Texas Register

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Texas Register

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Information Available: The nine 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

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

Proposed Sections - sections proposed for adoption

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings - notices of open meetings

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

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative 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 a 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 17 (1992) is cited as follows: 17 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: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 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, Austin. Material can be found using *Texas Register* indexes, the *Texas Administration Code,* section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

How to Cite: Under the TAC scheme, each agency 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 rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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Texas Register Publications

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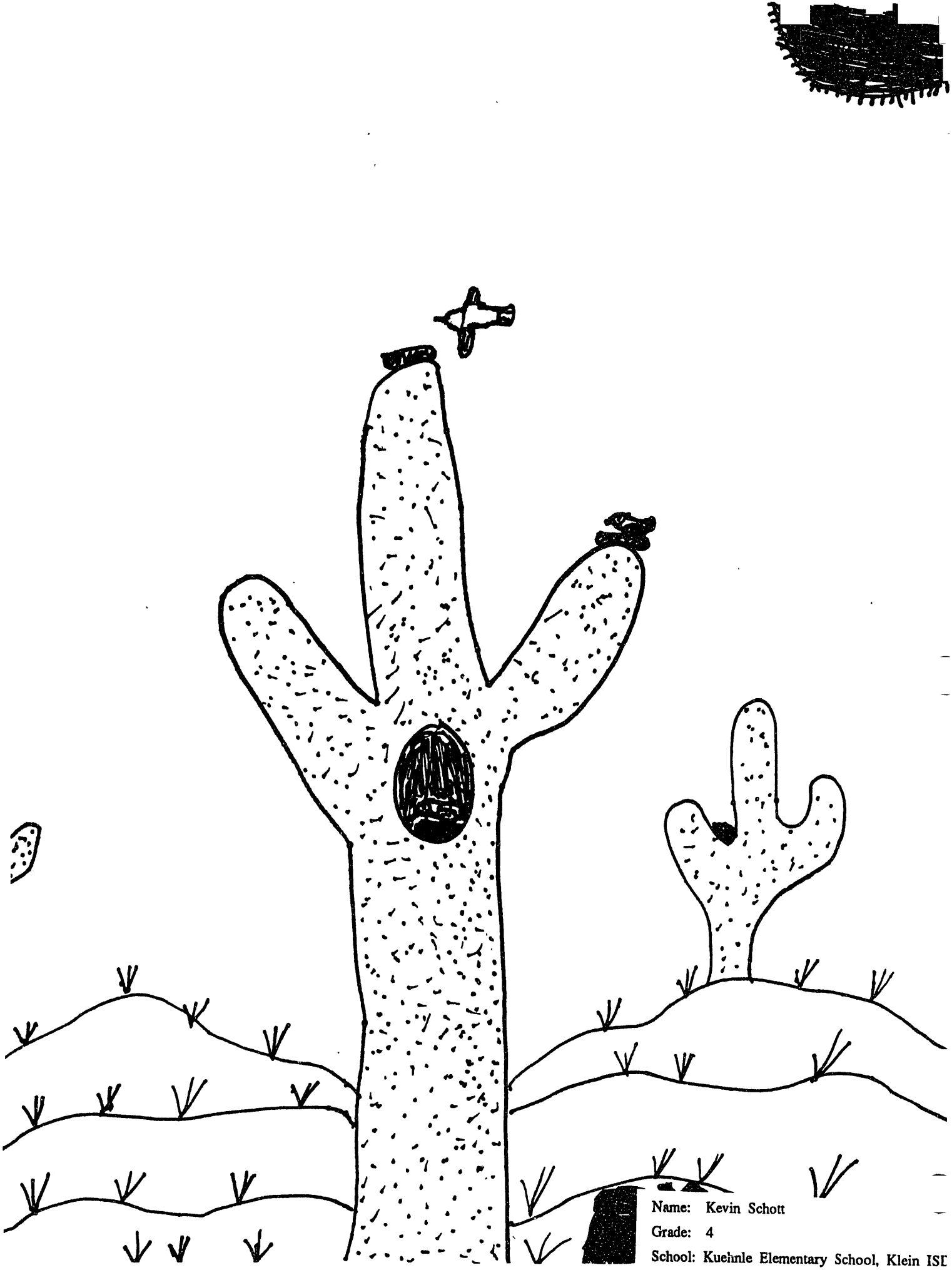
In Addition Sections



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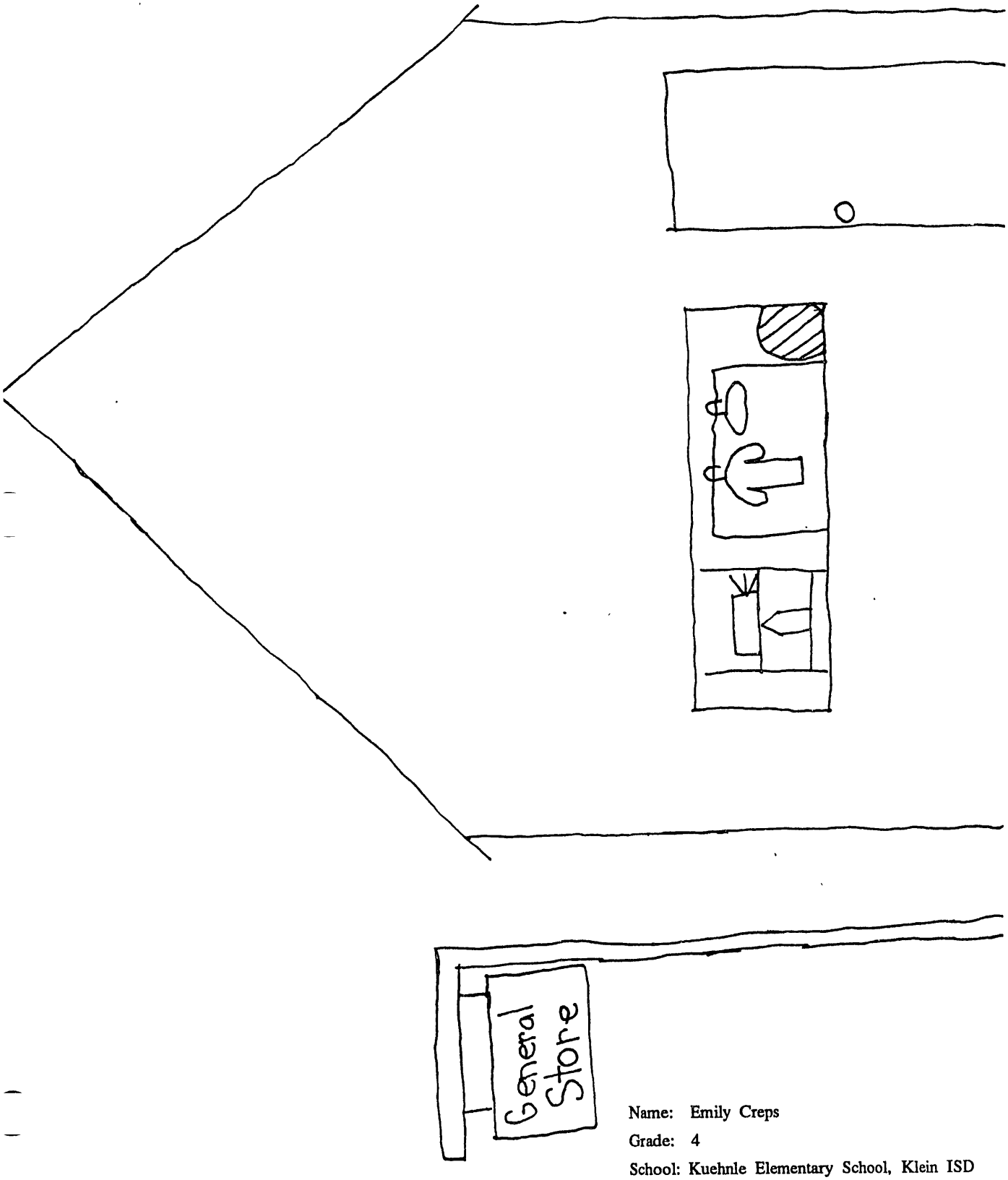

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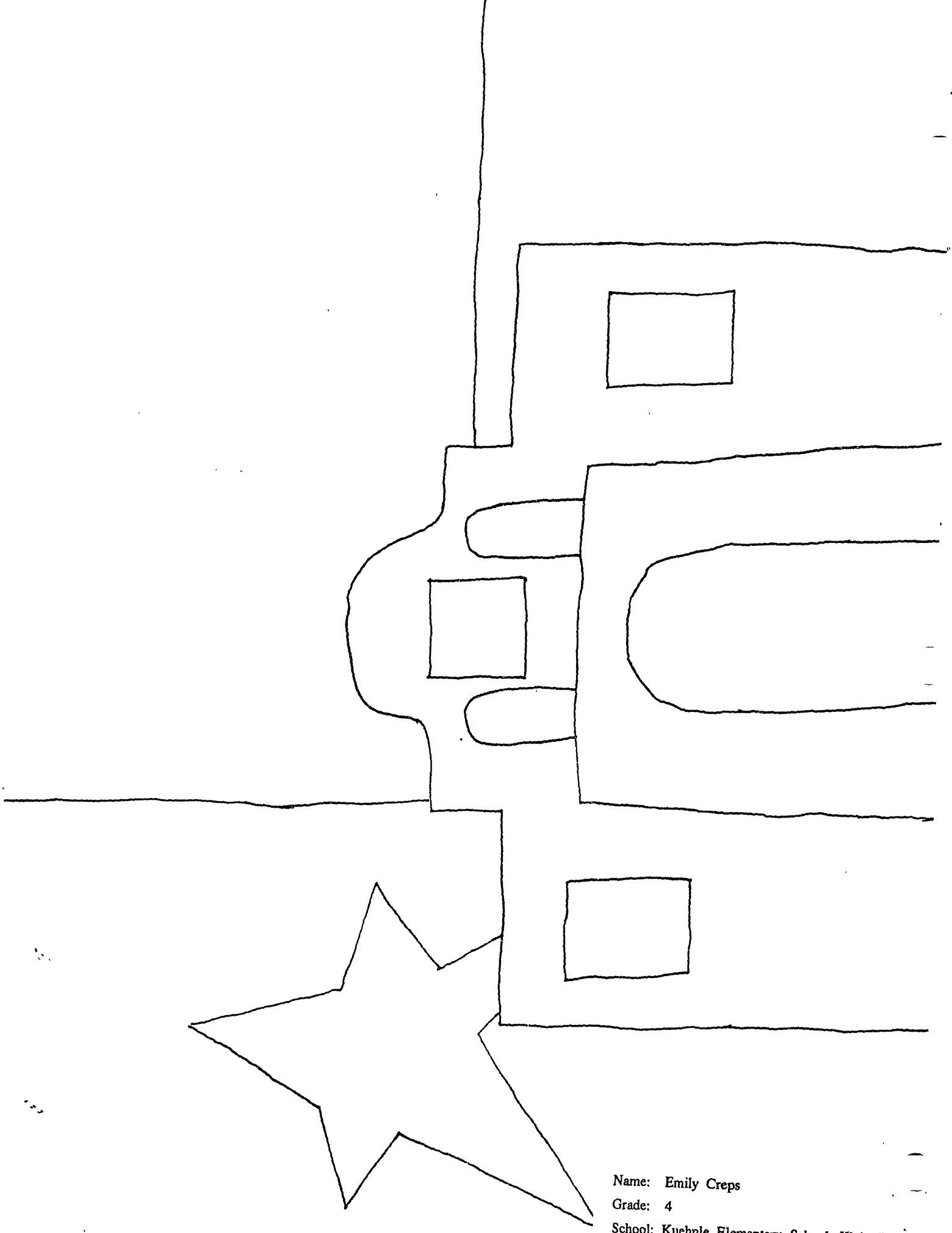

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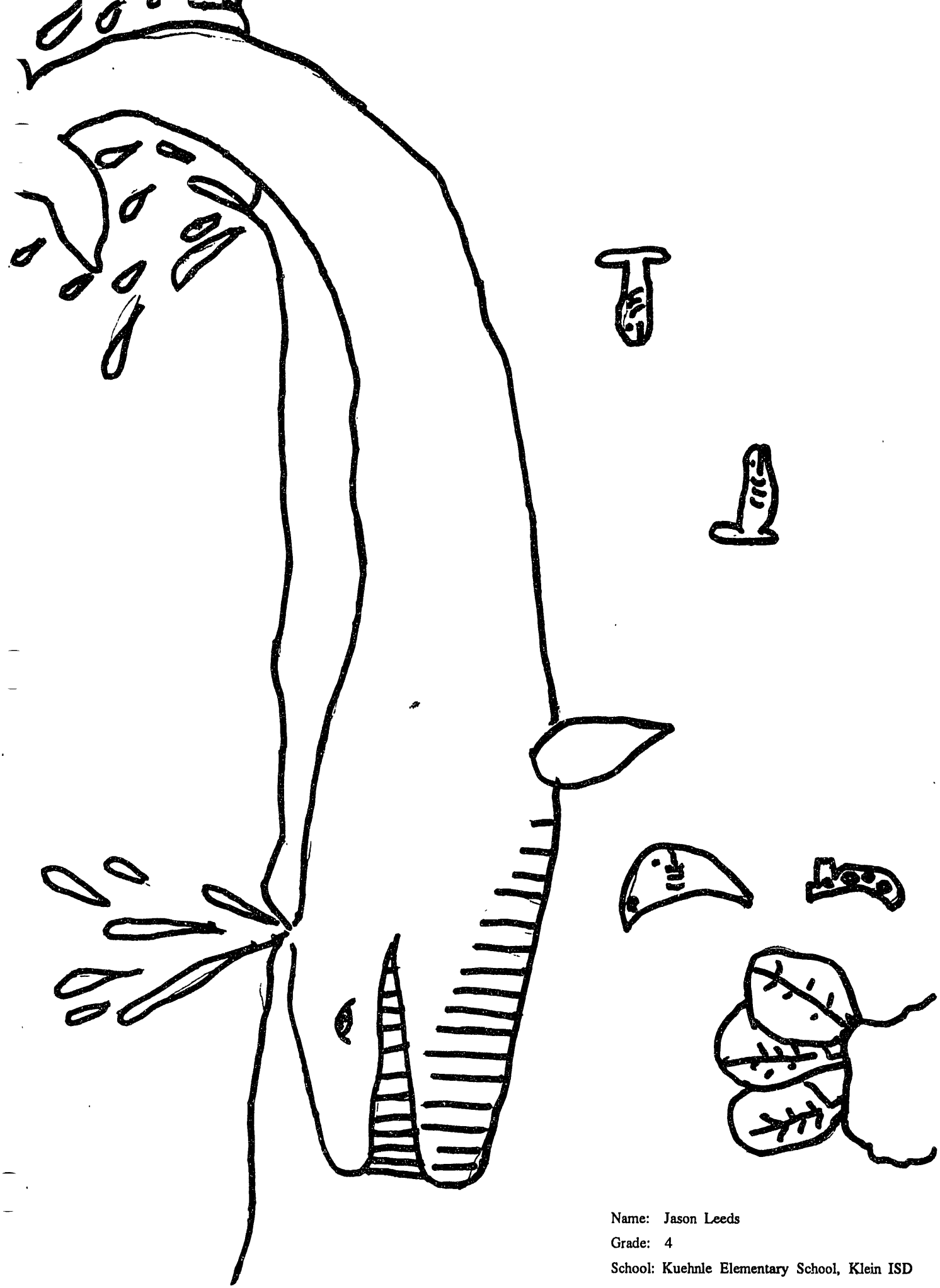

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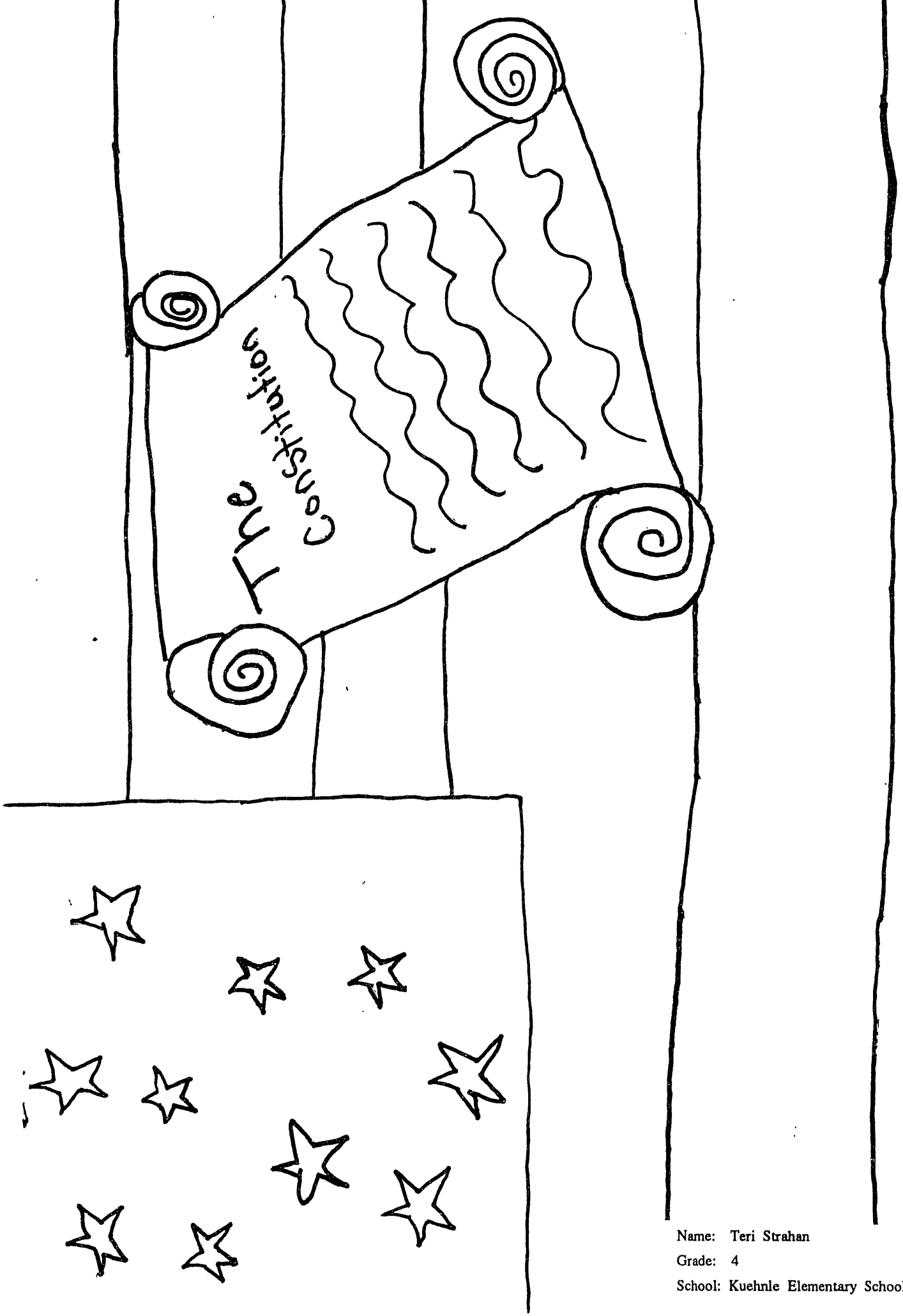

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Emergency Sections

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

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

TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 213. Practice Procedure

• **22 TAC §213.20**

The Board of Nurse Examiners is renewing the effectiveness of the emergency adoption of the amended §213.20, for a 60-day period effective February 4, 1992. The text of the amended §213.20 was originally published in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5742).

Issued in Austin, Texas, on February 4, 1992.

TRD-9201690 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: February 4, 1992

Expiration date: April 7, 1992

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

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 9. Property Tax Administration

• **34 TAC §9.401**

The Comptroller of Public Accounts adopts on an emergency basis new §9. 401, concerning the application form for a charitable organization property tax exemption. The new emergency section is necessary because the 72nd Legislature, 1991, First Called Session, added a new function to the type of charitable activities that may qualify for the exemption. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new emergency section establishes requirements for the contents of a charitable organization property tax exemption application form and adopts by reference a model application form.

The new section is adopted on an emergency basis under the Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of property tax exemption applications and contents of the notice of exemption requirements.

§9.401. Exemption Applications for Charitable Organizations.

(a) All appraisal offices shall prepare applications for charitable organization exemptions and make them available to the public.

