital that could result from the utility holding company's foreign investments?

4. How can the Commission protect ratepayers from cross-subsidies between the retail utility and the FUCO affiliate?

5. What other untoward consequences might an ill-fated FUCO investment visit on ratepayers?

6. Should the Commission be required to assess the riskiness of foreign investments? It if should, what standards should it use to define acceptable risk levels? (For purposes of this question, risk refers to risks characteristic of doing business in the country of the proposed investment.)

7. Under what circumstances should certification be granted? Identify any specific conditions that should be met by the utility requesting certification.

8. Under what circumstances should certification, once granted, be withdrawn?

9. For what purposes, if any, should the Commission have access to the accounting records of FUCO affiliates? What records?

10 When and how should the Commission be notified of a FUCO investment? When and how should the Commission be notified of divestitures?

11 Should the Commission establish either a threshold investment level below which certification is made without review, or a cap on the level of diversified investments that an electric utility holding company can have to obtain certification? If so, what should the standard be and how should it be calculated?

12 What, if any, written affirmations should be required of the retail utility or its holding company before certification is granted?

13. What information may the Commission reasonably require about FUCOs, host nations, holding companies, and regulated utilities, and the effects of those changes on possible harm to ratepayers of the regulated utility?

14. How should the certification be handled procedurally? (Administratively, public hearing, etc.)

15 Should the Commission have a public workshop or generic proceeding on this issue prior to drafting a rule?

Provide any other comments you feel would be helpful to the Commission regarding the granting of Commission certification for electric utility holding company investment in foreign utility companies. The Commission's staff and General Counsel will review the comments and use them in preparing a recommendation to the Commission for further action. The Commission may formally propose amendments to 16 TAC §23.

Comments (13 copies) should be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757 within 30 days of the date of publication of this notice. Comments should refer to Project Number 12123. Interested persons are asked to notify the commission in advance of filing comments of their intent to file comments. The names and mailing addresses of commenters will be used to compile a service list for this project. Persons that file comments should serve a copy of their comments on the other parties on this service list. The service list will be used to notify commenters of future proceedings in this project.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332803 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 29, 1993

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Office of the Secretary of State

Correction of Error

The Office of the Secretary of State proposed an amendment to §71.12, concerning faxed filings and the credit card payment option for documents filed with the Secretary of State. The rule appeared in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8489).

In §71.12(d), second line the word "care" should read "card".

In §71.12(d), second column, line 26 the word "recovery" should read "recover".

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The Texas A&M University System, System Human Resources

Request for Proposal

In accordance with Texas Insurance Code, Article 3 50-3, as amended, the Texas A&M University System (the System) announces a Request for Proposals (RFP) to implement and administer its optional group benefit plans. The RFP solicits proposals for a Group Term Life Insurance plan, a Group Accidental Death and Dismemberment Insurance plan, Group Long Term Disability Insurance plan, and a Group Long Term Care Insurance plan The RFP also solicits proposals for administrative services for a Spending Account plan. Firms are invited to submit proposals for any or all of the previously mentioned plans. Such proposals will relate to the plans for the System during the six fiscal years 1995-2000, beginning September 1, 1994, and are renewable annually. Proposals should include, but not be limited to, schedules of benefits, premium rates, claim administration, and financial arrangements.

Firms wishing to respond to this request must have superior recognized expertise and specialize in administering fully-insured, experience-rated group benefit plans of the types listed.

The RFP instructions which detail information regarding the project are available upon request from the Texas A&M University System.

The deadline for receipt of proposals in response to this request is January 31, 1994.

The System reserves the right to accept or reject any proposals submitted. The System is under no legal requirement to execute a resulting contract on the basis of this advertisement. The System intends to use responses as a basis for further negotiations of specific project details. The System will base its choice on cost, demonstrated competence, superior qualifications, and evidence of con-

formance with the RFP criteria. The System shall not designate and will not pay commissions to an Agent of Record or a commissioned representative.

This RFP does not commit the System to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the System to award a contract or to pay any cost incurred in the preparation of a response. The System specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the System deems it to be in its best interest.

