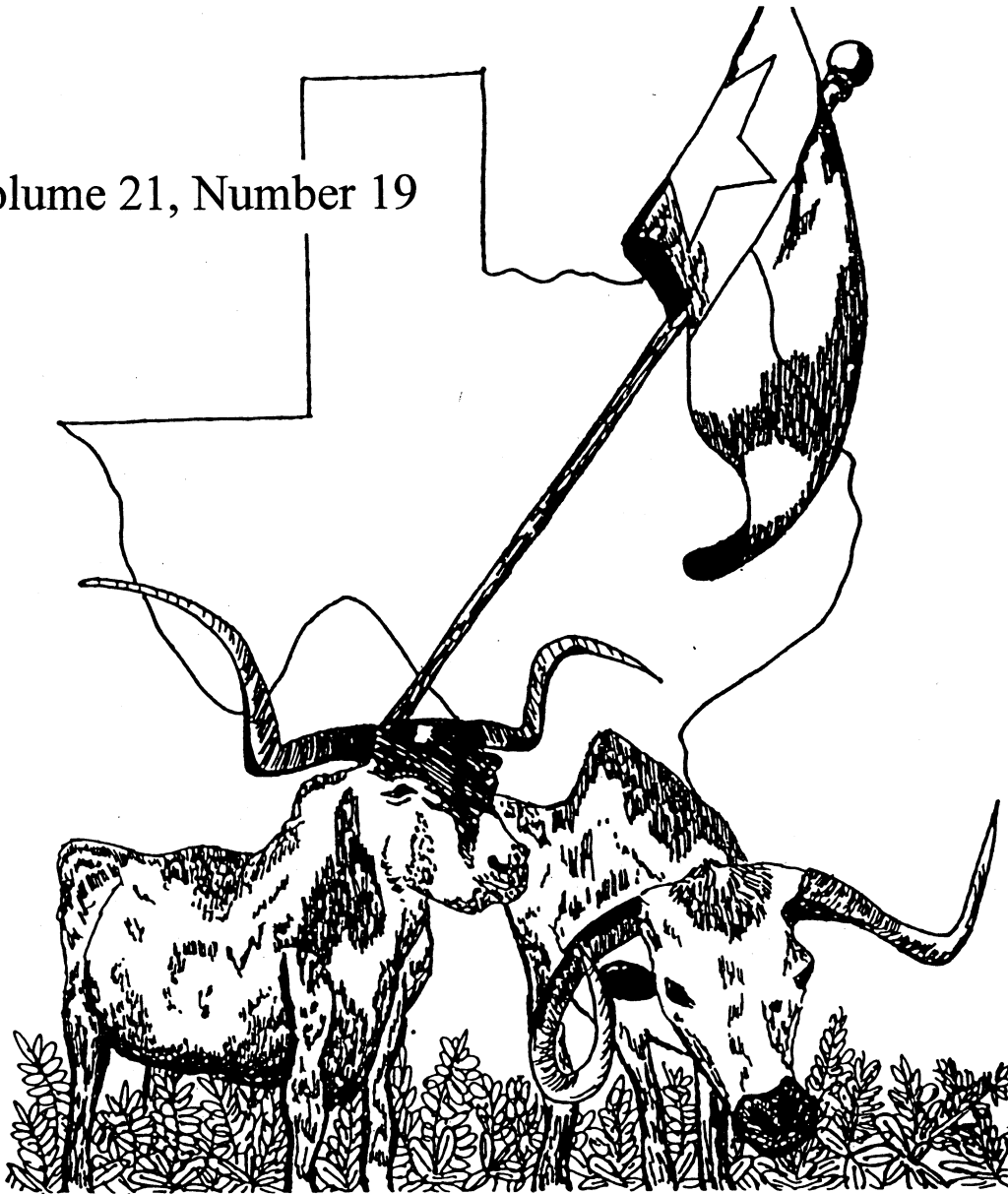

TEXAS REGISTER

Volume 21, Number 19, March 12, 1996

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This month's front cover artwork:

Artist: Lakeisha R. Hines

11th grade

Sulphur Springs High School, Sulphur Springs ISD

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For more information about the student art project, please call (800) 226-7199.

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IN THIS ISSUE

PROPOSED RULES

Office of the Secretary of State

Automobile Club

1 TAC §§75.21.....1933

Texas State Library and Archives Commission

State Records

13 TAC §§6.21-6.351934

Local Records

13 TAC §§7.21-7.351940

.....1941

Talking Book Program [Program for the Blind and Physically Handicapped]

13 TAC §§9.15-9.211948

13 TAC §§9.21-9.311949

Railroad Commission of Texas

Liquefied Petroleum Gas Division

16 TAC §9.2.....1950

16 TAC §9.15, §9.19.....1950

Texas Education Agency

Regional Education Service Centers

19 TAC §§53.1-53.31952

Regional Education Service Centers

40 TAC §53.11952

19 TAC §§53.21-53.25.....1953

19 TAC §§53.71-53.74.....1953

Curriculum Requirements

19 TAC §§74.1-74.31954

19 TAC §§74.11-74.141955

19 TAC §§74.21-74.301959

Curriculum

19 TAC §§75.1-75.51962

19 TAC §75.141, §75.1421963

19 TAC §§75.151-75.1531963

19 TAC §§75.161-75.1741963

19 TAC §§75.191-75.1971963

19 TAC §§75.211-75.2181964

19 TAC §§75.311-75.3201964

19 TAC §75.411, §75.412.....1964

Extracurricular Activities

19 TAC §76.1.....1965

Adaptations for Special Populations

19 TAC §§89.1-89.161967

19 TAC §§89.41-89.43.....1967

19 TAC §89.51, §89.52.....1968

19 TAC §§89.71-89.84.....1968

19 TAC §§89.111-89.120.....1968

19 TAC §89.201, §89.203.....1969

19 TAC §§89.211-89.229, 89.231-89.240, 89.242-89.2461969

19 TAC §§89.250, 89.252-89.254, 89.256, 89.258.....1970

19 TAC §89.3011970

19 TAC §89.3311970

19 TAC §§89.1-89.51971

19 TAC §§89.21-89.33.....1972

19 TAC §§89.41-89.481974

19 TAC §§89.61-89.631975

19 TAC §89.711978

Foundation School Program

19 TAC §105.11.....1979

Pupil-School Relations

19 TAC §§133.21-133.24.....1979

Texas Department of Health

Health Maintenance Organizations

25 TAC §§119.1-119.15.....1981

25 TAC §§119.1-119.4.....1981

25 TAC §§119.21-119.27.....1986

25 TAC §§119.51-119.561991

25 TAC §119.71.....1994

25 TAC §119.91.....1994

Food and Drug

25 TAC §§229.141, 229.142, 229.145-229.148, 229.150-229.152.....1995

Texas Department of Insurance

General Administration

28 TAC §§1.88, 1.89.....2001

Texas Workers' Compensation Commission

Guidelines for Medical Services and Treatments

28 TAC §134.501.....2001

Texas Water Development Board

Financial Assistance Programs

31 TAC §§363.502, 363.503, 363.505, 363.506.....2002

Texas Department of Human Services

Medicaid Eligibility

40 TAC §§15.609-15.611, 15.617.....2004

Texas Commission on Alcohol and Drug Abuse

Funding Requirements

40 TAC §144.1, §144.11.....2005

40 TAC §§144.21-144.29; 144.31-144.34; 144.41-144.44;
144.51-144.54; 144.61-144.65; 144.71-144.742011

40 TAC §§144.301; 144.311-144.316; 144.321; 144.322; 144.333;
144.341-144.346; 144.351; 144.352; 144.355; 144.356; 144.361 2017

40 TAC §§144.401; 144.411-144.427; 144.431-144.435;
144.441-144.444; 144.451; 144.4522021

40 TAC §§144.511; 144.512; 144.521-144.5312027

40 TAC §§144.611-144.615; 144.621-144.624; 144.631-144.633
2029

40 TAC §§144.711-144.714; 144.721-144.727; 144.731; 144.732
2031

Texas Commission for the Deaf and Hard of Hearing

Board for Evaluation of Interpreters and Interpreter Certifica-
tion

40 TAC §183.573.....2033

Texas Department of Protective and Regulatory Services

24-Hour Care Licensing

40 TAC §§720.24-720.37, 720.39-720.62.....2034

40 TAC §§720.24-720.60.....2035

Texas Department of Transportation

Finance Division

43 TAC §3.2.....2048

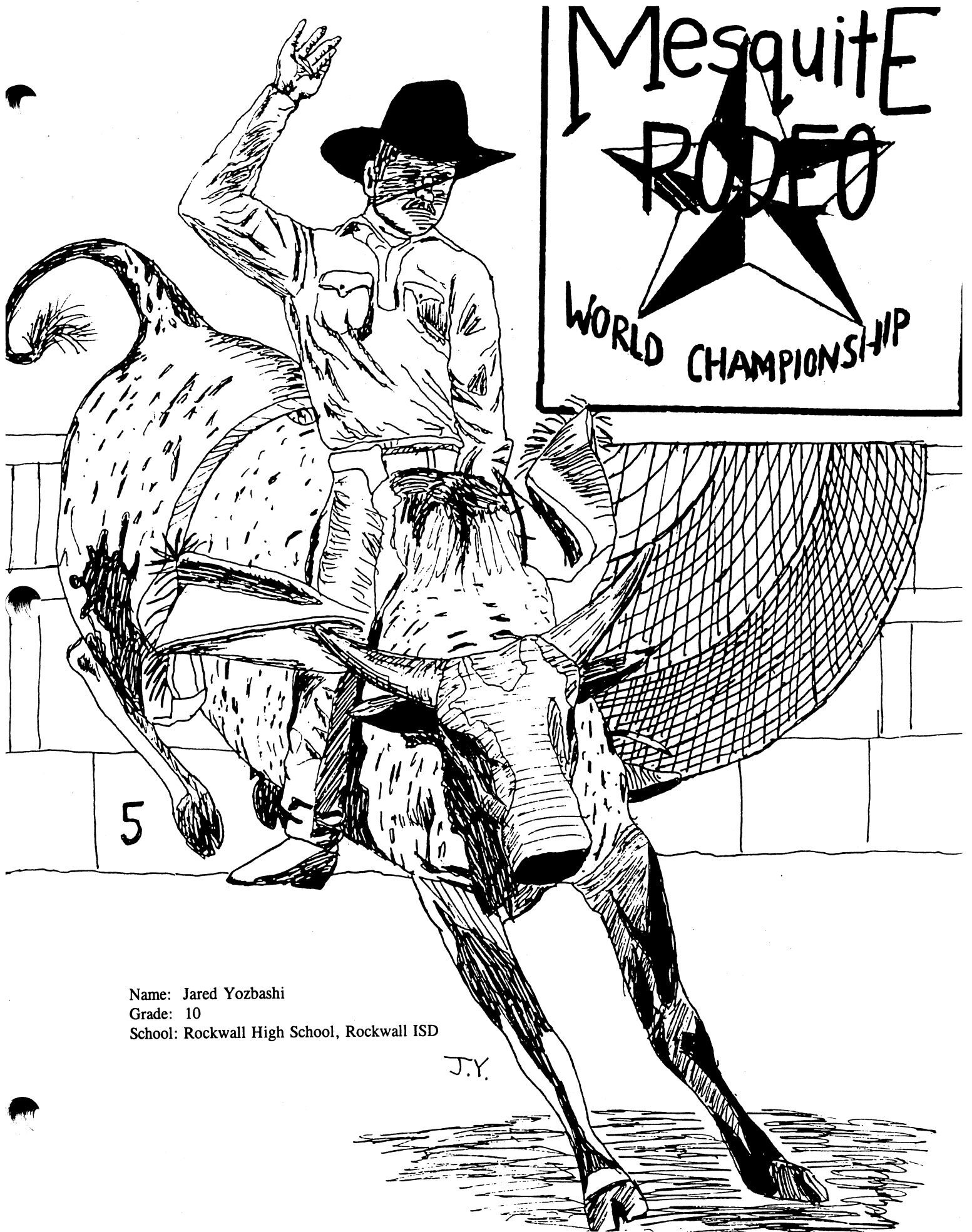
Vehicle Title and Registration

43 TAC §17.2, §17.3.....2048

43 TAC §§17.21, 17.22, 17.28, 17.30, 17.50.....2052

Travel Information

43 TAC §§23.40-23.47.....2063



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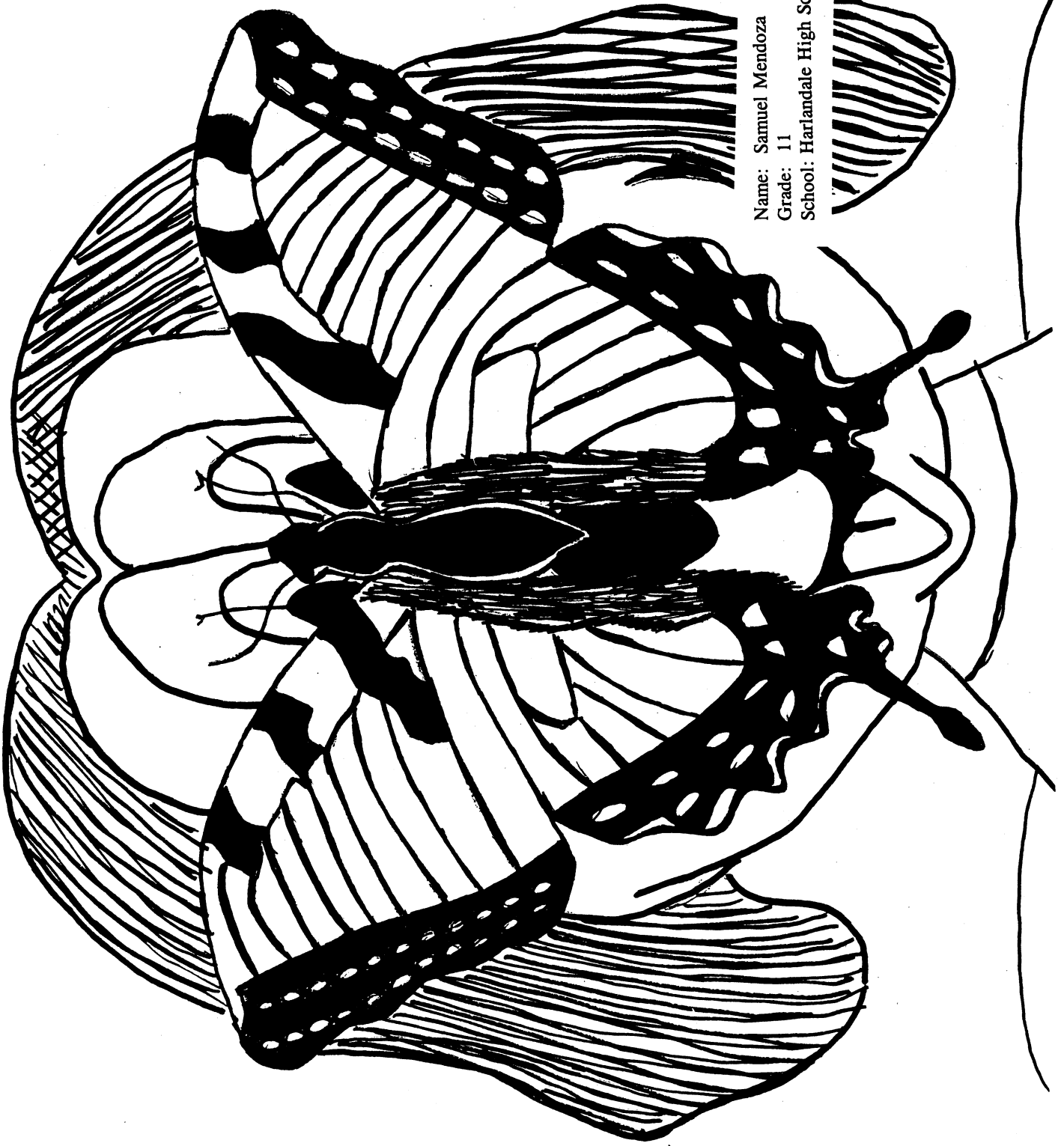
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1/11/14



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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 75. Automobile Club

Automobile Club Services

1 TAC §75.21

The Office of the Secretary of State proposes an amendment to §75.21, concerning the services an automobile club may provide. The amendment is proposed in order to conform §75.21, with current insurance law.

Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section 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. Joyner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to insure that the services authorized in §75.21 are not in conflict with current insurance law. 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 Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

The amendment is proposed under the Texas Government Code, §2001.004(1) and the Automobile Services Act, Texas Transportation Code Annotated, §722.003 which provides the Secretary of State with the authority to prescribe and adopt rules.

The amendment affects the Texas Transportation Code, §22.002.

§75.21. *Services an Automobile Club May Provide.*

[By way of illustration and not by way of limitation,] An [an] automobile club may provide its customers or subscribers with the following services:

(1)-(7) (No change.)

(8) a legal fee reimbursement [service] in the defense of traffic offenses;

(9) [the purchase of] accidental injury and death benefits that are covered by a group policy issued to the club, for the benefit of its members, by [insurance coverage from] a duly authorized insurance company;

[(10) a reimbursement for the deductible on an automobile club insurance policy for the collision of a motor vehicle not to exceed \$500; and

[(11) a reimbursement for the deductible on an automobile insurance policy for the theft of a motor vehicle not to exceed \$500.]

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

Issued in Austin, Texas, on February 28, 1996.

TRD-9602809

Clark Kent Ervin

Assistance Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 475-0775

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 6. State Records

Microfilming Standards for State Agencies

13 TAC §§6.21-6.35

The Texas State Library and Archives Commission proposes the new §§6.21-6.35, concerning standards for the microfilming of state records. The new sections are proposed for the purpose of more clearly identifying for state agency officials the standards required to protect the integrity and longevity of state records that are being stored in microfilm format. The new rules define the technical terms that are used and adopts national microfilming standards. The new rules also set forth the general requirements for microfilming, as well as for the use, maintenance and inspection of the microfilm and related supplies and equipment.

William L. Dyess, Director, State and Local Records Management Division, has determined that for each of the first five years the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections by those state agencies that have microfilming operations. Of the twenty-four standards proposed for adoption by reference in these sections, sixteen standards have already been required for the microfilming of state records. For the eight standards not previously specified as requirements for microfilming, the following are projected costs for the agencies to purchase the standards applicable to their microfilming operations. Effects on state government will be an estimated additional cost of \$2,655. All of the standards are available for review without cost at the technical library of the State and Local Records Management Division but most agencies prefer to purchase a copy and keep it on-site. The adoption of the new standards will result in some additional costs for those agencies that have microfilming operations but the amount of the costs cannot be determined with any accuracy as many of the procedures in the new standards are already being followed because they are cross-referenced in standards previously required. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Dyess has determined that for each year of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be that the microfilming of records will be done according to established standards to ensure the physical protection and information integrity of state records, thereby, improving public access to the records. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the sections as proposed.

Comments on the proposal may be submitted to Elizabeth Love, Program Planning and Research Specialist, State and Local Records Management Division, Texas State Library, P. O. Box 12927, Austin, Texas 78711-2927, (512) 452-9242 ext. 137, within 30 days of publication in the *Texas Register*.

The new sections are proposed under the Government Code, §441.032, §441.037, and §441.058, which provide the Texas State Library and Archives Commission with the authority to manage all state records with the cooperation of the heads of the various departments and institutions in charge of the records; to issue rules, standards, and procedures for the efficient management of state records; and to prescribe standards for microfilming of essential state records.

The Government Code, §441.032, §441.037, and §441.058 are affected by the proposed sections.

§6.21. Definitions.

The following words and terms, when used in these sections, have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections have the meanings defined in the Government Code, Chapter 441, or technical report AIIM TR2 adopted by reference in §6.22(a) of this title (relating to Adopted National Standards).

Agency-A state executive, educational, judicial, legislative, or eleemosynary department, institution, board, or commission.

Aperture card-A card with a rectangular opening(s) into which 16mm/35mm microfilm frames can be inserted, mounted, or pre-mounted.

Batch-A quantity of chemicals or film which has been prepared at one time, and which has been identified through labeling or through other means by the manufacturer as a batch or lot.

CAD (computer assisted design)-A method of creating microimages by computer-driven laser.

Convenience film-Microfilm copies of records created only for convenience of use and considered nonrecords under the Government Code, §441.031(5).

Declaration by the camera operator-A target photographed on film following the filmed records that provides identification of beginning and ending records on the film; signature of the camera operator; date the declaration was filmed; and reduction range, if more than one ratio has been used.

Diazo-A photographic film containing one or more photosensitive layers composed of diazonium salts in a polymeric material which react with coupler(s) to form an azo dye image after film processing.

Duplicate microfilm-A microfilm copy made from the original or master negative. Can be silver, diazo or vesicular film.

Essential record-Any state record necessary to resume or continue a state agency's business; to recreate its legal and financial status; and to preserve the rights of the agency, its employees, and its clients.

Microfilm-Roll microfilm, microfiche, computer output microfilm (COM), and all other formats produced by any method of microphotography or other means of miniaturization on film.

Microfilm container-Generic term for any enclosure in close or direct contact with film such as a reel, can, bag, folder, sleeve (sheath), jacket, envelope, window mount or mat, slide mount, carton, cartridge, cassette, and aperture card.

Microfilming-The methods, procedures, and processes used to produce microfilm.

Needs assessment-A documented process to determine the feasibility and justification for microfilming records including consideration of the retention period and activity rate of the records, advantages and limitations of alternate records media, protection of essential records, access or retrieval concerns, and cost comparisons.

Original microfilm-Film produced directly from the record (also known as first-generation microfilm and camera film).

Records administrator-The head of an agency or the person appointed by the head of an agency to act as the agency's representative in all

issues of records management policy, responsibility, and statutory compliance pursuant to the Government Code, §441.037.

Records custodian-The agency employee who is in charge of an office that creates or receives state records.

Records retention schedule-A document prepared in accordance with §6.2 of this title (relating to Submission of Records Retention Schedules for Certification).

Records series-A group of identical or related records that are normally used and/or filed together, and that permit evaluation as a group for retention scheduling purposes.

Retention period-The period of time during which a state record must be maintained before final disposition.

Security copy-Either the original microfilm or a duplicate that is stored offsite for the full retention period of the record.

State record-Any written, photographic, machine-readable, or other recorded information created or received by a state agency that documents its activities in the conduct of state business or use of public resources. The term does not include library or museum material made or acquired and preserved solely for reference or exhibition purposes, an extra copy of recorded information preserved only for reference, or a stock of publications or blank forms.

Step-and-repeat system-A method of microfilming by which images are directly placed on an area of film according to a predetermined format, usually in orderly rows and columns.

Title page-A target photographed on film stating that the records are microfilmed in the regular course of business and identifying the name of the agency of origin, if applicable; name of the records administrator or name and title of the current records custodian; name and location of service bureau, if applicable; reduction ratio; records series title; inclusive dates of records and volume numbers or serial numbers needed to clearly identify the records; and restriction or classification, if applicable.

Vesicular-Photographic film containing one or more photosensitive layers composed of diazonium salt in a thermoplastic material.

§6.22. *Adopted National Standards.*

(a) The commission adopts by reference the following copyrighted standards and recommended practices issued by the American National Standards Institute (ANSI) and/or the Association for Information and Image Management (AIIM) as minimum requirements for all microfilming of state records where these sections do not specify a standard or practice. A copy of each of the standards adopted in this section is on file and available for public inspection during regular working hours at the State and Local Records Management Division, Texas State Library, 4400 Shoal Creek Boulevard, Austin, TX 78756. The standards are distributed by and available from the Association for Information and Image Management, Suite 1100, 1100 Wayne Avenue, Silver Spring, MD 20910-5699.

- (1) AIIM TR2-1992, Glossary of Imaging Technology.
- (2) AIIM TR11-1987 with 1993 addendum, Microfilm Jacket Formatting and Loading Techniques.
- (3) AIIM TR12-1988, Bar Coding on Microfiche for Production and Dynamic Distribution Control.

(4) ANSI IT9.2-1991, Imaging Media - Photographic Processed Films, Plates, and Papers - Filing Enclosures and Storage Containers.

(5) ANSI IT9.5-1992, Imaging Media (Film) - Ammonia-Processed Diazo Films - Specifications for Stability.

(6) ANSI IT9.11-1991, Imaging Media - Processed Safety Photographic Film - Storage.

(7) ANSI IT9.12-1991, Photography - Processed Vesicular Photographic Film - Specifications for Stability.

(8) ANSI/AIIM MS1-1988, Recommended Practice for Alphanumeric Computer-Output Microforms - Operational Practices for Inspection and Quality Control.

(9) ANSI/AIIM MS5-1992, Microfiche.

(10) ANSI/AIIM MS8-1988, Image Mark (Blip) Used in Image Mark Retrieval Systems.

(11) ANSI/AIIM MS11-1987, Microfilm Jackets.

(12) ANSI/AIIM MS14-1988, Specifications for 16mm and 35mm Roll Microfilm.

(13) ANSI/AIIM MS17-1992, Micrographics - Rotary (Flow) Microfilm Camera Test Chart and Test Target - Descriptions and Use.

(14) ANSI/AIIM MS18-1992, Micrographics - Splices for Imaged Microfilm - Dimensions and Operational Constraints.

(15) ANSI/AIIM MS19-1993, Standard Recommended Practice - Identification of Microforms.

(16) ANSI/AIIM MS23-1991, Practice for Operational Procedures/Inspection and Quality Control of First-generation, Silver Microfilm of Documents.

(17) ANSI/AIIM MS28-1987, Alphanumeric COM Quality Test Slide.

(18) ANSI/AIIM MS39-1987, Recommended Practice for Operational Procedures, Quality Control and Inspection of Graphic Computer-Output Microforms.

(19) ANSI/AIIM MS42-1989, Recommended Practice for the Expungement, Deletion, Correction, or Amendment of Records on Microforms.

(20) ANSI/AIIM MS43-1988, Recommended Practice for Operational Procedures/Inspection and Quality Control of Duplicate Microforms of Documents and From COM.

(21) ANSI/AIIM MS45-1990, Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration.

(22) ANSI/AIIM MS51-1991, Micrographics - ISO Resolution Test Chart No. 2 - Description and Use.

(23) ANSI/NAPM IT9.1-1992, Imaging Media (Film) - Silver-Gelatin Type - Specifications for Stability.

(24) ANSI/NAPM IT9.17-1993, Photography - Determination of Residual Thiosulfate and Other Related Chemicals in Processed Photographic Materials - Methods Using Iodine-Amylose, Methylene Blue and Silver Sulfide.

(b) In case of conflict between any standard adopted by reference in subsection (a) of this section and any provision of these sections, these sections prevail.

§6.23. General.

(a) These sections apply to the microfilming of any state record that is to be maintained solely in microfilm format and to all microfilm which is created or maintained for the full retention period of the record as a backup or security copy of a state record. These sections do not apply to convenience film.

(b) Microfilming of records must be in compliance with an approved agency records retention schedule except, if an agency does not have an approved schedule, a microfilming needs assessment must be completed to determine if filming is justified.

(c) For microfilm maintained as roll film, no more than one records series is permitted on each roll of microfilm.

(d) For essential records that are microfilmed, there must be a security copy stored offsite.

(e) The originals of records or source documents that have been microfilmed may be destroyed prior to the expiration of their retention periods only if the microfilm complies with these sections and in accordance with the Government Code, §441.035.

(f) After the completion of the production tests and inspections required under §6.25 of this title (relating to Microfilm Production Tests and Inspections), original microfilm must not be unwound and used for any purpose except:

- (1) to produce duplicate copies of the film;
- (2) to carry out inspections under §6.27 of this title (relating to Inspection of Stored Original Microfilm);
- (3) to expunge records as required by §6.32 of this title (relating to Expungement); or
- (4) to destroy records as required by §6.33 of this title (relating to Destruction of Microfilmed Records).

(g) Microfilm produced for an agency is the property of the agency, and the agency head and the records administrator have the same responsibilities for ensuring the management and preservation of microfilmed records under the Government Code, Title 4, Subtitle D, as if the records were not microfilmed.

(h) If a service provider is used for the filming, processing, and/or storage of state records, a written agreement must be in place to provide access in compliance with local, state, and federal laws or delivery of the records as needed by the state agency and to allow inspections of the microfilm facilities by the agency head, records administrator, records custodian, or other authorized representative of the governing body of the agency.

(i) All microfilm produced before the effective date of these sections is validated to the extent the microfilm was produced in the manner and according to the standards prescribed by prior law.

§6.24. Microfilm Production Procedures.

(a) Standards for original microfilm.

- (1) First-generation, silver microfilm - ANSI/AIIM MS23.
- (2) Microfiche - ANSI/AIIM MS5.
- (3) Roll microfilm - ANSI/AIIM MS14.

(4) Splices for microfilm - ANSI/AIIM MS18.

(5) The quality-index graph in standard ANSI/AIIM MS23 must be used to determine the minimum quality index for all microfilm of essential and permanent records and for 10% of the total volume of microfilm of other records. All microfilm of permanent and essential records must meet a minimum quality index level of 5.0. Microfilm of other records must meet a minimum quality index level of 3.6.

(b) Standards for microfilm duplicates.

(1) ANSI/AIIM MS43 and the following standards, as applicable.

- (2) Diazo film - ANSI IT9.5.
- (3) Vesicular film - ANSI IT9.12.
- (4) Silver film - ANSI/NAPM IT9.1.

(c) Film specifications.

(1) Original microfilm must meet standard ANSI/NAPM IT9.1, except where these sections specifically state otherwise.

(2) Film with a polyester base must be used for records having a retention period of 10 years or more.

(3) Any film type may be used for records having a retention period of less than 10 years, provided the microfilmed record will last for the required retention period.

(d) Indexing.

(1) The indexing and retrieval system to be used must be determined before preparing documents for filming.

(2) The records must be arranged, identified, and indexed for filming so that an individual document or a series of documents can be located on film.

(3) Any use of image marking must comply with standard ANSI/AIIM MS8.

(4) In those instances where records are not self-indexing, (i.e. not in a readily identifiable numeric or alphabetic sequence) an index must be maintained.

(e) Document preparation.

(1) All imperfections that affect the legibility of a document must be repaired, if possible, and if allowed by the records administrator or records custodian.

(2) Documents must be filmed in an orderly sequence and misplaced pages, folders or other file units must be put in the correct order.

(3) The film must be as complete a record of the file as possible. Problems with missing file units, incorrect pagination, illegible pages, etc. must be documented by inserting and filming targets, as specified in standard ANSI/AIIM MS23.

(4) Whenever possible, targets must all face the same direction as the records being microfilmed.

(f) Image sequence for filming.

(1) The image sequence on roll microfilm must be at a minimum:

- (A) leader with a minimum of 700 millimeters (28 inches) of blank film;
- (B) density target and resolution target;
- (C) title page;
- (D) records on film;
- (E) declaration by camera operator;
- (F) density target and resolution target; and
- (G) trailer with a minimum of 700 millimeters (28 inches) of blank film.

(2) The filming sequence for retakes/additions on all microfilm must be:

- (A) title target identifying the retake/addition records;
- (B) the retake/addition records; and
- (C) declaration by camera operator.

(3) Retakes/additions can be spliced either before the density and resolution targets at the beginning of the film or after the density and resolution targets at the end of the film. Retakes/additions can be on another roll of film if cross-indexed to the original role on the title target and the container label.

§6.25. Microfilm Production Tests and Inspections.

(a) The following tests must be performed on microfilm as indicated.

(1) Methylene blue test.

(A) A methylene blue test for conventionally processed silver-gelatin film must be performed on all original microfilm in compliance with standard ANSI/NAPM IT9.17.

(B) A test must be performed on a strip of processed, clear, and unexposed film approximately six inches long from the original microfilm or on a process control strip at least once each week during which processing is done.

(C) A test must also be performed whenever a batch of fixer or developer is changed, or when changes in processing such as replacement or addition of filter, water softener, or replenishing system are made, or when water is changed.

(D) If processing is performed by a service bureau, a test performed for one agency may satisfy this requirement for more than one agency.

(E) If film fails to meet the standards established by these sections, it must be rewashed and retested within 14 days of initial processing.

(F) Once a year, two test strips must be taken from the same microfilm; one must be sent to an independent testing laboratory and the other to the laboratory which performs the weekly test, for verification of test results.

(G) If either test result is greater than 0.014 grams per square meter, the records administrator or records custodian must identify and remedy the cause of the deviation from the required standard.

(2) Density test.

(A) A density test must be performed on all original microfilm in compliance with standard ANSI/AIIM MS23 and the background density must be in accordance with that standard.

(B) Densitometer used must be calibrated daily, when in use.

(3) Resolution test.

(A) A resolution test must be performed on all original microfilm in compliance with standard ANSI/AIIM MS23.

(B) The resolution target must meet the following standards:

(i) ANSI/AIIM MS17; and/or

(ii) ANSI/AIIM MS19; and/or

(iii) ANSI/AIIM MS51.

(C) Photocopies of the resolution target must not be used for testing.

(D) Resolution target images must be evaluated under a microscope to determine if resolution loss from duplicating is acceptable. A duplicate of a first-generation film must have a resolution loss of no more than one test pattern of the test objects described in ANSI/AIIM MS51.

(b) Original processed microfilm must be visually inspected according to the following procedures.

(1) Within two weeks of completion of the methylene blue test, a visual inspection of microfilm must be completed to verify legibility.

(2) Film of essential records or records having a retention period of 10 years or more must be inspected image by image.

(3) Film of non-essential records having a retention period of less than 10 years must be inspected at least every three meters (10 feet) of each roll or every third fiche.

(4) Images of documents must be uniformly placed on the film and must be free of any defects in the filming area that would interfere with the documents being read.

(5) If a defect is found on any microfilm, the microfilm immediately preceding and following the sample of microfilm on which the defect was found must be inspected. If a defect is found on those microfilms, the uninspected microfilm preceding and/or following those microfilms must be inspected image by image until all defective film has been identified.

(c) Testing and Inspection of Equipment.

(1) Cameras and ancillary equipment must be calibrated, tested, or otherwise inspected and adjusted at least twice annually or more often if required to comply with manufacturer's specifications or recommended operating and maintenance procedures.

(2) Processors must be monitored on a scheduled basis with process control strips (sensitometric strips) at a minimum at the start of processing each day and whenever a batch of film, fixer, or developer is changed, or when changes in processing such as replacement or addition of filter, water softener, or replenishing system are made, or when water is changed.

§6.26. Storage of Original Microfilm.

(a) Original microfilm must be stored in a separate building from that in which duplicate copies, if any, or the original records are housed, and under conditions that meet the requirements of this section.

(b) Microfilm must be stored in a storage room or vault that complies with the following:

(1) is separate from other types of storage, offices, or work areas and offers protection from fire, water, steam, structural collapse, unauthorized access, and other potential hazards;

(2) is equipped with a fire alarm system and capable of preventing temperatures inside the storage room/vault from exceeding 150 degrees Fahrenheit and the relative humidity inside the storage room/vault from exceeding 85% for up to two hours in the event of a fire external to the storage room/vault;

(3) if constructed or readapted after 1991 to serve as a microfilm storage facility, is equipped with a fire suppression system and with automatic fire control dampers in ducts carrying air to and from the storage room/vault;

(4) if needed, is equipped with a system capable of removing those gaseous impurities in the surrounding environment as specified in standard ANSI IT9.11;

(5) if subject to invasion of solid particles that can abrade film or react on the images, has mechanical filters or electrostatic precipitators installed with a cleaning efficiency of at least 80% when tested with atmospheric air in accordance with standard ANSI IT9.11;

(6) has approximately 0.05 inch of pressure above atmospheric pressure; e.g., a positive air pressure is maintained within the storage room or vault; and

(7) has adequate temperature and humidity controls.

(A) For microfilm of records with a retention of 10 years or more, temperature must not exceed 70 degrees Fahrenheit, and a constant relative humidity of 35% must be maintained with a maximum variance of plus/minus 5.0% relative humidity in a 24-hour period.

(B) For microfilm of records with a retention of less than 10 years, the maximum temperature must not exceed 77 degrees Fahrenheit, and a relative humidity range between 20% and 50% must be maintained with a maximum variation of plus/minus 5.0% relative humidity in a 24-hour period.

(c) Standards for microfilm containers and storage housings.

(1) A microfilm container must be used for processed microfilm to protect the film and facilitate identification and handling.

(2) Chemically stable materials such as non-corrosible metals (anodized aluminum or stainless steel), peroxide-free plastics, and acid-free paper must be used for containers to ensure no degradation is caused to the image.

(A) If an adhesive is used, it must have no harmful effect on the photographic images.

(B) Inks used on the container and on the label must not be a source of products that may damage the film or the enclosure itself.

(C) Paper that is free of chemicals harmful to the film may be used to secure roll film, if needed.

(3) Container label information must include:

(A) whether the film is original microfilm or a duplicate, including generation number if known;

(B) identification number;

(C) name of agency;

(D) records series title;

(E) inclusive dates of records;

(F) the beginning and ending records; and

(F) inclusive dates of records; and

(G) retakes/additions, if applicable.

(4) Microfilm must be stored in a closed housing or may be stored on open shelves or racks if the film is in closed containers.

(5) Storage housing materials must be noncombustible and noncorrosive.

(6) Storage housing and containers must not be overloaded and film must not be stored under pressure.

(d) Films of different generic types, such as silver-gelatin, diazo, and vesicular films, must not be stored in the same storage room/vault or in rooms sharing common ventilation.

§6.27. Inspection of Stored Original Microfilm.

(a) An inspection of stored original microfilm must be conducted in accordance with the following standards:

(1) ANSI IT9.11;

(2) ANSI/AIIM MS45; and

(3) ANSI/NAPM IT9.1.

(b) When inspection is done, the sample of microfilm to be inspected for each storage room or vault, if more than one, must be 1/1000th of the total volume of stored microfilm or at least 100 microforms (rolls, jackets, microfiche, aperture cards, COM, etc.) whichever is greater. Sampling procedures must be established that will assure that all parts of the group of microfilm are represented.

(c) An inspection of stored microfilm must be conducted every two years, except if the microfilm has been stored under temperature and/or humidity conditions other than those specified in these sections, it must be inspected yearly.

(d) Containers used to store the film must be inspected for evidence of rust, corrosion, or other deterioration and replaced, if needed.

(e) Original microfilm must be inspected on a light box with rewinds or comparable equipment which will not scratch the film.

(f) If deterioration is found, a more extensive inspection must be conducted to locate all deteriorating film.

(g) Any deteriorating film must immediately be removed from the storage area and the problem corrected before returning the film to storage.

§6.28. Computer Output Microfilm (COM).

(a) Standards for COM are the same as other microfilm formats, except as stated in this section.

(b) The COM original must be wet processed silver-gelatin film for essential records and records with a retention of 10 years or more.

(c) The following standards for production, testing, and inspection of COM must be met:

- (1) ANSI/AIIM MS1;
- (2) ANSI/AIIM MS5;
- (3) ANSI/AIIM MS28;
- (4) ANSI/AIIM MS39;
- (5) ANSI/AIIM MS43; and
- (6) ANSI/NAPM IT9.17.

(d) If bar coding is used, the procedures in technical report AIIM TR12 must be followed.

(e) The COM original must be visually inspected every 10 feet.

(f) Eye-legible titling information must include the following:

- (1) name of agency;
- (2) records series title;
- (3) date(s) of records; and
- (4) starting and/or ending indexing information.

(g) A reduction ratio not exceeding 48:1 must be used.

(h) Adherence to the provisions of §6.24(f) of this title (relating to Image Sequence for Filming) is not required.

§6.29. Jacketing.

(a) Standards for jacketed microfilm are the same as other microfilm formats, except as stated in this section.

(b) Original microfilm may be placed in a jacket, if there is a security copy stored according to the provisions of §6.26 of this title (relating to Storage of Original Microfilm) and inspected according to the provisions of §6.27 of this title (relating to Inspection of Stored Original Microfilm).

(c) The following must be included in the jacket header information:

- (1) name of agency;
- (2) records series title;
- (3) date(s) of records; and
- (4) starting and/or ending indexing information.

(d) Header information must be created with a black carbon-type ribbon or ink that will not bleed, spread, or transfer.

(e) Microfilm jackets must comply with ANSI/AIIM MS11.

(f) The procedures in AIIM TR11 must be used for the jacketing of film.

(g) If using a strip film processor camera, the density test and resolution test for original microfilm must be conducted at a minimum of once every roll or every 3,000 images.

§6.30. Aperture Card/CAD Systems.

(a) Standards for film produced by aperture card/CAD systems are the same as other microfilm formats, except as stated in this section.

(b) The original microfilm and enclosure must pass the photographic activity test criteria outlined in the standard ANSI IT 9.2.

(c) A density test and a resolution test must be conducted on a sample of original microfilm at a minimum of once every 250 cards or every 1,000 images, whichever is greater.

(d) Aperture cards must have the following information on label headings:

- (1) name of agency;
- (2) records series title;
- (3) date(s) of records; and
- (4) unique identifier.

(e) Adherence to the provisions of §6.24(f) of this title (relating to Image Sequence for Filming) is not required.

§6.31. Step-and-Repeat Systems.

(a) Standards for film produced by step-and-repeat systems are the same as other microfilm formats, except as stated in this section.

(b) Silver-gelatin microfilm in roll or microfiche form must be used for original microfilm.

(c) A density test and a resolution test for original microfilm must be conducted at the beginning of each day of filming and at a minimum of once every roll, or if using pre-cut film, every 3,000 images.

(d) Adherence to the provisions of §6.24(f) of this title (relating to Image Sequence for Filming) is not required.

§6.32. Expungement.

(a) Expungement of records must comply with statutory law and standard ANSI/AIIM MS42.

(b) If roll film is spliced, the following information must be inserted in place of the expunged record(s):

- (1) a start of expungement target;
- (2) replacement documents for documents that were expunged (if necessary);
- (3) an expungement certificate containing the following information:

(A) the number of the district court ordering the expungement;

(B) the signature, printed name, and title of the custodian of expunged records;

(C) the date of expungement.

(c) If the abrasion method is used, an expungement certificate must be maintained that includes the information specified by subsection (b)(3)(A)-(C) of this section and other information sufficient to identify the microfilm and the image location, if applicable. This certificate must be preserved until the microfilm's final disposition.

(d) Images on film must not be expunged by punching holes through film, by using opaque, by blotting images with ink-type pen, or by using chemical means such as potassium dichromate (bleach) on film emulsion.

(e) Expungement certificates must not be used when an amended certificate of birth is prepared and filed based on adoption, legitimation, or paternity determination. No evidence may be retained in the microfilm, index, or cross-reference through which the confidentiality of adoption, legitimation, or paternity actions may be directly or indirectly violated.

§6.33. Destruction of Microfilmed Records.

(a) Microfilmed records must be destroyed only in accordance with the Government Code, §441.035.

(b) Microfilmed records scheduled for destruction must be disposed of in a manner that ensures protection for any sensitive or confidential information.

(c) Destruction of records on a roll of microfilm containing multiple record series must be done by destroying the whole roll of film at the time the records on the film that have the longest retention period are eligible for destruction or, if filmed prior to the effective date of these standards, by deleting the section of the film containing records eligible for destruction and splicing the film. If the film is spliced, a destruction notice containing the following information must be inserted in place of the deleted records:

- (1) the record series title and the inclusive dates of the records;
- (2) the signature and printed name of the agency records administrator approving deletion of the records;
- (3) the date of the deletion.

§6.34. Documentation and Recordkeeping.

(a) Microfilm production, including testing, and inspection.

(1) Records administrators must require documentation to be maintained that identifies titles of records filmed, quality control tests conducted, the results of quality control tests, dates records filmed, disposition of records after filming, dates film processed, disposition of film, reduction ratio used, records series contained on each microfilm, and equipment on which each microfilm was filmed and processed. The documentation must be retained until final disposition of all microfilm documented in the log or equivalent.

(2) If filming or processing is done by a service bureau, the agency must obtain a statement of the results of density, resolution, methylene blue, and visual inspection tests from the service bureau attesting to the accurate reproduction of records filmed.

(b) Microfilm storage inspections.

(1) The following information must be recorded for each inspection of stored microfilm.

- (A) the quantity and identification of microfilm inspected;
- (B) the condition of the microfilm, including description of any deterioration;
- (C) any corrective action required;
- (D) the date(s) of inspection and signed certification of inspector; and

(E) the date any corrective action was completed.

(2) The inspection log of stored microfilm must be maintained by year and within each year numerically according to microfilm identifier or number.

(c) Microfilm program procedures, training, and reviews.

(1) Written procedures must be prepared for the microfilm program and periodically updated to reflect current practice and at a minimum must include a description of:

- (A) purpose of microfilm program;
- (B) microfilm production including tests and inspections;
- (C) storage of microfilm;
- (D) inspection of stored microfilm;
- (E) destruction of microfilmed records including expungement of information on microfilm; and
- (F) documentation maintained.

(2) Staff training on microfilm procedures must be documented.

(3) The microfilm program must be reviewed yearly by the records administrator for compliance with the Government Code, Chapter 441 and these sections.

§6.35. Public Access to Information on Microfilm.

Agencies must adopt procedures to ensure that the public has the same access to information on microfilm as they would be entitled to if the information were recorded in another medium and to protect access to confidential information on microfilm. Where microfilm is the record medium, a paper copy, duplicate microfilm, or other type of copy must be made available for public use. The agency must not provide the original microfilm for public access.

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 February 29, 1996.

TRD-9602850

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: April 12, 1996

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

◆ ◆ ◆
Chapter 7. Local Records

Microfilming Standards for Local Governments

13 TAC §§7.21-7.35

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

The Texas State Library and Archives Commission proposes the repeal of §§7.21-7.35 concerning standards for the micro-

filming of local government records. The repeal is proposed for the purpose of adopting new standards to provide local government officials with more clearly and simply written and more logically organized standards.

William L. Dyess, Director, State and Local Records Management Division, has determined that for each of the first five years the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Dyess has determined that for each year of the first five years the repeal as proposed is in effect the public benefits anticipated as a result of enforcing the sections as proposed will be that in new sections the requirements will be more clearly stated and accessible to local government officials. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the sections as proposed.

Comments on the proposal may be submitted to Elizabeth Love, Program Planning and Research Specialist, State and Local Records Management Division, Texas State Library, P. O. Box 12927, Austin, TX 78711-2927, (512) 452-9242 ext. 137, within 30 days of publication in the *Texas Register*.

The repeal is proposed under the Local Government Code, §204.004, which requires the Texas State Library and Archives Commission to adopt rules establishing standards and procedures for the microfilming of local government records.

The Local Government Code, §204.004, is affected by the proposed repeal.

§ 7.21. *Definitions.*

§ 7.22. *General.*

§ 7.23. *Standards for Film Quality, Resolution, Density, Definition, and Chemical Stability.*

§ 7.24. *Tests and Other Methods of Inspection and Verification.*

§ 7.25. *Certification and Documentation.*

§ 7.26. *Use of Editorial and Technical Targets.*

§ 7.27. *Image Sequence.*

§ 7.28. *Master Microfilms.*

§ 7.29. *Labeling and Indexing.*

§ 7.30. *Computer Output Microfilm (COM).*

§ 7.31. *Jacketing.*

§ 7.32. *Expungement of Records.*

§ 7.33. *Public Access to Information.*

§ 7.34. *Aperture Card/CAD Systems.*

§ 7.35. *Step-and-Repeat Systems.*

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

Issued in Austin, Texas, on February 29, 1996.

TRD-9602848

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: April 12, 1996

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

The Texas State Library and Archives Commission proposes the new §§7.21-7.35 concerning standards for the microfilming of local government records. The new sections are proposed for the purpose of providing local government officials with more clearly written and logically organized standards.

William L. Dyess, Director, State and Local Records Management Division, has determined that for each of the first five years the sections are in effect there will be fiscal implications for local government as a result of enforcing or administering the sections. The deletion of the former requirement for a certificate of authenticity for local government records that are microfilmed will result in cost savings to local governments, but the savings will be minimal even among those governments that microfilm large quantities of records. Revision of the humidity standards to agree with the federal regulations of the National Archives and Records Administration for the storage of microfilmed records with retention periods of 10 years or more should provide local governments with a larger pool of potential service providers for the storage of microfilmed records and, depending on competition and local pricing structures, may result in cost savings to some local governments, but the amount of these savings cannot be determined with any accuracy. There will be no fiscal implications for state government as a result of enforcing or administering the sections.

Mr. Dyess has determined that for each year of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be that the requirements are more clearly stated and accessible to local government officials. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the sections as proposed.

Comments on the proposal may be submitted to Elizabeth Love, Program Planning and Research Specialist, State and Local Records Management Division, Texas State Library, P. O. Box 12927, Austin, TX 78711-2927, (512) 452-9242 ext. 137, within 30 days of publication in the *Texas Register*.

The new sections are proposed under the Local Government Code, §204.004, which requires the Texas State Library and Archives Commission to adopt rules establishing standards and procedures for the microfilming of local government records.

The Local Government Code, §204.004 is affected by the proposed sections.

§7.21. *Definitions.*

The following words and terms, when used in these sections, have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections have the meanings defined in the Local Government Code, Chapter 201, or technical report AIIIM TR2 adopted by reference in §7.22(a) (relating to Adopted National Standards) of this title.

Aperture card-A card with a rectangular opening(s) into which 16mm/35mm microfilm frames can be inserted, mounted, or pre-mounted.

Batch-A quantity of chemicals or film which has been prepared at one time, and which has been identified through labeling or through other means by the manufacturer as a batch or lot.

CAD (computer assisted design)-A method of creating microimages by computer-driven laser.

Convenience film-Microfilm copies of records created only for convenience of use and considered nonrecords under the Local Government Code, §201.003(8).

Declaration by the camera operator-A target photographed on film following the filmed records that provides identification of beginning and ending records on the film; signature of the camera operator; date the declaration was filmed; and reduction range, if more than one ratio has been used.

Diazo-A photographic film containing one or more photosensitive layers composed of diazonium salts in a polymeric material which react with coupler(s) to form an azo dye image after film processing.

Duplicate microfilm-A microfilm copy made from the original or master negative. Can be silver, diazo or vesicular film.

Essential record-Any local government record necessary to the resumption or continuation of government operations in an emergency or disaster, to the re-creation of the legal and financial status of the government, or to the protection and fulfillment of obligations to the people of the state.

Local government record-Any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business, except for materials excluded under the Local Government Code, Chapter 201.

Microfilm-Roll microfilm, microfiche, computer output microfilm (COM), and all other formats produced by any method of microphotography or other means of miniaturization on film.

Microfilm container-Generic term for any enclosure in close or direct contact with film such as a reel, can, bag, folder, sleeve (sheath), jacket, envelope, window mount or mat, slide mount, carton, cartridge, cassette, and aperture card.

Microfilming-The methods, procedures, and processes used to produce microfilm.

Needs assessment-A documented process to determine the feasibility and justification for microfilming records including consideration of the retention period and activity rate of the records, advantages and limitations of alternate records media, protection of essential records, access or retrieval concerns, and cost comparisons.

Original microfilm-Film produced directly from the record (also known as first-generation microfilm and camera film).

Records custodian-The appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.

Records management officer-The person identified under the Local Government Code, §203.001 or designated under the Local Government Code, §203.025 as the records management officer.

Records series-A group of identical or related records that are normally used and/or filed together, and that permit evaluation as a group for retention scheduling purposes.

Retention period-The minimum time that a local government record must be retained as established on a records retention schedule adopted under §7.125 of this title (relating to Records Retention Schedules).

Security copy-Either the original microfilm or a duplicate that is stored offsite for the full retention period of the record.

Step-and-repeat system-A method of microfilming by which images are directly placed on an area of film according to a predetermined format, usually in orderly rows and columns.

Title page-A target photographed on film stating that the records are microfilmed in the regular course of business and identifying the name of the government and office of origin, if applicable; name and title of the current records custodian/officer; name and location of service bureau, if applicable; reduction ratio; records series title; inclusive dates of records and volume numbers or serial numbers needed to clearly identify the records; and restriction or classification, if applicable.

Vesicular-Photographic film containing one or more photosensitive layers composed of diazonium salt in a thermoplastic material.

§7.22. *Adopted National Standards.*

(a) The commission adopts by reference the following copyrighted standards and recommended practices issued by the American National Standards Institute (ANSI) and/or the Association for Information and Image Management (AIIM) as minimum requirements for all microfilming of local government records where these sections do not specify a standard or practice. A copy of each of the standards adopted in this section is on file and available for public inspection during regular working hours at the State and Local Records Management Division, Texas State Library, 4400 Shoal Creek Boulevard, Austin, Texas 78756. The standards are distributed by and available from the Association for Information and Image Management, Suite 1100, 1100 Wayne Avenue, Silver Spring, MD 20910-5699.

(1) AIIM TR2-1992, Glossary of Imaging Technology.

(2) AIIM TR11-1987 with 1993 addendum, Microfilm Jacket Formatting and Loading Techniques.

(3) AIIM TR12-1988, Bar Coding on Microfiche for Production and Dynamic Distribution Control.

(4) ANSI IT9.2-1991, Imaging Media - Photographic Processed Films, Plates, and Papers - Filing Enclosures and Storage Containers.

(5) ANSI IT9.5-1992, Imaging Media (Film) - Ammonia-Processed Diazo Films - Specifications for Stability.

(6) ANSI IT9.11-1991, Imaging Media - Processed Safety Photographic Film - Storage.

(7) ANSI IT9.12-1991, Photography - Processed Vesicular Photographic Film - Specifications for Stability.

(8) ANSI/AIIM MS1-1988, Recommended Practice for Alphanumeric Computer-Output Microforms - Operational Practices for Inspection and Quality Control.

(9) ANSI/AIIM MS5-1992, Microfiche.

(10) ANSI/AIIM MS8-1988, Image Mark (Blip) Used in Image Mark Retrieval Systems.

(11) ANSI/AIIM MS11-1987, Microfilm Jackets.

(12) ANSI/AIIM MS14-1988, Specifications for 16mm and 35mm Roll Microfilm.

(13) ANSI/AIIM MS17-1992, Micrographics - Rotary (Flow) Microfilm Camera Test Chart and Test Target - Descriptions and Use.

(14) ANSI/AIIM MS18-1992, Micrographics - Splices for Imaged Microfilm - Dimensions and Operational Constraints.

(15) ANSI/AIIM MS19-1993, Standard Recommended Practice - Identification of Microforms.

(16) ANSI/AIIM MS23-1991, Practice for Operational Procedures/Inspection and Quality Control of First-generation, Silver Microfilm of Documents.

(17) ANSI/AIIM MS28-1987, Alphanumeric COM Quality Test Slide.

(18) ANSI/AIIM MS39-1987, Recommended Practice for Operational Procedures, Quality Control and Inspection of Graphic Computer Output Microforms.

(19) ANSI/AIIM MS42-1989, Recommended Practice for the Expungement, Deletion, Correction, or Amendment of Records on Microforms.

(20) ANSI/AIIM MS43-1988, Recommended Practice for Operational Procedures/Inspection and Quality Control of Duplicate Microforms of Documents and From COM.

(21) ANSI/AIIM MS45-1990, Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration.

(22) ANSI/AIIM MS51-1991, Micrographics - ISO Resolution Test Chart No. 2 - Description and Use.

(23) ANSI/NAPM IT9.1-1992, Imaging Media (Film) - Silver-Gelatin Type - Specifications for Stability.

(24) ANSI/NAPM IT9.17-1993, Photography - Determination of Residual Thiosulfate and Other Related Chemicals in Processed Photographic Materials - Methods Using Iodine-Amylose, Methylene Blue and Silver Sulfide.

(b) In case of conflict between any standard adopted by reference in subsection (a) of this section and any provision of these sections, these sections prevail.

§7.23. General.

(a) These sections apply to the microfilming of any local government record that is to be maintained solely in microfilm format and to all microfilm which is created or maintained for the full retention period of the record as a backup or security copy of a local government record. These sections do not apply to convenience film.

(b) Microfilming of records must be in compliance with an approved records control schedule except, if a local government does not have an approved schedule, a microfilming needs assessment must be completed to determine if filming is justified.

(c) For microfilm maintained as roll film, no more than one records series is permitted on each roll of microfilm.

(d) For essential records that are microfilmed, there must be a security copy stored offsite.

(e) The originals of records or source documents that have been microfilmed may be destroyed prior to the expiration of their retention periods only if the microfilm complies with these sections and in accordance with the Local Government Code, §§204.007-204.008.

(f) After the completion of the production tests and inspections required under §7.25 of this title (relating to Microfilm Production Tests and Inspections), original microfilm must not be unwound and used for any purpose except:

(1) to produce duplicate copies of the film;

(2) to carry out inspections under §7.27 of this title (relating to Inspection of Stored Original Microfilm);

(3) to expunge records as required by §7.32 of this title (relating to Expungement); or

(4) to destroy records as required by §7.33 of this title (relating to Destruction of Microfilmed Records).

(g) Microfilm produced for a local government is the property of the local government, and the local government and its records management officer have the same responsibilities for ensuring the management and preservation of microfilmed records under the Local Government Code, Title 6, Subtitle C, as if the records were not microfilmed.

(h) If a service provider is used for the filming, processing, and/or storage of local records, a written agreement must be in place to provide access in compliance with local, state, and federal laws or delivery of the records as needed by the local government and to allow inspections of the microfilm facilities by the records management officer, records custodian, or other authorized representative of the governing body of the local government.

(i) All microfilm produced before the effective date of these sections is validated to the extent the microfilm was produced in the manner and according to the standards prescribed by prior law or the provisions of Local Government Code, Chapter 204, and the rules adopted under it.

§7.24. Microfilm Production Procedures.

(a) Standards for original microfilm.

(1) First-generation, silver microfilm - ANSI/AIIM MS23.

(2) Microfiche - ANSI/AIIM MS5.

(3) Roll microfilm - ANSI/AIIM MS14.

(4) Splices for microfilm - ANSI/AIIM MS18.

(5) The quality-index graph in standard ANSI/AIIM MS23 must be used to determine the minimum quality index for all microfilm of essential and permanent records and for 10% of the total volume of microfilm of other records. All microfilm of permanent and essential records must meet a minimum quality index level of 5.0. Microfilm of other records must meet a minimum quality index level of 3.6.

(b) Standards for microfilm duplicates.

(1) ANSI/AIIM MS43 and the following standards, as applicable.

- (2) Diazo film - ANSI IT9.5.
- (3) Vesicular film - ANSI IT9.12.
- (4) Silver film - ANSI/NAPM IT9.1.

(c) Film specifications.

(1) Original microfilm must meet standard ANSI/NAPM IT9.1, except where these sections specifically state otherwise.

(2) Film with a polyester base must be used for records having a retention period of 10 years or more.

(3) Any film type may be used for records having a retention period of less than 10 years, provided the microfilmed record will last for the required retention period.

(d) Indexing.

(1) The indexing and retrieval system to be used must be determined before preparing documents for filming.

(2) The records must be arranged, identified, and indexed for filming so that an individual document or a series of documents can be located on film.

(3) Any use of image marking must comply with standard ANSI/AIIM MS8.

(4) In those instances where records are not self-indexing, (i.e. not in a readily identifiable numeric or alphabetic sequence) an index must be maintained.

(e) Document preparation.

(1) All imperfections that affect the legibility of a document must be repaired, if possible, and if allowed by the records management officer or records custodian.

(2) Documents must be filmed in an orderly sequence and misplaced pages, folders or other file units must be put in the correct order.

(3) The film must be as complete a record of the file as possible. Problems with missing file units, incorrect pagination, illegible pages, etc. must be documented by inserting and filming targets, as specified in standard ANSI/AIIM MS23.

(4) Whenever possible, targets must all face the same direction as the records being microfilmed.

(f) Image sequence for filming.

(1) The image sequence on roll microfilm must be at a minimum:

(A) leader with a minimum of 700 millimeters (28 inches) of blank film;

(B) density target and resolution target;

(C) title page;

(D) records on film;

(E) declaration by camera operator;

(F) density target and resolution target; and

(G) trailer with a minimum of 700 millimeters (28 inches) of blank film.

(2) The filming sequence for retakes/additions on all microfilm must be:

(A) title target identifying the retake/addition records;

(B) the retake/addition records; and

(C) declaration by camera operator.

(3) Retakes/additions can be spliced either before the density and resolution targets at the beginning of the film or after the density and resolution targets at the end of the film. Retakes/additions can be on another roll of film if cross-indexed to the original role on the title target and the container label.

§7.25. Microfilm Production Tests and Inspections.

(a) The following tests must be performed on microfilm as indicated.

(1) Methylene blue test.

(A) A methylene blue test for conventionally processed silver-gelatin film must be performed on all original microfilm in compliance with standard ANSI/NAPM IT9.17.

(B) A test must be performed on a strip of processed, clear, and unexposed film approximately six inches long from the original microfilm or on a process control strip at least once each week during which processing is done.

(C) A test must also be performed whenever a batch of fixer or developer is changed, or when changes in processing such as replacement or addition of filter, water softener, or replenishing system are made, or when water is changed.

(D) If processing is performed by a service bureau, a test performed for one local government may satisfy this requirement for more than one local government.

(E) If film fails to meet the standards established by these sections, it must be rewashed and retested within 14 days of initial processing.

(F) Once a year, two test strips must be taken from the same microfilm; one must be sent to an independent testing laboratory and the other to the laboratory which performs the weekly test, for verification of test results.

(G) If either test result is greater than 0.014 grams per square meter, the records management officer or records custodian must identify and remedy the cause of the deviation from the required standard.

(2) Density test.

(A) A density test must be performed on all original microfilm in compliance with standard ANSI/AIIM MS23 and the background density must be in accordance with that standard.

(B) Densitometer used must be calibrated daily, when in use.

(3) Resolution test.

(A) A resolution test must be performed on all original microfilm in compliance with standard ANSI/AIIM MS23.

(B) The resolution target must meet the following standards:

(i) ANSI/AIIM MS17; and/or

(ii) ANSI/AIIM MS19; and/or

(iii) ANSI/AIIM MS51.

(C) Photocopies of the resolution target must not be used for testing.

(D) Resolution target images must be evaluated under a microscope to determine if resolution loss from duplicating is acceptable. A duplicate of a first-generation film must have a resolution loss of no more than one test pattern of the test objects described in ANSI/AIIM MS51.

(b) Original processed microfilm must be visually inspected according to the following procedures.

(1) Within two weeks of completion of the methylene blue test, a visual inspection of microfilm must be completed to verify legibility.

(2) Film of essential records or records having a retention period of 10 years or more must be inspected image by image.

(3) Film of non-essential records having a retention period of less than 10 years must be inspected at least every three meters (10 feet) of each roll or every third fiche.

(4) Images of documents must be uniformly placed on the film and must be free of any defects in the filming area that would interfere with the documents being read.

(5) If a defect is found on any microfilm, the microfilm immediately preceding and following the sample of microfilm on which the defect was found must be inspected. If a defect is found on those microfilms, the uninspected microfilm preceding and/or following those microfilms must be inspected image by image until all defective film has been identified.

(c) Testing and Inspection of Equipment.

(1) Cameras and ancillary equipment must be calibrated, tested, or otherwise inspected and adjusted at least twice annually or more often if required to comply with manufacturer's specifications or recommended operating and maintenance procedures.

(2) Processors must be monitored on a scheduled basis with process control strips (sensitometric strips) at a minimum at the start of processing each day and whenever a batch of film, fixer, or developer is changed, or when changes in processing such as replacement or addition of filter, water softener, or replenishing system are made, or when water is changed.

§7.26. Storage of Original Microfilm.

(a) Original microfilm must be stored in a separate building from that in which duplicate copies, if any, or the original records are housed, and under conditions that meet the requirements of this section.

(b) Microfilm must be stored in a storage room or vault that complies with the following:

(1) is separate from other types of storage, offices, or work areas and offers protection from fire, water, steam, structural collapse, unauthorized access, and other potential hazards;

(2) is equipped with a fire alarm system and capable of preventing temperatures inside the storage room/vault from exceeding 150 degrees Fahrenheit and the relative humidity inside the storage

room/vault from exceeding 85% for up to two hours in the event of a fire external to the storage room/vault;

(3) if constructed or readapted after 1991 to serve as a microfilm storage facility, is equipped with a fire suppression system and with automatic fire control dampers in ducts carrying air to and from the storage room/vault;

(4) if needed, is equipped with a system capable of removing those gaseous impurities in the surrounding environment as specified in standard ANSI IT9.11;

(5) if subject to invasion of solid particles that can abrade film or react on the images, has mechanical filters or electrostatic precipitators installed with a cleaning efficiency of at least 80% when tested with atmospheric air in accordance with standard ANSI IT9.11;

(6) has approximately 0.05 inch of pressure above atmospheric pressure; e.g., a positive air pressure is maintained within the storage room or vault; and

(7) has adequate temperature and humidity controls.

(A) For microfilm of records with a retention of 10 years or more, temperature must not exceed 70 degrees Fahrenheit, and a constant relative humidity of 35% must be maintained with a maximum variance of plus/minus 5.0% relative humidity in a 24-hour period.

(B) For microfilm of records with a retention of less than 10 years, the maximum temperature must not exceed 77 degrees Fahrenheit, and a relative humidity range between 20% and 50% must be maintained with a maximum variation of plus/minus 5.0% relative humidity in a 24-hour period.