(b) Each application form shall provide spaces for the applicant to indicate the following information:

(1) the name and address of the person who completes the application form;

(2) the capacity in which the person who completes the form serves the organization;

(3) the name of the organization and its mailing address;

(4) whether the organization is operated by an individual, an association, a corporation, a foundation, or a trust;

(5) the organization is a corporation that does not provide a function specified in the Tax Code, §11.18(d)(1),(2),(8),(9),(12), or (16), whether the corporation is a nonprofit corporation;

(6) the real and personal property upon which the exemption is claimed;

(7) whether the organization owns the property on which the exemption is claimed;

(8) for each parcel of real property, the legal description of the property, the primary use of the property, whether the property is reasonably necessary in performing the organization's functions, any other uses of the property, and all parties other than the applicant organization which have used the property in the year preceding the application;

(9) for each item of personal property, the nature and location of the item;

(10) whether the organization is organized exclusively to perform religious, charitable, scientific, literary, and educational functions;

(11) whether the organization is organized exclusively to engage in and does exclusively engage in one or more of the functions listed in the Tax Code, §11.18(d)(1)-(17), and which functions the organization engages in;

(12) all financial transactions for the preceding year which involved sale of an interest in the organization for gain, transfers of property between the organization and persons having an interest in the organization, and loans between the organization and persons having an interest in the organization;

(13) whether the organization operates, or its charter permits it to operate, in a manner which permits the accrual of profits or distribution of any form of private gain; and

(14) where the applicant indicates that it engages in functions listed in the Tax Code, §11.18(d)(1)-(17), the following additional information:

(A) whether the organization is governed by a volunteer board of directors;

(B) whether the organization is affiliated with a state or national organization that authorizes, approves, or sanctions volunteer charitable fund raising organizations;

(C) whether the organization qualifies for exemption under the Internal Revenue Code, §501(c)(3), as amended; and

(D) whether the organization distributes contributions to at least five other associations, each of which is governed by a volunteer board of directors, qualifies for exemption under the Internal Revenue Code, §501(c) (3), receives a majority of its annual revenues from gifts and government grants, and provides services without regard to the recipient's ability to pay.

(c) The appraisal office shall indicate on the application form that the applicant must attach a copy of the charter, bylaws, or other documents adopted by the organization to govern its affairs.

(d) With respect to the documents described in subsection (c) of this section,

the application shall contain spaces for the applicant to indicate:

(1) whether the documents pledge the organization's assets for use in performing its charitable functions and the page and paragraph number of such language;

(2) whether the documents require that upon dissolution of the organization that the organization's assets be transferred to a similar organization which is qualified for exemption under the Internal Revenue Code, §501(c)(3), as amended, or to the State of Texas;

(3) whether Internal Revenue Service regulations require that the documents provide for transfer of the organization's assets upon dissolution first to its members and then immediately from its members to a similar organization qualified for exemption under the Internal Revenue Code, §501(c)(3), as amended, or to the State of Texas.

(e) All applications shall require the applicant to sign and date the application and indicate in what capacity he represents the organization.

(f) All applications shall include the following affirmation, above the signature and date spaces and below the spaces for information required by subsections (b)-(d) of this section: "By signing this application, you designate the property described in the attached schedules A & B as the property against which the exemption for charitable organizations may be claimed in this appraisal district. You certify that this information is true and correct to the best of your knowledge and belief."

(g) All applications shall include the following statement in boldface type beneath the space for the signature and date: Under the Texas Penal Code, §37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine of up to $2,000, or a prison term of two to 10 years and a fine of up to $5,000.

(h) If the chief appraiser routinely requires supporting documentation for any charitable exemption, the appraisal office shall note the types of documentation required on the application.

(i) All applications shall contain the following statement: "This application covers property you owned on January 1 of this year. You must file the completed application between January 1 and May 1 of this year. Be sure to attach any additional documents requested. If the chief appraiser grants the exemption, you do not have to reapply every year. You must reapply if the chief appraiser requires you to do so, or if you want the exemption to apply to property not listed in this application. However, you have a duty to notify the chief appraiser in writing if and when your right to this exemption ends."

(j) The Comptroller of Public Accounts adopts by reference Form 11.18, Application for Charitable Organization Property Tax Exemption. Copies of the form are available for public inspection at the Office of the Secretary of State, Texas Register Section, or may be obtained from the Comptroller of Public Accounts, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201626 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 3, 1992

Expiration date: June 2, 1992

For further information, please call: (512) 463-4028

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• 34 TAC §9.402

The Comptroller of Public Accounts adopts on an emergency basis new §9. 402, concerning the application forms for special use appraisals. The new emergency section is necessary because the 72nd Legislature, 1991, First Called Session, added a new use to the types of uses that qualify as an agricultural use of land. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new emergency section adopts by reference a model application form for each available special use appraisal.

The new section is adopted on an emergency basis under Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of property tax exemption applications and contents of the notice of exemption requirements.

§9.402. Special Use Application Forms.

(a) In applying for special use valuation under the Tax Code, Chapter 23, the applicant shall use a form provided by the appraisal office. The appraisal office shall use the model form adopted by the Comptroller of Public Accounts which is appropriate to the special use type, or use a form containing information which is in substantial compliance with the model form adopted by the board.

(b) The following model application forms are adopted by the Comptroller of Public Accounts by reference. Copies of these forms are available for inspection at the office of the *Texas Register* or can be obtained from the Comptroller of Public Accounts, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

(1) 1-d Appraisal Application (1-d Agricultural Land), Special Use Form 23.43;

(2) 1-d-1 Appraisal Application (1-d-1 Agricultural Land), Special Use Form 23.54;

(3) open-space land application (1-d-1 timberland), Special Use Application Form 23.75;

(4) 1-d-1 Ecological Laboratory Appraisal Application, Special Use Application Form 23.51;

(5) application for recreational, park, and scenic land, Special Use Application Form 23.84; and

(6) application for public access airport property, Special Use Application Form 23.94.

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Chief, General Law Section
Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

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• 34 TAC §9.403

The Comptroller of Public Accounts adopts on an emergency basis new §9. 403, concerning application forms for miscellaneous property tax exemption. The new emergency section is necessary because the 72nd Legislature, 1991, First Called Session, created three new property tax exemptions. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new emergency section establishes general requirements for miscellaneous property tax exemption forms and adopts 11 property tax exemption application forms by reference.

The new section is adopted on an emergency basis under Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of each exemption application exemption form and the notice of exemption application requirements.

§9.403. Miscellaneous Exemptions.

(a) Each appraisal office shall prepare applications for the exemptions provided by the Tax Code, §§11.111, 11.17, 11.22, 11.23(a)-(k), 11.24, 11.27, 11.271, 11.28, 11.29, and 11.30, and make copies of each form available to the public.

(b) Each application must require the applicant to provide all information required by the board's model form. Each

application must substantially conform in form to the appropriate model form. The application may require information in addition to that required by the model form.

(c) Where the application contains or requires other information, the information required by this section shall be printed on the front of the form.

(d) If the chief appraiser routinely requires supporting documentation for the exemption, the appraisal office shall note on the application the types of documentation required.

(e) Each application shall require the applicant to sign and date the application.

(f) Each application shall include the following statement in boldface type immediately above or below the space for the signature and date. "Under Texas Penal Code, §37.10, if you make a false statement on this application, you could receive a jail term of up to one year an a fine of up to $2,000, or a prison term of two to 10 years and a fine of up to $5,000."

(g) An application for the exemption provided by the Tax Code, §11.22, for disabled veterans and their survivors, and §11.30, for a nonprofit water supply or wastewater services corporation, shall state that the exemption need not be applied for annually, that the applicant has a duty to notify the chief appraiser in writing before the next May 1 following the date the applicant's entitlement to an exemption ends, and that the chief appraiser may required an applicant to reapply be delivering written notice to the applicant with a new application.

(h) The following model forms are adopted by reference:

(1) application for cemetery exemption (Form 11.17);

(2) application for disabled veteran's or survivor's exemption (Form 11. 22);

(3) application for miscellaneous property tax exemptions (Forms 11.23);

(4) application for theater school property tax exemption (Form 11.23(g));

(5) application for historic site property tax exemption (Form 11.24);

(6) application for solar and wind-powered energy device exemption (Form 11.27);

(7) application for property tax abatement exemption (Form 11.28);

(8) application for stored offshore drilling rig exemption (Form 11.271);

(9) application for dredge disposal site exemption (Form 11.29);

(10) application for transitional housing property tax exemption (Form 11. 111); and

(11) application for nonprofit water supply or wastewater services corporation (Form 11.30).

Issued in Austin, Texas, on February 3, 1992.

TRD-9201630 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 3, 1992

Expiration date: June 2, 1992

For further information, please call: (512) 463-4028

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• 34 TAC §9.404

The Comptroller of Public Accounts adopts on an emergency basis new §9. 404, concerning the application form for a property tax exemption for goods exported from Texas. The new emergency section is necessary because the 72nd Legislature, 1991, First Called Session, changed the qualification requirements for the exemption. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new emergency section prescribes the contents of the application form for exemption of goods exported from Texas, and adopts the form by reference.

The new section is adopted on an emergency basis under Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of each property tax exemption form and the notice of exemption requirements.

§9.404. Application For Exemption of Goods Exported From Texas.

(a) Appraisal districts shall prepare and make available application forms for the exemption provided by the Tax Code, §11.251.

(b) A form shall require a property owner to provide the following information.

(1) the property owner's name, street address, mailing address if different, and telephone number;

(2) a description of the inventory affected by the exemption;

(3) the total cost of goods sold from inventory held by the property owner in the preceding year;

(4) the total cost of goods sold from inventory that in preceding year met the criteria set forth in the Tax Code, Texas Constitution, Article VIII, §1-j(a)(1)(3), excluding the cost of equipment, machinery, or materials that entered into and became part of the inventory described in paragraph (3) of this subsection but did not themselves meet the criteria set forth in the Texas Constitution, Article VIII, §1-j(a)(1)-(3);

(5) a statement that the property owner holds items in inventory that in the current year meet or will meet the requirements of the Texas Constitution, Article VIII, §1-j(a)(1)-(3); and

(6) a statement indicating how long the property owner has engaged in the business of transporting goods out of this state.

(c) The chief appraiser shall include the following information on the form:

(1) instructions stating that the property owner must apply for the exemption annually;

(2) a statement that under the Penal Code, §37.10, the penalties for making a false statement on the application could include a fine of up to $5,000 and a jail or prison term of up to 10 years; and

(3) a statement that the chief appraiser may require the property owner to submit records verifying the information in the application and that if so required, the property owner must submit the records within 30 days of the request.

(d) The chief appraiser may duplicate Model Form 11.251 or employ a different from that set out the information listed in subsections (b) and (c) of this section in the same language and sequence as the model form.

(e) In special circumstances the chief appraiser may use a form that provides additional information, deletes information required by this section, or sets out the required information in different language or sequence then that required by this section if the form has been previously approved by the Property Tax Division, Comptroller of Public Accounts.

(f) Model Form 11.251 is adopted by reference. Copies of the form may be obtained from the Comptroller of Public Accounts, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201632 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 3, 1992

Expiration date: June 2, 1992

For further information, please call: (512) 463-4028

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• 34 TAC §9.405

The Comptroller of Public Accounts adopts on an emergency basis new §9. 405, concerning the application form for a residence homestead property tax exemption. The new emergency section is necessary because the 72nd Legislature, 1991, First Called Session, transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new emergency section establishes requirements for the contents of a residence homestead property tax exemption application form and adopts by reference a model application form.

The new section is adopted on an emergency basis under Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of property tax exemption applications and contents of the notice of exemption requirements.

§9.405. Exemption Application for Residence Homesteads.

(a) All appraisal offices shall prepare and make available applications for residence homestead exemptions.

(b) All applications shall contain spaces for the property owner to provide the following information:

(1) the name and address of the property owner;

(2) the street address or other description of the property, and, if the property is a mobile home, the make, model, and permanent identification number, together with a copy of the document of title to the mobile home if the mobile home is eight feet wide or wider, 40 feet long or longer, or occupies an area of 320 square feet, and the document of title has not been canceled;

(3) whether the property owner qualifies for the general residence homestead exemption. The application form shall require the property owner to indicate whether he owns the property, whether it was his residential homestead on January 1 of the year for which the application is filed, and whether he has claimed a residential homestead exemption on any other property for the year;

(4) whether the property owner qualifies for over-65 homestead exemptions or for the continuation of a school tax ceiling as an over-55 surviving spouse of a person who died while entitled to the tax ceiling;

(5) whether the property owner qualifies for disability exemptions;

(6) if the property is owned by a cooperative housing corporation, whether the applicant has an exclusive right to occupy the property because he or she owns stock in the corporation; and

(7) whether the property owner is applying for the exemption in the current year or is making a late application to qualify for the exemption beginning with the preceding year.

(c) All applications shall require the applicant to sign and date the application.

(d) All applications for residence homestead exemption shall contain a statement indicating that by signing the application, the applicant states that he/she is qualified for the exemptions indicated, and a statement that under the Penal Code, §37.10, if the applicant intentionally makes a false statement on the application, he or she could receive a jail term of up to one year and a fine of up to $2,000, or a prison term of two to 10 years and a fine of up to $5, 000.

(e) All applications shall contain instructions which state that the property owner need not apply for the exemption annually, that the applicant has a duty to notify the chief appraiser in writing before May 1 when his entitlement to the exemption ends, and that the chief appraiser may require the property owner to reapply for the exemption.

(f) Where the application contains or requires other information, the information required by this section shall be printed on the front of the form. Otherwise, the application shall be prepared as a separate form from any other form.

(g) If the chief appraiser routinely requires supporting information or other documents for a homestead exemption, the appraisal office shall note the type(s) of documentation required on the application.

(h) The chief appraiser shall determine each application in accordance with the provisions of the Tax Code, Chapter 11.

(i) With each application form the appraisal office shall provide a list of taxing units served by the appraisal district, together with all residential homestead exemptions each offers.

(j) If the chief appraiser learns of the death of a person qualified for over-65 homestead exemptions and it appears that the person's spouse has acquired ownership of the homestead, the chief appraiser should require the surviving spouse to file a new homestead exemption application. Based on the information provided in the new application, the chief appraiser shall determine whether the surviving spouse qualifies for homestead exemptions, including over-65 exemptions, and whether the surviving spouse may retain the tax ceiling for school tax purposes established on the homestead by the decedent.

(k) An application for residential homestead exemption form is adopted by reference. Copies of the form may be obtained from the Comptroller of Public Accounts, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201634 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 3, 1992

Expiration date: June 2, 1992

For further information, please call: (512) 463-4028

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Subchapter D. Appraisal Review Board

• 34 TAC §9.801

The Comptroller of Public Accounts adopts on an emergency basis new §9. 801, concerning property tax receipts. The new emergency section is necessary because the 72nd Legislature, 1991, First Called Session, added elements of information required on a notice of protest form. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new emergency section establishes requirements for a notice of protest form, including a provision giving the property owner an opportunity to request a copy of the appraisal review board's hearing procedures.

The new section is adopted on an emergency basis under the Tax Code, §5.07, which provides the comptroller with the authority to prescribe the contents of all forms necessary for the administration of the property tax system, and §41. 44, which provides the comptroller with the authority to prescribe the contents of a form for notice of protest.

§9.801. Notice of Protest.

(a) To be entitled to a hearing and determination of a protest by an appraisal review board, a property owner initiating the protest must file a written notice of the protest with the appraisal review board having authority to hear the matter protested.

(b) A notice of protest is sufficient if it:

(1) identifies the protesting property owner, including a person claiming an ownership interest in the property;

(2) identifies the property that is the subject of the protest; and

(3) indicates apparent dissatisfaction with some determination of the appraisal office.

(c) The notice of protest need not be on an official form. The protesting property owner may use the model form adopted by, and available from the Comptroller of Public Accounts or any other form or notice which contains the information set forth in subsection (b) of this section.

(d) The Model Notice of Protest Form 41.44 is adopted by the Comptroller of Public Accounts by reference. Copies of this form are available from the Comptroller of Public Accounts, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

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TRD-9201622 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

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Expiration date: June 2, 1992

For further information, please call: (512) 463-4028

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• 34 TAC §9.802

The Comptroller of Public Accounts adopts on an emergency basis new §9. 802, concerning the affidavit to be signed by an appraisal review member hearing a property owner's protest. The new emergency section is necessary because the 72nd Legislature, 1991, First Called Session, required this affidavit of appraisal review board members. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new emergency section prescribes the contents of the appraisal review board member's affidavit stating that the member has not communicated with another person concerning the property under protest or any matter related to the property owner's protest.

The new section is adopted on an emergency basis under the Tax Code, §5.07, which provides the comptroller with the authority to prescribe the contents of all forms necessary for the administration of the property tax system.

§9.802. Affidavit for Protesting Hearing.

(a) A member of the appraisal review board shall file the affidavit required by the Tax Code, §41.66, before hearing a protest.

(b) The appraisal review board shall prepare and make available forms for the affidavit required by the Tax Code, §41.66. A form shall contain the following information:

(1) a description of the property that is the subject of the protest;

(2) a statement by the affiant that the affiant has not communicated with another person about the evidence, argument, facts, merits, or any other matters related to the property owner's protest, or about the property under protest, excluding cases where the property was used as part of a sample or compared with other properties in another proceeding before the board and cases in which the contact was expressly permitted under the Tax Code, Chapter 41;

(3) a space for the signature of the affiant; and

(4) a space for the officer who administers the oath to the affiant to affix the date, his signature, and his title.

(c) A notary public, and any other officer authorized by law to administer oaths and who is not in conflict concerning the subject of the affidavit, may administer the oath for the affidavit.

(d) The appraisal office may duplicate Model Form 41.66 or use a different form that sets out the information listed in subsection (b) of this section in the same language and sequence as the model form.

(e) In special circumstances the chief appraiser or the appraisal review board may use a form that provides additional information, deletes information required by this section, or sets out the required information in different language or sequence than that required by this section if the form has been previously approved by the Comptroller of Public Accounts.

(f) If an appraisal review board member is unable to sign the affidavit required under the Tax Code, §41.66, and this section because of contacts by the member with another person concerning the property owner's protest or the property under protest, the member shall be recused from hearing the protest.

(g) The model Affidavit for Protest Hearing Form 41.66 is adopted by reference by the Comptroller of Public Accounts. Copies of this form may be obtained from the Comptroller of Public Accounts, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201624 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 3, 1992

Expiration date: June 2, 1992

For further information, please call: (512) 463-4028

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Subchapter E. Tax Office Administration

• 34 TAC §9.1001

The Comptroller of Public Accounts adopts on an emergency basis new §9. 1001, concerning property tax receipts. The new emergency section is necessary because the 72nd Legislature, 1991, First Called Session, added two elements of information required on a property tax receipt. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new emergency section establishes requirements for current and delinquent property tax receipts, including a provision requirement that the receipt show the tax rate and taxable value for the property for each year for which the receipt is requested.

Comments on the new section may be submitted to Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Austin, Texas 78746-6565.

The new section is adopted on an emergency basis under the Tax Code, §31. 075, which provides the comptroller with the authority to prescribe the description of property required on a property tax receipt.

§9.1001. Current and Delinquent Tax Receipts.

(a) All offices collecting taxes for purposes of ad valorem taxation shall prepare and issue current and delinquent tax receipts, as applicable, and, as requested, for the payment of current and delinquent taxes.

(b) Current tax receipts for the payment of current taxes shall make provision for the following items of information:

(1) the name and address of the collecting office and the name of the taxing unit(s) for which that office collects on that property;

(2) the name and address of the property owner and/or agent;

(3) the description of the property as shown on the tax roll;

(4) the tax roll account number of the property and, if different, the appraisal roll account number of the property;

(5) the year for which the taxes are paid;

(6) the taxable value of the property;

(7) the tax rate imposed by each taxing unit taxing the property;

(8) the amount of taxes paid, including a breakdown of taxes collected for each taxing unit;

(9) the date the taxes are paid; and

(10) in cases of split payment, indication that the amount paid is a split payment.

(c) Delinquent tax receipts for the payment of delinquent taxes shall make provision for the following items of information:

(1) subsection (b)(1)-(9) of this section, except that subsection (b)(6) and (7) of this section shall include the required

information for each year for which the taxes are paid;

(2) the amount of penalty and interest collected; and

(3) at the option of the collecting office, more than one year of delinquent taxes paid may appear on one delinquent tax receipt.

(d) Collecting offices failing to prepare current and delinquent tax receipts as required in this section may be judged to be in compliance upon a showing to the board that current and delinquent tax receipts substantially equivalent to that required in this section have been prepared.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201621 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 3, 1992

Expiration date: June 2, 1992

For further information, please call: (512) 463-4028

Proposed Sections

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

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

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

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

The Railroad Commission of Texas proposes the repeal of §3.30 and amendments to §§3.31, 3.34, and 3.49, concerning gas nominations required, gas well allowables, gas to be produced and purchased ratably, and gas-oil ratio. These proposals eliminate the requirement of filing nominations; establish a procedure for determining market demand for each reservoir based on prior production and other information; eliminate the "U", "L", and "O" allowable provisions; change the commission's law or policy regarding prorated well allowable limiting routines that rely on short-term production history; and establish an allowable review procedure for nonprorated and associated wells. The existing language in §3.30 was adopted by the Railroad Commission on February 9, 1987, and published in the February 17, 1987, issue of the *Texas Register* (12 TexReg 536); §3.31 was adopted by the Railroad Commission on August 11, 1986, and published in the August 19, 1986, issue of the *Texas Register* (11 TexReg 3680); §3.34 was adopted by the Railroad Commission on February 1, 1988, and published in the February 12, 1988, issue of the *Texas Register* (13 TexReg 838); and §3.49 was adopted by the Railroad Commission to be effective on January 1, 1976.