To obtain copies of the RFP instructions, please submit a written request to Steven W. Hassel, Assistant Executive Director, System Human Resources, The Texas A&M University System, State Headquarters Building, College Station, Texas 77843-1117 (physical address: 301 Tarrow Drive, College Station, Texas 77840), FAX (409) 845-5281. For questions or further information regarding this notice, contact Steven W. Hassel at (409) 845-2026

Issued in Austin, Texas, on November 29, 1993

TRD-9332835 Patricia L Couger
Executive Director, System Human Resources
The Texas A&M University System

Filed November 30, 1993

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The University of Texas System

Request for Proposal

The University of Texas Medical Branch at Galveston (UTMB) requests, pursuant to the provisions of Texas Civil Statutes, Article 6252-11C, the submission of proposals leading to the award of a contract for a Utility Cost Allocation Study, in compliance with OMB Circular A-12. UTMB's objective for this project is to utilize the data obtained from the Study to negotiate an indirect overhead rate with the Department of Health and Human Services (DHHS) that will be applied to Federal Contracts and Grants for fiscal year 1995 and beyond.

The awarded firm will be responsible for completing all the requirements for this project and shall be available to assist in the indirect overhead cost negotiations with DHHS.

Respondents must be regularly engaged in the business of conducting Utility Cost Allocation Study in an academic/healthcare environment.

UTMB reserves the right to accept or reject any or all proposals. The proposals submitted will be the basis for contract negotiation and the representations made therein will be binding on Respondent.

Selected Respondents may be requested to conduct an on-site presentation, at their expense, to clarify and expand upon items provided in their proposals. The consulting group awarded a contract, if any, will be the Respondent whose proposal conforming to this request, is deemed to be the most advantageous by UTMB Factors in awarding a contract will include, but are limited to, demonstrated competence and experience in conducting Utility Cost Allocation Studies according to OMB Circular A-21 rules and regulations, written approval by DHHS Office of Consultant's Utility Study methodology, proposed project time table and the expectation of UTMB involvement, and reasonableness in the overall cost Proposals must remain valid for acceptance and may not be withdrawn for a period of 90 days after the proposal closing date.

An original and five copies of the full proposal must be submitted to UTMB prior to 3.00 p m , Wednesday, December 29, 1993. Proposals received thereafter will not be considered and will be returned unopened Proposals must be sent to the address indicated below.

For further information or to obtain a complete proposal package (RFP Number 4-10), contact Kyle Barton, Senior Procurement Officer, The University of Texas Medical Branch at Galveston, Administration Annex Building, Suite 3. 202, 301 University Boulevard, Galveston, Texas 77555-0105, (409) 772-2262

Issued in Austin, Texas, on November 29, 1993

TRD-9332805 Arthur H Dilly
Executive Secretary of the Board
The University of Texas System