(c) Standards for microfilm containers and storage housings.

(1) A microfilm container must be used for processed microfilm to protect the film and facilitate identification and handling.

(2) Chemically stable materials such as non-corrosible metals (anodized aluminum or stainless steel), peroxide-free plastics, and acid-free paper must be used for containers to ensure no degradation is caused to the image.

(A) If an adhesive is used, it must have no harmful effect on the photographic images.

(B) Inks used on the container and on the label must not be a source of products that may damage the film or the enclosure itself.

(C) Paper that is free of chemicals harmful to the film may be used to secure roll film, if needed.

(3) Container label information must include:

(A) whether the film is original microfilm or a duplicate, including generation number if known;

(B) identification number;

(C) name of government and office of origin, if applicable;

(D) records series title;

(E) inclusive dates of records;

(F) the beginning and ending records; and

- (F) inclusive dates of records; and
- (G) retakes/additions, if applicable.

(4) Microfilm must be stored in a closed housing or may be stored on open shelves or racks if the film is in closed containers.

(5) Storage housing materials must be noncombustible and noncorrosive.

(6) Storage housing and containers must not be overloaded and film must not be stored under pressure.

(d) Films of different generic types, such as silver-gelatin, diazo, and vesicular films, must not be stored in the same storage room/vault or in rooms sharing common ventilation.

§7.27. Inspection of Stored Original Microfilm.

(a) An inspection of stored original microfilm must be conducted in accordance with the following standards:

- (1) ANSI IT9.11;
- (2) ANSI/AIIM MS45; and
- (3) ANSI/NAPM IT9.1.

(b) When inspection is done, the sample of microfilm to be inspected for each storage room or vault, if more than one, must be 1/1000th of the total volume of stored microfilm or at least 100 microforms (rolls, jackets, microfiche, aperture cards, COM, etc.) whichever is greater. Sampling procedures must be established that will assure that all parts of the group of microfilm are represented.

(c) An inspection of stored microfilm must be conducted every two years, except if the microfilm has been stored under temperature and/or humidity conditions other than those specified in these sections, it must be inspected yearly.

(d) Containers used to store the film must be inspected for evidence of rust, corrosion, or other deterioration and replaced, if needed.

(e) Original microfilm must be inspected on a light box with rewinds or comparable equipment which will not scratch the film.

(f) If deterioration is found, a more extensive inspection must be conducted to locate all deteriorating film.

(g) Any deteriorating film must immediately be removed from the storage area and the problem corrected before returning the film to storage.

§7.28. Computer Output Microfilm (COM).

(a) Standards for COM are the same as other microfilm formats, except as stated in this section.

(b) The COM original must be wet processed silver-gelatin film for essential records and records with a retention of 10 years or more.

(c) The following standards for production, testing, and inspection of COM must be met:

- (1) ANSI/AIIM MS1;
- (2) ANSI/AIIM MS5;
- (3) ANSI/AIIM MS28;
- (4) ANSI/AIIM MS39;

- (5) ANSI/AIIM MS43; and
- (6) ANSI/NAPM IT9.17.

(d) If bar coding is used, the procedures in technical report AIIM TR12 must be followed.

(e) The COM original must be visually inspected every 10 feet.

(f) Eye-legible titling information must include the following:

- (1) name of government and office of origin, if applicable;
- (2) records series title;
- (3) date(s) of records; and
- (4) starting and/or ending indexing information.

(g) A reduction ratio not exceeding 48:1 must be used.

(h) Adherence to the provisions of §7.24(f) of this title (relating to Image Sequence for Filming) is not required.

§7.29. Jacketing.

(a) Standards for jacketed microfilm are the same as other microfilm formats, except as stated in this section.

(b) Original microfilm may be placed in a jacket, if there is a security copy stored according to the provisions of §7.26 of this title (relating to Storage of Original Microfilm) and inspected according to the provisions of §7.27 of this title (relating to Inspection of Stored Original Microfilm).

(c) The following must be included in the jacket header information:

- (1) name of government and office of origin, if applicable;
- (2) records series title;
- (3) date(s) of records; and
- (4) starting and/or ending indexing information.

(d) Header information must be created with a black carbon-type ribbon or ink that will not bleed, spread, or transfer.

(e) Microfilm jackets must comply with ANSI/AIIM MS11.

(f) The procedures in AIIM TR11 must be used for the jacketing of film.

(g) If using a strip film processor camera, the density test and resolution test for original microfilm must be conducted at a minimum of once every roll or every 3,000 images.

§7.30. Aperture Card/CAD Systems.

(a) Standards for film produced by aperture card/CAD systems are the same as other microfilm formats, except as stated in this section.

(b) The original microfilm and enclosure must pass the photographic activity test criteria outlined in the standard ANSI IT 9.2.

(c) A density test and a resolution test must be conducted on a sample of original microfilm at a minimum of once every 250 cards or every 1,000 images, whichever is greater.

(d) Aperture cards must have the following information on label headings:

- (1) name of government and office of origin, if applicable;
- (2) records series title;
- (3) date(s) of records; and
- (4) unique identifier.

(e) Adherence to the provisions of §7.24(f) of this title (relating to Image Sequence for Filming) is not required.

§7.31. Step-and-Repeat Systems.

(a) Standards for film produced by step-and-repeat systems are the same as other microfilm formats, except as stated in this section.

(b) Silver-gelatin microfilm in roll or microfiche form must be used for original microfilm.

(c) A density test and a resolution test for original microfilm must be conducted at the beginning of each day of filming and at a minimum of once every roll, or if using pre-cut film, every 3,000 images.

(d) Adherence to the provisions of §7.24(f) of this title (relating to Image Sequence for Filming) is not required.

§7.32. Expungement.

(a) Expungement of records must comply with statutory law and standard ANSI/AIIM MS42.

(b) If roll film is spliced, the following information must be inserted in place of the expunged record(s):

- (1) a start of expungement target;
- (2) replacement documents for documents that were expunged (if necessary);
- (3) an expungement certificate containing the following information:
 - (A) the number of the district court ordering the expungement;
 - (B) the signature, printed name, and title of the custodian of expunged records;
 - (C) the date of expungement.

(c) If the abrasion method is used, an expungement certificate must be maintained that includes the information specified by subsection (b)(3)(A)-(C) of this section and other information sufficient to identify the microfilm and the image location, if applicable. This certificate must be preserved until the microfilm's final disposition.

(d) Images on film must not be expunged by punching holes through film, by using opaque, by blotting images with ink-type pen, or by using chemical means such as potassium dichromate (bleach) on film emulsion.

(e) Expungement certificates must not be used when an amended certificate of birth is prepared and filed based on adoption, legitimation, or paternity determination. No evidence may be retained in the microfilm, index, or cross-reference through which the confidentiality of adoption, legitimation, or paternity actions may be directly or indirectly violated.

§7.33. Destruction of Microfilmed Records.

(a) Microfilmed records must be destroyed only in accordance with the Local Government Code, §§202.001-202.003.

(b) Microfilmed records scheduled for destruction must be disposed of in a manner that ensures protection for any sensitive or confidential information.

(c) Destruction of records on a roll of microfilm containing multiple record series must be done by destroying the whole roll of film at the time the records on the film that have the longest retention period are eligible for destruction or, if filmed prior to the effective date of these standards, by deleting the section of the film containing records eligible for destruction and splicing the film. If the film is spliced, a destruction notice containing the following information must be inserted in place of the deleted records:

- (1) the record series title and the inclusive dates of the records;
- (2) the signature, printed name, and title of the custodian of the deleted records;
- (3) the date of the deletion.

§7.34. Documentation and Recordkeeping.

(a) Microfilm production, including testing, and inspection.

(1) Records management officers or records custodians must require documentation to be maintained that identifies titles of records filmed, quality control tests conducted, the results of quality control tests, dates records filmed, disposition of records after filming, dates film processed, disposition of film, reduction ratio used, records series contained on each microfilm, and equipment on which each microfilm was filmed and processed. The documentation must be retained until final disposition of all microfilm documented in the log or equivalent.

(2) If filming or processing is done by a service bureau, the local government must obtain a statement of the results of density, resolution, methylene blue, and visual inspection tests from the service bureau attesting to the accurate reproduction of records filmed.

(b) Microfilm storage inspections.

(1) The following information must be recorded for each inspection of stored microfilm.

- (A) the quantity and identification of microfilm inspected;
- (B) the condition of the microfilm, including description of any deterioration;
- (C) any corrective action required;
- (D) the date(s) of inspection and signed certification of inspector; and
- (E) the date any corrective action was completed.

(2) The inspection log of stored microfilm must be maintained by year and within each year numerically according to microfilm identifier or number.

(c) Microfilm program procedures, training, and reviews.

(1) Written procedures must be prepared for the microfilm program and periodically updated to reflect current practice and at a minimum must include a description of:

- (A) purpose of microfilm program;

- (B) microfilm production including tests and inspections;
- (C) storage of microfilm;
- (D) inspection of stored microfilm;
- (E) destruction of microfilmed records including expungement of information on microfilm; and
- (F) documentation maintained.

(2) Staff training on microfilm procedures must be documented.

(3) The microfilm program must be reviewed by the records management officer or the records custodian yearly for compliance with the Local Government Code, Chapter 204 and these sections.

§7.35. Public Access to Information on Microfilm.

Local governments must adopt procedures to ensure that the public has the same access to information on microfilm as they would be entitled to if the information were recorded in another medium and to protect access to confidential information on microfilm. Where microfilm is the record medium, a paper copy, duplicate microfilm, or other type of copy must be made available for public use. The local government must not provide the original microfilm for public access.

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 February 29, 1996.

TRD-9602849

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

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



Chapter 9. Talking Book Program [Program for the Blind and Physically Handicapped]

Adaptive Technology for Texas Public Libraries

13 TAC §§9.15-9.21

The Texas State Library and Archives Commission proposes new §§9.15-9.21, concerning procedures to loan adaptive equipment to Texas public libraries for use by persons with visual disabilities. The sections identify definitions, eligibility requirements, and basic procedures for the new program, Print Access for Texans. The sections establish the requirements and procedures necessary to ensure the fair and equitable loan of this equipment to Texas public libraries.

Dale Propp, Director, Talking Book Program, has determined that for each year of the first five years the sections as proposed are in effect there will be fiscal implications to state and local government. Both the Commission and libraries that participate will incur the cost of staff as well as return shipping costs for any loaned equipment. The Commission will incur the cost of equipment and maintenance. The estimated additional cost

to state government will be \$193,000 in FY96, \$173,000 in FY97, and \$1,500 per year for the following three years. The estimated additional cost on local governments will be \$2,500 for each of the first five years the sections are in effect.

Mr. Propp has also determined for each year of the first five years the sections as proposed are in effect the public benefit will be improved public library access by local residents with visual disabilities, and improved awareness regarding library service to people with disabilities. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the sections as proposed.

Comments on the proposal may be submitted to Renullo Ramirez, Administrative Services Librarian, Talking Book Program, Texas State Library, P. O. Box 12927, Austin, TX 78711-2927, (512) 463-5737, within 30 days of publication in the *Texas Register*.

The new sections are proposed under the Human Resources Code, §91.082 which requires the Texas State Library and Archives Commission to establish a central media center for persons unable to use ordinary print materials, Government Code 441.006, which provides the Commission with the authority to govern the Texas State Library, and HB1 (Acts of the 74th Legislature - Regular Session- Article 1, Library and Archives Commission, #8 Appropriation: Print Access Aids.) which directs the Commission to ensure that print access aids are equitably distributed among public libraries based on need and location.

The Government Code, §441.006, the Human Resources Code 91.082, and Texas Civil Statutes, Article 1696c, are affected by the proposed sections.

§9.15. Definitions.

The following words and terms, when used in this sections, have the following meanings unless the context clearly indicates otherwise.

Print access aid-A hardware or software product that improves or facilitates access to standard print by enlarging or magnifying print, or by electronically converting print to spoken, recorded, or tactile format.

Public library-Has the meaning assigned by Section 441.122,(12) Government Code, and its subsequent amendments. In this chapter, "public library" is used synonymously with "library."

Texas State Library-The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the Commission's responsibilities.

§9.16. Purpose.

The Print Access for Texans Program will assist public libraries in determining the benefits and potential use of print access aids by print impaired library patrons. The Texas State Library will purchase a variety of print access aids and make them available to public libraries on a loan basis.

§9.17. Eligibility.

All public libraries in Texas that are members of their Texas Library system, and can demonstrate a need, are eligible to apply for loans of print access aids.

§9.18. Application Process.

A library must submit an application on the forms and at the times specified by the Texas State Library.

§9.19. Number of Loans.

A library may not have more than one of each type of print access aids on loan at one time.

§9.20. Loan Process.

Texas State Library staff will review all applications and rank them according to total population served, as reported in the most recent edition of *Texas Public Library Statistics*, produced by the Texas State Library. Starting with the library serving the greatest population, requests will be filled for each library's first priority request until the supply is exhausted. If demand for a particular type of print access aid exceeds the supply, unfilled applications will be held for the next round of loans. When all first priority requests have been filled, second priority requests will be filled in the same manner until the supply of equipment is exhausted.

§9.21. Standard Loan Period.

The standard loan period for this program will be two years. After two years the Texas State Library will review each loan to determine whether to continue the loan or to relocate the print access aid at another site. The Texas State Library will coordinate and pay for shipping costs of print access aids from the Texas State Library. After the loan period expires, all print access aids will be returned to the Texas State Library, or to the next designated recipient. Return shipping costs will be paid by the public library returning the equipment.

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

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Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

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

13 TAC §§9.21-9.31

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

The Texas State Library and Archives Commission proposes the repeal of §§9.21-9.31 concerning rules for the Texas Reading Machine Program. The repeals are proposed to eliminate rules for a program which no longer exists. The statutory authority for the Texas Reading Machine program was removed from the Government Code by HB 1843, (Acts of the 73d Legislature - Regular Session - Chapter 387, § 7, effective September 1, 1993).

Dale Propp, Director, Talking Book Program, has determined that for each of the first five years the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Propp has determined that for each year of the first five years the repeals as proposed are in effect the public benefits anticipated will be removal of outdated rules and less confusion and worry to local government officials. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the sections as proposed.

Comments on the proposal may be submitted to Renulfo Ramirez, Administrative Services Librarian, Talking Book Program, Texas State Library, P. O. Box 12927, Austin, TX 78711-2927, (512) 463-5737, within 30 days of publication in the *Texas Register*.

The repeals are proposed under the Human Resources Code, §91.082 which requires the Texas State Library and Archives Commission to establish a central media center for persons unable to use ordinary print materials, and Government Code 441.006, which provides the Commission with the authority to govern the Texas State Library.

The repeal does not affect other statutes, articles, or codes.

§9.21. Definitions.

§9.22. Texas Reading Machine Program Library Responsibilities.

§9.23. Texas State Library Responsibilities.

§9.24. Repair of Reading Machines.

§9.25. Reading Machine Maintenance.

§9.26. Financial Exemption Requests.

§9.27. Financial Exemption Restrictions.

§9.28. Placement of Reading Machines.

§9.29. Purchase of Reading Machines with Local Funds.

§9.30. Retirement of Reading Machines.

§9.31. Cost to Transfer Reading Machines.

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

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Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

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

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

The Railroad Commission of Texas proposes amendments to §9.2, 9.953, 9.954, 9.955, and 9.956, relating to definitions; specifications for approved low pressure piping materials; corrosion protection; piping layout; and joining methods. The commission proposes these actions to allow the use of corrugated stainless steel tubing (CSST) for LP-gas vapor service inside a

building. CSST is recognized and accepted by the National Fire Protection Association (in NFPA Pamphlet 54, *National Fuel Gas Code*), the Southern Building Code Congress International, the Council of American Building Officials, the American and Canadian Gas Associations, and other building codes. Its flexibility means it will bend instead of break when a building settles over time or is subject to earthquakes or high winds. Its flexibility also means fewer joints are used during installation, which decreases the potential for leaks.

Proposed amendments in §9.2 include a new definition for CSST and amendment of the definition for low pressure piping. Section 9.953 describes the types of material that may be used in low pressure piping and lists the standards to which the material must conform. The proposed amendment in new subsection (a)(1)(D) adds the specifications for CSST.

Sections 9.954 and 9.955 describe the protection against corrosion which must be used when piping is installed underground and the locations inside a building where piping may be installed. The proposed amendments state that CSST shall be installed underground only as specified by the manufacturer and shall be protected in a manner specified by the manufacturer.

Section 9.956 specifies joining methods that must be used. Proposed amendments to §9.956 include a new subsection (d), which states that CSST shall only be joined by methods approved by ANSI/AGA LC-1, *Interior Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing*. Subsection (f) also has a proposed new sentence requiring licensees to keep written proof of any certifications for CSST installation and repair.

Thomas D. Petru, assistant director, Liquefied Petroleum Gas Section, Gas Services Division, has determined that for each year of the first five years the sections as proposed will be in effect there will be no fiscal implications for state or local governments.

Mr. Petru has also determined that for each year of the first five years the sections as proposed will be in effect the public benefit anticipated as a result of enforcing the sections as proposed will be an additional product for use in buildings to provide LP-gas vapor service. There is no anticipated economic cost to small businesses and to persons required to comply; participation will be voluntary and some costs may in fact be lowered due to decreased labor costs for installation.

Comments on the proposals may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket Number 1494. For additional information contact Thomas D. Petru at (512) 463-6949.

Subchapter A. General Applicability Requirements

16 TAC §9.2

The amendment is proposed under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following are the statutes, articles, or codes affected by the proposed amendments: §§9.2, 9.953, 9.954, 9.955, and 9.956 Texas Natural Resources Code, §113.051.

§9.2. Definitions.

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

Corrugated stainless steel tubing-A type of tubing which is primarily used inside a building for LP-gas vapor service only. The tubing shall have a maximum operating pressure of 5 psig, and shall be one inch or less in diameter.

Low pressure gas piping or tubing-Piping or tubing used for conveying LP-gas liquid or vapor at pressures of 50 psig or less, except for corrugated stainless steel tubing, which shall be used for vapor service only and shall not exceed a maximum operating pressure of 5 psig.

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

Issued in Austin, Texas, on February 28, 1996.

TRD-9602826

Mary Ross McDonald

Assistant Director, Gas Services Section, Office of General Counsel
Railroad Commission of Texas

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-7008

16 TAC §9.15, §9.19

The Railroad Commission of Texas withdraws proposed amendments to §9.19, relating to insurance requirements, published in the November 7, 1995, *Texas Register* (20 TexReg 9239) and proposes amendments to §9.15, relating to registration of LP-gas transports, and §9.19, relating to insurance requirements. Section 9.15 describes registration requirements for LP-gas transports and bobtails, including fees and forms to be filed, while §9.19 describes the insurance requirements for licensees.

The commission withdraws the previously published amendments to §9.19 in order to correct the proposed requirements for motor vehicle insurance and to increase the insurance minimum from \$500,000 to either \$1,000,000 or \$5,000,000; the proposed amendments also clarify which types of vehicles must comply with which insurance amount. The withdrawal for §9.19 is contemporaneously published in this issue of the *Texas Register*. Proposed amendments to §9.15 correct sections 1 and 2 in the table which refer to the aggregate water capacity of vehicles required to pay the specified registration fees. Increasing the minimum insurance would bring Texas' intrastate requirements in line with interstate requirements and was proposed by the Texas Tank Truck Carriers Association and the Texas Propane Gas Association. The description of which type of vehicle must carry which amount of insurance has been changed from the generic terms "transport" and "bobtail" to a specific water gallonage. The proposed amendments will require vehicles equipped with containers with individual or aggregate water gallonage of 3,500 gallons or less to carry a minimum of \$1,000,000 motor vehicle insurance. Vehicles equipped with

containers with individual or aggregate water gallonage of 3,501 gallons or more will require \$5,000,000 minimum. These specifications are proposed to be added as paragraphs (1) and (2) in subsection (a). In addition, the last row of the table, where the amount of insurance for Category C, E, H, and J licensees, and ultimate consumers indicates the \$1,000,000 or \$5,000,000 amounts, depending on the water gallonage. The only amendment proposed for §9.15 is the correction of the water gallonage in sections 1 and 2 of the chart.

Thomas D. Petru, assistant director, LP-Gas Section, Gas Services Division, has determined that for each year of the first five years the sections as proposed will be in effect, there will be only slight fiscal implications for state government as a result of enforcing or administering the sections as proposed. There are approximately eight to ten vehicles which will be required to pay a higher registration fee required in §9.15, resulting in a per-truck increase of \$62 and increased revenue to the state of approximately \$496 to \$620. There will be no fiscal implications for local government.

Mr. Petru also has determined that the public benefit anticipated as a result of enforcing the sections will be an increase in the protection of the health, safety, and welfare of the general public. There is an anticipated economic cost to small businesses or to individuals required to comply. As explained in the preceding paragraph, about eight to ten trucks will be required to pay a higher registration fee (\$156 as opposed to \$94). In addition, to increase motor vehicle insurance from the \$500,000 minimum currently required to the proposed \$1,000,000 amount would increase monthly premiums an estimated 10 to 15 percent, but the specific cost will depend on the insurance carrier and the claim history. Because an increase from \$500,000 to \$5,000,000 for vehicles with containers of 3,501 gallons or more would involve many variables, including that the coverage may be part of an "umbrella" policy which covers more than just the motor vehicle insurance, the exact increased cost is impossible to compute, but may be as high as a 60% increase in cost. However, most large operators already carry at least \$5,000,000 in motor vehicle insurance.

Comments on the proposal may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket Number 1478. For additional information contact Thomas D. Petru at (512) 463-6949.

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the proposed amendments: §9.15 and §9.19-Texas Natural Resources Code, §113.051.

§9.15. Registration of LP-Gas Transports.

(a)-(f) (No change.)

(g) LP-gas transports shall comply with the requirements indicated in Table 1 of this section:

Figure 1: 16 TAC §9.15(g)

(h)-(k) (No change.)

§9.19. Insurance Requirements.

(a) Pursuant to the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted the minimum amounts of insurance for LP-gas licensees licensed by the State of Texas specified in Table 1 of this section. Applicants shall file or cause to be filed a valid certificate of insurance with the commission before it grants or renews a license, and a valid certificate of insurance shall remain in effect during the entire period that the license is in effect.

Figure 2: 16 TAC §9.19(a)

(1) (Vehicles equipped with containers with individual or aggregate water capacities of 3,500 gallons or less shall carry a minimum of \$1,000,000 motor vehicle insurance.

(2) (Vehicles equipped with containers with individual or aggregate water capacities of 3,501 gallons or more shall carry a minimum of \$5,000,000 motor vehicle insurance.

(b)-(i) (No change.)

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

Issued in Austin, Texas, on February 28, 1996.

TRD-9602825

Mary Ross McDonald

Assistant Director, Gas Services Section, Office of General Counsel
Railroad Commission of Texas

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-7008

TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 53. Regional Education Service Centers

The Texas Education Agency (TEA) proposes the repeal of §§53.1-53.3, 53.21-53.25, and 53.71-53.74, concerning regional education service centers (RESCs). The sections establish definitions, requirements, and procedures related to RESC operations, including: authorization, location, and administration of RESCs; services provided to member schools; and information systems. The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. A new Chapter 53 is proposed in a separate submission.

Gene Davenport, associate commissioner for school/community support, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Davenport and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be

compliance with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloutd, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

Subchapter A. Authorization

19 TAC §§53.1-53.3

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§53.1. *General Provisions.*

§53.2. *Services to Member Schools.*

§53.3. *Location of Centers.*

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

Issued in Austin, Texas, on March 4, 1996.

TRD-9603000

Criss Cloutd

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-9701



Chapter 53. Regional Education Service Centers

40 TAC §53.1

The Texas Education Agency (TEA) proposes new §53.1, concerning regional education service centers (RESCs). The section specifies procedures for electing members of RESC boards of directors and for filling the unexpired term of an RESC board member. The new section is proposed as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. The repeal of current Chapter 53 is proposed in a separate submission.

Gene Davenport, associate commissioner for school/community support, 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 or small businesses as a result of enforcing or administering the section.

Mr. Davenport and Criss Cloutd, associate commissioner for policy planning and research, have determined that for each year of the first five years the section is in effect the public ben-

efit anticipated as a result of enforcing the section will be standardized procedures for electing and continuing membership of RESC boards of directors. 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 Criss Cloutd, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §8.003(b), which authorizes the State Board of Education to adopt uniform rules to provide for the local selection, appointment, and continuity of membership of RESC boards of directors.

The new section implements the Texas Education Code, §8.003(b).

§53.1. *Board of Directors.*

(a) *Term of Office.*

(1) A member of a regional education service center (RESC) board of directors shall be elected for a three-year term. The term of office shall begin June 1.

(2) If a vacancy occurs due to death or resignation of a member of an RESC board of directors, a 30-day period shall elapse, after notice has been given to the board chair, before the vacancy is filled.

(3) At the beginning of the 30-day period, notice of any vacancy shall be given to the president of the board of trustees and the superintendent of each school district in the education service center region and shall be posted in appropriate locations.

(4) A vacancy for the unexpired term of a member of an RESC board of directors shall be filled by appointment by the remaining board members.

(b) *Election Procedures.*

(1) A member of an RESC board of directors must be a United States citizen, at least 18 years of age, and a resident of that education service center region. He or she may not be engaged professionally in education in a public school district, be a member of a school district board of trustees, or be a member of the board of trustees of any institution of higher education.

(2) A member of an RESC board of directors shall be elected by the boards of trustees of the school districts in that education service center region.

(3) Any eligible person wishing to seek election to an RESC board of directors shall file at the headquarters of that RESC in person or by certified mail between February 1 and February 20. No filing fee shall be required. Each RESC board of directors shall adopt policies concerning filing procedures.

(4) By February 1, notice of the time and place for filing shall be posted in appropriate locations and submitted to appropriate newspapers in the education service center region for publication and

to the superintendent of each school district in the education service center region.

(5) A ballot shall be developed and submitted to the board of trustees of each school district in the education service center region by March 1. Placement on the ballot shall be determined by drawing. Each member of the board of trustees of each school district in the education service center region shall have one vote for each vacancy on the RESC board of directors. Completed ballots shall be returned to the chair of the RESC board of directors by April 5. The RESC board of directors shall canvass the ballots at its next regularly scheduled or special meeting, but not later than May 31, and determine the winner by a plurality of the votes cast. In the event of a tie, the names of the candidates who have tied shall be resubmitted to the board of trustees of each school district in the education service center region.

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

Issued in Austin, Texas, on March 4, 1996.

TRD-9603003

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-9701

Subchapter B. Administration and Operation

19 TAC §§53.21-53.25

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§53.21. *Working Relationships.*

§53.22. *Staff.*

§53.23. *Fiscal Records and Accounting.*

§53.24. *Accountability Requirements.*

§53.25. *Powers of the Commissioner of Education to Impose Sanctions.*

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

Issued in Austin, Texas, on March 4, 1996.

TRD-9603001

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter D. Information Systems

19 TAC §§53.71-53.74

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§53.71. *General Provisions.*

§53.72. *Multi-Regional Processing Center (MRPC).*

§53.73. *Reporting.*

§53.74. *Funding.*

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

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TRD-9603002

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-9701

Chapter 74. Curriculum Requirements

The Texas Education Agency (TEA) proposes new §§74.1-74.3, 74.11-74.14, and 74.21-74.30, concerning curriculum requirements. The new sections establish definitions, requirements, and procedures related to required curricula, graduation requirements, academic achievement records, special programs, and credit. The sections are proposed as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. The repeal of Chapter 75, Subchapters A and E-J (relating to Curriculum), is proposed in a separate submission.

Felipe Alanis, deputy commissioner for programs and instruction, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. There will be no effect on state government. The effect on local government (school districts) cannot be precisely determined at this time. An increase in the minimum high school graduation requirements may require additional teacher resources in some districts. New course requirements are all in areas in which teaching staff currently exist. In addition, slightly more than half of the districts offering a high school program have already moved to a program requiring more than 21 credits. There will be no effect on small businesses.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be

assurance that students throughout the state have access to the foundation and the enrichment curricula and the requirements for high school graduation. 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 Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

Subchapter A. Required Curriculum

19 TAC §§74.1-74.3

The new sections are proposed under the Texas Education Code, §28.002, which directs the State Board of Education to adopt rules related to essential knowledge and skills and required curricula.

The new sections implement the Texas Education Code, §28.002.

§74.1. *Essential Elements Mandated.*

(a) A school district that offers kindergarten through Grade 12 must offer the following as a required curriculum:

(1) a foundation curriculum that includes:

- (A) English language arts;
- (B) mathematics;
- (C) science; and
- (D) social studies, consisting of Texas, United States and world history, government, and geography; and

(2) an enrichment curriculum that includes:

- (A) economics, with emphasis on the free enterprise system and its benefits;
- (B) to the extent possible, languages other than English;
- (C) health;
- (D) physical education;
- (E) fine arts;
- (F) career and technology education; and
- (G) technology applications.

(b) Essential elements referred to in this chapter shall remain in use until the State Board of Education (SBOE) adopts the essential knowledge and skills for the curriculum required in Texas Education Code, §28.002. When SBOE adopts the essential knowledge and skills, the term "essential elements" shall be understood to mean essential knowledge and skills.

(c) A school district must provide instruction in the essential elements of the appropriate grade levels as specified in this subchapter; Chapter 75, Subchapter B, of this title (relating to Essential Elements - Prekindergarten-Grade 6); Chapter 75, Subchapter C, of this

title (relating to Essential Elements - Grades 7-8); and Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12). A district is not required to offer the essential elements for prekindergarten. A school district may add elements at its discretion but must not delete or omit instruction in the foundation curriculum specified in subsection (a) of this section. A district must use the essential elements as guidelines in providing instruction in the enrichment curriculum specified in subsection (a) of this section.

(d) At least every five years, SBOE shall review and evaluate the appropriateness of the essential elements. When possible, changes in essential elements shall be made in sequence with the textbook adoption cycle. A school district must implement the changes no later than the date textbooks and instructional materials are available in the district.

§74.2. *Description of a Required Elementary Curriculum.*

A school district that offers kindergarten through Grade 5 must provide instruction in the essential elements described in Chapter 75, Subchapter B, of this title (relating to Essential Elements - Prekindergarten-Grade 6). The district must ensure that sufficient time is provided for teachers to teach and for students to learn the essential elements in English language arts, mathematics, science, social studies, fine arts, health, physical education, technology applications, and to the extent possible, languages other than English. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations.

§74.3. *Description of a Required Secondary Curriculum.*

(a) Middle Grades 6-8. A school district that offers Grades 6-8 must provide instruction in the essential elements for Grades 6-8 as described in Chapter 75, Subchapter B, of this title (relating to Essential Elements - Prekindergarten-Grade 6); and Chapter 75, Subchapter C, of this title (relating to Essential Elements - Grades 7-8). The district must ensure that sufficient time is provided for teachers to teach and for students to learn the essential elements in English language arts, mathematics, science, social studies, fine arts, health, physical education, technology applications, and to the extent possible, languages other than English. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations.

(b) Secondary Grades 9-12.

(1) A school district that offers Grades 9-12 must provide instruction in the essential elements described in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12). The district must ensure that sufficient time is provided for teachers to teach and for students to learn the essential elements. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations.

(2) The school district must offer the courses listed in this paragraph and maintain evidence that students have the opportunity to take these courses:

- (A) English language arts - English I, II, III, and IV;

(B) mathematics - Algebra I, Algebra II, Geometry, and Precalculus. (Trigonometry and either Elementary Analysis or Analytic Geometry may be offered in lieu of Precalculus);

(C) science - Biology I, Chemistry I, Physics I, and Physical Science or Science III. Science courses shall include at least 40% hands-on laboratory investigations and field work using appropriate scientific inquiry;

(D) social studies - United States History, World History Studies, United States Government, and World Geography Studies;

(E) economics with emphasis on the free enterprise system and its benefits;

(F) Physical Education I and II;

(G) health education;

(H) fine arts - courses selected from two of the four fine arts areas (art, music, theatre, and dance);

(I) career and technology education - courses selected from three of the eight career and technology areas (agriculture science and technology education, business education, career orientation, health science technology education, home economics education, industrial technology education, marketing education, and trade and industrial education) taught on a campus in the school district with provisions for contracting for additional offerings with programs or institutions as may be practical;

(J) languages other than English - Levels I and II of the same language until the end of school year 1998-1999, and Levels I, II, and III beginning in the 1999-2000 school year; and

(K) computer technology - one unit of credit selected from a variety of computer-related courses as described in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12), including Business Computer Applications I and II, Business Computer Programming I and II, Computer Applications, Computer Science I and II, Microcomputer Applications, Business Information Processing, and Computer Mathematics.

(3) The school district must provide each student the opportunity to participate in all courses listed in paragraph (2) of this subsection. The district must provide students the opportunity each year to select courses in which they intend to participate from a list that includes all courses in paragraph (2) of this subsection. The school district must teach a course that ten or more students indicate they will participate in or that is required for a student to graduate. For a course that fewer than ten students indicate they will participate in, the district must employ options described in Chapter 75, Subchapter C, of this title (relating to Other Provisions) to provide the course and must maintain evidence that it is employing those options. If the school district will not offer the required courses every year, but intends to offer particular courses only every other year, it must notify all enrolled students of that fact.

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

Issued in Austin, Texas, on March 4, 1996.

TRD-9603004

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-9701

Subchapter B. Graduation Requirements

19 TAC §§74.11-74.14

The new sections are proposed under the Texas Education Code, §28.025, which directs SBOE to determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under the Texas Education Code, §28.002, and to adopt transcript forms designed to differentiate between the minimum, recommended, and advanced high school programs and identify whether a student received a diploma or a certificate of coursework completion.

The new sections implement the Texas Education Code, §28.025.

§74.11. High School Graduation Requirements.

(a) Graduates of each high school are awarded the same type of diploma. The academic achievement record (transcript), rather than the diploma, records individual accomplishments, achievements, and courses completed.

(b) All credit for graduation must be earned no later than Grade 12.

(c) A student must complete at least 22 credits to receive a high school diploma. Credit may be awarded without prior instruction under Texas Education Code, §28.023 (relating to Credit by Examination), or §39.023(i) (relating to end-of-course tests). A student must demonstrate proficiency in the following.

(1) English language arts - four credits. The credits must consist of:

(A) English I, II, and III (for recent immigrants, English as a Second Language (ESL) I and II may be substituted for English I and II); and

(B) a fourth credit of English, which may be satisfied by English IV, English IV (Academic), Introduction to Speech Communication, Research/Technical Writing, Creative/Imaginative Writing, Practical Writing Skills, Literary Genres, Business Communication, Debate, Journalism, concurrent enrollment in a college English course, or College Board advanced placement literature and composition.

(2) Mathematics - three credits to include Algebra I.

(3) Science - two credits to include one from Biology I, Chemistry I, or Physics I.

(4) Social studies - three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History (one credit), and United States Government (one-half credit).

(5) Economics with emphasis on the free enterprise system and its benefits - one-half credit.

(6) Physical education - one and one-half credits to include one-half credit in Foundations of Personal Fitness.

(A) The school district board of trustees may allow a student to substitute certain physical activities for the one and one-half required credits of physical education, including the one-half credit of Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Reserve Officer Training Corps (ROTC); athletics; and Dance I-IV.

(B) A student may not earn more than three credits in physical education toward state graduation requirements.

(C) For physical education, a district must classify each student, on the basis of health, into one of the following categories.

(i) Unrestricted (not limited in activities).

(ii) Restricted (excludes the more vigorous activities).

(I) Permanent. A member of the healing arts licensed to practice in Texas must provide the school written documentation concerning the nature of the impairment and the expectations for physical activity for the student.

(II) Temporary. The student may be restricted from physical activity of the physical education class. A member of the healing arts licensed to practice in Texas must provide the school written documentation concerning the nature of the temporary impairment and the expected amount of time for recovery. During recovery time, the student must continue to learn the concepts of the lessons but may not actively participate in the skill demonstration.

(iii) Adapted and remedial (specific activities prescribed or prohibited, as directed by a member of the healing arts licensed to practice in Texas).

(D) A school district may award up to two credits for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education.

(7) Health education - one-half credit.

(8) Speech - one-half credit.

(9) Technology applications - one credit.

(10) Electives - five and one-half credits. Each elective must be selected from the list of courses approved by the State Board of Education (SBOE) for Grades 9-12 under Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12).

(d) A maximum of two of the four credits of English required for graduation may be English as a second language (ESL). Credit earned in ESL that is not counted toward the graduation requirement in English may be counted as elective credit in meeting state graduation requirements.

(e) A maximum of three credits of reading may be offered by districts for state graduation credit for identified students under the following conditions. The school district board of trustees shall adopt policies to identify students in need of additional reading instruction, and district procedures shall include assessment of individual student needs, ongoing evaluation of each student's progress, and monitoring of instructional activities to ensure that student needs are addressed.

Reading credits may be selected from any of the following as outlined in §75.61 of this title (relating to English Language Arts): Reading Improvement I, II, or III, which will be revised as part of the adoption of essential knowledge and skills to delete the term "improvement."

(f) An out-of-state or out-of-country transfer student or a transfer student from a Texas nonpublic school must complete all requirements of this section to be eligible to satisfy state graduation requirements. Any course credit required in this section that is not completed by the student before he or she enrolls in a Texas school district may be satisfied through the provisions of §74.23 of this title (relating to Correspondence Courses) and §74.24 of this title (relating to Credit by Examination) or by completing the course or courses according to the provisions of §74.26 of this title (relating to the Award of Credit).

§74.12. Recommended High School Program.

(a) Academic core components. College Board advanced placement and International Baccalaureate courses may be substituted for requirements in appropriate proficiency areas. Credit may be awarded without prior instruction under Texas Education Code, §28.023 (relating to Credit by Examination), or §39.023(i) (relating to end-of-course tests). The student must demonstrate proficiency in the following.

(1) English - four credits. The credits must consist of English I, English II, English III, and English IV (for recent immigrants, English as a Second Language (ESL) I and II may be substituted for English I and II).

(2) Mathematics - three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(3) Science - three credits. The credits must consist of three credits selected from Physical Science, Biology I and II, Chemistry I and II, Physics I and II, or Science III and IV. A student may not take more than two credits from any combination of Physical Science, Science III and IV, and Biology I.

(4) Social studies - three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History (one credit), and United States Government (one-half credit).

(5) Economics with emphasis on the free enterprise system and its benefits - one-half credit.

(6) Languages other than English - three credits. The credits must consist of Level I, Level II, and Level III in the same language.

(7) Health - one-half credit.

(8) Fine arts - one credit.

(9) Physical education - one and one-half credits to include one-half credit in Foundations of Personal Fitness.

(A) A school district board of trustees may allow a student to substitute certain physical activities for the one and one-half required credits of physical education, including the one-half credit of Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Reserve Officer Training Corps (ROTC); athletics; and Dance I-IV.

(B) A school district may also apply to the commissioner of education for a waiver to allow credit for appropriate private or commercially-sponsored physical activity programs conducted on or off campus.

(10) Computing - one credit. The credit must consist of one credit in computer science.

(b) Additional components. College Board advanced placement and International Baccalaureate courses may be substituted for requirements in appropriate proficiency areas. The student must choose one of the following options for additional components. Credit may be awarded without prior instruction under Texas Education Code, §28.023 (relating to Credit by Examination), or §39.023(i) (relating to end-of-course tests).

(1) Option I: mathematics, science, elective. The student must demonstrate proficiency in the following.

(A) Mathematics - one credit. The credit must consist of:

(i) Precalculus (one credit); or

(ii) Trigonometry (one-half credit) and either Elementary Analysis (one-half credit) or Analytic Geometry (one-half credit).

(B) Science - one credit. The credit must be selected from Biology I or II, Chemistry I or II, Physics I or II, or Science III or IV. A student may not take more than two credits from any combination of Physical Science, Science III and IV, and Biology I.

(C) Elective - one credit.

(2) Option II: career and technology. The student must demonstrate proficiency equivalent to three credits in a coherent sequence of courses for career and technology preparation. To be included in the recommended high school program, a technology preparation program approved by Texas Education Agency (TEA) must meet recommended high school program criteria in English language arts, mathematics, science, social studies, languages other than English, health, fine arts, and technology applications.

(3) Option III: specialization. The student must demonstrate proficiency equivalent to three credits in a specialization consisting of state-approved, college-preparatory courses from language arts (including speech and journalism), science, social studies, mathematics, languages other than English, fine arts, or computer science.

(c) Any program or course substitution to the courses included in subsection (a) and subsection (b) of this section must be approved by the State Board of Education (SBOE).

§74.13. *Distinguished Achievement Program - Advanced High School Program.*

(a) Beginning in the 1999-2000 school year, a student who wishes to complete an advanced high school program (called the distinguished achievement program) and have the accomplishment recognized and distinguished on the academic achievement record (transcript) must complete the following requirements.

(1) Academic core components. College Board advanced placement and International Baccalaureate courses may be substituted for requirements in appropriate proficiency areas. The student must demonstrate proficiency in the following.

(A) English - four credits. The credits must consist of English I, English II, English III, and English IV (for recent immigrants, English as a Second Language (ESL) I and II may be substituted for English I and II).

(B) Mathematics - three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(C) Science - three credits. The credits must consist of three credits selected from Physical Science, Biology I and II, Chemistry I and II, Physics I and II, or Science III and IV. A student may not take more than two credits from any combination of Physical Science, Science III and IV, and Biology I.

(D) Social studies - three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History (one credit), and United States Government (one-half credit).

(E) Economics with emphasis on the free enterprise system and its benefits - one-half credit.

(F) Languages other than English - three credits. The credits must consist of Level I, Level II, and Level III in the same language.

(G) Health - one-half credit.

(H) Fine arts - one credit.

(I) Physical education - one and one-half credits to include one-half credit in Foundations of Personal Fitness.

(i) A school district board of trustees may allow a student to substitute certain physical activities for the one and one-half required credits of physical education, including the one-half credit of Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Reserve Officer Training Corps (ROTC); athletics; and Dance I-IV.

(ii) A school district may also apply to the commissioner of education for a waiver to allow credit for appropriate private or commercially-sponsored physical activity programs conducted on or off campus.

(J) Computing - one credit. The credit must consist of one credit in computer science.

(2) Additional components. College Board advanced placement and International Baccalaureate courses may be substituted for requirements in appropriate proficiency areas. The student must choose one of the following options for additional components. Credit may be awarded without prior instruction under Texas Education Code, §28.023 (relating to Credit by Examination), or §39.023(i) (relating to end-of-course tests).

(A) Option I: mathematics, science, elective. The student must demonstrate proficiency in the following.

(i) Mathematics - one credit. The credit must consist of:

(I) Precalculus (one credit); or

(II) Trigonometry (one-half credit) and either Elementary Analysis (one-half credit) or Analytic Geometry (one-half credit).

(ii) Science - one credit. The credit must be selected from Biology I or II, Chemistry I or II, Physics I or II, or Science III or IV. A student may not take more than two credits from any combination of Physical Science, Science III and IV, and Biology I.

(iii) Elective - one credit.

(B) Option II: career and technology. The student must demonstrate proficiency equivalent to three credits in a coherent sequence of courses for career and technology preparation. To be included in the recommended high school program, a technology preparation program approved by the Texas Education Agency (TEA) must meet recommended high school program criteria in English language arts, mathematics, science, social studies, languages other than English, health, fine arts, and technology applications.

(C) Option III: specialization. The student must demonstrate proficiency equivalent to three credits in a specialization consisting of state-approved, college-preparatory courses from language arts (including speech and journalism), science, social studies, mathematics, languages other than English, fine arts, or computer science.

(3) Advanced measures. A student also must achieve any combination of four of the advanced measures approved by the State Board of Education (SBOE). The measures must be reviewed at least once each biennium and meet the standards specified in subparagraphs (A) and (B) of this paragraph.

(A) The measures must focus on demonstrated student performance at the college or professional level.

(B) Student performance on advanced measures must be assessed through an external review process.

(4) Any program or course substitution to the courses included in subsection (a)(1) and (2) of this section must be approved by SBOE.

(b) Subsections (c)-(g) of this section relate to a previous advanced high school program and shall expire at the end of school year 1998-1999.

(c) A student who wishes to complete an advanced high school program and have the accomplishment recognized and distinguished on the academic achievement record (transcript) must complete the following requirements. Programs shall be of two types.

(1) The advanced high school program shall consist of 22 credits selected from the provisions of subsection (d)(1)-(11) of this section.

(2) The advanced high school honors program shall consist of 22 credits selected from the provisions of subsection (d)(1)-(11) of this section. Five of these credits must be designated by the school district board of trustees as honors courses under subsection (f) of this section.

(d) The required credits must include the following.

(1) English language arts - four credits.

(A) Three credits must consist of English I, II, and III. English as a Second Language (ESL) I and II may be substituted for English I and II.

(B) The fourth credit of English may be satisfied by English IV, English IV Honors, English IV (Academic), English IV (Academic) Honors, or College Board advanced placement English literature and composition.

(2) Languages other than English - two credits. The credits must consist of Level I and Level II of the same language.

(3) Mathematics - three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(4) Science - three credits. The credits must be selected from Physical Science or Science III, Biology I or Science IV, Biology II, Chemistry I, Chemistry II, Physics I, Physics II, Geology, Meteorology, Astronomy, Aquatic Science, Environmental Science, or Anatomy and Physiology.

(5) Social studies - two and one-half credits. The credits must consist of World History Studies or World Geography Studies (one credit), United States History (one credit), and United States Government (one-half credit).

(6) Economics with emphasis on the free enterprise system and its benefits - one-half credit.

(7) Physical education - one and one-half credits.

(A) A school district board of trustees may allow a student to substitute certain physical activities for the one and one-half required credits of physical education. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Reserve Officer Training Corps (ROTC); athletics; Dance I-IV; and two- or three-credit career and technology education work-based training courses.

(B) A student may not earn more than two credits in physical education toward state graduation requirements.

(C) A school district may award up to two credit for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education.

(8) Health education - one-half credit.

(9) Technology applications - one credit. The credit must be selected from a variety of computer-related courses listed in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12), including:

(A) Computer Mathematics;

(B) Business Computer Applications I or II;

(C) Business Computer Programming I or II;

(D) Computer Science I or II;

(E) Business Information Processing; and

(F) Microcomputer Applications.

(10) Fine arts or speech - one credit. The credit must be selected from the list of courses approved by the State Board of Education (SBOE) in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12).

(11) Electives - three credits. Each elective must be selected from the list of courses approved by SBOE in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12).

(e) When necessary and justified, the commissioner of education may authorize a substitution in the requirements for the advanced high school program under the following conditions.

(1) A student must complete 22 credits from state-approved courses specified in this section.

(2) A student must complete the number of credits in each subject area specified in this section from courses listed in these subject areas in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12). A student who has already taken one or more of the following classes as part of the advanced high school program shall receive credit for each class taken: Precalculus, Trigonometry, Elementary Analysis, Analytic Geometry, Computer Mathematics I, Computer Mathematics II, Probability and Statistics, Calculus, Number Theory, Linear Algebra, Linear Programming, History of Mathematics, Survey of Mathematics, Laboratory Management, Physiology and Anatomy, or Computer Mathematics.

(3) Any course substituted for another course must maintain the same level of academic excellence as the courses specified in this section.

(4) A course described as introductory, remedial, or compensatory may not substitute for any course specified in this section.

(5) A school district must request in writing approval from the commissioner of education to substitute specific courses, citing justification for the requests.

(f) A school district board of trustees that wishes to offer the advanced high school honors program must adopt policies that provide for special honors courses and programs. The policies must provide for modification of the courses of study in subsection (c) of this section by accelerating, providing greater depth, and expanding the courses and their essential elements described in this section and in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12). In addition, the courses must have been submitted to the Texas Education Agency (TEA) before April 30, 1995. A school district must ensure that students participating in honors courses or programs are instructed in all essential elements and demonstrate an acceptable degree of mastery of those elements.

(g) All College Board advanced placement and International Baccalaureate courses are designed as honors courses. A district is not required to submit these courses for approval.

§74.14. Academic Achievement Record (Transcript).

(a) Each school district must use the academic achievement record (transcript) form designated by the State Board of Education (SBOE). Each district must reproduce the form in sufficient quantities. The form shall serve as the academic record for each student and must be maintained permanently by the district. Each district must ensure that copies of the record are made available for a student transferring from one district to another. The information may be provided to the student or to the district to which the student is transferring or both. To ensure appropriate placement of a transfer student, a district must

respond promptly to each request for student records from a receiving school district.

(b) The commissioner of education shall develop and distribute to each school district and institution of higher education in the state a common academic achievement record and coding system for courses and instructions for recording information on the academic achievement record. Each school district must use the system provided by the commissioner.

(c) Any credit earned by a student must be recorded on the academic achievement record, regardless of when the credit was earned.

(d) A student who completes high school graduation requirements shall have attached to the academic achievement record a seal approved by SBOE.

(e) A student who completes all graduation requirements except for required exit-level assessment instruments may be issued a certificate of coursework completion. A student who receives a certificate of coursework completion shall have attached to the academic achievement record a seal approved by SBOE.

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

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For further information, please call: (512) 463-9701

◆ ◆ ◆
Subchapter C. Other Provisions

19 TAC §§74.21-74.30

The new sections are proposed under the Texas Education Code, §28.023, which directs the State Board of Education (SBOE) to establish guidelines under which a school district shall develop or select for board review examinations for acceleration for each primary school grade level and for credit for secondary school academic subjects; the Texas Education Code, §28.054, which directs SBOE to adopt guidelines for determining financial need consistent with the definition of financial need adopted by the College Board or the International Baccalaureate Organization; and the Texas Education Code, §38.003, which directs SBOE to approve a program to test students for dyslexia and related disorders.

The new sections implement the Texas Education Code, §§28.023, 28.054, and 38.003.

§74.21. Schedule for Implementation.

The requirements in this chapter shall be implemented according to the following schedule.

(1) Elementary, kindergarten through Grade 5. All provisions of §74.2 of this title (relating to Description of a Required Elementary Curriculum) shall be implemented fully beginning with the 1996-1997 school year.

(2) Secondary, Grades 6-12. All provisions of §74.3 of this title (relating to Description of a Required Secondary Curriculum) and Subchapter B of this chapter (relating to Graduation Requirements) shall be implemented fully beginning with the 1997-1998 school year. A student entering Grade 9 in the 1997-1998 school year or thereafter must meet the provisions of Subchapter B of this chapter (relating to Graduation Requirements).

(3) Other sections. Provisions of other sections of this chapter shall be implemented during the 1996-1997 school year unless otherwise specified.

§74.22. Options for Offering Courses.

A school district may use alternative procedures for delivering instruction to ensure that essential elements and courses are taught according to the requirements of Chapter 75 of this title (relating to Curriculum). The district shall pay any fees or other costs for students to participate in alternative delivery procedures.

§74.23. Correspondence Courses.

Credit toward state graduation requirements may be granted under this section only under the following conditions.

(1) The institution offering the course must be the University of Texas at Austin, Texas Technological University, or another public institution of higher education approved by the commissioner of education.

(2) The correspondence course must include the essential elements specified in Chapter 75 of this title (relating to Curriculum) for such a course.

§74.24. Credit by Examination.

A school district must provide at least five days each semester when examinations for acceleration required under Texas Education Code, §28.023, shall be administered in kindergarten through Grade 12. The days do not need to be consecutive but must be designed to meet the needs of all students. The dates must be publicized in the community.

§74.25. High School Credit for College Courses.

(a) A school district board of trustees may adopt a policy that allows a student to be awarded credit toward high school graduation for completing a college-level course. The course must be provided only by an institution of higher education that is accredited by one of the following regional accrediting associations:

- (1) Southern Association of Colleges and Schools;
- (2) Middle States Association of Colleges and Schools;
- (3) New England Association of Schools and Colleges;
- (4) North Central Association of Colleges and Schools;
- (5) Western Association of Schools and Colleges; or
- (6) Northwest Association of Schools and Colleges.

(b) To be eligible to enroll and be awarded credit toward state graduation requirements, a student must have the approval of the high school principal or other school official designated by the school district. The course for which credit is awarded must provide advanced academic instruction beyond, or in greater depth than, the essential elements.

§74.26. Award of Credit.

(a) The award of credit for a course by a school district affirms that a student has satisfactorily met all state and local

requirements. Any course for which credit is awarded must be provided according to this subsection.

(1) Credit earned toward state graduation requirements by a student in an accredited school district shall be transferable and must be accepted by any other school district in the state. A district may not prohibit a new student from attending school pending receipt of transcripts or records from the school district the student previously attended. Credit earned in a local-credit course may be transferred only with the consent of the receiving school district.

(2) A school district must ensure that the records or transcripts of an out-of-state or out-of-country transfer student or a transfer student from a Texas nonpublic school are evaluated and that the student is placed in appropriate classes promptly. The district may use a variety of methods to verify the content of courses for which a transfer student has earned credit.

(b) A course may be considered completed and credit may be awarded if the student has demonstrated achievement by meeting the standard requirements of the course, including demonstrated proficiency in the subject matter, regardless of the time the student has received instruction in the course or the grade level at which proficiency was attained.

(c) Credit for courses for high school graduation may be earned only if the student received a grade which is the equivalent of 70 on a scale of 100, based upon course-level, grade-level standards.

§74.27. Innovative Courses and Programs.

(a) A school district may develop innovative or other locally-designed courses to enable students to master knowledges, skills, and competencies not included in the essential elements described in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12).

(1) Any experimental course which has been approved in previous years for state credit toward graduation will cease to be approved August 31, 1997.

(2) The State Board of Education (SBOE) may approve any course that does not fall within any of the subject areas listed in the foundation and enrichment curricula when the applicant school district or organization demonstrates that the proposed course is academically rigorous and addresses documented student needs.

(3) The commissioner of education may approve a discipline-based course in the foundation or enrichment curriculum when the applicant school district or organization demonstrates that the proposed course is academically challenging and addresses documented student needs.

(4) To request approval from SBOE or the commissioner of education, the school district or organization must submit a request for approval, at least six months before planned implementation, that includes:

- (A) a description of the course and its elements or objectives;
- (B) the rationale and justification for the request in terms of student need;
- (C) a description of activities, major resources, and materials to be used;
- (D) the methods of evaluating student outcomes;

- (E) the qualifications of the teacher;
- (F) the amount of credit requested; and
- (G) the school years for which approval is requested.

(b) A school district may operate a magnet program, academy, or other innovative program to serve student populations with specialized interests and aptitudes. A program that does not meet all applicable requirements of this chapter must be approved by SBOE. A district seeking approval under this subsection must apply in writing to the commissioner of education. The district's request must include the same information as that specified in subsection (a) of this section for a request for approval of an innovative courses.

§74.28. Students with Dyslexia and Related Disorders.

(a) The board of trustees of a school district must ensure that procedures for identifying a student with dyslexia or a related disorder and for providing appropriate instructional services to the student are implemented in the district. These procedures will be monitored by the Texas Education Agency (TEA) with on-site visits conducted as appropriate.

(b) A school district's procedures must be implemented according to the State Board of Education (SBOE) approved methods for screening, and techniques for treating, dyslexia and related disorders. The methods and techniques are described in "Procedures Concerning Dyslexia," a set of flexible guidelines for local districts that may be modified by SBOE only with broad-based dialogue that includes input from educators and professionals from the field of reading and dyslexia across the state. Testing should only be done by individuals/professionals who are trained to test students with dyslexia and related disorders.

(c) A school district may purchase a reading program or develop its own reading program for students with dyslexia and related disorders, as long as the program is characterized by the descriptors found in "Procedures Concerning Dyslexia." Teachers who screen and treat these students must be trained in instructional strategies which utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components described in the "Procedures Concerning Dyslexia" and in the professional development activities specified by each district and/or campus planning and decision making committee.

(d) Before an identification or assessment procedure is used selectively with an individual student, the school district must notify the student's parent or guardian or another person standing in parental relation to the student.

(e) Parents/guardians of students eligible under the Rehabilitation Act of 1973, §504, must be informed of all services and options available to the student under that federal statute.

(f) Each school district must provide each campus access to the services of a teacher trained in dyslexia and related disorders.

(g) Because early intervention is critical, a program for early identification, intervention, and support for students with dyslexia and related disorders must be available in each district.

(h) Each school district may provide a parent education program for parents/guardians of students with dyslexia and related disorders.

§74.29. Texas Advanced Placement Incentive Program.

(a) Purpose. The Texas advanced placement incentive program is created to recognize and reward students, teachers, and schools that demonstrate success in achieving the educational goals of the state. An award or a subsidy granted under this section shall be for the public purpose of promoting an educated citizenry.

(b) Types of awards.

(1) A school participating in the program shall be eligible to receive the following awards:

(A) a one-time, \$3,000 equipment grant for providing a College Board advanced placement course, based on need as determined by the commissioner of education; and

(B) \$100 for each student who receives a score of three or better on a College Board advanced placement test.

(2) A teacher who teaches a College Board advanced placement course shall be eligible to receive the following awards:

(A) a subsidy of up to \$450 per teacher for teacher training for College Board advanced placement courses;

(B) a one-time award of \$250 for teaching a College Board advanced placement course for the first time; and

(C) a share of the teacher bonus pool proportional to the number of courses taught that shall be distributed by the teacher's school. Fifty dollars may be deposited in the teacher bonus pool for each student enrolled in the school who receives a score of three or better on a College Board advanced placement test.

(3) A student who receives a score of three or better on a College Board advanced placement test may receive a reimbursement of up to \$65 for the advanced placement testing fee. The reimbursement shall be reduced by the amount of any subsidy awarded by the College Board or under subsection (e) of this section.

(c) Award adjustment. The commissioner of education shall adjust and prorate by category the sum and number of awards to ensure the purpose of the program is realized.

(d) Application for, and use of, awards.

(1) To obtain an award, a school or teacher must submit to the State Board of Education (SBOE) a written application in a form, manner, and time prescribed by the commissioner of education. The intended recipient of the award must submit the application.

(2) A school must give priority to academic enhancement purposes in using any award received under this section. An award may not be used for any purpose relating to athletics.

(e) Subsidies for College Board advanced placement tests.

(1) A student is entitled to a subsidy for the fee he or she pays to take a College Board advanced placement test if the student demonstrates financial need according to guidelines adopted by the College Board.

(2) The Texas Education Agency (TEA), with SBOE approval, may pay each eligible applicant an equal amount of up to \$25.

(f) Funding of awards and subsidies.

(1) An award or a subsidy granted under this section is subject to the availability of funds. An award or a subsidy may be funded by donations, grants, or legislative appropriations.

(2) The commissioner of education may solicit and receive a grant or donation for the purpose of making awards under this section. The TEA shall account for and distribute any donation, grant, or legislative appropriation.

(3) The TEA shall apply to the program any available funds from its appropriations that may be used for this purpose.

(4) An application for funding may be filed with TEA at a date determined by the commissioner of education.

§74.30. Identification of Advanced Courses.

The following are identified as advanced classes as referred to in the Texas Education Code, §33.081(c), concerning extracurricular activities:

(1) English language arts: all College Board advanced placement courses and International Baccalaureate courses in the discipline, high school/college concurrent enrollment classes that are included in the "Community College General Academic Course Guide Manual (Part One)," English IV Academic (composition), English IV Academic (British Literature), World Literature, Creative/Imaginative Writing, Research/Technical Writing, Debate III, and Public Speaking III;

(2) Fine arts: all College Board advanced placement courses and International Baccalaureate courses in the discipline, high school/college concurrent enrollment classes that are included in the "Community College General Academic Course Guide Manual (Part One)," Art IV, Dance IV (not to include drill team activities), Music IV, and Theatre IV;

(3) Languages other than English: all College Board advanced placement courses and International Baccalaureate courses in the discipline, high school/college concurrent enrollment classes that are included in the "Community College General Academic Course Guide Manual (Part One)," and languages other than English courses Levels IV-VII;

(4) Mathematics: all College Board advanced placement courses and International Baccalaureate courses in the discipline, high school/college concurrent enrollment classes that are included in the "Community College General Academic Course Guide Manual (Part One)," Trigonometry, Elementary Analysis, Analytic Geometry, Precalculus, Calculus, Linear Algebra, and Advanced Mathematics for Business (may be phased out with new essential knowledge and skills development);

(5) Science: all College Board advanced placement courses and International Baccalaureate courses in the discipline, high school/college concurrent enrollment classes that are included in the "Community College General Academic Course Guide Manual (Part One)," Biology II, Physics II, and Chemistry II; and

(6) Social Studies: all College Board advanced placement courses and International Baccalaureate courses in the discipline, and high school/college concurrent enrollment classes that are included in the "Community College General Academic Course Guide Manual (Part One)."

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

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Criss Cloudt

Associate Commissioner, Policy Planning and Research
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For further information, please call: (512) 463-9701

Chapter 75. Curriculum

The Texas Education Agency (TEA) proposes the repeal of §§75.1-75.5, 75.141, 75.142, 75.151-75.153, 75.161-75.174, 75.191-75.197, 75.211-75.218, and 75.311-75.320, concerning curriculum. The sections establish definitions, requirements, and procedures related to curriculum programs, instruction, and grading. The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. A new Chapter 74 (relating to Curriculum Requirements) is proposed in a separate submission.

Felipe Alanis, deputy commissioner for programs and instruction, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be compliance with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

Subchapter A. General Provisions

19 TAC §§75.1-75.5

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§75.1. *Philosophy of the State Board of Education Relating to the Curriculum.*

§75.2. *General Responsibility of School Districts.*

§75.3. *Essential Elements (Prekindergarten-Grade 12) Mandated.*

§75.4. *Special Populations and Programs.*

§75.5. *State Board of Education Review and Renewal.*

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

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Subchapter E. Well-Balanced Curriculum

19 TAC §§75.141, §75.142

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§75.141. *Description of a Well-Balanced Elementary Curriculum.*

§75.142. *Description of a Well-Balanced Secondary Curriculum.*

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

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Subchapter F. Graduation Requirements

19 TAC §§75.151-75.153

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§75.151. *High School Graduation Requirements.*

§75.152. *Advanced High School Program.*

§75.153. *Academic Achievement Record (Transcript).*

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

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Subchapter G. Other Provisions

19 TAC §§75.161-75.174

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§75.161. *Schedule for Implementation.*

§75.162. *Options for Offering Courses.*

§75.163. *Correspondence Courses.*

§75.164. *Experimental Courses, Magnet Programs, and Alternative School Programs.*

§75.165. *Courses for Local Credit Only.*

§75.166. *Credit by Examination.*

§75.167. *High School Credit for College Courses.*

§75.168. *Summer School Programs.*

§75.169. *Award of Credit, Grades 9-12.*

§75.170. *School District Policy on Grading, Promotion, Retention, Remediation, and Placement.*

§75.171. *School District Hardship.*

§75.172. *Advanced Placement Examinations.*

§75.173. *Tutorial Programs.*

§75.174. *Students with Dyslexia and Related Disorders.*

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

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Criss Cloudt

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Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter H. Promotion and Alternatives to Social Promotion

19 TAC §§75.191-75.197

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

- §75.191. *Grading and Reporting Requirements.*
- §75.192. *Promotion and Course Credit.*
- §75.193. *Grade Level Advancement and Course Credit.*
- §75.194. *Encouragement of Students to Take Advanced Courses.*
- §75.195. *Alternatives to Social Promotion.*
- §75.196. *Memorandum of Understanding for Multiproblem Children and Youth.*
- §75.197. *Texas Advanced Placement Incentive Program.*

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

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Subchapter I. Special Provisions for Vocational Education

19 TAC §§75.211-75.218

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

- §75.211. *Vocational Program Units - General Provisions.*
- §75.212. *Definitions.*
- §75.213. *General Operational Provisions.*
- §75.214. *Vocational Course Requirements.*
- §75.215. *Participation in Vocational Education Programs.*
- §75.216. *Vocational Education Student Organizations.*
- §75.217. *Specific Program Requirements.*
- §75.218. *Program Evaluations.*

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

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Subchapter J. Driver Education

19 TAC §§75.311-75.320

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

- §75.311. *Administration and Supervision.*
- §75.312. *Teacher Certification.*
- §75.313. *Teaching Assistants.*
- §75.314. *Course Requirements.*
- §75.315. *Scheduling.*
- §75.316. *Instructor Hours, Class Size, and Age Level.*
- §75.317. *Driver Education Course Records.*
- §75.318. *Signatures.*
- §75.319. *Control of Standards.*
- §75.320. *Procedures for Student Certification.*

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

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Subchapter K. Extracurricular Activities

19 TAC §§75.411, §75.412

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

The Texas Education Agency (TEA) proposes the repeal of §§75.411 and §75.412, concerning extracurricular activities. The sections establish definitions, requirements, and procedures related to eligibility for, and limitations on, participation in

extracurricular activities and competitive athletics. The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. A new Chapter 76 (relating to Extracurricular Activities) is proposed in a separate submission.

Gene Davenport, associate commissioner for school/community support, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Davenport and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be compliance with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§75.411. *Student Absences for Extracurricular or Other Activities.*

§75.412. *Competitive Athletics During the School Day.*

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

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Chapter 76. Extracurricular Activities

19 TAC §76.1

The Texas Education Agency (TEA) proposes new §76.1, concerning extracurricular activities. The section establishes definitions, requirements, and procedures related to eligibility for, and limitations on, participation in extracurricular activities and competitive athletics. The new section is proposed as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. The repeal of Chapter 75, Subchapter K (relating to Extracurricular Activities), is proposed in a separate submission.