Rita E. Percival, systems analyst, oil and gas division, has determined that for the first five-year period the repeals are in effect there will be fiscal implications as a result of enforcing or administering them. The effect on state government for the first five-year period the sections are in effect will be an estimated cost of $38,304 for fiscal year 1992 and an estimated savings of $1, 386 per year fiscal years 1993-1996. There will be no fiscal implications for local government.

Peggy S. Gray, hearings examiner, legal division, 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 understanding of the sections and more accurate determination of reservoir market demand and well allowables. There will be no effect on small businesses. The economic cost anticipated for those persons who are required to comply with the proposal is the value of lost time that will be spent analyzing and implementing the proposal. The net effect of the proposal will be a cost savings for persons who are currently required to file nominations because the optional filing for adjustments will only be necessary when prior production history does not completely reflect actual market demand.

Comments on the entire text of the proposals may be submitted to Peggy Gray, Hearings Examiners, Oil and Gas Section, Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. The docket number for the proposal is 20-97, 100. All comments must be submitted by 5 p.m. on March 12, 1992. The Railroad Commission will hold a public hearing on February 26, 1992, at 9 a.m. at the William B. Travis State Office Building, 1701 North Congress Avenue, Austin, pursuant to the Administrative Procedure and Texas Register Act, §5(c), Texas Civil Statutes, Article 6252-13a, §5(c). For room assignment on the date of the hearing please check the bulletin board located in the first floor lobby.

• 16 TAC §3.30

The repeal is proposed under the Texas Natural Resources Code, §§81.051, 81. 052, 85.046, 85.053, 85.055, 85.201-85.203, 86.011, 86.012, 86.041, 86.042, 86. 081, 86.083-86.090, 86.094, 111.083, 111.090, and 111.133, which provides the Railroad Commission of Texas with the authority to adopt rules for the following purpose: to govern and regulate persons and their operations under the jurisdiction of the Railroad Commission; to prevent waste of oil and gas in drilling and producing operations; to distribute, prorate, and apportion allowable production to effectuate the provisions and purposes of the Natural Resources Code, Chapter 86; to conserve and prevent waste of gas; to prevent discrimination in the production and purchasing of gas; to prevent monopolistic practices which may be injurious to the general public; and to regulate common purchasers of gas to achieve the prior purposes.

§3.30. Gas Nominations Required.

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 3, 1992.

TRD-9201700 Nolan Ward
Secretary
Railroad Commission of Texas

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 463-6941

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• 16 TAC §§3.31, 3.34, 3.49

The amendments are proposed under the Texas Natural Resources Code, §§81. 051, 81.052, 85.046, 85.053, 85.055, 85.201-85.203, 86.011, 86.012, 86.041, 86. 042, 86.081, 86.083-86.090, 86.094, 111.083, 111.090, and 111.133, which provides the Railroad Commission of Texas with the authority to adopt rules for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the Railroad Commission; to prevent waste of oil and gas in drilling and producing operations; to distribute, prorate, and apportion allowable production; to effectuate the provisions and purposes of the Natural Resources Code, Chapter 86; to conserve and prevent waste of gas; to prevent discrimination in the production and purchasing of gas; to prevent monopolistic practices which may be injurious to the general public; and to regulate common purchasers of gas to achieve the prior purposes.

§3.31. Gas Well Allowables.

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

(c) Requirements for gas wells in a field for which an allocation formula has been adopted.

(1) If acreage is a factor in the allocation formula, a certified plat showing the acreage assigned to the well for proration purposes shall be submitted. The plat must be accompanied by a statement that all of the acreage claimed can reasonably be considered productive of gas and that the distance limitations of the field rules have not been exceeded. If all of the acreage claimed is not contained in a single lease, a certificate of pooling authority must be submitted, on the appropriate commission form. If the distance limitations of the field

rules are shown to have been exceeded, the plat must show the number of acres within and beyond the distance limitations. An operator may request an exception to the distance limitations which may be administratively approved by the **commission or a commission representative** [director of the Oil and Gas Division (director) or the director's delegate] if all the acreage can be considered productive. If approval of the request is declined or protest is received, the request may be set for hearing. If all of the acreage cannot be considered productive, the plat must also show the productive limit of the acreage. If a plat shows acreage in the unit in excess of the maximum number of acres permitted by the field rules, it will not be accepted.

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

(d) **Determining reservoir allowables and lawful market demand** [Ascertaining allowables by adjustment of gas nominations and deliverabilities].

(1) On or before the 20th day of the preceding month, the commission will determine the lawful market demand for gas to be produced from each reservoir during the upcoming allowable month. The monthly reservoir allowable shall be equal to the lawful market demand for that reservoir. The lawful market demand is the first prior year's allowable month's production multiplied by the calculated decline factor plus inactive well production plus necessary adjustments.

(A) Allowable month–the month during which allowables determined pursuant to this section will be effective.

(B) First prior year's allowable month's production–the total production during the same allowable month in the first prior year from wells that will be active in the allowable month and reported production in same allowable month in the first prior year. A well is presumed to be active if all commission prerequisites for assignment of an allowable have been satisfied.

(C) Calculated decline factor–for wells that reported production in the same allowable month during both the first and second prior year, the total production of such wells in the first prior year's allowable month divided by the total production of such wells in the second prior year's allowable month. The calculated decline factor cannot be greater than 1.00 or less than 0.90.

(D) Inactive well production–for new or previously inactive wells that will be active in the allowable month and had zero or no production reported in the first prior year's allowable month, the deliverability of such wells corrected to a monthly production amount. If the well has reported production during any of the three most recently reported production months, then the largest monthly production during those months will be used instead.

(E) Necessary adjustments–any further adjustments to the reservoir market demand determination that are necessary to more accurately determine the lawful market demand for the reservoirs. The amount of the necessary adjustment may be based on, but is not limited to, the status of gas production from all reservoirs in the state, promotion of conservation of the state's gas resources, prevention of waste, prevention of unlawful discrimination, protection of correlative rights, and correlative opportunities of each owner of gas in a common reservoir to produce and use or sell the gas. For changes in market demand, the commission may consider credible information received from all sources including, but not limited to, representatives of pipelines, producers, and purchasers.

(2) Any person, other than the commission, requesting a necessary adjustment must file such a request no later than the fifth day of the month preceding the allowable month. Any appropriate information supporting the request may be submitted with the request.

(A) To be considered, a request for a necessary adjustment must designate which of the following reasons support the request:

(i) **additional demand for the field that was not previously met with gas produced from the state:**

(ii) **additional demand for a field that was previously met with production from another field in the state: or**

(iii) **abnormal operating conditions that did not permit production from the reservoir to satisfy existing market demand during the first prior year's allowable month.**

(B) A request for a necessary adjustment pursuant to subparagraph (A) (2)(i) or (ii) of this paragraph will be verified by the commission according to all of the following:

(i) **information indicating that the field has produced 85% of the assigned allowable during the three most recently reported months:**

(ii) **information indicating that aggregate underproduction for all underproduced wells in the field is less than 25% of the estimated market demand; and**

(iii) **a verification statement on the request form by a purchaser indicating that it reasonably anticipates the need for the additional gas from the field.**

(C) A request for a necessary adjustment pursuant to subparagraph (A)(2)(iii) of this paragraph must be verified by a statement from a person having knowledge of the operating conditions in the field that describes the nature of the abnormal operating condition and estimates the amount of production restricted by the condition.

(D) The lawful market demand for each reservoir, which includes the amount of any necessary adjustment, shall be determined at the statewide hearing called pursuant to the Texas Natural Resources Code, §86.085.

(E) Any person allegedly aggrieved by the commission's determination of the necessary adjustment may file a complaint supported by prima facie evidence with the commission that alleges good cause to review the determination. After notice and opportunity for hearing given to all operators in the field, the commission will determine whether corrective action to future allowables should be taken.

(3) On its own motion or the request of an operator in the field, the commission may determine, after notice and opportunity for hearing given to all operators in the field, a decline factor determined by generally accepted engineering practices that will be used instead of the calculated decline factor. The decline factor may be determined administratively by the commission or the commission's representative if all operators in the field have been given at least 21 days' notice and no protest has been filed.

[(1) The allocation of allowables to all wells in non-associated prorated gas fields reservoirs will be determined from the nominations submitted. Prorated gas fields are reservoirs or fields in which an allocation formula is in effect. In order to ascertain the reasonable reservoir market demand for the gas, nominations for gas may be adjusted by comparing the latest reported production from the field to the nominations filed for the field for that period.

[(2) The total nominations for a field for gas from prorated wells for a month shall be determined by subtracting the total allowable assigned to nonprorated wells for the month from the total nominations for that month for gas from all wells in the field.

[(3) Nothing in this subsection shall be interpreted as binding to prevent the commission from making other adjustments to nominations when necessary to bring allowables for gas to an amount equal to market demand as required by statute.

[(4) No gas well shall be given an allowable in excess of an amount determined by the lesser of the well's latest deliverability test on file with the commission or the well's highest daily production in any month during the last 12 months in the production records of the commission at the time the allowable is assigned. The daily production is the reported monthly production divided by the number of days in the month. If there is a substantial increase in production, the commission may determine the highest daily production from monthly data submitted by the operator which is more recent than that in the production records of the commission.]

(e) **Revision of gas wells' allowables.**

(1) No gas well shall be given an allowable in excess of an amount determined by the well's latest deliverability test on file with the commission.

(2) A nonassociated gas well's allowable may be revised based on prior production. However, such a revision must consider at least seven months of prior reported production and be established by field rules. Revisions of well allowables otherwise specifically provided for in this section or by statute are not affected by this paragraph. If any special rules governing any field conflict with the provisions of this paragraph then this paragraph shall govern.

(f)[(e)] Fields operating under statewide rules.

(1) A statewide prorated field is any [nonassociated] gas field in which no special field rules have been adopted and in which at least one well in the field has a current reported deliverability of greater than 200 Mcf a day. Daily allowable production of gas from individual wells in a statewide prorated field shall be determined by allocating the allowable production among the individual wells in the proportion that each well's capability to produce (based on the latest adjusted deliverability test of record [as determined in subsection (d)(4) of this section]) bears to the summation of the most recent reported capabilities of all wells producing from the same field.

(2) A statewide exempt field is any [nonassociated] gas field in which no special field rules have been adopted and in which no well in the field has a current reported deliverability of greater than 200 Mcf a day. Wells in statewide exempt fields shall be assigned allowables equal to their capacity to produce.

(g)[(f)] **Definitions of** [Allowables for] prorated and nonprorated wells.

(1) A prorated well is a well for which an allowable is determined by an allocation formula.

[(2) 0* allowable wells are prorated wells with an allowable assigned on a field-wide basis, excluding special allowable wells, that aids in balancing production in that field. Under a O* allowable all production in the month that the allowable is assigned is considered overproduction.]

(2)[(3)] A nonprorated well is a well for which an allowable is not determined by an allocation formula.

(3)[(4)] A limited well is a nonprorated well with an allowable set below the maximum allowable it would receive under the allocation formula. A limited well shall be assigned an allowable at the rate that the well is capable of producing **as determined by the most recent deliverability test on file with the commission.**

(4)[(5)] A special allowable well is a nonprorated well granted a fixed allowable by the commission after notice and hearing.

(5)[(6)] An administrative special allowable well is a nonprorated well that has been granted a fixed allowable pursuant to subsection (k)[(j)] of this section.

(6)[(7)] Exempt allowable (X) wells are nonprorated wells in an exempt field and are assigned an allowable on a field-wide basis that allows wells to produce at capacity.

(h)[(g)] Allowable adjustments and balancing provisions for **nonprorated** [limited] wells.

(1) A **nonprorated** [limited] well shall not be allowed to accumulate underproduction.

(2) If the most recent production figures reported to the commission show a **nonprorated** [limited] well to be overproduced, the allowable will be revised to cover overproduction up to the maximum allowable which the well can be assigned under an allocation formula. If the indicated capability of a **nonprorated** well to produce, plus its latest recorded overproduction, is less than its formula allowable, sufficient allowable will be assigned to balance the allowable with production.

(3) If a **nonprorated** [limited] well is assigned an allowable that results in its removal from the nonprorated classification, the underage status of the well shall be reinstated in the amount discontinued at the time the well was placed in the nonprorated category. However, credit will not be given for underproduction attributable to those months when the well was in a nonprorated category, nor will credit be given for underproduction that accumulated prior to the immediately preceding balancing period.

(4) The allowable for a well in a nonprorated field shall be limited to the lesser of:

(A) the maximum allowable the well can receive under applicable rules;

(B) the well's latest deliverability test on file with the commission; or

(C) for wells that reported production during any of the three most recently reported production months, the largest monthly production during those months averaged to a daily amount.

(i)[(h)] Balancing provisions for overproduction and underproduction of gas for wells completed in prorated gas fields.

(1) Balancing provisions for prorated fields. Except as provided in subsection (h)[(g)] of this section or as necessary to prevent waste or protect correlative rights, balancing provisions will be applied for wells completed in prorated gas fields.

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

(4) Underproduction.

(A) (No change.)

(B) The amount of underproduction to be carried forward into any new balancing period as allowed production during such new balancing period shall consist of the actual underproduction that accrued in the balancing period immediately preceding such new balancing period; and the accumulative well status as to underproduction, will be adjusted on each balancing date accordingly. An operator may request that underproduction not balanced during a second balancing period be carried forward to subsequent balancing periods. The operator's request must include evidence of increased market demand that will allow underproduction to be produced in the subsequent balancing period. The request may be granted administratively by **the commission or a commission representative** [director or the director's delegate] if the

request was filed no later than the first day of the balancing period following the date the underproduction is canceled, the operator has given at least 21 days' notice to all other operators in the field and the first purchaser of gas from the subject well, and no protest to the request has been filed. The request may also be approved administratively if the operator provides written waivers of objection from all to whom notice should be given as an alternative to notice and absence of protest. If the **commission or a commission representative** [director or the director's delegate] declines to grant administratively the request, the operator may request a hearing.

(C) If a producing well has been accumulatively underproduced on each of two successive balancing dates, the well shall not be assigned a monthly allowable greater than the highest monthly production from the well during the immediately preceding balancing period; provided, however, the [limited] allowable assigned to the well may be adjusted to a value not to exceed the allowable applicable to the well under the allocation formula upon certification to the commission from the operator that such well is producing gas in excess of the [limited] allowable assigned it. **A well assigned an allowable pursuant to this subparagraph shall be classified as a nonprorated well.**

(5) Overproduction.

(A) (No change.)

(B) A well overproduced as of a balancing date, which was also overproduced on the balancing date immediately preceding and remained overproduced for the entire period between the two balancing dates, shall be shut-in until the overproduction, existent as of the later of such two balancing dates, is made up. Upon request by the operator, the commission may grant authority to produce such a well at a fractional part of its monthly allowable (reduced rate) until its production and allowable are in balance. The **commission or commission representative** [director or the director's delegate] may determine the permissible rate.

(C) If a protest is received or the commission declines to approve a request to produce at a reduced rate, the operator of a well which under the provisions of subparagraph (B) of this paragraph is required to be shut-in, may request a hearing before the commission to determine whether shutting-in the well would damage it. Notice of the hearing will be given to all operators in the field and the first purchaser of the subject well. If, after consideration of the evidence submitted at the hearing, the commission finds that the well would be damaged if shut-in, the commission may allow the overproduction charged against it to be made up at a lesser rate than it would be made up if the well were shut-in. The **commission or a commission representative** [director or the director's delegate] may determine the permissible rate pending the result of the hearing.

(D) (No change.)

(j)[(i)] Suspension of allocation formula.

(1) The **commission or a commission representative** [director or the director's delegate] may administratively suspend the allocation formula for a particular gas field if:

(A)-(C) (No change.)

(2) Suspension of the allocation formula may be initiated by the **commission or a commission representative** [director, by the director's delegate], by one of the operators in the field, or by one of the first purchasers in the field.

(A) The **commission or a commission representative** [director of oil and gas or the director's delegate] will determine which fields are appropriate for suspension utilizing the criteria of paragraph (1) of this subsection. The allocation formula may be suspended administratively by the **commission or a commission representative** [director or the director's delegate] if the applicant has given at least 21 days' notice of intent to suspend the allocation formula for a particular field to each of the operators and first purchasers in the field and no protest has been made.

(B) If it is anticipated that suspension of the allocation formula will cause a pipeline limitation in a field, first purchasers in the field for which suspension of the allocation formula is requested shall notify the **commission or a commission representative** [director or the director's delegate] within 21 days of the mailing date of the notice of intent to suspend the allocation formula.

(C) The allocation formula may also be suspended administratively if the applicant provides written waivers of objection from all to whom notice would be given. If the **commission or a commission representative** [director or the director's delegate] declines to suspend administratively the allocation formula, the applicant may request a hearing as provided for in paragraph (4) of this subsection.

(3) Reinstatement of the allocation formula may be initiated by the **commission or a commission representative** [director, by the director's delegate], by one of the operators in the field, or by one of the first purchasers in the field.

(A) If the market demand for gas from a field with suspended allocation drops below 100% of deliverability at any time, the operators and/or first purchasers for the field shall immediately notify the **commission or a commission representative** [director or director's delegate] and give an explanation of the reduction in demand. The **commission or a commission representative** [director or director's delegate] will then make a determination of whether the allocation formula should be reinstated and may immediately reinstate the allocation formula.

(B) If a pipeline limitation occurs after suspension of the allocation formula, first purchasers in the field shall immediately notify the **commission or a commission representative** [director or the director's delegate]. The **commission or a commission representative** [director or the director's delegate] will then make a determination of whether the allocation formula should be reinstated and may immediately reinstate the allocation formula.

(C) An operator or first purchaser may request that the allocation formula for a field be reinstated administratively. The request may be approved administratively by the **commission or a commission representative** [director or the director's delegate] if the applicant provides to the commission written waivers of objection from all operators and first purchasers for a field. If the applicant fails to secure all necessary waivers or if the **commission or a commission representative** [director or the director's delegate] declines to approve the request, the operator may request a hearing as provided for in paragraph (4) of this subsection. If the matter is set for hearing, the allocation formula may be reinstated administratively by the **commission or a commission representative** [director or the director's delegate] pending the result of the hearing. The notice of request for reinstatement shall specify the date on which allocation again becomes effective.

(4) If the **commission or a commission representative** [director or the director's delegate] denies administratively a request to suspend or reinstate allocation formula in a particular field, the applicant may request a hearing. In addition to the criteria set forth in paragraph (1) of this subsection, the commission will consider whether suspension or reinstatement is nec-

essary to prevent waste or protect correlative rights.

(5) (No change.)

(k)[(j)] Administrative special allowable. A well which demonstrates by both deliverability test and production data a deliverability of 100 Mcf or less is eligible for an administrative special allowable equal to its deliverability.

§3.34. Gas to be Produced and Purchased Ratably.

(a) Definitions. The following words and terms, when used in this section and in §3.31 of this title (relating to Gas Well Allowables) (Statewide Rule 31) shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate–A person or entity that owns, is owned by, or is under common ownership with another person or entity to the extent of 50% or more or that otherwise controls or is controlled by another person or entity. Affiliates of a common entity are also affiliates of each other. A person or entity that purchases gas solely for purposes other than resale shall not be considered an affiliate, and an interstate pipeline, as defined in the Natural Gas Policy Act of 1978, §2(15) (15 United States Code, §3301 et seq), shall not be considered an affiliate of an intrastate pipeline.

(2) Commission representative–A Railroad Commission employee authorized to act for the commission. Any authority given to a commission representative is also retained by the commission. Any action taken by the commission representative is subject to review by the commission.

(3) Downstream purchaser–One that purchases natural gas for resale and is not a first purchaser.

(4) First purchaser or initial purchaser–The first purchaser of natural gas produced from a well. A first purchaser and any affiliate of the purchaser that transports any natural gas it purchases from a well by use of the same pipeline system used by the first purchaser of which it is an affiliate shall be treated as a single first purchaser for purposes of ratability requirements; provided, however, that an affiliate that is purchasing and accepting deliveries pursuant to a special marketing program that is in compliance with this section, shall be treated as a separate first purchaser; and, provided further that the designation of such affiliate as a separate first purchaser is reviewable by the commission and may be disallowed upon a showing that the designation was for purposes of circumventing this section. Any affiliate may file forms in its own name.

(5) Pipeline system–A network of physically connected pipelines that are operated as a single unit under normal conditions.

(A) A first purchaser's pipeline system is that portion of a physical segment of a pipeline that the first purchaser owns.

(B) If a first purchaser does not own the pipeline it uses to transport its gas, the first purchaser's pipeline system shall include all the wells from which it purchases that are on the pipeline system of the transport pipeline.

(C) A first purchaser may not segregate its purchases from any one field into two or more pipeline systems by transporting on another pipeline gas that it purchases as a first purchaser if the first purchaser is also purchasing as a first purchaser from the same field and transporting on a pipeline that it owns.

(D) A first purchaser may not segregate its purchases from any one field into two or more pipeline systems by executing gas exchange agreements.

(E) Any of a first purchaser's pipeline systems which serve a common customer or common customers in a common geographic location shall be operated in a manner to avoid unjust or unreasonable discrimination in takes as between those systems.