Filed November 29, 1993

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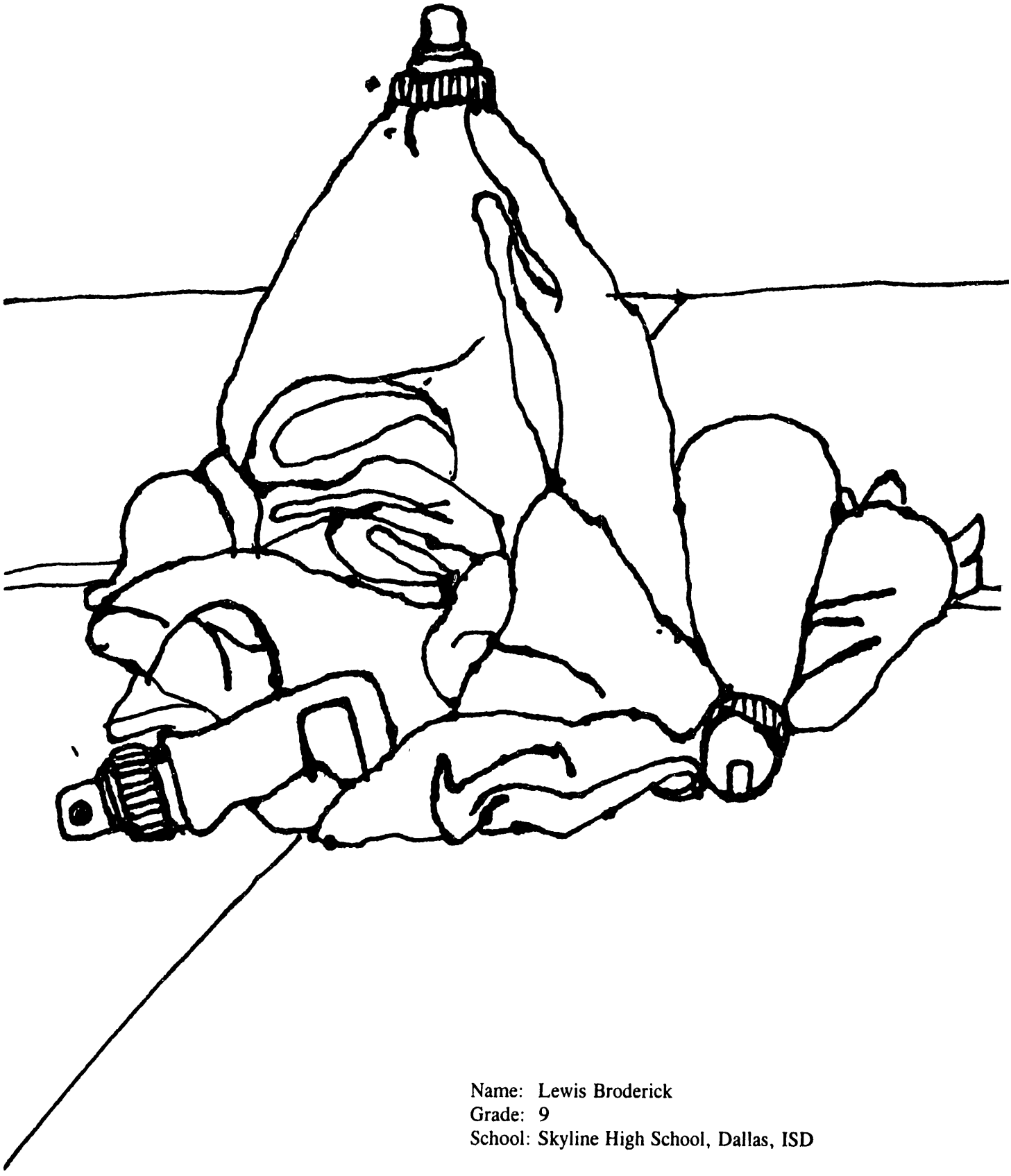

Name: Lewis Broderick
Grade: 9
School: Skyline High School, Dallas, ISD

TAC Titles Affected

The following is a list of the administrative rules that were published in the November 1993 issues.