Gene Davenport, associate commissioner for school/community support, 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 or small businesses as a result of enforcing or administering the section.

Mr. Davenport and Criss Cloudt, associate commissioner for policy planning and research, have 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 preservation of the school day and week for academic activities and clarification of issues regarding student eligibility for participation in extracurricular activities. 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 Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §7.102(b)(28), which directs the State Board of Education (SBOE) to adopt rules relating to extracurricular activities under the Texas Education Code, §33.081; and the Texas Education Code, §33.081, which directs SBOE to limit by rule participation in, and practice for, extracurricular activities during the school day and the school week.

The section implements the Texas Education Code, §7.102(b)(28) and §33.081.

§76.1. *Extracurricular Activities.*

(a) An extracurricular activity is an activity sponsored by the University Interscholastic League (UIL), the school district board of trustees, or an organization sanctioned by resolution of the board of trustees. The activity is not necessarily directly related to instruction of the essential knowledge and skills but may have an indirect relation to some areas of the curriculum. Extracurricular activities include, but are not limited to, public performances, contests, demonstrations, displays, and club activities, with the exception of public performances specified in paragraph (3) of this subsection.

(1) In addition, an activity shall be subject to the provisions for an extracurricular activity if any one of the following criteria apply:

- (A) the activity is competitive;
- (B) the activity is held in conjunction with another activity that is considered to be extracurricular;
- (C) the activity is held off campus, except in a case in which adequate facilities do not exist on campus;
- (D) the general public is invited; or
- (E) an admission is charged.

(2) A student may participate in extracurricular activities during the first six weeks of the school year, provided the following academic requirements have been met.

(A) A student beginning Grade 8 or below must have been promoted from a lower grade before the beginning of the current school year.

(B) A student beginning Grade 9 or the first year of high school must have been promoted from a lower grade before the beginning of the current school year.

(C) A student beginning Grade 10 or the second year of high school must have earned five credits toward state high school graduation requirements.

(D) A student beginning Grade 11 or the third year of high school must have earned a total of ten credits toward state high school graduation requirements, or the student must have earned five credits toward state high school graduation requirements during the 12 months preceding the first day of the current school year.

(E) A student beginning Grade 12 or the fourth year of high school must have earned a total of 15 credits toward state high school graduation requirements, or the student must have earned five credits toward state high school graduation requirements during the 12 months preceding the first day of the current school year.

(3) A student ineligible to participate in an extracurricular activity, but who is enrolled in a state-approved course that requires demonstration of the mastery of the essential knowledge and skills in a public performance, may participate in the performance subject to the following requirements and limitations.

(A) Only the criterion listed in paragraph (1)(D) of this subsection applies to the performance.

(B) The requirement for student participation in public is stated in the essential knowledge and skills of the course.

(C) Performances under these conditions are limited to no more than one per semester or the equivalent number for a school using an alternative class schedule.

(b) The school week is defined as beginning at 12:01 a.m. on the first instructional day of the calendar week and ending at the close of instruction on the last instructional day of the calendar week, excluding holidays.

(c) A school district may not schedule or permit a student to participate in an extracurricular activity or a public performance that would require, permit, or allow the student to be absent from a class more than ten times during the school year. A school district may adopt policies that permit distribution of the ten absences during the school year for the purpose of participation in extracurricular activities.

(d) A school district may grant individual student exceptions to the ten-absence limit stated in subsection (c) of this section for participation in post-district competition in extracurricular activities sponsored by UIL or another organization approved by the school district board of trustees. Each exception must be based on unforeseen circumstances resulting from the student earning the right to compete at the post-district level. An exception may not exceed a total of five additional absences per year. In addition, an exception may not be granted to allow a student who has not earned the right to compete at the post-district level to participate in more district-level activities than are permitted under subsection (c) of this section.

(e) Under extenuating circumstances, a student who has incurred all five absences while participating in post-district activities

as described in subsection (d) of this section may request up to an additional two absences for participation at the UIL state championship level of competition. The request must be made in advance of the competition to the UIL office of the director.

(f) A school district must maintain an accurate record of each exception it grants to the ten-absence limit described in subsection (d) of this section and the limit of five post-district absences described in subsection (e) of this section. The record of exceptions must be kept on file in the school district and be available for inspection.

(g) Limitations on practice, rehearsal, and student participation in extracurricular activities during the school week shall be as follows.

(1) For any given extracurricular activity, a student may not participate in more than one activity per school week, excluding holidays, except as provided in paragraph (2) of this subsection.

(2) In addition to the limit specified in paragraph (1) of this subsection of one extracurricular activity permitted per school week, a student may also participate in a tournament or post-district contest, as well as a contest postponed by weather or public disaster that may determine advancement to a post-district level of competition.

(3) For each extracurricular activity, a school district must limit students to a maximum of eight hours of practice and rehearsal outside the school day per school week.

(4) An extracurricular activity or a public performance may not be scheduled to occur on the day or evening immediately preceding the day on which the administration of the Texas Administration of Academic Skills (TAAS) test is scheduled.

(h) Limitations on practice and rehearsal for extracurricular activities during the school day shall be as follows.

(1) A school district must limit a student to one period of practice during the regularly scheduled school day for extracurricular activities, such as athletics, or drill team, or cheerleading.

(2) The limit specified in paragraph (1) of this subsection of one period per school day for practice in an extracurricular activity does not prohibit a student from enrolling in any state-approved class. A student who is enrolled in a state-approved class that includes essential knowledge and skills that relate to the preparation for an extracurricular activity may practice that extracurricular activity no more than one period during the school day.

(3) A student may not be permitted to miss a scheduled academic class to practice for an unrelated extracurricular activity.

(4) A school district must limit extracurricular practice during the school day to ensure that class periods for extracurricular practice do not exceed the time allotted for other class periods.

(5) A school operating on a non-traditional class schedule, such as a block schedule or accelerated block schedule, may elect to practice extracurricular activities daily, provided the extracurricular practice period is not longer than 60 minutes per day and the total minutes allowed for the extracurricular practice is not greater than the total minutes allowed for any academic class over a two-week period.

(i) The provisions of this section apply to any UIL activity. Any other organization requiring student participation that causes a

student to miss a class may request sanction from the school district board of trustees. If the organization is sanctioned by resolution of the board of trustees, student participation in the organization's activities shall be subject to all provisions of this section and statute. Any absence incurred by a student while participating with an organization that has not received sanction from the school district board of trustees shall be subject to provisions of the Texas Education Code related to student attendance.

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

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Chapter 89. Adaptations for Special Populations

The Texas Education Agency (TEA) proposes the repeal of §§89.1-89.16, 89.41-89.43, 89.51, 89.52, 89.71-89.84, 89.111-89.120, 89.201, 89.203, 89.211-89.229, 89.231-89.240, 89.242-89.246, 89.250, 89.252-89.254, 89.256, 89.258, 89.301, and 89.331, concerning adaptations for special populations. The sections concern special programs provided by local education agencies for students whose educational needs are outside the regular school program. The sections establish definitions, requirements, and procedures related to: the state plan for educating limited English proficient students; remedial and compensatory instruction; educational programs for gifted and talented students; adult basic and secondary education; general educational development; special education; educational services for released offenders; and the migrant education program.

The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. A new Chapter 89 is proposed in a separate submission.

Felipe Alanis, deputy commissioner for programs and instruction, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be compliance with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a pro-

posed change in the sections has been published in the *Texas Register*.

Subchapter A. State Plan for Educating Limited English Proficient Students

19 TAC §§89.1-89.16

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§89.1. *Policy.*

§89.2. *Required Bilingual Education and English as a Second Language Programs.*

§89.3. *Program Content and Design.*

§89.4. *Home Language Survey.*

§89.5. *Language Proficiency Assessment Committee.*

§89.6. *Testing and Classification of Students.*

§89.7. *Eligible Students with Handicaps.*

§89.8. *Participation of Nonlimited English Proficiency Students.*

§89.9. *Facilities; Classes.*

§89.10. *Parental Authority and Responsibility.*

§89.11. *Staffing and Staff Development.*

§89.12. *Bilingual Education Allotment.*

§89.13. *Required Summer School Programs.*

§89.14. *Local Plan.*

§89.15. *Monitoring of Programs and Enforcing Law and State Board of Education Rules.*

§89.16. *Evaluation.*

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

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Subchapter B. Remedial and Compensatory Instruction

19 TAC §§89.41-89.43

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

- §89.41. *Definition of Remedial and Compensatory Instruction.*
- §89.42. *Community-Based Alternative Education Programs.*
- §89.43. *Investment Capital Fund.*

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

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Subchapter C. Educational Programs for Gifted and Talented Students

19 TAC §§89.51, §89.52

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

- §89.51. *Student Participants.*
- §89.52. *Establishment and Approval of Programs.*

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

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For further information, please call: (512) 463-9701



Subchapter D. Adult Basic and Secondary Education

19 TAC §§89.71-89.84

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

- §89.71. *Provision of Adult Education.*
- §89.72. *Definitions.*
- §89.73. *Essential Program Components.*
- §89.74. *Diploma Requirements.*
- §89.75. *Qualifications and Training of Staff.*
- §89.76. *Service Requirements for Staff.*
- §89.77. *Program Delivery System.*
- §89.78. *Cooperatives To Have Written Policies.*
- §89.79. *Local Advisory Committee.*
- §89.80. *Coordinating Committee.*
- §89.81. *Allocation of Funds.*
- §89.82. *Tuition and Fees.*
- §89.83. *Allowable and Nonallowable Expenditures.*
- §89.84. *Staff Development and Special Projects.*

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

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For further information, please call: (512) 463-9701



Subchapter E. General Educational Development

19 TAC §§89.111-89.120

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

- §89.111. *Policy.*
- §89.112. *Official Testing Centers.*
- §89.113. *Eligibility for a Texas Certificate of High School Equivalency.*

- §89.114. *Identification.*
- §89.115. *Retesting.*
- §89.116. *Testing the Handicapped.*
- §89.117. *Reporting Test Scores.*
- §89.118. *Issuance of the Certificate.*
- §89.119. *State Administrator.*
- §89.120. *Equivalency Examination Pilot Program.*

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

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Subchapter G. Special Education

General Provisions

19 TAC §§89.201, §89.203

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§89.201. *Scope and Applicability.*

§89.203. *Compliance Monitoring.*

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

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Clarification of Provisions in Federal Regulations and State Law

19 TAC §§89.211-89.229, 89.231-89.240, 89.242-89.246

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§89.211. *Eligibility Criteria.*

§89.212. *Intermediate Educational Units.*

§89.213. *Qualifications of Special Education Personnel.*

§89.214. *Special Education Professional Support Personnel.*

§89.215. *Related Services Personnel.*

§89.216. *Special Education Paraprofessional Personnel.*

§89.217. *Related Services.*

§89.218. *Participation of Students with Disabilities in Regular Education Programs.*

§89.219. *Special Education.*

§89.220. *Age Ranges for Student Eligibility.*

§89.221. *The Admission, Review, and Dismissal (ARD) Committee.*

§89.222. *Parent Participation in Admission, Review, and Dismissal (ARD) Committee Meetings.*

§89.223. *Content of the Individual Educational Plan (IEP).*

§89.224. *Local District Procedures Required.*

§89.225. *Assistive Technology Devices and Services.*

§89.226. *Comprehensive System of Personnel Development.*

§89.227. *Contracting for Educational Placements for Students with Disabilities.*

§89.228. *Provision of Services for Students Placed by Their Parents in Private Schools.*

§89.229. *Notice Requirements and Complaint Procedures.*

§89.231. *Child Identification.*

§89.232. *Referral for Comprehensive Assessment.*

§89.233. *Comprehensive Individual Assessment.*

§89.234. *Learning Disabilities: Criteria for Determining the Existence of a Severe Discrepancy.*

§89.235. *General Program Requirements.*

§89.236. *Special Education Cooperatives.*

§89.237. *Regional Day School Program for the Deaf.*

§89.238. *Regional Education Service Center Special Education Programs.*

§89.239. *Other Special Program Provisions.*

§89.240. *Texas School for the Blind and Visually Impaired and Texas School for the Deaf.*

§89.242. *Instructional Arrangements and Settings.*

§89.243. *Memorandum of Understanding Relating to School-Age Residents of Intermediate Care Facilities for the Mentally Retarded.*

§89.244. *Advisory Committees.*

§89.245. *Memorandum of Understanding on Coordination of Services to Disabled Persons.*

§89.246. *Memorandum of Understanding on Transition Planning for Students Enrolled in Special Education.*

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

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◆ ◆ ◆
Special Education Funding

19 TAC §§89.250, 89.252-89.254, 89.256, 89.258

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

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§89.250. *Distribution of State Funds.*

§89.252. *Allowable Expenditures with State Special Education Funds.*

§89.253. *School Districts Serving Out-of-District Students with Disabilities Residing in Residential Care and Treatment Facilities.*

§89.254. *Comprehensive Services for Students with Visual Impairments.*

§89.256. *Regional Education Service Centers.*

§89.258. *Early Childhood Intervention Program for Children with Developmental Delays.*

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

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◆ ◆ ◆
Subchapter H. Other Provisions

19 TAC §89.301

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

The repeal is proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeal implements the Texas Education Code, §7.102.

§89.301. *Memorandum of Understanding to Provide Educational Services to Released Offenders.*

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

Issued in Austin, Texas, on March 4, 1996.

TRD-9603024

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

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For further information, please call: (512) 463-9701

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Subchapter J. Migrant Education Program

19 TAC §89.331

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

The repeal is proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeal implements the Texas Education Code, §7.102.

§89.331. *State Parent Advisory Council for Migrant Education.*

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

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Chapter

The Texas Education Agency (TEA) proposes new §§89.1-89.5, 89.21-89.33, 89.41-89.48, 89.61-89.63, and 89.71, concerning adaptations for special populations. The new sections concern special programs provided by local education agencies for students whose educational needs are outside the regular school program. The sections establish definitions, requirements, and procedures related to: gifted/talented education; adult basic and secondary education; general educational development; special education services; and the migrant education program.

The new sections are proposed as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature,

1995. The repeal of current Chapter 89 is proposed in a separate submission.

Felipe Alanis, deputy commissioner for programs and instruction, 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 or small businesses as a result of enforcing or administering the sections.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be access to a full range of education programs for students in special population groups. 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 Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

Subchapter A. Gifted/Talented Education

19 TAC §§89.1-89.5

The new sections are proposed under the Texas Education Code, §29.122, which authorizes the State Board of Education (SBOE) to establish criteria under which each school district shall adopt a process for identifying and serving gifted and talented students in the district and shall establish a program for those students in each grade level; and the Texas Education Code, §42.156(b), which authorizes SBOE to establish rules under which each school district must account for the expenditure of state funds.

The new sections implement the Texas Education Code, §29.122 and §42.156(b).

§89.1. Student Assessment.

School districts shall develop written policies on student identification that are approved by the local board of trustees and disseminated to parents. The policies must:

(1) include provisions for ongoing screening and selection of students who perform or show potential for performing at remarkably high levels of accomplishment in the areas defined in the Texas Education Code, §29.121;

(2) include assessment measures collected from multiple sources according to each area defined in the Texas State Plan for the Education of Gifted/Talented Students;

(3) the policies must include data and procedures designed to ensure that students from all populations in the district have access to services designed to identify gifted students;

(4) provide for final selection of students to be made by a committee of at least three local district educators who have received training in the nature and needs of gifted students; and

(5) include provisions regarding furloughs, reassessment, exiting of students from program services, transfer students, and appeals of district decisions regarding program placement.

§89.2. Professional Development.

School districts shall ensure that:

(1) teachers who provide instruction and services that are a part of the program for gifted students have a minimum of 30 hours of staff development that includes nature and needs of gifted/talented students, assessing student needs, and curriculum and instruction for gifted students;

(2) teachers who provide instruction and services that are a part of the program for gifted students receive a minimum of six hours annually of professional development in gifted education; and

(3) administrators and counselors who have authority for program decisions have a minimum of six hours of professional development that includes nature and needs of gifted/talented students and program options.

§89.3. Student Services.

School districts shall provide an array of learning opportunities for gifted/talented students in kindergarten through Grade 12 and shall inform parents of the opportunities. Options must include:

(1) instructional and organizational patterns that enable identified students to work together as a group, to work with other students, and to work independently;

(2) a continuum of learning experiences that leads to the development of advanced-level products and performances;

(3) in-school and, when possible, out-of-school options relevant to the student's area of strength that are available during the entire school year; and

(4) opportunities to accelerate in areas of strength.

§89.4. Fiscal Responsibility.

School districts shall ensure that:

(1) no more than 15% of state funds allocated for gifted/talented education are spent on indirect costs; and

(2) not more than 25% of state funds allocated for gifted/talented education are spent on teachers' salaries unless the teacher's sole or primary assignment is providing services that are part of the gifted/talented program.

§89.5. Program Accountability.

School districts shall ensure that student assessment and services for gifted/talented students comply with accountability standards defined in the Texas State Plan for the Education of the Gifted/Talented.

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

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Subchapter B. Adult Basic and Secondary Education

19 TAC §§89.21-89.33

The new sections are proposed under the Texas Education Code, §7.102(b)(17), which directs the State Board of Education (SBOE) to adopt rules for approving adult education programs as required under the Texas Education Code, §29.253, and authorizes SBOE to establish an adult education advisory committee under the Texas Education Code, §29.254; and the Texas Education Code, §29.253, which provides that adult education programs shall be provided by public school districts, public junior colleges, public universities, public nonprofit agencies, and community-based organizations approved in accordance with state statutes and rules adopted by SBOE.

The new sections implement the Texas Education Code, §7.102(b)(17) and §29.253.

§89.21. Definitions.

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

Adult education - Basic and secondary instruction and services for adults.

(A) Adult basic education - Instruction in reading, writing, English and solving quantitative problems, including functional context, designed for adults who: have minimal competence in reading, writing, and solving quantitative problems; are not sufficiently competent to speak, read, or write the English language; or are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.

(B) Adult secondary education - Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.

Contact time -

(A) The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, and/or assessment services by a staff member supported by federal and state adult education funds as documented by local attendance and reporting records.

(B) Student contact time generated by volunteers may be accrued by the adult education program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §89.25 of this title (relating to Qualifications and Training of Staff).

Student contact hour - 60 minutes.

Cooperative/consortium adult education program - A community or area partnership of educational, work force development, human service entities, and other agencies that agree to collaborate for the provision of adult education and literacy services.

Fiscal agent - The local entity that serves as the contracting agent for an adult education program.

Eligible grant recipient - Eligible grant recipients for adult education programs are those entities specified in statutes. Eligible grant recipients must have at least one year of experience in providing adult education and literacy services.

§89.22. Use of Funds.

Adult education and literacy funds are to be used for programs of adult education and literacy for out-of-school persons who are beyond compulsory school attendance age and who function at less than a secondary school completion level.

§89.23. Essential Program Components.

The following essential program components shall be provided:

- (1) adult basic education;
- (2) programs for adults of limited English proficiency;
- (3) adult secondary education, including programs leading to the achievement of a high school equivalency certificate and/or a high school diploma;
- (4) instructional services to improve student proficiencies in accessing further education, employment-related training, or employment; and
- (5) assessment and guidance services related to paragraphs (1)-(4) of this section.

§89.24. Diploma Requirements.

The standards for the awarding of diplomas to adults shall be those established under Chapter 75 of this title with the following exceptions.

- (1) There shall be no limit to the number of secondary credits adults may earn by demonstration of competence.
- (2) Adults may earn the required physical education credits by one or more of the following:
 - (A) satisfactory completion of approved secondary physical education courses; or
 - (B) substitution of state-approved secondary elective courses.
- (3) Adults must meet the requirements for successful performance on a secondary level test designated by the commissioner of education.

§89.25. Qualifications and Training of Staff.

The requirements of this section shall apply to all adult education staff hired after November 12, 1986, excluding clerical and janitorial staff.

- (1) All staff shall receive at least 12 clock hours of professional development annually.
- (2) All staff new to adult education shall receive six clock hours of preservice professional development before they begin work in an adult education program.
- (3) Aides shall have at least a high school diploma or high school equivalency certificate.
- (4) The following apply to directors, teachers, counselors, and supervisors.

(A) Persons must possess at least a bachelor's degree.

(B) Persons without valid Texas teacher certification must attend 12 clock hours of inservice professional development annually in addition to that specified in paragraph (1) of this section until they have completed either six clock hours of adult education college credit or attained two years of adult education experience.

(5) The requirements for inservice professional development may be reduced or waived in individual cases where exceptional circumstances prevent employees from completing the required hours of inservice professional development. Documentation shall be kept justifying such circumstances.

(6) Records of staff qualifications and professional development shall be maintained by each fiscal agent and must be available for monitoring.

§89.26. Service Requirements for Staff.

Teachers and aides shall be assigned to instruction, counseling, and/or assessment for a minimum of 75% of the hours for which they are employed.

§89.27. Program Delivery System.

(a) There shall be a statewide system of adult education cooperatives/consortia for the coordinated provision of adult education services. To the extent possible, service delivery areas shall be large enough to support a program meeting the requirements of §89.23 of this title (relating to Essential Program Components) and to ensure efficient and effective delivery of services.

(b) Eligible grant recipients may apply directly to the Texas Education Agency (TEA) for adult education and literacy funding. Eligible grant recipients are encouraged to maximize the fiscal resources available for service to undereducated adults and avoid unproductive duplication of services and excessive administrative costs by forming consortia or cooperatives and using fiscal agents for the delivery of services.

(c) Grant applicants who will serve as a fiscal agent for a cooperative/consortium must consult with other adult education and literacy providers in the cooperative/consortium in developing applications for funding to be submitted to TEA.

(d) Each fiscal agent shall be responsible for:

(1) the overall management of the cooperative/consortium, including technical assistance to consortium members, on-site visits, staff professional development, and program implementation in accordance with the requirements of this subchapter;

(2) the employment of an administrator for the cooperative/consortium;

(3) development of written agreements with consortium members for the operation of the adult education program; and

(4) expenditures of funds for the conduct of the project and making and filing composite reports for the consortium.

(e) Nonconsortium applicants must also provide evidence of coordination of existing adult education and literacy services in the area proposed to be served and maintain an advisory committee.

§89.28. Advisory Committee.

At least one collaborative advisory committee shall be formed in each funded adult education program. That committee shall be composed of a broad spectrum of community representatives to review the

activities of, and make recommendations to, the fiscal agent in planning, developing, and evaluating the adult education program. The fiscal agent shall be responsible for convening the collaborative advisory committee at least twice each year.

§89.29. Allocation of Funds.

(a) Annually, after federal adult education and literacy funds have been set aside for state administration, special projects and staff development, state and federal adult education fund allocations shall be developed for each county and each school district geographic area. Allocations shall be computed as follows.

(1) Twenty-five percent of the funds available shall be allocated based on the best available estimates of the number of eligible adults in each county and school district geographic area within each county.

(2) Seventy-five percent of the funds available shall be allocated based on student contact hours reported by each school district geographic area and for the most recent complete fiscal year reporting period.

(3) A school district geographic area's student contact hour annual allocation shall not be reduced by more than 10% below the preceding fiscal year's contact hour allocation provided that:

(A) sufficient funds are available; and

(B) the school district geographic area's contact hour performance used in calculating the allocation was not less than that of the preceding fiscal year.

(4) If public funds, other than state and federal adult education funds, are used in the adult education instructional program, the program may claim only the proportionate share of the student contact time based on the adult education program's expenditures for the instructional program.

(b) Supplemental allocations may be made at the discretion of the commissioner of education from funds becoming available for local allocations during the program year.

§89.30. Tuition and Fees.

(a) No student tuition or fees shall be charged for adult basic education as a condition for membership and participation in a class.

(b) Tuition and fees for adult secondary education may be charged and be established by local board policy. Funds generated by such tuition and fees shall be used for the adult education instructional program.

(c) Funds, not exceeding 50% of student tuition, may be used to pay tuition charged to students enrolled in correspondence courses or high school credit courses.

§89.31. Allowable and Nonallowable Expenditures.

Supervisory and administrative costs shall not exceed 25% of the total budget. These costs may include supervisory payroll costs, rental of administrative space, indirect costs, and clerical costs.

§89.32. Staff Development and Special Projects.

Priorities for expenditures of federal funds as required by the Adult Education Act, §353, shall be presented annually to the State Board of Education (SBOE).

§89.33. Evaluation of Programs.

The Texas Education Agency (TEA) shall evaluate adult education programs based on the indicators of program quality for adult

education through the TEA results-based monitoring system and compliance requirements.

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

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Subchapter C. General Educational Development

19 TAC §§89.41-89.48

The new sections are proposed under the Texas Education Code, §7.111, which directs the State Board of Education (SBOE) to provide for the administration of high school equivalency examinations.

The new sections implement the Texas Education Code, §7.111.

§89.41. Policy.

The Texas Education Agency (TEA) shall be the only agency in Texas authorized to issue a certificate of high school equivalency on the basis of the General Educational Development (GED) Tests. Tests shall be administered by authorized contracted testing centers under applicable state law and rules of the American Council on Education and the State Board of Education (SBOE).

§89.42. Official Testing Centers.

(a) When authorized by the Texas Education Agency (TEA), official testing centers shall be established by annual contract with an accredited school district, institution of higher learning, or education service center (ESC). The testing center must be located at a high school in an accredited district, an adult learning center, an accredited institution of higher learning, or ESC. The chief administrative officer of a school, institution of higher learning, or ESC desiring to provide the General Educational Development (GED) testing service to residents in the community must request authorization to do so from TEA. If the need for a testing center in the location exists, the appropriate agency official, in writing, shall inform the American Council on Education that the establishment of an official testing center is authorized at that particular institution. The center shall be sent four copies of an annual contract, together with order forms and other material, relating to the operation of the testing center. The contract forms must be signed by the chief administrative officer of the school, institution of higher learning, or ESC.

(b) The chief administrative officer of the school, institution of higher learning, or ESC at which an official testing center is established must agree to maintain test records permanently, to provide appropriate storage for restricted test materials, and to provide a suitable place for administering the test. Each center is responsible for selecting and ordering test materials.

(c) The administrative officer of a school district or ESC must designate a certified counselor, and the administrative officer of an institution of higher learning must designate a professional

person with a background in testing and counseling, to serve as chief examiner. The person designated as chief examiner shall not be involved in preparing persons for the examinations. The chief administrative officer must obtain prior authorization from TEA to change the chief examiner or the location of a testing center. The person designated as chief examiner must attend annual training conducted by TEA.

(d) A testing center may transport restricted test material to correctional facilities, health facilities, or schools if authorization to do so has been obtained. The chief administrative officer of an institution housing an official testing center and the administrator of the correctional facility, health facility, or school must request authorization to provide the testing services from TEA. Only the exact number of tests needed at a test session may be transported. Testing services at correctional or health facilities shall be limited to inmates or patients of the facility, and the tests must be administered by an employee of the school district, institution of higher learning, or ESC housing the test center.

(e) The authorization to function as an official testing center may be withdrawn by TEA when a center has failed to maintain the integrity of the testing program. The TEA may suspend testing at a center if restricted test material is reported missing or if conditions reported by the TEA monitoring visit indicate that the testing center is in violation of State Board of Education (SBOE) rules or requirements of the American Council on Education.

(f) An official testing center may charge a fee for test administration. The amount of the fee shall be determined by the administration or board of the school district, institution of higher learning, or ESC.

(g) The administration or board of an institution housing an official testing center shall have a written policy concerning the operation of the center. This policy must provide that the chief administrative officer or chief examiner of the testing center shall prepare an annual report concerning the center for review by the administration or board of each institution. The report must include the number of tests administered and fees received.

§89.43. Eligibility for a Texas Certificate of High School Equivalency.

(a) An applicant for a certificate of high school equivalency shall meet the following requirements.

(1) Residence. The applicant must be a resident of Texas or a member of the United States armed forces stationed at a Texas installation.

(2) Age. The applicant must be 18 years old. An applicant who is 17 years of age is eligible with parental or guardian consent. An applicant who is 17 years of age must present written permission signed by the applicant's parent or guardian. An applicant who is 17 years of age and married, who has entered military service, who has been declared an adult by the court, or who has otherwise legally severed the child/parent relationship is not required to present parent or guardian permission to be tested. Any applicant who is at least 16 years of age may test if recommended by a public agency having supervision or custody under a court order. Recommendations must include the applicant's name and date of birth and must be signed by an official of the public agency having supervision or custody of the person under a court order.

(3) Educational status. The applicant must not be enrolled in school and must not have received a high school diploma from an accredited high school in the United States. A student who is 17 years of age is eligible to test if the student has participated in an in-school program approved by the Texas Education Agency (TEA) to prepare for the General Educational Development (GED) Test.

(4) Minimum test scores. The applicant must achieve a standard score of 40 or above on each of the five parts of the test or achieve an average standard score of 45 on all five parts of the test. An applicant who achieved scores of 35 on each of the five tests prior to January 1, 1959, may be issued a certificate.

(b) Test centers shall verify that any person being tested meets the eligibility requirements in this section.

§89.44. Identification.

Test centers shall require each examinee to present a driver's license or Texas Department of Public Safety (DPS) identification card, or a notarized statement bearing the examinee's name, date of birth, recent photograph, and signature.

§89.45. Retesting.

After completing all five tests, an examinee who fails to achieve a minimum passing score on one or more of the tests may retest on the tests he or she failed. A person desiring to retest must wait six months to do so unless he or she presents a letter from an adult preparation program or a certified teacher verifying that the individual is prepared to retest. Each retest must be on a different form of the test.

§89.46. Examinees with Disabilities.

(a) A physically disabled person who is unable to mark an answer sheet may be assisted by the chief examiner or proctor. The examinee must read the questions without assistance and indicate the answer for the proctor to mark.

(b) A severely handicapped or ill person who cannot travel to the test center may be administered the tests at home. Prior approval to transport the tests shall be requested of the Texas Education Agency (TEA) by the chief examiner.

(c) An applicant who is unable to take the printed form of the test may be administered a taped version of the test upon written authorization of TEA. A request by the chief examiner must be accompanied by certification by a physician that verifies a medical diagnosis of the disability that renders the potential examinee unable to take the printed form of the test.

(d) An applicant who is visually handicapped may take the test in a braille, large print, or taped version. Versions of the test in these forms are available from TEA.

§89.47. Issuance of the Certificate.

(a) Test scores shall be accepted as official only when reported directly by official testing centers, the Defense Activity for Nontraditional Education Support, directors of Veterans Administration hospitals, and, in special cases, by the General Educational Development (GED) Testing Service.

(b) Following review for eligibility and approval, certificates will be issued directly to clients. A nonrefundable fee of \$10 will be assessed for issuance of a certificate. Fees for issuance of certificates shall be waived for residents and inmates of city, county, state, and federal health and correctional facilities. A permanent file shall be maintained for all certificates issued.

(c) The certificate of high school equivalency shall indicate the version of the test taken by the applicant: audiotape, large print, braille, English, French, or Spanish.

(d) The state GED administrator may disapprove issuance of a certificate or may cancel a certificate under the following conditions:

(1) an applicant does not meet eligibility requirements under §89.43 of this title (relating to Eligibility for a Texas Certificate of High School Equivalency);

(2) the applicant in any way violates security of the restricted test material;

(3) the applicant presents fraudulent identification or is not who he or she purports to be;

(4) the applicant uses another person's certificate or test scores in an attempt to defraud; or

(5) the applicant willingly allows another person to use his or her certificate or test scores in an attempt to defraud.

(e) In the case of nonissuance or cancellation of a certificate, the applicant shall be notified in writing by the GED administrator that the certificate will not be issued or may be canceled.

(f) An applicant who has been notified that his or her certificate will not be issued or may be canceled may appeal to the state GED administrator within 30 days of receiving written notification.

(g) If, after further review, the state GED administrator does not approve issuance of the certificate or cancels a certificate, this decision may be appealed to the commissioner of education under Chapter 157 of this title (relating to Hearings and Appeals).

§89.48. State Administrator.

The commissioner of education shall designate the state administrator of General Educational Development (GED) testing and the certificate of high school equivalency program.

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

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Subchapter D. Special Education Services

19 TAC §§89.61-89.63

The new sections are proposed under the Texas Education Code, §30.003(d) and (g), which authorizes the State Board of Education (SBOE) to adopt rules as necessary to implement the provisions of the Texas Education Code, §30.003, concerning support of students enrolled in the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf; the Texas Education Code, §30.004(b), which directs SBOE to adopt rules prescribing the form and content of information

required by the Texas Education Code, §30.004(a); the Texas Education Code, §30.057(a)(2)(B), which provides that the Texas School for the Deaf shall provide services in accordance with the Texas Education Code, §30.051, to any eligible student with a disability for whom the school is an appropriate placement if the student has been referred for admission by the student's parent or legal guardian according to rules adopted by SBOE with the advice of the school's governing board; and the Texas Education Code, §42.151(e) and (g), which directs SBOE to prescribe by rule the qualifications an instructional arrangement must meet in order to be funded as a particular instructional arrangement under the Texas Education Code, §42.151, and to adopt rules and procedures governing contracts for residential placement of special education students.

The new sections implement the Texas Education Code, §§30.003(d) and (g), 30.004(b), 30.057(a)(2)(B), and 42.151(e) and (g).

§89.61. Contracting for Residential Educational Placements for Students with Disabilities.

(a) School districts may contract for residential placement only with facilities which are approved by the commissioner of education.

(1) Facilities for students contracted on a residential basis include public and private facilities which have licensure by the Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services, Texas Department of Health, Texas Department of Protective and Regulatory Services, and Texas Council on Alcohol and Drug Abuse.

(2) School districts which intend to contract with facilities under this section shall notify the Texas Education Agency, through an application process, of their intent to contract for residential placements.

(3) With the approval of the Texas Education Agency, the district may contract with the facility for the services listed in the contracted student's individual educational plan (IEP).

(4) The commissioner of education shall renew approvals and issue new approvals only for those facilities which have contract students already placed or which have a request for residential placement from a school district. This approval does not apply to facilities that only provide related services or facilities in which the local school district where the facility is located operates the educational program.

(b) If a residential facility which is not approved by the commissioner of education gets a request for placement from a local school district, the Texas Education Agency shall begin approval procedures and make an on-site visit to the facility within 30 calendar days after the Texas Education Agency has been notified by the local school district or shared service arrangement unit of the request for placement. Approval of residential facilities may be for one, two, or three years.

(c) The school district shall have the following responsibilities when making a residential placement.

(1) Before a district places a student with a disability in, or refers a student to, a facility, the district shall initiate and conduct a meeting to develop an IEP for the student in accordance with 34 CFR, §§300.342-300.349, state statute, and commissioner of education rule.

(2) For each student, those services which the district is unable to provide and which the facility is able to provide shall be listed in the student's IEP.

(3) The school district shall make an annual on-site visit to verify that the facility can and will offer the services listed in the individual student's IEP and to ensure that the facility offers an appropriate educational program for the student.

(4) The placement of more than one student may be considered in the same on-site visit; however, the IEP of each student must be reviewed and a determination of appropriateness of placement and service must be made for each student.

(5) The appropriateness of the facility for each student being contracted shall be documented in the IEP. General approval of a residential facility by the Texas Education Agency or general screening by a regional education service center is not sufficient to meet the requirements of this subsection.

(6) For each student, the admission, review, and dismissal (ARD) committee shall establish in writing criteria and estimated time lines for returning the student to the school district.

(7) For all contract students, in the annual ARD review, the school district shall verify:

(A) that the facility continues to meet minimum standards for health and safety;

(B) that continued contracting is needed and that the need is documented in the IEP; and

(C) that the facility continues to offer an appropriate program for the student.

(d) Residential contracts shall be negotiated on an individual student basis.

(1) Requests for approval of state and federal funding for residentially placed students shall be on an individual student basis through an application form submitted to the Texas Education Agency.

(A) A residential application must be for educational purposes only.

(B) A residential application shall not be approved if the application indicates:

(i) the placement is primarily due to the student's medical problems;

(ii) the placement is primarily due to problems in the student's home;

(iii) the district does not have a plan with time lines and criteria for returning the student to the local school program;

(iv) the district did not attempt to implement less restrictive placements prior to residential placement (except in emergency situations as documented by the student's ARD committee);

(v) the placement is not cost effective when compared with other alternatives; and/or

(vi) the placement provides the delivery of unapproved services.

(2) The residential placement, if approved by the Texas Education Agency, shall be funded as follows.

(A) The education cost of residential contracts shall be funded with state funds on the same basis as nonpublic day school contract costs according to the Texas Education Code, §42.151.

(B) Related services and residential costs for residential contract students shall be funded from a combination of funding sources. After expending other available funds, the district must use its local tax share per average daily attendance and 25% of its Individuals with Disabilities Education Act, Part B, (IDEA-B) formula funds (or the equivalent of appropriate other state or local funds) for payment of related services and residential costs. If this amount is not sufficient, the district may apply for the necessary amount of IDEA-B discretionary funds to pay for the balance of its residential contract placements.

(C) Funds generated by the formula for residential costs described in subparagraph (B) of this paragraph may not exceed the daily rate recommended by the Texas Health and Human Services Commission for the types of services for which the student is placed.

(e) School districts which contract for out-of-state residential placement shall do so in accordance with the rules for in-state residential placement in this section, except that the facility must be approved by the appropriate agency in the state in which the facility is located, rather than by the commissioner of education in Texas.

(f) When a student who is on a residential contract in one school district of residence moves to another Texas school district, and the student is to continue in the contract placement, the school district which negotiated the contract shall be responsible for the residential contract for the remainder of the school year.

§89.62. *Support of Students Enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf.*

(a) For each student enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf, the school district responsible for providing appropriate special education and related services to the student shall share the cost of the student's education (excluding the summer programs) as provided under the Texas Education Code, §30.003.

(1) The information required in accordance with the Texas Education Code, §30.003(d), must be submitted in a form prescribed by the commissioner of education within 30 calendar days after the student enrolls in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf.

(2) School districts required to remit their shares to the Texas Education Agency in accordance with the Texas Education Code, §30.003(d), shall do so within 60 days of notification by the commissioner of education.

(b) School districts shall provide, annually, in writing to each parent or legal guardian of an eligible student with visual or auditory impairments, the information specified in the Texas Education Code, §30.004(a)(1-3), before considering the student's placement for special education services.

§89.63. *Instructional Arrangements and Settings.*

(a) Each local school district shall be able to provide services with special education personnel on the following bases to students with disabilities in order to meet the special needs of those students

in accordance with 34 CFR, §300.551: itinerant, helping teacher, resource, partially self-contained, and self-contained.

(b) For the purpose of determining the student's instructional arrangement/setting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee for a student whose individual educational plan (IEP) specifies a shortened day.

(c) Instructional arrangements/settings shall be based on the individual needs and IEPs of eligible students receiving special education services and shall include the following.

(1) Mainstream. This instructional arrangement/setting is for providing special education instruction and related services according to IEPs to students whose instruction and related services are provided in regular education with special education support. This support is for teachers and students; examples include direct instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications/accommodations, special materials/equipment, consultation, staff development, monitoring a student's progress in regular education classes, reduction of ratio of students to instructional staff, or other direct or indirect services needed to implement the IEPs of students receiving special education services in this instructional arrangement. This support shall be designed to enrich education in order to enable success of all students.

(2) Homebound. This instructional arrangement/setting is for providing special education instruction to students who are served at home or hospital bedside. This arrangement/setting also applies to students who receive services from a school district that provides education solely to students confined to or educated in hospitals.

(3) Hospital class. This instructional arrangement/setting is for providing special education instruction in a classroom in a hospital facility or a residential care and treatment facility not operated by the school district. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class.

(4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services. Students who are provided speech therapy services only are not eligible to be counted for any other instructional arrangement.

(5) Resource room/services. This instructional arrangement/setting is for providing special education instruction and related services in a setting other than regular education for less than 50% of the regular school day.

(6) Self-contained, mild and moderate, regular campus. This instructional arrangement/setting is for providing special education instruction and related services to students with mild or moderate disabilities who are in a self-contained program for 50% or more of the regular school day on a regular school campus.

(7) Self-contained, severe, regular campus. This instructional arrangement/setting is for providing special education instruction and related services to students with severe disabilities who are in a self-contained program for most of the regular school day on a regular school campus. Students may be capable of attending no more than two regular education classes (such as music, physical education, or art).

(8) Off home campus. This instructional arrangement/setting is for providing special education instruction and related services to students from more than one school district served in a single location when special education instruction and related services are not otherwise available in the respective sending district, to students whose instruction is provided in a facility not operated by a school district, and to students in a self-contained program at a separate campus operated by the school district that provides only special education instruction. This instructional arrangement/setting also applies to students at South Texas Independent School District and Windham Independent School District.

(9) Nonpublic day school. This instructional arrangement/setting is for providing special education instruction to students through a contractual agreement with a nonpublic school for special education.

(10) Vocational adjustment class/program. This instructional arrangement/setting is for providing special education, academic, or job-related instruction to students who are placed on a job with regularly scheduled supervision by special education teachers.

(11) Residential care and treatment facility (not school district resident). This instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the school district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a school district campus. If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.

(12) State school for persons with mental retardation. This instructional arrangement/setting is for providing special education instruction to students who reside at a state school. The services are provided at a state school or on a school district campus.

(d) The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the individual family service plan (IFSP), current attendance guidelines, and the agreement memorandum between the Texas Education Agency and the Texas Interagency Council on Early Childhood Intervention.

(e) For nonpublic day school placements, the school district or shared service arrangement unit shall submit information to the Texas Education Agency indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement unit is contracting. The school district or shared service arrangement unit shall not count contract students' average daily attendance as eligible. The Texas Education Agency shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law.

(f) Other program options which may be considered for the delivery of special education services to eligible students may include the following:

- (1) contracts with other school districts; and

(2) other program options as approved by the Texas Education Agency.

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

Issued in Austin, Texas, on March 4, 1996.

TRD-9603029

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-9701

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Subchapter E. Migrant Education Program

19 TAC §89.71

The new section is proposed under the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Public Law 103-382, Part c, §1304(c)(3), which requires assurances that, in the planning and operation of programs and projects at both the state and local operating agency level, there is appropriate consultation with parent advisory councils.

The new section implements the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Public Law 103-382, Part c, §1304(c)(3).

§89.71. *State Parent Advisory Council for Migrant Education.*

(a) A parent advisory council for migrant education shall be responsible for advising the Texas Education Agency (TEA) in planning, implementing, and evaluating the state program designed to meet the educational needs of migrant children.

(b) The State Parent Advisory Council for Migrant Education shall consist of 15 members. The majority of members shall be parents of identified migrant students served in a migrant project. All council members shall be knowledgeable of the needs of migratory children. Because of the high concentration of migrant education programs in a few areas of the state, the council may have more than one representative from the same State Board of Education (SBOE) district.

(c) Council members shall be appointed by the commissioner of education for a term of four years. Members shall be eligible for reappointment once.

(d) The commissioner of education shall solicit recommendations from local district-wide advisory councils for members to be nominated to the State Parent Advisory Council for Migrant Education.

(e) The council shall meet at least three times annually. In scheduling meetings, the chair shall consider the mobility patterns of migrants.

(f) A council member who does not attend two of the three regularly scheduled meetings in one calendar year shall automatically vacate membership on the council.

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

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Criss Cloudt

Associate Commissioner, Policy Planning and Research
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For further information, please call: (512) 463-9701



Chapter 105. Foundation School Program

Subchapter B. Maximum Indirect Cost Allowable on Certain Foundation School Program Allotments 19 TAC §105.11

The Texas Education Agency (TEA) proposes new §105.11, concerning special Foundation School Program allotments. The new section provides a limit on the maximum amount of indirect cost that can be claimed against these allotments. The section is necessary to consolidate and replace portions of Chapter 78 (repealed effective February 7, 1996) and Chapter 89 (proposed for repeal in a separate submission) as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995.

Joe Wisnoski, coordinator for school finance and fiscal analysis, 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 or small businesses as a result of enforcing or administering the section.

Mr. Wisnoski and Criss Cloudt, associate commissioner for policy planning and research, have 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 assurance that at least 85% of the Foundation School Program special allotments will be expended for direct instructional and instructional-related purposes. 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 Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §§42.151(h), 42.152(c), 42.153(b), 42.154(c), and 42.156(b), which authorizes the State Board of Education to establish indirect Foundation School Program allotments for certain programs, including compensatory education, gifted and talented education, bilingual education and special language programs, career and technology education, and special education.

The new section implements the Texas Education Code, §§42.151(h), 42.152(c), 42.153(b), 42.154(c), and 42.156(b).

§105.11. Maximum Allowable Indirect Cost.

No more than 15 % of each school district's Foundation School Program special allotments under the Texas Education Code, Chapter 42, Subchapter C, may be expended for indirect costs related to the following programs: compensatory education, gifted and talented education, bilingual education and special language programs, career and technology education, and special education. Indirect costs may be attributed to the following expenditure function codes: 34 - Student Transportation; 41 - General Administration; 81 - Facilities Acquisition and Construction; and the Function 90 series of the general fund, as defined in the Texas Education Agency (TEA) bulletin, Financial Accountability System Resource Guide.

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

Issued in Austin, Texas, on March 4, 1996.

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Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

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For further information, please call: (512) 463-9701



Chapter 133. Pupil-School Relations

19 TAC §§133.21-133.24

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

The Texas Education Agency (TEA) proposes the repeal of §§133.21-133.24, concerning pupil-school relations. The sections establish definitions, requirements, and procedures related to: discipline management programs, suspension, expulsion, removal to alternative education programs, and discipline of students with handicaps. The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995.

Ruben Olivarez, associate commissioner for accountability and school accreditation, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Olivarez and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be compliance with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Adminis-

trative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeal implements the Texas Education Code, §7.102.

§133.21. *Discipline Management Programs.*

§133.22. *Suspension of Students: Removal to Alternative Education Programs.*

§133.23. *Expulsion.*

§133.24. *Discipline of Students with Handicaps.*

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

Issued in Austin, Texas, on March 4, 1996.

TRD-9603032

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-9701

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 119. Health Maintenance Organizations

Editor's Note: These proposed rules and the preamble were published in error in the March 8, 1996 issue of the Texas Register. Subchapters B and C were not included in the March 8, 1996 publication. This issue includes all proposed Subchapters and corrected preamble. Any comments on these rules should be based solely on these rules in this issue; not on the rules as published in the March 8th issue. The 30-day comment period begins March 12, 1996.

The Texas Department of Health (department) proposes the repeal of §§119.1-119.15 and proposes new §§119.1-119.4, 119.21-119.27, 119.51-119.56, 119.71 and 119.91 concerning health maintenance organizations (HMOs). Specifically, the new sections cover definitions; applications, assessments and fees; examinations; reporting complaints; organization of a health maintenance organization and service area; quality improvement; quality improvement program; quality improvement committee; utilization review; utilization review protocol; utilization review committee; ambulatory health care services; emergency care; inpatient hospital and medical service; diagnostic and therapeutic services; optional services; single health care service; enforcement; and Texas metropolitan areas. The department and the Texas Department of Insurance work together in regulating HMOs under authority of the Health Maintenance Organization Act, Insurance Code, Chapter 20A (HMO Act).

The repeal of §§119.1-119.15 will allow for the proposal of the new sections. The rules as proposed are consistent with rules adopted by the Texas Department of Insurance effective Jan-

uary 1, 1996, and reflect current accepted standards of practice by HMOs and industry trends. The new sections clarify the department's examination procedures of HMOs both prior to and subsequent to the Texas Department of Insurance issuance of a certificate of authority; clarify the authority of the department to examine the quality of health care services offered by an HMO; explain the types of examinations that are conducted by the department, including review of data which is to be submitted to the department and the protocol by which the examinations are conducted; add new language to guide consumers, physicians, dentists and other providers and HMOs in filing complaints against HMOs and against the department; establish criteria for creating a service area using as parameters metropolitan statistical areas, primary metropolitan statistical areas and consolidated metropolitan statistical areas as established by the U. S. Office of Management and Budget in Statistical Definitions for Texas Metropolitan Areas; place emphasis on local involvement and control in quality improvement and utilization review decisions within each service area; clarify that throughout the sections providers include dentists, physical therapists, and others; contain a requirement for quality improvement and utilization review functions to be accomplished by committees composed of local physicians, dentists and other providers, a majority of whom practice within the respective service area; expand provisions requiring availability, accessibility, and continuity of health care services, including expanded emergency care provisions; expand provisions requiring each HMO to have a quality improvement plan; clarify provisions regarding the department's role in enforcement actions against HMOs; and contain an application fee increase for new HMOs.

The new language will address concerns related to the quality of health care services furnished by HMOs to its enrollees and will more fully implement the regulatory authority over HMOs assigned to the department in the HMO act. Bernie Underwood, Chief of Staff Services, Health Care Quality and Standards, has determined that for the first five-year period the sections are in effect, there will be additional fiscal implications as a result of enforcing or administering the sections. The effect on state government as a result of the application fee increase will be an increase in revenue of \$32,250 annually if the department receives the same number of initial applications (15) it received during 1995. The increase will be offset by administrative costs to the department due to increases in staff and travel costs. There will be no effect on local government.

Ms. Underwood also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be increased protection for HMO enrollees by expanded provisions related to the quality of health care services to be furnished by HMOs to its enrollees, and by expanded provisions requiring HMOs to submit quality improvement data, related to analysis of health care processes and outcomes. The new provisions require that quality improvement function in order to identify areas where improvements in the quality, availability and accessibility of health care services are possible and for the purpose of assuring high quality patient care and protection from harm for HMO enrollees. The application fee for new HMOs will increase from \$850 to \$3,000, due to increases in staff and travel costs. The benefit to the department is the increase will allow the department to add staff and resources to assume the additional

workload due to the growth of the industry and the expanded provisions related to data collection and analysis. There will be costs associated with the submittal of quality improvement data to small businesses and persons who are required to comply with the sections as proposed. However, since the department is unable to determine the extent to which HMOs currently collect the data required by these sections as proposed, the department is unable to estimate the cost at this time.

Comments on the proposal may be submitted to Julia R. Beechinor, Director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, 512/834-6646. Comments will be accepted for a period of 30 days after publication of the proposal in the Texas Register. In addition, a public hearing will be held at 9:00 a.m., Monday, March 25, 1996 in the Lecture Hall, Room K-100, Main Building, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Subchapter B. Organization and Functions of a Health Maintenance Organization
25 TAC §§119.1-119.15

(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 Maintenance Organization Act, Insurance Code, Chapter 20A, which provides the Texas Board of Health with authority to adopt rules to establish minimum standards regarding the quality of health care services, including availability, accessibility and continuity of services, to be furnished by an HMO to its enrollees; and under Health and Safety Code, §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 repeals affect the Health Maintenance Organization Act, Insurance Code, Article 20A, and Health and Safety Code, Chapter 12.

§119.1. *Definitions.*

§119.2. *The Certification Procedure.*

§119.3. *Organization.*

§119.4. *Geographic Service Area.*

§119.5. *Ambulatory Health Care Service.*

§119.6. *Emergency Services.*

§119.7. *Inpatient Hospital and Medical Service.*

§119.8. *Diagnostic and Therapeutic Services.*

§119.9. *Optional Services.*

§119.10. *Statistical Information.*

§119.11. *Quality Assurance.*

§119.12. *Texas Department of Health On-site Review.*

§119.13. *Compliance with Texas Department of Health Rules.*

§119.14. *Single Health Care Service.*

§119.15. *Fees and Assessments.*

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

Issued in Austin, Texas, on February 27, 1996.

TRD-9602758

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 458-7236

Subchapter A. General Provisions

25 TAC §§119.1-119.4

The new sections are proposed under the Health Maintenance Organization Act, Insurance Code, Chapter 20A, which provides the Texas Board of Health with authority to adopt rules to establish minimum standards regarding the quality of health care services, including availability, accessibility and continuity of services, to be furnished by an HMO to its enrollees; and under Health and Safety Code, §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 Maintenance Organization Act, Insurance Code, Article 20A, and Health and Safety Code, Chapter 12.

§119.1. *Definitions.*

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Basic health care services-Health care services which an enrolled population might reasonably require in order to be maintained in good health, including, as a minimum, emergency care, inpatient hospital and medical services, and outpatient medical services.

Commissioner-The commissioner of insurance.

Credentials-Certificates, diplomas, licenses or other written documentation which establishes proof of training, education, and experience in a field of expertise.

Deficiency-A statement or notice of noncompliance cited by the Texas Department of Health during an examination of a health maintenance organization.

Dentist-A person licensed to practice dentistry by the Texas State Board of Dental Examiners.

Department-Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Emergency care-Bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

- (A) placing the patient's health in serious jeopardy;
- (B) serious impairment to bodily functions; or
- (C) serious dysfunction of any bodily organ or part.

Enrollee-An individual who is enrolled in a health care plan, including covered dependents.

Evidence of coverage-Any certificate, agreement, or contract issued to an enrollee setting out the coverage to which the enrollee is entitled. **General hospital**-An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

Health care-Prevention, maintenance, rehabilitation, pharmaceutical, and chiropractic services provided by qualified persons other than medical care.

Health care plan-Any plan whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services; provided, however, a part of such plan consists of arranging for or the provision of health care services, as distinguished from indemnification against the cost of such service, on a pre-paid basis through insurance or otherwise.

Health care services-Any services, including the furnishing to any individual of pharmaceutical services, medical, chiropractic, or dental care, or hospitalization or incident to the furnishing of such services, care, or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury or a single health care service plan.

Health maintenance organization (HMO)-Any person who arranges for or provides a health care plan or single health care service plan to enrollees on a prepaid basis.

Health maintenance organization delivery network-A health care delivery system in which a health maintenance organization arranges for health care services directly or indirectly through contracts and subcontracts with providers and physicians.

Inpatient medical care-Includes, but is not limited to, medical and surgical care received in a hospital or skilled nursing home environment.

Outpatient services-Services which may be rendered in, but are not limited to, clinics, private offices, hospital based outpatient departments, home health services, ambulatory surgical centers, hospices and kidney dialysis centers.

Pathology services-A laboratory which has the capability of evaluating tissue specimens for diagnoses in histopathology, oral pathology, or cytology.

Person-Any natural or artificial person, including, but not limited to, individuals, partnerships, associations, organizations, trusts, hospital districts, limited liability companies, limited liability partnerships, or corporations.

Physician-A physician is:

(A) an individual licensed to practice medicine in this state;

(B) a professional association organized under the Texas Professional Association Act (Texas Civil Statutes, Article 1528f) or a nonprofit health corporation certified under §5.01, Medical Practice Act (Texas Civil Statutes, Article 4495b); or

(C) another person wholly owned by physicians.

Primary care physician or primary care provider - A physician or provider who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating referral for care.

Provider-A provider is:

(A) any person other than a physician, including a licensed doctor of chiropractic, registered nurse, pharmacist, optometrist, pharmacy, hospital, or other institution or organization or person that is licensed or otherwise authorized to provide a health care service in this state;

(B) a person who is wholly owned or controlled by a provider or by a group of providers who are licensed to provide the same health care service; or

(C) a person who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital organization.

Psychiatric hospital-A hospital which offers inpatient services, including treatment, facilities, and beds for use beyond 24 hours, for the primary purpose of providing psychiatric assessment and diagnostic services and psychiatric inpatient care and treatment for mental illness. Such services must be more intensive than room, board, personal services, and general medical and nursing care. Although substance abuse services may be offered, a majority of beds must be dedicated to the treatment of mental illness in adults and children.

Quality improvement-An approach to the continuous study and improvement within an organization where opportunities to improve care and service are found primarily by examining the systems and processes by which care and services are provided.

Reference laboratory-A laboratory that accepts specimens for testing from outside sources. A reference laboratory does not have an inhouse patient population to provide services to; their business depends on referrals from other laboratories or entities. Health maintenance organizations may contract with a reference laboratory to provide clinical diagnostic services to their enrollees.

Reference laboratory specimen procurement services - The operation utilized by the reference lab to pick up the lab specimens from the client offices or referring labs, etc. for delivery to the reference laboratory for testing and reporting.

Referral specialists (other than primary care)-Specialists who set themselves apart from the primary care physician or primary single service provider through specialized training and education in a health care discipline.

Service area-The geographical area within which direct service benefits are available and accessible to HMO enrollees.

Single health care service-A health care service that an enrolled population may reasonably require in order to be maintained in good health with respect to a particular health care need for the purpose of preventing, alleviating, curing, or healing human illness

or injury of a single specified nature and that is to be provided by one or more persons each of whom is licensed by the state to provide that specific health care service.

Single health care service plan-A plan under which any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of a single health care service, provided, that a part of the plan consists of arranging for or the provision of the single health care service, as distinguished from an indemnification against the cost of the service, on a prepaid basis through insurance or otherwise and that no part of that plan consists of arranging for the provision of more than one health care need of a single specified nature.

Special hospital-An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general nursing care;

(B) has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities, or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient.

Utilization review-A system for prospective or concurrent review of the medical necessity and appropriateness of health care services being provided or proposed to be provided to an individual within this state. Includes prior authorization, concurrent review, retrospective review, discharge planning, and case management.

§119.2. Application, Assessments and Fees.

(a) Original application.

(1) The Texas Department of Insurance (TDI) will forward all applications for a certificate of authority to the Texas Department of Health (department) for review.

(2) Upon receipt of the application from TDI, the department shall acknowledge receipt of the application and bill the applicant for the original application fee of \$3,000 which shall be due to the department within 10 days of the applicant's receipt of the billing.

(3) The department shall review the application and related documents upon receipt of the application fee.

(4) When the department has reviewed the application and related documents, a representative of the department may contact the HMO if additional information is needed.

(5) When the application is complete, the representative shall schedule an on-site examination at the HMO administrative office.

(6) Following the examination, the department shall give written notification to the TDI of whether the proposed HMO meets the requirements of this chapter. The written notice shall be provided within 45 days of the department's receipt of the completed application.

(b) Examination expenses and assessments.

(1) The HMO shall pay examination expenses for standard, complaint and other examinations which include examinations

of statistical data collected by the department, for service area expansions, and to verify correction of deficiencies on-site or by mail. Examination expenses include all the expenses attributable directly to a specific examination, including the actual salaries and expenses of the examiners plus the cost of administrative departmental expenses, directly attributable to that examination.

(2) The department shall bill the HMO for the examination expenses following the examination. The HMO shall pay the amount within 30 days of the HMO's receipt of the billing.

(3) The examination expenses and assessments for a foreign HMO and a domestic HMO shall be calculated in the same manner.

(c) Payment of fees.

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

(2) All fees and assessments received by the department are non-refundable.

§119.3. Examinations.

(a) General. The Texas Department of Health (department) shall conduct quality of care examinations of a health maintenance organization (HMO) to review the quality, availability and accessibility of health care services. Examinations include departmental review of statistical data reported to the department as required by §119.23 of this title (relating to Quality Improvement Program), and examinations as described in subsection (b) of this section.

(1) Official representatives of the Texas Department of Insurance (TDI) and the department may administer oaths to and examine the officers and agents of the HMO and the principals of such physicians and, if applicable, providers such as dentists and physical therapists concerning their business.

(2) Every HMO shall make its books and records relating to its operation available for such examinations and in every way facilitate the examinations. Every physician and, if applicable, providers such as dentists and physical therapists with whom an HMO has a contract, agreement, or other arrangement need only make available for examination that portion of its books and records relevant to its relationship with the HMO.

(3) If any person refuses to appear or testify or to give information requested pursuant to an official examination, the commissioner may file a sworn application with any district judge or district court within this state, where the witness is summoned to appear and the judge shall summon the witness and require answers to such questions.

(4) The department may conduct an examination as often as it deems necessary, but not less than once every three years.

(b) Types of examinations.

(1) Examination prior to issuance of certificate of authority. The department shall conduct a qualifying examination of an applicant prior to the issuance of a certificate of authority by the TDI in accordance with Title 28, Texas Administrative Code, §§11.201-11.208. Department surveyors shall conduct the qualifying examination in accordance with the protocol set out in subsection (c) of this section. The documents listed in subsection (c)(3) of this sec-

tion shall be available to the department at the HMO administrative offices.

(2) Standard examinations.

(A) Subsequent to the issuance of the certificate of authority, the department shall conduct on-site quality of care examinations of an HMO to review the quality, availability, and accessibility of health care services.

(B) Department surveyors shall conduct the examination in accordance with the protocol set out in subsection (c) of this section.

(3) Complaint examinations. The department shall conduct complaint examinations concerning the quality, availability, or accessibility of care.

(A) Complaints may be reported to the TDI as provided by §119.4 of this title (relating to Reporting Complaints).

(B) Department surveyors shall conduct the complaint examination in accordance with the protocol set out in subsection (c) of this section.

(C) The department shall conduct the examination without prior notice to the HMO.

(4) Other examinations. The department may conduct other examinations as it determines necessary.

(A) Department surveyors shall conduct the examinations in accordance with the protocol set out in subsection (c) of this section.

(B) Examinations may be conducted for reasons including but not limited to the following:

(i) statistical data required by §119.23 of this title submitted to the department that affects the quality, availability, or accessibility of care;

(ii) amendments to a certificate of authority, including service area expansions, that affect the quality, availability or accessibility of care; or

(iii) to verify correction of deficiencies.

(c) Examination protocol. Department surveyors shall adhere to the following protocol when conducting on-site examinations.

(1) Entrance conference. Department surveyors shall hold an entrance conference with administrative personnel or their designee before beginning the on-site examination to explain the nature, scope, and estimated time schedule of the examination.

(2) Interviews with HMO staff. Department surveyors may conduct interviews with any person with knowledge of the facts, including but not limited to:

(A) administrative personnel, including the HMO president or chief executive officer;

(B) operations manager, medical (dental, vision, or mental health) directors and quality improvement committee personnel;

(C) utilization review personnel;

(D) membership services personnel;

(E) grievance personnel;

(F) physician and provider relations personnel; and

(G) physicians and providers with whom the HMO has contracts, agreements or other arrangements.

(3) Review of documents. Department surveyors may review any documents relating to the operation of the HMO deemed necessary to the examination including but not limited to the following:

(A) the minutes of the HMO organizational meetings which indicate the type and date of each meeting, and the officer or officers who are responsible for the handling of the funds of the applicant; the minutes of meetings of the HMO board of directors; management committee minutes; administrative policy manuals; physician and provider manuals; enrollee information; enrollee newsletters; personnel manuals; organizational charts; contracts with physicians and, if applicable, providers such as dentists and physical therapists; and other items as required;

(B) the quality improvement review standards, quality improvement committee meeting minutes, quality review audits, and utilization review system program description, including policies and procedures to evaluate medical necessity, criteria used, information sources, the process used to review and approve the provision of medical services and utilization review system data;

(C) the complaint policy and procedure and samples of the forms to be used in the complaint resolution procedure for enrollee, physician and provider complaints, both verbal and written. All complaints shall be processed in accordance with the HMO's complaint policy and procedure which shall include but not be limited to the following:

(i) language that explains that the term "complaints" includes all complaints or grievances and all denials, terminations or other limitations of covered health care services;

(ii) use of an acknowledgment letter which is used to acknowledge the HMO's receipt of a complaint from an enrollee, physician or provider;

(iii) the time frames for resolution of complaints. The HMO response to the complainant, the investigation by the HMO, and the HMO's resolution shall not exceed 30 days from the date the HMO receives the complaint unless delays are outside the control of the HMO;

(iv) use of a response letter to enrollee, physician, dentist or provider explaining the HMO's resolution and which includes the time frames for the appeals process and the time frames for the final decision on the appeal;

(v) the appeal process which may include the right of the complainant to request a hearing;

(vi) requirements for a complaint and appeal log including time frames and outcomes;

(vii) requirements for documentation of all action taken to resolve each complaint; and

(viii) provide that documentation for all complaints and action taken shall be retained for a period of 3 years from the date of the receipt of the complaint and that the department shall be able to review such documentation during any examination.

(D) the accessibility monitoring data;

(E) the enrollee satisfaction surveys, disenrollment logs. The enrollee satisfaction survey, written or telephone, shall contain questions, including, but not limited to the following:

(i) has the enrollee used the services of the HMO within the past year and, if so;

(I) was the enrollee satisfied in being able to schedule an appointment within a reasonable and timely manner;

(II) how many miles did the enrollee have to travel and for how long a time;

(III) how long a period of time did the enrollee have to wait in the physician or provider office after the scheduled time of the appointment;

(ii) if the enrollee has not used the services, why not;

(iii) did the enrollee have need of emergency services and was the enrollee satisfied with the service provided; and

(iv) has the enrollee been denied services and, if so, is the enrollee satisfied the denial was resolved;

(F) medical, hospital and health records of all enrollees and records of all physicians and providers providing service under independent contract with an HMO shall be subject to such examination as is necessary for an ongoing examination of the approved quality improvement plan, as required in §119.23 of this title. The plan shall provide for adequate protection of confidentiality of medical information and shall only be disclosed in accordance with applicable law;

(G) network configuration information, including an explanation of the adequacy of the physician and other provider network configuration. The information provided must include the names of physicians, specialty physicians and other providers by zip code or zip code map and indicate whether each physician or other provider is accepting new patients from the HMO;

(H) lists of primary care and specialty physicians, hospitals, laboratories, diagnostic imaging providers, radiologic oncology providers, and, if applicable, other providers such as dentists and physical therapists to be used by the applicant inside the service area:

(i) the list of physicians must include:

(I) each physician's medical specialty;

(II) board certification, if any;

(III) Texas license number;

(IV) federal and state permits relating to registration of controlled substances, if applicable;

(V) business address;

(VI) hospitals at which the physician has staff privileges; and

(VII) whether or not the physician accepts new patients from the HMO.