(F) A first purchaser shall not segregate its physically connected pipelines that are capable of being operated as a single unit under normal conditions into two or more pipeline systems or designate a gathering system as a separate system for purposes of circumventing this section.

(6) Prorated gas field–A reservoir or field in which an allocation formula is in effect.

(b)[(a)] **General provisions.** This section is promulgated to promote and maintain ratable production of natural gas and to require production in compliance with priority categories established by the commission for the purposes of preventing waste, including production in excess of market demand, protecting correlative rights, preventing discrimination, and conserving the natural resources of this state. An operator shall not produce in excess of its ratable share of the market demand as determined by this section and [*] §3.28 [, 3.30,] and §3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported [; Gas Nominations Required;] and Gas Well Allowables) (Statewide Rules 28 [, 30,] and 31). An operator shall produce ratably as set out in subsection (e)[(b)] of this section and shall produce in compliance with subsection (i)[(f)] of this section which establishes priority categories of natural gas. Because production is dictated by pipeline capacity and market demand, pipelines are an integral part of production regulation. The requirements imposed on pipelines by this section and [*] §3.28 [, 3.30,] and §3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported [, Gas Nominations Required,] and Gas Well Allowables) (Statewide Rules 28 [, 30,] and 31) are enforced to assist in the regulation of production and provide the only method by which such production regulation can be enforced and market demand met as required by statutory law. A first purchaser shall not discriminate between different wells from which it purchases in the same field, nor shall it discriminate unjustly or unreasonably between separate fields. The provisions of this section requiring ratable production and purchasing of gas apply to purchase and production from wells from which a first purchaser is purchasing on its pipeline system [as defined in §3.30(a)(4) of this title (relating to Gas Nominations Required) (Statewide Rule 30)].

(c) Designation of pipeline system. A first purchaser shall, on or before a date designated by the commission or a commission representative, designate its pipeline system(s) and shall identify its affiliates that use the same pipeline system, including an affiliate operating a special marketing program that is in compliance with subsection (k) of this section. A pipeline system designation must identify the physical segment of pipeline that constitutes the pipeline system and identify by Railroad Commission of Texas lease and/or identification number and field the wells on that pipeline system from which the first purchaser is purchasing. A change in pipeline system designation is not required to add or delete well connections. The designation of a pipeline system cannot be changed by a first purchaser without prior approval by the commission or a commission representative. Approval of a change in pipeline system designation cannot be given without prior notice of the requested designation given by the first purchaser to affected operators of wells on the system(s) for which a change in designation is sought. A hearing to determine the proper designation of a first purchaser's pipeline system may be called by the commission, or may be requested by a first purchaser or by an

operator filing a complaint. The burden of proof in the hearing shall be on the first purchaser.

(d) Operators who use produced gas. Any person who purchases natural gas at the wellhead, at a common point within a field or fields, or at the outlet of a processing or treating plant must determine if it is the initial purchaser.

(e)[(b)] **Production guidelines.** An operator shall produce without discrimination between its wells in the same field on the same first purchaser's pipeline system and without unjust or unreasonable discrimination between its wells in separate fields on the same first purchaser's pipeline system. An operator shall apportion a first purchaser's delivery requests ratably to its wells in each field on the same first purchaser's pipeline system without discrimination in the same manner as provided in this section and [*] §3.28 [, 3.30,] and §3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported [; Gas Nominations Required;] and Gas Well Allowables) (Statewide Rules 28 [, 30,] and 31) and shall not produce in excess of its ratable share of the market demand as its share is determined by those rules. An operator shall produce in compliance with the priority categories of gas production established by the commission in subsection (i)[(f)] of this section.

(f) **Purchases from different fields.**

(1) [(c)] In making purchases and accepting deliveries between fields, a first purchaser of natural gas that purchases and accepts delivery of gas from more than one field on its same pipeline system must accept from each field a consistent percentage of the portion of the aggregate deliverability and total gas limits that it is entitled to purchase from all wells from which it purchases on its pipeline system, unless the purchaser can demonstrate a just and reasonable basis for discriminating between fields.

(2) Natural gas purchase's from a well by a first purchaser that uses another first purchaser's pipeline system to transport its gas and sells the gas purchased on that pipeline system solely to the first purchaser that owns the transport pipeline must be treated as first purchases of gas by the first purchaser that owns the transport pipeline.

(g) **Purchases within a field.**

(1)[(d)] In making purchases and accepting deliveries within fields, a first purchaser of natural gas that purchases and accepts delivery of gas from different gas wells in the same priority category (see subsection (i)[(f)] of this section) in the same field on its same pipeline system shall purchase and accept from the wells from which it purchases in the field a consistent percentage of the portion that it is entitled to purchase of the maximum allowable that a well is entitled to under the field's allocation formula. If purchases and deliveries from different wells in the same field become nonratable, the first purchaser shall consider commission-assigned underproduction and overproduction to establish an appropriate pattern of purchases or acceptance of deliveries to restore ratability.

(2) Natural gas purchases from a well by a first purchaser that uses another first purchaser's pipeline system to transport its gas and sells the gas purchased on that pipeline system solely to the first purchaser that owns the transport pipeline must be treated as first purchases of gas by the first purchaser that owns the transport pipeline.

(3) Purchases and deliveries of casinghead gas shall be based on the well's gas limit (see §3.49 of this title (relating to Gas-Oil Ratio)) (Statewide Rule 49) as provided in subsection (h) [(e)] of this section. Overproduction and underproduction of gas is administered by the provisions of §3.31 of this title (relating to Gas Well Allowables) (Statewide Rule 31). A first purchaser shall not reduce purchases from a limited well (see §3. 31(g)(3)[(f)(4)] of this title (relating to Gas Well Allowables)) until all prorated gas wells from which it purchases in the field connected to its same pipeline system are ratably reduced to the assigned allowable of the limited well. Below that point, purchases from all prorated wells and limited wells should be reduced ratably by purchasing and accepting delivery of the same percentage of the portion that it is entitled to purchase of the maximum allowable established for the well by the fields allocation formula. If purchases and deliveries from different wells in the same field become nonratable, the first purchaser shall consider commission-assigned underproduction and overproduction in establishing an appropriate pattern of purchases or acceptances of deliveries to restore ratability. When purchases of gas described in subsection (i)[(f)] (2) or (5) of this section are to be reduced, they shall be reduced ratably within each priority category.

(h)[(e)] **Casinghead gas reductions.** When purchases and deliveries of casinghead gas described in subsection **(i)(1)[(f)(1)] or (3) of this section are to be reduced, each well's share of the reduction shall be calculated by multiplying the total reduction by the fractional share that each well's gas limit bears to the arithmetic sum of the aggregate gas limits of all wells in the field from which the first purchaser has been purchasing on its same pipeline system. In calculating its reduction of a well, a first purchaser shall use that portion of the gas limits that it is entitled to purchase. A well operating under net gas/oil ratio authority shall produce no more gas than its gas limit as it would be reduced by the previously mentioned procedure absent the net gas/oil ratio authority.**

(i)[(f)] Priority categories. First purchasers of gas shall satisfy their pipeline system demand for gas by purchasing and accepting delivery of gas from the following priority categories in ascending numerical order. Lower priority category gas is gas from a higher numerical category. A first purchaser shall not within its pipeline system curtail gas from a priority category if the purchaser is purchasing and accepting delivery of lower priority category gas as a first purchaser on its same pipeline system. A first purchaser's purchases and acceptance of delivery of first, second, or third priority category gas under an obligation to purchase and accept delivery from the tailgate of a plant processing gas to extract liquids, or from a gathering system that purchases from wells and is required by contract or by its physical connections to sell its gas entirely to the purchaser, whether or not these purchases are made as a first purchaser, shall not be curtailed if the first purchaser is purchasing and accepting delivery of lower priority category gas purchaser on its same pipeline system. If curtailed, the curtailment must be ratable with like priority category gas which the first purchaser is purchasing and accepting delivery of from wells on its same pipeline system.

(1) (No change.)

(2) Second priority shall be given to gas from special allowable wells as defined in §3.31(q)(4) [(f)(5)] of this title (relating to Gas Well Allowables) (Statewide Rule 31) granted special allowable status after the effective date of this section to prevent physical waste. Wells classified as special allowable wells pursuant to notice and hearing prior to the effective date of this section shall be given second priority unless a new determination is made that the special allowable status is not necessary to prevent physical waste.

(3) (No change.)

(4) Fourth priority shall be given to gas from wells classified under §3.49(b) of this title (relating to Gas-Oil Ratio) (statewide Rule 49(b)), but only to the extent of one full allowable for multiple 49(b) wells.

(5) Fifth priority shall be given to gas from administrative special allowable wells as defined in §3.31(g)(5)[(f)(6)] of this title (relating to Gas Well Allowables) (Statewide Rule 31), to gas from special allowable wells (see §3.31(g)(4)[(f)(5)] of this title (relating to Gas Well Allowables))

granted that status prior to the effective date of this section (see paragraph (2) of this subsection) without notice and hearing, and to gas from special allowable wells granted that status by the commission subsequent to the effective date of this section after notice and hearing for other reasons than to prevent physical waste.

(6) Sixth priority shall be given to the remainder of gas well gas, including limited wells (see subsection (g) [(d)] of this section).

(j)[(g)] **Prohibition against discriminating in favor of purchaser's own production.** A first purchaser of natural gas may not discriminate between or against natural gas of a similar kind or quality in favor of its own production or production in which it may be directly or indirectly interested in whole or in part.

(k)[(h)] **Special marketing programs.** If a first purchaser elects to qualify an affiliate as a separate first purchaser [in §3. 30(a)(1) of this title (relating to Gas Nominations Required) (Statewide Rule 30)], the first purchaser may designate the affiliate as a special marketing program. The special marketing program must comply with the following with respect to the [nomination,] purchase [,] and acceptance of delivery of natural gas. (1)-(4)(No change.)

(5) The affiliated first purchaser must continue in compliance with this section [and §3.30 of this title (relating to Gas Nominations Required) (Statewide Rule 30)] to [nominate,] purchase [,] and accept delivery from the wells for which the offer was made and not accepted.

(6) With respect to the [nomination and] purchase of gas from those that accept an offer made pursuant to this subsection, the special marketing program purchaser must comply with this section and [*] §3.28 [, 3.30,] and § 3.31 of this title (relating to Potential and Deliverability of Gas Wells To Be Ascertained and Reported [; Gas Nominations Required;] and Gas Well Allowables) (Statewide Rules 28 [, 30,] **and** 31) as a separate first purchaser.

(7) (No change.)

(l)[(i)] **Sellers' complaint procedure.** Any operator or nonoperator that is denied by the first purchaser in violation of this section or [*] §3.28 [, 3.30,] or §3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported [; Gas Nominations Required;] and Gas Well Allowables) (Statewide Rules 28 [, 30,] and 31) the opportunity to produce a well's ratable share of gas or opportunity for a well to participate in a special marketing program may file a complaint with the commission and request the commission to direct the first purchaser to end the discriminatory practices. A complainant may request a hearing regarding alleged discriminatory practices or to determine whether a first purchaser is or has, through gas exchange agreements or through actions of its affiliate(s), denied an operator a reasonable opportunity to market its gas.

(m) [(j)] **Purchasers' complaint procedure.** If after reasonable notice by the purchaser, an operator fails to comply with a first purchaser's request to reduce production ratably in compliance with this section and [*] §3.28 [, 3.30,] and §3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported [; Gas Nominations Required;] and Gas Well Allowables) (Statewide Rules 28 [, 30,] and 31) the purchaser may file a complaint with the commission and request the commission to direct the operator to comply with the purchaser's requests to reduce production ratably. The complainant or the operator may request the commission to take further action, including setting the issue for hearing.

(n)[(k)] **Hardship exceptions.** If the operation of this section or [*] §3. 28 [, 3.30,] or §3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported [, Gas Nominations,] and Gas Well Allowables) (Statewide Rules 28 [, 30,] and 31) causes undue hardship, the commission may, after proper notice and hearing, grant an exception or take appropriate action, including action to prevent waste or protect correlative rights.

(o)[(l)] **Severability provisions.** If any provision of this section or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provisions or appreciation, and the provisions of the section are declared to be severable.

§3.49. Gas-Oil Ratio.

(a) (No change.)

(b) Any gas well producing from the same reservoir in which oil wells are completed and producing shall be allowed to produce daily only that amount of gas which is the volumetric equivalent in reservoir displacement of the gas and oil produced from the oil well in the reservoir that withdraws the maximum amount of gas in the production of its daily oil allowable.

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

(3) The allowable for an associated gas well as determined by this subsection shall be limited to the lesser of:

(A) the gas well allowable as calculated by paragraph (1) or (2) of this subsection;

(B) the well's latest deliverability test on file with the commission; or

(C) for wells that reported production during any of the three most recently reported production months, the largest monthly production during those months averaged to a daily amount.

(c)-(i) (No change.)

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

Issued in Austin, Texas, on February 3, 1992.

TRD-9201700 Kim Williamson
Secretary
Railroad Commission of Texas

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 463-6941

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TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 73. Licenses and Renewals

• 22 TAC §73.3

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

The Texas Board of Chiropractic Examiners proposes the repeal of 22 TAC §73.3, concerning refresher courses and the requirements for continuing education.

Jennie Smetana, executive director, 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.

Ms. Smetana, 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 the current rule is being repealed in order to propose a new rule which will require an increased number of hours for continuing education for the doctors each year. 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.

Comments on the proposal may be submitted to Jennie Smetana, Executive Director, Texas Board of Chiropractic Examiners, 8716 MoPac Expressway North, Suite 301, Austin, Texas 78759.

The repeal is proposed under Texas Civil Statutes, Article 4512b, which provide the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules and regulations as deemed necessary.

§73.3. Refresher Courses.

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

Issued in Austin, Texas, on February 3, 1992.

TRD-9201597 Jennie Smetana
Executive Director
Texas Board of
Chiropractic Examiners

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 343-1895

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The Texas Board of Chiropractic Examiners proposes new §73.3 concerning refresher courses and the requirements for continuing education.

Jennie Smetana, 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. Smetana, 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 the doctors will be required to attend and complete additional continuing education. This will help ensure that the doctors will stay up to date on the latest treatments and procedures which will benefit each and every patient. 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 Jennie Smetana, Executive Director, Texas Board of Chiropractic Examiners, 8716 Mopac Expressway North, Suite 301, Austin, Texas 78759.

The new section is proposed under Texas Civil Statutes, Article 4512b, which provide the Texas Board of Chiropractic Examiners with the authority to promulgate procedures rules and regulations as deemed necessary.

§73.3. Refresher Courses. The following information is regarding continuing education courses for license renewal.

(1) Requirements.

(A) All licensees will annually attend and complete 16 hours of continuing education.

(B) Fourteen hours of the continuing education may be completed at any course or seminar elected by the licensee, as long as it is sponsored by a state or national association or a chiropractic college which is accredited by the Council on Chiropractic Education and approved by the board.

(C) Only those topics listed as authorized procedures in §75.7(a) and (b) of this title (relating to Authorized Practices, Techniques, and Procedures) shall be acceptable in these courses or seminars.

(D) Two hours of the continuing education must be presented by the board and will be given at the following seminars:

(i) Texas Chiropractic Association-Lubbock;

(ii) Texas Chiropractic Association Convention;

(iii) Chiropractic Society of Texas Annual Convention;

(iv) Parker College of Chiropractic Homecoming;

(v) Texas Chiropractic College Homecoming.

(2) Verification.

(A) Verification of the two hour board presentation will be provided to the board office annually. The sponsoring organization will submit an alphabetical list showing the name of the attending doctor, license number, and number of hours completed.

(B) Each doctor will be responsible for documenting verification of the additional 14 hours of continuing education.

(C) Upon request by the board, the licensee will be responsible for providing verification of his continuing education for the five year period preceding the date of request made by the board.

(D) Should the licensee fail to submit verification upon request by the board, it will be considered a violation of Texas Civil Statutes, Article 4512b, §8b(a).

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 3, 1992.

TRD-9201596 Jennie Smetana
Executive Director
Texas Board of
Chiropractic Examiners

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 343-1895

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Chapter 81. Chiropractic Facilities

• 22 TAC §81.1

The Texas Board of Chiropractic Examiners proposes new §81.1, concerning chiropractic facilities and the registration of all facilities providing chiropractic care.

Jennie Smetana, 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.

Ms. Smetana, 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 the rule will provide the board with the information essential for regulating the practice of chiropractic. Registration of chiropractic facilities allows the board to identify all facilities where chiropractic services are being provided, not just licensed doctors. There will be no effect on small businesses. There is no anticipated economic cost to person who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jennie Smetana, Executive Director, Texas Board of Chiropractic Examiners, 8716 MoPac Expressway North, Suite 301, Austin, Texas 78759.

The new section is proposed under Texas Civil Statutes, Article 4512b, which provide the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules and regulations as deemed necessary.

§81.1. Chiropractic Facilities.

(a) Any facility providing chiropractic care must be registered with the Texas Board of Chiropractic Examiners and this registration must be renewed annually.

(b) Requirements for obtaining a Certificate of Registry include the following:

(1) application shall be made on a form prescribed by the board;

(2) provisions acceptable to the board shall be made to assure that all chiropractic services are provided by or under the direction or a doctor of chiropractic who holds a currently valid license to practice chiropractic in Texas;

(3) names and addresses of all parties with an ownership interest in an office or place of business providing chiropractic services shall be registered with the board including all general and limited partners and all shareholders of corporations;

(4) names and addresses of each doctor licensed by the board who is employed, contracted, or otherwise engaged to provide or direct the provision of chiropractic services shall be registered with the board; and

(5) no licensee, owner, partner, or shareholder shall be less than 21 years of age. This board may deny a certificate if the applicant has been convicted for any offense which, under the laws of Texas is a felony or is an offense involving moral turpitude.

(c) It shall be a violation of this section:

(1) to operate an office or place of business offering chiropractic services without obtaining a Certificate of Registration as provided herein;

(2) to fail to comply with the requirements of subsections (a) and (b) of this section;

(3) to operate an office or place of business providing chiropractic services without complying with all provisions of this Act and with the rules of the board; or

(4) for an individual, other than the primary treating doctor of chiropractic, to control or attempt to control, in any way whatsoever, the professional judgment of such treating doctor or his/her office staff with respect to patient care.

(d) A violation of this section constitutes the unauthorized practice of chiropractic and the Texas Board of Chiropractic Examiners may revoke or suspend a Certificate of Registration, or probate a registration suspension for any violation of the Act or rules of the board.

(e) This registration does not apply to Hospitals or Public Health Clinics registered with the Texas Department of Health or other state agencies or a student enrolled in a college of chiropractic in this state engaged in internship under the control of a chiropractic college in this state.

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 3, 1992.

TRD-9201598 Jennie Smetana
Executive Director
Texas Board of
Chiropractic Examiners

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 343-1895

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Part IX. Texas State Board of Medical Examiners

Chapter 177. Certification of Nonprofit Health Corporations

• 22 TAC §177.1-177.2

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

The Texas State Board of Medical Examiners proposes the repeal of §177.1 and §177.2, concerning the certification of nonprofit health corporations. Extensive rewrite of the sections are felt necessary; therefore, repeal of the sections with simultaneous proposed new chapter wording is submitted. This is to comply with House Bill 2478, enacted by the 72nd Legislature.

Pat Wood, secretary to the executive director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Wood also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be clarification of the rules by omission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

The repeals are proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§177.1. Purpose.

§177.2. Procedure.

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 3, 1992.

TRD-9201787 Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 834-4502

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• 22 TAC §177.1

The Texas State Board of Medical Examiners proposes new §177.1, concerning the certification of nonprofit health corporations. This new section will comply with the mandate of House Bill 2478, enacted by the 72nd Legislature.

Pat Wood, secretary to the 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.

There will be no local employment impact.

Ms. Wood 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 allow the employment of physicians in organizations operated as a migrant, community, or homeless health center. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

The new section is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§177.1. Certification of Nonprofit Health Corporations.

(a) Any health organization formed solely by persons licensed by the board shall make application and present the documentation following to the executive director of the Texas State Board of Medical Examiners for certification.

(1) A written request to the board by each health organization's chief executive officer will suffice as the application.

(2) The following documentation shall be submitted:

(A) a copy of the certificate of incorporation under the Texas Non-Profit Corporation Act;

(B) proof that the entity is organized for any or all of the following purposes:

(i) the carrying out of scientific research and research projects in the

public interest in the fields of medical sciences, medical economics, public health, sociology, and related areas;

(ii) the supporting of medical education in medical schools through grants and scholarships;

(iii) the improving and developing of the capabilities of individuals and institutions studying, teaching, and practicing medicine;

(iv) the delivery of health care to the public;

(v) the engaging in the instruction of the general public in the area of medical science, public health, and hygiene and related instruction useful to the individual and beneficial to the community; and

(C) proof that the entity is organized and incorporated by persons licensed by the board and that the directors and trustees of the organization and their successors in office shall be persons licensed by the board and actively engaged in the practice of medicine. The term "actively engaged in the practice of medicine" shall mean that the physician is engaged in full-time service of diagnosing or treating mental or physical ailments of human beings at least 40 hours per week.