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

1 TAC §71.12 8489

1 TAC §§71.40-71.42, 71.45, 71.46, 71.48, 71.50.. 7897

1 TAC §§78.1, 78.11, 78.13, 78.21.....6885, 8515

1 TAC §79.13, §79.14. 8057

1 TAC §81.100-81.137 8515

1 TAC §§81.100-81.138 .....6591, 6592, 8515

1 TAC §81.138 8513

Part V. General Services Commission

1 TAC §111.2 7901

1 TAC §113.2, §113.6 7902

1 TAC §113.19..... 5169, 5189, 6832, 7895, 7902

1 TAC §117.41 ..... 5940, 7921

1 TAC §117.42, §117.43 ..... 5941, 7921

1 TAC §117.51 7903

1 TAC §§117.52-117.57 7903

Part XIII. Texas Incentive and Productivity Commission

1 TAC §§273.1, 273.7, 273.9, 273.27 8297

Part XIV. Texas National Research Laboratory Commission

1 TAC §300.8 8058

Part XV. Health and Human Services Commission

1 TAC §351.1 ..... 4556, 6297, 7921

1 TAC §351.3 8058

Part XVI. State Council on Competitive Government

1 TAC §§401.1-401.4 ..... 6163, 8189

1 TAC §§401.21-401.28 ..... 6164, 8190

1 TAC §§401.41-401.49 ..... 6165, 8190

1 TAC §401.61, §401.62 ..... 6167, 8192

1 TAC §401.81, §401.82 ..... 6167, 8193

1 TAC §§401.101-401.104 ..... 6168, 8193

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

4 TAC §§1.71-1.77 8060

4 TAC §§3.1, 3.4-3.6 8061

4 TAC §§3.1-3.11 ..... 6387, 8193

4 TAC §§3.21-3.24 ..... 6387, 8194

4 TAC §§3.31-3.39 ..... 6388, 8194

4 TAC §§3 50-3.56 8737

4 TAC §§5.172, 5.175-5.179 8783

4 TAC §§11.1-11.9 ..... 6168, 8671

4 TAC §§11.1-11.10 ..... 6169, 8671

4 TAC §19.8, §19.9 8738

4 TAC §§26.1-26.3, 26.5, 26.6, 26 8, 26.10, 26.12....7904

4 TAC §30 6 8639

4 TAC §§30.50-30.54 ..... 5875, 8516

Part IX. Texas Veterinary Medical Diagnostic Laboratory

4 TAC §§102.1-102.10 ..... 5941, 7922

4 TAC §§162.1-162.10 7922

TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

7 TAC §3 31, §3.32 ..... 5944, 8449

7 TAC §3.37 ..... 5944, 8449

7 TAC §3.38 ..... 5931, 5947, 8447, 8450

7 TAC §3.91.....1985, 2249, 5947, 5971, 5976, 8435, 8447

7 TAC §3.92 8438

7 TAC §4.3 ..... 5950, 8450

Part II. Texas Department of Banking

7 TAC §10.10, §10.11 8439

7 TAC §13.70 8441

7 TAC §13.71 ..... 5952, 8453

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

30 TAC §101.1 8535

30 TAC §114.3 ..... 8689, 8698

30 TAC §114.23 ..... 6424, 8700

30 TAC §115.10 8569

30 TAC §§115.121-115.123, 115.126, 115.127, 115.129 8572

30 TAC §§115.152, 115.153, 115.155-115.157, 115.159 8574

30 TAC §§115.211, 115.212, 115.214-115.217, 115.219 8575

30 TAC §§115.222, 115.226, 115.227, 115.229 8582

30 TAC §§115.234-115.237, 115.239 8583

30 TAC §§115.241-115.249 8583

30 TAC §115.324 8588

30 TAC §115.334 8588

30 TAC §115.344 8588

30 TAC §§115.352-115.357, 115.359 8588

30 TAC §§115.421, 115.422, 115.426, 115.427, 115.429 8591

30 TAC §§115.442, 115.443, 115.445, 115.446, 115.449 8592

30 TAC §§115.541-115.547, 115.549 8593

30 TAC §115.621, §115.625 8595

30 TAC §§115.930, 115.932, 115.940 8597

30 TAC §115.950 8597

30 TAC §116.110, §116.115 8145

30 TAC §116.211 8147

30 TAC §116.311 8147

30 TAC §§116.610, 116.611, 116.614, 116.617 8148

30 TAC §§290.251, 290.253-290.256, 290.260, 290.265, 290.266 8150

30 TAC §305.2 ..... 8216, 8641

30 TAC §305.50 8217

30 TAC §305.50 8152

30 TAC §305.69 ..... 8217, 8643

30 TAC §305.122 8217

30 TAC §§305.501-305.507 8648

30 TAC §330.4 8766

30 TAC §330.65 8652

30 TAC §331.121 8217

30 TAC §334.301 ..... 6538, 8355

30 TAC §335.1 8658

30 TAC §§335.1, 335.2, 335.10, 335.13, 335.29 8218

30 TAC §§335.9, 335.13, 335.15 8767

30 TAC §335.41, §335.47 8219

30 TAC §§335.61, 335.69, 335.74 8219

30 TAC §335.71 8769

30 TAC §335.111 8659

30 TAC §§335.111, 335.112, 335.115 8220

30 TAC §§335.151, 335.152, 335.167 8659

30 TAC §§335.152, 335.155, 335.166-335.168, 335.173 8220

30 TAC §335.211 8220

30 TAC §335.224 8220

30 TAC §§335.321-335.323, 335.325-335.329, 335.331- 335.332 8154

30 TAC §335.431 ..... 8220, 8770

30 TAC §§335.501-335.503, 335.507-335.514 8660

30 TAC §335.504 8221

30 TAC §§336.1-336.6 ..... 7459, 8624

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

31 TAC §57.500 7917

Part XV. Texas Low-Level Radioactive Waste Disposal Authority

31 TAC §§450.1-450.4 ..... 6918, 8791

31 TAC §§450.11-450.19 ..... 6919, 8791

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