(ii) the list of hospitals must include:

(I) each hospital's address;

(II) license number, unless exempt from licensure requirements;

(III) the number of licensed beds in the hospital;

(IV) the hospital's current occupancy rate;

(V) indication of accreditation issued by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA), if applicable; and

(VI) indication of Medicare certification (Title XVIII, Social Security Act), if applicable;

(iii) the list of laboratories, diagnostic imaging providers, radiologic oncology providers, and, if applicable, other providers such as dentists and physical therapists must include each provider's address and license, accreditation, registration or certification, if applicable, and whether or not the provider accepts new patients from the HMO;

(I) a copy of the contract or letter of intent with each physician and each provider such as dentists and physical therapists;

(J) evidence that the HMO has a mechanism for maintaining, monitoring and implementing the quality improvement program, as required by §119.23 of this title including procedures for data collection, analysis and reporting, for all physicians and providers, including pharmacy or drug utilization review format, if applicable; utilization review; denials of coverage and a complaint system;

(K) an example of all printed materials to be presented to prospective enrollees, an enrollee handbook and evidence of coverage and physician and provider manuals;

(L) the statistical reporting system developed and maintained by the HMO which allows for compiling, developing, evaluating, and reporting statistics relating to the cost of operation, the pattern of utilization of services, the accessibility, availability and continuity of services; and

(M) the HMO's annual report and statement.

(4) Exit conference. Following the examination, the department surveyor shall hold an exit conference with administrative personnel or their designee and provide the following:

(A) the specific nature of the examination;

(B) any alleged violations of a specific statute or rule;

(C) the specific nature of any finding regarding an alleged violation or deficiency;

(D) if the deficiency is alleged, the severity of the deficiency;

(E) if there are no deficiencies found, a statement indicating this fact; and

(F) identity of any records that were duplicated.

(5) Written statement of examination outcome. The department surveyor shall prepare a written statement of the examination outcome. If deficiencies are noted during the examination, the surveyor shall prepare a written statement of deficiencies.

(6) Plan of correction. The HMO shall provide a plan of correction for each deficiency cited.

(A) If the department surveyor cites serious or life-threatening deficiencies, the HMO shall provide the surveyor with a signed plan of correction at the time of the exit conference and immediately correct the deficiencies.

(B) If the department surveyor cites potentially serious or life-threatening deficiencies, the HMO shall provide the department surveyor with a signed plan of correction at the time of the exit conference. The HMO's plan of correction shall provide for correction of the deficiencies no later than 30 days from the last day of the examination.

(C) If the department surveyor cites deficiencies that are not serious or life-threatening, the HMO shall provide a signed plan of correction to the department no later than 30 days from the last day of the examination. The HMO's plan of correction must provide for correction of the deficiencies no later than 90 days from the last day of the examination. If the plan of correction is not acceptable, the department shall notify the HMO in writing and request that the plan of correction be resubmitted within ten days of the HMO'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 HMO acknowledging same.

(7) The HMO shall come into compliance by the completion date provided on the statement of deficiencies and plan of correction form.

(8) The department shall verify the correction of deficiencies by mail or by an on-site examination.

(9) The department may certify to the TDI in accordance with §119.71 of this title (relating to Enforcement) even if a plan of correction is accepted and completed.

§119.4. Reporting Complaints.

(a) Complaints against a health maintenance organization (HMO).

(1) All individuals, including those who have attempted to resolve grievances through the HMO complaint system process who are dissatisfied with the resolution, may report an alleged violation of the Insurance Code, Chapter 20A, Health Maintenance Organization Act (Act), or the rules under 28 Texas Administrative Code (TAC) Chapter 11 (relating to Health Maintenance Organizations) and this chapter, by writing or calling the Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, 1-800-252-3439.

(2) The Texas Department of Insurance (TDI) will forward all complaints concerning quality, availability, and accessibility of care to the Texas Department of Health (department) for investigation.

(3) The department shall investigate a complaint against an HMO and report the findings to TDI within 90 days of the department's receipt of the complaint. The investigation will be conducted in accordance with §119.3(b)(3) and (c) of this title (relating to Examinations).

(b) Complaints against the department. An HMO or an individual may register a complaint against a department surveyor who conducts an examination with the Health Facility Licensing

Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 834-6646.

(1) When a complaint against a surveyor is received in writing or by telephone, it shall be forwarded to the appropriate supervisor. The Health Facility Licensing Division (division) shall inform the complainant in writing that the complaint has been forwarded to the appropriate supervisor.

(2) The supervisor shall notify the complainant in writing that an investigation will be done.

(3) The supervisor shall review the documentation in the examination packet and interview the surveyor identified in the complaint to obtain facts and assess the objectivity of the surveyor in the surveyor's application of this chapter during the HMO examination.

(4) The supervisor shall review the applicable rules, personnel policies, and review the training and qualifications of the surveyor as it relates to the HMO examination.

(5) The supervisor shall document the investigation. A report of the investigation shall be placed in the HMO's file if the complaint and investigation affected the HMO examination process. A counseling form shall be used and placed in the surveyor's personnel file if the complaint relates to personnel performance.

(6) The supervisor shall offer to meet with the complainant to resolve the issue. The surveyor identified in the complaint shall participate in the discussion. The resolution meeting may be conducted at the division's office or during an on-site follow-up visit to the HMO or other site selected by the individual.

(7) Changes and deletions shall be made to the examination report, if necessary and the HMO shall be provided with an amended statement of deficiencies.

(8) The supervisor shall forward all final documentation to the director of the division and notify the complainant of the results.

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

Issued in Austin, Texas, on February 27, 1996.

TRD-9602759

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 458-7236

Subchapter B. Organization and Functions of a Health Maintenance Organization

25 TAC §§119.21-119.27

The new sections are proposed under the Health Maintenance Organization Act, Insurance Code, Chapter 20A, which provides the Texas Board of Health with authority to adopt rules to establish minimum standards regarding the quality of health care services, including availability, accessibility and continuity of services, to be furnished by an HMO to its enrollees; and under Health and Safety Code, §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 will affect the Health Maintenance Organization Act, Insurance Code, Article 20A, and Health and Safety Code, Chapter 12.

§119.21. Organization of a Health Maintenance Organization and Service Area.

(a) Organizationally, the health maintenance organization (HMO) shall be governed by a governing body that is legally responsible for the operation of the HMO. The governing body may include physicians, providers, or other individuals.

(b) The governing body shall be responsible for the development, approval, implementation and enforcement of administrative, operational, personnel and patient care policies, procedures and related documents for the operation of the HMO.

(c) An HMO may establish one or more service areas within Texas. Each service area shall:

(1) be located where a concentration of primary care providers, enrollees, hospitals and, if applicable, providers such as dentists and physical therapists are located;

(2) be based upon the concept of a metropolitan statistical area (MSA), a primary metropolitan statistical area (PMSA), or a consolidated metropolitan statistical area (CMSA) as defined and described in §119.91 of this title (relating to Texas Metropolitan Areas), except that the HMO shall not be required to serve all of the defined counties in an MSA, PMSA or CMSA. The service area may include other counties surrounding the MSA, PMSA or CMSA so long as the service area does not extend into the counties or central cities of another MSA, PMSA or CMSA;

(3) not be composed of more than one MSA, PMSA or CMSA;

(4) not extend into any other state; and

(5) be organized according to subsection (e) of this section.

(d) An HMO may cover more than one service area under a single certificate of authority.

(e) Whether the HMO has one or several service areas, the HMO shall provide within each service area:

(1) all services identified at §119.51 of this title (relating to Ambulatory Health Care Services), §119.52 of this title (relating to Emergency Care), §119.53 of this title (relating to Inpatient Hospital and Medical Services), §119.54 of this title (relating to Diagnostic and Therapeutic Services) and perform the quality improvement and utilization review functions required by §119.22 of this title (relating to Quality Improvement), §119.23 of this title (relating to Quality Improvement Program), §119.24 of this title (relating to Quality Improvement Committee), §119.25 of this title (relating to Utilization Review), §119.26 of this title (relating to Utilization Review Protocol) and §119.27 of this title (relating to Utilization Review Committee). The HMO may also provide one, all or a combination of the services in §119.55 of this title (relating to Optional Services);

(2) a physically identifiable administrative office;

(3) a full-time chief executive officer or operations officer who resides within the service area and is available on-site; and

(4) a medical director or single service director who:

(A) shall be currently licensed or otherwise authorized to practice in this state;

(B) shall reside in the local service area; and

(C) may serve in a part-time capacity.

(f) The HMO shall ensure that each administrative office maintains:

(1) quality improvement and utilization review plans;

(2) a current list of all participating physicians and, if applicable, providers of care such as dentists and physical therapists;

(3) current files on contracts for all participating physicians and, if applicable, other providers of care such as dentists and physical therapists that are updated on an ongoing basis;

(4) files on subcontracting physicians and, if applicable, providers such as dentists and physical therapists which contain sufficient information to assure current licensure or other authorizations to practice in the State of Texas; and

(5) current physician manual and current provider manual which shall be provided to each contracting physician and provider. The manuals shall contain details of the requirements by which the physicians and providers will be governed.

(g) An enrollee who lives within an MSA, a PMSA or CMSA as defined and described in §119.91 of this title shall not be required to travel in excess of 20 miles to reach a source of health care service provided by the HMO except as provided in subsections (i) and (j) of this section.

(h) An enrollee who lives outside an MSA, PMSA, or CMSA shall not have to travel in excess of 50 miles to reach a source of health care service provided by the HMO except as provided in subsections (i) and (j) of this section.

(i) If any service or provider is not available to an enrollee within the mileage radii specified in subsections (g) and (h) of this section, the HMO shall submit to the department for approval health care utilization data which indicates a normal pattern for securing health care services within the service area.

(j) The provisions in subsections (g) and (h) of this section do not preclude an HMO from making arrangements with another source outside the service area for enrollees to receive a higher level of skill or specialty such as treatment of cancer, burns and cardiac diseases that is not available within the HMO service area.

(k) HMO physicians, dentists and other providers of care who employ physician assistants, nurse practitioners, dental hygienists and individuals other than physicians to assess the health care needs of HMO enrollees shall have written policies which are implemented and enforced and describe the exact duties of all such providers and practitioners.

(l) An HMO which has not received a certificate of authority prior to the effective date of these rules shall establish its service area based upon subsection (c) of this section.

(m) An HMO which obtained a certificate of authority and became operational prior to the effective date of these rules and which did not establish its service area according to this chapter may continue to operate within its approved service area. However, this subsection shall not apply in either of the following instances:

(1) If, during an examination, department surveyors cite deficiencies concerning an HMO's inability to provide quality care that is available and accessible to its enrollees for reasons relating to the service area configuration, the HMO shall comply with subsection (c) of this section in its entirety; or

(2) If an HMO submits a request to the Texas Department of Insurance (TDI) to expand its approved service area, the new service area shall be established in accordance with subsection (c) of this section.

(n) The HMO shall systematically and regularly verify that support services and supplies under contract with the HMO are furnished to physicians and providers of care such as dentists, physical therapists, to assure that health care services are available to enrollees without unreasonable periods of delay.

(o) The HMO shall develop and maintain a statistical reporting system which allows for compiling, developing, evaluating, and reporting statistics relating to the cost of operation, the pattern of utilization of services, the accessibility, availability and continuity of services.

(p) The HMO shall submit directly to the department in care of the Health Facility Licensing Division one copy of its annual report and its annual statement each year.

(q) An HMO shall notify the TDI and shall comply with 28 Texas Administrative Code §11.302, before the HMO may add new service areas outside the service area(s) originally identified in the application for a certificate of authority.

§119.22. *Quality Improvement.*

(a) The health maintenance organization (HMO) shall develop and maintain an ongoing quality improvement (QI) program designed to objectively and systematically monitor and evaluate the quality and appropriateness of care and service provided to enrollees, and to pursue opportunities for improvement. The scope and content of the program shall reflect the delivery system of the HMO within the respective service area.

(b) The HMO governing body is ultimately responsible for the overall QI program in each respective service area. The HMO governing body shall

(1) appoint the formal QI committee which shall include local physicians, dentists, and other providers, as applicable, a majority of whom practice within the respective service area;

(2) approve the QI program;

(3) approve an annual QI plan; and

(4) receive and review reports of the QI committee or group of committees and take action when appropriate. §119.23. Quality Improvement Program. The quality improvement (QI) program shall be continuous and comprehensive including both the quality of clinical care and the quality of service requiring updates as needed.

(1) Written description. There shall be a written description of the QI program that outlines program organizational structure, functional responsibility and design.

(2) Work plan. There shall be an annual QI work plan, or schedule of activities, that includes but is not limited to the following:

(A) objectives, scope, and planned projects or activities for the year;

(B) planned monitoring of previously identified issues, including tracking of issues over time; and

(C) planned evaluation and modification, if necessary, of the QI program.

(3) Monitoring and evaluation. The program monitoring and evaluation of clinical issues shall reflect the population served by the health maintenance organization (HMO) in the respective service area in terms of age groups, disease categories, and special risk status. Monitoring and evaluation of clinical issues shall include:

(A) care and services provided in institutional settings;

(B) care and services provided in noninstitutional settings, including, but not limited to, practitioner offices, ambulatory surgical centers, hospices and home and community support services agencies; and

(C) primary care and major specialty services, including but not limited to mental health, cancer, burn or cardiac centers.

(4) Identifying special needs. The QI program shall identify enrollees with special needs such as disabilities and chronic conditions to assure that care and services are available and accessible.

(5) Credentialing. The QI program shall provide for the credentialing and recredentialing of all contracting physicians and providers, including an application which contains information on education and professional background, admitting privileges, current relevant permit to practice, Drug Enforcement Agency certificate and Texas Controlled Substance Certificate, if applicable.

(6) Peer review. The QI program shall provide for an effective peer review procedure which meets the standards set forth in the Health Care Quality Improvement Act of 1986 (42 USC §11101).

(7) Measurements, data collection, and analysis. The HMO shall track QI by using measurements, QI data collection and analysis.

(A) To monitor and evaluate aspects of care and services identified, the HMO shall use quality indicators that are objective, measurable, and based on current knowledge and clinical experience.

(B) The HMO shall have performance goals for each indicator.

(8) Methods and frequency of data collection. The HMO shall establish methods and frequency of data collection for each indicator.

(A) QI activities include the collection of data.

(B) Data collected through monitoring and evaluation activities shall be analyzed.

(i) Appropriate clinicians shall evaluate data on clinical performance of practitioners.

(ii) Multidisciplinary teams shall be used, where indicated, to analyze and address quality improvement issues.

(9) Data submission. The HMO shall assess its performance in the use of preventive medicine and prenatal care through the QI program.

(A) The HMO shall monitor, evaluate and take action to improve the use of preventive medicine and prenatal care as appropriate.

(B) Using the criteria established by the National Committee for Quality Assurance in the Health Plan Employer Data and Information Set (HEDIS) 2.5, 1995, HMOs shall submit data for the following to the department:

- (i) childhood immunization rate;
- (ii) prenatal care in first trimester; and
- (iii) low birthweight.

(C) The document referenced in subparagraph (B) of this paragraph is available from the National Committee for Quality Assurance, 1350 New York Avenue, Suite 700, Washington, D.C. 20005, or the department.

(D) HMOs shall submit the data to the department in care of the Health Facility Licensing Division, 1100 West 49th Street, Austin, Texas 78756 by June 30 of each year for the previous calendar year. The first submittal to the department shall be for calendar year 1996 and shall be due by June 30, 1997. An HMO which collected data for the entire calendar year 1996 shall submit data for the entire year. An HMO that begins collecting the data upon the effective date of these sections shall submit the data for only that portion of 1996.

(E) HMOs shall identify to the department the collection methodology under which the data was collected.

(F) HMOs shall retain the raw data from which the data submitted to the department was obtained for a period of three years.

(10) Health promotion.

(A) The HMO shall facilitate preventive health care through health promotion activities. Health promotion activities include outreach to enrollees to encourage appropriate use of services and educating enrollees in preventive health care measures. Outreach may be accomplished through but not limited to written educational materials, community based programs, health promotion fairs and verbal communication.

(B) The HMO shall promote health management through management actions including but not limited to tracking of abnormal test findings and follow-up, in cooperation with participating physicians and providers; identification and case-finding of high-risk enrollees, including those with chronic illnesses; and educating enrollees on chronic illness.

(C) The HMO shall inform and educate physicians and, if applicable, providers such as dentists and physical therapists about using the health management and outreach programs for the enrollees assigned to them. §119.24. Quality Improvement Committee. Quality improvement (QI) shall be accomplished by the

formal QI committee appointed by the governing body or by a group of committees working under the direction of the QI committee.

(1) Delegation. The QI committee may delegate QI activities to other committees. Each committee shall include local physicians, dentists and other providers as applicable, a majority of whom practice within the respective service area.

(A) All committees shall collaborate and coordinate efforts to improve the quality, availability, and accessibility of health care services to be furnished by the health maintenance organization (HMO) to its enrollees.

(B) All committees shall meet and regularly report findings, recommendations and resolutions in writing through the QI committee to the HMO governing body.

(C) If the QI committee delegates any QI or utilization review activity, then the QI committee must establish, implement, and enforce a policy to address effective methods of accomplishing oversight of each delegated activity.

(2) QI committee responsibilities.

(A) The QI committee shall assess both quality of clinical care and quality of service, specifically analyzing:

(i) availability, accessibility, and quality of care to include but not limited to time frames for routine and urgent care appointments, ratio of physicians, dentists and other providers to enrollees, physician, dentists and other providers capability of accepting new enrollees and referrals, and response time for post-stabilization treatment;

(ii) continuity of health care and related services. Each contract between an HMO and a physician or, if applicable, other provider of health care services such as a dentist or physical therapist must provide that reasonable advance notice be given to an enrollee of the impending termination from the plan of a physician or, if applicable, provider such as a dentist or physical therapist who is currently treating the enrollee. Each contract must also provide that the termination of the physician or provider contract, except for reason of medical competence or professional behavior, does not release the obligation of the HMO to provide for continuity of treatment to an enrollee of special circumstance, such as a person who has a disability, acute condition, life-threatening illness, or is past the twenty-fourth week of pregnancy. Special circumstance means a condition such that the treating physician or, if applicable, provider such as a dentist or physical therapist reasonably believes that discontinuing care by the treating physician or provider could cause harm to the patient. Special circumstance shall be identified by the treating physician or provider who must request that the enrollee be permitted to continue treatment under the physician's or provider's care. Contracts between an HMO and physicians and, if applicable, providers such as dentists and physical therapists shall provide procedures for resolving disputes regarding the necessity for continued treatment by the physician or provider;

(iii) patterns of clinical care rendered; and

(iv) patterns of high volume, high risk services rendered;

(B) The QI committee shall analyze enrollees' responses to the questions on the written or telephonic enrollee sat-

isfaction surveys. The questions include but are not limited to the following:

(i) has the enrollee used the services of the HMO within the past year and, if so;

(I) was the enrollee satisfied in being able to make an appointment within a reasonable and timely manner; and

(II) how many miles did the enrollee have to travel and for how long a time;

(III) how long a period of time did the enrollee have to wait in the physician or provider office after the scheduled time of the appointment;

(ii) if the enrollee has not used the services, why not;

(iii) did the enrollee have need of emergency services and was the enrollee satisfied with the service provided; and

(iv) has the enrollee been denied services and, if so, is the enrollee satisfied the denial was resolved;

(C) The QI committee shall analyze the investigation, resolution and appeal of complaints including denials, terminations or other limitations of covered health care services, both verbal and written, initiated by enrollees, physicians or providers concerning care or services by:

(i) reviewing the complaint log, documentation and analysis of the resolution of each complaint, documentation of an appeal and documentation of trending; and

(ii) identifying and removing communication barriers which may impede enrollees from effectively making complaints against the HMO;

(D) The QI committee shall identify on an annual basis QI goals and objectives, defined in the written plan, including time frames for implementation and accomplishment established in the written plan.

(E) The QI committee shall conduct quality of care studies over a period of time, prescribed in the QI plan, which shall specify methodologies, organizational arrangements to be used to accomplish them, and individuals responsible for the studies.

(F) The QI committee shall adopt and use practice guidelines, clinical care standards or parameters of care for physicians and dentists. The committee may develop guidelines for other providers. The QI committee shall assure the practice guidelines, clinical care standards or parameters of care:

(i) are based on accepted scientific evidence and are developed or reviewed by local plan participating physicians and dentists. If guidelines are established for other providers, local providers shall participate in the development and review of such guidelines;

(ii) focus on the processes and outcomes of health care delivery, as well as access to care;

(iii) are updated continuously and communicated to all affected physicians, dentists and other providers.

(iv) are included in physician and provider manuals; and

(v) include preventive health services.

(G) The QI committee shall take action to improve quality and assess the effectiveness of actions through systematic follow-up.

(i) There shall be evidence that results of evaluation are used to improve clinical care where availability, accessibility and quality of care need improvement.

(ii) There shall be a systematic method of tracking areas identified for improvement to assure that appropriate action is taken to effect the needed improvement.

(iii) The QI committee shall assure follow-up of identified issues to determine whether actions have been effective.

(H) The QI committee shall evaluate the overall effectiveness of the QI program.

(i) There shall be a written report on quality, which includes a report of completed QI activities, trending of clinical and service indicators and other performance data, and demonstrated improvements in availability, accessibility and quality of care.

(ii) There shall be evidence that QI activities have contributed to improvement in the care and services provided enrollees.

(iii) The written report shall be presented and reviewed by the HMO governing body on a regular basis but not less than yearly.

§119.25. Utilization Review.

(a) Ongoing utilization review. To the extent that an HMO does perform utilization review (UR), the health maintenance organization (HMO) shall develop and maintain an ongoing utilization review (UR) program designed to evaluate medical necessity, criteria used, information sources and the process used for the review and approval for the provision of medical services.

(b) Governing body responsibilities.

(1) To the extent that an HMO does perform utilization review, the HMO governing body is ultimately responsible for the overall UR program in each respective service area.

(2) To the extent that an HMO does perform utilization review, the governing body may delegate UR activities to licensed contractors. If UR activities are delegated, there shall be evidence of oversight of the activity by the quality improvement (QI) committee. The evidence shall include but not be limited to a written description of:

(A) the delegated activities;

(B) the delegate's accountability for the activities;

(C) the frequency of reporting to the HMO;

(D) the process by which the delegation will be evaluated.

(E) approval of the delegate's UR program; and

(F) evaluation of regular, specified reports.

(3) The governing body, through the QI committee, shall receive and review reports of the UR committee or licensed UR contractor and take action when appropriate as part of the QI process.

§119.26. Utilization Review Protocol.

(a) There shall be a set of written UR decision protocols that is based on reasonable medical evidence.

(1) Criteria for appropriateness of medical services shall be clearly documented and available to participating physicians.

(2) There shall be a mechanism for ascertaining the consistency of application of criteria across reviewers.

(3) There shall be a mechanism for updating review criteria periodically. The timing of the update shall be specified by the HMO.

(b) Efforts shall be made to obtain all necessary information, including pertinent clinical information and consultation with the treating physician, as appropriate.

(c) The HMO shall assure that decisions are made in a timely manner, depending on the urgency of the situation.

(d) Reasons for denial, termination or other limitation of covered health care services shall be clearly documented and available to the enrollee. The notification of a denial shall include complaint and appeal process information.

(e) The HMO shall have policies and procedures in place to evaluate the appropriate use of new medical technologies, including medical procedures, drugs, and devices.

(1) Appropriate professionals shall participate in the development of technology evaluation criteria.

(2) Criteria shall include review of information from appropriate government regulatory bodies and published scientific evidence.

§119.27. Utilization Review Committee.

(a) Utilization review (UR) shall be accomplished by the quality improvement (QI) committee, by a separate UR committee, or by a licensed UR contractor.

(b) The UR committee shall include physicians, dentists, and other providers as applicable, a majority of whom practice within the respective service area.

(c) The UR committee or licensed UR contractor shall regularly report and make recommendations to the QI committee concerning its activities.

(d) The UR committee or licensed UR contractor activities shall include but not be limited to the following:

(1) the identification and analysis of the trends and patterns of denials, terminations or other limitations of covered health care services;

(2) the analysis of utilization statistics;

(3) the analysis of referral trends;

(4) the assessment of the preauthorization program;

(5) the evaluation of the concurrent review program; and

(6) the monitoring of the effectiveness of a discharge planning procedure.

(e) Qualified medical professionals shall supervise review decisions where procedures are used for preauthorization and concurrent review.

(1) A physician, dentist or other appropriate provider shall conduct a review of any denial to determine the appropriateness of the denial.

(2) The HMO shall use as needed physician consultants from appropriate specialty areas of medicine and surgery.

(f) There shall be mechanisms to evaluate the effects of the program, using enrollee satisfaction data, provider satisfaction data, and/or other appropriate means.

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

Issued in Austin, Texas on March 6, 1996.

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Susan K. Steeg

General Counsel

Texas Department of Health

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For further information, please call: (512) 458-7236

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Subchapter C. Services

25 TAC §§119.51-119.56

The new sections are proposed under the Health Maintenance Organization Act, Insurance Code, Chapter 20A, which provides the Texas Board of Health with authority to adopt rules to establish minimum standards regarding the quality of health care services, including availability, accessibility and continuity of services, to be furnished by an HMO to its enrollees; and under Health and Safety Code, §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 will affect the Health Maintenance Organization Act, Insurance Code, Article 20A, and Health and Safety Code, Chapter 12.

§119.51. Ambulatory Health Care Services.

(a) Primary care physician and primary care provider services.

(1) Primary care physician services, and, if applicable, other services such as dental services and physical therapy services shall be available and accessible 24 hours per day, 7 days per week within the health maintenance organization's (HMO's) service area.

(A) Participating primary care physicians or their designated physician coverage, and, if applicable, providers such as dentists and physical therapists shall be available for emergency and urgent care after normal business hours.

(B) There shall be telephone access to participating primary care physicians, and, if applicable, providers such as dentists and physical therapists at all times.

(C) The HMO shall develop a method by which enrollees may secure health care services after hours which shall be clearly communicated in writing to enrollees in the languages predominantly spoken in the respective geographic service area.

(2) An adequate number of participating primary care physicians, and, if applicable, other providers shall have admitting privileges at one or more participating general hospitals located within the HMO's geographic service area to assure that necessary admissions are made.

(3) There shall be a sufficient number of participating primary care physicians, and, if applicable, providers such as dentists and physical therapists to meet the needs of the enrollees.

(b) Referral specialists.

(1) Referral specialist services shall be available and accessible 24 hours per day, 7 days per week, within the HMO's geographic service area.

(2) There shall be sufficient number of referral specialists with appropriate hospital admitting privileges who are available and accessible 24 hours per day, 7 days per week, to meet the needs of the enrollees.

§ 119.52. *Emergency Care.*

(a) Emergency care shall be available and accessible 24 hours per day, 7 days per week, without restrictions as to where the services are rendered.

(b) The health maintenance organization (HMO) shall have documentation demonstrating that the HMO will pay for emergency care services performed by non-network physicians or providers at the negotiated or usual and customary rate and that the health care plan contains the following provisions and procedures for coverage of emergency care services without regard to whether the physician or provider furnishing the services has a contractual or other arrangement with the entity to provide items or services to covered individuals.

(1) Any medical screening examination or other evaluation required by state or federal law which is necessary to determine whether an emergency medical condition exists will be provided to covered enrollees in the emergency department of a hospital.

(2) Necessary emergency care services will be provided to covered enrollees, including the treatment and stabilization of an emergency medical condition.

(3) Services originating in a hospital emergency department following treatment or stabilization of an emergency medical or dental condition as approved by the HMO will be provided. This provision must require the HMO to approve or deny coverage of post stabilization care as requested by a treating physician, dentist or other provider within the time appropriate to the circumstances relating to the delivery of the services and the condition of the patient, but in no case to exceed one hour. The HMO must respond to inquiries from the treating physician, dentist or other provider in compliance with this provision in the HMO's health care plan.

§ 119.53. *Inpatient Hospital and Medical Service.*

(a) General hospital care shall be available and accessible 24 hours per day, 7 days per week, within the health maintenance organization's (HMO) defined geographic service area.

(b) Based upon the evidence of coverage, the HMO shall provide for the necessary hospital services by contracting with special and psychiatric hospitals, and, if necessary, other general hospitals. Such services shall be available and accessible 24 hours per day, 7 days per week, within the HMO geographic service area.

(c) General, special and psychiatric hospitals, which provide services to HMO enrollees, shall have current licenses by the State of Texas, unless exempt from licensure requirements.

§ 119.54. *Diagnostic and Therapeutic Services.*

(a) Laboratories must meet the requirements of Federal Public Law 100-578, Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988). CLIA 1988 applies to all 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.

(1) The reference laboratory services shall be of sufficient size and scope to meet the non-emergent, urgent and emergency needs of the enrolled population.

(2) Reference laboratory specimen procurement services shall facilitate the provision of clinical diagnostic services for physicians, providers and enrollees through the use of convenient reference satellite labs, strategically located specimen collection areas, and the use of a courier system under the management of the reference lab.

(3) Pathology laboratory services shall be available and accessible.

(b) Diagnostic imaging services shall be available and accessible to all enrolled enrollees.

(1) Diagnostic imaging procedures that require the injection or ingestion of radiopaque chemicals shall be performed only under the direction of physicians qualified to perform those procedures.

(2) Diagnostic imaging machines shall be registered and inspected according to state law.

(3) Technicians, physicians, and other personnel who work with imaging machines shall comply with state law regarding monitoring.

(c) Services involving therapeutic/oncological radiology shall be available and accessible to all enrollees.

(d) If other diagnostic and therapeutic services are part of the services offered by the health maintenance organization, they shall be available and accessible to all enrollees. § 119.55. *Optional Services.* The provisions in this section apply to categories of other health care services which a health maintenance organization (HMO) may offer in a basic health care plan pursuant to any service agreement. If offered, the following optional services shall be available and accessible to the enrolled population within the respective geographic service area.

(1) Inpatient skilled nursing care may be offered by one or a combination of the following:

(A) a skilled nursing facility that is licensed by the state, unless exempt from licensure requirements;

(B) a hospital that is licensed by the state, unless exempt from licensure requirements, which provides post hospital extended care services in Medicare approved swing-beds; and

(C) a general or special hospital licensed by the state, unless exempt from licensure requirements, a distinct part of which is a skilled nursing facility;

(2) Licensed home and community support services agencies or their licensed branches and alternate delivery sites (hospice only) may offer one or a combination of the following services:

- (A) licensed and certified home health services;
- (B) licensed home health services;
- (C) hospice services;
- (D) licensed home health services with home dialysis designation; and
- (E) personal assistance services.

(3) Pharmacy services shall be available and accessible within the geographic service area for the enrolled population through pharmacies licensed by the Texas State Board of Pharmacy.

(A) Pharmacy services shall be offered directly by the HMO or through contracts.

(B) The quality of pharmacy services, including the specifics of any drug formulary, shall be regularly reviewed by a committee established by the quality improvement (QI) committee. The functions of the committee may be performed by the QI committee or by a separate committee composed of physicians, pharmacists and other professionals as needed, a majority of whom practice within the respective geographic service area.

(i) The committee shall be responsible for assuring that drug utilization review is performed on a regular basis, but not less than quarterly, to detect and prevent inappropriate drug use and negative outcomes.

(ii) The committee shall assure that contracting pharmacies maintain drug profiles on the enrollees population and make use of such profiles to detect inappropriate drug use.

(iii) The committee shall make recommendations on policies under which pharmacists provide patient instruction and education on correct use of medications.

(iv) The committee shall report its findings and recommendations to the QI committee on a regular basis but not less than quarterly.

(4) Other services may be offered by the HMO. The following is not intended to be a complete list of all possible benefit additions.

(A) If health care services such as dental, physical therapy, occupational therapy, podiatric, nutrition or dietary, vision, hearing, speech, durable medical equipment, mental health, drug dependency, chiropractic care, or any other health care services are offered, they shall be offered by the HMO or through contracts with physicians and other providers such as dentists and physical therapists who are licensed or otherwise authorized to practice in this state.

(B) Such services shall be of sufficient number and location as to be readily available and accessible within the geographic service area to the enrolled population.

§119.56. Single Health Care Service.

(a) A single health care service health maintenance organization (HMO) may choose to offer to an enrolled population a particular service as defined in §119.55 of this title (relating to Optional Services). The single health care service shall be offered directly by the HMO or by contract.

(b) A single health care service HMO offering a particular service must be prepared to deal with specific health care situations which may require emergency intervention, as described in §119.52 of this title (relating to Emergency Care). Emergency care shall be available and accessible 24 hours per day, 7 days a week. Emergency care or a higher level of care shall be provided directly by the HMO or by contract.

(c) A single health care service HMO offering a particular service which requires inpatient status for the management of the single health care problem shall provide for the appropriate inpatient facility according to the need by contracting with one or more general, special or psychiatric hospitals; nursing facility; or home and community support services agency for hospice inpatient services.

(1) Inpatient care shall be available and accessible 24 hours per day, 7 days a week, within the single health care service HMO's geographic service area.

(2) Inpatient facilities shall be currently licensed by the State of Texas, unless exempt from licensure requirements.

(3) An adequate number of participating single health care physicians or dentists shall have admitting privileges at one or more inpatient facilities located within the HMO's geographic service area to ensure that necessary admissions are made.

(d) The following requirements apply to outpatient single health care services.

(1) A sufficient number of single health care service physicians, dentists or other providers (initial contact and specialists, as appropriate or required) shall be available and accessible to meet the single health care needs of enrollees. Participating initial contact (primary care) physicians or providers shall be available for emergency care after normal business hours and shall comply with subsection (b) of this section.

(2) The method by which enrollees may secure single health care services, which require after hours emergency response by physicians, dentists or other providers, shall be clearly communicated in writing to enrollees, in the languages predominantly spoken in the service area.

(e) The following requirements apply to diagnostic and therapeutic services.

(1) The single health care service which uses reference and pathological laboratory technologies in the care of patients shall provide those technologies in accordance with §119.54 of this title (relating to Diagnostic and Therapeutic Services).

(2) The single health care service which uses diagnostic imaging or therapeutic radiology or other diagnostic or therapeutic services in the care of patients shall provide those procedures according to §119.54 of this title.

(3) The single health care service which uses the expertise of an ancillary health care facility or service to fulfill its obligations to enrollees shall have in effect a written contract with each facility, physician or provider and shall comply with all other applicable provisions in accordance with §119.55 of this title.

(f) Other services. The following shall apply to single health care service plans:

- (1) §119.1 of this title (relating to Definitions);

(2) §119.2 of this title (relating to Application, Assessments and Fees);

(3) §119.3 of this title (relating to Examinations);

(4) §119.4 of this title (relating to Reporting Complaints);

(5) §119.21 of this title (relating to Organization of a Health Maintenance Organization and Service Area);

(6) §119.22 of this title (relating to Quality Improvement);

(7) §119.23 of this title (relating to Quality Improvement Program);

(8) §119.24 of this title (relating to Quality Improvement Committee);

(9) §119.25 of this title (relating to Utilization Review);

(10) §119.26 of this title (relating to Utilization Review Protocol);

(11) §119.27 of this title (relating to Utilization Review Committee);

(12) §119.55 of this title (relating to Optional Services);

(13) §119.71 of this title (relating to Enforcement); and

(14) §119.91 of this title (relating to Texas Metropolitan Areas).

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

Issued in Austin, Texas on March 6, 1996.

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Susan K. Steeg

General Counsel

Texas Department of Health

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For further information, please call: (512) 458-7236

Subchapter D. Enforcement

25 TAC §119.71

The new section is proposed under the Health Maintenance Organization Act, Insurance Code, Chapter 20A, which provides the Texas Board of Health with authority to adopt rules to establish minimum standards regarding the quality of health care services, including availability, accessibility and continuity of services, to be furnished by an HMO to its enrollees; and under Health and Safety Code, §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 section affects the Health Maintenance Organization Act, Insurance Code, Article 20A, and Health and Safety Code, Chapter 12.

§119.71. Enforcement.

(a) The Texas Department of Health (department) or the commissioner may examine and use all information required by this chapter for any purpose consistent with the Health Maintenance

Organization Act, Insurance Code, Chapter 20A (HMO Act) or any rule or regulation adopted thereunder.

(b) The department may certify to the commissioner of insurance that any of the following conditions exist:

(1) the health maintenance organization (HMO) does not meet the requirements as specified in the HMO Act, §20A.05(a)(2), or as specified in any rule or regulation adopted thereunder; or

(2) the HMO is unable to fulfill, or is not fulfilling, its obligation to furnish health care services as required under its health care plan or to furnish a single health care service as required under its single health care service plan.

(c) Such certification notice may constitute grounds for suspension or revocation of the HMO certificate of authority by the commissioner.

(d) The department shall send a copy of such certification notice to the affected HMO.

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

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Susan K. Steeg

General Counsel

Texas Department of Health

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Subchapter E. Exhibits

25 TAC §119.91

The new section is proposed under the Health Maintenance Organization Act, Insurance Code, Chapter 20A, which provides the Texas Board of Health with authority to adopt rules to establish minimum standards regarding the quality of health care services, including availability, accessibility and continuity of services, to be furnished by an HMO to its enrollees; and under Health and Safety Code, §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 section affects the Health Maintenance Organization Act, Insurance Code, Article 20A, and Health and Safety Code, Chapter 12.

§119.91. Texas Metropolitan Areas.

(a) General. The chart in subsection (b) of this section relating to "Statistical Definitions for Texas Metropolitan Areas," was issued by the Office of Management and Budget, effective December 31, 1992. The chart shall be used by a health maintenance organization in developing its service area in accordance with §119.21 of this title (relating to Organization of a Health Maintenance Organization and Service Area). The acronyms used in this section have the following meanings:

(1) MA is a metropolitan area.

(2) MSA is a metropolitan statistical area.

- (3) PMSA is a primary metropolitan statistical area.
- (4) CMSA is a consolidated metropolitan statistical area.

(b) Statistical Definitions for Texas Metropolitan Areas.

FIGURE 1: 25 TAC §119.19(b)

FIGURE 2: 25 TAC §119.19(b)

(c) Metropolitan area.

(1) The general concept of an MA is one of a large population nucleus, together with adjacent communities that have a high degree of economic and social integration with that nucleus. Some MAs are defined around two or more nuclei.

(2) The MA classification is a statistical standard, developed for use by Federal agencies in the production, analysis, and publication of data on MAs. The MAs are designated and defined by the Federal Office of Management and Budget, following a set of official published standards. These standards were developed by the interagency Federal Executive Committee on Metropolitan Areas, with the aim of producing definitions that are as consistent as possible for all MAs nationwide.

(3) Each MA must contain either a place with a minimum population of 50,000 or a Census Bureau-defined urbanized area and a total MA population of at least 100,000 (75,000 in New England). An MA comprises one or more central counties. An MA also may include one or more outlying counties that have close economic and social relationships with the central county. An outlying county must have a specified level of commuting to the central counties and also must meet certain standards regarding metropolitan character, such as population density, urban population, and population growth. In New England, MAs are composed of cities and towns rather than whole counties.

(4) The territory, population, and housing units in MAs are referred to as "metropolitan." The metropolitan category is subdivided into "inside central city" and "outside central city." The territory, population, and housing units located outside MAs are nonmetropolitan classification cuts across the other hierarchies; for example, there is generally both urban and rural territory within both metropolitan and nonmetropolitan areas.

(5) To meet the needs of various users, the standards provide for a flexible structure of metropolitan definitions that classify an MA either as a MSA or as a CMSA that is divided into PMSAs. Documentation of the MA standards and how they are applied is available from the Secretary, Federal Executive Committee on Metropolitan Areas, Population Division, U.S. Bureau of the Census, Washington, DC 20233.

(d) Central city. In each MSA and CMSA, the largest place and, in some cases, additional places are designated as "central cities" under the official standards. A few PMSAs do not have central cities. The largest central city and, in some cases, up to two additional central cities are included in the title of the MA; there also are central cities that are not included in an MA title. An MA central city does not include any part of that city that extends outside the MA boundary.

(e) Consolidated and primary metropolitan statistical area.

(1) If an area that qualifies as an MA has more than one million persons, PMSAs may be defined within it. PMSAs consist of a large urbanized county or cluster of counties that demonstrates very strong internal economic and social links, in addition to close ties to

other portions of the larger area. When PMSAs are established, the larger area of which they are component parts is designated a CMSA.

(2) The Dallas-Fort Worth CMSA consists of the Dallas and the Forth Worth-Arlington PMSAs combined. Similarly, the Houston-Galveston-Brazoria CMSA combines the Houston, Galveston-Texas City, and Brazoria PMSAs.

(f) Metropolitan statistical area. MSAs are relatively free-standing MAs and are not closely associated with other MAs. These areas typically are surrounded by nonmetropolitan counties.

(g) Metropolitan area title and code.

(1) The title of an MSA contains the name of its largest central city and up to two additional city names, provided that the additional places meet specified levels of population, employment, and commuting. Generally, a city with a population of 250,000 or more is in the title, regardless of other criteria.

(2) The title of a PMSA may contain up to three place names, as determined above, or up to three county names, sequenced in order of population. A CMSA title also may include up to three names, the first of which generally is the most populous central city in the area. The second name may be the first city or county name in the most populous remaining PMSA; the third name may be the first city or county name in the next most populous PMSA. A regional designation may be substituted for the second and/or third names in a CMSA title if such a designation is supported by local opinion and is deemed to be unambiguous and suitable by the Office of Management and Budget.

(3) The titles for all MAs also contain the name of each State in which the area is located. Each MA is assigned a four-digit FIPS code, in alphabetical order nationwide. If the fourth digit of the code is "2," it identifies a CMSA. Additionally, there is a separate set of two-digit codes for CMSAs, also assigned alphabetically.

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

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Susan K. Steeg

General Counsel

Texas Department of Health

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Chapter 229 Food and Drug

Minimum Standards for Approved Narcotic Treatment Programs

25 TAC §§229.141, 229.142, 229.145-229.148, 229.150-229.152

The Texas Department of Health (department) proposes amendments to §§229.141, 229.142, 229.145-229.148, and 229.150-229.152, concerning the licensure and operating standards for narcotic treatment programs (NTP). Specifically, the sections cover general provisions; definitions; applications, fees and permits; failure to comply; denial of application; suspension or revocation of a permit; state operational re-

quirements; central registry; approved hospital narcotic drug detoxification treatment; and federal regulations.

The amendments require programs to prepare and follow written procedures for conducting patient urinalysis screens for illicit drug use and to plan for emergencies that interrupt normal program functions. The amendments contain detailed patient requirements for tuberculosis screening and subsequent evaluation and treatment referral. In addition, programs are given detailed procedures to follow when patients transfer from one program to another.

The amendment to §229.145 removes the three-mile distance requirement for new programs and establishes new criteria based on location, funding, and competency and compliance history of the applicant.

Cynthia T. Culmo, R.Ph., Director, Drugs and Medical Devices Division, has determined that for the first five-year-period the sections are in effect there will be no fiscal implications to state and local governments as a result of enforcing or administering the sections as proposed.

Ms. Culmo has also determined that for each year of the first five years the sections as proposed are in effect, the benefit to the public will be the early detection and treatment of tuberculosis infection among the high risk population of intravenous drug users. Continuity of care for NTP patients who wish to transfer between programs and in emergency situations that interrupt program functions will be encouraged by the amendments. This will contribute to minimizing the possibility of diversion of narcotic drugs outside the treatment setting. There is no anticipated economic cost to small businesses or persons who may be required to comply with the sections. There will be no effect on local employment.

Comments on the proposal may be submitted to Cynthia T. Culmo, R.Ph., Director, Drugs and Medical Devices Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0237. Comments will be accepted for 30 days from the date of publication of this proposal. In addition, a public hearing on the proposed rules will be held in the Texas Department of Health Lecture Hall, 1100 West 49th Street, Austin, Texas, on March 18, 1996, beginning at 9:00 a.m.

The amendments are proposed under the Texas Health and Safety Code, §466.004, which provides the department with the authority to adopt rules to ensure the proper use of approved narcotic drugs to treat opiate addicted persons and for the issuance of permits to operate narcotic treatment programs; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The amendments affect Health and Safety Code, Chapter 466.

§229.141. General Provisions.

The purpose of the sections in this chapter is to provide assurance that facilities holding an approved narcotic drug permit are regulated under a set of minimum standards for the establishment and operation of a narcotic treatment program pursuant to Texas Health and Safety Code, Chapter 466. Each facility shall be approved and monitored by the Texas Department of Health, Drugs and Medical Devices

Division [of Food and Drugs], 1100 West 49th Street, Austin, Texas 78756.

§229.142. Definitions.

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

Central registry-A process in which an NTP shall share patient identifying information about individuals who are applying for or undergoing detoxification or maintenance treatment on an approved narcotic drug to a central record system at the Texas Department of Health, Drugs and Medical Devices Division [of Food and Drugs], Austin, Texas.

State Methadone Authority-The Texas Department of Health, Drugs and Medical Devices Division [of Food and Drugs].

§229.145. Application, Fees, Permits.

(a) Application.

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

(4) Currently addicted individuals, and individuals with a history of opiate usage (including methadone) within one year of [employment] application[,] for a permit, are not eligible for [employment in and/or] ownership of an NTP.

(5) (No change.)

(6) Applicants must provide to the department complete information for evaluation of criteria concerning location, funding, compliance history, and competency to operate an NTP.

(A) Scope. The department intends that new NTP locations be established to serve diverse patient populations without singular regard to proximity of location to an existing program(s). The department has established criteria to prevent competition for patients among NTPs in the same area that may result in increased noncompliance with state and federal regulations and compromised patient care.

(B) Criteria. An applicant must affirmatively demonstrate the following:

(i) serviceability of the program at the proposed location by providing the department the following:

(I) a map showing proximity of the proposed NTP to existing programs within a three-mile radius;

(II) description of how the new program will ensure it will not duplicate treatment services for existing patients at an established program in the area;

(III) copies of planned promotional materials, advertisements, and other techniques to publicize the proposed program; and

(IV) procedures that will be used to identify whether a patient is enrolled in another clinic;

(ii) the source and adequacy of financial assets necessary to operate the program;

(iii) if applicable, the compliance history of the applicant, which includes any issues reported to the department by FDA, DEA or any other regulatory agency;

(iv) adequate planning and organizational structure demonstrated by full and complete answers submitted to all questions in the application materials; and

(v) a statement that the applicant has read, understood and agreed to follow all federal and state regulations concerning operation of an NTP.

[(6) New clinics will not be permitted to operate within a three-mile radius of an existing clinic. Existing programs are exempted so that they are not required to relocate.

(b) Fees and fee assessments.

(1) **Initial fee.** A nonrefundable initial fee of \$700 must be submitted along with the complete application for the purpose of evaluation, inspection, and processing of the request to operate a NTP in accordance with subsection (a) of this section. An application will not be considered unless the application is accompanied by the initial fee. A nonrefundable initial fee of \$100 shall be submitted for each medication unit requested in the initial application.

(2) **Annual patient fee.** Upon issuance of the permit, the permit holder shall submit a fee of \$20 for each patient which the NTP is approved to treat no later than 30 days after the permit is issued. A fee certificate will be issued for a 12-month period from date of issuance of the permit. The current annual renewal patient fee certificate is transferrable until its expiration date in the following circumstances:

(A) to the permit holder of a program which relocates with no change of ownership or;

(B) to a new permit holder of a program which changes ownership at an existing location.

(3) **Annual renewal fee.** A nonrefundable annual renewal fee of \$20 for each patient which the NTP is approved to treat shall be submitted by the permit holder to the department by filing a renewal form provided by the department prior to the expiration of the current fee certificate. A person who files a renewal fee after the expiration date must pay an additional \$100 as a delinquency fee. A fee certificate will be issued for a 12-month period from date of issuance of the permit.

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

(4) **Medication unit fee.** A nonrefundable annual renewal fee of \$100 shall be paid for each medication unit the permit holder may operate.

(c) (No change.)

§§229.146. *Failure to Comply.*

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

(c) The department will assess [access] administrative or civil penalties in accordance with the provisions in §229.261 of this title (relating to Assessment of Administrative or Civil Penalties).

§229.147. *Denial of Application; Suspension or Revocation of a Narcotic Drug Permit.*

(a) Failure to comply with any of these sections shall be grounds for denial, suspension, or revocation of a narcotic drug permit.

(b) The commissioner may refuse an application for a license or may suspend or revoke a license if the applicant or licensee:

(1) Vhas been convicted of a felony that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony that involves moral turpitude;

(3) has been convicted of a felony in a state or federal court of the illegal use, sale or transportation of narcotic drugs, barbiturates, amphetamines, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted of a felony in a state or federal court of the illegal use, sale, or transportation of narcotic drugs, barbiturates, amphetamines, or any other dangerous or habit-forming drugs;

(5) has had a permit to operate a narcotic treatment program refused, revoked, and/or suspended by the Texas Department of Health (department), Drug Enforcement Administration (DEA), and/or Food and Drug Administration (FDA); and

(6) has obtained or attempted to obtain a license by fraud or deception.

(c) If it appears that an applicant or permit holder has failed to achieve or demonstrate compliance with these sections, the applicant or permit holder shall be given written notice of an opportunity for a hearing in accordance with the [Texas Department of Health's (department)] department's formal hearing procedures in Chapter 1 of this title (relating to Board of Health), prior to denying the application, or suspending or revoking the permit.

(d) An applicant or permit holder may request one informal reconsideration conference with the department prior to the requesting or setting of an administrative hearing under this chapter. The request for such an informal reconsideration may be in addition to the request for a formal hearing and will not waive the person's right to a formal hearing if the outcome of the informal reconsideration is adverse to the person. Requests for the informal reconsideration conference shall be addressed as provided in subsection (e) of this section.

(e) If the applicant or permit holder requests a hearing or informal reconsideration, he/she shall so notify, in writing, the Texas Department of Health, Drugs and Medical Devices Division [of Food and Drugs], 1100 West 49th Street, Austin, Texas 78756, within 15 days of receipt of the notice of an opportunity for a hearing. If the applicant or permit holder does not request a hearing within the specified time, then the notice of an opportunity for a hearing shall be construed to be a notice of denial of the application, or suspension or revocation of the permit as stated in the notice.

(1) The request shall:

(A) indicate if the applicant or permit holder will be accompanied by counsel or other representative;

(B) indicate the name(s) of the person(s) who will represent the applicant or permit holder; and

(C) include an explanation of the specific point(s) that are being disputed.

(2) Regarding the informal reconsideration conference, the department will contact the applicant or permit holder in writing or verbally to discuss a mutually agreeable time and place for the meeting.

(3) The department may verbally advise the applicant or permit holder of their decision relative to the informal hearing, with written confirmation to follow.

(f) [(b)] The department may take action under emergency orders of the Health and Safety Code, Chapter 466, to immediately suspend an approved narcotic drug permit when approval is withdrawn from the permit holder by the FDA [Food and Drug Administration (FDA)] or a registration is revoked by the DEA [Drug Enforcement Administration (DEA)]. The suspension shall be effective until the permit is surrendered, revoked, or reinstated in accordance with the department's formal hearing procedures in Chapter 1 of this title [(relating to the Board of Health)].

§229.148. State Operational Requirements.

(a) (No change.)

(b) If a patient, because of exceptional circumstances or hardship, requests to receive additional take-home doses of narcotic drug before the next scheduled clinic visit or to ingest a previously dispensed take-home dose as an observed dose and receive additional take-home doses, the patient shall be required to return all remaining dispensed doses to the program for verification of the correct number of doses, the container content, and label dates. Discrepancies shall be reported to the State Methadone Authority before doses are returned to the patient. The rationale for allowing the exception shall be documented in the patient file and signed or countersigned and dated within 72 hours by the program physician. [When given a take-home dose of medication, a patient may not return to the clinic to ingest that take-home as an observed dose.] The clinic may dispense only the minimum number of take-home doses of methadone to change a patient's take-home schedule.

(c)-(o) (No change.)

(p) Employees who are currently or formerly addicted to drugs of abuse are considered risks to the security of drug stocks and may not have access to the drug stocks [drugs] or to the drug dispensing area. [Currently addicted individuals, and individuals with a history of opiate usage (including methadone) within one year of the employment application, are not eligible for employment and/or ownership of a NTP.]

(q) A narcotic drug may be administered or dispensed only by a practitioner licensed under the appropriate state law and registered under the appropriate state and federal laws to order narcotic drugs for patients, or by an agent of such a practitioner, supervised by and under the order of the practitioner. This agent is required to be a pharmacist, registered nurse, or licensed practical nurse, or any other health care professional authorized by federal and state law to administer or dispense narcotic drugs. The licensed practitioner assumes responsibility for the amounts of narcotic drugs administered or dispensed and shall record and countersign all changes in dosage schedules within 72 hours. If the program keeps the record of administration and dispensing of narcotic drugs separate from the patient's file, the program shall transfer data from the dosing record to the patient's file at least monthly.

(r) The person(s) responsible for a program shall ensure that an initial drug-screening test or analysis is collected for each new patient, including permanent transfer patients, before the initial or maintenance dose is administered. The program medical director shall ensure that the initial dose of methadone for a new patient does not exceed 30 milligrams and that the total dose for the first day does not exceed 40 milligrams, unless the program medical director documents in the patient's record that 40 milligrams did not suppress opiate abstinence symptoms. A patient is to be given an initial dose of 30 milligrams and then observed for one hour to see if opiate abstinence symptoms are suppressed. If not, an additional dose of up to 10 milligrams may be given. The patient is to be observed for an additional hour. If opiate abstinence symptoms are still not suppressed, then the patient may be given up to an additional 10 milligrams. This procedure, administering methadone in up to 10 milligram increments with a one-hour observance period after each addition, may be continued until abstinence symptoms are suppressed and within a scope that ensures patient safety.

(s)-(t) (No change.)

(u) Upon admission, each patient must receive an intradermal skin test using the Mantoux technique, using 0.1ml of purified protein derivative (PPD) tuberculin containing 5 tuberculin units (TU) into the volar surface of the forearm. The reaction to the Mantoux test should be read by a trained health care worker 48 to 72 hours after the injection and the results (induration only) recorded in millimeters (mm). A patient with a documented previously positive PPD should not be retested. Rather, a verification of documentation of satisfactory record of diagnostic evaluation and therapeutic follow up, including preventive treatment or treatment of TB, shall be placed in the patient file. If disposition cannot be verified, the patient must be referred for further evaluation. [or, when available, a procedure of equal or better sensitivity. A patient is not required to be retested at each admission if he or she can provide documentation that a Mantoux test was performed within the previous 12 months.] Patients who had negative tuberculin skin tests on admission must be retested each year. Patients with a positive skin test result of five millimeters or greater must be referred for diagnostic evaluation. The program shall document in the patient file verification of follow-up on all patients referred for TB evaluation, HIV counseling, and HIV testing to make sure appointments are kept.

(1) HIV seropositive patients found to be tuberculin-negative must be tested for anergy. Anergy is the absence of a reaction to the tuberculin test. In immunosuppressed patients, delayed-type hypersensitivity responses such as tuberculin reactions may decrease or disappear. A test for anergy is done by administering at least two other delayed-type hypersensitivity antigens in conjunction with tuberculin skin testing. As new methods for testing anergy are developed, the most recent method recommended by the Center for Disease Control and Prevention may be utilized in lieu of the test method required in this paragraph.

(2) Results of anergy testing shall be recorded in millimeters of induration, not simply as positive or negative. If anergy is demonstrated, the patient must be referred for further evaluation. Anergic HIV-positive patients must be referred for clinical assessment and possible preventative therapy.

(3) Generally, patients who successfully complete recommended preventive therapy are not likely to develop TB. However, in

immunosuppressed populations a subsequent exposure can lead to reinfection. Consequently, immunosuppressed individuals must be evaluated periodically as indicated to rule out active tuberculosis, particularly after contact with persons known to be infectious. All HIV-infected persons with a positive tuberculin skin test (equal to or greater than 5mm of induration) should have a chest x-ray and be evaluated by a clinician to rule out active tuberculosis. HIV-infected individuals who have symptoms suggestive of tuberculosis should be referred for chest x-ray and clinical evaluation regardless of their tuberculin skin test status.

(v) Each employee working in a narcotic treatment program must receive an intradermal skin test using the Mantoux technique at the start of employment and annually thereafter, if the test result is negative, or present a certificate signed by a physician that states that:

(1) (No change.)

(2) the results of the test and subsequent medical evaluation including x-ray indicate that the person does not have tuberculosis.

(w)-(y) (No change.)

(z) Each NTP shall notify the State Methadone Authority in writing of any change in the employment status of any of its program personnel. The employee's home address and phone number, copies of a current Texas driver's license and verification of professional licensure shall be provided with this notification. In addition, copies of a curriculum vitae, physician permit, and DEA and DPS registrations shall be provided for physicians. This notice shall be provided within 20 days of the event.

(aa) NTP counselors not exempted shall [must] meet the requirements of a qualified credentialed counselor or counselor intern as defined in regulations of [be licensed by] the Texas Commission on Alcohol and Drug Abuse (TCADA), Title 40, Texas Administrative Code, Section 150.

(bb) (No change.)

(cc) There shall be written procedures that must be followed by the program for the screening of urine for illicit drugs. The procedures shall describe in sufficient detail a plan for collection, storage, handling and analysis of urine samples, and the program's response to test results that include at least the following:

- (1) training for staff members of the importance and relevance of reliable and timely urinalysis procedures and reports, the purpose of conducting urinalyses, and the significance of the results;
- (2) the drugs or substances for which the urine is analyzed;
- (3) a protocol for collection of urine that minimizes the opportunity for falsification and incorporates the elements of randomness and surprise;
- (4) storage of urine in a secure place to avoid substitution;
- (5) a requirement for disclosure of urine screen results to the patient and documentation in the patient file of program and patient response to test results; and
- (6) refusal by the patient to provide a urine sample shall be considered the same as a positive result for illicit drugs. Such refusals shall be documented in the patient file.

(dd) A patient readmitted within six months after discharge does not require a repeat physical examination unless requested by the program physician.

(ee) There shall be a written procedure for handling the admission of patients who wish to transfer with no lapse in treatment from another program. At a minimum, the procedure shall contain the following information:

(1) a requirement to obtain from the patient an authorization for disclosure of confidential information, pursuant to 42 Code of Federal Regulations (CFR), §§2.31-2.34, for the purpose of obtaining accurate and current information concerning the patient's treatment at the former program.

(2) The program physician or an appropriately trained health care professional supervised by the admitting program physician shall consider data obtained from the transferring program that verifies the amount of time the patient has spent satisfactorily adhering to the eight criteria found in subsection (c) of this section in determining if the patient may continue the same frequency of clinic attendance permitted at the former program immediately before transferring to the new program. The program physician shall not allow the patient to attend the clinic less frequently than the most recent schedule allowed at the former program unless:

(A) copies of the patient's records are obtained to sufficiently document the patient's satisfactory adherence to federal and state regulations for the required time in treatment; and

(B) the physician has completed an evaluation of the patient that includes consideration of the eight criteria in subsection (c) of this section and the additional criteria for patients considered for once weekly clinic attendance as found in 21 CFR, §291.505(d)(6)(v)(A)(3).

(3) At a minimum, the admitting program shall document in the patient file the following information before administering the initial dose of narcotic drug to a transfer patient:

(A) the last date and amount of narcotic drug administered or dispensed at the former program;

(B) the name, address and phone number of the program contacted;

(C) the date and time of the contact; and

(D) the name of the program employee furnishing the information.

(4) Unless an exception is granted by the State Methadone Authority, the admitting program shall, in addition to the requirements in paragraph (3) of this subsection, document in the patient file at a minimum the following information before dispensing an initial dose of take-home narcotic drug to a transferred patient:

(A) the length of time in continuous treatment;

(B) the most recent schedule of clinic attendance;

(C) verification of satisfactory urinalysis screen results that correspond to requirements for the most recent take-out schedule of narcotic drug at the former program; and

(D) satisfactory compliance with the criteria in subsection (c) of this section and 21 CFR, §291.505(d)(6)(v)(A)(3), relating to patients on a weekly clinic attendance schedule.

(5) The admitting program shall obtain and place in the patient file copies of medical records, including the results of the most recent physical examination, laboratory tests, urinalysis screen results, and all other required patient records listed above within 30 days. Patients who have had a physical examination and laboratory tests within the past three months can be admitted without a new physical examination and laboratory tests, unless the program physician requests it, if the admitting program obtains significant results of the previous examination and tests. The admitting program shall obtain copies of these results within 30 days of admission. If records are not obtained within 30 days, the program shall consider the patient a new patient and fulfill the minimum standards for admission.

(ff) Each program shall develop and maintain a written plan to ensure the continuity of patient treatment in the event that an emergency or disaster disrupts the program's functions.

§229.150. *Central Registry.*

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

(e) Each NTP shall report to the central registry specific information.

(1) The following changes in patient status: [Each person admitted as a] new patient, readmitted to the same clinic, admitted from another NTP as a permanent transfer patient, transferred to another narcotic maintenance or detoxification program, deceased patient, [temporarily transferred to another program,] or discharged (terminated) from maintenance or detoxification treatment shall be identified and reported to the central registry located at the Texas Department of Health, Drugs and Medical Devices Division [of Food and Drugs], by telephone on the day the action occurs and written documentation must be submitted within a 24-hour period (or the next state working day immediately following weekends or holidays).

(2) Each NTP's verbal and written report to the central registry shall identify and provide the following information for each patient:

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

(C) action taken identified as:

- (i) new patient, readmitted patient (NP); or
- (ii) terminated patient (TP);
- (iii) permanent transfer inpatient (TIP);
- (iv) permanent transfer outpatient (TOP);
- (v) deceased patient (DP); and [terminated patient

(TP);]

[(vi) readmitted patient (RP); or]

[(vii) temporary transfer patient (TTP); and]

(D) patient identification as follows.

(i) The patient must be identified with a current state driver's license containing a photograph of the patient or state-issued identification card containing a photograph of the patient. Photocopies of each of these must be maintained in the patient's

file. The program shall document in the patient's file attempts to induce the patient to obtain state identification before admission. If a patient is not able or willing to furnish the required documents, the program shall contact the State Methadone Authority to access the Central Registry to check for possible duplicate enrollment and to discuss acceptable, alternate forms of identification.

(ii)-(iii) (No change.)

§229.151. *Approved Hospital Narcotic Drug Detoxification Treatment.*

(a) (No change.)

(b) Fees.

(1) (No change.)

(2) The nonrefundable annual renewal fee of \$200 shall be submitted by the permit holder to the department by filing a renewal form provided by the department prior to the expiration of the current fee certificate. A person who files a renewal fee after the expiration date must pay an additional \$100 as a delinquency fee. A fee certificate will be issued for a 12-month period from date of issuance of the permit. The department will not issue a permit if the current permit has been suspended, revoked, or surrendered by the permit holder.

(c) (No change.)

(d) Compliance by existing hospital NTPs.

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

[(4) Section 229.148 (e) and (f) of this title (relating to Compliance by Existing Narcotic Treatment Programs) shall not apply to hospitals.]

(4) [(5)] Methadone, or any other drug approved by the United States Food and Drug Administration for the treatment of opiate addiction, [in writing by the State Methadone Authority], is the only drug which is approved to be used in hospital inpatient detoxification treatment of patients with opiate addiction.

§229.152. *Federal Regulations.*

The Texas Department of Health adopts by reference the federal regulations on "Drugs Used For Treatment of Narcotic Addicts" found in Title 21, Code of Federal Regulations, Part 291, 1993 [as amended]. A copy of these regulations are indexed and filed in the Drugs and Medical Devices Division [of Food and Drugs], Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

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

Issued in Austin, Texas, on February 28, 1996.

TRD-9602813

Susan K. Steeg

General Counsel, Office of General Counsel

Texas Department of Health

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter A. Rules of Practice and Procedure

28 TAC §§1.88, 1.89

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

The Commissioner of Insurance proposes repeal of §1.88 and §1.89, concerning entry of appearance, and failure to appear at a hearing on a contested case. Repeal of the sections is necessary because their provisions relate to essentially the same subject matter and regulatory procedural framework as proposed new §1.88 and §1.89, concerning the filing of a written response to the notice of a hearing in a contested case, and to default provisions and remedies in the event of default. Simultaneous to this proposed repeal, proposed new §§1.88 and 1.89 are published elsewhere in this issue of the Texas Register. The new sections reorganize and streamline the disposition of certain contested matters, resulting in greater time efficiency and cost effectiveness than the sections proposed for repeal. The proposed new sections will permit the elimination of unnecessary administrative expense for both the department and SOAH, so that resources may be shifted to necessary and more essential functions, by providing that in certain circumstances informal disposition by default authorized by the Insurance Code, Article 1.10, may be directly pursued by department staff.