(b) Migrant, community, or homeless health centers who wish to employ physicians shall make application and present the required proof to the executive director of the Texas State Board of Medical Examiners for approval.

(1) A written request to the board by each health center's chief executive officer will suffice as the application.

(2) The following documentation shall be submitted:

(A) a copy of the certificate of incorporation under the Texas Non-Profit Corporation Act;

(B) written proof of compliance with the Internal Revenue Code, §501(c) (3).

(C) written proof of compliance with 42 United States Code, §254(b) or (c), or §256.

(c) The board may, at its discretion, refuse to approve and certify any such health organization making application to the board if in the board's determination the applying nonprofit corporation is established or organized or operated in contravention to or with the intent to circumvent any of the provisions of the Medical Practice Act.

(d) The board shall revoke an approval or certification if in the board's determination the nonprofit corporation is established, organized, or operated in contravention of or with the intent to circumvent any of the provisions of the Medical Practice Act.

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

Issued in Austin, Texas, on February 3, 1992.

TRD-9201786 Homer R. Goehrs, M.D.
Executive Director
Texas State Board of Medical Examiners

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 834-4502

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Part XII. Board of Vocational Nurse Examiners

Chapter 233. Education

Operation of a Vocational Nursing Program

• 22 TAC §233.25

The Board of Vocational Nurse Examiners proposes an amendment to §233.25, concerning workshops for faculty of vocational nursing programs.

Marjorie A. Bronk, 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.

Mrs. Bronk 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 may be public benefit in enhancing current knowledge. 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 Marjorie A. Bronk, Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

*§233.25. **Faculty Continuing Education Requirements** [Workshops].* [Budgeting shall include monies for director and instructors to attend available workshops to improve teaching skills and knowledge.] **To enhance teaching skills and knowledge, program director and nursing faculty** [Faculty members] shall attend [workshops and/or] continuing education programs/**activities** of not less than **15** [40] hours annually. Foci shall include **topics in** one or more of the following **areas:** nursing, health **care** [services], and education. **Budgeting shall include monies for program director and nursing faculty to attend continuing education programs/activities.**

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 3, 1992.

TRD-9201695 Marjorie A. Bronk, R.N., M.S.H.P.
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 835-2071

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Chapter 239. Contested Case Procedure

Enforcement

• 22 TAC §239.11, §239.16

The Board of Vocational Nurse Examiners proposes an amendment to §239.11 and new §239.16, concerning enforcement. Rule 239.11 is being amended to include referring of individuals for treatment/rehabilitation with the intent of receiving remuneration (as directed by the Senate Interim Committee on Health and Human Services), to add that failure to repay a guaranteed student loan is considered unprofessional conduct, and to add other violations that may be considered unprofessional conduct. Rule 239.16 is proposed in order to allow for consistency in rules in adopting a rule relative to defaulted student loans.

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

Mrs. Bronk also has determined that for each year of the first five years the sections are in effect there will be the following public benefits: §239.11(16) -this amendment will improve the system of accessing health services to the citizens of Texas by not limiting their choice of institutions; and §239.11(18) -this amendment will enhance government funds by causing individuals to repay monies owed to the state on student loans. Other amendments more clearly outline reasons the public may file a complaint against an individual's license for disciplinary action. There will be no effect on small businesses.

The anticipated economic cost to persons who are required to comply with the sections as proposed would be the impact of loss of earning power if licensure is withheld or disciplinary action is taken against the license of the individual for noncompliance of the rules.

Comments on the proposal may be submitted to Marjorie A. Bronk, Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendment and new section are proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to govern its procedures and to carry in effect the purposes of the law.

§239.11. Unprofessional Conduct. Unprofessional or dishonorable conduct, likely to deceive, defraud, or injure the public may include the following described acts or omissions:

(1)-(15) (No change.)

(16) knowingly and willfully referring any individual for treatment/rehabilitation with the express intent of receiving remuneration, either directly or indirectly;

(17) knowingly falsifying and/or forging a physician's order/prescription;

(18) failing to repay a guaranteed student loan, as provided in the Texas Education Code;

(19)[(16)] failing to conform to the minimal standards of acceptable prevailing practice, regardless of whether or not actual injury to any person was sustained, including, but not limited to:

(A) failing to assess and evaluate a patient's/client's status or failing to institute nursing intervention which might be required to stabilize a patient's/client's condition or prevent complications;

(B) performing or attempting to perform nursing techniques or procedures or both in which the nurse is untrained by education or experience;

(C) delegating nursing care functions or responsibilities to an individual lacking the ability or knowledge to perform the function or responsibility in question;

(D) causing suffering, permitting or allowing physical or emotional injury or impairment of dignity or safety to the patient/client, or failing to report same in accordance with the incident reporting procedure where the vocational nursing is employed or working;

(E) knowingly or consistently failing to follow the policy and procedure for the wastage of medication(s) in effect at the facility at which the nurse is employed or working;

(F) leaving a nursing assignment without notifying appropriate personnel;

(G) engaging in unnecessary violence towards any person in connection with the practice of vocational nursing;

(H) failing to comply with a supervisor's valid directives;

(I) negligently or intentionally violating a physician's order addressing patient care;

(20)[(17)] being convicted of a crime which relates to the practice of vocational nursing. Those crimes which the board considers to be directly related to the duties and responsibilities of a licensed vocational nurse shall include, but are not limited to:

(A) any felony or misdemeanor which involves an act of fraud, dishonesty, or deceit;

(B) any criminal violation of the Vocational Nurse Act or other statutes regulating or pertaining to nursing or the medical profession;

(C) any crime involving moral turpitude;

(D) murder;

(E) assault;

(F) burglary;

(G) robbery;

(H) theft;

(I) rape or sexual abuse;

(J) patient/client abuse;

(K) injury to an elderly person;

(L) child molestation, abuse, endangerment, or neglect;

(M) felony conviction for driving while intoxicated, driving under the influence of alcohol or drugs, or driving while ability is impaired;

(N) sale, distribution, or illegal possession of narcotics, controlled substances or dangerous drugs;

(O) tampering with a governmental record;

(P) offenses which include attempting or conspiring to commit any of the offenses in this subsection;

(21)[(18)] violating state or federal laws relative to drugs, including controlled substances and dangerous drugs;

(22)[(19)] in determining whether a crime not listed previously relates to vocational nursing, consideration by the board of:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to practice vocational nursing;

(C) the extent to which a license might offer opportunities to engage in further criminal activity of the same type as that in which the person was previously engaged; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and to discharge the responsibilities of a vocational nurse.

§239.16. Peer Assistance Programs.

(a) A peer assistance program for licensed vocational nurses will identify, assist, and monitor colleagues with job impairing alcohol or drug problems, and/or mental health impairment.

(1) The program will provide statewide peer advocacy services available to all licensed vocational nurses impaired by alcohol or drug abuse and/or mental illness.

(2) The program shall have a statewide monitoring system that will be able to track the nurse while preserving anonymity.

(3) The program shall provide a network of trained peer interveners located throughout the state.

(4) The program shall have a written plan for the education and training or interveners and other program personnel.

(5) The program shall have a written plan for the education of licensed vocational nurses, other practitioners, and employers.

(6) The program shall have a mechanism for documenting program compliance, and any noncompliance may be reported to the board within 10 working days.

(7) The program shall demonstrate financial stability and funding sufficient to operate the program.

(8) The program shall collect and make available to the board and/or other appropriate persons data relating to impaired licensed vocational nurses and the success/failure of peer assistance.

(9) The program shall have a written plan for a systematic total program evaluation and shall be subject to evaluation by the board.

(10) The program shall comply with all minimum criteria established by the Texas Commission on Alcohol and Drug Abuse, and if the board determines that the program no longer complies with the established criteria, the program shall have 30 days to attain compliance or the board may revoke its approval of the program.

(11) The program shall establish a plan to verify previous disciplinary action prior to admitting a nurse to the peer assistance program and the board will provide the program with a list of all disciplinary actions after each board meeting.

(12) The program may report to the board within 10 working days, the impaired nurse who has had a prior disciplinary action or has previously been admitted to a peer assistance program.

(b) The approved program(s) will enter into a contractual agreement with the board to provide the services of an impaired professional program. Said contract can be withdrawn for noncompliance and is subject to 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.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201697 Marjorie A. Bronk, R.N., M S.H.P.
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 835-2071

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• 22 TAC §239.15

(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 Board of Vocational Nurse Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Board of Vocational Nurse Examiners proposes to repeal §239.15 concerning peer assistance programs and adopt new §239.16 as the same rule with no change in language. The rule is being renumbered in order to allow for continuity in the rules by adding the rule relative to defaulting on student loans in the §239.15 sequence.

Marjorie A. Bronk, executive director, 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.

Ms. Bronk also has determined that for each year of the first five years the repeal is in effect there will be no public benefit as the public is relatively unaffected by the section. 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.

Comments on the proposal may be submitted to Marjorie A. Bronk, Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The repeal is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

§239.15. Peer Assistance 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.

Issued in Austin, Texas, on February 5, 1992.

TRD-9201881 Marjorie A. Bronk, R.N., M.S H.P.
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 835-2071

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The Board of Vocational nurse Examiners proposes new §239.15, concerning licensure of persons who have defaulted on student loans as required by law.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the proposed amendment will be in effect, will be a possible increase in state revenues by individuals repaying their student loans.

Mrs. Bronk also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the benefit to the public of an enhancement of government funds by causing individuals to repay monies owed to the state on student loans. There will be no effect on small businesses. The anticipated economic cost to persons required to comply with the section as proposed will be the cost to repay their student loans.

Comments on the proposal may be submitted to Marjorie A. Bronk, Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The new section is proposed under Texas Civil Statutes, Article 4528c, §5(g) , which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

§239.15. Licensure of Persons Who Have Defaulted On A Student Loan With the Texas Guaranteed Student Loan Corporation.

(a) In review of a complaint alleging default on a guaranteed student loan by a respondent/applicant, the board shall consider the following evidence in determining the respondent's/applicant's present fitness to practice vocational nursing:

(1) a certificate issued by the student loan corporation certifying that the respondent/applicant has entered a repayment agreement on the defaulted loan; or

(2) a certificate issued by the student loan corporation certifying that the respondent/applicant is not in default on a loan guaranteed by the corporation.

(b) The burden to provide the foregoing documentation to the board shall be solely at the expense of the respondent/applicant.

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

Issued in Austin, Texas, on February 2, 1992.

TRD-9201698 Marjorie A. Bronk, R.N., M.S.H.P.
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 835-2071

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Part XIII. Texas Board of Licensing for Nursing Home Administrators

Chapter 251. Disciplinary

• 22 TAC §§251.1-251.5

(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 Board of Licensing for Nursing Home Administrators or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Licensure for Nursing Home Administrators proposes the repeal of 22 TAC §§251.1-251.5, concerning disciplinary procedures for nursing home administrators. The chapter describes the disciplinary procedures used by TBLNLHA, but does not describe the process so that an administrator can easily understand what will happen or how the process will proceed. The rules limit the involvement of the board to a role of approval of a final order from a hearings officer. This vests a great amount of authority with the executive director. Because only one person is vested with so much authority, the opportunity for an unbiased decision is enhanced.

Robert Conkright, executive director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Conkright, also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the repeal of current rules which do not ensure due process in disciplinary procedures. 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.

Comments on the proposal may be submitted to Robert Conkright, Executive Director, TBLNHA, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756.

The repeals are proposed under Texas Civil Statutes, Article 442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the state to meet the requirements set forth in §1908 of the Social Security Act (42 United States Code, §1396g), the Federal rules and regulations promulgated thereunder, and other pertinent Federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two thirds majority of the board.

§251.1. Prehearing Conferences.

§251.2. Consolidation.

§251.3. Hearing Officer Procedures.

§251.4. Department of Public Safety Information.

§251.5. Special Fees for Expert Witnesses.

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 January 30, 1992.

TRD-9201738 Kim M. Foutz
Administrative Technician III
Texas Board of Licensure for Nursing home Administrators

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 458-1955

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Subchapter A. General Provisions

The Texas Board of Licensure for Nursing Home Administrators proposes new §§251.1-251.37, concerning disciplinary procedures for nursing home administrators. The new procedures describe, in great detail, the disciplinary process to be followed by TBLNHA. A person having a complaint brought forth for disciplinary action to the agency will be able to quickly determine how the process works. The new procedures require that the Board be more active in the disciplinary process. The authority for disciplinary action is taken from one person and vests that authority with a Disciplinary Review Panel. Most decisions will be made by the Panel, thus increasing the opportunity for an unbiased decision.

Dr. Robert Conkright, executive director has determined that there will be fiscal implications as a result of enforcing or administering the section. There will be an estimated additional cost to state government of $11,200 for the first year (FY 1992) and $16,800 per year for the following four years (FY 1993-1996) that the section will be in effect. There will be no fiscal impact on local government or large businesses.

Dr. Conkright, also has determined that for each year of the first five years the section as proposed is in effect, the public will benefit from the new rule because it will result in a fair, consistent, and clear method of handling all complaints against nursing home administrators These new rules also ensure due process for licensure. There will be no effect on small businesses. There will be no economic cost to persons who are required to comply with the rule as proposed for the first five year period the section will be in effect.

Comments on the proposal may be submitted to Robert Conkright, Executive Director, TBLNHA, 4800 North Lamar, Suite 310, Austin, Texas 78756. Comments will be accepted until March 20, 1992. A public hearing will be held on March 11, 1992, at The Criss Cole auditorium, 4800 North Lamar, Austin, at 10 am.

• 22 TAC §§251.1-251.16

The new sections are proposed under Texas Civil Statutes, Article 4442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in §1908 of the Social Security Act (42 United States Code, §1396g), the federal rules and regulations promulgated thereunder, and other pertinent federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two thirds majority of the board.

§251.1. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicate otherwise.

Act–The Texas Nursing Home Administrators Licensure Act, Texas Civil Statutes, Article 4442d.

APTRA–The Administrative Procedures and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Applicant or petitioner–A party seeking a license or rule from the board.

Board–The Texas Board of Licensure for Nursing Home Administrators.

Board member–One of the members of the board, appointed pursuant to the Act.

Contested case–A proceeding, including but not restricted to, licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

Disciplinary review panel–A committee composed of the executive director, a person representing the Texas Department of Health Long Term Care Division, counsel to the board, and a licensed administrator and a chair appointed by the executive committee of the Board. The chair will be a board member, a licensed attorney, licensed administrator, or a volunteer member of the general public. A member of the investigative staff of the board will be a nonvoting member of the panel.

Documents–Applications, petitions, complaints, motions, protests, replies, exceptions, answers, notices, or other written instruments filed with the board in a licensure proceeding or by a party in a contested case.

Executive committee–The chair, vice-chair, and secretary-treasurer of the board.

Executive director–The incumbent of the position designated executive director in accordance with the Act, or their designee if the incumbent is unavailable.

Hearings examiner or examiner–A person assigned through the Administrative Law Judges Department of the Attorney General's Office.

License–Includes the whole or part of any board permit, certificate, approval, registration, or similar form of permission required by law; specifically, a license and a registration.

Licensing–Includes the board's process respecting the granting, denial, renewal, revocation, suspension, or probation of a license.

Misdemeanors Involving Moral Turpitude–Any misdemeanor of which fraud, dishonesty, or deceit is an essential element, burglary, robbery, sexual offenses, theft, child molesting, and substance diversion or substance abuse.

Party–Each person named or admitted as a party whether an applicant, protestant, petitioner, complainant, respondent or intervenor, and the board.

Person–Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

Pleading–Written documents filed by parties, concerning their respective claims.

Presiding officer–The chair, or a duly qualified successor in accordance with Robert's Rules of Order Newly Revised or board rules, a hearing examiner, or other person presiding over the board.

Register–The Texas Register.

Rule–Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of this board. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. This definition includes substantive regulations.

Secretary–The secretary-treasurer of the Board.

§251.2. Applicability. These rules shall govern the procedures for the institution, conduct and determination of all causes and proceedings before the board. The purpose of these sections is to provide for a simple and efficient system of procedure before the board, to insure uniform standards of practice and procedure, public participation and notice of board actions, and a fair and expeditious determination of causes.

§251.3. Construction. These rules shall not be construed so as to enlarge, diminish, modify or alter the jurisdiction, powers, or authority of the board or the substantive rights of any party. They shall be liberally construed, with a view towards the purpose for which they were adopted.

§251.4. Computation of Time.

(a) Computing time. In computing any period of time prescribed or allowed by these sections, order of the board, or any applicable statute, the period shall begin on the day after the act, event, or default in controversy and end on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a state recognized holiday.

(b) Extensions. Unless otherwise provided by statute, the time for filing any document may be extended by agreement of the parties or order of the secretary or hearing examiner upon written verified motion duly filed prior to the expiration of the applicable time period, showing good cause for an extension of time and stating that the need therefor is not caused by the neglect, indifference or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

§251.5. Agreement to be in Writing. No stipulation or agreement between the parties, their attorneys or representatives, with regard to any matter involved in any proceeding before the board shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these sections, unless precluded by law.

§251.6. Expiration of Licenses. When a licensee has made timely and sufficient application for the renewal of a license or a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, or unless it has been terminated according to statute and rule, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

§251.7. Pleadings.

(a) Form. Pleadings shall be typewritten or printed upon paper 8 1/2 inches wide and 11 inches long with left and right margins at least one inch wide. Exhibits annexed thereto shall be folded to the same size and conform to §251.30(h) of this title (relating to Evidence). Reproductions are acceptable, provided all copies are clear and permanently legible.

(b) Content. Pleadings shall state their purpose, contain a concise statement of the facts in support thereof and a statement of the desired outcome.

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

(d) Certificate of service. A certificate of service by the party, attorney, or representative who files a pleading, stating that it has been served on the other parties, shall be prima facie evidence of such service. The following form of certificate will be sufficient in this connection: "I hereby certify that I have this _____ day of _____, 19__, served copies of the foregoing pleading upon all other parties to this proceeding, by (here state the manner of service). Signature." Service of pleadings on and by party shall be as specified in §251.12(c) of this title (relating to Service in Nonrulemaking Proceedings).

(e) Numbering and heading. In a contested case the complaint and each pleading shall be numbered with the licensee's license number, centered and underscored six lines down from the top of the first page. Double spaced below the number shall be the heading, as follows:

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IN THE MATTER OF THE	) (	BEFORE THE TEXAS BOARD
COMPLAINT AGAINST	) (	OF LICENSURE FOR NURSING
_____ RESPONDENT	) (	HOME ADMINISTRATORS

NAME OF PLEADING

(f) Other pleadings. All pleadings for which no official form is prescribed shall contain:

(1) the name of the party seeking to bring or prevent action by the board;

(2) the names of all other known parties in interest;

(3) a concise statement of the facts relied upon by the pleader;

(4) a prayer stating the type of relief, action or order desired;

(5) any other matter required by statute; and

(6) a certificate of service, if required by §251.12(c) of this title (relating to Service in Nonrulemaking Proceedings).

(g) Amendments. Any pleading may be amended at any time upon motion or the filing of an amended application, complaint, or petition for which notice, if required, shall be issued pursuant to §251.8 of this title (relating to Notice of Adjudicative Hearing Proceedings).

(h) Incorporation by reference of agency records. Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the agency. This section shall not relieve any applicant of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law.

(i) Classification. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

(j) Docketing. Upon receipt of a complaint, an application or other pleading which is intended to institute a proceeding before the board, the secretary, executive director or designee shall docket the same as a pending proceeding and serve notice thereon as specified in §251.12 of this title (relating to Service in Nonrulemaking Proceedings).

(k) Filing of documents. All documents relating to any proceeding pending or to be instituted before the board shall be filed with the secretary, executive director, or designee. Documents shall be deemed filed only when actually marked with the official stamp of the board, accompanied by the filing fee, if any, required by statute or board rules.

§251.8. Notice of Adjudicative Hearing Proceedings.

(a) Notice. Before revoking, probating, or suspending any license or registration, or denying an application for a license or registration, or reprimanding any licensee or registrant, the board will afford all parties an opportunity for an adjudicative hearing after reasonable notice of not less than 15 days.

(b) Content. Such notice of adjudicative hearing shall include:

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

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

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

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

(c) More definite statement. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on a timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing; however, the board shall not be required to plead its evidence in its complaint.

(d) Service. The notice of adjudicative hearing shall be served as specified in §251.12 of this title (relating to Service in Nonrulemaking Proceedings).

§251.9. Conduct and Decorum. Each person, party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy and respect for the board, the executive director, the examiner, and all other parties. Disorderly or disruptive conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

§251.10. Classification of Parties. Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding.

§251.11. Parties in Interest. Any party in interest may appear in any proceeding before the board. All appearances shall be subject to a motion to strike upon a showing that the party has no justiciable or administratively cognizable interest in the proceeding.

§251.12. Service in Nonrulemaking Proceedings.

(a) Personal service. Where personal service of notice by the board is required, the board shall serve in person or by mailing the notice of adjudicative hearing, certified or registered mail, return receipt requested, to the last address filed with the board by the person entitled to receive such notice.

(b) Service by publication. Where personal service cannot be made as contemplated in subsection (a) of this section, then service of notice shall be by publication of the notice of adjudicative hearing in a newspaper of general circulation in the county in which the licensee was last known to have his or her other practice. Notice shall be made once each week for two consecutive weeks, with the last publication to be at least 15 days prior to the date of the hearing.

(c) Service of pleadings. A copy of any document filed by any party in any proceeding subsequent to the institution thereof shall be mailed or otherwise delivered to other party of record by the filing party. If any party has appeared in the proceeding by attorney or other representative authorized under these sections to make appearances, service shall be made upon such attorney or other representative. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the presiding officer or hearings examiner striking the document from the record.

§251.13. Appearances Personally or by Representative. Any party may appear and be represented by an attorney at law authorized to practice law before the highest court of this state. This right may be waived. Any person may appear on his own behalf or by a designated representative. A corporation, partnership, or association may appear and be represented by any bona fide officer, partner, or full-time employee.

§251.14. Filing Fees. Each application, petition or complaint which is intended to institute a proceeding before the board shall be accompanied by the filing fee, if any, prescribed by law and these sections.

§251.15. Forms. Official forms for use in certain board proceedings are incorporated in the appendix to these sections. The previously-mentioned official forms shall be printed, when appropriate, under the supervision of the secretary or executive director who shall furnish copies thereof to any person upon request.

§251.16. Ex Parte Consultations. Unless required for the disposition of ex parte matters authorized by law, members or employees of the board assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

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 4, 1992.

TRD-9201733 Kim M. Foutz
Administrative Technician III
Texas Board of Licensure for Nursing Home Administrators

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 458-1955

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Subchapter B. Prehearing

• 22 TAC §§251.17-251.24

The new section is proposed under Texas Civil Statutes, Article 4442d, §8, which provides TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in §1908 of the Social Security Act (42 United States Code, §1396g), the federal rules and regulations promulgated thereunder, and other pertinent federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two thirds majority of the board.

§251.17. Depositions. The taking and use of depositions in any proceeding shall be governed by Administrative Procedure and Texas Register Act, §14.

§251.18. Subpoenas.

(a) Authority. Pursuant to the Act, 11. 02 and Administrative Procedure and Texas Register Act (APTRA) §14, the board has the authority to issue subpoenas to compel the attendance of witnesses and subpoena duces tecum to compel the production of books, records, or documents when requested by three party or on the board's own motion.

(b) Request. A party may request at any time during the pendency of a proceeding, including a contested case, that the board issue its subpoena or subpoena duces tecum upon a showing of good cause, the relevancy, and necessity of the testimony or documents, lack of undue inconvenience, imposition, or harassment of the party required to produce the testimony or documents, and the deposit of sums sufficient to insure payment of expenses incident to the subpoenas.

(1) The party requesting the subpoena shall be responsible for the payment of any expense incurred in serving the subpoena, as well as reasonable and necessary expenses incurred by the witness who appears in response to the subpoena.

(2) The party requesting a subpoena duces tecum shall describe and recite with clarity, specificity, and particularity the books, records, documents to be produced.

(c) Ministerial act. When requested by a party to issue a subpoena or subpoena duces tecum the board is performing a ministerial act and shall do so in accordance with the law; however, the board shall not be responsible for inadequacies, insufficiencies, or lack of pleading by the requesting parties or consequences thereof.

(d) On its own motion, or on the written request of any party to a contested case pending before it, on a showing of good cause, and on the deposit of sums with the executive director/secretary that will reasonably insure payment of the amounts estimated to accrue under §251.17 of this title (relating to Depositions), the board shall issue a subpoena addressed to an authorized agency employee or sheriff or any constable, to require the attendance of witnesses and the production of books, records, pages, or other objects as may be necessary and proper for the purposed of the proceedings.

(e) Fees and travel. Usual and customary fees for required expert witnesses subpoenaed in disciplinary hearings are authorized over and above the amount specified in APTRA, §14, when such fees are quoted in writing and approved by the agency prior to the hearing.

§251.19. Show Compliance Conference. Prior to the institution of the board's proceedings to revoke, suspend, or probate any license, the board shall, through the Disciplinary Review Panel:

(1) give notice to the licensee of such proceedings as required by §251.12 of this title (relating to Service in Nonrulemaking Proceedings); and

(1) provide the licensee an opportunity to show compliance with the Act or the rules of the board which shall consist of the following:

(A) the licensee may present his or her evidence;

(B) the licensee may be represented by counsel;

(C) the licensee may elect to have the show compliance proceeding reduced to writing at his or her expense;

(D) the licensee's testimony and evidence shall be under oath;

(E) the evidence may include records, x-rays, and other film recordings, diagrams, drawings, and other illustrative or explanatory matters relevant to the facts and the conduct of the licensee.

§251.20. Prehearing Conferences.

(a) Appearance. In any contested case the hearings examiner on his or her own motion or on the motion of a party,

may direct the parties, their attorneys or representatives to appear before him or her at a specified time and place for a conference prior to the hearing for the purpose of discussing:

(1) formulating issues;

(2) simplifying issues;

(3) matters to be officially noticed;

(4) the possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as official records of the board to the end of avoiding the unnecessary introduction of proof;

(5) ruling on any previously filed motions;

(6) the procedure at a hearing;

(7) the possible limitation of the number of witnesses; and

(8) such matters as may aid in the simplification of the proceedings.

(b) Order. Action taken at the conference shall be recorded in an appropriate order by the hearings examiner.

§251.21. Motions.

(a) Any motion filed in a pending proceeding shall, unless made during a hearing:

(1) be in writing;

(2) set forth the specific grounds and reasons, and the relief sought;

(3) be distributed to all parties of record over a certificate of service as outlined in §251.7(d) of this title (relating to Pleadings) and §251.12(c) of this title (relating to Service in Nonrulemaking Proceedings);

(4) be filed with the hearing examiner not less than five days prior to the hearing date;

(5) if based on facts or matters which are not of record, be supported by an affidavit; and

(6) be ruled on by the hearings examiner at the prehearing conference or at the hearing.

(b) Motions for continuance or for dismissal of complaint shall:

(1) comply with subsection (a)(1)-(6) of this section;

(2) make reference to relevant prior motions filed in the same proceeding.

(c) When a complaint has proceeded to its hearing date, pursuant to the notice issued therein, no continuance or dismissal shall be granted by the examiner without the consent of all parties involved.

§251.22. Consolidated Hearings. A motion for consolidation of two or more complaints, applications, petitions, or other proceedings shall comply with §251.21 of this title (relating to Motions). Proceedings shall not be consolidated unless the board shall find:

(1) that the proceedings involve common questions of law and fact;

(2) that separate hearings would result in unwarranted expense, delay, or substantial injustice.

§251.23. Place and Nature of Hearings. All hearings conducted in any proceedings shall be open to the public and shall be held in Austin.

§251.24. Informal Disposition. Pursuant to the Administrative Procedure and Texas Register Act, §13(e), informal disposition of any complaint or matter relating to this Act or of any contested case may be made by stipulation, agreed settlement, consent, order, or default.

(1) The Disciplinary Review Panel may determine that the public interest might be served by attempting to resolve a complaint or other matters pending before the board through an informal settlement conference prior to a formal disciplinary proceeding as described in Subchapter C of this chapter, concerning hearings.

(2) The following procedure shall be followed in informal settlement conferences.

(A) The Disciplinary Review Panel shall conduct the settlement conference as the board's representative.

(B) The board will provide the licensee with written notice of the time, date, and place of the settlement conference. Such notification shall inform the licensee of the nature of the alleged violation, that the licensee may be represented by legal counsel or by a representative of his or her choice, that the licensee may offer the testimony of witnesses, that the board will be represented by the Disciplinary Review Panel, that the licensee's attendance and participation is voluntary, and that the licensee may request in writing that the matter be considered according to procedures described in Subchapter C of this chapter, concerning hearings. A copy of the board's rules concerning informal disposition of cases shall be enclosed with the notice of the settlement conference. Notice of the settlement conference, with enclosures, shall be sent by certified mail, return receipt requested, to the current address of the licensee on file with the board.

(C) Notice of the settlement conference, with enclosures, shall be sent by certified mail, return receipt requested, to the complainant at his or her current address on file with the board. The complainant shall be afforded the opportunity to appear and testify or to submit a written statement for consideration at the settlement conference.

(D) The settlement conference shall be informal and will not follow the procedure established in this chapter for contested cases. The licensee, the licensee's attorney or representative, and representatives of the board and board staff may question witnesses, make relevant statements, present affidavits, letters, reports, or statements of persons not in attendance, and may present such other evidence as may be appropriate.

(E) The board's representative may question any witness, and shall afford each participant in the settlement conference the opportunity to make such statements as are material and relevant.

(F) The board's representative shall prohibit or limit access to the board's investigative file by the licensee, the licensee's attorney or representative, and by the complainant.

(G) The board's representative may, at his or her discretion, direct that a tape recording be made of none or all of the informal settlement conference.

(H) The board's representative shall exclude from the settlement conference all persons except witnesses during their testimony, the licensee, the licensee's attorney or representative, the complainant, board members, disciplinary review panel members, and board staff.

(I) At the conclusion of the settlement conference, the board's representative may make recommendations to the licensee for resolution of the issues. Such recommendations may include any disciplinary actions authorized by the Act. The board representative may also conclude that the board lacks jurisdiction or that a violation of the Act or the board's rules has not been established, and may order that the investigation be closed or referred for further investigation.

(J) The licensee may either accept or reject the settlement recommendations proposed by the board representative. If the licensee accepts the recommendations, the licensee shall execute the settlement agreement as soon thereafter as is practical. If the licensee rejects the proposed agreement, the matter proceed to a formal hearing as outlined in Subchapter C of this Chapter, (relating to Hearings).

(K) Following acceptance and execution by the licensee of the settlement agreement, said agreement shall be submitted to the board for approval at the next meeting of the board. Upon an affirmative two-thirds majority vote, the board shall enter an order approving the proposed settlement agreement. Said order shall bear the signature of the officer presiding at such meeting and shall be included in the minutes of the board.

(L) If the board approves the proposed settlement agreement, the licensee and the complainant shall be so notified.

(M) If the board declines to approve any part or all of the proposed settlement agreement, the matter may be referred back to the board's representative and to the licensee for additional discussion, if appropriate. The board may also schedule the matter for a hearing as described in Subchapter C of this Chapter, (relating to Hearings).

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

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TRD-9201735 Kim M. Foutz
Administrative Technician III
Texas Board of Licensure for Nursing Home Administrators

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For further information, please call: (512) 458-1955

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Subchapter C. Hearing

• 22 TAC §§251.25-251.30

The new sections are proposed under Texas Civil Statutes, Article 4442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the state to meet the requirements set forth in §1908 of the Social Security Act (42 United States Code, §1396g), the federal rules and regulations promulgated thereunder, and other pertinent federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two thirds majority of the board.

§251.25. Presiding Officer. When the board enbanc, or a committee or panel of the board, conducts a hearing pursuant to the Act, then the following apply.

(1) The hearing will be presided over by a hearings officer.

(2) The presiding officer shall have the authority to:

(A) administer oaths;

(B) examine witnesses;

(C) rule on the admissibility of evidence;

(D) rule on motions;

(E) rule on amendments to pleadings;

(F) recess the hearing from day to day; and

(G) refer the hearing to a hearing examiner to be appointed by the board.

§251.26. Hearing Examiners.

(a) Authority. When the board appoints a hearing examiner pursuant to the Act, §11.02, then such hearings shall be conducted in accordance with the APTRA, the Act, the rules of this board, and all other applicable law.

(b) Duties. Except for accepting or rejecting proposed findings of fact or conclusions of law, issuing final orders on the merits, dismissing complaints, and making recommendations as to a licensee's discipline, the hearings examiner shall have all the authority which the board has regarding the conduct of hearings, including, without limitation, the following:

(1) to hold hearings and issue notices;

(2) to administer oaths and affirmations;

(3) to direct all parties to enter their appearance on the record;

(4) to subpoena and examine witness;

(5) to subpoena documents and other physical evidence;

(6) to hold conferences, including prehearing conferences, before or during the hearing to consider the matters specified in §251.20 of this title (relating to Prehearing Conferences);

(7) to regulate the course and conduct of the hearing, including, without limitation, setting the time and place of the hearing and/or continued hearings; fixing the time for filing of briefs and other documents; receiving relevant evidence; excluding evidence which is irrelevant, immaterial, repetitious, or cumulative; ruling upon offers of proof; regulating the manner of examination to prevent needless and unreasonable harassment, intimidation, expense, inconvenience, or embarrassment of any witness or party at a hearing; removing disruptive individuals; and ruling on motions;

(8) to submit in writing to the parties, a proposal for decision containing the elements specified in §251.31 of this title (relating to Proposals for Decision);

(9) to present and explain in person his or her proposal for decision to the board for its consideration and final action; and

(10) to dispose of any other matter that arises in the course of a hearing and to take any action authorized by these sections, the Act, the APTRA, and all other applicable law.

§251.27. Order of Proceeding.

(a) Hearings. In all proceedings, the petitioner, applicant or complainant, respectively, shall be entitled to open and close. Where several proceedings are heard on a consolidated record, the examiner shall designate who shall open and close. The examiner in all cases shall determine whether and at what stage intervenors shall be permitted to offer evidence. After all parties have completed the presentation of their evidence, the examiner may call upon any party or the board for further material or relevant evidence upon any issue, to be presented at further public hearing after notice to all parties of record.

(b) Before the board. During proceedings before the board, enbanc, the order of proceeding shall be the following.

(1) The examiner shall present his or her proposal for decision and recommended order, explaining them as specified in §251.26(8) and (9) of this title (relating to Hearing Examiners).

(2) The party adversely affected shall briefly state their reasons for being so affected supported by the evidence of record.

(3) The other party or parties shall be given the opportunity to respond.

(4) The board as complainant shall have the right to close.

(5) The president or a member of the board may question any party as to any matter relevant to the proceeding.

(6) At the end of any argument by the parties, the board shall deliberate the matter and announce its final decision in open meeting.

(c) Limitation. A party shall not inquire into the mental processes used by the board in arriving at its decision, nor be disruptive of the orderly procedure of the board's routine.

§251.28. Reporter and Transcripts.

(a) Option. A party has the option of furnishing his or her own stenographic reporter at his or her own expense or using the reporter on the staff of the board. If a party elects to provide his or her own reporter, then party shall notify the board prior to the commencement of the hearing.

(b) Original. The original transcript shall be delivered to the board as practicable. A stenographic reporter may sell copies of a transcript If the respondent in the proceedings requests the original record (statement of fact) of the testimony and evidence of a disciplinary hearing, the costs for the final transcript shall be borne by the respondent (appellant). Any subsequent copies of the record (transcript) shall be borne any person requesting same.

(c) Corrections. Suggested corrections to the transcript of the record may be offered within 10 days after the transcript is filed in the proceeding, unless the board shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the board. If suggested corrections are not objected to, board will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the board which shall then determine the manner in which the record shall be signed, if at all.

§251.29. Dismissal Without Hearing.

(a) The board may entertain motions for dismissal for the following reasons:

(1) failure to prosecute;

(2) unnecessary duplication of proceedings;

(3) withdrawal;

(4) moot questions or stale petitions; or

(5) lack of jurisdiction.

(b) Such motions must meet the criteria of §251.21 of this title (relating to Motions).

(c) These motions may be argued prior to the board ruling thereon.

§251.30. Evidence.

(a) Rules. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall apply. In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The board shall give effect to the rules of privilege recognized by law. Opportunity must be afforded all parties to respond and present evidence and argument of all issues involved.

(b) Objections. Objections to evidentiary offers shall be made and shall be noted in the record. Formal exceptions to rulings of the presiding officer during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the presiding officer or the examiner the action which he or she desires.

(c) Offer of proof. If evidence is excluded from the record by an exclusionary ruling of the examiner, the evidence may be included in the record by an offer of proof by the sponsoring party by dictating into the record or submitting in writing the substance of the evidence. An offer of proof shall be sufficient to preserve the evidence for review.

(d) Resident's records. When subpoenaed by the board, the records of nursing home resident's shall have stapled thereto an affidavit in the form approved and furnished by the board which contains the requisite elements to comply with the Texas Rules of Evidence, 902 (10)b, relating to form of affidavits.

(e) Documents. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(1) Copies. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the examiner may limit those admitted to a (number which are typical and representative and may, in his or her discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement the examiner shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made.

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

(f) Official notice. Official notice may be taken of all facts judicially cognizable and records of the board. The addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the agency and its staff may be utilized in evaluating the evidence.

(g) Limitations on number of witnesses. The examiner shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

(h) Exhibits.

(1) Form. Documentary exhibits shall be of such size as set forth in §251.7 of this title (relating to Pleadings), or shall be eight inches by 14 inches in length, so as to not unduly encumber the files and records of the board. There shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(2) Marking and service. The original of each exhibit offered shall be marked sequentially for identification and tendered for inclusion in the evidentiary record. One copy shall be furnished to the examiner, and one copy to each party of record or his or her attorney or representative.

(i) After hearing. No exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing unless specifically directed by the examiner, presiding officer, or by the board with copies

of the late-filed exhibit served on all parties of record.

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

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TRD-9201736 Kim M. Foutz
Administrative Technician III
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For further information, please call: (512) 458-1955

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Subchapter D. Posthearing

• 22 TAC §§251.31-251.37

The new sections are proposed under Texas Civil Statutes, Article 4442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the state to meet the requirements set forth in §1908 of the Social Security Act (42 United States Code §1396g), the federal rules and regulations promulgated thereunder, and other pertinent federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two thirds majority of the board.

§251.31. Proposals for Decision.

(a) Elements. In addition to any other requirement of the Act or the APTRA, an examiner shall serve on the parties a proposal for decision which shall contain:

(1) a summary of the evidence adduced by each party;

(2) a statement of the examiner's reasons for the proposed decision;

(3) findings of fact expressed in clear, concise factual terms, either summarizing or reciting the evidence. Findings of fact must be based on the evidence and on matters officially noticed;

(4) conclusions of law necessary to the proposed decision; and

(5) a listing and explanation of all mitigating and aggravating circumstances necessary to a complete understanding of the case by the board;

(6) recommended disposition or discipline

(b) Service. When a proposal for decision is prepared, a copy of the proposal shall be served forthwith by the examiner on each party, his or her attorney of record or representative, and the board. Service of the proposal or decision shall be in accordance with §251.7(d) of this title (relating to Pleadings) and §251.12(c) of this title (relating to Service in Nonrulemaking Proceeding).

(c) Statutory statement. If findings of fact are stated in statutory language, each finding must be accompanied by a concise and explicit statement of the facts supporting the finding.

(d) Proposed findings. Only when the examiner requests a party or parties to submit findings of fact will it be necessary for the examiner to rule on each proposed finding in the recommended order.

§251.32. Exceptions and Replies.

(a) Entitlement. Any party of record who is aggrieved by the examiner's proposal for decision shall have the opportunity to file exceptions to the proposal for decision within 20 days from the date of service of the proposal for decision. Replies to the exceptions may be filed by other parties within 10 days of the filing of the exceptions. Exceptions and replies shall be filed with the examiner. Any extensions of time shall be as provided by §251.4 of this title (relating to Computation of Time).

(b) Form. The form of exceptions and replies are as specified in §251.7 of this title (relating to Pleadings).

(c) Content. Each exception or reply to a finding of fact shall be concisely stated and summarize the evidence in support thereof. Arguments shall be logical and citations to authorities shall be complete.

(d) Briefs. Briefs shall be filed only when requested or permitted by the board, presiding officer or examiner.

(e) Service. Exceptions and replies shall be served upon every party of record by the filing party pursuant to §251.12 of this title (relating to Service in Nonrulemaking Proceedings).

§251.33. Oral Argument. Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only in the sound discretion of the board. A request for oral argument may be incorporated in exceptions, briefs, replies to exceptions, motions for rehearing or in separate pleadings.

§251.34. Final Decisions and Orders.

(a) Board action. The proposal for decision may be acted on by the board after the expiration of 10 days after the filing of replies to exceptions to the proposal for decision. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his or her attorney of record.

(b) Recorded. All final decisions and orders of the board shall be in writing or stated in the record and shall be signed by the chair, the vice-chair, or the secretary-treasurer. A final order shall include findings of fact and conclusions of law, separately stated.

(c) Amended order. If the board modifies, amends, or changes the examiner's recommended order, the examiner shall prepare an order reflecting the board's changes as stated in the record.

(d) Administrative finality. A final order or board decision is administratively final:

(1) when absent the filing of a timely motion for rehearing upon the expiration of 20 days from the date the final order or board decision is entered; or

(2) when a timely motion for rehearing is filed and the motion for rehearing is overruled by board order or operation of law as outlined in §251.35 of this title (relating to Motions for Rehearing).

(e) Rendering of final decision or order. The final decision or order must be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by an examiner, an extension of time for the issuing of a proposal for decision may be announced at the conclusion of the hearing.

§251.35. Motions for Rehearing.