Mary Keller, senior associate commissioner for the legal and compliance activity of the Texas Department of Insurance, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. Ms. Keller also has determined that there will be no effect on local employment or the local economy.

Ms. Keller, senior associate commissioner for the legal and compliance activity of the Texas Department of Insurance, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administration and enforcement of the sections as repealed will be the more efficient administrative regulation of insurance licensees or prospective licensees, and the more effective utilization of public resources. There is no anticipated difference in cost of compliance between small and large businesses, or between business entities and natural persons resulting from the repealed sections. There is no anticipated economic cost resulting from the proposed repeal to persons who are required to comply with the proposed repeal.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the Texas Register to Alicia M. Fechtel, General Counsel and Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Mary Keller, Senior Associate Commissioner for Legal and Compliance, P.O. Box 149104, MC 110-1A, Austin, Texas 78714-9104. A request

for public hearing on the proposed repeal should be submitted separately to the Office of the Chief Clerk.

The repeal is proposed pursuant to the Insurance Code, Articles 1.10 and 1.03A, and the Government Code, §2001.056 and §2001.004. Article 1.10, §7(d) provides that the commissioner may dispose of items addressed in §7 by consent order, agreed settlement, stipulations or default. Article 1.03A authorizes the commissioner of insurance to promulgate and adopt rules and regulations for the conduct and execution of the duties and functions by the department. The Government Code, §2001.056 provides that unless precluded by law, an informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default. The Government Code, §2001.004 authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures, and prescribe the procedure for adoption of rules by a state administrative agency.

The proposed repeal affects regulation pursuant to the following statutes: Insurance Code, Articles 1.10 and 1.10A, Government Code, Chapter 2001.

§1.88. *Entry of Appearance; Continuance.*

§1.89. *Failure to Attend Hearing; Default Judgment*

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

Issued in Austin, Texas, on March 1, 1996.

TRD-9602961

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-6327

Part II. Texas Workers' Compensation Commission

Chapter 134. Guidelines for Medical Services and Treatments

Subchapter F. Pharmaceutical Fees

28 TAC §134.501

The Texas Workers' Compensation Commission (the commission) proposes the repeal of §134.501, the Pharmaceutical Fee Guideline. The repeal is proposed because a revised fee guideline for pharmaceuticals has been included in the *Texas Workers' Compensation Medical Fee Guideline, 1996 (MFG)*. Although some revisions have been made in the wording of the Pharmaceutical Fee Guideline contained in the MFG, the fees for pharmaceutical services are the same as those contained in §134.501. The major change is simply the location of the Pharmaceutical Fee Guideline. The MFG is effective for pharmaceutical services provided on or after April 1, 1996 and the provisions of §134.501 are effective for pharmaceutical services provided prior to April 1, 1996.

Janet Chamness, Chief of Budget, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of repeal of the rule, because similar provisions are now included in the *TWCC Medical Fee Guideline, 1996*.

Ms. Chamness has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the repeal will be a more logical organization of fee requirements. With the addition of the Pharmaceutical Fee Guideline to the *Texas Workers' Compensation Medical Fee Guideline, 1996*, provisions regarding fees for medical treatments and services can all be found in the same document. This avoids confusion.

There will be minimal anticipated economic costs to persons as a result of repeal of the rule as proposed. Persons who utilize only the Pharmaceutical section of the MFG will be required to purchase a full copy of the *Texas Workers' Compensation Medical Fee Guideline, 1996* to obtain the provisions applicable to pharmaceuticals. The cost of this document is estimated at less than ten dollars.

There will be no greater cost of compliance for small businesses as compared to large businesses.

Comments on the proposal or requests for public hearing must be submitted to Elaine Crease by 5:00 p.m. on April 11, 1996 at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

The repeal is proposed under the Texas Labor Code, §402.061 which requires the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act; the Texas Labor Code, §408.021, which entitles injured employees to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code, §413.007, which requires the Commission to maintain a statewide database of medical charges, actual payments, and treatment protocols; the Texas Labor Code, §413.011, which mandates that the Commission by rule establish medical policies and guidelines; and the Texas Labor Code, §413.012, which requires review and revision of the medical policies and fee guidelines at least every two years.

This proposed repeal affects the following statutes: the Texas Labor Code, §413.002, which requires that the Commission's Medical Review Division monitor health care providers, insurance carriers and claimants to ensure compliance with Commission rules; the Texas Labor Code, §413.007, which sets out information to be maintained by the Commission's Medical Review Division; the Texas Labor Code, §413.011, which mandates that the Commission by rule establish medical policies and guidelines; the Texas Labor Code, §413.012, which requires review and revision of the medical policies and fee guidelines at least every two years; the Texas Labor Code, §413.013, which requires the Commission by rule to establish programs related to health care treatments and services for dispute resolution, monitoring, and review; the Texas Labor Code, §413.015, which requires insurance carriers to pay charges for medical services as provided in the statute and requires that the Commission ensure compliance with the medical policies and fee guidelines through audit and review; the Texas La-

bor Code, §413.016, which provides for refund of payments made in violation of the medical policies and fee guidelines; the Texas Labor Code, §413.017, which provides a presumption of reasonableness for medical services fees which are consistent with the medical policies and fee guidelines; the Texas Labor Code, §413.019, which provides for payment of interest on delayed payments refunds or overpayments; and the Texas Labor Code, §413.031, which provides a procedure for medical dispute resolution.

§ 134.501. *Pharmaceutical Fee Guideline.*

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

Issued in Austin, Texas, on March 4, 1996

TRD-9602989

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Earliest possible date of adoption: April 12, 1996

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 363. Financial Assistance Programs

Subchapter E. Economically Distressed Areas Program

31 TAC §§363.502, 363.503, 363.505, 363.506

The Texas Water Development Board (the board) proposes amendments to §363.502 Definition of Terms, §363.503 Terms of Financial Assistance, §363.505 Calculation of Financial Assistance, and §363.506 Minimum Total Loans. The amendments provide a new methodology for determining the amount and form of financial assistance for EDAP projects, increase the limit of minimum total loans, and add definitions for clarification. The determination of the amount and form of financial assistance would be based on the average annual debt service of the applicant divided by the number of residential users or the capital component. The capital component is multiplied by the estimated number of residential users to be served by the project on the date of completion of the project to determine the amount of revenue that is available for debt service. For start up systems, a regional capital component benchmark is calculated based on no less than three utility systems within 100 miles of the proposed system.

Pamela Ansbury, the Director of Finance, has determined that for the first five year period the sections are in effect the fiscal implications as a result of administering the sections will be a reduction in cost to state government of \$40,200 for each year. Additionally, for the same time period, the effect of enforcing the rule may reduce the state general revenue necessary to repay the state bonds which finance the program, however, inasmuch as the amount of the reduction is dependent on the amount of capital debt currently held by the applicants to the program for

their water or sewer system the amount of the reduction cannot be determined at this time. For the same time period, there may be a fiscal implication to local governments that receive financial assistance from the Economically Distressed Areas Program in that the amount and form of financial assistance as provided under the new sections may increase the amount of such assistance for which repayment is required of the local governments. The amount of the financial assistance for which repayment is required from these local governments is dependent on the amount of capital debt currently held by the local governments for their water or sewer system and therefore cannot be determined at this time.

Ms. Ansbury also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to reduce the potential for manipulation of projected costs that could result in consistently greater grant amounts, to minimize the number of subjective quantifications required in determining the amount of revenue available for debt service payments thereby reducing the complexity, uncertainty, and apparent arbitrary nature of the determination of the amount and form of the financial assistance available under EDAP, and to require evidence that the rates the colonia resident will have to pay are similar to the rates other families of similar income are able to pay for similar services. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed new section and amendments will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Attorney, (512) 475-2051, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The amendments are proposed under Texas Water Code, §6.101 and Texas Water Code, §16.342 which require the board to adopt rules that are necessary to carry out the program provided by Water Code, Subchapter K, Chapter 17.

Texas Water Code §§15.407, 17.927, and 17.933 are the statutory provisions affected by the proposed amendment.

§363.502. Definitions of Terms.

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

Capital component - That component of the existing rate of a provider utility for the applicable utility service used to retire the long term capital debt of the system determined by calculating a monthly average of the existing annual long term capital debt payments of the utility service provider divided by the total number of living unit equivalents (LUE).

Default rate - The average monthly number of residential customers that are delinquent in payment in excess of six months for the service provided divided by the average monthly total number of residential customers.

Long term capital debt - The total amount of outstanding indebtedness of an applicant that at the time the debt was incurred was intended to be repaid over a period longer than one year, the proceeds of such indebtedness being used for the purpose of acquiring, constructing, or improving a water or sewer

system or a necessary component to the service, operation, or maintenance of such system, including long term capital leases of real property and provided that leases for personal property are excluded.

Living unit equivalent or LUE - The total volume of water provided or wastewater treated annually by a provider utility divided by the annual use of a typical single family residence of the provider utility divided by twelve months.

Payment rate - One minus the default rate of a service utility.

Regional capital component benchmark - The average capital component of all customers of no less than three water or wastewater service providers located in Texas within a 100 mile radius of the project area.

Regional payment benchmark - The average of the payment rates of no less than three water or wastewater service providers located in Texas within a 100 mile radius of the project area.

§363.503. Terms of Financial Assistance.

The board shall determine the amount and form of financial assistance and the amount and form of repayment. The board shall consider rates, fees, and charges that the average customer to be served by the project will be able to pay based on a comparison of what other families of similar income who are similarly situated pay for comparable services, sources of funding available to the political subdivision from federal and private funds and from other state funds, and any local funds of the political subdivision to be served by the project if the economically distressed area to be served by the board's financial assistance is within the boundary of the political subdivision, and the just, fair, and reasonable charges for water and wastewater service as provided in the Water Code. The board shall determine the method of evidence of debt.

§363.505. Calculation of Financial Assistance.

(a) The board's financial assistance will be determined by the provisions of this section, including calculating:

(1) capacity within the applicant's existing water or wastewater plants and associated facilities which will be funded by the board to serve the project area. The amount of financial assistance for existing system capacity shall be based on the percentage of the system capacity necessary to serve the project area. The percentage of system capacity for the project is then multiplied by the historical plant cost to the utility. This amount will be paid directly by the board in grant funds upon completion of construction and acceptance of the project to the extent other funds and system revenues are not sufficient to pay for such capacity; and

(2) revenue available for payment [repayment] of debt service. The board will determine the revenue available for payment of debt service by using the appropriate method specified in either (A) or (B) of this paragraph.

(A) Upon the submission of evidence satisfactory to the executive administrator that the rates, fees and charges to the average customer to be served by the project will be the same as the rates, fees, and charges that other families of similar income who are similarly situated pay for comparable services, the revenue available for payment of debt service will be determined as follows:

(i) for existing provider utilities, the capital component multiplied by the estimated number of LUE's in the project area at the end of construction of the project; or

(ii) for new provider utilities, the regional capital component benchmark multiplied by the estimated number of LUE's in the project area at the end of construction of the project.

(B) If there is insufficient satisfactory evidence that there are other families of similar income who are similarly situated paying the same rates, then the revenue available for debt service will be determined as follows:

(i) for existing provider utilities, the payment rate of the provider utility multiplied by the capital component of the provider utility multiplied by the estimated number of LUE's in the project area at the end of construction of the project; or

(ii) for new provider utilities, the regional payment benchmark multiplied by the regional capital component benchmark of the same water or service providers used to determine the regional payment benchmark multiplied by the estimated number of LUE's in the project area at the end of construction of the project. [Existing rates of the provider utility, adjusted for any subsidy to the system, estimated water usage in the project area, and number of connections for the projected 20-year needs will be used to calculate project revenues. In the absence of a provider utility, rates will be based upon the amount paid by similarly situated customers to similarly situated provider utilities. Projected operations and maintenance expenses will be deducted from this sum to produce a revenue available for repayment of debt service. The amount of debt that the revenue will support shall be the minimum amount of financial assistance extended to the applicant as a loan.]

[(b) By a political subdivision complying with the requirements of §16.349, Texas Water Code, and by the board compensating utilities for the system costs to provide service to the project area, the board finds it will be providing financial assistance to applicants in a manner such that the rates, fees and charges that the average customer to be served by the project is charged are the same as the rates, fees, and charges that other families of similar income who are similarly situated pay for comparable services.]

(b)[(c)] In determining the amount and form of financial assistance and the amount and form of repayment, the board also will consider sources of funding available to the applicant from federal and private funds, and from other state funds, as well as any other sources of funds to the applicant if the economically distressed area to be served by the board's financial assistance is within the boundary of the applicant, and the just, fair, and reasonable charges for water and wastewater service as provided in the Water Code.

(c)[(d)] If the amount of financial assistance for which repayment is not required exceeds 50% of the total amount of financial assistance requested from the Economically Distressed Areas Program, including funds for system capacity, plus the total interest on any amount of financial assistance that must be repaid, the applicant will be asked to provide a finding from the Texas Department of Health that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project.

§363.506. *Minimum Total Loans.*

The total amount of financial assistance provided by the board to political subdivisions under the board's Economically Distressed

Areas Program for which repayment is not required may not exceed at any time 90% [75%] of the sum of the total principal amount of issued and unissued bonds authorized under Texas Constitution, Article III, §49-d-7, for purposes of the Economically Distressed Areas Program plus outstanding interest on those bonds.

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

Issued in Austin, Texas, on March 1, 1996.

TRD-9602919

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Proposed date of adoption: April 18, 1996

For further information, please call: (512) 463-7981

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter G. Application for Medicaid

40 TAC §§15.609-15.611, 15.617

The Texas Department of Human Services (DHS) proposes amendments to §§15.609-611 and 15.617, concerning applicants and their allowed representatives, allowed signatures, and denials, in its Medicaid Eligibility rule chapter. The purpose of the amendments is to ensure Qualified Medicare Beneficiary/Specified Low-Income Medicare Beneficiaries (QMB/SLMB) benefits are received by entitled clients and limit who can apply for Medicaid on behalf of a deceased client if no bona fide agent was appointed before the client's death.

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

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that a client will receive all benefits he is entitled to receive. The limit on who may apply on behalf of a deceased client complies with state law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Long Term Care Division. Comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-142, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the depart-

ment with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code §;22.001-22.024 and §;32.001-32.042.

§15.609. *Applicants and Their Allowed Representatives.*

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

(d) The list of individuals who may serve as a bona fide agent or responsible party applying on behalf of a deceased client may be more restrictive.

§15.610. *Medicaid Coverage.*

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

(d) SSI-MAO eligibility requirements.

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

(4) Prior coverage for deceased individuals.

(A) A bona fide agent of a deceased individual may apply for retroactive medical coverage, whether or not the decedent filed a previous application for MAO or SSI. If an application was not filed during the individual's lifetime, the period considered is the three months before the month the application is received from the agent. The department considers all eligibility criteria, including a retroactive determination of disability, if applicable.

(B) If a bona fide agent was appointed during the individual's lifetime, that bona fide agent may continue to serve after the individual's death in initiating and/or completing the application process. Appointment of a bona fide agent may be by written document or may be indicated on the application form, or a bona fide agent may have been designated by the individual during the face-to-face interview.

(C) If a bona fide agent was not appointed during the individual's lifetime, then only the individual's spouse, children, sibling or half-sibling, parent (in the case of a minor child), or court-appointed estate representative may file for benefits on behalf of the deceased individual.

§15.611. *Allowed Signatures.*

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

(e) The list of individuals who may sign as bona fide agent or responsible party applying on behalf of a deceased client may be more restrictive.

§15.617. *Denials.*

[Eligibility for all applicable programs must be determined before] Before a client is denied for any reason during application or redetermination, eligibility for Qualified Medicare Beneficiary/Specified Low-Income Medicare Beneficiaries must also be tested

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

Issued in Austin, Texas, on March 1, 1996.

TRD-9602933

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: May 1, 1996

For further information, please call: (512) 438-3765

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 144. Funding Requirements

Subchapter A. Definitions

40 TAC §144.1, §144.11

The Texas Commission on Alcohol and Drug Abuse proposes new §§144.1 and 144.11, concerning definitions for funding requirements. The new sections are being proposed to set forth the definitions used in this chapter.

Sharon F. Logan, Interim Executive Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Logan also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clear understanding of the terms used in this chapter. There will be no effect on small businesses. There are no anticipated economic costs to currently funded providers who are required to comply with the sections as proposed, because these requirements are already included in the contract. Cost of compliance for future providers will vary, depending on each organization's structure and operations.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701.

The new sections are proposed under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections is the Texas Health and Safety Code, Chapter 461.

§144.1. *Applicability.*

The rules in this chapter apply only to prevention, intervention, and treatment providers receiving funds from the commission. Subchapter D (relating to Prevention and Intervention) does not apply to treatment providers, and Subchapter E (relating to Treatment) does not apply to prevention and intervention providers. Unless otherwise stated, all of the other rules apply to all providers.

§144.11. *Definitions.*

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

Abuse - Any act or failure to act which is done knowingly, recklessly or intentionally, including incitement to act,

which caused or may have caused injury to a client. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it is caused by physical action or verbal statement. Client abuse includes: any sexual activity between facility personnel and a client; corporal punishment; nutritional or sleep deprivation; efforts to cause fear; the use of any form of communication to threaten, curse, shame, or degrade a client; restraint that does not conform with these standards; coercive or restrictive actions taken in response to the client's request for discharge or refusal of medication or treatment that are illegal or not justified by the client's condition; and any other act or omission classified as abuse by the Texas Family Code, §34.012.

Access - Provided directly or indirectly through linkages with other organizations.

Admission - Formal acceptance of a prospective client to a treatment facility, requiring initiation of treatment protocol and documentation.

Admission screening - An evaluation and needs assessment, necessary for the purpose of determining service needs and appropriateness of admission to a treatment facility.

Adolescent - An individual 13 through 17 years of age whose disabilities of minority have not been removed by marriage or judicial decree.

Adult - An individual 18 years of age or older, or an individual under the age of 17 whose disabilities of minority have been removed by marriage or judicial decree.

Advocacy - Assisting participants in developing those skills necessary to access services and exercise their rights. These services require intense coordination and networking with existing community service organizations such as local schools, juvenile probation departments, employment agencies, and mental health service agencies.

Alternative activities - A prevention strategy which aims to offset the attraction to, or otherwise meet the needs usually filled by Alcohol, Tobacco and Other Drugs (ATOD). Alternative activities assist participants to master new skills and develop relationships. This strategy is aimed at providing participants with opportunities and experiences that show them constructive and healthy ways to socialize, communicate, have fun, and function without the use of ATOD. Activities conducted to meet the intent of this strategy include but are not limited to the following: tutoring, mentoring, recreation, cultural events, field trips and social outings, social bonding activities, drug-free dances and parties, retreats, and community drop-in centers.

Approval - Written authorization.

Approved - Having met certain prescribed standards and notified of such in writing by the commission.

Approved providers - Those individuals, partnerships, corporations, associations, organizations, organized health care systems, educational institutions, governmental agencies, or private practitioners who have been approved for funding by the commission.

Assessment - The process used to gain sufficient information to identify, among other things, the participant's strengths, problems, and needs as they relate to the use/abuse of alcohol and/or other drugs and the risk of contracting or transmitting infectious diseases/sexually transmitted diseases.

ATOD - Alcohol, tobacco, and other drugs.

Audit - Systematic examination of statements, records, and operations for the purpose of determining adherence to generally accepted principles, policies, or other established federal, state, or commission rules.

Award - An executed grant agreement with the commission.

Awareness - Direct or non-direct contact with target audiences, based on affecting knowledge and attitudes and includes, but is not limited to, public presentations, special events such as proclamations, poster contests, rallies, youth events; media efforts such as public service announcements; and distribution of written and promotional materials.

Bylaws - The written rules, regulations, policies, and/or procedures through which the operations of the organization are legally conducted.

Case management - Services provided by a single accountable staff person to assist and support clients in developing skills to gain access to needed medical, social, educational, and other services essential to meeting basic human services; linkage and training for the client served in the use of basic community resources; and monitoring of overall service delivery.

CFR - Code of Federal Regulations.

Chart of accounts - An organized listing of the various fund accounts, income, and expense classifications and their respective numerical designations that an organization utilizes to track its financial transactions.

Chemical dependency - The abuse of, psychological or physical dependence on, or addiction to alcohol, a toxic inhalant, or any substance designated as a controlled substance in the Texas Controlled Substances Act.

Chemical dependency counseling - Assisting an individual or group to develop an understanding of chemical dependency problems, define goals, and plan action reflecting the individual's or group's interest, abilities, and needs as affected by chemical dependency problems.

Chemical dependency treatment - A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

Client - An individual who has been admitted to a substance abuse treatment facility licensed by the commission and is currently receiving services.

Client/participant rights - The list of civil rights guaranteed to allow substance abuse programs clients' rights.

Client/participant record - A collection of written information which includes the intake data, evaluation, treatment/service plan, description of treatment/services provided, continuing care plan, and discharge information on an individual client.

CODAP - Client-Oriented Data Acquisition Process.

Collusion - A secret agreement between an applicant organization and another party to secure a contract or grant by unfair, illegal, or deceptive means.

Commission - The Texas Commission on Alcohol and Drug Abuse (TCADA).

Commissioners - Members of the commission's governing body.

Community - The people, groups, agencies, or other entities within a specified locality.

Community-based process - A strategy which aims to enhance the ability of the community to more effectively provide prevention and treatment services. Activities for this strategy include establishing formalized written agreements with other community agencies, community mobilization, community and volunteer training, neighborhood action training, staff/official training, systematic planning, multi-agency coordination and collaboration, community team-building, and accessing services and funding.

Compensation - Something, such as money or other value, given or received as payment for a service, benefit, or consideration.

Conflict of interest - The actions of an individual or individuals who receive or appear to receive private gain or favor for themselves or others while acting in the capacity as owner, board member, volunteer, or employee of a provider organization.

Consenter - The individual legally responsible for giving informed consent for a client. This may be the client, parent, guardian, or conservator. Unless otherwise provided by law, a legally competent adult is his or her own consenter. Consenters include adult clients, clients 16 or 17 years of age, and clients 13-16 years of age admitting themselves for substance abuse treatment under the provisions of the Family Code, §35.03.

Consideration - An act or forbearance (or the promise thereof) done or given by one party in return for the act or promise of another.

Continuum of care - The array of services including prevention, intervention, and treatment services, designed to meet a variety of needs resulting from potential or actual substance abuse.

Corrective action plan - A written response by provider agency to findings of non-compliance identified by the commission. A corrective action plan may serve as a means for a funded program to demonstrate to the commission the specific steps it will take to address areas of non-compliance which jeopardize its future receipt of state or federal funds. A corrective action plan must both correct a problem, and prevent that problem from occurring in the future. It is a resolution that can be measured, has a high probability of success, and will be the basis for ongoing behavior by the provider.

Cost analysis - Review and evaluation of each element of a cost to determine reasonableness, allocability, and allowability.

Cost objective or cost center - A pool, center, or area established for the accumulation of costs related to a specific grant, project, program, or contract.

Counseling session - A scheduled meeting of 30 minutes or longer duration where group, individual, or family counseling is provided.

Counselor - A qualified credentialed counselor or counselor intern.

Counselor intern (CI) - A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or an approved clinical training institution who has been designated as a counselor intern by the institution. A counselor intern shall only perform functions that are part of the supervised course of training. The supervised course of training includes educational hours, practicum hours, and supervised work experience hours that are described in writing, performed under the auspices of the institution, and performed under the direct supervision of a qualified credentialed counselor (QCC).

Counselor trainee - A person working to accumulate the 4,000 hours of supervised work experience required for licensure as a chemical dependency counselor. A trainee receiving compensation for performing assessments, counseling, or crisis intervention shall be designated as a counselor intern by a regionally accredited institution of higher education or an approved clinical training institution by September 1, 1996.

Crisis intervention - Services designed to intervene in situations which may result in a crisis if immediate attention is not provided. The crisis situation may or may not involve face-to-face or telephone alcohol/drug abuse or health issues relating to a crisis or emergency situation experienced by an individual, significant other, or community system.

Cultural competency - Academic and interpersonal skills to understand and appreciate cultural differences and similarities with, among, and between ethnic/racial groups.

Day treatment (type of service) - Treatment and education services designed for non-residential clients who spend at least four hours of a 24-hour period in the program component.

Debar - To exclude a provider from future consideration for funding by means of an established procedure which allows for tracking the provider organization and its principals and a fair hearings process.

Detoxification services - Substance abuse treatment designed to systematically reduce the amount of alcohol and other toxic chemicals in a client's body, manage withdrawal symptoms, and encourage the client to seek on-going treatment for substance abuse.

Direct care staff - Staff responsible for providing substance abuse care, supervision, or other client services that involve a significant amount of face-to-face contact.

Direct costs - The costs directly associated with the provision of services, such as costs of client care, which includes treatment services for actual substance abuse such as counseling sessions, costs of services directly associated with bringing substance abuse prevention and intervention programs to the public, and direct costs include preparation of materials, advertising, and public forums.

Direct services - Those activities that are client oriented, provided by qualified trained staff.

Discharge - That point when a client's involvement with an alcohol and other drug program is terminated and the alcohol and other drug program no longer bears responsibility for the individual's care.

Discharge summary - The documentation in the clinical record summarizing the clients progress during treatment, with goals reached, continuing needs, and referrals made.

Documentation - A written record that includes a date and signature and provides written, dated, and authenticated evidence to substantiate compliance with standards such as minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, and announcements.

Double billing (illegal) The act of billing and receiving payment in excess of actual costs from more than one entity for the same service, at the same time, for the same client. Double billing will be considered illegal if the provider cannot document that payment received was not greater than the actual cost of delivering the service.

DSM IV - The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Revised, published by the American Psychiatric Association.

Dual diagnosis - An individual who has been determined to suffer from both a major mental illness and substance abuse. Dually diagnosed clients shall have a presenting problem which meets the criteria of DSM-IV for psychoactive substance induced organic disorders or psychoactive substance use disorders, or substance abuse related problems and emotional maladjustment/disturbance problems, thought disorders, behavioral disturbance problems, or suicidal/self abuse problems.

Education - The delivery of services with target audiences, based on affecting knowledge and attitude and/or behavior. This includes, but is not limited to, teaching of course instruction; group facilitation; and educational resources and programs.

Education (community) - The dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning mental health, substance abuse, or domestic violence-related problems and services. A systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, and to examine attitude and/or behaviors. May stimulate social action and/or community support of the program and its consumers.

Eligible clients - Those adult persons who are unable to pay for treatment services provided by an entity funded by the commission as defined under medically indigent. All youth are eligible clients.

Employee - An individual hired directly by an organization to provide services in exchange for money or other compensation, as determined under the usual common law rules. An employee is subject to the will and control of the employer not only as to what shall be done but as to how it shall be done.

Ensure - To take all reasonable and necessary steps to achieve results.

Environmental and social policy - A strategy aimed at influencing the incidence and prevalence of alcohol, tobacco, and other drugs (ATOD) used in the general population. This strategy establishes or changes written and unwritten community standards, codes, and attitudes regarding legal and regulatory issues and social policy issues. Activities which meet the intent of this strategy include but are not limited to: assisting in the change in taxation policies,

promoting the establishment of ATOD policies in schools, awareness of enforcement procedures governing availability and distribution of drugs, and modifying alcohol advertising practices.

Evaluation - (See Program Evaluation.)

Executive director - The person hired by the governing authority to direct all of the day-to-day administrative activities of the organization.

Exploitation - An act or process to use, either directly or indirectly, the labor or resources of a client for monetary or personal benefit, profit, or gain of another individual or organization.

FACTS - Facility Capacity System.

Family - The natural parents, brothers, sisters, other relatives, foster parents, guardians, or significant others who perform the roles and functions of natural family members in the lives of clients/participants.

Financial assistance - A payment mechanism where payment is made based on an approved line item budget.

Follow-up - The process of contacting a participant who has received services from a program to ascertain if the participant has been adequately served and has benefited from the services provided by the program or organization.

Franchise tax - A tax applied to corporations that have commercial activity in the State of Texas. The franchise tax applies to organizations incorporated jurisdictions other than Texas, as well as Texas corporations, if the corporation does business in Texas. Fraud - An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself/herself or to some other person. It includes an act that constitutes fraud under applicable federal or state law.

Goals - Broad general statements of purpose or intent. Goals should indicate the general effect the service is intended to have on the client/participant. Also, specific numbers or amount of services or activities to be delivered in a specified period of time.

Governing board - The individual or group legally established to operate an organization. The governing authority has ultimate authority and responsibility for the organization's services and operations.

Grant - A funding mechanism used as an agreement between two or more entities or individuals and which specifies services or activities to be provided and funds to be provided in exchange.

HIV - Human Immunodeficiency Virus.

HIV early intervention services - Services provided to HIV positive clients enrolled in a substance abuse program.

Indemnification - The act of protecting the commission against damage, loss, or injury resulting from the provider's actions. An assurance that the provider organization assumes full legal responsibility for its actions, and that the provider and others cannot hold the commission responsible for the actions of the provider organization or its employees.

Indirect Costs - Those costs that have been incurred for common or joint objectives and cannot be readily identified with a particular cost objective.

Inform - To communicate through mail, by telephone or telecopier, by courier, or in person.

Information dissemination - A strategy that provides awareness and knowledge of the nature, and extent of alcohol, tobacco, and other drug use, abuse, and addictions, HIV infection and their effects on individuals, families, and communities. It also provides knowledge and awareness of protective factors and available programs and services. Efforts under this strategy are geared to the general population in any given community. A broad range of activities/services fall under this strategy including but not limited to the following: clearinghouse/information resource centers, resource directories, media campaigns, brochures, newsletters, radio/television public service announcements (PSAs), speaking engagements, health fairs/promotions, and information telephone lines.

Intervention counseling - The process of assisting individuals, families, and groups to identify, understand, and resolve issues and problems related to substance abuse in order to intervene in problem situations and high risk behaviors associated with substance abuse, that if not addressed, may escalate to substance abuse or severe impairment.

Intervention service - Those activities that seek to detect alcohol and/or other drug problems and addiction in their early stages and to intervene in such a way as to arrest the progression of such problems.

Letters of agreement - Agreements which increase cooperation, formalize linkages, community team building, and formation of partnerships in communities to eliminate barriers to service, promote delivery of needed services in the most cost effective manner, and to encourage sharing and management of resources. A letter of agreement is a document from other agencies, groups, organizations, that describe their specific involvement with the proposed program, activities, and target population.

Letters of support - Letters which increase cooperation, create linkages, establish community team building, and formation of partnerships in communities to eliminate barriers to service, promote delivery of needed services in the most cost effective manner, and to encourage sharing and management of resources. Letters of support are considered as such when the other party supports the work/services offered by a program/organization but yet has no direct involvement with the program nor assists in the delivery of ancillary services for the target population.

Level/phase system - A systematic approach to the course of treatment where client privileges and responsibilities are tied to the level/phase to which the client is assigned.

Liability - Something for which the provider is legally obligated, such as an obligation, a debt, or a responsibility.

License - A grant of authority to a facility or individual which is issued by the commission to provide chemical dependency treatment services in the State of Texas.

Licensed chemical dependency counselor (LCDC) - A counselor licensed by the commission to provide chemical dependency counseling services.

Medically indigent - Chemically dependent adult persons who lack adequate financial and/or medical resources to achieve physical and mental health, affecting their ability to interact as a positive, functioning member of society. Determination of medical

indigency is made by the provider based upon a financial assessment and does not include youth age 0-17. Medical indigency is established if the client is eligible for state or federal assistance or the client lacks insurance and has a household income at or below one and one-half times the federal poverty guidelines.

Mental health services - A wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of mental illness or emotional disorders, including substance abuse.

Minutes - A record of business introduced, transactions and reports made, conclusions reached, and recommendations made during a meeting. Reports of officers and committees may be summarized briefly or mentioned as having been presented.

Neglect - Actions resulting from inattention, disregard, carelessness, ignoring or omission of reasonable consideration that caused, or might have caused, physical or emotional injury to a client. Examples of neglect include, but are not limited to: failure to provide adequate nutrition, clothing, or health care; failure to provide a safe environment free from abuse; failure to maintain adequate numbers of appropriately trained staff; failure to establish or carry out an appropriate individualized treatment plan; and any other act or omission classified as neglect by the Texas Family Code §34.012.

Notify - Inform in writing.

Objectives - A specific statement of planned accomplishments or results that are quantitative, qualitative, time-limited, and realistic.

Offer - To make available.

OMB - Office of Management and Budget.

Outcome - The impact on the system or client/participant served.

Outreach - The process of reaching into a community systematically for the purposes of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter and accept the service delivery system.

Parenting skills training - Training focusing on teaching parents to monitor their children's behavior, to set clear expectations for behavior, to use moderate contingent discipline for undesired behavior, to consistently reward pro-social behavior, to create opportunities for family involvement, and to promote the development of their children's academic, social and refusal skills. Parents may be defined according to heritage, culture, and ethnicity, such as grandmother, tribal elders, and foster parents.

Participant - Used to describe an individual involved in prevention or intervention substance abuse programs.

Person - An individual, firm, partnership, corporation, association, or other business or professional entity.

Personnel - Members of the governing body, employees, contract providers, consultants, agents, representatives, volunteers, and other individuals working on behalf of the organization through a formal or informal agreement.

Personnel record - A chart or file containing the employment history and actions relevant to individual employee activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials, and other items.

Plan - A written document which is appropriately approved, related to a service or activity that describes goals and objectives, identifies timelines, assigns responsibility for implementation, establishes outcome measures, and assigns responsibility for monitoring and reporting results.

Policies - Statements of organizational intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of services.

Prevention - A proactive, inclusive process which seeks the strengthening and empowerment of individuals, families, and communities to create conditions that promote health and well-being by enhancing resiliency and protective factors. This is accomplished through comprehensive, evaluative, culturally, and linguistically competent strategies.

Prevention education/skills training - This strategy aims to affect critical life and social skills of the program participant and family members, including problem solving, decision making refusal skills/social influence resistance approaches, coping skills for relieving stress and anxiety, interpersonal skills, assertiveness skills, critical analysis (of media messages for example), and systematic and judgmental abilities designed to increase self-control and self-efficacy. The focus is on skill-building and practice as part of a course or series outline. Educational activities conducted to accomplish the intent of this strategy may include the following: on-going classroom and/or small group educational sessions, parenting skills and family management classes/training, peer leader/helper programs, education program for organized youth groups, outreach education opportunities for runaway, homeless, school drop-outs, and curriculum-based support group activities.

Problem identification and referral - A strategy aimed at identification of individuals who have indulged in either inappropriate use of alcohol, tobacco, or other drugs in order to assess if their behavior can be reversed through education/skills training or if they need treatment for a more deep-seated potentially abusive behavior pattern. Activities under this strategy include screening for tendencies toward substance abuse and minimal preemptive counseling to curb such tendencies. The intent of this strategy is to determine the need and appropriate referral for alcohol and drug abuse assessment and intervention as well as HIV risk assessment and intervention to reduce long term care needs and increase the quality of life and participation in society of young adults.

Procedures - The stated standard methods by which policies are implemented. A set of step-by-step instructions used to implement policy.

Professional staff - Those individuals specifically qualified by education and/or special training to perform the duties of their positions. Professional staff traditionally include, but are not limited to, psychiatrists, psychologists, social workers, physicians, nurses, and alcohol/drug counselors.

Program - A system of service delivery consisting of a specific type of service delivered to a specific population as identified in the proposal.

Program director - The individual who manages the day-to-day activities of a substance abuse program.

Program evaluation - Written assessment activities, performed internally or externally, of a program or a service and its staff,

activities, and planning process to determine whether program goals are met, staff and activities are efficient and effective, and whether or not a program or service has any effect on the problem which it was created to address and/or on the population which it was created to serve.

Protective factors - Those characteristics within social systems, such as family, schools, peer groups, that foster resiliency and include high expectations, caring and support, and the opportunity to be involved.

Provide - To perform or deliver.

Provider - An entity or individual which receives commission funding to provide substance abuse services.

Qualified credentialed counselor (QCC) - An LCDC or one of the professionals listed below who can demonstrate two years of chemical dependency counseling experience or one year of chemical dependency counseling experience and 90 clock hours (six semester hours) of chemical dependency training including the 12 core functions from an accredited college or university or an education provider approved by the commission. Documentation shall be available upon request. The following professionals are eligible to serve as QCCs:

- (A) licensed professional counselor (LPC);
- (B) licensed master social worker (LMSW);
- (C) licensed marriage and family therapist (LMFT);
- (D) licensed psychologist;
- (E) licensed physician (MD);
- (F) certified addictions registered nurse (CARN);
- (G) licensed psychological associate; and
- (H) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with a specialty in psycho-mental health (APN-P/MH).

Qualified personnel - Employees who have documented evidence of education/training/ experience required by their job description and/or commission standards to do the work assigned.

Referral - The identification of appropriate services and the provision of information needed to access those services.

Request for proposal (RFP) - The method by which the commission solicits applications which are to be considered for funding with state and federal funds.

Review and evaluation - An assessment by commission staff of a provider's compliance with commission regulations and the terms and conditions of the provider's contract or letter of award. The assessment may include review of a provider's records, review of a provider's reports, on site visits, and interviews with the provider's employees and any persons who receive services from the provider's programs.

Sanction - The penalty for noncompliance, which is defined in the provider manual. Sanctions are applied by the commission in a balanced response to a given act of non-compliance, so where more than one sanction is provided, the commission reserves the right to apply a sanction consistent with its assessment of the harm

caused by an organization's failure to comply with the commission's requirements.

Screening - Determining whether a client meets the program's admission criteria, based on the person's reason for admission, medical and chemical use history, and other needed information.

Screening and evaluation - Preliminary determination of the nature and extent of a person's problem in order to link the person with appropriate and available services to be provided in the least restrictive setting.

Self-help group - An independent support group or fellowship organized by and for drug abusers and alcoholics to help members achieve and maintain abstinence and/or cope with the effects of drugs and alcohol.

Service area - A defined geographic area and specified population base which identifies specific counties for substance abuse services as defined and funded by the commission.

Staff - Individuals who provide services for the organization in exchange for money or other compensation, including employees, contract providers, and consultants.

STDs - Sexually transmitted diseases.

Subcontract - An agreement between a commission-funded provider and another entity to provide part or all of the services required through an executed award with the commission. Subcontracts do not include those agreements which involve general services required to support the grant program, such as auditing, maintenance, or staff development. All subcontracts must be approved in advance, in writing, by the commission.

Subcontractor - The legal entity to which a subcontract is made and which is accountable to the provider for the provision of services in response to the funds provided. Subcontractors are responsible for compliance with the rules, policies, and procedures established for grants, programs, and contracts to the same degree as providers and recipients.

Substance abuse - The use of one or more drugs, including alcohol which significantly and negatively impacts one or more major areas of life functioning.

Substance abuse education - A planned, structured presentation of information related to substance abuse, including but not limited to: physiological and psychological effects, emotional and social deterioration, rehabilitation and relapse, and risk of Human Immunodeficiency Virus.

Suspension - Withholding of funds and/or temporary cessation of services or licenses due to noncompliance. The commission will determine the length of the suspension period at the time the suspension is ordered. At any time while the license holder or the intern is suspended, the commission may hold a hearing and on majority vote revoke the suspension status.

TAC - Texas Administrative Code.

TB - Tuberculosis.

TCADA - The Texas Commission on Alcohol and Drug Abuse.

Terminate - A decision by the commission or the provider to end its executed agreement.

Therapeutic community (TC) - The treatment model characterized as a separate community that is highly structured and ritualized and designed to habilitate or rehabilitate its residents based on predetermined goals.

Training plan - A written document that serves as a means of verification that an employee has been adequately prepared to perform their function in an organization. A training plan will include documentation relating to the topics covered with an employee, the date, the instructor, and an acknowledgment by the employee of receiving the instruction, such as entering their initials on the training plan document, or in the case of group instruction, a sign-in sheet.

Treatment Facility - A site or specific location licensed by the commission to provide substance abuse services.

Treatment level - The intensity of treatment provided by a program.

Unit cost - A payment mechanism in which a specified rate of payment is made in exchange for a specified unit of services.

Universal Precautions for AIDS - Those guidelines promulgated by the Center for Disease Control which are designed to prevent the transmission of Human Immunodeficiency Virus.

Update - A dated and signed review of a report, plan, program, or procedures.

Volunteer - An individual who provides services without compensation.

Waiting list - A record of individuals referred or requesting treatment services at a facility that is operating at full capacity, which includes a roster, log, file, or equivalent record with names, addresses, and telephone numbers of screened eligible applicants for admission, with date of application, and dates and nature of follow-up contacts.

Youth - An individual under the age of 17 whose disabilities of minority have not been removed by marriage or judicial decree.

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 February 29, 1996.

TRD-9602831

Mark S. Smock

Assistant Deputy for Finance

Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 867-8720

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Subchapter B. Organizational

40 TAC §§144.21-144.29; 144.31-144.34; 144.41-144.44; 144.51-144.54; 144.61-144.65; 144.71-144.74

The Texas Commission on Alcohol and Drug Abuse proposes new §§144.21-144.29; 144.31-144.34; 144.41-144.44; 144.51-

144.54; 144.61-144.65; and 144.71-144.74 concerning organizational requirements for service providers funded by the commission. The new sections are being proposed to establish minimum criteria regarding organizational structure; use of funds; relationships with the community; HIV procedures and records; processing changes affecting the award; confidentiality and retention of records; subcontracting; publications; conflict of interest, collusion, and remuneration; franchise taxes; target population; and limiting barriers.

Sharon F. Logan, Interim Executive Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Logan also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be effective organizational structure and practices among providers funded by the commission. There will be no effect on small businesses. There are no anticipated economic costs to currently funded providers who are required to comply with sections as proposed, because these requirements are already included in the contract. Cost of compliance for future providers will vary, depending on each organization's structure and operations.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701.

The new sections are proposed under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections is the Texas Health and Safety Code, Chapter 461.

§144.21. *General Requirements.*

(a) Providers are responsible for the efficient and effective administration of grant programs.

(b) Each provider shall monitor the day-to-day operations of its program to ensure that commission funds are properly spent and accounted for.

(c) The provider shall remain in good standing with other funding and regulatory agencies.

(d) Providers shall develop strategies to diversify their funding.

§144.22. *Organizational Chart.*

(a) All providers shall submit an organizational chart to the commission which illustrates the organizational structure and lines of authority and shows how the commission-funded program fits within the overall structure.

(b) In addition, treatment service providers shall submit an organizational chart for clinical supervision that shows the number of staff clinically supervised by each qualified credentialed counselor.

(c) The organizational charts shall be updated as needed and sent to the commission.

§144.23. *Award Acceptance and Changes Required by Law.*

(a) To execute an award, the provider shall submit an original grantee acceptance notice signed by the chief executive officer, chief financial officer, and board chair and a copy of the board minutes accepting the terms and conditions of the award. These documents shall be submitted within 30 days of the mail date unless the commission grants an extension.

(b) Changes in state or federal laws and regulations may affect award provisions. Any modifications resulting from such changes are automatically made part of the award and go into effect on the date set by the law or regulation or the date the provider is notified by the commission, whichever is later.

(c) The provider may reject the proposed amendment by notifying the commission in writing within 30 days.

(d) If the provider rejects or fails to execute the proposed revision or amendment, the award will be terminated.

§144.24. *Responsibilities of the Governing Board.*

(a) All entities shall have a separate and distinct governing board that provides oversight for staff.

(b) The governing board is legally responsible for the integrity of the fiscal and programmatic management of the organization. This includes:

(1) responsibility for all funds, assets, and liabilities gained as a result of the commission award;

(2) compliance with commission rules and applicable federal and state laws and regulations; and

(3) correction of identified organizational, fiscal and program deficiencies.

(c) The governing board shall:

(1) be informed and have a general understanding of the organization's obligations under the award agreement, including regulatory compliance;

(2) maintain legal authority to operate in the State of Texas;

(3) comply with all applicable laws, regulations and commission rules, and requirements specific to the funded services provided by the entity;

(4) maintain active involvement in the organization's funded activities and document corrective actions taken to resolve identified problems in a timely manner;

(5) approve an annual plan for the organization's substance abuse services;

(6) appoint a person to manage the day-to-day administrative operations of the organization. The person shall demonstrate competency in financial management, personnel management, and other areas necessary to manage the organization effectively;

(7) confirm the appointment of a person to manage the day-to-day operations of the funded program. The person shall demonstrate competency in chemical dependency, financial management, personnel management, and other areas necessary to manage the program effectively;

(8) establish a written policy on board orientation and training. Board members shall receive orientation that addresses administration, legal liability, fiscal, public and community relations, personnel, fund raising, and cultural competency related to the program's target population. Additional information and training shall be provided as needed to develop appropriate knowledge and skills;

(9) establish a written policy that ensures separation of powers, duties, and functions of board members and staff;

(10) establish a written policy to conduct meetings at least quarterly. Minutes shall include the date, time, place, names of members present and absent, a summary of discussions, and actions taken;

(11) establish a written policy prohibiting any form of collusion;

(12) establish a written policy prohibiting any officer, employee, or member of the governing board of the organization or the organization's subcontractor from voting for or confirming the employment of any person related within the second degree by marriage or third degree by blood to any member of the governing board or to any other officer or employee authorized to employ or supervise the person.

(d) The organization shall maintain a current organizational manual that includes all policies and procedures required by the commission. Policies shall be approved by the board and procedures shall be approved by the executive director. The manual shall be reviewed annually, and copies shall be convenient and readily available to all staff.

§144.25. Restrictions on Use of Funds.

(a) All providers who receive commission funds shall ensure compliance with the following restrictions.

(1) A provider shall not provide inpatient hospital services to an individual, except for medically necessary services that cannot be effectively provided in an alternative setting. Alcohol and drug treatment services licensed and funded by the commission are not traditional hospital services. The cost for these services shall not exceed the comparable daily rate provided for community-based, non-hospital residential substance abuse treatment programs.

(2) Unless otherwise approved in writing, a provider shall not use commission funds to distribute sterile needles for the injection of any illegal drug.

(3) A provider may not:

(A) provide cash payments to intended recipients of funded activities or services;

(B) make purchases or improvements to land;

(C) purchase, construct, or permanently improve (other than minor remodeling) any building or other facility;

(D) purchase major medical equipment;

(E) use commission funds to meet a matching requirement of federal funds; or

(F) use commission funds to pay any individual a salary greater than \$125,000 per year.

(b) Medicaid eligible clients are not eligible to treatment services through commission-funded awards until all Medicaid benefits have been exhausted. The services provided shall be in excess of the Medicaid limitations and documentation shall be maintained.

§144.26. Funding Requirements.

(a) Continuing education. All providers who receive commission funds shall make continuing education available to employees who provide funded substance abuse services. The provider shall maintain documentation of education which includes the topic, dates, duration, and names of participating staff.

(b) Community-based strategies. Providers who receive commission funds and provide prevention or intervention services shall develop community-based strategies for prevention of substance abuse, including strategies to discourage the use of alcoholic beverages and tobacco products by minors.

§144.27. Requirements for Providers Funded to Meet Tobacco Legislative Mandates.

When specified in the grant award notice, prevention and intervention providers shall comply with commission requirements regarding minors and tobacco to help reduce the availability of tobacco products to youth in the community. This includes:

(1) requesting retailer compliance;

(2) conducting or encouraging compliance inspections;

(3) organizing or joining tobacco coalitions;

(4) conducting education and prevention activities;

(5) providing media coverage; and

(6) submitting reports to the commission as requested.

§144.28. Community Support.

(a) Providers shall obtain letters of support from organizations that have no direct involvement with the program and do not assist in the delivery of ancillary services for the target population.

(b) Facilities shall be located in an appropriate setting. Evidence of continuing conflict with the community may result in termination of the award.

§144.29. Linkages and Written Agreements.

(a) The provider shall maintain written agreements with other service providers to facilitate the delivery of appropriate comprehensive care to individuals and families. Each agreement shall contain:

(1) names of the organizations entering into the agreement;

(2) services or activities each organization will provide;

(3) signatures of authorized representatives; and

(4) dates of action and expiration.

(b) Agreements shall comply with the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, Code of Federal Regulations, Title 42, Part 2.

§144.31. HIV Workplace Guidelines and Training.

(a) The provider shall adopt and implement workplace guidelines concerning individuals with AIDS and HIV infection, as required by Texas Health and Safety Code, §85.113.

(b) The provider shall provide HIV/AIDS workplace education programs to employees and clients/participants. The programs shall be tailored to the specific group and shall include:

- (1) modes of transmission;
- (2) methods of prevention;
- (3) behaviors related to substance abuse;
- (4) occupational precautions; and

(5) current laws and regulations concerning the rights of an AIDS/HIV-infected individual (including confidentiality) and behaviors in violation of current Texas law.

(c) Training for managers shall also address related personnel issues.

(d) Organizations that provide direct services shall also implement procedures, and employee education programs based on universal precautions.

(e) Employees shall receive annual updates, which may include information about tuberculosis and sexually transmitted diseases. All HIV-related training shall be documented in employee personnel files.

§144.32. HIV Confidentiality Guidelines.

The provider shall develop and implement policies and procedures to protect the confidentiality of AIDS- and HIV-related medical information for program staff and participants, as required by Texas Health and Safety Code, §85.115.

§144.33. HIV Record Keeping Systems.

Each treatment provider shall establish record-keeping systems to meet state and federal laws and regulations and the rules of the commission. Policies and procedures shall ensure:

- (1) only authorized staff have access to the protected information and it is used only for authorized purposes;
- (2) no unintentional or unauthorized disclosures of HIV-related information are made to third parties;
- (3) the record-keeping system facilitates the delivery of comprehensive health care;
- (4) HIV case management services are coordinated and documented as a part of the treatment process; and
- (5) documentation of HIV-related information is consistent with the provider's policies and procedures.

§144.34. HIV Counseling and Education In Treatment.

Treatment providers shall:

- (1) offer HIV counseling and education services to all clients receiving substance abuse treatment;
- (2) inform staff and clients about the connection between substance abuse and HIV infection, risk factors, risk reduction strategies, routes of transmission, and HIV antibody counseling and testing;
- (3) conduct HIV risk assessments on all clients entering treatment;
- (4) make available, at the client's request, pretest and post-test counseling and anonymous or confidential HIV testing;

(5) ensure that testing for the etiologic agent for Acquired Immunodeficiency Syndrome (AIDS) is not carried out unless it is accompanied by written permission and appropriate pretest and post-test counseling; and

(6) refer HIV positive treatment clients to a provider of HIV early intervention services. Whenever possible, these services shall be provided and paid for by a commission-funded HIV early intervention service administrator.

§144.41. Methods of Amendments to the Terms of the Award.

(a) To revise the terms and conditions of the award, the provider shall submit a written request to the commission. The request shall identify the requirement to be changed, provide an alternative, and explain how the alternative will meet the intent of the requirement.

(b) The commission will review each request and respond in writing.

(c) No agreement or amendment is valid unless it has been approved in writing by the commission.

§144.42. Organizational and Personnel Changes.

The provider shall notify the commission in writing of any organizational or personnel changes that affect services provided through a commission-funded award. This includes:

- (1) changes in the organization's legal name, address, telephone number, or structure. Notice shall be sent within ten days of the effective date;
- (2) reorganization of funded programs and staff. Notice shall be sent within 30 days;
- (3) changes in key personnel. Notice of vacancies and replacements in these positions shall occur within ten days:
 - (A) certifying representative;
 - (B) board chair;
 - (C) executive director;
 - (D) financial officer;
 - (E) project director; and
 - (F) contact person.

§144.43. Retention of Records.

(a) Providers shall retain all records for a period of three years from close-out of the award. The retention period for all records starts from the date of submission of the final expenditure report or final payment or refund under the award, whichever is later. If litigation or a claim is initiated during the retention period and is in process when the three years end, records shall be retained until the action is resolved.

(b) The provider shall allow commission representatives and other authorized government authorities to examine or copy all property, books, recordings, client records, and documents related to the award or a commission requirement. Upon request, these materials shall also be made available for officials to remove from the provider's location.

(c) Providers shall establish written policies regarding record keeping to include retention requirements and documentation of record location.

(d) If a provider receives multiple awards from the commission, documents that are specific to an award shall be filed by award number and client records shall be filed alphabetically or by record number to provide ready access.

(e) If a provider closes business operations, it shall ensure that records are stored and accessible and that someone is responsible for maintaining the records. Confidentiality of client records shall be safeguarded as required in the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, Code of Federal Regulations, Title 42, Part 2.

§144.44. Confidentiality of Records.

(a) The provider shall protect client/participant records and client/participant-identifying information from unauthorized disclosure in accordance with the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, Code of Federal Regulations, Title 42, Part 2. All providers shall:

(1) develop and implement written policies and procedures to ensure the confidentiality of program clients and participants in accordance with Code of Federal Regulations, Title 42, Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records;

(2) train all personnel, including volunteers, in these policies and procedures and document the training in the personnel or volunteer files;

(3) ensure all personnel, including volunteer staff, follow the written procedures for protecting and releasing client/participant information;

(4) develop and use a form for obtaining a client's or participant's written consent to release information which includes all required elements;

(5) ensure that personnel do not acknowledge the presence of a client/participant or disclose any client/participant-identifying information unless:

(A) the client/participant gives full written consent;

(B) the disclosure is authorized by an appropriate court order as defined in the Code of Federal Regulations, Title 42, Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; or

(C) the disclosure is otherwise permitted by law.

(6) ensure that a disclosure made in accordance with this procedure is properly documented in the client/participant record.

(b) The provider shall not deny a client/participant access to the content of the client/participant record except as provided by the Texas Health and Safety Code, §611.0045.

§144.51. Requirements for Subcontracting.

(a) Providers shall not subcontract, assign, or transfer any portion of the award without prior written approval from the commission.

(b) The provider shall submit a written request for approval which includes a description of the proposed subcontractor's qualifications, justification for the request, and a description of the services to be performed.

(c) The provider shall require any approved subcontractor to comply with all provisions of the commission's contract and with applicable laws and regulations.

(d) The relationship between the provider and the subcontractor shall be formalized in a written agreement that incorporates all applicable service delivery requirements imposed by the commission. The agreement shall be signed by the governing bodies of the provider and the subcontractor.

(e) The provider shall retain sufficient rights and controls to fulfill its award responsibilities to the commission. Subcontracting does not relieve the funded provider of any responsibility to the commission under the award.

(f) The provider is responsible for paying subcontractors and shall monitor activities to assure compliance with applicable requirements.

(g) When an award ends, the provider and each subcontractor shall settle all claims promptly, including those from employees, vendors, and other subcontractors.

(h) If a subcontractor becomes insolvent or otherwise incapacitated, abandons the award, or is discharged by the funded provider, the funded provider shall notify the commission in writing within three working days.

(i) When the commission approves a subcontractor, it reserves the right to require the provider's full compliance with the terms of the award.

§144.52. Use of the Commission Logo and Slogan.

(a) The provider may not use the commission's logo and slogan on publications or video material unless the commission has given written approval.

(b) The provider shall submit a written request that includes:

(1) type of publication;

(2) target population;

(3) purpose of document;

(4) quantity;

(5) method of distribution; and

(6) a copy of the draft publication.

(c) The provider shall send a copy of the final product to the commission within 30 days of publication or production.

§144.53. Complaints.

Providers shall have a written policy and procedures for handling complaints from staff and clients/participants of funded programs. The procedures shall require providers to:

(1) document all complaints, results of investigations, and action taken;

(2) inform all employees and volunteers of these policies;

(3) display a sign informing the public of the policy and procedures on complaints. The sign shall be prominently displayed at all times and shall provide notice of the commission's Compliance Division and its mailing address and phone number.

§144.54. Central File for Commission Programs.

(a) The provider shall maintain a central file at its administrative offices which contains all information and documents relating to the award.

(b) If fiscal or programmatic services are provided at another location, appropriate fiscal and programmatic information shall be on file at each site.

(c) A separate file shall be established for each award at the beginning of the award period and updated regularly so that it is current and complete at all times.

(d) The central file shall contain:

(1) grant award notice with terms and conditions and all revisions;

(2) grantee acceptance notice;

(3) approved budget/program adjustments (BPA);

(4) approved application and budget;

(5) self evaluation description and procedures, when required;

(6) monthly performance and activity goals, measure definitions, and annual goals; and

(7) any other required reports submitted to the commission that are not on the Electronic Forms Interchange (EFT) system.

(e) Applicable administrative and cost principles, audit requirements, manuals, and rules shall also be maintained at each site.

§144.61. Conflict of Interest.

(a) Providers shall create safeguards and a board-approved policy to prevent employees, consultants, contractual personnel, volunteers, or members of the governing board from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others.

(b) Providers shall have written guidelines outlining conditions under which outside activities, relationships, or financial interests are improper.

(c) All personnel, including consultants, contractors, volunteers, and board members, shall sign a statement that they have read the conflict of interest policy, that they have no conflicts of interest, and that they will report any potential conflicts immediately.

(d) When a conflict of interest issue is resolved by the provider, the resolution shall be documented in board minutes.

§144.62. Non-Collusion.

(a) The provider shall adopt and abide by a written policy that has been adopted regarding non-collusion and shall establish appropriate internal controls.

(b) The provider shall comply with all applicable laws, regulations, and commission policies relating to receiving assistance in obtaining an award from the commission, or lobbying the commission staff or board members with the intent of influencing the decision to award a grant.

§144.63. Remuneration.

(a) Providers receiving funds from the commission shall neither compensate for client referrals to their own funded programs nor receive compensation for making client referrals to other programs. Providers shall not compensate or reward any individuals based on re-

errals, admissions, contacts made to solicit clients, or determinations made regarding client length of stay. Paying or receiving payment for admission into any program or placement on a waiting list of any program funded by the commission is prohibited.

(b) The provider shall establish a written policy on remuneration and written procedures on program marketing, client admissions and referrals, and employee compensation which ensure compliance with this requirement.

§144.64. Franchise Taxes.

A commission-funded provider which is organized as a corporation shall maintain current State of Texas franchise tax payment status, unless the provider is exempted by the State of Texas from the payment of these taxes.

§144.65. Oral and Written Agreements.

No oral statements made between the provider and the commission shall have any effect on the provisions contained in the award. The provider shall have the executed award revisions or amendments on file to document any changes to the original approved award. Any commission correspondence that directly affects the administration of the award shall be on file.

§144.71. Target Population.

(a) For the purpose of providing services, the adult target population is defined as individuals who are 18 years and older. The youth target population includes individuals younger than 18 years and individuals whose 18th birthday occurs within the state fiscal year.

(b) The provider shall observe laws which define the adult population to be served when it is different from the commission's definition.

(c) Providers serving youth shall comply with laws and assume any liabilities that may be associated with custody of minors.

§144.72. Receipt of Goods and Services.

Expenditures reported to the commission shall be for goods delivered and services performed by the end of the award period.

§144.73. Publications and Products Produced.

(a) The provider shall publicize the name of the project and acknowledge financial support from the commission on all brochures, pamphlets, and other written or visual materials related to the funded project.

(b) The provider may publish and make available the results of its work under an award agreement. The provider shall notify the commission prior to publication of any work or article, and shall give the commission a copy of the article or work as produced.

(c) The provider shall include a disclaimer in any document, publication, or other work developed under a commission-funded award stating that the commission's financial support does not imply its endorsement or agreement.

§144.74. Limiting Barriers.

(a) The provider shall not discriminate against an individual or group based on race, religion, ethnicity, country of origin, age, disability, or sex. The provider shall also ensure that no person or group of persons is restricted from receiving the same services or the same quality of services available to others.

(b) The provider shall:

- (1) provide annual staff training in cultural competency;
- (2) document good faith efforts to recruit and employ qualified staff which reflect the ethnic and cultural diversity of the target population;
- (3) adopt a policy which identifies the population to be served, acknowledges cultural diversity and its implications, and commits the program to culturally competent practices appropriate for the population served;

(4) document a good faith effort to provide direct services or make appropriate referrals for all persons covered under the Americans with Disabilities Act; and

(5) provide equal access to services and activities for pregnant females.

(c) Materials and other communications shall be culturally appropriate and relevant.

(d) Services shall be delivered at the developmental and literacy levels of the individuals served, through direct services or appropriate referrals. Provisions shall be made for participants or clients who cannot read and or write.

(e) The program design, content, and materials shall be appropriate to the gender, sexual orientation, age, and developmental levels of the participants.

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 February 29, 1996.

TRD-9602832

Mark S. Smock

Assistant Deputy for Finance

Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 867-8720

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Subchapter D. Prevention and Intervention

40 TAC §§144.301; 144.311-144.316; 144.321; 144.322; 144.333; 144.341-144.346; 144.351; 144.352; 144.355; 144.356; 144.361

The Texas Commission on Alcohol and Drug Abuse proposes new §144.301; 144.311-144.316; 144.321; 144.322; 144.333; 144.341-144.346; 144.351; 144.352; 144.355; 144.356; and 144.361 concerning prevention and intervention programs funded by the commission. The new sections are being proposed to establish minimum standards for prevention and intervention programs funded by the commission, including planning; staffing; program evaluation; participant rights; essential services; special programs; and performance measures.

Sharon F. Logan, Interim Executive Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Logan also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more effective prevention and intervention programs. There will be no effect on small businesses. There are no anticipated economic costs to currently funded providers who are required to comply with the sections as proposed, because these requirements are already included in the contract. Cost of compliance for future providers will vary, depending on each organization's structure and operations.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701.

The new sections are proposed under the Texas Health and Safety Code, § 461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections is the Texas Health and Safety Code, Chapter 461.

§144.301. Applicability.

The rules in this subchapter apply only to funded providers of prevention and intervention services.

§144.311. General Provisions.

(a) Prevention and intervention programs shall provide services to:

- (1) educate and counsel individuals on substance use/abuse and HIV risk;
- (2) provide activities to reduce substance abuse and HIV risk while giving priority to high risk populations; and
- (3) implement community-based strategies for the prevention of substance abuse and HIV risk to improve the health status of individuals, families, and communities.

(b) The provider shall implement activities to carry out the following strategies, as appropriate to the program's design and approach. A provider may not implement any one strategy in isolation:

- (1) prevention education/skills training;
- (2) alternatives;
- (3) problem identification and referral;
- (4) information dissemination;
- (5) community-based process; and
- (6) environmental/social policy.

(c) All programs shall provide access to the following essential services:

- (1) advocacy;
- (2) family services; and
- (3) continuum of care.

§144.312. Annual Plan.

(a) The provider shall develop a written annual plan that incorporates strategies and essential services to support the total vision and goals of the program.

(b) The program design shall describe how the program will deliver or provide access to all strategies and all essential services.

(c) The provider shall establish linkages and agreements with available resources to meet all strategies and all essential services not offered directly.

(d) To the extent possible and appropriate, the essential services shall be integrated throughout each strategy and activity implemented by the program.

(e) The plan shall include a description of:

- (1) program goals and objectives;
- (2) target population and needs;
- (3) strategies, activities, and services included in program design and approach; and
- (4) educational and training curricula.

§144.313. Staffing and Special Training.

(a) The provider shall:

(1) implement a procedure for supervision of all service delivery staff; and

(2) develop a written job description for each position that clearly defines job duties, qualifications, and experience for the position. A copy of the signed job description shall be maintained in each employee's personnel file.

(b) Staff shall be qualified to provide services and shall have skills and expertise specified by the job description.

(c) The provider shall verify credentials, education, and related experience. Documentation of verification shall be maintained in personnel files.

(d) The provider shall develop and implement an annual staff training plan and document training in personnel files. The training shall include the following topics as specified in the funding agreement:

- (1) orientation to program philosophy;
- (2) nonviolent crisis intervention;
- (3) ethics;
- (4) adolescent/child development;
- (5) requirements for reporting abuse, neglect, and other incidents;
- (6) participant abuse, neglect, and exploitation;
- (7) participant rights and grievance procedures;
- (8) HIV/AIDS;
- (9) cultural and cross cultural awareness;
- (10) first aid and CPR;
- (11) screening, assessment, and referral process;
- (12) family dynamics; and

(13) specific needs and issues of the target population.

§144.314. Program Evaluation.

(a) The provider shall perform on-going program evaluation to verify, document, and quantify program activities and effectiveness.

(b) Evaluation activities shall implement the model specified in the Provider Compliance Guide which includes:

(1) Identification of goals and objectives: Provider gives a clear statement of what the program wants to accomplish, for whom, and with what effect.

(2) Process assessment: Provider describes what was implemented, how much of it was done, and how many people were reached or included in each program.

(3) Outcome assessment: The provider gives a description of the immediate effects of the program, and whether the program achieved the desired outcomes.

(c) The provider shall implement program evaluation activities according to the timelines specified in the funding agreement.

§144.315. Annual Evaluation.

(a) The provider shall submit a written annual evaluation report at the end of each fiscal year. The report shall contain an evaluation summary and the forms described in the Provider Compliance Manual.

(b) The evaluation summary shall include:

- (1) evaluation key points;
- (2) evaluation design;
- (3) recommendations for program; and
- (4) recommendations for evaluation.

(c) The provider shall use information gained from the self-evaluation to improve and strengthen program services and activities.

§144.316. Participant Rights.