(a) Filing times. A motion for rehearing must be filed within 20 days after a party has been notified, either in person or by mail, of the final decision or order of the board.

(b) Board action. Board action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If board action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The board may by written order extend the period of time for filing the motions and replies and taking board action, except that an extension may not extend the period for board action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order. The parties may by agreement with the approval of the board provide for a modification of the times provided in this section.

§251.36. The Record. The record in a contested case shall include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings;

(5) proposed findings of fact, conclusions of law, exceptions, and replies;

(6) any decision, opinion, or report by the officer presiding at the hearing; and

(7) all staff memoranda or data submitted to or considered by the hearing officer or members of the agency who are involved in making the decision.

§251.37. Costs of Appeal. A party appealing a final decision of the board in a contested case may be ordered by the board to pay all or a part of the cost of preparation of the original or a certified copy of the record of the proceeding that is required to be transmitted to the reviewing court.

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 4, 1992.

TRD-9201737 Kim M Foutz
Administrative Technician III
Texas Board of Licensure for Nursing Home Administrators

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For further information, please call: (512) 458-1955

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug

Licensing [Registration] of Wholesale Distributors of Drugs **-Including Good Manufacturing Practices**

- **25 TAC §§229.251-229.254**

The Texas Department of Health (department) proposes new §§229.251-229.254, concerning licensing of wholesale distributors of drugs-including good manufacturing practices. The sections cover definitions; licensing fee and procedures; minimum standards for licensure; and refusal, revocation, or suspension of license.

The amendments will comply with requirements of Senate Bill 873, Acts of the 72nd Legislature, 1991, and with the federal Prescription Drug Marketing Act of 1987. In order to conform with Senate Bill 873, Acts of the 72nd Legislature and with the federal Prescription Drug Marketing Act of 1987, the amendments update and clarify the sections by replacing the word "registration" with the word "licensing" throughout the sections; clarify the definition of the location where drugs are distributed; add new definitions for "wholesale distribution" (of drugs) and "prescription drugs"; authorize licensure fees for in-state and out-of-state wholesale distributors of drugs and inserts the guidelines for licensure; and enumerates those entities which are exempt from licensing requirements.

The proposed amendments will enable the department to license and regulate wholesale drug distributors so as to conform with the federal Prescription Drug Marketing Act of 1987. The federal Act requires states to license wholesale drug distributors in an effort to reduce potential public health risks which might result from the diversion of prescription drugs from legitimate commercial channels. Failure to license out-of-state distributors would not only penalize drug distributors by precluding shipment into Texas, but would also possibly limit the availability of prescription drugs to Texas citizens. The Texas Food, Drug, and Cosmetic Act, Texas Health and Safety Code, Chapter 431, was amended during the 72nd Texas Legislative Session to enable the department to enact the provisions of the federal Act. Since the new state law went into effect on September 1, 1991, it is imperative that the proposed rules be passed so that licensing provisions may be enacted as expeditiously as possible.

Stephen Seale, Chief Accountant III, 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. The effect on state government will be an estimated additional cost of $739,000 for each year of fiscal years 1992-1996; however, there will be an estimated increase in revenue of $739,000 each year to offset this cost. There will be no effect on local government.

Mr. Seale also has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing or administering the proposed sections will be recovery of at least 50% of the costs incurred by the department in the licensing, inspection, implementation, and enforcement of the law and the sections. The possible annual cost to small businesses and persons required to comply with the proposed rules for the next five years will be as set forth in the schedule of fees in §229. 252. There will be no effect on local employment.

Comments on the proposal may be submitted to Dennis E. Baker, Director, Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, ((512) 458-7248. Comments will be accepted for 30 days following the date of publication of these proposed rules in the *Texas Register.* In addition, a public hearing on the proposed rules will be held at 8:30 a.m., on Wednesday, February 26, 1992, in the Texas Department of Health Auditorium, 1100 West 49th Street, Austin.

The amendments are proposed under Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of this chapter; 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.

§229.251. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Place of business [Establishments]–Each location **at which** [where] drugs are distributed at wholesale as defined in **The Health and Safety Code, Chapter 431.** [Texas Civil Statutes, Article 4476-5, §27].

Wholesale distribution–Distribution to a person other than a consumer or patient, including, but not limited to, distribution by a manufacturer, repacker, own label distributor, jobber, or wholesaler.

§229.252. Licensing [Registration] Fee and Procedures.

(a) **License** [Registration] fee. All wholesale distributors of drugs **who sell drugs** in Texas shall **obtain a license** [register] annually on or before September 1 with the Texas Department of Health **(department)** and shall pay a **licensing** [registration] fee for each wholesale distribution **place of business** [establishment] operated as follows:

(1) **500** [$100] per wholesale distributor having a gross annual volume of $0-**$19,999,999.99 [$199,999.99];**

(2) **$750** [$200] per wholesale distributor having a gross annual volume **greater than or equal to** [of] **$20,000,000** [$200,000-$999,999. 99];

(3) **$750** [$300] per **out-of-state** wholesale distributor, **unless an audited statement is provided which demonstrates** [having] a gross annual volume of **less than $20,000,000 which would require a licensing fee of $500** [$1,000,000-$2,999,999.99].

[(4) $400 per wholesale distributor having a gross annual volume of $3,000,000-$4,999,999.99; and]

[(5) $500 per wholesale distributor having a gross annual volume of $5 million or above]

(b) **License** [Registration] forms. **Licensing** [Registration] forms may be obtained from the Texas Department of Health, Division of Food and Drugs, 1100 West 49th Street, Austin, Texas, 78756.

(c) **License** [Registration] statement. The wholesale distributors' **licensing** [registration] statement shall be signed and verified, shall be made on the department furnished **license** [registration] form, and shall contain the following information:

(1) the **legal** name under which the business is conducted;

(2) the address of each place of business **that is** [in this state being registered] **licensed** [A "place of business" means each location where drugs are located for wholesale distribution];

(3) if a proprietorship, the name and **residence** [resident] address of the proprietor; if a partnership, the names and **residence** [resident] addresses of all partners; if a corporation, the date and place of incorporation and name and address of its registered agent in the state; or if any other type of association, then the names of the principals of such association;

(4) the names and **residence** [resident] addresses **and valid driver's license (if not applicable, a social security number)** of those individuals in an actual administrative capacity which, in the case of proprietorship, shall be the managing proprietor; partnership, the managing partner; corporation, the officers and directors; or those in a managerial capacity in any other type of association;

(5) for each place of business [in the state], the **residence** [resident] addresses of the individuals in charge thereof; and

(6) a list of categories [of gross annual volume] which must be marked and adhered to in the determination and paying of the fee.

(d) Two or more **places of business** [establishments]. If the wholesale distributor operates more than one **place of business** [establishment], the wholesale distributor shall **license** [register] each **place of business** [establishment] separately.

(e) Pre-**licensing** [registration] inspection. The applicant shall cooperate with any **pre-licensing** [pre-registration] inspection by the department of the wholesale distributor's facilities. **The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with the minimum standards in this chapter for applicants located out-of-state.**

(f) Issuance of **License** [registration]. The department **may** [shall] **license** [register] a wholesale distributor of drugs who meets the requirements of this section and §229.253 of this title (relating to Minimum Standards for **Licensing** [Registration]).

(g) Exemption from licensing. Persons who engage only in the following types of wholesale drug distribution are exempt from the licensing requirements of this undesignated head, to the extent that it does not violate provisions of the Texas Dangerous Drug Act, Health and Safety Code; or the Texas Controlled Substances Act, Health and Safety Code, Chapter 481:

(1) intracompany sales;

(2) the purchase or acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(3) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization, as described in the Internal Revenue Code of 1986, §501(c)(3), to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(4) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For the purpose of this subsection, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;

(5) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this section, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(6) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(7) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(8) the sale, purchase, or trade of blood and blood components intended for transfusion.

(h)[(g)] Renewal of **license** [registration]

(1) Each year, the wholesale distributor of drugs shall renew its **license** [registration] following the requirements of this section and §229.253 of this title (relating to Minimum Standards for **Licensing** [Registration]).

(2) The application for renewal and fee for each **place of business** [establishment] shall be submitted to the department on or before September 1 in accordance with department procedures in this section.

(3) Failure to submit the renewal prior to September 1 may subject the wholesale distributor of drugs to the **enforcement** [offense] provisions under **The Health and Safety Code, Chapter 431** [Texas Civil Statutes, Article 4476-5, §27] and also to the provision of §229.254 of this title (relating to Refusal, Revocation or Suspension of **License** [Registration]).

(i) Amendment of license. A license that is amended, including a change of ownership or a notification of a change in the location of a licensed place of business required under the Health and Safety Code, §431.206 will require submission of fees as outlined in subsection (a) of this section.

(j) Notification of change of location of place of business. Not fewer than 30 days in advance of the change, the licensee shall notify the Commissioner of health (commissioner) or the commissioner's designee in writing of the licensee's intent to change the location of a licensed place of business. The notice shall include the address of the new location, and the name and residence address of the individual in charge of the business at the new location. Not more than 10 days after the completion of the change of location, the licensee shall notify the commissioner or the commissioner's designee in writing to verify the change of location, the address of the new location, and the name and residence address of the individual in charge of the business at the new address. Notice will be deemed adequate if the licensee provides the intent and verification notices to the commissioner or the commissioner's designee by certified mail, return receipt requested, mailed to the Texas Department of Health, 1100 West 49th Street, Austin, Texas.

§229.253. Minimum Standards for Licensure [Registration].

(a) Minimum standards. All wholesale distributors of drugs [in Texas] shall comply with the minimum standards specified in **subsections** [subsection] (b) **and** (c)

of this section in addition to the existing statutory standards contained in **the Texas Health and Safety Code, Chapter 431** [the Texas Food, Drug and Cosmetic Act, Texas Civil Statutes, Article-4476-5].

(b) Current good manufacturing practices in manufacturing, processing, packing, or holding of drugs. The **Texas Department of Health** (department) adopts by reference [the current good manufacturing practices in manufacturing, processing, packing or holding of drugs,] **Title 21**, Code of Federal Regulations, Part 210, §§210.1-210.3, **as amended, titled "Current Good Manufacturing Practices in Manufacturing, Processing, Packing, or Holding of Drugs"**; and Part 211, §§211.1-211.208, **as amended, titled "Current Good Manufacturing Practice for Finished Pharmaceuticals"**. Copies are indexed and filed in the office of the Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 and are available for inspection during normal working hours.

(c) **Guidelines for licensing of wholesale prescription drug distributors. The department adopts by reference Title 21, Code of Federal Regulations, Part 205, §§205.1-205.50, as amended, titled "Guidelines for State Licensing of Wholesale Prescription Drug Distributors". Copies are indexed and filed in the office of the Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 and are available for inspection during normal working hours. To the extent these sections conflict with Title 21, Code of Federal Regulations, Part 205, this section shall prevail. Prescription drug means any drug, human or veterinary, required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to the Federal Food, Drug, and Cosmetic Act, §503(b).**

(d)[(c)] Buildings and facilities. All manufacturing, processing, packing or holding of drugs shall take place in buildings and facilities described in **Title 21, Code of Federal Regulations, Part 211, Subpart C, as amended** [Subpart C of Part 211, Code of Federal Regulations, Title 21]. No manufacturing, processing, packing, or holding of drugs shall be conducted in any personal residence.

(e)[(d)] Drug labeling. If a person, firm, or corporation labels a drug, the label shall meet the requirements of **the Texas Health and Safety Code, Chapter 431** [the Texas Food, Drug and Cosmetic Act, Texas Civil Statutes, Article 4476-5].

§229.254. Refusal, Revocation, or Suspension of License [Registration].

(a) Basis. The **Texas Department of Health** (department) may, after providing opportunity for hearing, refuse to **license** [register] a wholesale distributor of drugs, or may revoke or suspend the **license** [registration] for violations of the requirements in §§229.251-229.253 of this title (relating to Definitions, **Licensing** [Registration] Fee and Procedures, and Minimum Standards for **Licensure** [Registration]) or for any of the reasons described in **the Texas Health and Safety Code, Chapter 431,** [Texas Civil Statutes, Article 4476-5,-§27].

(b) Hearings. Any hearings for the refusal, revocation, or suspension of a **license** [registration] are governed by **the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health)** [§§1.21-1.32 of this title (relating to the department's Formal Hearing Procedures)] **and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.**

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 3, 1992.

TRD-9201617 Deputy Commissioner
Robert A. MacLean, M.D.
Texas Department of Health

Proposed date of adoption: April 25, 1992

For further information, please call: (512) 458-7248

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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 40. System Administration

Subchapter B. Interagency Agreements

- **25 TAC §401.53**

The Texas Department of Mental Health and Mental Retardation proposes amendments to Exhibit J, which is adopted by reference in §401.53, concerning the plan for new bed development in the Texas ICF/MR Program for fiscal years 1992-1993. The amendment would reallocate 78 level-of-care V beds (24 from the North, 12 from the West, 24 from the East, and 18 from the South) and 12 level-of-care VI beds (six from the North and six from the East) to the Central Region. The reallocation has been approved by the Interagency Council on ICF/MR Facilities.

Leilani Rose, director, financial services department, has determined that there will be no significant fiscal implications for state or local government as a result of enforcing the section as proposed.

Jaylon Fincannon, deputy commisioner, mental retardation services, has determined that for the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be the reallocation of ICF/MR beds to meet regional needs as evidenced by the applications received to establish ICF/MR facilities in the Central Region. Applicants must submit sufficient information to support the claim that a need exists for the facility. 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. There is no significant local economic impact anticipated.

The amendment and the adoption by reference are proposed under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§401.53. Plan for New Bed Development in the Texas ICF/MR Program.

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

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

Issued in Austin, Texas, on February 5, 1992.

TRD-9201802 Ann Utley
Chairman
Texas Board of Mental Health and Mental Retardation

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 465-4670

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Chapter 404. Protection of Clients and Staff

Subchapter E. Rights of Persons Receiving Mental Health Services

- **25 TAC §§404.151-404.166**

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§404.151-.166 of this title, concerning rights of persons receiving mental health services. A previous version of the proposed new rules, published in the October 25, 1991, issue of the Texas Register (16 TexReg 1626-1632) is subsequently withdrawn. The repeal of existing §§405.281-291, concerning mental health rights, was published in the October 25, 1991, issue of the Texas Register (16 TexReg 6032).

A preliminary version of Chapter 404, Subchapter E was distributed to field staff and advocacy organizations in early March. Several comments and recommendations were received and reflected in the sections proposed in October 1991. A public hearing was held on the proposed rules on December 12, 1991, at which six people presented oral testimony. In addition, a number of written

comments were received. All comments were considered in developing the current proposal.

The primary difference between the current proposed sections and the former proposal is that the current proposal expands the application of the rule to include private psychiatric facilities. As a result, a number of rights have been revised to specify references for department facilities, community centers, and private psychiatric facilities, where appropriate. A new section has been added outlining additional rights of individuals receiving mental health services in department facilities to easily identify those rights not applicable to private psychiatric facilities.

The proposed new sections include several new rights addressing an individual's ability to refuse certain treatments without compromising access to other treatments solely because of the refusal, as well as an individual's right to the provision of services without discrimination. The rights of persons voluntarily admitted to inpatient services have been revised to allow for oral requests for release and to require a physician's examination within 24 hours of requesting release. The proposed new rules also include a provision that an individual taken to a department facility, community center, or private psychiatric facility be examined immediately by a physician to determine whether further detention is necessary. The proposed sections also include a new section addressing the use of the Patient's Bill of Rights in private psychiatric hospitals.

Leilani Rose, director, Office of Financial Services, has determined that there will be no significant fiscal implications for state or local government or small businesses as a result of administering the sections as proposed. Local economic impact is anticipated to be insignificant.

Pam Carley, director, Office of Consumer Services and Rights Protection, has determined that the public benefit is the adoption of rules protecting and guaranteeing the rights of persons receiving mental health services.

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

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

§404.151. Purpose. The purpose of this subchapter is:

(1) to provide to persons receiving mental health services:

(A) a listing of the specific rights guaranteed to them;

(B) the assurance that these rights must and will be made known to them, and, when applicable, to the persons having legal responsibility for them (i.e., parent of a minor, managing conservator, legal guardian of the person, limited legal guardian of the person); and

(C) assistance in exercising their rights in a manner which does not conflict with the rights of other persons;

(2) to require the development of rights handbooks and their distribution to persons receiving mental health services and, when applicable, to the persons with legal responsibility for them and other interested parties;

(3) to require the appointment of a rights protection officer at each department facility and community MHMR center which provides mental health services; and

(4) to ensure that department facility, community center, and private psychiatric hospital employees are aware of the rights of persons receiving mental health services.

§404.152. Application. The provisions of this subchapter shall apply to each of the following in which mental health services are provided:

(1) facilities of the Texas Department of Mental Health and Mental Retardation and their respective community-based programs;

(2) community centers;

(3) private psychiatric hospitals licensed by the Texas Department of Mental Health and Mental Retardation; and

(4) any program contracting with these entities.

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

Community center–A community mental health and mental retardation center organized pursuant to Section 3.01 of the Texas Mental Health and Mental Retardation Act, as amended, Texas Civil Statutes, Articles 5547-201 through 5547-204, which provides mental health services.

Department–The Texas Department of Mental Health and Mental Retardation.

Department facilities–The state hospitals, state centers which provide mental health services, and their respective community-based programs.

Emergency–A situation in which, in the opinion of the treating physician, the immediate use of medication, or, in the opinion of the treating physician or other appropriate professional, the immediate use of restrictive techniques is essential to interrupt imminent physical danger to self or others.

Grounds privileges–Access, with or without supervision, to areas of the department facility or private psychiatric hospital away from an individual's living unit.

Inpatient services–Residential services provided in a department facility, a licensed hospital unit, a licensed crisis stabilization unit, or a private psychiatric hospital.

Mental health services–Includes all services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate mentally disordered and disabled persons, including persons mentally disordered and disabled from alcoholism and drug addiction.

Office of Consumer Services and Rights Protection–The office located within the department's Central Office which maintains the toll-free telephone line (1-800-252-8154) to receive rights-related complaints and which is responsible for assisting persons receiving mental health services with needed services and rights protection.

Private psychiatric hospital–An establishment offering 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/or children. Services other than those of an inpatient nature are not licensed or regulated by the department and are considered only to the extent that they affect the stated resources for the inpatient components

Residential services–Twenty-four hour services provided and/or contracted by the department or a community center (e.g., structured group residential programs, halfway houses, hospital units providing mental health services, crisis stabilization units, etc.) or a private psychiatric hospital.

Rights protection officer–An individual appointed by the head of a department facility or community center to protect and advocate for the rights of persons receiving mental health services.

§404.154. Rights of All Persons Receiving Mental Health Services. Persons receiving mental health services from department facilities, community centers, and private psychiatric hospitals have the following rights:

(1) The rights, benefits, responsibilities, and privileges guaranteed by the constitutions and laws of the United States and the State of Texas unless they have

been restricted by specific provisions of law. These rights include, but are not limited to, the right to impartial access to treatment, regardless of race, nationality, religion, sex, ethnicity, sexual orientation, age, or handicap; the right to petition for habeas corpus; the right to register and vote at elections; the right to acquire, use, and dispose of property including contractual rights; the right to sue and be sued; all rights relating to the granting, use, and revocation of licenses, permits, privileges, and benefits under law; the right to religious freedom; and rights concerning domestic relations.

(2) The right to presumption of mental competency in the absence of a judicial determination to the contrary. There may be limitations to this right found in department rules, including Chapter 404, Subchapter A of this title (relating to Abuse and Neglect of Persons Served by TXMHMR Facilities) , Chapter 404, Subchapter B of this title (relating to Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers), and Chapter 404, Subchapter C of this title (relating to Patient Abuse in Private Psychiatric Facilities) Department facilities and community centers should also reference Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication). Any questions regarding applicability of this right or a limitation on it should be referred for appropriate legal advice.

(3) The right to a humane treatment environment that ensures protection from harm, provides privacy to as great a degree as possible with regard to personal needs, and promotes respect and dignity for each individual.

(4) The right to appropriate treatment in the least restrictive appropriate setting available consistent with the protection of the individual and the protection of the community.

(5) The right to be informed of all rules and regulations of the department facility, community center, or private psychiatric hospital relating to expectations of the individual's conduct. Staff must document in the medical record that this information was received.

(6) The right to communication in a language and format understandable to the individual for all services provided.

(7) The right to participate actively in the development and periodic review of an individualized treatment plan (extending to a parent or conservator of a minor, and the legal guardian of the person, when applicable); and the right to a timely consideration of any request for the participation of any other person in this process, with the right to be informed of the reasons for any denial of such a request. Staff must document in the medical record that the parent, guardian, conservator, or other person was notified to participate.

(8) The right to explanations of the care, procedures, and treatment to be provided; the risks, side effects, and benefits of all medications and treatment procedures to be used, including those that are unusual or experimental; the alternative treatment procedures that are available; and the possible consequences of refusing the treatment or procedure. This right extends to the parent or conservator of a minor, the legal guardian of the person, when applicable, and to any other person authorized by the individual served.