(a) The provider shall develop and implement a policy and age-appropriate procedures to protect the rights of children, families, and adults participating in a prevention or intervention program.

(b) A participant has the right to:

- (1) a humane environment that provides reasonable protection from harm and appropriate privacy for personal needs;
- (2) be free from abuse, neglect, and exploitation;
- (3) be treated with dignity and respect;
- (4) be informed of the program rules and regulations before participation;
- (5) be informed of any other appropriate services;
- (6) accept or refuse services after being informed of services and responsibilities;
- (7) participate in the development of a service plan;
- (8) refuse participation in any research, and have all research explained fully;
- (9) have confidentiality maintained about any information concerning participants and family;

(10) receive an explanation of rights in a way the participant can understand;

(11) make a complaint to the program or the Texas Commission on Alcohol and Drug Abuse at any time; and

(12) access a program uninhibited by race, creed, color, handicap, or national origin.

(c) The provider shall inform participants and consenting adults (if applicable) about:

(1) program goals and objectives;

(2) rules and regulations; and

(3) participant rights.

(d) This material shall be explained in simple, understandable terms in a language the participant understands.

(e) The provider shall implement a procedure for filing complaints with the program and with the commission.

(f) A listing of the commission's hotline and address for filing complaints shall be posted in a prominent area at each site where services are delivered.

§144.321. Advocacy.

All providers shall ensure advocacy services at the individual, family, and community level. This includes:

(1) ensuring that all participants receive advocacy services to assist them in developing the skills needed to access services and exercise their rights; and

(2) advocating for the families and the community of the target population by involving other community entities.

§144.322. Family Services.

To the extent possible and appropriate, providers shall involve family members in all services and coordinate appropriate services for them.

§144.333. Continuum of Care.

(a) A continuum of prevention/intervention services shall include activities to:

(1) strengthen and empower individuals, families, and communities;

(2) promote health and well being by enhancing protective and resiliency factors;

(3) intervene at early signs of problems and crisis situations; and

(4) prepare for treatment and rehabilitation.

(b) To the extent possible and appropriate, intervention and prevention providers shall:

(1) perform screening procedures to identify the needs of clients and families entering services;

(2) promote and support the development of an array of prevention/intervention services in the community;

(3) identify and address the special needs of the individuals and families within the targeted community, communicate location of programming, and ensure accessibility of services and activities;

(4) provide linkages to an array of available treatment services ranging from the least restrictive to the most restrictive; and

(5) maintain coordination and linkages with available community resources to address identified individual and family needs.

(c) Intervention providers shall also perform assessments when necessary and appropriate to measure the level and intensity of need for clients and families entering services.

§144.341. Prevention Education and Skills Training.

(a) A provider who implements this strategy shall provide education and skills training to affect critical life and social skills relative to substance abuse and HIV risk of the participant and family members.

(b) Educational activities shall have a course curriculum that focuses on skill-building and practice.

(c) The provider shall document prevention education and skills training activities as specified in the Provider Compliance Guide.

§144.342. Alternative Activities.

(a) A provider who implements this strategy shall provide alternative activities designed to assist participant in mastering new skills and developing relationships.

(b) The program shall provide work-oriented, recreational, and other experiences to meet the needs of the individual, family, community, and peers. Activities shall provide challenging, positive growth experiences and promote healthy alternatives for leisure and free time.

(c) The provider shall document alternative activities as specified in the Provider Compliance Guide.

§144.343. Problem Identification and Referral.

(a) General requirements. The program shall provide problem identification and referral services to ensure access to the appropriate level and type of services needed by participants and their families.

(1) Prevention providers shall provide screening, crisis intervention, referral, and follow-up.

(2) Intervention providers shall provide screening, crisis intervention, referral, follow-up, assessment, and intervention counseling.

(b) Screening. The screening process shall be designed to identify warning signs for alcohol, tobacco, and/or other drug abuse and HIV risk factors, as deemed appropriate.

(c) Crisis intervention. The program shall provide short-term services to intervene in situations that may or may not involve alcohol and drug abuse, and which may result in a crisis if immediate attention is not provided.

(1) Needs shall be identified through personal or phone interviews.

(2) A short term plan shall be developed which documents timelines, actions, and responsible persons.

(3) The program shall provide information about available services and referrals when appropriate.

(4) Crisis and/or short term counseling shall be provided by a qualified credentialed counselor (QCC) or counselor intern when needed.

(d) Referral. The provider shall identify needs that cannot be met by the program and help the participant use appropriate support systems and community resources. The provider shall:

(1) maintain a list of referral resources; and

(2) conduct and document follow-up on referrals made whenever possible.

(e) Follow-Up. The provider shall establish and implement procedures addressing the frequency of follow-up and documentation in the participant's record.

(f) Assessment. The program shall use an assessment tool that is appropriate for the target population.

(1) Assessments shall be conducted by a QCC or a counselor intern. A QCC shall review and approve all assessments.

(2) Assessment and recommendations shall occur through confidential face-to-face contacts.

(g) Intervention counseling. Intervention counseling shall be conducted through face-to-face confidential interactions with intervention program participants and/or family members.

(1) Counseling shall be conducted by a QCC or counselor intern and documented in the participant's record.

(2) The provider shall develop a service plan based on identified needs that includes a timeline.

(3) Intervention counseling shall include coping skills training, education on dysfunctional family relationships, and support group opportunities.

§144.344. *Information Dissemination.*

(a) The provider shall prepare and disseminate accurate and current information about the nature and extent of alcohol, tobacco, and other drug use, abuse, and addiction, and HIV infection. Information shall include the potential consequences associated with their use, protective factors, and available services.

(b) The provider shall document the information dissemination activities as specified in the Provider Compliance Guide.

(c) In addition, HIV outreach projects shall document all referrals made as a results of street outreach, and the number of individuals counseled and tested for HIV, tuberculosis, and STDs.

§144.345. *Community-Based Process.*

(a) The provider shall:

(1) initiate and participate in activities to mobilize and empower the community to provide more effective services; and

(2) use action-planning and collaborative systems approaches that take advantage of community activities and efforts.

(b) The provider shall document information related to these activities as specified in the Provider Compliance Guide.

§144.346. *Environmental and Social Policy.*

(a) The provider shall:

(1) take steps to establish and/or change written and unwritten community standards, codes, and attitudes; and

(2) initiate and participate in activities that focus on environment and social policy.

(b) The provider shall document information related to these activities as specified in the Provider Compliance Guide.

§144.351. *Requirements for HIV Early Intervention Services.*

(a) Treatment providers receiving HIV early intervention funds designated by the Substance Abuse Prevention Treatment (SAPT) Block Grant set-aside shall offer HIV early intervention services for treatment clients at the program site, including:

(1) appropriate pretest counseling for HIV and AIDS;

(2) HIV testing to diagnose the disease, assess the deficiencies in the immune system, and identify appropriate therapeutic measures;

(3) appropriate post-test counseling; and

(4) case management to access the appropriate therapeutic measures.

(b) HIV early intervention services can be provided only if the client voluntarily gives informed consent. Receiving these services shall not be required as a condition of receiving treatment or other services.

(c) Providers shall establish linkages with a comprehensive community resource network of related health and social services organizations.

§144.352. *HIV Outreach.*

(a) Providers receiving HIV outreach service funds designated by the Substance Abuse Prevention Treatment Block Grant shall use outreach models that are scientifically sound. Unless the commission approves another model in writing, providers shall use one of the following models:

(1) the standard intervention model as described in *The NIDA Standard Intervention Model for Injection Drug Users: Intervention Manual*, National AIDS Demonstration Research (NADR) Program, National Institute on Drug Abuse, February, 1992;

(2) the health education model as described by Rhodes, R., Humfleet, G.L., et al., *AIDS Intervention Program for Injecting Drug Users: Intervention Manual*, February, 1992; and

(3) the indigenous leader model as described in Wiebel, W., Levin, L.B., *The Indigenous Leader Model: Intervention Manual*, February 1992.

(b) Outreach programs shall also:

(1) promote awareness among injecting drug abusers about the relationship between injecting drug use and communicable diseases; and

(2) select, train, and supervise outreach workers.

(c) HIV outreach programs target substance abusers who may or may not be seeking treatment and provide them with information, activities, referrals, and education.

(1) Services shall be delivered at times and locations that are necessary to meet the needs of the target population.

(2) Outreach workers shall be trained in substance abuse issues and be able to deliver culturally appropriate HIV education and risk reduction messages to substance users.

(3) Written procedures shall effectively secure confidentiality of individuals who are identified through outreach activities.

(4) Programs shall demonstrate ethnic and cultural sensitivity with a history of service delivery to the identified target population.

§144.355. Councils on Alcohol and Drug Abuse Requirements.

(a) A council on alcohol and drug abuse (COADA) shall coordinate and centralize specific services for its defined service area. While the COADA is not required to be physically present in each of the assigned counties, the COADA is required to make every effort possible through all known sources and linkages to serve the residents of assigned counties.

(b) COADAs shall meet the minimum service requirements described in the Provider Compliance Guide.

§144.356. Infant Primary Prevention Programs and Infant Intervention Programs.

(a) Infant primary prevention programs shall address the needs and issues of non-using pregnant and postpartum women and their families that are at risk for substance abuse. This may include promoting the health of children and mothers and prenatal and postpartum care of women and reducing the pregnant and postpartum women's risk of abusing alcohol or other substances or becoming chemically dependent.

(b) Infant intervention programs shall address substance use or abuse during the prenatal and postpartum period. Services may include information and education, assessments, intervention counseling services, and interruption of the onset or progression of chemical dependency in the early stages.

(c) To ensure that services are comprehensive, programs shall establish appropriate linkages with available community services.

(d) Service providers shall address the following minimum requirements described in the Provider Compliance Guide, Chapter 11:

- (1) strategies;
- (2) essential services;
- (3) staffing requirements; and
- (4) evaluation and program administration.

(e) The provider shall implement the program as described in the application through which the program is awarded funds.

§144.361. Select Performance Measures.

(a) Prevention and intervention providers shall meet specific performance measures based on the annual goals approved for the performance and activity measures.

(b) Annual goals for each funded activity listed in the award terms and conditions are submitted and/or negotiated at the time funding is approved. The provider may request revisions to annual goals prior to the beginning of a quarterly review period.

(c) The provider shall report monthly performance toward the accomplishment of the annual goals to the commission in the performance and activity measures.

(d) The commission shall review the measures quarterly by using the actual number reported to date as a proportion of annual goals.

(e) The commission shall notify the provider in writing if the provider failed to achieve the expected level of performance.

(f) The provider shall respond to the notice within 30 days from the date of notification.

(g) If the provider fails to satisfactorily achieve or maintain performance levels, the commission shall impose one or more of the following sanctions:

- (1) designation as a high-risk organization;
- (2) suspension or withholding of payments;
- (3) one-time decrease in the award amount for the fiscal year;
- (4) permanent decrease in the award amount;
- (5) termination of the award;
- (6) ineligibility to receive a new award or an increase in the current award amount.

(h) The commission shall use performance measure data as a criteria in future funding decisions.

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 February 29, 1996.

TRD-9602834

Mark S. Smock

Assistant Deputy for Finance

Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 867-8720

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Subchapter E. Treatment

40 TAC §§144.401; 144.411-144.427; 144.431-144.435; 144.441-144.444; 144.451; 144.452

The Texas Commission on Alcohol and Drug Abuse proposes new §§144.401; 144.411-144.427; 144.431-144.435; 144.441-144.444; 144.451; and 144.452 concerning treatment requirements for providers funded by the commission. The new sections are being proposed to describe the minimum criteria for treatment programs funded by the commission, including continuum of care, family services, indigent status, admission, assessment, waiting lists, interim services, provisions for special populations, service areas, diagnosis, client chart documentation, client absent from treatment, level/phase systems, relapse prevention education, group size, specific provisions for each level of care and for specialized populations, and performance measures.

Sharon F. Logan, Interim Executive Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Logan also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more

effective treatment programs. There will be no effect on small businesses. There are no anticipated economic costs to currently funded providers who are required to comply with the sections as proposed, because these requirements are already included in the contract. Cost of compliance for future providers will vary, depending on each organization's structure and operations.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701.

The new sections are proposed under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections is the Texas Health and Safety Code, Chapter 461.

§144.401. Applicability.

The rules in this subchapter apply only to funded providers of treatment services.

§144.411. Continuum of Care.

Treatment programs shall ensure linkages with available substance abuse services and other mental health, health care, and social services for clients and families based on their individual needs (either directly or through arrangements with other entities). The provider shall, to the extent possible and appropriate:

- (1) perform screening and assessment procedures to measure the level and intensity of need for clients and families entering services;
- (2) promote and support the development of an array of prevention/intervention services in the community;
- (3) identify and address the special needs of the individuals and families within the targeted community, communicate location of programming, and ensure accessibility of services and activities;
- (4) provide linkages to an array of treatment services ranging from the least restrictive to the most restrictive; and
- (5) ensure the provision of case management services and establish and maintain coordination with community resources.

§144.412. Family Services.

- (a) The provider shall, to the extent possible and appropriate:
 - (1) involve family members in program services;
 - (2) establish family-related services to impact the prevention of substance abuse and/or the recovery process;
 - (3) implement a systematic process to identify appropriate referrals for family members;
 - (3) inform family members of family services offered directly and through other community resources; and
 - (4) document family participation and attempts to engage family members in services.

(b) Family-related services may be provided directly or through linkages and shall include screening and assessment for family members, and appropriate referrals for identified needs.

(c) The provider shall maintain linkages with available community resources for appropriate referral services, including linkages with the community resources coordinating groups (CRCG) or the community management teams (CMT).

§144.413. Medically Indigent Status and Ability to Pay.

(a) The provider may serve any adolescent but shall only serve medically indigent adults with commission funds.

(b) No applicant shall be denied services based only on inability to pay.

(c) The provider shall complete and document a financial assessment of each client at admission to determine financial status and ability or inability to pay.

(d) The provider shall document all sources of reimbursement and all actual costs for chemical dependency services for each client billed to the commission.

§144.414. Admission.

(a) The provider shall screen and assess applicants according to written admission policies that are approved by the program director and the governing board.

(b) Screening eligibility criteria shall include age, catchment area, drug use history, treatment history, ability to pay or payment source, current crisis and associated problems, and priority.

(c) Only eligible and appropriate clients shall be admitted to the program.

(d) The provider shall implement procedures to identify members of priority populations and admit them before all others. The commission has established the following priority order:

- (1) pregnant injecting drug users;
- (2) pregnant substance abusers;
- (3) injecting drug users; and
- (4) all other chemical dependents.

(e) Clients who are ineligible for services shall be referred to the nearest council on alcohol and drug abuse (or other resource) for further screening and assessment.

(f) The provider shall maintain a log of ineligible applicants which documents the reason for ineligibility and where the individual was referred.

§144.415. Assessment.

(a) The provider shall conduct a formal, structured, and comprehensive assessment for each client to determine appropriate treatment and identify needed ancillary services.

(b) In addition to the items required by the commission's Facility Licensure Rules, the assessment shall include a diagnosis and a severity rating to determine appropriate level of service.

(c) Youth assessments shall address child welfare involvement, peer relationships, and gang involvement.

(d) The assessment shall be administered by a qualified credentialed counselor (QCC) or counselor intern. A QCC shall review and approve all assessments.

§144.416. Waiting List.

(a) The provider shall maintain a waiting list for eligible individuals who have been screened but cannot be treated immediately.

(b) The provider shall refer eligible applicants who cannot be served because capacity has been reached to an agency that offers tuberculosis services.

(c) The provider shall establish criteria and procedures to manage the waiting list.

§144.417. Interim Services.

(a) The program shall provide access to interim services for individuals on the waiting list who are intravenous drug abusers or who are pregnant. Interim services may be provided directly or through written agreements with community resources.

(b) Interim services shall:

(1) be offered within 48 hours;

(2) continue until the individual is admitted into treatment; and

(3) include strategies to reduce the adverse health effect of intravenous drug use and to reduce the risk of transmission of disease.

(c) The provider shall maintain documentation of interim services provided.

§144.418. Facility Capacity System.

The provider shall participate in the Facility Capacity System (FACTS). The provider shall:

(1) report daily, no later than 11:00 a.m., Monday through Friday, by clinic number, the number of funded beds or slots available by service type and project type;

(2) record, categorize, and report all individuals who are waiting for treatment services; and

(3) consistently use the Texas Referral Network to place waiting clients.

§144.419. Provisions for Intravenous Drug Use Treatment Providers.

(a) Upon reaching 90% capacity for pharmacotherapy programs, the provider shall report this information through the Facility Capacity System (FACTS).

(b) An individual requesting treatment for intravenous drug use shall be admitted to an appropriate program within 14 days. If no treatment slots are available and interim services are made available to the individual within 48 hours, admission may be delayed for up to 120 days.

§144.420. Provisions for Pregnant Females.

(a) Pregnant females shall be given preference in admissions to treatment facilities.

(b) The program shall inform the public and relevant community organizations that treatment is available for pregnant females.

(c) When a program does not have capacity to admit a pregnant female, the provider shall make every effort to place her

in another treatment facility or make interim services available to her within 48 hours. Interim services shall include counseling about the effects of alcohol and drug use on the fetus and referrals for prenatal care.

§144.421. Service Area.

(a) Each program shall designate a service area which includes all counties designated in the funding agreement. The program shall make services available to clients from all designated counties when commission-funded capacity is available.

(b) The provider shall document efforts to have representation for the whole service area on the governing board or advisory committee.

(c) Clients who live outside the designated service area may be admitted when commission-funded capacity is available. Priority shall, however, be given to clients in the assigned catchment area.

§144.422. Diagnosis.

(a) Singly diagnosed clients. Clients receiving substance abuse services shall have a presenting problem which meets the criteria of DSM-IV for psychoactive substance induced organic disorders or psychoactive substance use disorders.

(1) The diagnosis shall be the result of an assessment conducted by a qualified professional and shall take developmental issues into account in the case of adolescents.

(2) Adults shall meet the criteria for dependence, except for pregnant women who can meet the criteria for dependence or abuse.

(3) Adolescents shall meet the criteria for dependence or abuse.

(b) Dually diagnosed clients. Dually diagnosed clients shall have a presenting problem which meets the criteria of DSM-IV for psychoactive substance induced organic disorders or psychoactive substance use disorders, or substance abuse related problems and emotional maladjustment/disturbance problems, thought disorders, behavioral disturbance problems, or suicidal/self abuse problems. All treatment providers serving dual diagnosis clients shall:

(1) train appropriate staff on the recognition and diagnosis of substance abuse and emotional disorders. Training shall be documented in personnel files;

(2) develop and implement written procedures to properly diagnose clients exhibiting conditions or behavior that may suggest the need for dual diagnosis treatment; and

(3) develop and implement written referral procedures that incorporate other available resources to assist in the referral and placement of clients who are inappropriate for dual diagnosis treatment.

§144.423. Client Chart Documentation.

(a) General requirements. All providers shall meet the following requirements:

(1) providers shall maintain complete documentation for all services paid for by commission funds;

(2) the provider shall have a system to monitor the delivery and documentation of services;

(3) all documentation shall include the date, nature, and duration of the contact, as well as the signature and credentials of the counselor providing the service;

(4) the program shall have descriptions of all group sessions, including curriculum, outlines, and activities;

(5) the provider shall not bill for:

(A) more than two hours of outpatient individual services per day for a single client; or

(B) self-help groups;

(6) client files shall include:

(A) follow-up notes for case management;

(B) a progress note documenting required information gathered in the 60-day follow-up contact (made for Client-Oriented Data Acquisition Process purposes); and

(C) follow-up documentation for the program's self evaluation.

(b) Level IV services. Documentation for Level IV Outpatient Services shall include complete documentation for every service hour or half-hour billed for group and individual counseling. Documentation shall be related to the client's treatment plan and show the client's interaction with the counselor.

(c) All services except Level IV. The following documentation is required:

(1) weekly summary progress notes which provide a summary of all scheduled groups attended by the client, including the dates covered, the topics, the number of hours, and the client's level of participation;

(2) individual documentation to verify all group services if the schedule of services is not followed; and

(3) separate progress notes for each individual counseling session, including the duration of the session. Notes shall be related to the client's treatment plan and show the client's interaction with the counselor.

(d) Documentation process. Client record documentation shall provide all information from assessment and admission to discharge. The client record shall include:

(1) psychosocial history;

(2) identified needs and treatment plan;

(3) progress notes;

(4) discharge summary;

(5) discharge plan; and

(6) documentation of all case management, referrals, linkages, and follow-up activities.

§144.424. Client Absence from Treatment.

(a) Providers may hold a bed or day treatment slot open and bill for a client who is on a planned, approved absence for up to two days.

(b) If a client leaves the program against program advice, an absence may be billed only if the client returns within two days and is accepted back into the program.

(c) The bed or slot shall not be occupied by another client when billed to the commission.

(d) The client record shall document the purpose, duration, and justification of an approved absence.

§144.425. Level/Phase System.

(a) If a provider uses a level or phase system, it shall be clearly defined, consistently communicated and applied to all clients, documented, and approved by the program director.

(b) There shall be a written description of the level/phase system and a procedure to ensure consistent implementation.

(c) Criteria shall be defined in behavioral terms.

(d) Responsibilities, rewards, and restrictions shall be therapeutically indicated as determined by the program director.

(e) The client record shall contain documentation signed and dated by the client showing that the client understands and has received a copy of the level/phase plan. It shall also include the client's movement within the system, including rationale for assignments.

§144.426. Relapse Prevention Education.

All providers shall offer a program to address the symptoms of relapse and provide more intense relapse prevention programming if necessary to meet the individual needs of clients who relapse during treatment.

§144.427. Group Size.

Group size shall be limited to a number that allows effective interaction between the group and facilitator and between group members.

(1) The counselor to client ratio in group counseling shall not exceed one to 12.

(2) Group education sessions, didactic sessions, multifamily groups, and other groups are limited to 30 clients.

(3) Group sessions can exceed levels established in policy only if approved by the commission in writing.

§144.431. General Treatment Services.

(a) All treatment programs shall comply with applicable chemical dependency treatment facility licensure requirements for the specified level of service, as published in Texas Health and Safety Code, Chapter 148.

(b) In addition, all treatment programs funded by the commission shall provide:

(1) education about dysfunctional relationships within the family;

(2) coping skills training;

(3) access to tuberculosis services;

(3) case management;

(4) family services;

(5) individual counseling;

(6) waiting list interim services; and

(7) support group opportunities for children and adults.

(c) Level II, III, and IV treatment programs shall also provide relapse prevention services.

§144.432. Level I Service Requirements.

(a) Staff shall make a documented effort to refer and place clients in continuing chemical dependency treatment programming after discharge.

(b) A qualified credentialed counselor or counselor intern shall conduct a motivational interview to engage the client in the treatment process. The provider shall develop a written outline which describes the areas to be covered in the interview, and the interview shall be documented in the client record.

(c) Providers of adolescent services shall provide ongoing training to direct care staff to maintain and upgrade clinical skills specific to adolescent detoxification.

(1) The provider shall have an annual staff training plan listing trainers, timelines, locations, and agendas.

(2) Trainers shall be qualified, credentialed professionals.

(3) Documentation of the training, including attendance, shall be filed with the annual training plan and in personnel files.

§144.433. Level II Service Requirements.

(a) Residential programs serving adults shall include five hours of planned (structured) activities in addition to those required by licensure rules. These five hours shall be offered during evenings and weekends.

(b) Residential programs serving adolescents shall include ten hours of planned (structured) activities in addition to those required by licensure rules. These ten hours shall be offered during evenings and weekends.

§144.434. Level III Service Requirements.

(a) Residential programs serving adults shall include six hours of planned (structured) activities in addition to those required by licensure rules. These six hours shall be offered during evenings and weekends.

(b) Residential programs serving adolescents shall include ten hours of planned (structured) activities in addition to those required by licensure rules. These ten hours shall be offered during evenings and weekends.

§144.435. Level IV Service Requirements.

(a) Residential programs serving adults shall include four hours of planned (structured) activities in addition to those required by licensure rules. These four hours shall be offered during evenings and weekends.

(b) Residential programs serving adolescents shall include ten hours of planned (structured) activities in addition to those required by licensure rules. These ten hours shall be offered during evenings and weekends.

§144.441. Specialized Treatment Services: Women.

(a) Required services. Programs offering specialized female services shall include:

(1) gender-specific substance abuse treatment;

(2) prenatal care and child care while women are receiving services (provided directly or through formal agreements with other entities);

(3) access to primary pediatric care for children, including immunizations;

(4) therapeutic interventions for children who are in the custody of women in treatment which address their development needs, and their issues of physical abuse and neglect;

(5) early assessment of the children of these women and appropriate referrals to community resources as necessary; and

(6) sufficient case management and transportation services to ensure that women and their children have access to the services provided.

(b) Procedures. Specialized female programs shall serve these priority populations:

(1) pregnant women;

(2) women with dependent children; and

(3) women who are attempting to regain custody of their children.

(c) Community information. Providers shall inform relevant entities in their communities that the specialized female program is available.

(d) Special reports. Providers shall submit special reports that include services and activities for children who receive services from the program while their parents are in treatment, if applicable.

§144.442. Modified Therapeutic Communities.

(a) The therapeutic community program design shall include a distinctly phased, hierarchic chemical dependency treatment regimen. Phases shall include orientation, treatment, and re-entry.

(b) The program shall have a community management system with rules and guidelines to govern the treatment family. This system should include privileges and sanctions designed to protect the community and strengthen it as a context for social learning.

(c) The provider shall design activities and services where clients learn new social skills by active participation in a group process.

(d) The program shall include community activities, such as meetings, designed to enhance the well-being of the community at large.

(e) If the structure of a modified therapeutic community model appears to be hindered by commission service requirements, the provider may request a revision to modify the requirements. The commission will approve a request only if the provider can justify the modification and demonstrate experience in operating a therapeutic community under the requested conditions.

§144.443. Court Commitment Services.

(a) Court commitment service (CCS) programs only serve clients remanded for treatment by county and probate judges through certificates of commitment.

(b) All programs providing these services shall be licensed and approved by the commission to provide chemical dependency care to a client court ordered to treatment before services are provided.

(c) The program shall implement procedures for compliance with Federal and State Statutory and Administrative Code provisions

that relate to the care and custody of court committed clients. These provisions include:

(1) Code of Federal Regulations, Title 42, Part 2 - Confidentiality of Alcohol and Drug Abuse Patient Records;

(2) Texas Health and Safety Code, Chapter 42; and

(3) Texas Administrative Code, Chapters 41-42.

(d) The program shall provide training for all CCS staff to ensure they understand and comply with CCS statutes, regulations, and procedures.

(e) Services shall be provided in compliance with all relevant statutory provisions.

(f) All CCS staff and volunteers providing direct client services shall receive training in Prevention and Management of Aggressive Behavior (PMAB). The second part of PMAB training (relating to restraint procedures) is not required, and a facility may substitute another non-violent behavior management course with content equivalent to the PMAB training. This training shall be documented in personnel files.

(g) In addition to the documentation requirements set out in the commission's Licensure Standards, the CCS provider shall document as a part of the client's record the conditions and/or behaviors that caused the client's entry into the civil court commitment process.

(h) The client record shall also contain copies of the following documents:

- (1) order of detention (if applicable);
- (2) application for court ordered treatment;
- (3) two certificates of medical exam;
- (4) order of protective custody;
- (5) notification of probable cause hearing
- (6) waiver of attendance at hearing (if applicable);
- (7) finding of probable cause hearing;
- (8) order of commitment or writ of commitment; and
- (9) transfer order (if applicable).

§144.444. Pharmacotherapy Services.

(a) The program shall maintain compliance with all applicable statutes and regulations adopted by:

- (1) Texas Department of Health;
- (2) Food and Drug Administration;
- (3) Drug Enforcement Agency; and
- (4) Texas Commission on Alcohol and Drug Abuse.

(b) The pharmacotherapy treatment team shall include a physician.

(c) Providers shall establish a phase/level system which is consistent with guidelines from the Food and Drug Administration and includes the following phases:

(1) Phase I: During the first 90 days of treatment, the client shall receive at least four individual counseling sessions monthly.

(2) Phase II: After 90 days of continuous treatment, the client shall receive at least two individualized counseling sessions monthly.

(3) Phase III: After two years of continuous treatment, the client shall receive at least one individual counseling session per month.

(d) Individual counseling sessions shall be conducted more frequently when the need is identified by the treatment team.

(e) Client files shall document any progress made by clients in treatment as they move through the phase/level system.

(f) The provider shall ensure that:

(1) all staff providing direct client services have received annual continuing education and training in pharmacotherapy treatment methods; and

(2) the client's primary counselor has at least forty training hours in pharmacotherapy services or has at least one year of documented experience providing pharmacotherapy services.

§144.451. Self-Evaluation.

(a) The provider shall develop and implement a system to monitor and evaluate the quality, efficiency, and effectiveness of its program(s), and then use the data and results to make appropriate program adjustments.

(b) The system shall identify problem areas, evaluate progress, develop and take corrective actions, and monitor and evaluate the results of corrective actions taken. It shall also assess how changes in the treatment population, admission procedures, and treatment protocols affect retention, utilization, discharge status, and client outcomes.

(c) The program self-evaluation system shall use data collected to:

(1) describe the types of clients being served and their particular needs;

(2) identify treatment services provided;

(3) track the progress of clients in completing treatment phases and meeting treatment goals and objectives;

(4) generate information on daily census, utilization, retention, and outcomes;

(5) provide information needed to meet internal and external reporting requirements; and

(6) conduct a review of program services and their effectiveness on at least an annual basis, and make program adjustments as indicated.

(d) The program self-evaluation system shall include the core set of items/performance measures identified by the commission and other data that meet the specific information needs of the individual program.

(e) To the extent possible, the system should be based on objective data and be clinically useful.

(f) The provider shall develop a written plan describing measures to be used and methods of data collection for each measure.

(g) The provider shall also document:

- (1) identified problem areas;
- (2) evaluated progress;
- (3) corrective actions taken; and
- (4) the results of corrective actions taken.

§144.452. Select Performance Measures.

(a) The treatment provider shall meet specific performance measures as stated in the award terms and conditions.

(b) The commission shall review compliance with targets at least twice each fiscal year.

(c) The commission shall notify the provider in writing if the provider failed to achieve the expected level of performance.

(d) The provider shall respond to the notice within 30 days from the date of notification.

(e) If the provider fails to satisfactorily achieve or maintain performance levels, the commission shall implement corrective action as described in the Provider Compliance Guide or impose one or more of the following sanctions:

- (1) designation as a high-risk organization;
- (2) suspension or withholding of payments;
- (3) one-time decrease in the award amount for the fiscal year;
- (4) permanent decrease in the award amount;
- (5) termination of the award; or
- (6) ineligibility to receive a new award or an increase in the current award amount.

(f) The commission shall also use performance measure data as a criteria in future funding decisions.

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

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Mark S. Smock

Assistant Deputy for Finance

Texas Commission on Alcohol and Drug Abuse

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For further information, please call: (512) 867-8720



Subchapter F. Reports

40 TAC §§144.511; 144.512; 144.521-144.531

The Texas Commission on Alcohol and Drug Abuse proposes new §§144.511; 144.512; and 144.521-144.531, concerning reporting requirements for funded providers. The new sections are being proposed to describe the general requirements for reporting, use of the Electronic Forms Interchange System,

and the specific reports that providers must submit to the commission.

Sharon F. Logan, Interim Executive Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Logan 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 rule will be clear and consistent reporting and a more efficient funding system. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the sections as proposed is the cost of purchasing computer hardware and software if not already owned by the provider.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701.

The new sections are proposed under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections is the Texas Health and Safety Code, Chapter 461.

§144.511. General Provisions.

The provider shall submit all reports as required by commission rules, the award, and the commission's Provider Compliance Guide. Reports shall be submitted in the specified form, manner, and timeframe.

§144.512. Electronic Forms Interchange System.

(a) The provider shall submit all performance reports, financial reports, and requests for payment through the Electronic Forms Interchange (EFI) system unless otherwise provided by the commission.

(b) It is the provider's responsibility to acquire and maintain the equipment and software needed for the EFI system. This includes:

- (1) Disk Operating System (DOS)-based personal computer or Macintosh computer;
- (2) modem;
- (3) telephone line;
- (4) Information Management System (IMS) software package;
- (5) user manual and training; and
- (6) set of forms and templates.

(c) The provider shall obtain the commission's approval before using any computer-generated interface with EFI.

(d) The provider shall establish adequate internal controls, security, and oversight for the approval and transfer of information.

(e) Before reports are transmitted, the organization's authorized official or designee shall ensure that the information is true, accurate, and complete. Providers shall complete and send the com-

mission an Electronic Forms Signature Agreement form with the original signature of the authorized official.

§144.521. CODAP Reports.

All treatment providers shall submit Client Oriented Data Acquisition Process (CODAP) reports to the commission on all clients billed to the commission for substance abuse treatment services. Providers shall comply with reporting procedures detailed in the CODAP Instruction Manual. Any changes to instructions that are mailed to treatment providers from the commission prior to revising the CODAP manual will supersede the instructions in the current CODAP manual.

§144.522. Client Billings (Treatment).

(a) Treatment providers shall submit monthly client billings for each client that receives treatment.

(b) Treatment providers who are funded through the unit cost payment mechanism shall use the client billing forms to request monthly reimbursement. Treatment providers funded through the financial assistance payment mechanism shall also submit client billing forms, however, payments will be based on satisfactory submission of a request for advance or reimbursement (RFA).

(c) All billing forms shall be submitted through the Electronic Forms Interchange (EFI) system unless otherwise provided by the commission.

(d) Only one batch of client billing forms per award may be submitted each month from each clinic site.

(e) Providers may bill for only one service type per client per day. Services delivered to a single client in different months shall be billed separately for each month.

(f) When an error report is received, the provider shall take immediate action to correct the errors or resubmit new client billings if needed.

(g) The commission shall not process payments until error-free billing forms have been received and accepted.

(h) Failure to correct errors will result in subsequent reductions of payment requests.

§144.523. TCADA-FACTS Form (Treatment).

Treatment providers shall report available capacity and waiting list information through the Electronic Forms Interchange (EFI) system unless otherwise provided by the commission. Available capacity is based on the number of slots and/or beds available for commission-funded eligible clients. The Texas Commission on Alcohol and Drug Abuse - Facility Capacity System (TCADA-FACTS) Form shall be transmitted daily by 11:00 a.m.

§144.524. Prevention and Intervention - Performance and Activity Measures.

(a) Each provider shall submit annual goals for anticipated numbers of persons to be served during the course of the award period.

(b) Prevention and intervention programs shall track and appropriately document the performance and activity measures defined for the target population and the services provided. Treatment providers serving women with dependent children shall report monthly measures and annual goals only for the children of females in treatment who are receiving prevention and/or intervention services.

(c) Each provider shall submit monthly performance and activity reports based on the approved goals for funded activities by the specified due date, and correct any errors identified. The provider shall also report issues that will impact measures to the assigned specialist immediately.

§144.525. Payment Request Procedure for RFA.

(a) Providers paid through the financial assistance mechanism are eligible to receive monthly cash advances.

(b) The provider shall submit the method of payment selection form to provide information for approval by the commission of the amount of monthly cash advances that may be received by a provider.

(c) The provider shall minimize the time between disbursement of funds by the commission and expenditures of funds by the provider.

(d) Reimbursement for expenses incurred during the budget period is the commission standard form of payment.

(e) Expenditure of commission funds shall be planned for the entire budget period so that the commission award will not be spent before the end of the budget period and so that programs make full use of available funds.

(f) Before requesting reimbursement, the grantee or contractor shall determine the commission's share of the actual expenditures and request only that amount.

(g) Reimbursements may be requested monthly or less often as needed, but at least quarterly. Final payment must be requested within 45 days after the end of the budget period.

(h) To be eligible for payments, the provider must comply with provisions of the award agreement, rules, policies, and procedures of the commission, and other applicable state and federal laws and regulations.

(i) Payment requests shall be accurate and submitted in the format required by the commission, and certified by the provider's authorized representative.

(j) The commission may reduce or reject payment if it appears:

(1) the provider may maintain cash-on-hand; or

(2) the commission funds may be spent prior to the end of the budget period.

§144.526. Financial Status Report (FSR).

(a) All providers shall report actual expenses each quarter, as well as the expenses charged to match funds and program income when appropriate.

(b) The form shall be completed by the financial officer or the executive director.

(c) Provider shall report only those expenses actually incurred during the report period and shall report by budget line items. Providers shall also submit itemized documentation for personnel, equipment, and contractual expenses on forms provided by the commission.

§144.527. Quarterly Narrative Report - HIV Prevention Form.

Providers funded to provide HIV outreach prevention services shall submit a quarterly narrative report by the specified due date.

§144.528. Quarterly Narrative Report - Unique Programs.

Unique programs shall submit a quarterly narrative report, when required in the award, that highlights progress made and/or problems encountered during that quarter. Forms shall be received at the commission by the specified due date.

§144.529. Quarterly Report - Minors and Tobacco.

Councils on alcohol and drug abuse (COADAs) and prevention and intervention providers funded to carry out activities for minors and tobacco shall submit a quarterly report by the specified due date.

§144.530. Close-out.

Providers shall close out their awards at the end of the fiscal year in the manner and format prescribed by the commission.

§144.531. Historically Underutilized Business (HUB).

Any provider who has a subcontract shall complete and sign the HUB report, and then return it to the commission according to the specified quarterly due dates.

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

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Subchapter G. Audits

40 TAC §§144.611-144.615; 144.621-144.624; 144.631-144.633

The Texas Commission on Alcohol and Drug Abuse proposes new §§144.611-144.615; 144.621-144.624; and 144.631-144.633, concerning audits of providers funded by the commission. The new sections are being proposed to establish minimum standards for external audits required by the commission, and to describe the responsibilities of the commission and the provider during the program review process.

Sharon F. Logan, Interim Executive Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Logan 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 new sections will be greater control over funds used by providers and more effective enforcement of commission rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701.

The new sections are proposed under the Texas Health and Safety Code, §461.012(15), which provides the Texas Com-

mission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections are the Texas Health and Safety Code, Chapter 461.

§144.611. Annual Single or Program-Specific Audit.

Providers who receive \$25,000 or more of total federal and state financial assistance during their fiscal year shall have an annual single or program-specific audit for that year.

(1) Providers receiving at least \$25,000 but less than \$100,000 in state and federal funds may have a program-specific audit in accordance with the statutes and regulations governing the program if the provider receives funding for only one program.

(2) State and local governments shall comply with the Single Audit Act and requirements of Office of Management and Budget (OMB) Circular A-128.

(3) All other organizations, including commercial or for-profit organizations, shall comply with the single audit requirements of OMB Circular A-133.

§144.612. Auditor Qualifications.

(a) The single or program-specific audit shall be conducted by an independent certified public accountant (CPA) in accordance with the Government Auditing Standards (GAS) issued by the Comptroller General of the United States.

(b) Providers who use outside CPA firms to perform book-keeping or accounting services shall not use the same CPA firm for audit services.

(c) All providers shall require the selected auditor to meet minimum standards, including appropriate state licensing requirements, independence, training requirements, or any other specific qualification requirement imposed by federal, state, or local law.

(d) The independent auditor shall meet the requirements of GAS.

§144.613. Audit Agreement.

The provider and auditor shall sign a written agreement which includes:

- (1) a reference incorporating the contract provisions contained in the fiscal requirements chapter of the commission's Provider Compliance Manual;
- (2) terms of the request for proposal, if applicable;
- (3) terms of the successful bidder, if applicable;
- (4) scope, objective, and purpose of the audit;
- (5) deadlines for work to be performed;
- (6) report format;
- (7) type and timing of support to be provided by the provider to the auditor;
- (8) professional auditing standards to be followed in performing the audit;
- (9) a statement that the relationship is that of an independent contractor;

(10) a provision allowing the provider to make changes in or additions to the work, if it is within the general scope of the agreement and the provider gives written notice; and

(11) acknowledgment that the work papers prepared by the auditor during the audit shall be made available upon request to the provider or its designee or to federal and state oversight authorities.

§144.614. Monitoring.

(a) The provider shall monitor the progress of the audit to ensure that it meets the terms of the agreement, and take appropriate action to resolve any problems.

(b) The provider shall have a clear understanding of the report, its contents, and the findings.

§144.615. Audit Report.

(a) The audit report shall include the requirements of the Government Auditing Standards (GAS) and the following publications, as applicable:

(1) Audits of State and Local Governmental Units (issued by the State and Local Governmental Committee of the American Institute of Certified Public Accountants);

(2) Office of Management and Budget (OMB) Circular A-102: Uniform Administrative Requirements for Grants and Other Agreements with State and Local Governments (issued by the United States Office of Management and Budget - OMB);

(3) Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (OMB Common Rules);

(4) OMB Circular A-110: Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, for United States Department of Health and Human Service funded programs;

(5) OMB Circular A-21: Cost Principles for Educational Institutions;

(6) OMB Circular A-122: Cost Principles for Nonprofit organizations;

(7) OMB Circular A-87; Cost Principles for State and Local Governments;

(8) Statement of Position 92-9: Audits of Non-for-Profit Organizations Receiving Federal Awards, an amendment to American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guides of Audits of Certain Not-for-Profits, Audits of Providers of Health Care Services, Audits of Voluntary Health Care and Welfare Organizations, and Audits of Colleges and Universities (issued by the AICPA);

(9) Statement on Auditing Standards No. 74 (issued by the American Institute of Certified Public Accountants);

(10) Uniform Grants and Contract Management Standards for the State of Texas for State and Local Government Providers (issued by the Governor's Office of Budget and Planning); and

(11) grant award notice with the Texas Commission on Alcohol and Drug Abuse, including any stipulations and amendments.

(b) The audit report shall state that the audit was made in accordance with the provisions of either Circular A-128 or A-133, as applicable, and the GAS.

(c) The audit report and management letter shall include provider responses and a plan of corrective action for each finding or issue identified.

§144.621. Audit Due Date.

Two copies of the audit report, including the management letter, responses, and The Audit Report Submission Checklist," shall be submitted to the commission's Audit Department within 30 days after completion of the audit, and no later than one year after the end of the provider's fiscal year-end.

§144.622. Corrective Action Plan.

(a) All providers shall respond to the deficiencies noted in the external audit report and management letter, and submit a corrective action plan for all deficiencies noted.

(b) Management responses shall express agreement or disagreement with the noted deficiencies. Disagreement shall include additional support, evidence, or justification of the provider's position.

(c) The corrective action plan shall explain the provider's methods for correcting or resolving the noted deficiencies and include the timing for implementation.

§144.623. Commission Review of Audit Report.

(a) After reviewing the audit, the commission will send the provider an initial resolution letter requesting a response to any administrative findings or deficiencies.

(b) The provider shall respond to the commission within ten days of the date of the initial resolution letter.

§144.624. Acceptance Letters.

(a) If the review process indicates that no further action is needed, the provider will receive an acceptance letter.

(b) If further action is required, additional resolution letters will request specific actions or responses.

§144.631. Compliance Review.

(a) All commission-funded providers, regardless of the level of funding, are subject to periodic reviews by the commission for compliance with applicable federal, state and agency regulations.

(b) These reviews may be performed at the commission using documentation submitted by the provider or at the provider's location. The reviews may include all applicable areas outlined in the commission's Provider Compliance Manual.

(c) The extent of the review will be determined by the commission and may include, but is not limited to, organizational management fiscal management, personnel management, and program service delivery.

§144.632. Corrective Action.

(a) The provider will be notified, in writing, of any noncompliance with federal, state, and agency regulation identified by the commission.

(b) The provider shall to respond to the deficiencies and submit a plan of corrective action to the commission within 30 days of notification.

(c) The commission will evaluate and respond to corrective action plans.

§144.633. Audit and Review Sanctions.

All providers are subject to sanctions if the provider fails to comply with federal, state, or commission regulations regarding auditing and review requirements.

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

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Subchapter H. Sanctions

40 TAC §§144.711-144.714; 144.721-144.727; 144.731; 144.732

The Texas Commission on Alcohol and Drug Abuse proposes new §§144.711-144.714; 144.721-144.727; 144.731; and 144.732, concerning sanctions for providers funded by the commission. The new sections are being proposed to describe criteria for sanctions, prohibited actions, the range of sanctions that may be applied by the commission; and the effect of sanctions.

Sharon F. Logan, Interim Executive Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Logan 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 new sections will be more effective enforcement of commission rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701.

The new sections are proposed under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections is the Texas Health and Safety Code, Chapter 461.

§144.711. Criteria for Sanctions.

(a) The commission's executive director may terminate, suspend, or otherwise require stipulations to an award if an applicant,

license holder, owner, member of the governing board, administrator, or clinical staff member:

- (1) engages in fraud;
- (2) commits acts of abuse, neglect, or exploitation; or
- (3) violates any laws, regulations, or professional ethical codes.

(b) Criteria for sanction is not limited to the specific examples provided.

(c) Submission of false or fraudulent claims, statements, or documents or the concealment of a material fact may be prosecuted as a felony in either Federal or State court.

(d) If records identify situations in which there is a question of fraud, the commission will consult with the Texas Attorney Generals Office, the United States Attorney Generals Office, and other appropriate law enforcement agencies.

(e) Abuse, neglect, or exploitation is a violation of commission rules and is punishable by criminal prosecution, administrative disciplinary action, or both.

§144.712. Fraudulent Billing.

Fraudulent billing includes, but is not limited to, the following:

- (1) presenting or causing to be presented for payment any false or fraudulent claim for service;
- (2) failing to repay or make arrangement for the repayment of identified overpayments or other erroneous payments; and
- (3) submitting or causing to be submitted false information for the purpose of obtaining greater compensation than the provider is legally entitled to.

§144.713. Abuse, Neglect and/or Exploitation.

Abuse, neglect, and exploitation include, but are not limited to, the following:

- (1) conviction of a criminal offense relating to negligent practice resulting in death or injury to a client;
- (2) an act or process to use, either directly or indirectly, the labor or resources of a client for monetary or personal benefit, profit, or gain of another individual or organization;
- (3) negligent practice resulting in death or injury to clients, including actions resulting from inattention, disregard, carelessness, ignoring or omission of reasonable consideration that caused, or might have caused, physical or emotional injury to a client. Examples of neglect include but are not limited to:
 - (A) failure to provide adequate nutrition, clothing, or health care;
 - (B) failure to provide a safe environment free from abuse;
 - (C) failure to provide adequate numbers of appropriately trained staff;
 - (D) failure to establish or carry out an appropriate individualized treatment plan; and
 - (E) any other act or omission classified as neglect by the Texas Family Code, § 34.012.

(4) Any act or failure to act which is done knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused injury to a client. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it is caused by physical action or verbal statement. Client abuse includes:

- (A) any sexual activity between facility personnel and a client;
- (B) corporal punishment;
- (C) nutritional or sleep deprivation;
- (D) efforts to cause fear;
- (E) the use of any form of communication to threaten, curse, shame, or degrade a client;
- (F) restraint that does not conform with these standards;
- (G) coercive or restrictive actions taken in response to the client's request for discharge or refusal of medication or treatment that are illegal or not justified by the client's condition; and
- (H) any other act or omission classified as abuse by the Texas Family Code, §34.012.

§144.714. *Other Violations.*

Violations of any laws or regulations, or violations of ethical codes governing the conduct of occupations or professionals subject to the policies and procedures of substance abuse services, including the following:

- (1) submitting or causing to be submitted false information for the purpose of meeting service requirements;
- (2) failing to disclose or make available to the commission, or its authorized agent, records of services provided to a client and records of payments made for those services;
- (3) failing to provide and maintain the quality of services to clients within established standards/requirements;
- (4) engaging in a course of conduct or performing an act which violates federal or state regulations, or continuing such conduct following notification that it should cease;
- (5) over-utilizing treatment services as defined by the commission by inducing, furnishing, or otherwise causing clients to receive services not authorized;
- (6) rebating or accepting a fee or portion of a fee or charge for referrals of a client;
- (7) submitting a false or fraudulent application for provider status for substance abuse services;
- (8) failing to meet standards required by state or federal law for approval by the commission;
- (9) failing to correct deficiencies in provider operations after receiving notice of these deficiencies from the commission; and
- (10) being suspended or terminated from participation in another governmental agency program.

§144.721. *Withholding Cash Payments.*

- (a) The commission may withhold payment for overdue documents.

(1) The commission will send the provider a written notice and request for the overdue documents.

(2) If the document is not received within 30 calendar days after the original due date, the commission may suspend the award.

(3) The award may be terminated if the document is not received after 30 additional days.

(b) Payment may also be withheld if the commission determines that the provider has not expended amounts paid for services in accordance with federal, state, and local laws and regulations and commission policies.

§144.722. *Disallowing Costs.*

The commission may disallow all or part of the costs of the activity or action not in compliance.

§144.723. *Suspension.*

(a) The commission may wholly or in part suspend or terminate the current award for a program.

(b) The commission will give the provider written notice stating the reasons for the suspension, any corrective action required of the provider, and the effective date of the suspension.

(c) Suspensions shall remain in effect until the provider has taken corrective action or until the commission terminates the award.

(d) No payments will be processed during the suspension period.

(e) The commission may suspend the award at any time without advance notice when there is evidence to support allegations of:

- (1) waste, fraud, or abuse;
- (2) staff or client abuse or neglect; or
- (3) any illegal act.

§144.724. *Termination.*

(a) If the commission decides to terminate an award, it will give the provider written notice stating the reasons for the termination and the effective date.

(b) The commission will not be liable to the provider or the provider's creditors for the expenses incurred after the termination date.

(c) The commission may terminate the award in whole or in part at any time when funds are not available, or when it has evidence showing the provider has:

- (1) violated any federal or state law; or
- (2) engaged in waste, fraud, or abuse.

§144.725. *Withhold Future Awards.*

(a) A provider who is not in compliance with the terms and conditions of any award from the commission is not eligible to receive any new awards or an increase in current award amounts.

(b) If the commission finds in writing that a provider has repeatedly engaged in waste, fraud, abuse, or illegal acts, the commission may exclude the provider from participation in any award for a defined period as determined by the commission.

(c) Providers may be debarred and excluded from participation in any funding process with the commission if the commission finds in writing that the provider has repeatedly failed to comply with the terms and conditions of the award, or has repeatedly engaged in waste, fraud, abuse, or illegal acts.

(d) A list of the names of provider organizations who have been debarred will be kept by the commission and will be a matter of public record which will be released to other funding sources when requested.

§144.726. Other Remedies.

If the commission finds in writing that the provider has failed to comply with the terms and conditions of the award, or has engaged in waste, fraud, abuse, or illegal acts, to the extent that a refund of amounts paid to the provider is due to the commission, the commission may:

- (1) deduct from payments due;
- (2) request all or part of the amount of the refund; or
- (3) take other remedies that are legally available.

§144.727. Reduce Award Amount.

(a) The commission may reduce the award amount if it determines that the provider is not:

- (1) achieving or maintaining the proposed level of service;
- (2) expending funds appropriately and at a rate which will make full use of the award; or
- (3) providing services as set forth in the signed grant award notice or contract and the application and revisions to the application approved in writing by the commission.

(b) The reduction notice will be given to the provider in writing and will not require the provider's consent or written agreement.

§144.731. Requirements for High-Risk Organizations.

(a) The commission may identify a provider as high-risk when the provider:

- (1) has a history of unsatisfactory performance;
- (2) is not financially stable;
- (3) has a management system which does not meet required standards;
- (4) has not conformed to terms and conditions of the award; or
- (5) is otherwise not responsible.

(b) The commission will notify the provider in writing when a high risk determination has been made and will inform the provider of:

- (1) the additional requirements or special restrictions that have been assigned;
- (2) the reason for imposing them;
- (3) corrective action which must be taken before they will be removed;
- (4) time allowed for taking corrective action; and

(5) method for requesting reconsideration of the additional requirements.

(c) When a provider is identified as high risk, the commission may:

- (1) withhold authority to proceed to the next phase of the program until receipt of evidence of acceptable performance within a given funding period;
- (2) require additional, more detailed financial reports;
- (3) conduct additional project monitoring;
- (4) require the provider to obtain technical or management assistance;
- (5) establish additional prior approvals; or
- (6) take other appropriate action.

(d) A provider which has been identified as high risk is not eligible to receive any new award, new funding or increase in current funding through any application or funding process.

§144.732. Effects of Suspension and Termination.

(a) Costs resulting from obligations incurred by the provider during a suspension or after termination of an award are not allowable unless the commission expressly authorizes them in the notice of suspension or termination.

(b) Other provider costs incurred during suspension after termination which are necessary and not reasonably avoidable are allowable if:

- (1) the costs result from obligations which were properly incurred by the provider before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are non-cancelable; and
- (2) the costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

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 February 29, 1996.

TRD-9602838

Mark S. Smock

Assistant Deputy for Finance

Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 867-8720

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**Part VI. Texas Commission for the Deaf
and Hard of Hearing**

**Chapter 183. Board for Evaluation of Interpreters
and Interpreter Certification**

Subchapter E. Fees

40 TAC §183.573

The Texas Commission for the Deaf and Hard of Hearing proposes an amendment to §183.573, concerning Fees, to provide an opportunity to recover the cost involved for providing services to interpreter candidates. This amendment is proposed to allow the program a means of recouping cost for time involved in an analysis between an appointed member of the board and the interpreter candidate.

David W. Myers, Executive Director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Myers 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 interpreter certification candidates will have recourse for action if they dispute or have concerns about their evaluation results. 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 Angela Bryant, Board for Evaluation of Interpreters, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing the authority to adopt rules for administration and programs.

The proposed amendment affects Texas Administrative Code.

§183.573. Fees.

The commission shall charge the following fees: Certification Fee
Schedule Level I Level II Level III Level IV Level V

- (1) Application-\$20 \$20 \$20 \$20 \$20
- (2) Evaluation-\$75 \$100 \$100 \$100 \$100
- (3) Intermediary Evaluation-n/a n/a \$30 \$30 \$30
- (4) Annual Renewal/Maintenance-\$25 \$25 \$25 \$25 \$25
- (5) Late [Validation] Maintenance -\$50 \$50 \$50 \$50 \$50
- (6) Reciprocity Application-\$50 \$50 \$50 \$50 \$50
- (7) Recertification Application-\$50 \$50 \$50 \$50 \$50
- (8) Re-issuance [\$15 \$15 \$15 \$15 \$15] -\$20 \$20 \$20 \$20 \$20
- (9) Inactive-[\$10 \$10 \$10 \$10 \$10] -\$15 \$15 \$20 \$25 \$25
- (10) Analysis-\$50 \$65 \$65 \$75 \$75

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

Issued in Austin, Texas, on February 21, 1996.

TRD-9802480

David W. Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 451-8494

Part I. Texas Department of Protective and Regulatory Services

Chapter 720.24-Hour Care Licensing

The Texas Department of Protective and Regulatory Services (TDPRS) proposes the repeal of §720.24-720.37 and 720.39-720.62; and new sections 720.24-720.60, in its 24-Hour Care Licensing rule chapter. The purpose of the repeals and new sections is to include substantive changes resulting from amendments to V.T.C.A., Family Code §161.103 and §162.308, 74th Legislature, Regular Session (1995); and to make editorial revisions, which will clarify the minimum standards, make them easier to read and more useful to care providers and licensing staff.

Jerry Abel, chief fiscal officer, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Abel also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that legislative changes will be included and the rules will be clearer and easier to use. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Joanna E. Taylor at (512) 438-3259 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-168, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714- 9030, within 60 days of publication in the *Texas Register*.

Subchapter A. Standards for Child-Placing Agencies(24-Hour Care and Adoption)

40 TAC §§720.24-720.37, 720.39-720.62

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

The repeals are proposed under V.T.C.A., Human Resources Code Chapters 40 and 42, which provides the department with the authority to propose and adopt rules to ensure compliance with state and federal law and to facilitate the implementation of departmental programs.

The repeals implement V.T.C.A., Human Resources Code Chapter 40 and 42.

§§720.24. *Definitions.*

§§720.25. *Legal Basis for Operation.*

§§720.26. *Governing Body.*

§§720.27. *Fiscal Accountability.*

- §§720.28. *Policies.*
- §§720.29. *Client Rights.*
- §§720.30. *Children's Rights.*
- §§720.31. *Medical and Dental Care.*
- §§720.32. *Problem Management.*
- §§720.33. *Serious Incident Reports.*
- §§720.34. *Client Records.*
- §§720.35. *Personnel Policies.*
- §§720.36. *General Personnel Requirements.*
- §§720.37. *Qualifications and Responsibilities of Professional Level Child-Placing Staff.*
- §§720.39. *Other Child-Placing Staff.*
- §§720.40. *Foster Parents and Agency Home Child Care Staff.*
- §§720.41. *Training Requirements.*
- §§720.42. *Placement for Substitute Care Policies.*
- §§720.43. *Substitute Care Intake.*
- §§720.44. *Substitute Care Placement.*
- §§720.45. *Initial Service Plan.*
- §§720.46. *Service Plan Review.*
- §§720.47. *Subsequent Placement.*
- §§720.48. *Discharge.*
- §§720.49. *Agency Foster Family Care Study.*
- §§720.50. *Foster Home Verification.*
- §§720.51. *Foster Home Management.*
- §§720.52. *Adoption Policies.*
- §§720.53. *Adoption Service Plan.*
- §§720.54. *Birth Parent Preparation.*
- §§720.55. *Adoptive Child Preparation.*
- §§720.56. *Adoptive Applicant Preparation.*
- §§720.57. *Required Information.*
- §§720.58. *Pre-Placement Requirements.*
- §§720.59. *Adoptive Placement Requirements.*
- §§720.60. *Pre-Adoption Consummation Activities.*
- §§720.61. *Post-Adoption Services.*
- §§720.62. *Subsequent Adoptions.*

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

Issued in Austin, Texas on February 26, 1996.

9602650
 Deborah L. Churchill
 Supervising Attorney
 Texas Department of Protective and Regulatory Services
 Proposed date of adoption: June 1, 1996

For further information, please call: (512) 438-3765

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Subchapter A. Standards for Child-Placing Agencies

40 TAC §§720.24-720.60

The new sections are proposed under V.T.C.A., Human Resources Code Chapters 40 and 42, which provides the department with the authority to propose and adopt rules to ensure compliance with state and federal law and to facilitate the implementation of departmental programs.

The new sections implement V.T.C.A., Human Resources Code Chapter 40 and 42.

§§720.24. *Structure of a Child-Placing Agency.*

The child-placing agency must

- (1) be legally established to operate within Texas and comply with all applicable statutes;
- (2) along with the application for a license, submit documentation of the legal basis for operation to the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division;
- (3) notify TDPRS's Licensing Division of any planned change in the child-placing agency's legal basis for operation before that change is made;
- (4) observe the conditions of the license;
- (5) report any planned change impacting the conditions of the license to TDPRS's Licensing Division prior to that change taking place;
- (6) have legal authority to place a child before making the placement; and
- (7) not act as an agent for unlicensed agencies, institutions, or individuals. When birth parents take an active role in the selection of an adoptive placement, the child-placing agency making the adoptive placement must ensure that the placement selected is in the child's best interest.

§§720.25. *Governing Body of the Child-Placing Agency.*

The child-placing agency must

- (1) have a governing body that is responsible for, and has authority over, the agency's policies and activities;
- (2) submit a written copy of the names, addresses, and titles of the officers or executive committee of the governing body with the application for a license;
- (3) submit written notice of any change in the composition of the governing body to the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division within ten working days of such change;
- (4) inform TDPRS's Licensing Division of any change in the information about governing body officers or executive committee members within ten working days of learning about such change;
- (5) have policies that clearly state the responsibilities assigned to the governing body; and
- (6) have a governing body that must carry out its assigned responsibilities.

§§720.26. *Fiscal Accountability.*

(a) General fiscal requirements. The child-placing agency must:

- (1) be established and maintained on a sound fiscal basis;
- (2) maintain complete financial records; and
- (3) have a fee policy that clearly describes what fees are charged and what services are covered by the fees.

(b) Fiscal requirements for new agencies. New child-placing agencies must

(1) set up a financial record keeping system approved by a certified public accountant (CPA) to meet generally accepted accounting standards (GAAS) as described in §720.64 of this title (relating to Audit and Accounting Standards for Child-Placing Agencies Providing Adoption Services).

(2) submit a 12-month budget to the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division when the signed application is submitted;

(3) have reserve funds or documentation of available credit at least equal to operating costs for the first three months of operation; and

(4) have predictable funds sufficient for the first year of operation.

(c) Fiscal requirements for agencies providing adoption services.

(1) General requirements. Agencies providing adoption services must

(A) have an annual audit by an independent CPA. The audit must be performed in accordance with generally accepted auditing standards (GAAS) as described in §720.64 of this title (relating to Audit and Accounting Standards for Child-Placing Agencies Providing Adoption Services). In lieu of an audit, agencies may submit a special report prepared by a CPA that meets the intent of the audit requirement.

(B) submit the following information to the TDPRS's Licensing Division annually:

(i) audit information pertaining to adoption fees and expenditures. The information must include an opinion letter from the CPA performing the audit verifying that the information submitted accurately reflects adoption related income and disbursements. Agencies submitting a special report in lieu of an audit must meet the intent of the standard in regard to the special report.

(ii) other financial information, as requested, required for the licensing review to determine that adoption related income and disbursements are reasonable, appropriate, and in compliance with minimum standards.

(C) ensure that annual income from adoption fees and any reimbursements related to adoption expenses, and gifts, donations, grants, or other sources of income related to adoption services does not exceed the child-placing agency's annual allowable and reasonable expenditures for providing adoption-related services to children, birth parents, adoptive applicants, and adoptive parents. The child-placing agency may carry over a maximum of three months adoption-related operating expenses as a reserve fund from fiscal year

to fiscal year. Only allowable and reasonable expenditures may be included in such calculations.

(D) not make any payments for adoption referrals.

(E) have an adoption fee or adoption fee schedule equally applied to all clients.

(2) Financial assistance to birth parents.

(A) An agency must not influence or attempt to influence birth parents to make a decision to relinquish their child by offering any form of financial or other material incentive.

(B) An agency must not make any payments to, or on behalf of, birth parents for goods or services that have already been paid for. An agency must not seek reimbursement for any expense not met by the agency.

(C) An agency may make allowable and reasonable expenditures on behalf of birth parents only when a demonstrated need for expenditures exist. Unless an agency can demonstrate that the basic health or safety of the birth parent or child is in imminent danger, the agency may not, by action or advice, disrupt an existing arrangement where needs are met and then make expenditures to meet those needs.

(D) When making allowable and reasonable expenditures on behalf of birth parents, children, and adoptive parents, an agency providing adoption services must maintain financial records that clearly state the specifics of each transaction.

(i) An agency may provide cash payments to birth parents to cover costs of food, household supplies, personal hygiene and grooming products, and gasoline or public transportation. Each disbursement may cover a period of up to one month.

(ii) An agency may provide a cash payment(s) to birth parents for the purchase of necessary clothing.

(iii) An agency making allowable expenditures on behalf of birth parents must establish in its policies a maximum amount per category per time period based on such generally accepted criteria as the cost-of-living index.

(iv) Each transaction must be documented by receipts. Receipts must include date, payee identification, purpose, and clear indication that funds were expended for services rendered or goods provided. Canceled checks do not meet the documentation requirement.

(E) An agency providing adoption services may only make direct payments to a birth parent as permitted in subparagraph (D) of this paragraph.

(F) If the birth parent chooses not to relinquish a child for adoption, the agency must not require repayment from that birth parent for any services. This policy must be posted in the agency's offices and the agency must provide this information to birth parents in writing.

§§720.27. *Child-Placing Agency Policies.*

The child-placing agency must:

(1) have clearly stated, current, governing body approved policies that at least meet minimum standards and are fully implemented;

(2) have policies that include a statement that describes the agency's services, including the eligible population and the needs the agency will meet for that population;

(3) make policies available for review upon request by the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division and clients of the child-placing agency;

(4) operate according to its written policies;

(5) report any changes in the written policies to TDPRS's Licensing Division prior to implementing the change; and

(6) maintain current copies of all policies. Policies must indicate governing body approval and effective date.

§§720.28. Client Rights.

Child-placing agencies must:

(1) ensure that clients (defined as birth parents, foster parent applicants, or adoptive applicants who enter into a relationship with the agency) have access to information necessary to make informed decisions;

(2) inform clients that minimum standards, compliance status reports, and the child-placing agency's policies are available for review upon request;

(3) have a written appeal process for child-placing agency clients in regard to all actions and decisions taken by the child-placing agency affecting those clients;

(4) inform clients of the right to appeal agency actions and decisions that affect them and of the procedures for making an appeal; and

(5) inform clients of the procedures for making a complaint to the Texas Department of Protective and Regulatory Services' Licensing Division.

§§720.29. Children's Rights.

(a) General rights. The child-placing agency must ensure that:

(1) children's rights are protected while a child is in substitute care and in adoptive placements prior to consummation of the adoption.

(2) children are not abused or neglected.

(3) children are placed and supervised appropriately in the least restrictive environment capable of meeting their needs. The placement must meet the child's physical and emotional needs, and must provide consideration for sibling relationships and cultural needs.

(4) children have an appropriate education.

(5) children have an opportunity to participate in community functions and recreational activities and to have their social needs met.

(b) Family contact.

(1) Children must have the opportunity for sibling visits and contact when a sibling group is not placed in the same home or facility.

(2) Unless parental rights have been terminated or relinquished, or unless contacts are not in the child's best interest, contacts

between children and their parents must be allowed according to the agency's policies.

(A) Unless the child's best interest or a court order necessitates restrictions, children must be allowed to send and receive mail and to have telephone conversations with family members or managing or possessory conservators.

(B) When either the child or his family requests contact, but that contact is not in the child's best interest, level I child-placing staff must determine the communication restrictions. Reasons for the restrictions must be explained to the child and documented in his record.

(C) If restrictions continue longer than one month and the child or his family continues to request contact, level I child-placing staff must evaluate these restrictions at least monthly. Reasons for the continued restrictions must be explained to the child and documented in his record.

(D) If communications or visits are limited for practical reasons (such as expense), the limits must be determined with the child and his parents or managing conservator. The limits must be documented in the child's record.

(c) Personal rights.

(1) Children must have personal clothing suitable to their age and size. Children must have some choice in selecting their clothing.

(2) Children must be given training in personal care, hygiene, and grooming. Each child must be supplied with equipment for personal care, hygiene, and grooming.

(3) Money a child earns or is given as a gift or allowance must be his personal property.

(4) A child's money must be accounted for separately from the agency's funds or the funds of the facility or family with whom he is placed.

(5) A child must not be required to use his personal money to pay for room and board, unless it is a part of the service plan and approved in writing by the parents or managing conservator and the child-placing agency.

(6) A child must be allowed to bring personal possessions to the facility or home where he is placed and allowed to acquire other personal possessions. Any limits on the kinds of possessions a child may or may not receive must be discussed with the child and his parents or managing conservator.

(7) Before involving a child in any fund raising or publicity for the child-placing agency, the written informed consent must be obtained of the child (if the child is able to give consent) and of the child's parents or managing conservator.

§§720.30. Medical and Dental Care.

(a) Medical and dental care. The child-placing agency must:

(1) ensure that each child receives appropriate medical and dental care.

(2) have written policies and procedures for routine and emergency diagnosis and for treatment of medical and dental problems. Copies of the policies and procedures must be given to each agency home and adoptive home. If children are placed in a child

care facility, the agency must ensure that medical and dental care provided at least meet the minimum requirements in these standards.

(3) ensure that a licensed physician determines the need and frequency for medical examinations.

(4) ensure that a licensed dentist determines the need and frequency for dental examinations.

(5) ensure that medical and dental examinations and treatment are provided as indicated.

(6) ensure that children are immunized against disease and screened for tuberculosis as recommended by the Texas Department of Health.

(7) ensure that if mind-altering or behavior-modifying medications are ordered for a child, the appropriateness of continuing the medication is evaluated by the prescribing physician on at least a quarterly basis.

(b) Medical records. The agency must

(1) document medical and dental examinations, each visit to a physician or dentist, and treatment recommended and provided in the child's medical records.

(2) keep current immunization records and records of tuberculosis screening for each child in substitute care or adoptive placement.

(3) document any known allergies in the child's medical record.

(4) record any seizures, injuries, and medically pertinent incidents in the child's medical record, including the date and time the incident occurred, type of incident, and action taken.

(5) include in each child's medical record a list of medications received by the child.

§§720.31. *Problem Management.*

(a) General requirements.

(1) The child-placing agency must have written policies to guide caregivers in management of problem behavior of children in substitute care or adoptive placement prior to consummation. The policies must also include measures for positive responses to appropriate behavior. The agency must give copies of the policies to staff, foster parents, adoptive parents, and to birth parents or managing conservators.

(2) Disciplinary measures used by caregivers must:

(A) be consistent with the agency's policies;

(B) not be physically or emotionally damaging to the child; and

(C) be individualized to meet each child's needs.

(3) Only adult caregivers may discipline a child.

(4) Children must not be subjected to any harsh, cruel, unusual, unnecessary, demeaning, or humiliating punishment.

(5) Children must not be denied food, mail, or visits with their families as punishment.

(6) Children must not be threatened with the loss of placement as a means of controlling behavior.

(7) The reasons for any punishment or restriction must be explained to the child when the measures are imposed.

(8) Physical punishment must not be used with any child placed in substitute care or in an adoptive placement prior to consummation of the adoption.

(9) If a child is restricted to a foster or adoptive home for more than 24 hours, the restrictions must be recorded in the child's record.

(b) Restraint and seclusion.

(1) If the agency's policies permit the use of any form of restraint, this must be limited to emergency use of personal restraint.

(2) Restraining measures must not be used as punishment, as a substitute for effective treatment or program, or for the caregiver's convenience.

(3) If restraining measures are used, only such force as is reasonable and necessary may be used.

(4) If the agency authorizes the use of restraint for a child, caregivers must be trained in the type(s) of restraint authorized before the child is placed.

(5) Personal restraint may be used only when a child's behavior endangers himself or others.

(6) The child must be released from personal restraint as soon as he is no longer a danger to himself or others.

(7) Any use of personal restraint must be documented in the child's record, including:

(A) the date and time the caregiver began using the restraint and the name of the caregiver using it;

(B) a description of the specific behaviors necessitating the use of the restraint;

(C) the type of restraint used and the length of time the child was restrained; and

(D) any injury the child sustained as a result of the incident or the use of restraint.

(8) The use of personal restraint must be evaluated as part of the next service plan review. The agency must consider alternative strategies to handle the behavior that required using personal restraint. This evaluation and instructions to caregivers must be documented in the child's record.

(9) Except as permitted in Chapter 720, Subchapter S, Standards for Child Care Facilities Serving Children with Autistic-like Behavior, of this title, mechanical restraints, seclusion, or placing a child in a locked room must not be used in an agency home or adoptive placement. Protective devices may only be used when prescribed by a physician.

§§720.32. *Serious Incident Reports.*

The child-placing agency must:

(1) complete written reports for serious incidents involving staff or children within 24 hours of learning about the occurrence. Each report must include the date and time of the occurrence, the staff or children involved, the nature of the incident, and the surrounding circumstances.

(2) report the following types of serious incidents to the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division and the child's parents or managing conservator by the next workday:

- (A) suicide attempts;
- (B) abusive treatment and abusive activity among children, including alleged abuse;
- (C) incidents that critically injure or permanently disable a child; and
- (D) a child's death.

(3) have current written policies and procedures to follow when a child is absent without permission. These must include:

(A) time frames for determining when a child is absent without permission;

(B) actions that child-placing agency staff must take to locate the child; and

(C) procedures (including time frames) that staff must follow to notify the parents or managing conservator and the appropriate law enforcement agency.

(4) If a child is not found, absence without permission must be reported to the child's parents or managing conservator and to the appropriate law enforcement agency.

(5) If a child is absent without permission, the circumstances surrounding his absence, efforts to locate the child, and notification of the child's parents or managing conservator and the appropriate law enforcement agency must be documented. If the parent or managing conservator cannot be located, attempts to report the child's absence must be documented.

§§720.33. *Client Records.*

The child-placing agency must:

- (1) maintain complete individual client records.
- (2) ensure that client records are kept confidential and inaccessible to unauthorized persons.
- (3) ensure that information in client records may only be disclosed for direct and authorized services to the child or family, or as part of the professional administration of the child-placing agency.
- (4) ensure that adoption records are kept confidential in accordance with the placement model, for example, open adoption, identified adoption, designated adoption, and closed adoption.
- (5) ensure that client records are available to the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division for review.

(6) ensure that for children placed in substitute care, agencies maintain complete case records for at least 10 years after the child is discharged from care. After 10 years, at least the following must be retained permanently:

(A) any health records that physicians advise will be of medical importance to the child; and

(B) information concerning the termination of parental rights or the court order.

(7) ensure that for children placed in adoption, complete client records are maintained permanently.

§§720.34. *Personnel Policies.*

The child-placing agency must:

(1) have a current organization chart showing the administrative structure and staffing, including the lines of authority;

(2) have a written job description for each employee;

(3) have volunteer policies describing the way volunteers will be used by the agency, if an agency uses volunteers; and

(4) have written policies covering volunteer qualifications, screening and selection procedures, and orientation and training programs, if agency volunteers have contact with clients.

§§720.35. *General Personnel Requirements.*

(a) The child-placing agency must reassign or remove from direct contact with clients any employee, volunteer, or foster parent against whom any of the following legal decisions are returned:

(1) an indictment alleging commission of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act;

(2) an indictment alleging commission of any misdemeanor classified as an offense against the person or family, or of public indecency; and

(3) an official criminal complaint accepted by a district or county attorney alleging commission of a misdemeanor classified as an offense against the person or family, or of public indecency.

(b) Such reassignment or removal, as described in subsection (a) of this section, must remain in effect pending resolution of the charges.

(c) No one may serve as a staff, volunteer, or foster parent having contact with clients, or be approved as an adoptive parent, who has been convicted of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act, or of any misdemeanor classified as an offense against the person or family or of public indecency, unless the Texas Department of Protective and Regulatory Services' (TDPRS's) Director of Licensing has ruled that proof of rehabilitation has been established.

(d) No one may serve as a staff, volunteer, or foster parent having contact with clients or be approved as an adoptive parent for whom "reason to believe" (or a comparable determination in another state) has been determined for child abuse or neglect, unless TDPRS's Director of Licensing determines that such service is acceptable.

(e) The agency must report any occurrences under subsections (a)-(c) of this section to TDPRS's Licensing Division by the end of the first workday after learning of the occurrence.

(f) Persons whose behavior or health status presents a danger to clients must not be allowed at the child-placing agency or at homes verified by the agency.

(g) Before having contact with children in care, staff, volunteers, foster parents, foster family household members, and employees in foster family homes must be tested for tuberculosis according to the recommendations of the Texas Department of Health or local health authorities.

(h) The child-placing agency must have a personnel file for each employee, volunteer, and foster parent whose work relates to child-placing activities, work with birth parents, and children in care. Each file must contain the following:

- (1) date of employment;
- (2) documentation that the person meets the qualifications for the position;
- (3) tuberculosis test reports, if required, for persons having contact with children;
- (4) criminal background check and child abuse/neglect report information system check reports;
- (5) documentation that the person meets training requirements; and
- (6) date and reason for separation, if applicable.

§§720.36. Personnel Qualifications and Responsibilities for Level I Child-Placing Staff.

(a) **Qualifications.** The child-placing agency must have on staff at least one person with either of the following sets of qualifications:

(1) a master's degree in social work or a human services field from an accredited college or university and at least two years of supervised child-placing experience. The degree must include the following:

(A) a minimum of nine credit hours in graduate level courses that focus on family and individual function and interaction; and

(B) at least 350 hours of formal, supervised field placement or practicum with a social service or human services agency.

(2) A master's degree in a human services field and at least three years of supervised child-placing experience.

(b) **Responsibilities.** The following responsibilities must be carried out by level I child-placing staff:

- (1) approval of admission of a child into the child-placing program;
- (2) approval of the intake study;
- (3) approval of a facility, adoptive home, or foster home for the child's initial and any subsequent placement(s);
- (4) approval of studies on foster families and adoptive homes; and
- (5) professional supervision of less qualified or experienced staff, if any, including planning for staff development and corrective action in regard to child-placing decisions.

§§720.37. Other Child-Placing Staff.

(a) Other staff engaged in child-placing must meet one of the following sets of qualifications:

(1) a master's degree in a human services field from an accredited college or university and one year of supervised child-placing experience. The degree must include the following:

(A) a minimum of nine credit hours in graduate level courses that focus on family and individual function and interaction; and

(B) at least 350 hours of formal, supervised field placement or practicum with a social service or human services agency.

(2) a master's degree from an accredited college or university and two years of supervised child-placing experience.

(3) a bachelor's degree in a human services field from an accredited college or university and two years of supervised child-placing experience.

(4) a bachelor's degree from an accredited college or university and three years of supervised child-placing experience.

(5) a bachelor's degree from an accredited college or university and direct supervision from a person meeting one of the above qualifications.

(b) Child-placing decisions made by staff who do not meet level I qualifications as specified* in §720.36 of this title (relating to Personnel Qualifications and Responsibilities for Level I Child-Placing Staff) must be approved by level I staff.

§§720.38. Foster Parent/Agency Home Child-Care Staff.

(a) The child-placing agency must have written procedures for implementing a screening program for foster parent/agency home child-care staff. The screening program must ensure either of the following requirements:

(1) foster parents/agency home child-care staff are able to benefit from training and have the competencies to meet the needs of children in care in areas such as health, education, and discipline/behavior management; or

(2) foster parents/agency home child-care staff have at least a high school diploma or general educational development certificate (GED).

(b) Foster parents, agency home child-care staff, and any persons involved in child care in an agency home must be responsible, mature, healthy adults capable of meeting the needs of children in care.

§§720.39. Training Requirements.

(a) **Agency training plan or program.** The child-placing agency must have a written training plan or program for all child-placing staff, foster parents, or agency home child-care staff. The plan must include stated time frames for assessment of each staff's training needs, training content, and number of training hours required.

(b) **Pre-service training requirements.**

(1) All child-placing staff, foster parents, or agency home child-care staff must receive an orientation to the child-placing agency's policies and the services provided.

(2) The agency must ensure that all foster parents or agency home child-care staff complete eight hours of pre-service training in areas appropriate to the needs of children for whom they will be providing care. Pre-service training must be completed before children are placed for care.

(3) Prior to being assigned child-care responsibilities, the primary caretaker (at a minimum) in a foster family unit, all agency home child-care staff, and all agency foster group home parents must successfully complete training from a certified instructor in infant/child cardiopulmonary resuscitation (CPR) and first aid.

(c) Ongoing training requirements.

(1) Level I child-placing staff must obtain at least 20 clock hours of job-related training annually. At least 10 of the clock hours obtained each year must relate directly to child-placing responsibilities.

(2) Other child-placing staff must obtain at least 30 clock hours of job-related training during the first year of assignment to child-placing responsibilities and at least 20 clock hours annually hereafter. All qualifying clock hours must relate directly to child-placing responsibilities.

(3) Foster parents or agency home child-care staff must have at least the following training:

(A) Infant/child CPR training and first aid training must be updated as required to maintain certification. Infant/child CPR training and first aid training must meet criteria established by the Texas Department of Protective and Regulatory Services' Licensing Division.

(B) For agency foster family homes providing therapeutic foster care, the foster family unit must complete at least 50 clock hours of training annually. Agency home child-care staff and agency group home foster parents must each complete at least 50 clock hours of training.

(C) For agency foster family homes that do not provide therapeutic foster care, the foster family unit must complete at least 20 clock hours of training annually. Agency home child-care staff and agency group home foster parents must each complete at least 20 clock hours of training.

(D) Annual training hour requirements are in addition to initial first aid and CPR training. First aid and CPR updates may be included in the annual training requirements.

(4) At least 75% of the required annual training for child-placing staff, foster parents, or agency home child-care staff must consist of course work from an accredited educational institution; workshops, seminars, other direct training provided by qualified agencies, organizations, and individuals; in-service training; or self-instruction programs. To qualify, in-service training and self-instruction programs must include stated learning objectives, curriculum and learning activities, and an evaluation component.

(5) All training must be documented including date, subject, number of hours, and training provider.

(6) When staff or foster parents complete training in excess of the minimum requirements, up to one-half of the following year's annual training requirement may be carried over from the previous year.

§§720.40. Placement of a Child in Substitute Care.

(a) If a child-placing agency provides foster care services, the agency must have written foster care policies that include:

(1) specific selection criteria for accepting foster parent applicants or agency home child-care staff.

(2) specific selection criteria for making decisions about the number, ages, and needs of children who may be placed with foster parents or in agency homes where child care staff are employed.

(3) screening procedures for foster parents or agency home child-care staff.

(4) a statement of the rights and responsibilities of the agency and foster parents/foster families in regard to the relationship between the agency and the foster family. The statement must include the following information:

- (A) roles;
- (B) training agreements;
- (C) communication process;
- (D) financial reimbursement;
- (E) placement procedures;
- (F) support services;
- (G) information sharing;
- (H) participation in the treatment process; and
- (I) the agency's grievance procedure.

(b) The agency must have a written pre-service training policy for foster parents or agency home child-care staff. The policy must include the type and amount of pre-service training in relation to the ages and needs of the children who will be placed in the home.

(c) The agency must screen applicants, make specific placement decisions, and provide pre-service training according to its stated policies.

(d) A child-placing agency must not permit an agency home to provide more than one type of care if this conflicts with the children's best interest, or with the use of staff or space in the home.

(e) The agency must have a policy that covers the following rights of children in agency care:

- (1) contact between the child and the child's family;
- (2) any limitations to the child's contact with the family;
- (3) the child's right to receive gifts, telephone calls, letters, other communications;
- (4) the right to confidentiality;
- (5) the right to be free of coercion regarding participation in public events, media presentations, and fund-raising events;
- (6) the right to be free from any harsh, cruel, unusual, unnecessary, demeaning, or humiliating discipline or punishment or from any physical punishment; and
- (7) the right to continued contact with siblings.

§§720.41. Substitute Care Intake.

(a) Except in an emergency placement, intake information must be gathered, documented, reviewed, and the intake process and decision to place must be approved by level I child-placing staff prior to placement.

(b) In an emergency placement, the intake study must be completed within 30 days of the placement, including approval by level I child-placing staff.

(c) The child-placing agency must obtain all available information regarding the child being considered for substitute care placement including:

(1) health, social, educational, genetic and family history, and other information required by the Texas Family Code, Section 16.032;

(2) history of any previous placements, including date(s) and reason(s) for placement;

(3) the child's understanding of and response to consideration of placement; and

(4) the child's legal status.

(d) A child must have a medical examination by a licensed health practitioner within 30 days prior to placement or within 30 days after placement. A child who is being transferred from a licensed agency and who has had a medical examination within the past year is exempt. The signed and dated examination report must be placed in the child's record.

(e) Children three years old or older must have a dental examination by a licensed dentist or a dental hygienist working under the supervision of a licensed dentist within one year before placement. Otherwise, an appointment for a dental examination must be made within 60 days after placement. Documentation of the appointment or of the dental exam must be placed in the child's record.

(f) Children must be tested for tuberculosis according to the recommendations of local public health authorities or the regional office of the Texas Department of Health in the county in which the child has been living.

(g) Unless the child-placing agency is the managing conservator at the time of placement, there must be a written agreement between the child-placing agency and the child's parents or managing conservator. A copy of the agreement must be in the child's record. The agreement must include the following:

(1) authorization for the child-placing agency to care for the child;

(2) a medical consent form signed by a person authorized to give consent by the Texas Family Code; and

(3) a statement of the reason for placement and anticipated length of time in care.

(h) Agencies must provide written notification to parents or managing conservators regarding the following:

(1) the agency's rules regarding visits, gifts, mail, and telephone calls;

(2) the type and frequency of reports the agency will make to parents/managing conservators;

(3) the agency's discipline policies;

(4) the agency's policy or program concerning religious training; and

(5) information concerning trips.

§§720.42. *Substitute Care Placement.*

(a) When the child-placing agency places children into a regulated child-care facility, the responsibility for the child's care becomes a joint responsibility between the agency and the regulated

child care facility. The facility must meet the appropriate minimum standards. The child-placing agency is not required to duplicate activities, such as service planning, being carried out by the facility. In regard to time frames and any specifics of care, the minimum standards for the regulated child care facility apply.

(b) In a non-emergency placement, all information from the intake study relating to the child's needs and the agency's plans for care and management must be shared with the foster parents or staff responsible for the child's care prior to placement.

(c) In an emergency placement, the agency must provide all available intake study information relating to the child's needs and the agency's plans for care and management to foster parents or staff responsible for the child's care at or before the time of placement.

(d) In an emergency placement, within ten working days of completion of the intake study, the agency must provide all information from the intake study relating to the child's needs and the agency's plans for care and management to foster parents or staff responsible for the child's care.

(e) The agency must document the intake information shared with foster parents or staff responsible for the child's care, including date(s) in the child's record.

(f) In a non-emergency placement, children over six months of age must visit the foster home or child care facility at least once before placement. The visit must be documented in the child's record.

(g) If a child-placing agency uses the agency home of another child-placing agency, there must be a written agreement between the agencies specifying the roles and responsibilities of each child-placing agency.

(h) The agency must document in the child's record that a child with special needs is placed in a foster home or child care facility capable of meeting such needs, or that the agency has in place other arrangements to ensure the needs are met.

§§720.43. *Initial Service Plan.*

(a) Within 30 days after placement, the child-placing agency must develop an initial service plan for the child. For children placed in emergency shelters, the agency must develop, review, and update the discharge plan as required by emergency shelter standards.

(b) The agency must make diligent efforts to involve the following persons in the service planning process:

(1) the child (as appropriate);

(2) the parents or managing conservator; and

(3) the foster parents or child care facility.

(c) Persons participating in the plan development must be documented in the child's record.

(d) The service plan must identify and include the following:

(1) the child's needs, in addition to basic needs related to day-to-day care and development must include

(A) areas of special needs that must be considered include medical, dental, developmental, educational, social, and emotional needs; and

(B) for children 16 years of age and older, the plan must include preparation for adult living.

(2) specific strategies to meet the child's needs, including instructions to foster parents or staff responsible for the care of the child. Instructions must include specific information about:

- (A) supervision;
- (B) discipline and behavior management; and
- (C) trips and visits away from the home.

(3) expected outcomes of placement for the child, including the permanency plan for the child and estimated length of time in care.

(e) Child-placing agency staff must have face-to-face contact with the child at least quarterly. Contacts must be documented in the child's record.

(f) The child-placing agency must obtain professional consultation and treatment for children with developmental disabilities or with problems adjusting to the social, home, or school environment. Any record of specialized testing or treatment must be documented in the child's records.

§§720.44. Service Plan Review.

(a) The child-placing agency must develop a policy for reviewing plans of service appropriate to the needs of the children served. The policy must address issues of placement disruption and planned subsequent placements in addition to regular reviews. The policy must be reviewed and approved by the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division.

(b) The child's parents or managing conservator must be notified of a service plan review in advance. Documentation of the notice must be included in the child's record.

(c) The agency must make diligent efforts to involve the following persons in the service plan review:

- (1) the child;
- (2) the child's parents or managing conservator;
- (3) child-placing agency staff; and
- (4) foster parents or child-care facility staff.

(d) Participation must be documented in the child's record.

(e) The service plan review must include:

(1) an evaluation of progress towards meeting identified needs;

(2) any new needs identified since the plan was developed or last reviewed and strategies to meet these needs, including instructions to foster parents or staff responsible for the child's care;

(3) any changes to the expected outcomes of placement, the permanency plan, and the estimated length of time in care; and

(4) reasons for continued placement, if the review shows no progress towards meeting the identified needs of the child.

§§720.45. Subsequent Placement.

(a) Non-emergency subsequent placements.

(1) Level I child-placing staff must approve a planned move before a child is moved from one placement to another.

(2) The child-placing agency must arrange for at least one pre-placement visit in the child care facility or foster home before

moving a child over six months of age. This must be documented in the child's record.

(b) Emergency subsequent placements.

(1) Level I child-placing staff must approve the move within ten working days of placement.

(2) Child-placing agency staff must discuss the circumstances that make the move necessary with the child, as appropriate to the child's age and ability to respond orally and behaviorally to such a discussion. The discussion must take place prior to the move and must be documented in the child's record.

(3) The child's understanding of, and response to, the move must be documented in the child's record.

(4) Prior to placement, social, medical, psychological, and school history as it relates to the child's needs and plans for care and management must be shared with the foster parents or child-care facility staff. The information provided must be documented in the child's record.

§§720.46. Discharge.

(a) The child-placing agency must make diligent efforts to involve the following persons in planning the discharge of a child:

- (1) the child;
- (2) the child's parents or managing conservator;
- (3) child-placing agency staff; and
- (4) foster parents or child-care facility staff.

(b) At discharge, the agency must include the following in a child's record:

(1) a discharge summary showing services provided during care, the growth and accomplishments, assessment of needs that remain to be met, and recommendations about the services needed to meet these needs;

(2) date of discharge, reason for discharge, and the name and relationship of the person(s) or agency to whom the child was discharged; and

(3) aftercare recommendations.

§§720.47. Foster Care Study.

(a) The foster home study process for all family applicants must include at least the following documented contacts:

(1) at least one individual interview with each foster parent;

(2) at least one additional interview with the foster parents, either jointly or as a family group;

(3) at least one interview with each child and any other person living full or part time with the family;

(4) at least one visit to the foster home when all members of the household are present; and

(5) at least one contact by telephone, in person, or by letter with each adult child of the foster family no longer living in the home.

(b) The child-placing agency must conduct a foster home study for all family applicants being considered for verification as an

agency foster family home or agency foster group home. The child-placing agency must obtain all available information about the foster home applicants regarding:

- (1) motivation for providing foster care;
- (2) health status (physical, mental, and emotional) of all persons living in the home in relation to the family's ability to provide foster care;
- (3) quality of marital and family relationships in relation to the family's ability to provide foster care;
- (4) foster parents' feelings about their childhood and parents, including any history of abuse or neglect and their resolution of such experience;
- (5) values, feelings, and practices in regard to child discipline and care;
- (6) sensitivity to, and feelings about, children who may have been subjected to abuse, neglect, separation from, and loss of their biological family;
- (7) sensitivity to, and feelings about, birth families of children in substitute care;
- (8) attitude of the extended family regarding foster care;
- (9) sensitivity to, and feelings about, different socioeconomic, cultural, and ethnic groups in relation to the family's ability to provide foster care for and assist in maintaining the cultural or ethnic identity of children from different backgrounds;
- (10) sensitivity to, and feelings about, maintaining sibling relationships;
- (11) expectations of, and plans for, foster children; and
- (12) the family's ability to work with specific kinds of behaviors and backgrounds.

(c) Staff responsible for the foster home study must evaluate information obtained during the study process and must make specific recommendations about the family's capacity to work with children. This must include, but is not limited to, such characteristics as age, sex, special needs, and number of children.

(d) The child-placing agency must obtain the following information prior to approving an agency home or agency foster group home for placement:

- (1) documentation that all members of the household and any employees of the foster family have been tested for tuberculosis according to the recommendations of the Texas Department of Health or local public health authorities.
- (2) an approved fire inspection report. If fire inspections are not available, the Texas Department of Protective and Regulatory Services' (TDPRS) fire safety checklist may be used.
- (3) an approved health inspection report. If health inspections are not available, TDPRS's health inspection checklist may be used.
- (4) a sketch of the floor plan of the home showing room dimensions and purposes of rooms.

§§720.48. *Foster Home Verification.*

(a) Before verifying an agency home, the child-placing agency must perform an inspection to document that the home meets appropriate minimum standards. Verification must include either that firearms are not and will not be present in the home, or that all appropriate precautions are taken.

(b) Before issuing an agency home verification, the child-placing agency must document that level I child-placing staff have approved the home for placement, including the number, age, and sex of the children for whom the home is approved.

(c) The child-placing agency must ensure that the agency home has sufficient appropriately qualified staff to provide proper care and treatment, and to protect the health and safety of children in care.

(d) An agency must not place a child into a home until the home has been studied and verified as an agency home. The child-placing agency must not place more children in an agency home than the number for which the home is approved.

(e) An agency home verification form must be given to each approved agency home after the foster home study and after any change that affects the conditions of the verification certificate.

(f) The child-placing agency must sign a written agreement with the foster parents at the time the agency home is verified. Both the child-placing agency and the foster parents must have a copy of the agreement, and a copy must be filed in the foster home record. This agreement must specify the following:

- (1) what the financial agreement is between the child-placing agency and the foster home;
- (2) that the foster home agrees not to accept a non-relative child for 24-hour care from any source other than through the child-placing agency;
- (3) that the child-placing agency has the right to remove the child at the child-placing agency's discretion;
- (4) that the child-placing agency must consent to discharge a child from the home;
- (5) that visits by the child's parents or relatives must be arranged through the child-placing agency;
- (6) that the child-placing agency is responsible for regular supervision of the foster home;
- (7) the agency's policies regarding child care, discipline, supervision of children, and children's visits or trips away from the foster home; and
- (8) the agency's policies regarding reports to the agency from the foster parents regarding foster children and other events or occurrences impacting the provision of foster care.

§§720.49. *Foster Home Management.*

(a) The child-placing agency must evaluate all minimum standards for each agency home at least every two years, and whenever a change is made that affects the conditions of the verification certificate or the composition of the foster family. Such changes include the admission of a person for care age 18 years or older related to the foster family or the children in care. They also include the addition of any resident in the home age 18 years or older. The re-evaluation study must document that appropriate minimum standards are met.

(b) Supervisory visits must be made at least quarterly to each agency home in which children are placed. These visits must be documented in the foster home record. Documentation must include notes on standards evaluated for compliance, any noncompliance found, and plans for correction. The child-placing agency must follow-up on any noncompliance and document that corrections have been made.

(c) Supervisory visits are not required for homes in which no children are being cared for. Such homes must be re-evaluated before additional placements are made.

(d) The child-placing agency must ensure that the agency home has sufficient adult caregivers or staff with needed qualifications to protect the health and safety of the children in care.

(e) Verification of an agency home applies only to the location of the residence at the time the study is made. If the family moves, the agency must not use the home until temporary verification for the new location is issued. Temporary verification is valid for no longer than six months from the date of issuance. Temporary verification may not be renewed. Verification of the agency home at the new address must be completed before the expiration of the temporary verification, or the agency may not use the home.

(f) All verifications and revocations must be reported to the Texas Department of Protective and Regulatory Services' Licensing Division on the forms supplied.

§§720.50. Adoption Policies.

(a) Child-placing agencies making adoptive placements must have written adoption policies.

(b) Adoption policies must include:

(1) qualifications, screening and selection criteria and procedures for adoptive parents or families;

(2) training policy and program for the adoptive parent or family; and

(3) a statement of the rights and responsibilities of the agency and adoptive parents in regard to the agency-adoptive family relationship prior to consummation of the adoption.

(c) Agencies making adoptive placements must specify in their service provision policy the degree to which birth parents are involved in planning for and placing their child.

(d) Agencies making adoptive placements must include counseling services and post-adoption services in their service provision policies.

(e) Agencies must not have policies or make adoption placement decisions on the presumption that placing a child in a family of the same race or ethnicity as the race or ethnicity of the child is in the best interest of the child.

§§720.51. Adoption Service Plan.

(a) A service plan must be developed for each child or sibling group (if siblings will be placed for adoption into the same home). For children with a foster care service plan prior to preparation for adoption, the adoption service plan may be a continuation of the foster care service plan.

(b) The adoption service plan must consider the needs of the birth family (unless parental rights have been involuntarily

terminated), the needs of the child or sibling group, and needs of the prospective or identified adoptive family.

(c) The adoption service plan must address the needs relating to the adoption process for the birth family, the child or sibling group, and the adoptive family.

(d) The adoption service plan must include specific strategies to meet the needs identified and must include an estimate of the time required to consummate the adoption.

(e) The child-placing agency must develop a policy for reviewing plans of service appropriate to the needs of the children served. The policy must be reviewed and approved by the Texas Department of Protective and Regulatory Services' Licensing Division.

§§720.52. Birth Parent Preparation.

(a) Child-placing agency staff must have at least two face-to-face contacts with both birth parents prior to placement. Alternatively, the agency staff must document in the adoption record diligent efforts to accomplish this contact and must also document the reasons why the contacts could not be made.

(b) Prior to establishing any formal relationship, the agency must provide written information to the birth parents regarding the following:

(1) alternatives and options to adoption for the birth parent and child;

(2) the services the child-placing agency provides, including counseling and post-adoption services;

(3) adoption registries;

(4) legal rights and responsibilities of the birth parents in regard to:

(A) relinquishment of parental rights;

(B) waivers of relinquishment;

(C) affidavit of status;

(D) termination of parental rights; and

(E) designating the father of a child as "unknown."

(5) any assistance available through the agency to meet housing, medical and prenatal care and other needs.

(c) Birth parents must not be pressured to make a decision about placing their child.

(d) An affidavit for voluntary relinquishment of parental rights must not be signed by the birth parent until 48 hours after the birth of the child.

§§720.53. Adoptive Child Preparation.

(a) For children six months of age and older, child-placing agency staff must make a minimum of three face-to-face contacts with the child being prepared for adoption. For infants ages zero to six months, one face-to-face contact is required. Contacts must be documented in the adoption record.

(b) The child-placing agency must obtain professional assessments of the physical, mental, and emotional status of a child being considered for adoption and must obtain a developmental assessment. These assessments must be current at the time of placement within 30 days for children ages zero to 18 months; within three months

for children ages 18 months to five years; and within six months for children ages five years and older. The child-placing agency must provide any recommended testing for the child being considered for adoption. The assessments and results must be documented in the adoption record.

(c) The child-placing agency must provide counseling to children two years of age and older being considered for adoption. Counseling must include exploration of the child's understanding of what is taking place and the child's feelings about adoption, separation, and loss issues related to the birth family.

(d) The child-placing agency must refer any child who has a disability or who, because of developmental delays or history may have a disability, to the Social Security Administration to determine eligibility for Supplemental Security Income.

§§720.54. *Adoptive Applicant Preparation.*

(a) The preparation process for adoptive applicants must include at least the following documented contacts:

- (1) at least one individual interview with each applicant;
 - (2) at least one additional interview with the adoptive applicants, either jointly or as a family group;
 - (3) at least one interview with each child and any other person living full-time or part-time with the family;
 - (4) at least one visit to the home when all members of the household are present; and
 - (5) at least one contact by telephone, in person, or by letter with each adult child of the adoptive applicants no longer living in the home.
- (b) Prior to establishing any formal relationship, the child-placing agency must provide written information to adoptive applicants regarding:
- (1) the services the child-placing agency provides, including counseling and post-adoptive services;
 - (2) fee policies and payment procedures;
 - (3) child-placing agency requirements and procedures;
 - (4) legal requirements for adoption, including their right to have independent legal counsel for legal consummation; and
 - (5) adoption registries.

§§720.55. *Required Information.*

(a) The child-placing agency must obtain information from birth parents about their expectations for adoptive placement, if placement is chosen, and the degree and type of involvement, if any, they desire with the adoptive family.

(b) The child-placing agency must obtain all available information regarding the child being considered for adoption including:

- (1) health history, social history, educational history, genetic and family history, and other information required by the Texas Family Code, §162.005-162.007;
- (2) history of any previous placements, including date(s) and reason(s) for placement;
- (3) the child's understanding of adoptive placement; and
- (4) the child's legal status.

(c) The child-placing agency must obtain all available information about the adoptive applicants regarding the following:

- (1) motivation for adoption;
- (2) health status (physical, mental, and emotional) of all persons living in the home in relation to the family's ability to provide an adoptive home;
- (3) quality of marital and family relationships in relation to the family's ability to provide an adoptive home;
- (4) applicants' feelings about their childhood and parents, including any history of abuse or neglect and their resolution of such experience;
- (5) values, feelings, and practices in regard to child discipline and care;
- (6) sensitivity to, and feelings about, children who may have been subjected to abuse, neglect, separation from, and loss of their biological family if the applicants are considering options in addition to adoption of a newborn;
- (7) sensitivity to, and feelings about, birth families of children placed for adoption; expectations about any on-going relationship with the birth family;
- (8) attitude of the extended family regarding adoption;
- (9) sensitivity to, and feelings about, different socioeconomic, cultural, and ethnic groups in relation to the family's ability to provide an adoptive home and to maintain the cultural or ethnic identity of a child from a different background;
- (10) expectations of, and plans for, adoptive children;
- (11) behavior, background, special needs status, or other characteristics of a potential adoptive child that the family cannot accept; and
- (12) financial status and ability to support a child, including employment history and insurance coverage.

(d) Prior to placing a child(ren) in an adoptive home, the agency must document the number, age, and sex, if applicable, of the child(ren) for whom the home is approved.

§§720.56. *Pre-Placement Requirements.*

(a) Prior to placement, the child-placing agency must maintain at least quarterly contact with birth parents unless parental rights have been involuntarily terminated. During this contact, child-placing agency staff must discuss the following topics with the birth parents:

- (1) preparation for childbirth, when applicable;
 - (2) relinquishment or waiver of parental rights;
 - (3) termination of parental rights; and
 - (4) counseling in regard to separation, loss, and grief issues.
- (b) If applicable, the child-placing agency must maintain at least quarterly contact with the child being considered for adoptive placement. The contact must include:
- (1) continued preparation for adoption; and
 - (2) updated information concerning the adoption.

(c) Prior to placement, the child-placing agency must maintain at least quarterly contact with the adoptive applicants. During this contact, child-placing agency staff must provide education and training in regard to:

- (1) bonding with adoptive children;
- (2) parenting issues and concerns; and
- (3) children with special needs, if appropriate.

(d) If a child has not been placed with the adoptive applicants within six months of the time the adoptive home study is completed, the adoptive home study must be brought up-to-date within the 30-day period before a child is placed in the home. The written update must include:

(1) review and any required updating of each category of information in the adoptive home study; and

(2) documentation of at least one additional visit to the home when all household members are present within the last six months.

§§720.57. Adoptive Placement Requirements.

(a) Except in the case of children one month old and younger, a child must have at least one visit with the adoptive family prior to placement.

(b) Before placing the child into a home, the child-placing agency must have a written agreement with the adoptive parent(s). A signed copy of this agreement must be given to the adoptive parent(s) and a copy must be placed in the case record. The agreement must specify the following:

(1) that the adoptive parent(s) and the child-placing agency agree to complete the adoption at a specified time;

(2) that the adoptive parent(s) agree to supervision by the child-placing agency during the time prior to completion of the adoption;

(3) that the adoptive parent(s) must notify the child-placing agency before removing the child from Texas prior to the completion of the adoption;

(4) that either the adoptive parent(s) or the child-placing agency can return the child to the agency at the discretion of either the adoptive parents or the agency before the adoption is completed; and

(5) what the fee and schedule of payment are.

(c) Written consent for medical care of the child must be given to the adoptive parent(s) at the time of the child's placement in the home. A copy of the signed medical consent form must be filed in the child's record or in the adoptive home record.

(d) Before placing a child into a home, the child-placing agency must discuss information about the child and his or her birth parents with the adoptive parent(s). Prior to or at the time of placement, the agency must also provide written information to the adoptive parent(s) that includes all available information on the child and his family, excluding identifying information, if appropriate.

(e) Before placing a child into a home, the child-placing agency must discuss basic care and safety issues with the adoptive parents, and ensure that the home provides an environment safe for

the child or children to be placed. This must include firearm safety, water safety, and basic home health and fire safety.

(f) Before placing a child into a home, the child-placing agency must give information to prospective adoptive parents about the Texas Department of Protective and Regulatory Services adoption assistance programs, including the non-recurring adoption expenses program.

(g) By the time of placement the adoptive parents must be given the following:

(1) written authorization to care for the child(ren); and

(2) written information if the child is not completely free for adoption at the time of placement.

§§720.58. Pre-Adoption Consummation Activities.

(a) During the supervisory period the child-placing agency must:

(1) offer counseling services to the adoptive family. These services may be provided through referrals outside the child-placing agency.

(2) ensure that children's needs are met in the adoptive placement.

(3) maintain responsibility for the child until the court has entered the adoption decree.

(b) Post-placement supervision must include:

(1) For children under the age of two years (with the exception of children with special needs), the child-placing agency must have a minimum of five supervisory contacts with the adoptive parents within the first six months of placement.

(A) two contacts must be face-to-face, with the entire family;

(B) at least one of these contacts must be in the adoptive home; and

(C) the contacts specified in subparagraphs (A) and (B) of this paragraph must be documented.

(2) For children with special needs and children ages two years or older, the child-placing agency must have monthly face-to-face contacts with the adoptive family during the first six months. Two of these contacts must be in the adoptive home, with the entire family and must be documented.

(3) After the first six months of placement, the child-placing agency must have at least quarterly face-to-face contacts in the adoptive home until the adoption decree is entered.

(4) The adoptive placement must be re-evaluated if it has not been completed within one year.

(c) During the post-placement period, the child-placing agency must document any changes in the adoptive family in health, financial condition, or composition which may affect the child.

(d) The child-placing agency must make every effort to see that the adoption is consummated as stipulated within the written agreement.

(e) If the placement is unsatisfactory, the child-placing agency must remove the child from the adoptive home.

(f) If a child comes back into child-placing agency care, the circumstances necessitating this and the child's needs must be documented in the child's record.

§§720.59. *Post-Adoption Services.*

(a) After the adoption is consummated, the child-placing agency must offer counseling services to the birth parents, to the adoptive child, and to the adoptive family. These services may be provided through referrals outside the child-placing agency.

(b) The agency must make diligent efforts to inform birth parents, in writing, about developing genetic conditions, terminal illness, or death of their child when this information comes to the attention of the child-placing agency.

(c) The agency must make diligent efforts to inform adoptive parents or the adult adoptee, in writing, about developing genetic conditions, terminal illness, or death of a birth parent when this information comes to the attention of the child-placing agency.

(d) Upon request, the child-placing agency must provide an adult adoptee with a de-identified copy of the adoption record. The record must include the county and court of jurisdiction for the adoption. If an adoptee is less than 18 years of age, the request for the information must come from or must include the written consent of the child's adoptive parents or managing conservator.

§§720.60. *Subsequent Adoptions.*

Before a subsequent placement is made into an adoptive home, the adoptive home study must be brought up to date. The adoptive home study for a subsequent placement must be in writing and must include:

- (1) at least one individual interview with each applicant;
- (2) at least one visit to the home when all members of the household are present;
- (3) observation of the adjustment of the children in the family and how the children feel about the addition of another child; and
- (4) updates on all areas addressed in the original adoptive home study.

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

Issued in Austin, Texas on February 26, 1996.

TRD-9602935

Deborah L. Churchill

Supervising Attorney

Texas Department of Protective and Regulatory Services

Proposed date of adoption: June 1, 1996

For further information, please call: (512) 438-3765

◆ ◆ ◆
TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 3. Finance Division

Subchapter

43 TAC §3.2

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

The Texas Department of Transportation proposes the repeal of §3.2, concerning prequalification of surety companies.

Insurance Code, Articles 6.16 and 7.19-1 establish prequalification and reinsurance requirements for surety companies. The repeal of §3.2 is necessary to remove duplicative regulation.

Lawrence J. Zatopek, Director of General Service Division, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Zatopek has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal.

Mr. Zatopek also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to eliminate unnecessary and duplicative regulation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Written comments on the proposal may be submitted to Lawrence J. Zatopek, Director, General Services Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on April 12, 1996.

The repeal is proposed under the Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The repeal does not affect other statutes, articles, or codes.

§3.2. *Prequalification of Surety Companies.*

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

Issued in Austin, Texas, on March 1, 1996.

TRD-9602908

Robert E. Shaddock

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-8630

Chapter 17. Vehicle Title and Registration

Subchapter A. Motor Vehicle Certificate of Title

43 TAC §17.2, §17.3

The Texas Department of Transportation proposes amendments to §17.2, concerning Definitions and §17.3, concerning Motor Vehicle Certificates of Title. The amended sections are necessary to ensure the department's proper administration of

the laws concerning the issuance of motor vehicle certificates of title.

House Bill 1863, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6687-1 by adding §27a, which requires that an application for a certificate of title include the applicant's social security number when such application is executed in a county in which the department's automated registration and title system has been implemented. Senate Bill 1435, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6687-1 by adding §35A to allow the transfer of vehicle ownership to a surviving spouse by completion of a "rights of survivorship" agreement on the certificate of title. Senate Bill 1445, 74th Legislature, 1995, effective January 1, 1996, amended Texas Civil Statutes, Article 6687-5, now codified as Transportation Code, §520.023, to allow the transferor of a motor vehicle to make voluntary written notification to the department regarding the sale of such vehicle. The department will note its automated records to indicate the date of transfer, and will maintain manual files containing the full name and address of the transferee. Senate Bill 1445 also amended Texas Civil Statutes, Article 6687-1, §36, now codified as Transportation Code, §501.134, to specify the conditions under which the department may issue a certified copy of a certificate of title to an applicant who is not a vehicle's owner or lienholder, or who is not the verified agent of the owner or lienholder.

Amended §17.2, Definitions, establishes the definitions as used in this subchapter.

Amended §17.3, Motor Vehicle Certificates of Title, establishes the department's policies and procedures for motor vehicle certificates of title. Amended §17.3 provides: policies regarding the requirement that an application for a certificate of title executed in a county in which the department's automated registration and title system (RTS) has been implemented include the applicant's social security number; the ability of a surviving spouse to transfer vehicle ownership by completion of a "rights of survivorship" agreement on the certificate of title; the ability of a transferor of a motor vehicle to make voluntary written notification to the department regarding the sale of the vehicle and the notation of the department's records regarding such; and the conditions under which the department may issue a certified copy of a certificate of title to an applicant who is not a vehicle's owner or lienholder, or who is not the verified agent of the owner or lienholder.

Jerry L. Dike, Director, Vehicle Titles and Registration Division, has determined that fiscal implications to the state as a result of enforcing or administering amendments to these sections will be \$385,000 for the first year, \$320,000 for the second year, \$330,000 for the third year, \$350,000 for the fourth year, and \$370,000 for the fifth year for each of the first five years the sections as proposed are in effect. It is estimated that revenues resulting from the collection of fees will be approximately \$400,000 for the first year, \$435,000 for the second year, \$480,000 for the third year, \$530,000 for the fourth year, and \$580,000 for the fifth year the amended sections are in effect. This figure may be increased or decreased depending upon the amount of public participation.

Mr. Dike further anticipates there will be some fiscal implications to local county governments as a result of enforcing and

administering the amended sections. It is anticipated that the 254 counties will experience increased combined costs of approximately \$66,000 for the first year the sections as proposed are in effect, combined costs of \$120,000 for the second year the sections as proposed are in effect, and combined costs of approximately \$70,000 annually for the third through fifth year the sections as proposed are in effect.

There will be no effect on small businesses, local economies, or overall employment as a result of enforcing or administering the amended sections. Economic costs to persons who avail themselves of the transfer notification program is estimated to be approximately \$400,000 for the first year, \$435,000 for the second year, \$480,000 for the third year, \$530,000 for the fourth year, and \$580,000 for the fifth year the amended sections are in effect (approximately \$5.00 per transfer). This figure may change depending upon the amount of participation. There will also be a delay in the issuance of certified copy certificates of title to applicants who are not a vehicle owner, lienholder, or the agent of an owner or lienholder. Such persons account for approximately 50% of those applying for certified copy certificates of title.

Mr. Dike also has determined that for each of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be increased public understanding of, and compliance with, policies and procedures regarding motor vehicle certificates of title. Additionally, the collection of social security numbers may assist other state agencies in determining eligibility for public assistance programs. New regulations regarding the transfer of motor vehicle certificates of title will make it less difficult for a surviving spouse to transfer a motor vehicle certificate of title, and will make it more difficult for a person who is not a vehicle's owner, lienholder, or the verified agent of the owner or lienholder to obtain a certified copy of a motor vehicle certificate of title.

Pursuant to Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amended sections. The public hearing will be held at 9:00 a. m., on Tuesday, March 26, 1996, in the first floor delegation room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing. However, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the

presiding officer. Persons with disabilities who plan to attend the 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 Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588, at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Jerry L. Dike, Director, Vehicle Titles and Registration, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on April 12, 1996.

The amendments are proposed under the Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6687-1, §27a, which requires that an application for a certificate of title include the applicant's social security number when such application is executed in a county in which the department's automated registration and title system has been implemented; Texas Civil Statutes, Article 6687-1, §35A, which allows the transfer of vehicle ownership to a surviving spouse by completion of a "rights of survivorship" agreement on the certificate of title; Transportation Code, §520.023, which allows the transferor of a motor vehicle to make voluntary written notification to the department regarding the sale of such vehicle and requires the department to note its records indicating the receipt of such notifications; and Transportation Code, §501.134, which specify the conditions under which the department may issue a certified copy of a certificate of title to an applicant who is not a vehicle's owner or lienholder, or who is not the verified agent of the owner or lienholder.

No statutes, articles, or codes are affected by these proposed amendments.

§17.2. Definitions.

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

Certificate of title-A written instrument which may be issued solely by and under the authority of the department, which reflects the transferor, transferee, [purchase, sale,] vehicle description, license plate and lien information, and rights of survivorship agreement [disclosed on the certificate of title application] as specified in this subchapter or as may be required by the department.

§17.3. Motor Vehicle Certificates of Title.

(a) Certificates of Title. Unless otherwise exempted by law or this chapter, the owner of any vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall be required to apply for a Texas Certificate of Title in accordance with the Certificate of Title Act, Transportation Code, Chapter 501.

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

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers must apply for and receive a Texas Certificate of Title for any stand alone (full) trailer, including homemade full trailers, having an empty weight in excess of 4,000 pounds or any

semitrailer having a gross weight in excess of 4,000 pounds. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph in order to be titled.

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

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and which is eight body feet or more in width or forty body feet or more in length (not including the hitch), is classified as a mobile home and is titled under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, administered by the Department of Housing and Community Affairs [Licensing and Regulation].

(ii)-(iii) (No change.)

(b) Initial application for Certificate of Title.

(1) (No change.)

(2) Information to be included on application. An applicant for an initial certificate of title shall file an application on a form prescribed by the department. The form shall at a minimum require the:

(A)-(F) (No change.)

(G) signature of the seller of the motor vehicle or the seller's authorized agent and the date the certificate of title application was signed; [and]

(H) [the] signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed ; and

(I) applicant's social security number, if the application is filed in a county in which the department's automated registration and title system has been implemented, with the following exceptions:

(i) applications filed in the name of entities which do not have, or are not eligible to obtain, a social security number; or

(ii) individual applicants who do not have, or are not eligible to obtain, a social security number (such applicants shall be required to execute a statement to that effect on a form prescribed by the department).

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

(c) Evidence of motor vehicle ownership. Evidence of motor vehicle ownership properly assigned to the applicant shall accompany the certificate of title application. Evidence shall include, but is not limited to, the following documents.

(1) (No change.)

(2) Used motor vehicles.

(A) Evidence of ownership. A certificate of title issued by the department, a certificate of title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership shall be relinquished in support of the certificate of title application for any used motor vehicle. A letter of Title and Registration verification is required from a vehicle owner

coming from a state that no longer titles vehicles after a certain period of time.

(B) **Rights of survivorship.** A signed "rights of survivorship" agreement, which is either attached to or printed on the certificate of title, allows the transfer of ownership by a surviving spouse. The surviving spouse or the surviving spouse's transferee may make application for a new certificate of title in accordance with the provisions of subsection (b) of this section, surrendering the properly executed certificate of title, along with a copy of the death certificate of the deceased spouse.

(3) (No change.)

(4) **Alterations to documentation.** An alteration to a registration receipt, certificate of title, manufacturer's certificate, or other evidence of ownership shall constitute valid reason for the rejection of any transaction to which such altered evidence is attached. The department may accept certain types of alterations provided that they are corrected in accordance with the following procedures.

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

(C) A correct manufacturer's certificate of origin will be required if the documents show[s] an:

(i)-(iv) (No change.)

(D) (No change.)

(d) **Certificate of title issuance.** Upon receiving a completed application for certificate of title, along with the title application fee of \$13 and any other applicable fees, the department or its designated agent will process and issue a certificate of title.

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

(e) **Replacement of certificate of title.** If a certificate of title is lost or destroyed, the [The] owner or lienholder [of a lost or destroyed certificate of title] may obtain a certified copy of that title upon proper application with the department in accordance with the Certificate of Title Act, Transportation Code, Chapter 501, and payment of the appropriate fee to the department.

(1) **Certified copy.**

(A) **Applicant who is a vehicle owner, lienholder, or verified agent.**

(i) If the applicant requests that a certified copy be issued before the fourth business day following application, the application must be made in person and the applicant must present valid personal identification, including a photograph, issued by an agency of this state or of the United States.

(ii) If the applicant is an agent, the applicant must present verifiable proof that he or she is an agent of the owner or lienholder. This proof may include a power of attorney, business card, written authorization on company letterhead, or employee identification.

(B) **Applicant other than the vehicle owner, lienholder, or verified agent.**

(i) The department will not issue a certified copy of a certificate of title before the fourth business day after application has been made.

(ii) Such titles shall only be issued by mail.

(2) **Certified copy designation.** A certified copy of an existing certificate of title will be marked "Certified Copy" until such time that ownership of the vehicle is transferred, when the words "Certified Copy" will be eliminated from the new certificate of title.

(3) **Fees.** The fee for obtaining a certified copy of a certificate of title shall be \$2.00 if the application is processed at the department's headquarters office, and \$5.45 if such application is processed at one of the department's regional offices.

(4) [(2)]**Recovery of lost title.** In the event that the "Duplicate Original" or "Original" certificate of title is recovered, the owner shall relinquish the certified copy to the department for cancellation and the words "Certified Copy" will be eliminated from certificates issued thereafter by the department as a result of transfer of ownership.

(f) **Department notification of second hand vehicle transfers.** A transferor of a motor vehicle may voluntarily make written notification to the department of the sale of the vehicle, in accordance with Transportation Code, §520.023 and this subsection.

(1) **Notification form.** The department shall provide a form for written notice of transfer, which shall include:

(A) vehicle identification number of the vehicle;

(B) license plate number issued to the vehicle;

(C) full name and address of the transferor;

(D) full name and address of the transferee;

(E) date the transferor delivered possession of the vehicle to the transferee;

(F) signature of transferor; and

(G) date the transferor signed the form.

(2) **Records.** Upon receipt of written notice of transfer and a \$5.00 fee from the transferor of a motor vehicle, the department shall mark its records to indicate the date of transfer and the full name and address of the transferee.

(3) **Ownership of transferred vehicle.** After the date of the transfer of the vehicle as shown in the department records, the transferee of the vehicle is rebuttably presumed to be:

(A) the owner of the vehicle; and

(B) subject to civil and criminal liability arising out of the use, operation, or abandonment of the vehicle, to the extent that ownership of the vehicle subjects the owner of the vehicle to criminal or civil liability under another provision of the law.

(4) **Certificate of title issuance.** A certificate of title may not be issued in the name of a transferee until such transferee files an application for the certificate of title as described in this section.

(g) [(f)] **Suspension, revocation, or refusal to issue Certificates of Title.**

(1) **Grounds for title suspension, revocation, or refusal to issue.** The department will refuse issuance of a certificate of title, or

having issued a certificate of title, suspend or revoke the certificate of title if the:

- (A) application contains any false or fraudulent statement;
- (B) applicant has failed to furnish required information requested by the department;
- (C) applicant is not entitled to the issuance of a certificate of title under the Certificate of Title Act, Transportation Code, Chapter 501;
- (D) department has reasonable ground to believe that the vehicle is a stolen or converted vehicle, or that the issuance of a certificate of title would constitute a fraud against the rightful owner or a mortgagee;
- (E) registration of the vehicle stands suspended or revoked; or
- (F) required fee has not been paid.

(2) Contested case procedure. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may contest such decisions in accordance with the Certificate of Title Act, Transportation Code, §§501.052-501.053, in the following manner:

(A) Hearing. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may apply to the designated agent of the county in which they reside for a hearing. At the hearing the applicant and the department may submit evidence, and a ruling of the designated agent will bind both parties. An applicant wishing to appeal the ruling of the designated agent may do so to the County Court of the county in which the applicant resides.

(B) Alternative to hearing. In lieu of a hearing, any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked a certificate of title may file a bond with the department, in an amount equal to one and one-half times the value of the vehicle as determined by the department, and in a form prescribed by the department. Upon the filing of the bond, the department may issue a certificate of title. The bond shall expire three years after the date it becomes effective and shall be returned to the person posting bond, upon expiration, unless the department has been notified of the pendency of an action to recover on the bond.

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

Issued in Austin, Texas, on March 1, 1996.

TRD-9602909

Robert E. Shaddock

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-8630



Subchapter B. Motor Vehicle Registration

43 TAC §§17.21, 17.22, 17.28, 17.30, 17.50

The Texas Department of Transportation proposes amendments to §§17.21, 17.22, 17.28, 17.30, and 17.50, concerning, respectively: definitions; motor vehicle registration; special category license plates, symbols, and tabs; commercial vehicle registration; and exempt and alias vehicle registration. The amended sections are necessary to ensure the department's proper administration of the laws concerning the issuance of motor vehicle registration.

House Bill 247, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-5k, now codified as Transportation Code, §§502.258-502.266, extending eligibility for U.S. Armed Forces license plates to honorably discharged veterans; extending eligibility for Vietnam Veteran license plates to surviving spouses who have not remarried; and increasing the number of sets of U.S. Armed Forces license plates a qualifying individual may obtain. House Bill 496, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-5e by adding §4(a-1) to authorize the department to issue Foreign Organization license plates. House Bill 1225, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-3e by adding §8A to authorize the department to issue registration numbers to former military vehicles. House Bill 1542, 74th Legislature, 1995, amended Texas Civil Statutes, Articles 6675a-3e and 6675a-13a, now codified as Transportation Code, §§502.180-502.184, to clarify placement location for windshield registration stickers and procedures for replacement of lost, stolen or mutilated registration insignia. House Bill 1794, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-5p, now codified as Transportation Code, §502.280 to clarify the definition of a "forestry vehicle." House Bill 2053, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-3aa, now codified as Transportation Code, §502.201 and §502.206 to specify criteria for identifying insignia to be displayed on vehicles bearing license plates with the word "exempt." House Bill 2151, 74th Legislature, 1995, added Texas Civil Statutes, Article 6687-1, §37(A)(j) and (n) to prohibit registration or operation of motor vehicles which have been issued a salvage or nonrepairable motor vehicle certificate of title. Senate Bill 123, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-5k, now codified as Transportation Code, §§502.258-502.266, to authorize the department to issue Legion of Valor license plates to recipients of specified military decorations. Senate Bill 209, 74th Legislature, amended Texas Civil Statutes, Article 6675a by adding §5q to authorize the department to issue Peace Officer license plates to officers wounded in the line of duty, and to the surviving spouse, parent, or adult child of an officer killed in the line of duty. Senate Bill 832, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a by adding §5q to authorize the department to issue U.S. Olympic Committee license plates. Senate Bill 971, 74th Legislature, 1995, re-codifies the statutes relating to transportation to the Transportation Code. Senate Bill 981, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-6c, now codified as Transportation Code, §502.353 to eliminate 24-hour permits as legal vehicle registration for the movement of foreign commercial vehicles on Texas highways.

Amended §17.21 establishes the definitions as used in this subchapter and includes definitions moved from §17.50.

Amended §17.22 establishes the department's policies and procedures for motor vehicle registration. The amendments include policies regarding the registration of vehicles which have been issued salvage or nonrepairable motor vehicle certificates of title, policies and procedures for the registration of former military vehicles, and policies and procedures regarding the replacement of lost, stolen or mutilated registration symbols, tabs, devices or number plates.

Amended §17.28 establishes the department's policies and procedures for the application and issuance of special category license plates, symbols and tabs. The amendments include policies and procedures regarding the following new special category license plates: Foreign Organization license plates, Legion of Valor license plates, Peace Officer license plates, and U.S. Olympic Committee license plates. Amendments also include policies and procedures regarding the issuance of former military vehicle registration numbers and revised procedures regarding U.S. Armed Forces and Log Loader license plates.

Amended §17.30 establishes the department's policies and procedures for the application and issuance of commercial vehicle registration. Amendments concern the issuance of Combination license plates for vehicles with 24-hour temporary permits. The issuance of 24-hour temporary permits was discontinued with a previous rule adoption (43 Texas Administrative Code, §17.23, relating to Temporary Permits).

Amended §17.50 establishes the department's policies and procedures regarding the issuance of exempt and alias vehicle registration. The amendments include minor organizational revisions to clarify procedures and to conform with the structure of existing sections in this subchapter, as well as to provide new requirements regarding how vehicles bearing license plates with the word "exempt" shall display the agency's name on all vehicles registered under this section, and method by which exempt agencies may obtain exempt license plates without the word "exempt" printed on such license plates.

Jerry L. Dike, Director, Vehicle Titles and Registration Division, has determined that fiscal implications to the state as a result of enforcing or administering the proposed amendments will be \$240,000 for the first year and \$170,000 each year thereafter for the first five years the amended sections as proposed are in effect. It is estimated that the department will experience a revenue reduction resulting from the increased number of individuals who are exempted from the payment of registration fees by the aforementioned legislation. Revenue reductions are estimated to average approximately \$150,000 for each of the first five years the amended sections are in effect. Mr. Dike further anticipates there will be some fiscal implications to local county governments as a result of enforcing and administering the amended sections. It is anticipated that the 254 counties will experience a combined decrease in revenue averaging \$153,000 annually for each of the first five years the amended sections as proposed are in effect.

There will be no effect on small businesses, local economies, or overall employment as a result of enforcing or administering the amended sections. Economic costs to persons who avail themselves of new special category license plates will be approximately \$20 per set of special category license plates

which, in some cases, is in addition to regular registration fees. Additional fiscal implications may accrue to individuals applying for certified copy original certificates of title in those cases where the applicant is not a vehicle's owner, lienholder, or an agent of the owner or lienholder. Certified copy original certificates of title shall no longer be released in person to such applicants, and will not be mailed until the fourth business day after application.

Mr. Dike also has determined that for each of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be increased public understanding of, and compliance with, policies and procedures regarding motor vehicle registration, registration insignia, commercial vehicle registration, and exempt vehicle registration.

Pursuant to Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amended sections. The public hearing will be held at 9:00 a. m., on Tuesday, March 26, 1996, in the first floor delegation room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing. However, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend the 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 Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588, at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Jerry L. Dike, Director, Vehicle Titles and Registration, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on April 12, 1996.

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 502, which authorizes the department to carry out the provisions of those laws governing the issuance of motor vehicle registration.

No statutes, articles, or codes are affected by these proposed amendments.

§17.21. Definitions.

The following words and terms, when used in this subchapter [undesignated head], shall have the following meanings, unless the context clearly indicates otherwise.

Affidavit for alias exempt registration - A form prescribed by the director that must be executed by an exempt law enforcement agency to request the issuance of exempt registration in the name of an alias.

Agent - A duly authorized representative possessing legal capacity to act for an individual or legal entity.

Alias - The name of a vehicle registrant reflected on the registration, different than the name of the legal owner of the vehicle.

Alias exempt registration - Registration issued under an alias to a specific vehicle to be used in covert criminal investigations by a law enforcement agency.

County or city civil defense agency - An agency authorized by a commissioner's court order or by a city ordinance to provide protective measures and emergency relief activities in the event of hostile attack, sabotage, or natural disaster.

Executive administrator - The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city that by law possesses the authority to conduct covert criminal investigations.

Exempt agency - A governmental body exempted by statute from paying registration fees when registering motor vehicles.

Exempt license plates - Specially designated license plates issued to certain vehicles owned or controlled by exempt agencies.

Fire fighting equipment - Equipment mounted on fire fighting vehicles used in the process of fighting fires, including, but not limited to, ladders and hoses.

Light truck - As defined in Transportation Code, §542.201 [Texas Civil Statutes, Article 6701d, Section 2(h)], any truck with a manufacturer's rated carrying capacity not to exceed two thousand pounds, including those trucks commonly known as pickup trucks, panel delivery trucks, and carryall trucks.

Owner - In accordance with Transportation Code, §502.001 [Texas Civil Statutes, Article 6675a-1(1)], any person who holds the legal title of a vehicle or who has the legal right of possession thereof, or the legal right of control of said vehicle.

Passenger car - In accordance with Transportation Code, §502.001 [Texas Civil Statutes, Article 6675a-1(j)], any motor vehicle other than a motorcycle, golf cart, or a bus, designed or used primarily for the transportation of persons.

Vehicle description - Information regarding a specific vehicle, including, but not limited to, the vehicle make, year model, body style, and vehicle identification number.

Volunteer fire department - An association that is organized for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services.

§17.22. Motor Vehicle Registration.

(a) Registration. Unless otherwise exempted by law or this chapter, a vehicle to be used upon the public highways of this state must be registered in accordance with Transportation Code, Chapter 502 and the provisions of this section. Texas Civil Statutes, Article 6687-1(37A)(j) and (n), and §17.8 of this title (relating to Certificates of Title for Salvage Vehicles) prohibit registration of a vehicle whose owner has been issued a salvage or nonrepairable motor vehicle certificate of title. These vehicles may not be operated upon a public roadway.

(b) Initial application for vehicle registration.

(1) (No change.)

(2) The application must be accompanied by the following documents:

(A) evidence of vehicle ownership as specified in Transportation Code, §501.030, unless the vehicle has been issued a salvage or nonrepairable motor vehicle certificate of title in accordance with Texas Civil Statutes, Article 6687-1 (37A)(j) and (n);

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

(3) Place of registration. An initial application for registration shall be filed with the tax assessor-collector of the county in which the owner resides; provided, however:

(A) registration involving the transfer of vehicle ownership by a motor vehicle dealer shall be governed by 16 Texas Administrative Code, §§111.1-111.16 [§17.74(c) of this title (relating to Records of Sales and Inventory)]; and

(B) (No change.)

(c) Vehicle registration insignia.

(1) Upon receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on the vehicle for which the registration was issued for the current registration period.

(A) If the vehicle has a windshield, the symbol, tab or other device prescribed by and issued by the department must be attached to the inside lower left corner of the vehicle's front windshield within six inches of [directly above] the vehicle inspection sticker in a manner that will not obstruct the vision of the driver.

(B) (No change.)

(C) If the vehicle is registered as a Former Military Vehicle as prescribed by §17.28(b)(14) of this title (relating to Special Category License Plates, Symbols, and Tabs), the vehicle's registration number shall be displayed in lieu of displaying a symbol, tab, or license plate.

(i) Former Military Vehicle registration numbers shall be displayed on a prominent location on the vehicle in numbers and letters of at least two inches in height.

(ii) To the extent possible, the location and design of the Former Military Vehicle registration number must conform with the vehicle's original military registration number.

(2) Unless otherwise prescribed by law, each vehicle registered under this subchapter [undesignated head] must display two license plates, one at the front and one at the rear of the vehicle.

(3) (No change.)

(d) Vehicle registration renewal.

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

(3) The license plate renewal notice must be returned by the vehicle owner to the appropriate county tax assessor-collector or his or her deputy, either in person or by mail, and shall be accompanied by the following documents and fees:

(A)-(C) (No change.)

(4) (No change.)

(5) Renewal of expired vehicle registrations.

(A) In accordance with Transportation Code, §502.407, a vehicle with an expired registration [registrations] may not be operated upon the highways of the state after the fifth day after the date a vehicle registration expires.

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

(6) (No change.)

(e) Replacement of registration symbol, tab, device, or number plates.

(1) When the registration symbol, tab, device or number plates are lost, stolen, or mutilated, a replacement may be obtained from any county tax assessor-collector as prescribed by law.

(2) The owner must properly execute a replacement affidavit, containing the vehicle description, original license plate number, and sworn statement that the registration symbol, tab, device, or number plates furnished for the vehicle described have been lost, stolen, or mutilated, and will not be used on any other vehicle.

(3) The owner's remaining part of the registration symbol, tab, device, or number plates must be removed and surrendered to the department upon issuance of the replacement and upon request by the county tax assessor-collector, the owner's current year's license receipt.

(f) [(e)] Out-of-state vehicles. A vehicle brought to Texas from out-of-state must be registered within 30 days of the date which the owner establishes residence or secures gainful employment. Accompanying a completed application, an applicant shall provide:

(1) an application for certificate of title as required by the Certificate of Title Act, Transportation Code, Chapter 501, if the vehicle to be registered has not been previously titled in this state; and

(2) an identification certificate required by the Transportation Code, §547.202 and §501.030.

(g) [(f)] Enforcement of traffic warrant. The department or a county tax assessor-collector may, pursuant to the provisions of a contract entered into under Transportation Code, §702.003, refuse to register a vehicle owned by a person for whom a warrant of arrest is outstanding for failure to appear or pay a fine on a complaint involving a violation of a traffic law.

§17.28. *Special Category License Plates, Symbols, and Tabs.*

(a) Purpose and Scope. Transportation Code, §§502.201-502.288 [Texas Civil Statutes, Articles 6675a-5a, et seq], charge the department with the responsibility of issuing a plate or plates, symbols, tabs, or other devices which, when attached to a vehicle as prescribed by the department, act as the legal registration insignia for the period issued. In addition, these articles charge the department with providing special category license plates, symbols, and tabs. In order for the department to efficiently and effectively perform these duties, this section prescribes the policies and procedures for the application, issuance, and renewal of special category license plates, symbols, and tabs.

(b) Plate Categories - The department will issue the following special category license plates, symbols, and tabs.

(1) Amateur Radio Operator license plates.

(A) In accordance with Transportation Code, §502.282 [Texas Civil Statutes, Article 6701c-2], the department will issue Amateur Radio Operator license plates bearing the words "Texas Radio Opr" to a person who:

(i)-(iii) (No change.)

(B) (No change.)

(2) Antique license plate. In accordance with Transportation Code, §502.275 [Texas Civil Statutes, Article 6675a-5a], the department will issue Antique license plates bearing the words "Antique Vehicle" or "Antique Motorcycle" to an owner of a vehicle that is:

(A)-(C) (No change.)

(3) Antique Validation tab. In accordance with Transportation Code, §502.275 [Texas Civil Statutes, Article 6675a-5a(b)], the department will issue Antique Validation tabs for display on existing Texas license plates that were originally issued the same year as the model year of the antique vehicle.

(4) Civil Air Patrol license plates. In accordance with Transportation Code, §502.261 [Texas Civil Statutes, Article 6675a-5k], the department will issue Civil Air Patrol license plates bearing the words "Texas Wing Civil Air Patrol" to a person who:

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

(5) Classic Auto/Truck windshield validation sticker. In accordance with Transportation Code, §502.274 [Texas Civil Statutes, Article 6675a-5n], the department will issue a Classic Auto/Truck windshield validation sticker to an owner of a passenger car or a light commercial motor vehicle that:

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

(6) Classic license plates. In accordance with Transportation Code, §502.275 [Texas Civil Statutes, Article 6675a-5n], the department will issue Classic license plates bearing the legend "Classic Auto" or "Classic Truck" to an owner of a passenger car or light commercial motor vehicle that:

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

(7) Collegiate license plates. In accordance with Transportation Code, §502.270 [Texas Civil Statutes, Article 6675a-5j], the department will issue collegiate license plates bearing the name and insignia of qualifying public or private institutions of higher ed-

ucation to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(8) Congressional Medal of Honor license plates.

(A) In accordance with Transportation Code, §502.255 [Texas Civil Statutes, Article 6675a-5e.2], the department will issue Congressional Medal of Honor license plates bearing the words "Congressional Medal of Honor" to a person who:

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

(B) An owner operating a vehicle bearing Congressional Medal of Honor license plates shall have the same parking privileges described in Transportation Code, §681.008 [Texas Civil Statutes, Article 6675a-5e].

(9) Cotton Vehicle license plates. In accordance with Transportation Code, §502.277 [Texas Civil Statutes, Article 6675a-5o], the department will issue Cotton Vehicle license plates bearing the words "Cotton Vehicle" to an owner of a motor vehicle that only transports seed cotton modules, cotton, or equipment used in transporting or processing cotton.

(10) Disabled Veteran license plate.

(A) In accordance with Transportation Code, §502.254 [Texas Civil Statutes, Article 6675a-5e], the department will issue Disabled Veteran license plates bearing the words "Disabled Vet" to the following owners of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less:

(i)-(iii) (No change.)

(B) A vehicle on which Disabled Veteran license plates are displayed is exempt from the payment of parking fees in accordance with Transportation Code, §681.008 [Texas Civil Statutes, Article 6675a-5e].

(11) Disaster Relief license plates. In accordance with Transportation Code, §502.203 [Texas Civil Statutes, Article 6675a-3(d)], the department will issue Disaster Relief license plates bearing the word "Disaster" to an owner of a commercial motor vehicle, truck-tractor, trailer, and semitrailer that is the property of and used exclusively by a non-profit, disaster relief organization in emergency situations.

(12) Foreign Organization license plates. In accordance with Texas Civil Statutes Transportation Code, §502.267, as amended, the department will issue Foreign Organization license plates bearing the words "Foreign Organization" to an instrumentality established by a foreign government recognized by the United States before January 1, 1979, that is without official representation or diplomatic relations with the United States, for a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(13) [12] Forestry Vehicle license plates. In accordance with Transportation Code, §502.280 [Texas Civil Statutes, Article 6675a-5p], the department will issue Forestry Vehicle license plates bearing the words "Forestry Vehicle" to an owner of a vehicle used exclusively for transporting forest products in their natural state, including logs, debarked logs, untreated ties, stave bolts, plywood bolts, pulpwood billets, wood chips, stumps, sawdust, moss, bark, wood shavings, [logs and debarked logs] and property used in the production of those products.

(14) Former Military Vehicle registration number. In accordance with Transportation Code, §502.275, the department will issue a registration number in lieu of displaying a symbol, tab, or license plate to the owner of a vehicle that:

(A) is a passenger car, truck, or motorcycle;

(B) has been, but no longer is, used by the armed forces of a national government;

(C) displays markings indicating it was a military vehicle;

(D) is used for exhibitions, club activities, parades, and other functions of public interest; and

(E) is not used for regular transportation.

(15) [(13)] Former Prisoner of War license plates. In accordance with Transportation Code, §502.257 [Texas Civil Statutes, Article 6675a-5g], the department will issue Former Prisoner of War license plates bearing the words "Former POW" to an owner of a passenger car and light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she is:

(A) honorably discharged from the U.S. Armed Forces and was captured and incarcerated by an enemy of the United States during a period of conflict with the United States; or

(B) the surviving spouse of a former prisoner of war and remains unmarried.

(16) [(14)] Honorary Consul license plates. In accordance with Transportation Code, §502.267 [Texas Civil Statutes, Article 6675a-5e.4], the department will issue Honorary Consul license plates bearing the words "Honorary Consul" to a person who:

(A) owns a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less; and

(B) is an honorary consul authorized by the United States government to perform consular duties.

(17) [(15)] Korea Veteran license plates. In accordance with Transportation Code, §502.263 [Texas Civil Statutes, Article 6675a.5k], the department will issue Korea Veteran license plates bearing the words "Korea Veteran" to an owner of a passenger car or light commercial vehicle that has a manufacturer's carrying capacity rated of one ton or less, if the owner provides evidence that he or she:

(A) served in a branch of the U.S. Armed Forces after June 26, 1950 and before February 1, 1955; and

(B) was honorably discharged from the U.S. Armed Forces.

(18) Legion of Valor license plates. In accordance with Transportation Code, §502.259, as amended, the department will issue Legion of Valor license plates bearing the words "Legion of Valor" to an owner of a passenger car or light commercial vehicle that has a manufacturer's carrying capacity rate of one ton or less, if the owner provides evidence that he or she is a honorably discharged veteran of the armed forces of the United States or is a member of the armed forces of the United States on active duty, and is the recipient of one of the following military decorations:

- (A) Air Force Cross;
- (B) Air Force Distinguished Service Cross;
- (C) Army Distinguished Service Cross;
- (D) Navy Cross; or
- (E) Congressional Medal of Honor.

(19) [(16)] Log Loader Vehicle license plates. In accordance with Transportation Code, §502.279 [Texas Civil Statutes, Article 6675a-2(l)], the department will issue Log Loader Vehicle license plates bearing the words "Log Loader" to an owner of a vehicle that does not haul logs and on which is mounted machinery used only for loading logs on other vehicles.

(20) [(17)] Non-Profit Organization license plates. In accordance with Transportation Code, §502.273 [Texas Civil Statutes, Article 6675a-5p], the department will issue Non-Profit Organization license plates bearing the insignia of a non-profit organization to an organization member who is an owner of a passenger car or a light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(21) [(18)] Operation Desert Storm license plates. In accordance with Transportation Code, §502.265 [Texas Civil Statutes, Article 6675a-5k], the department will issue Operation Desert Storm license plates bearing the words "Desert Storm" to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

- (A) took part in Operation Desert Shield/Storm as a member of the U.S. Armed Forces; and
- (B) is an honorably discharged veteran or remains a member of the U.S. Armed Forces.

(22) [(19)] Parade license plates. In accordance with Transportation Code, §502.283 [Texas Civil Statutes, Article 6675a-5b], the department will issue Parade license plates bearing the suffix "PAR" to a non-profit organization that owns and operates a motor vehicle designed, constructed, and used primarily for parade purposes.

(23) Peace Officer license plates. In accordance with Texas Civil Statutes, Article 6675a-5q, the department will issue Peace Officer license plates bearing the words "To Protect and Serve," inscribed above an insignia depicting a yellow rose superimposed on the outline of a badge, to the owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

- (A) has been wounded in the line of duty as a peace officer; or
- (B) is the surviving spouse, parent, or adult child of a person killed in the line of duty as a peace officer.

(24) [(20)] Pearl Harbor Survivor license plates.

(A) In accordance with Transportation Code, §502.259 [Texas Civil Statutes, Article 6675a-5k], the department will issue Pearl Harbor Survivor license plates bearing the legend "Pearl Harbor Survivor" to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

- (i) served in the U.S. Armed Forces;

(ii) was stationed in the Hawaiian islands on December 7, 1941; and

(iii) survived the attack on Pearl Harbor.

(B) Pearl Harbor license plates may be issued to the surviving spouse of a Pearl Harbor survivor for as long as the surviving spouse remains unmarried.

(25) [(21)] Personalized license plates. In accordance with Transportation Code, §502.251 [Texas Civil Statutes, Article 6675a-5c], the department will issue Personalized license plates, subject to the restrictions of subsection (d)(5) of this section, which display an approved personalized license plate number, to owners of all classifications of vehicles except:

- (A) those vehicles bearing license plates which receive full or partial exemption from regular registration fees; and
- (B) trailers and semitrailers with gross weights in excess of 10,000 pounds.

(26) [(22)] Purple Heart license plates.

(A) In accordance with Transportation Code, §502.260 [Texas Civil Statutes, Article 6675a-5k], the department will issue Purple Heart license plates bearing the words "Purple Heart" to an owner of a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she is:

- (i) a recipient of the Purple Heart medal; and
- (ii) an honorably discharged veteran or remains on active duty with U.S. Armed Forces.

(B) Purple Heart license plates may be issued to the surviving spouse of a Purple Heart medal recipient for as long as the surviving spouse remains unmarried.

(27) [(23)] State Capitol license plates. In accordance with Transportation Code, §502.269 [Texas Civil Statutes, Article 6675a-5k], the department will issue State Capitol license plates depicting the state capitol to an owner of a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(28) [(24)] State Official license plates. In accordance with Senate Concurrent Resolution Number 37, 67th Legislature; Senate Concurrent Resolution Number 70, 71st Legislature; and House Concurrent Resolution Number 138, 73rd Legislature; the department will issue State Official license plates bearing the appropriate designation to a vehicle owner who is a member of the U.S. Congress or Texas Legislature, is a U.S. Judge or Magistrate, and to the following elected state officials:

- (A) Governor;
- (B) Lieutenant Governor;
- (C) Speaker of the House;
- (D) Attorney General;
- (E) Comptroller of Public Accounts;
- (F) State Treasurer;
- (G) General Land Office Commissioner;
- (H) Agriculture Commissioner;

- (I) Secretary of State;
- (J) Railroad Commissioner;
- (K) Supreme Court Justice;
- (L) Court of Criminal Appeals Judge; and
- (M) Board of Education Member.

(29) [(25)] Texas Aerospace Commission license plates. In accordance with Transportation Code, §502.271 [Texas Civil Statutes, 6675a-5l], the department will issue Texas Aerospace Commission license plates bearing the words "Aerospace Commission" to an owner of a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(30) [(26)] Texas Commission on the Arts license plates. In accordance with Transportation Code, §502.272 [Texas Civil Statutes, Article 6675a-5m], the department will issue Texas Commission on the Arts license plates bearing the words "State of the Arts" to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(31) [(27)] Texas National Guard and State Guard license plates. In accordance with Transportation Code, §502.256 [Texas Civil Statutes, Article 6675a-5e.3], the department will issue Texas National Guard and State Guard license plates bearing the words "Texas Guard" to an owner of a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she is:

(A) an active member of the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard; or

(B) a retired guard member who has completed 20 years of satisfactory service.

(32) [(28)] U.S. Armed Forces license plates.

(A) In accordance with Transportation Code, §502.256 [Texas Civil Statutes, Article 6675a-5k], the department will issue U.S. Armed Forces license plates bearing the name of the appropriate branch of the U.S. Armed Forces to an owner of a passenger car or light commercial vehicle who provides evidence that the owner is an active, [or] retired, or honorably discharged member of a branch of the U.S. Armed Forces.

(B) U.S. Armed Forces license plates may be issued to the surviving spouse of a member killed in action for as long as that spouse remains unmarried.

(33) [(29)] U.S. Armed Forces Reserve license plates. In accordance with Transportation Code, §502.256 [Texas Civil Statutes, Article 6675a-5e.3], the department will issue U.S. Armed Forces Reserve license plates bearing the words "Armed Forces Reserve" to an owner of a passenger car or light commercial vehicle who provides evidence that the owner is a member of the United States Armed Forces Reserve.

(34) [(30)] U.S. Coast Guard Auxiliary license plates. In accordance with Transportation Code, §502.261 [Texas Civil Statutes, Article 6675a-5k], the department will issue U.S. Coast Guard Auxiliary license plates bearing the words "Coast Guard Auxiliary" to an owner of a passenger car or light commercial vehicle who provides evidence the owner is a member of the United States Coast Guard Auxiliary.

(35) [(31)] U.S. Marine Corps League license plates. In accordance with Transportation Code, §502.261 [Texas Civil Statutes, Article 6675a-5k], the department will issue Marine Corps League license plates bearing the words "Marine Corps League" and the emblem of the U.S. Marine Corps League to a person who:

(A) owns a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less; and

(B) provides evidence that the owner is a member of the Marine Corps League or its auxiliary.

(36) U.S. Olympic Committee license plates. In accordance with Texas Civil Statutes, Article 6675a-5q, the department will issue U.S. Olympic Committee license plates bearing the words "United States Olympic Committee" to an owner of a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(37) [(32)] Vietnam Veteran license plates.

(A) In accordance with Transportation Code, §502.264 [Texas Civil Statutes, Article 6675a-5k], the department will issue Vietnam Veteran license plates bearing the words "Vietnam Veteran" to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

(i) [(A)] served in a branch of the U.S. Armed Forces after August 4, 1964 and before May 8, 1975; and

(ii) (B) is an honorably discharged veteran or remains a member of the U.S. Armed Forces.

(B) Vietnam Veteran license plates may be issued to the surviving spouse of a qualifying Vietnam veteran for as long as the surviving spouse remains unmarried.

(38) [(33)] Volunteer Firefighter license plates. In accordance with Transportation Code, §502.268 [Texas Civil Statutes, Article 6675a-5h], the department will issue Volunteer Firefighter license plates bearing the words "Vol Firefighter" to an owner of a passenger car or light commercial vehicle who provides a certificate of certification as a volunteer firefighter from the Texas Volunteer Firefighters and Fire Marshals Certification Board.

(39) [(34)] World War II Veteran license plates. In accordance with Transportation Code, §502.262 [Texas Civil Statutes, Article 6675a-5k], the department will issue World War II Veteran license plates bearing the words "WWII Veteran" to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

(A) served in a branch of the U.S. Armed Forces after December 6, 1941 and before January 1, 1947; and

(B) is an honorably discharged veteran or remains a member of the U.S. Armed Forces.

(c) Initial application for special category license plates, symbols, or tabs.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in §17.22 [§17.30] of this title (relating to Motor Vehicle

Registration), who wishes to apply for a special category license plate, symbol, or tab must do so on a form prescribed by the director.

(B) (No change.)

(2) Fees and Documentation. [The application must be accompanied by the following fees and documentation:]

(A) The application must be accompanied by registration fees as required by law, with the following special category license plates exempted from regular registration fees by statute:

(i)-(iii) (No change.)

(iv) Foreign Organization;

(v) [(iv)] Former Prisoner of War;

(vi) Legion of Valor;

(vii) [(v)] Log Loader;

(viii) [(vi)] Parade;

(ix) [(vii)] Pearl Harbor Survivor (first set per applicant only); and

(x) [(viii)] Purple Heart Recipient (first set per applicant only).

(B) The application must be accompanied by statutorily prescribed special category license plate fees. [;

[(C) department fees for Forestry plates in the amount of \$2.00;]

(C) [(D)] The application must be accompanied by local fees or other fees as may be prescribed by law and collected in conjunction with registering a vehicle[; and], with the exception of vehicles bearing license plates described in subparagraph (A) of this section, which are exempted from such fees.

(D) [(E)] The application must include prescribed evidence of eligibility for any special category license plates other than personalized, collegiate, State Capitol, Texas Aerospace Commission, [and] Texas Commission on the Arts, and U.S. Olympic Committee, which may include, but is not limited to:

(i) a license issued by a governmental entity;

(ii) a letter issued by a governmental entity on that agency's letterhead;

(iii) discharge papers; and

(iv) marriage and death certificates.

(3) (No change.)

(d) Initial issuance of special category license plates, symbols, or tabs.

(1) (No change.)

(2) Number of plates issued

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

(C) Registration number. One registration number will be assigned for Former Military Vehicles. The applicant may select this number, or the department will assign it.

(3) (No change.)

(4) Number of vehicles.

(A) (No change.)

(B) One vehicle. The following categories are limited by statute to one set of special category license plates per owner:

[(i) Civil Air Patrol;]

(i) [(ii)] Congressional Medal of Honor;

(ii) [(iii)] Disabled Veteran;

[(iv) Korean Veteran;]

(iii) [(v)] Former Prisoner of War;

(iv) Legion of Valor;

(v) [(vi)] Non-Profit Organization; and

[(vii) Operation Desert Shield/Storm;]

[(viii) Pearl Harbor Survivor;]

[(ix) Purple Heart;]

(vi) [(x)] U.S. Armed Forces [and] Reserves; and

[(xi) U.S. Coast Guard Auxiliary;]

[(xii) Vietnam Veteran;]

(vii) [(xiii)] Volunteer Firefighter[; and

[(xiv) World War II Veteran.]

(C) (No change.)

(5) Personalized plate numbers.

(A) Issuance. The director will issue a personalized license plate number to be displayed on the standard passenger license plate or on special category license plates subject to the exceptions set forth in this paragraph and in subsection (b)(25) [(21)] of this section.

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

(D) Categories not available. Personalized license plate numbers are not available for display on the following license plates:

(i)-(vii) (No change.)

(viii) Foreign Organization;

(ix) [(viii)] Forestry Vehicle;

(x) [(ix)] Former Prisoner of War;

(xi) [(x)] Honorary Consul;

(xii) Legion of Valor;

(xiii) [(xi)] Log loader;

(xiv) [(xii)] Machinery;

(xv) [(xiii)] Parade;

(xvi) [(xiv)] Permit;

(xvii) [(xv)] Soil Conservation; and

[(xviii) [(xvi)] Texas Guard.

(E)-(F) (No change.)

(e) Special Category license plate renewal.

(1) Length of validation. All special category license plates, symbols, or tabs shall be valid for 12 months from the month of issuance, with the following exceptions.

(A) Five year period. The following license plates and registration numbers are issued for a five year period or remainder of that period, and expire every five years in March;

(i) Antique license plates and tabs; [and]

(ii) Former Military Vehicle registration numbers; and

(iii) [(ii)] Parade license plates.

(B) March expiration dates. The following license plates are issued for a 12-month period, or remainder of that period, and expire annually in March:

(i)-(vi) (No change.)

(vii) Legion of Valor;

(viii) [(vii)] Pearl Harbor Survivor; and

(ix) [(viii)] State Official.

(C) (No change.)

(D) September expiration dates. Log Loader [The following] license plates are issued for a 12-month period, or remainder of that period, and expire annually in September[:

[(i) Log Loader; and

[(ii) Purple Heart Recipient].

(E) No expiration date. Foreign Organization license plates are valid for as long as the registered vehicle is owned and operated by the foreign organization.

(2) Renewal.

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

(C) Registration Renewal. Upon receipt of the special category license plate renewal the department will notify the owner regarding registration renewal, in accordance with §17.22(d) [§17.30] of this title (relating to Motor Vehicle Registration). Special renewal fees for registration insignia issued under this section shall be the same as those fees listed under subsection (c)(2)(A) of this section, with the following exceptions:

(i) Amateur Radio Operator license plates - \$1.00;

(ii) Antique license plates - no fee;

(iii) Antique validation tab - no fee; and

(iv) Cotton Vehicle license plates - no fee.

(D) (No change.)

(E) Issuance of validation insignia. Upon receipt of the License Plate Renewal Notice as specified in this subsection, the department will issue registration validation insignia as specified in §17.22 [§17.30] of this title (relating to Motor Vehicle Registration), except for those plates listed in items (i) or (ii) of this paragraph or unless this section or other law require the issuance of new license plates to the owner.

(i) New license plates shall be issued upon expiration for renewed Antique Vehicle, Congressional Medal of Honor,

Disaster Relief, Honorary Consular, Legion of Valor, Parade, and State Official license plates.

(ii) New license plates shall be issued every six years for renewed personalized license plates, and every eight years for other license plate categories, in accordance with the provisions of §17.22 [§17.30] of this title (relating to Motor Vehicle Registration).

(F) (No change.)

(f) Transfer of special category license plates.

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

(3) Transfer of military plates to surviving spouse. Upon the death of the owner, and proper application with the department, the following special category license plates may be transferred to a surviving spouse who remains unmarried:

(A)-(C) (No change.)

(D) Pearl Harbor Survivor; [and]

(E) Purple Heart Recipient[.]; and

(F) Vietnam Veteran.

(4) (No change.)

(g) Replacement.

(1) Application. When special category license plates, symbols, or tabs are lost, stolen, or mutilated, the owner shall apply directly to the department for the issuance of replacements, except that log loader license plates must be reapplied for and accompanied by the required fees and documentation, in accordance with Transportation Code, §502.279 [Texas Civil Statutes, 6675a-2(l)].

(2) Interim replacement plates. In accordance with the provisions of Transportation Code, §502.184 [Texas Civil Statutes, Article 6675a-13a], until the department issues the replacement special category license plates, symbols, or tabs, the owner shall obtain regular replacement license plates, symbols or tabs and pay the statutory replacement plate fee.

(3) (No change.)

§17.30. Commercial Vehicle Registration.

(a) (No change.)

(b) Commercial vehicle registration classifications.

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

(3) Combination license plates.

(A) Specifications. A truck or truck tractor with a manufacturer's rated carrying capacity in excess of one ton used or to be used in combination with a semitrailer having a gross weight in excess of 6,000 pounds, shall be registered with combination license plates. Such vehicles must be registered for a gross weight equal to the combined gross weight of all the vehicles in the combination. When displaying a combination license plate, a truck or truck tractor is not restricted to pulling a semitrailer licensed with a Token Trailer license plate; and may legally pull semitrailers and full trailers displaying other types of Texas license plates or license plates issued out of state. The following vehicles are not required to be registered in combination:

(i)-(viii) (No change.)

(ix) vehicles which are to be issued temporary permits, such as 72-Hour Permits, [24-Hour Permits,] 144-Hour permits, One Trip Permits, or 30-day permits in accordance with **Transportation Code, §502.352 and §502.354** [Texas Civil Statutes, Articles 6675a-6b, 6675a-6c, and 6675a-6d].

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

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

(6) Intransit license plates. The department may issue an Intransit license plate annually to any person, firm or corporation engaged in the primary business of transporting and delivering by means of the full mount, saddle mount, tow bar or any other combination, new vehicles and other vehicles from the manufacturer or any other point of origin to any point of destination within the State. Each new vehicle being transported or delivered, or being moved under its own power in accordance with this paragraph must display an Intransit license plate in accordance with **Transportation Code, §503.035** [Texas Civil Statutes, Article 6686(b)].

(7) (No change.)

(8) Token Trailer license plates.

(A) (No change.)

(B) Validity. A Token Trailer license plate is valid only when it is displayed on a semitrailer that is being pulled by a truck or a truck tractor which has been properly registered with Forestry (in accordance with **Transportation Code, §502.280** [Texas Civil Statutes, Article 6675a-5p]), Combination (in accordance with **Transportation Code, §502.167** [Texas Civil Statutes, Article 6675a-6c]), or Apportioned (in accordance with **Transportation Code, §502.054** [Texas Civil Statutes, Article 6675a-16]) license plates for combined gross weights that include the weight of the semitrailer, unless exempted by **Transportation Code, §502.352 and §623.011** [Texas Civil Statutes, Articles 6675a-6d or 6701d-11].

(C)-(E) (No change.)

(9) Tow Truck license plates. A Tow Truck license plate must be obtained for all tow trucks operating and registered in this state. The department will not issue a Tow Truck license plate to tow trucks which are not registered in compliance with Texas Civil Statute s, Article 6675c[6687-9b].

(c) Application for Commercial Vehicle Registration.

(1) (No change.)

(2) Empty weight determination.

(A) The weight of a Motor Bus shall be the empty weight plus carrying capacity, in accordance with **Transportation Code, §502.168** [Texas Civil Statutes, Article 6675a-8a].

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

(3) Gross weight.

(A) (No change.)

(B) Restrictions. The following restrictions apply to combined gross weights.

(i) (No change.)

(ii) A combination of vehicles is restricted to a total gross weight not to exceed 80,000 pounds; however, all combinations may not qualify for eighty thousand pounds unless such weight can be properly distributed in accordance with axle load limitations, tire size, and distance between axles, in accordance with **Transportation Code, §623.011** [Texas Civil Statutes, Articles 6701d-11 and 6675a-6].

(4) (No change.)

(5) Accompanying documentation. Unless otherwise exempted by law, completed applications for commercial license plates shall be accompanied by:

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

(C) evidence of financial responsibility as required by **Transportation Code, §502.153** (if the applicant is a motor carrier as defined by §18.2 of this title (relating to Definitions), proof of financial responsibility may be in the form of a registration listing or an international stamp indicating that the vehicle is registered in compliance with Chapter 18, subchapter B of this title) [Texas Civil Statutes, Article 6675a-2a];

(D)-(E) (No change.)

(F) an original or certified copy of the Certificate of Registration issued in accordance with Texas Civil Statutes, Article 6675c [6687-9b], if application is being made for Tow Truck license plates; and

(G) (No change.)

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

(d) Renewal of commercial license plates.

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

(3) Return of License Plate Renewal Notices. License Plate Renewal Notices must be returned by the vehicle owner to the department or the appropriate county tax assessor-collector, as indicated on the License Plate Renewal Notice. Unless otherwise exempted by law, License Plate Renewal Notices may be returned either in person or by mail, and shall be accompanied by:

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

(C) evidence of financial responsibility as required by **Transportation Code, §502.153** [Texas Civil Statutes, Article 6675a-2a]; and

(D) (No change.)

(4) (No change.)

(e)-(f) (No change.)

§17.50. *Exempt and Alias Vehicle Registration.*

(a) Exempt plate registration.

(1) Issuance. Pursuant to **Transportation Code, §502.202**, a vehicle owned by and used exclusively in the service of a governmental agency, used exclusively for public school transportation services, used for fire fighting or by a volunteer fire department, or used in volunteer county marine law enforcement is exempt from payment of a registration fee, and the department will issue exempt plates to those vehicles [Purpose. The department issues exempt registrations to those vehicles controlled by legally sanctioned exempt agencies. The following regulations provide criteria for ap-

plication and issuance of exempt registrations that may not otherwise be provided by statute].

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

[(1) Affidavit for alias exempt registration - A form prescribed by the director that must be executed by an exempt law enforcement agency to request the issuance of exempt registration in the name of an alias.

[(2) Agent - A duly authorized representative possessing legal capacity to act for an individual or legal entity.

[(3) Alias - The name of a vehicle registrant reflected on the registration, different than the name of the legal owner of the vehicle.

[(4) Alias exempt registration - The issuing of license plates under an alias to a specific vehicle to be used in covert criminal investigations by a law enforcement agency.

[(5) Ambulance - A vehicle equipped with life supporting devices which transports the injured or sick.

[(6) Application for exempt registration - A request submitted to the department containing the vehicle description.

[(7) County or city civil defense agency - Agencies authorized by commissioners court order, or by city ordinance to provide protective measures and emergency relief activities in the event of hostile attack, sabotage, or natural disaster.

[(8) Department - The State Department of Highways and Public Transportation.

[(9) Director - Director, Division of Motor Vehicles, State Department of Highways and Public Transportation.

[(10) Executive administrator - The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city who by law possesses the authority to conduct covert criminal investigations.

[(11) Exempt agency - A governmental body sanctioned by statute to register motor vehicles without payment of applicable registration fees.

[(12) Exempt registration - The issuance of specially designated license plates to vehicles controlled by exempt agencies.

[(13) Fire fighting equipment - Equipment mounted on fire fighting vehicles used in the process of fighting fires, including, but not limited to, ladders, hoses, etc.

[(14) Vehicle description - Including, but not limited to, the vehicle make, year model, body style, and vehicle identification number.

[(15) Volunteer ambulance company - A nonprofit corporation chartered under the laws of this state for the purpose of providing emergency medical services.

[(16) Volunteer fire department - An association that is organized for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services.

[(c) Title requirements. Prior to or simultaneously with the issuance of exempt registration, the vehicle must be titled, unless otherwise exempted by law.]

(2) [(d)] Application for exempt registration.

(A) [(1)] Application. The application for exempt plates [registration] shall be made on a form prescribed by the department, and shall contain the following information: [must contain the]

(i) vehicle description[.];

(ii) [the] name of the exempt agency [.];

(iii) an [and the] affidavit executed by an authorized person stating that the vehicle is owned or under the control of and will be operated by the exempt agency[.];and

(iv) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high, and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet.

(B) Emergency Medical Service Vehicle.

(i) Exempt registration may be issued for a vehicle which is owned or leased by a non-profit emergency medical service provider; a municipality, county, or combination of both; or a non-profit emergency medical service provider chief or supervisor in accordance with Transportation Code §502.204.

(ii) The application for exempt registration must contain the vehicle description, the name of the emergency medical service provider, and a statement signed by an officer of the emergency medical service provider stating that the vehicle is used exclusively as an emergency response vehicle and qualifies for registration under Transportation Code, §502.204.

(iii) A copy of an emergency medical service provider license issued by the Texas Board of Health must accompany the application.

[(2) The application for exempt registration by a volunteer ambulance company must contain the vehicle description, the name of the volunteer ambulance company, and an affidavit signed by an officer of the company stating that the vehicle will be operated as an ambulance. Evidence of registration issued by the Texas Department of Health must accompany the application.]

(C) [(3)] Fire fighting vehicle. The application for exempt registration of a fire fighting vehicle owned privately or by a volunteer fire department must contain the vehicle description. The affidavit must be executed by the person who has the proper authority, and shall state [stating] either that the vehicle is privately owned and is designed and used exclusively for fire fighting, or that the vehicle is owned by a volunteer fire department and is used exclusively in the conduct of business of such department.

(D) [(4)] Disabled insignia. The application for disabled person [special identifying] registration insignia for a vehicle used by an exempt agency to regularly transport disabled persons may be used to obtain a specially designed disabled person placard [sticker at no charge] in accordance with §17.24 of this title, (relating to Disabled Person License Plates and Identification Placards).

(3) Exception. If the applicant is a law enforcement agency or is exempt from the inscription requirements under Transportation Code, §721.003 and §721.005, and the vehicle is not registered under subsection (b) of this section, then the vehicle may display license plates which are not marked with the word "exempt," and the applicant must present a certification that each vehicle listed on the application will be dedicated to law enforcement activities or that the applicant is exempt from inscription requirements under Transportation Code, §721.003 and §721.005.

(b) [(e)] Affidavit for issuance of exempt registration under an alias.

(1) Upon receipt of an affidavit for alias exempt registration, properly executed by the executive administrator of an exempt agency that is a law enforcement agency, alias exempt registration will be issued annually by the department[']s director of the division of motor vehicles to law enforcement agencies] for a vehicle used in covert criminal investigations.

(2) The affidavit for exempt registration issued under an alias for use on law enforcement vehicles shall be in a form prescribed by the director and must include the vehicle description, a sworn statement that the vehicle will be used in covert criminal investigations, and the signature of either the executive administrator or his or her designee as provided in paragraph (3) of this subsection. The Vehicle registration insignia [license plates] of any vehicles no longer used in covert criminal investigations will be surrendered immediately to the department.

(3) The executive administrator, by annually filing an authorization with the director, may appoint a staff designee to execute the affidavit. Upon the appointment of a new executive administrator or his or her designee, a new authorization must be filed.

(4) The letter of authorization must contain a sworn statement delegating the authority to sign the affidavit to a designee, the name of the designee, and the name and the signature of the executive administrator. The jurat must be signed by a notary public.

(5) The affidavit for alias exempt registration must be accompanied by a certificate of title application as cited in §17.7 of this title (relating to Alias Certificate of Title) which identifies the information required by the department to create the alias record of vehicle registration and title.

(c) [(e)] Replacement of exempt registration.

(1) If exempt registration becomes lost, stolen, or mutilated, a properly executed replacement affidavit for exempt license plates must be submitted to the department.

(2) The application for replacement license plates must contain the vehicle description, original license number, and the sworn statement that the license plates furnished for the vehicle described have been lost, stolen, or mutilated, and will not be used on any other vehicle.

(3) Any remaining plate or plates must be removed and surrendered to the department upon issuance of the replacements.

(d) Title requirements. Prior to or simultaneously with the issuance of exempt registration, the vehicle must be titled, unless otherwise exempted by law.

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

Issued in Austin, Texas, on March 1, 1996.

TRD-9602910

Robert E. Shaddock

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-8630

Chapter 23. Travel Information

Subchapter D. Memorandum of Understanding with the Texas Department of Commerce and the Texas Parks and Wildlife Department

43 TAC §§23.40-23.47

The Texas Department of Transportation proposes new §§23.40-23.47, concerning a Memorandum of Understanding (MOU) with the Texas Department of Commerce (Commerce) and the Texas Parks and Wildlife Department (TPWD).

Government Code, §481.028 requires Commerce to enter into a MOU to cooperate in program planning and budgeting with any other agency involved in economic development. This includes entering into a MOU with the department and TPWD regarding each agencies' efforts to promote tourism. Section 481.028 further directs the agencies to adopt the MOU and all revisions by rule.

Rider 33 to the department's appropriations for Fiscal Years 1996-1997 also requires that the three agencies enter into a MOU to coordinate state spending for travel and tourism promotion.

New §23.40 designates the parties to the MOU.

New §23.41 cites the statutory authority and responsibilities of the parties to promote Texas tourism.

New §23.42 sets forth the agreement of the parties to cooperate on developing and promoting Texas as a premier travel destination through marketing, magazines, TOURTEX 2000, travel information centers, photo files, shows, research/information sharing, community profiles, community education/training, tourism business assistance, 1-800 numbers, fulfillment operation, and collateral materials.

New §23.43 provides that the MOU is effective when executed and shall terminate on August 31, 1999, unless terminated earlier pursuant to §23.44 or unless extended by the mutual agreement.

New §23.44 permits each agency to terminate the MOU.

New §23.45 requires that any alteration, addition, or deletion to the MOU shall be made in writing.

New §23.46 requires each agency to adopt the MOU as a rule.

New §23.47 requires the MOU to be subject to the statutory authority of each agency, all other applicable laws, and appropriations.

Doris Howdeshell, Director, Travel and Information Division, has determined that for the first five-year period the sections are in effect there will be fiscal implications to the state as a result of enforcing or administering the sections. The department is unable to assign an exact cost to the state that will be associated with the increased cooperation in program planning and budgeting. Additional costs will be related to the scope and extent of specific departmental activities or projects as guided by a tri-agency marketing group comprised of the executive directors of the three agencies or their designees. Each agency will continue to pay for its own marketing and promotional activities. In addition, the department will continue to manage and pay for materials, postage, and labor for the fulfillment of inquiries from the general public. If this MOU results in increased public inquiries, the cost of the fulfillment operation will increase. There are no anticipated fiscal implications to local governments as a result of administering or enforcing the sections.

Ms. Howdeshell also has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Ms. Howdeshell also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased coordination, planning, and communication among the Texas Department of Transportation, the Texas Department of Commerce, and the Texas Parks and Wildlife Department concerning the promotion of travel and tourism in Texas. Reduced costs may result from the increased cooperation, planning, and communication since duplication of services can be avoided. A joint effort on tourism promotion may result in a broader panoply of services for the public. There may be some overall reduction in costs if the agencies consolidate certain operations. There will be no effect on small business, except that there may be a potential for increased revenue for vendors contracting with the agencies for products or services that will be in increased demand as a result of the proposed sections. The provisions of these sections are not applicable to individuals.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed sections. The public hearing will be held at 9:00 a.m. on April 2, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and

same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing 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 Eloise Lundgren, Director of the Public Information office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed amendments may be submitted to Doris Howdeshell, Director of Travel and Information Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be at 5:00 p.m. on April 12, 1996.

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation and Texas Civil Statutes; Government Code, §481.028, which directs that the MOU be adopted by rule; and Texas Civil Statutes, Article 6144e, which provide the Texas Transportation Commission with the authority to publish pamphlets, bulletins, maps, and documents to serve the motoring public and road users and to maintain and operate Travel Information Bureaus at the principal gateways to Texas to provide road information, travel guidance, and various descriptive materials designed to aid and assist the traveling public and stimulate travel to and within Texas.

No statutes, articles, or codes are affected by these proposed new sections.

§23.40. Parties.

Pursuant to Government Code, §481.028(5), this memorandum of understanding (MOU) is made and entered into by and between the Texas Department of Commerce (Commerce), the Texas Department of Transportation (TxDOT), and the Texas Parks and Wildlife Department (TPWD) to formalize their agreement to cooperate in marketing and promoting Texas as a travel destination and provide services to travelers.

§23.41. Recitals.

(a) Commerce, TxDOT, and TPWD are the three major state agencies responsible for promoting travel and tourism in Texas.

(b) Government Code, §481.172 sets forth the responsibilities of Commerce in promoting Texas as a tourist destination. Government Code, §481.172(5) and (6) direct that Commerce cooperate with TxDOT and TPWD in tourism matters.

(c) Government Code, §481.022(b)(1) requires Commerce to promote Texas as an attraction for tourism.

(d) Texas Civil Statutes, Article 6144(e) authorizes TxDOT to publish such pamphlets, bulletins, maps and documents as it deems necessary to serve the motoring public and road users. Texas Civil Statutes, Article 6144(e) also requires TxDOT to maintain and operate Travel Information Bureaus at the principal gateways to Texas to provide road information, travel guidance and various descriptive

materials designed to aid and assist the traveling public and to stimulate travel to and within Texas.

(e) Parks and Wildlife Code, §11.033(2), §11.054(a)(1), 13.017(a) and 31.002 authorize TPWD to expend certain funds and provide certain information to the public relating to wildlife management, nongame and endangered species conservation, public parks, and water safety.

§§23.42. *Undertakings by Each Party.*

The parties agree to cooperate on developing and promoting Texas as a premier travel destination in 13 subject areas. The subject areas and each agency's responsibilities are as follows.

(1) Marketing.

(A) Commerce, TxDOT and TPWD will form a tri-agency marketing group that will develop guidelines and policies to encourage the use of a unified travel and tourism marketing theme for the state. The current theme is "Texas. It's Like a Whole Other Country." The tri-agency marketing group will be comprised of the executive directors of the three agencies or their designees. Other staff members from the three agencies may be brought into the meetings of the tri-agency marketing group to provide expertise on certain issues. These other staff members, however, will not have decision-making authority. The tri-agency marketing group will meet quarterly. Decisions of the tri-agency marketing group will be made by consensus.

(B) The mission of the tri-agency marketing group will be to guide and coordinate the statewide travel-related advertisements, promotions, media relations, and collateral pieces of the three agencies. The tri-agency marketing group will advise and make recommendations on the appropriate tone and message for the marketing efforts of the three agencies. Each agency will pay for its own marketing and promotional activities. Each agency will be responsible for ensuring that its statewide marketing, promotional, and informational materials use the consistent message developed and adhere to the guidelines established by the tri-agency marketing group.

(C) Commerce owns the trademark to "Texas. It's Like a Whole Other Country." Commerce will develop a licensing agreement with TxDOT and TPWD to allow them to use this trademarked theme.

(2) Magazines. The magazine staffs of Texas Highways and Texas Parks & Wildlife and the media staff from Commerce will meet at least twice a year to address opportunities that promise to enhance Texas travel and tourism through these two magazines. Information of mutual interest and opportunities for sharing resources will be included in these meetings.

(3) TOURTEX 2000. TxDOT serves as the lead agency in developing and managing the TOURTEX 2000 electronic information system. TxDOT will operate and be responsible for the financial support of TOURTEX 2000. TxDOT will solicit partnerships for the system with local chambers of commerce, convention and visitors bureaus, or city tourism offices. Commerce will assist TxDOT in the development of a trade component for the system so that detailed information for tour operators and travel agents may be provided electronically. All three agencies agree to investigate additional methods of marketing and other potential outlets for the travel information.

(4) Travel information centers. TxDOT will continue to operate and fund TxDOT's existing travel information centers.

TxDOT will continue providing collateral materials and advice to city information centers in an effort to expand state traveler information throughout Texas. TPWD will consider using facilities at state parks as distribution points for travel information. Commerce and TPWD will support the development of the travel information centers and may provide information to them when appropriate.

(5) Photo files. Commerce, TxDOT, and TPWD will investigate the feasibility of establishing a single photo library that will house a majority of images owned by the three agencies. This will be an ADA compatible, "one stop shop" for public use. The photo library may be housed in one of the agency's existing libraries or in a separate location. The facility housing this collection should meet ANSI (American National Standards Institute) standards for storage and preservation of photographic materials. Each agency may retain some images specific to its marketing campaigns, magazines and promotions. In addition, each agency will retain its own historical or documentary photos pertaining to its mission and history.

(6) Shows.

(A) The tri-agency marketing group will develop a comprehensive marketing plan for the three agencies' participation in various consumer and travel trade shows/initiatives. These shows may be in-state, out-of-state, or international. The tri-agency marketing group will decide upon the show schedule prior to fiscal year budget planning deadlines. Each of the three agencies may play a role in staffing the shows, depending upon each agency's focus and budget restrictions. Each agency will be responsible for its participation costs at such trade shows.

(B) The agencies will use a unified travel and tourism marketing theme in a manner appropriate for each show. Texas ancillary products and magazines may be promoted at these shows.

(C) Commerce will be the prime Texas representative at out-of-state and international trade shows. TxDOT and TPWD may participate at other shows with collateral materials and staff where appropriate.

(7) Research/information sharing.

(A) The three agencies will meet quarterly to discuss research work plans and projects to ensure that the state's research is comprehensive and appropriate to guide the marketing and promotional activities of the three agencies.

(B) Commerce will take the lead in conducting and gathering Texas tourism research. TxDOT and TPWD may conduct other research independently. Each agency will pay for its own research or share costs as may be identified in the research work plans. The three agencies will distribute their new research publications, as they are completed and become available, to the other agencies.

(8) Community profiles. Commerce maintains a computer database containing community profiles for use by communities seeking business prospects or funding from public and private sources. Commerce will continue to develop this system and will provide TxDOT and TPWD access to it.

(9) Community education/training.

(A) Commerce will take the lead in organizing community training and education for tourism development. TxDOT and TPWD will assist in the organization and sponsorship of these community training sessions, together with other state, regional and

local organizations. Training sessions may include nature tourism, hospitality training, development and funding techniques, and the integration of existing training offered by TxDOT to its travel counselors.

(B) In addition, Commerce will assist communities through development booklets, tip sheets, and basic counseling/assistance over the telephone. TPWD will offer nature tourism outreach and assistance through various means.

(10) Tourism business assistance. Commerce will play a lead role in providing information and contacts to companies and individuals seeking to develop tourism-related properties and attractions. TxDOT and TPWD may provide expertise in this area when needed.

(11) 1-800 numbers. Commerce, TxDOT, and TPWD each maintain toll-free telephone numbers for different purposes (advertising fulfillment, travel counseling, and weather conditions, etc.). The three agencies will investigate the feasibility of combining some of these lines. In addition, the three agencies will form a team of individuals from the entities involved in the operation of the state's main 1-800 number (1-800-8888-TEX). This main 1-800 line handles inquiries to the state's tourism advertising campaign. This team will work to ensure the efficient operation of the 1-800 number and coordinate activities between the 1-800 number and fulfillment operations.

(12) Fulfillment operation.

(A) Fulfillment refers to the act of responding to a request for consumer travel information. TxDOT serves as the lead agency in travel literature fulfillment. TxDOT will manage the state's main fulfillment operation, providing information to inquiries generated by the state's advertising and other marketing efforts. These inquiries may be from phone calls, coupons, tip-in cards, or other means. Commerce will provide TxDOT with quality inquiries from tip-in cards and the main 1-800 number line in a timely fashion for TxDOT to fulfill.

(B) The three agencies agree that the level of the state's advertising program has budget implications for each of the agencies. Because the volume of travel literature requests directly drives TxDOT's budget expenditure in production and fulfillment operations, the three agencies agree to make the best possible projections of annual fulfillments so that accurate budgets may be formulated.

(C) TxDOT will manage and pay for materials, postage, and labor for the fulfillment of inquiries from the general public. Commerce will manage and pay for postage and labor to fulfill inquiries generated from travel trade marketing efforts. TxDOT will pay only for TxDOT-produced travel literature for travel trade inquiries.

(D) As the lead fulfillment agency, TxDOT is responsible for the final accuracy and management of the master data file. Until all daily file corrections have been made, none of the three agencies will use the data for statistical or reporting purposes. Only correct and complete data entries will be loaded onto the TRAX database.

(E) This fulfillment operation agreement does not provide for any magazine or ancillary products fulfillment operations.

(13) Collateral Materials.

(A) TxDOT will provide a Travel Literature Unit to produce most travel-related and tourism-related publications required by Commerce, TxDOT and TPWD. This unit will be composed of TxDOT employees who will work directly with individuals from the three agencies to ensure that the pieces meet the needs of their intended audiences, are completed in a timely manner, and fall within budget.

(B) The three agencies agree that TxDOT's Travel Literature Unit must be kept informed about budgeted publications of all three agencies early enough to incorporate resource needs. A means of timely and accurate communication of this information will be established by the tri-agency marketing group.

(C) Examples of tasks performed by the TxDOT unit include writing specifications for contracting outside services, setting deadlines, editing, designing, and overseeing quality control of the publications. Advertising sales will remain with each respective agency.

(D) The tri-agency marketing group will provide general guidance towards maintaining consistency among all Texas travel publications, while allowing for differentiated attributes necessary for individual pieces to meet their intended purposes. The tri-agency marketing group will recommend appropriate methods to ensure equitable agency contributions to TxDOT of the costs of shared resources and indirect costs of each agency's own publications. The tri-agency group also will resolve any problems concerning the application of available resources and completion dates for various publication projects.

(E) Each agency reserves the right to produce its own collateral materials when desired or appropriate.

§23.43. *Term.*

This MOU, which is effective upon execution by representatives of each agency, shall terminate on August 31, 1999 unless terminated earlier pursuant to §23.44 of this title (relating to Termination) or unless extended by the mutual agreement of the parties.

§23.44. *Termination.*

Any of the three agencies shall have the right, in such agency's sole discretion, and at such agency's sole option, to terminate and bring to an end all performances to be rendered under this agreement, such termination to be effective 60 days after receipt of written notification by the other parties.

§23.45. *Amendments and Changes.*

Any alteration, addition, or deletion to the terms of this agreement shall be by amendment hereto in writing and executed by all three parties, except as may be expressly provided for in some manner by the terms of this agreement.

§23.46. *Adoption As Rule.*

Each agency shall adopt this MOU as a rule in compliance with Government Code, §481.028.

§23.47. *Compliance with Laws and Budgetary Constraints.*

The obligations of the parties in carrying out the provisions of this MOU are subject to the statutory authority of each agency, all other applicable laws, and the appropriations available to each agency to accomplish the purposes set forth herein.

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

Issued in Austin, Texas, on March 1, 1996.

TRD-9602911

Robert L. Shaddock
General Counsel

Texas Department of Transportation

Earliest possible date of adoption: April 12, 1996

For further information, please call: (512) 463-8630



Name: Heather Hester
Grade: 11
School: Rockwall High School, Rockwall ISD



February - December 1996 Publication Schedule

The following is the February-December 1996 Publication Schedule for the *Texas Register*. Listed below are the deadline dates for these issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Monday and Wednesday of the previous week, and deadlines for a Friday edition are Wednesday of the previous week and Monday of the week of publication. No issues will be published on February 23, March 15, November 8, December 3, and December 31. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

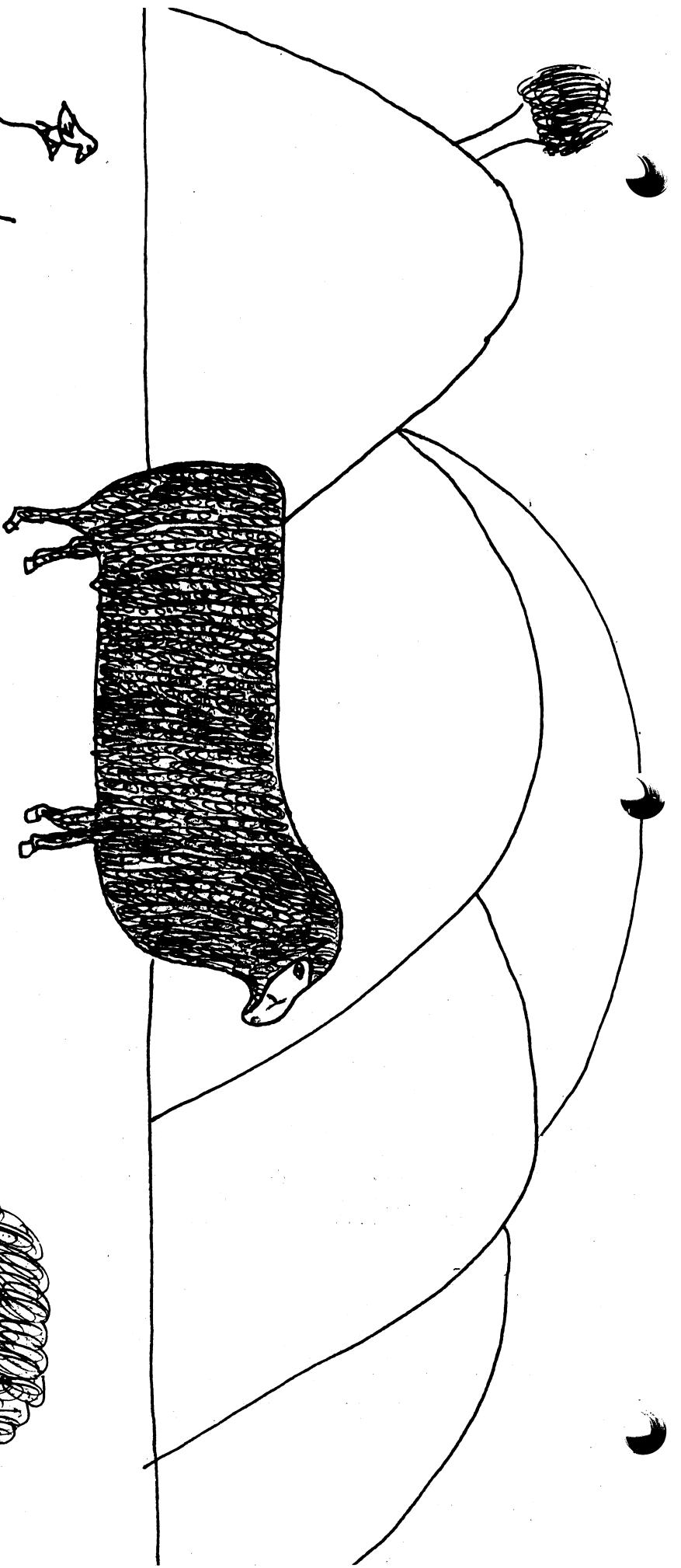
FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
9 Friday, February 2	Wednesday, January 24	Monday, January 29	Monday, January 29
10 Tuesday, February 6	Monday, January 29	Wednesday, January 31	Wednesday, January 31
11 Friday, February 9	Wednesday, January 31	Monday, February 5	Monday, February 5
12 Tuesday, February 13	Monday, February 5	Wednesday, February 7	Wednesday, February 7
13 Friday, February 16	Wednesday, February 7	Monday, February 12	Monday, February 12
14 Tuesday, February 20	Monday, February 12	Wednesday, February 14	Wednesday, February 14
Friday, February 23	<i>No Issue Published</i>		
15 Tuesday, February 27	*Tuesday, February 20	Wednesday, February 21	Wednesday, February 21
16 Friday, March 1	Wednesday, February 21	Monday, February 26	Monday, February 26
17 Tuesday, March 5	Monday, February 26	Wednesday, February 28	Wednesday, February 28
18 Friday, March 8	Wednesday, February 28	Monday, March 4	Monday, March 4
19 Tuesday, March 12	Monday, March 4	Wednesday, March 6	Wednesday, March 6
Friday, March 15	<i>No Issue Published</i>		
20 Tuesday, March 19	Monday, March 11	Wednesday, March 13	Wednesday, March 13
21 Friday, March 22	Wednesday, March 13	Monday, March 18	Monday, March 18

22 Tuesday, March 26	Monday, March 18	Wednesday, March 20	Wednesday, March 20
23 Friday, March 29	Wednesday, March 20	Monday, March 25	Monday, March 25
24 Tuesday, April 2	Monday, March 25	Wednesday, March 27	Wednesday, March 27
25 Friday, April 5	Wednesday, March 27	Monday, April 1	Monday, April 1
Tuesday, April 9	<i>First Quarterly Index</i>		
26 Friday, April 12	Wednesday, April 3	Monday, April 8	Monday, April 8
27 Tuesday, April 16	Monday, April 8	Wednesday, April 10	Wednesday, April 10
28 Friday, April 19	Wednesday, April 10	Monday, April 15	Monday, April 15
29 Tuesday, April 23	Monday, April 15	Wednesday, April 17	Wednesday, April 17
30 Friday, April 26	Wednesday, April 17	Monday, April 22	Monday, April 22
31 Tuesday, April 30	Monday, April 22	Wednesday, April 24	Wednesday, April 24
32 Friday, May 3	Wednesday, April 24	Monday, April 29	Monday, April 29
33 Tuesday, May 7	Monday, April 29	Wednesday, May 1	Wednesday, May 1
34 Friday, May 10	Wednesday, May 1	Monday, May 6	Monday, May 6
35 Tuesday, May 14	Monday, May 6	Wednesday, May 8	Wednesday, May 8
36 Friday, May 17	Wednesday, May 8	Monday, May 13	Monday, May 13
37 Tuesday, May 21	Monday, May 13	Wednesday, May 15	Wednesday, May 15
38 Friday, May 24	Wednesday, May 15	Monday, May 20	Monday, May 20
39 Tuesday, May 28	Monday, May 20	Wednesday, May 22	Wednesday, May 22
40 Friday, May 31	Wednesday, May 22	*Friday, May 24	*Friday, May 24
41 Tuesday, June 4	*Tuesday, May 28	Wednesday, May 29	Wednesday, May 29
42 Friday, June 7	Wednesday, May 29	Monday, June 3	Monday, June 3
43 Tuesday, June 11	Monday, June 3	Wednesday, June 5	Wednesday, June 5
44 Friday, June 14	Wednesday, June 5	Monday, June 10	Monday, June 10
45 Tuesday, June 18	Monday, June 10	Wednesday, June 12	Wednesday, June 12
46 Friday, June 21	Wednesday, June 12	Monday, June 17	Monday, June 17

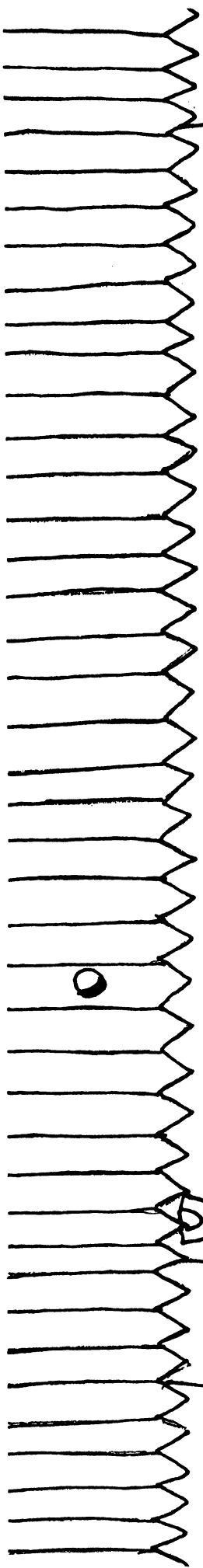
47 Tuesday, June 25	Monday, June 17	Wednesday, June 19	Wednesday, June 19
48 Friday, June 28	Monday, June 19	Wednesday, June 24	Wednesday, June 24
49 Tuesday, July 2	Wednesday, June 24	Wednesday, June 26	Wednesday, June 26
50 Friday, July 5	Wednesday, June 26	Monday, July 1	Monday, July 1
51 Tuesday, July 9	Monday, July 1	Wednesday, July 3	Wednesday, July 3
Friday, July 12	<i>2nd Quarterly Index</i>		
52 Tuesday, July 16	Monday, July 8	Wednesday, July 10	Wednesday, July 10
53 Friday, July 19	Wednesday, July 10	Monday, July 15	Monday, July 15
54 Tuesday, July 23	Monday, July 15	Wednesday, July 17	Wednesday, July 17
55 Friday, July 26	Wednesday, July 17	Monday, July 22	Monday, July 22
56 Tuesday, July 30	Monday, July 22	Wednesday, July 24	Wednesday, July 24
57 Friday, August 2	Wednesday, July 24	Monday, July 29	Monday, July 29
58 Tuesday, August 6	Monday, July 29	Wednesday, July 31	Wednesday, July 31
59 Friday, August 9	Wednesday, July 31	Monday, August 5	Monday, August 5
60 Tuesday, August 13	Monday, August 5	Wednesday, August 7	Wednesday, August 7
61 Friday, August 16	Wednesday, August 7	Monday, August 12	Monday, August 12
62 Tuesday, August 20	Monday, August 12	Wednesday, August 14	Wednesday, August 14
63 Friday, August 23	Wednesday, August 14	Monday, August 19	Monday, August 19
64 Tuesday, August 27	Monday, August 19	Wednesday, August 21	Wednesday, August 21
65 Friday, August 30	Wednesday, August 21	Monday, August 26	Monday, August 26
66 Tuesday, September 3	Monday, August 26	Wednesday, August 28	Wednesday, August 28
67 Friday, September 6	Wednesday, August 28	*Friday, August 30	*Friday, August 30
68 Tuesday, September 10	*Tuesday, September 3	Wednesday, September 4	Wednesday, September 4
69 Friday, September 13	Wednesday, September 4	Monday, September 9	Monday, September 9
70 Tuesday, September 17	Monday, September 9	Wednesday, September 11	Wednesday, September 11
71 Friday, September 20	Wednesday, September 11	Monday, September 16	Monday, September 16

72 Tuesday, September 24	Monday, September 16	Wednesday, September 18	Wednesday, September 18
73 Friday, September 27	Wednesday, September 18	Monday, September 23	Monday, September 23
74 Tuesday, October 1	Monday, September 23	Wednesday, September 25	Wednesday, September 25
75 Friday, October 4	Wednesday, September 25	Monday, September 30	Monday, September 30
Tuesday, October 8	<i>Third Quarterly Index</i>		
76 Friday, October 11	Wednesday, October 2	Monday, October 7	Monday, October 7
77 Tuesday, October 15	Monday, October 7	Wednesday, October 9	Wednesday, October 9
78 Friday, October 18	Wednesday, October 9	Monday, October 14	Monday, October 14
79 Tuesday, October 22	Monday, October 14	Wednesday, October 16	Wednesday, October 16
80 Friday, October 25	Wednesday, October 16	Monday, October 21	Monday, October 21
81 Tuesday, October 29	Monday, October 21	Wednesday, October 23	Wednesday, October 23
82 Friday, November 1	Wednesday, October 23	Monday, October 28	Monday, October 28
83 Tuesday, November 5	Monday, October 28	Wednesday, October 30	Wednesday, October 30
Friday, November 8	<i>No Issue Published</i>		
84 Tuesday, November 12	Monday, November 4	Wednesday, November 6	Wednesday, November 6
85 Friday, November 15	Wednesday, November 6	*Friday, November 8	*Friday, November 8
86 Tuesday, November 19	*Tuesday, November 12	Wednesday, November 13	Wednesday, November 13
87 Friday, November 22	Wednesday, November 13	Monday, November 18	Monday, November 18
88 Tuesday, November 26	Monday, November 18	Wednesday, November 20	Wednesday, November 20
89 Friday, November 29	Wednesday, November 20	Monday, November 25	Monday, November 25
Tuesday, December 3	<i>No Issue Published</i>		
90 Friday, December 6	Wednesday, November 27	Monday, December 2	Monday, December 2
91 Tuesday, December 10	Monday, December 2	Wednesday, December 4	Wednesday, December 4
92 Friday, December 13	Wednesday, December 4	Monday, December 9	Monday, December 9
93 Tuesday, December 17	Monday, December 9	Wednesday, December 11	Wednesday, December 11
94 Friday, December 20	Wednesday, December 11	Monday, December 16	Monday, December 16

95 Tuesday, December 24	Monday, December 16	Wednesday, December 18	Wednesday, December 18
96 Friday, December 27	Wednesday, December 18	Monday, December 23	Monday, December 23
Tuesday, December 31	<i>No Issue Published</i>		



Name: Claudia Chavez
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How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

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

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

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

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 21 (1996) is cited as follows: 21 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 "21 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 21 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.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in a plain text version as well as a .pdf (portable document format) version through the Internet. In addition to the Internet version, the *Texas Register* is available online through a dialup bulletin board and as ASCII files on diskette. For subscription information, see the back cover or call the *Texas Register* at (800) 226-7199.

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, publishes on an annual basis.

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.

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 26, April 9, July 12, and October 8, 1996). 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 or (800) 226-7199.

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

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