(9) The right to refuse particular treatments without prejudice to participation in other programs, or without compromising access to other treatments or services solely because of the refusal.

(10) The right to meet with the professional staff members responsible for the individual's care and to be informed of their professional discipline, job title, and responsibilities. In addition, the individual has the right to an explanation of the justification involving any proposed change in the appointment of staff members responsible for the individual's care.

(11) The right to request the opinion of a consultant at the individual's own expense and to be granted an in-house review of the individual treatment plan or specific procedure upon reasonable request as provided for in the written procedures of the department facility, community center, or private psychiatric hospital.

(12) The right to an explanation of the justification of any transfer of the individual to any program within or outside of the department facility, community center, or private psychiatric hospital.

(13) The right to participate actively in the development of a discharge plan addressing aftercare issues which include the individual's mental health, physical health, and social needs. This right extends to a parent or conservator of a minor, or the legal guardian of the person, when applicable. The individual also has the right to a timely consideration of any request for the participation of any other person in this discharge planning, with the right to be informed of the reasons for any denial of such a request. Staff must document in the medical record that the parent, guardian, conservator, or other person was notified to participate.

(14) The right to information, upon request, pertaining to the cost of services rendered (itemized when possible), the sources of the program's reimbursement, and any limitations placed upon the duration of services. At department facilities and community centers, no person will be denied services due to an inability to pay for them.

(15) The right to be free from unnecessary or excessive medication, which includes the right to give or withhold informed consent to treatment with psychoactive medication, unless the right has been limited by court order or in an emergency. In department facilities and community centers this right may only be limited in accordance with the provisions of Chapter 405, Subchapter FF.

(16) The right to give or withhold informed consent to participate in research programs without compromising access to services to which the individual is otherwise entitled.

(17) The right to give or withhold informed consent for the use or performance of any of the following (exceptions to this right must be in accordance with applicable laws, standards, or, for department facilities and community centers, department rules, and must be fully explained to the individual and the person authorized to give consent, if applicable):

(A) surgical procedures;

(B) electroconvulsive therapy;

(C) unusual medications;

(D) behavior therapy;

(D) hazardous assessment procedures;

(E) audiovisual equipment; and

(F) other procedures for which consent is required by law.

(18)The right to withdraw consent at any time in any matter in which the person receiving services has previously granted consent, without limiting or compromising access to services or other treatment(s).

(19) The right to be informed of the current and future use and disposition of products of special observation and audiovisual techniques, such as one-way vision mirrors, tape recorders, television, movies, or photographs.

(20) The right to confidentiality of records and the right to be informed of the conditions under which information can be disclosed without the individual's con-

sent. At department facilities and community centers, client-identifying information shall be disclosed in accordance with Chapter 403, Subchapter K of this title (relating to Client-Identifying Information). At private psychiatric hospitals, client-identifying information shall be disclosed in accordance with the provisions of the Texas Health and Safety Code, §§611.001-611.005 and 42 Code of Federal Regulations, Part 2.

(21) The right to have access to information contained in one's own record, including the right to an independent review of any denial of access in accordance with Public Law 99-319 (Protection and Advocacy Act for Mentally Ill Individuals). The right extends to the parent or conservator of a minor (unless the minor has admitted himself/herself for chemical dependency services) and to the legal guardian of a person declared to be legally incompetent. Department facilities and community centers should also reference Chapter 403, Subchapter K regarding this right.

(22) The right to be free from mistreatment, abuse, neglect, and exploitation. See Chapter 404, Subchapter A, Chapter 404, Subchapter B, and Chapter 404, Subchapter C.

(23) The right to the provision of services in a way that does not discriminate on the basis of race, religion, sex, ethnicity, nationality, age, sexual orientation, or handicap.

(24) The right to protection of personal property from theft or loss. At department facilities, the head of the facility must institute procedures to protect and adequately secure the personal property of persons served, including clothing. Should theft or loss occur, the head of the facility must ensure prompt initiation of a claim against the state for reimbursement through the department's Office of Legal Services and may also seek reimbursement from other sources. Community centers and private psychiatric hospitals should develop and post procedures regarding protection and security of personal property of persons served.

(25) The right not to be secluded or have physical restraint applied to the individual unless it has been prescribed by a physician, except in emergency situations. If physical restraint or seclusion is utilized, the reason for the prescription, the length of time restraint or seclusion has been prescribed, and the behaviors necessary for the individual to be removed from restraint or seclusion shall be explained to the individual, and the restraint or seclusion shall be discontinued as soon as possible. Department facilities and community centers should reference Chapter 405, Subchapter F (relating to Restraint and Seclusion in Mental Health Facilities) for more information regarding this right.

(26) The right to fair compensation for labor performed for the department facility, community center, or private psychiatric hospital in accordance with the Fair Labor Standards Act. Persons receiving services at department facilities and community centers have the right to be informed of the availability of employment opportunities at the department facility or in the community which may lead to competitive employment, as outlined in the Texas Health and Safety Code, §533.008 (the Texas Mental Health and Mental Retardation Act,§2.17A).

(27) The right to initiate a complaint. At department facilities and community centers, this includes the right to be informed of how to contact the facility or center rights protection officer, the facility or center public responsibility committee, and the Office of Consumer Services and Rights Protection in Central Office (toll free telephone number 1-800-252-8154). At private psychiatric hospitals, this includes the right to be informed of how to contact the Office of Standards and Quality Assurance in Central Office (toll free number 1-800-LET-MHMR).

(28) The right of any individual to make a complaint regarding denial of rights without any form of retaliation.

(29) The right to have these rights and any additional rights explained aloud in a way the person served can understand within 24 hours of admission to services (refer to §404.163 of this title (relating to Communication of Rights to Individuals Receiving Mental Health Services) and upon request.

§404 155. Rights of Persons Receiving Residential Mental Health Services.

(a) The following rights shall be provided to all persons receiving residential mental health services.

(1) The right to communicate with persons outside the department facility, community center, or private psychiatric hospital, including:

(A) receiving visitors at reasonable times and places, allowing for as much privacy as possible;

(B) making phone calls at reasonable times, allowing for as much privacy as possible; and

(C) communicating by uncensored and sealed mail with others, including, but not limited to, legal counsel, the department, the courts, and the attorney general of the state, except in the following situations.

(i) When there is reason to suspect that the mail contains items such as illicit drugs or weapons which may present imminent risk of harm to the individual or others, the treating physician may authorize opening of the mail by writing a specific order into the individual's chart explaining the potential harm, the reason for suspicion, and what mail is to be opened. The mail may then be opened by two members of the individual's treatment team in the presence of the individual. After inspecting the mail and removing any items which might present imminent risk of harm to the individual or others, the mail shall be given to the individual; those opening the mail may not read it.

(ii) If the individual is unable to open personal mail because of a physical limitation, a staff member may assist if documentation of the need for assistance is provided in the individual's record and if the individual requests or agrees to such assistance. An order authorizing this assistance must be signed by the treating physician and must be reviewed every seven days, except in the case of an individual with a chronic physical limitation, when the order may remain in effect until there is an improvement in the individual's condition. Other orders may be renewed as long as the condition exists. Any cash or articles received shall be recorded in the individual's record and placed in appropriate safekeeping. Staff members may offer to read mail to individuals unable to read because of illiteracy, blindness, or other reason, but staff members may not read the mail if the individual declines the offer.

(iii) Employees may observe the opening of packages received by individuals deemed not capable of protecting personal property. An order authorizing this limitation must be signed by the treating physician and must be reviewed every seven days, except in the case of an individual with a chronic physical limitation, when the order may remain in effect until there is an improvement in the individual's condition. Other orders may be renewed as long as the condition exists. Any cash or articles received shall be recorded in the individual's record and placed in appropriate safekeeping.

(iv) Under no circumstances may mail from the attorney of the person served or from a court be censored (withheld in part or in whole from the person served).

(2) The right to have unrestricted visits from attorneys, internal advocates, representatives of Advocacy, Inc. with the consent of the person served, private physicians, or other mental health professionals at reasonable times and places. At department facilities, this right shall also include unrestricted visits from public re-

sponsibility committee members at reasonable times and places. There shall be no limitation on communication between an individual and an attorney.

(3) The right to be informed in writing and by any other means necessary for communication, at the time of admission to and discharge from inpatient services and upon request, of the existence and purpose of the protection and advocacy system in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Public Law 99-319). The notice must include the protection and advocacy system's telephone number and address. In Texas, the system is called Advocacy, Inc.

(4) The right to keep and use personal possessions. This includes the right to wear one's own clothing and religious or other symbolic items. This right may only be limited if the use of the possession is determined by the treatment team to present imminent risk of harm, to present a security risk, or to prevent the individual from participating in the treatment plan A clinical justification must exist and be documented in the individual's record if access to or the use of any personal possession is limited.

(5) The right to wear suitable clothing which is neat, clean, and well fitting At department facilities and community centers, clothing will be obtained and provided for individuals not having such clothing.

(6) The right to have an opportunity for physical exercise and for going outdoors with or without supervision at least daily. A physician's order limiting this right must be reviewed and renewed, if necessary, at intervals no longer than every three days and the findings of the review must be documented in the individual's record

(7) The right to have grounds privileges, with or without supervision, at frequent and regular intervals.

(8) The right to religious freedom. No person shall be forced to attend or engage in any religious activity.

(9) The right to have opportunities for suitable interactions with individuals of the opposite sex, with or without supervision, as appropriate for the individual.

(10) The right to a timely consideration of a request for transfer to another room if another person in the room is unreasonably disturbing the individual, with the right to be informed of any reasons for any denial of such a request.

(11) The right to receive appropriate treatment of any physical ailments essential to the treatment of a mental disorder and for a physical disorder arising in the course of an individual's inpatient psychiatric care. The manner in which these physical disorders are treated is the decision of the physician, consistent with good professional judgment. If the physician determines the procedures required for treatment to be elective rather than essential, the individual has the right to consult with a provider outside the facility for treatment at the individual's own expense.

(12) The right of each adult individual admitted to an inpatient program to have the department facility, community center, or private psychiatric hospital notify the person of the individual's choice of the admission if the individual grants permission. Documentation of the individual's granting or denial of that permission must be entered into the individual's clinical record. If such notification is refused upon admission, the individual served shall be reinformed of this right as the individual's condition changes.

(13) The right of each adult individual admitted to an inpatient program to have the department facility, community center, or private psychiatric hospital notify the individual's family prior to discharge or release if the individual grants permission. Documentation of the individual's granting or denial of that permission must be entered into the individual's clinical record.

(b) For persons receiving inpatient services, and unless otherwise noted, these rights may be limited by the treating physician, acting as the agent of the head of the facility, community center, or private psychiatric hospital, when the exercise of the right endangers the physical and/or emotional condition of the individual or other individuals, in which case the reasons for the limitation shall be made a part of the clinical record of the individual and fully explained to the individual. The treating physician may write an order imposing special limitations on the recommendation of the treatment team when the limitations are justified by psychiatric necessity or security. The written order must be reviewed at least every seven days, and if renewed, it must be renewed at least every seven days in writing. The treatment team should consider strategies to help the individual regain or resume the practice of the right.

(c) Except for the general rules of the program, there is no provision for limiting these rights for persons voluntarily admitted to a residential program other than an inpatient unit.

§404.156. Additional Rights of Persons Receiving Residential Mental Health Services at Department Facilities. In addition to the rights listed in §404.155 of this title (relating to rights of persons receiving residential mental health services, persons receiving residential mental health services at department facilities have the following rights:

(1) The right to be advised of the availability of trust fund accounts and other safekeeping for funds and articles of value. This right shall extend to the family of the person receiving services, who shall be informed of the existence of the trust fund as a means of protecting personal funds for the person served, and who shall be advised to send all monies, either checks or cash, to the cashier, and not to individual or ward employees. Families shall be informed that the department facility is not responsible for funds mailed directly to the person served. The method of advising persons served and their families of this right is to be determined by each department facility.

(2) The right of each individual admitted to an inpatient program of a department facility to have the state pay the cost of transportation home upon discharge or furlough unless the individual or someone responsible for the individual is able to do so.

(3) The right of each individual admitted to an inpatient program of a department facility other than for substance abuse to be informed in writing at admission and upon discharge of the existence of the court monitor of the RAJ *v.* Jones settlement and to be informed of how to contact the monitor's office, the plaintiff's counsel, and organizations which provide free legal assistance.

§404.157. Rights of Persons Voluntarily Admitted to Inpatient Services.

(a) All persons voluntarily admitted to inpatient services for treatment of mental illness or chemical dependency or the person who requested admission on the individual's behalf have the right to request discharge. Any such person expressing a request for release shall be given an explanation of the process for requesting release and afforded the opportunity to request release in writing. When a written request for release is signed or presented to any direct care staff of the department facility, community center, or private psychiatric hospital, it should be witnessed and dated and timed. Oral statements of the desire to be discharged shall be treated as written requests for release and shall be reduced to writing by staff. Without regard to whether the individual agrees to sign paperwork requesting discharge from services, the request will be documented and processed by staff. The refusal or inability of the individual to sign the request for discharge will be documented on the unsigned written request. All written or prepared requests for discharge will be timed, dated, and signed by two staff, who shall provide information

to the individual that pursuant to law, during the ensuing period of up to 24 hours, the individual will be observed and evaluated to determine the clinical appropriateness of seeking an involuntary commitment to services. The form and format for requesting release and the information to be provided may be prescribed by the department.

(b) All persons voluntarily admitted to inpatient services for treatment of mental illness or chemical dependency have the right to be examined in person by a physician and assessed for discharge readiness within 24 hours of the filing of a request for release, with results of the assessment and recommendation resulting documented in the medical record and disclosed to the individual. All such persons have the right not to be detained unless:

(1) the person who filed the request for release files a written withdrawal of the request;

(2) the person served, in the physician's clinical judgment, meets the criteria for involuntary commitment outlined in the Texas Health and Safety Code, §573.022, and an application for court-ordered mental health services, chemical-dependency services or emergency detention will be filed within 96 hours of the filing of the request for release and the individual is detained under the provisions of the relevant statute; or

(3) the person receiving inpatient treatment for chemical dependency is a minor admitted with the consent of the parent, guardian, or conservator, and the individual who gave that consent objects in writing to the release of the minor after consultation with personnel of the department facility, community center, or private psychiatric hospital.

(c) Each of these persons has the right not to have an application for court-ordered mental health or chemical dependency services filed while a voluntary patient unless, in the opinion of the head of the department facility, community center, or private psychiatric hospital, the voluntary patient meets the criteria for court-ordered services as outlined in the Texas Health and Safety Code, §573.022 and either:

(1) is absent without authorization; or

(2) refuses or is unable to consent to appropriate and necessary psychiatric or chemical dependency treatment.

§404.158. Rights of Persons Apprehended for Emergency Detention for Inpatient Mental Health Services (Other Than for Chemical Dependency). The rights of each person apprehended for emergency detention for inpatient mental health services at a department facility, community center, or private psychiatric hospital are granted under the relevant sections of the Texas Mental Health Code (Texas Civil Statutes, Article 5547-1 et seq).

(1) Each person apprehended or detained, but not yet admitted, has the following rights.

(A) The right to be advised of the location of detention, the reasons for detention, and that detention could result in a longer period of involuntary commitment.

(B) The right to contact an attorney of the person's own choosing with opportunities to contact that attorney.

(C) The right to be transferred back to the location of apprehension, or other suitable place, if not admitted for emergency detention, unless the person is arrested or objects to the return.

(D) The right to be released if the head of the department facility, community center, or private psychiatric hospital determines that any one of the criteria for emergency detention no longer applies.

(E) The right to be informed that anything the person says to the personnel of the department facility, community center, or private psychiatric hospital may be used in the proceeding for further detention.

(F) The right to a preliminary examination by a physician conducted immediately upon arrival at the department facility, community center, or private psychiatric facility following apprehension to determine whether the person meets the criteria for admission for emergency detention.

(2) If the person is accepted for treatment on an emergency detention, the personnel of the department facility, community center, or private psychiatric hospital shall immediately advise the person of the following additional rights:

(A) The right not to be detained for more than 24 hours after the hour of initial detention unless an order for further detention is obtained, except that if the 24-hour period ends on a Saturday or Sunday or a legal holiday or before 4 p.m. on the first business day succeeding the Saturday, Sunday, or legal holiday, the period of detention shall end no later than 4 p.m. of the first succeeding business day.

(B) The right to be released if the head of the department facility, community center, or private psychiatric hospital determines that any one of the criteria for emergency detention, as outlined in the Texas Health and Safety Code, §573.022, no longer applies.

(C) The right to be returned to the location of apprehension, place of residence, or other suitable place if released from emergency detention, unless the person is arrested or objects to the return.

(D) The right to be informed that if a petition for court-ordered treatment is filed, the person is entitled to a judicial probable cause hearing no later than the 72nd hour after the hour of which detention begins under an order of protective custody.

(E) The right to have an attorney appointed if the person does not have an attorney when application for court-ordered services is filed.

(F) The right to communicate with the attorney at any reasonable time and to have assistance in contacting the attorney.

(G) The right to present evidence and to cross-examine witnesses who testify on behalf of the petitioner at a hearing.

§404.159. Rights of Persons Apprehended for Emergency Detention for Inpatient Chemical Dependency Services. The rights of each person apprehended for emergency detention for inpatient chemical dependency services at a department facility, community center, or private psychiatric hospital are granted under the relevant sections of the Texas Alcohol and Drug Abuse Services Act (Texas Civil Statutes, Article 5561c-2).

(1) Each person apprehended or detained, but not yet admitted, for emergency detention has the following rights.

(A) The right to be advised of the location of detention, the reasons for detention, and that detention could result in a longer period of involuntary commitment.

(B) The right to contact an attorney of the person's own choosing with opportunities to contact that attorney.

(C) The right to be transported back to the location of apprehension, or other suitable place, if not admitted for emergency detention, unless the person is arrested or objects to the return.

(D) The right to be released if the head of the department facility, community center, or private psychiatric hospital determines that any one of the criteria for emergency detention, as outlined in the Texas Health and Safety Code, §573.022, no longer applies.

(E) The right to be informed that anything the person says to the personnel of the department facility, community center, or private psychiatric hospital may be used in proceedings for further detention.

(F) The right to have a preliminary examination by a physician conducted immediately upon arrival at the department facility, community center, or private psychiatric hospital following apprehension to determine whether the person meets the criteria for admission for emergency detention.

(2) If a person is accepted for treatment on an emergency detention, the personnel of the department facility, community center, or private psychiatric hospital shall immediately advise the person of the following additional rights.

(A) The right not to be detained for more than 24 hours after the hour of initial detention unless an order for further detention is obtained, except that if the 24-hour period ends on a Saturday or a Sunday or legal holiday or before 4 p.m. on the first business day succeeding the Saturday, Sunday, or legal holiday, the period of detention shall end no later than 4 p.m. of the first succeeding business day.

(B) The right to be released if the head of the department facility, community center, or private psychiatric hospital determines that the criteria for emergency detention, as outlined in the Texas Health and Safety Code, §573.022, no longer applies.

(C) The right to be transferred back to the location of apprehension, or other suitable place, if released from emergency detention, unless the person is arrested or objects to the return.

(D) The right to be informed that no later than the 24th hour after the hour of initial detention, the head of the department facility, community center, or private psychiatric hospital may file a petition for court-ordered treatment.

(E) The right to be informed that if a petition for court-ordered treatment is filed, the person is entitled to a judicial probable cause hearing no later than the 72nd hour after the hour on which detention begins under an order of protective custody to determine whether the person should remain detained in the department facility, community center, or private psychiatric hospital.

(F) The right to have an attorney appointed if the person does not have an attorney, when application for court-ordered services is filed.

(G) The right to communicate with the attorney at any reasonable time and to have assistance in contacting the attorney.

(H) The right to be informed that anything the person says to the personnel of the department facility, community center, or private psychiatric hospital may be used in making a determination relating to detention, may result in the filing of a petition for court-ordered treatment, and may be used at a court hearing.

(I) The right to present evidence and to cross-examine witnesses who testify on behalf of the petitioner at a hearing.

(J) The right to refuse medication unless there is an imminent likelihood of serious physical injury to the person or others if the medication is refused.

(K) The right to be informed that beginning on the 24th hour before a hearing for court-ordered treatment, the person may refuse to take medication unless the medication is necessary to save the person's life.

(L) The right to request that a hearing be held in the county of which the person is a resident, if within the state.

§404.160. Rights Handbooks for Persons Receiving Mental Health Services at Department Facilities and Community Centers.

(a) The department will publish a rights handbook which will contain interpretations written in simple and non-technical language of the various rights afforded individuals receiving mental health services, an explanation of the circumstances under which those rights may be limited, and an explanation of the appeals process. This handbook will be revised by the Office of Consumer Services and Rights Protection as necessary.

(b) Only the handbook published by the department will be distributed to individuals admitted to department facilities and their community programs. Community centers may distribute the handbook published by the department or may choose to publish their own version. Handbooks published by community centers must contain all rights outlined in the handbook published by the department and must be approved by the Office of Consumer Services and Rights Protection prior to their distribution.

(c) Each handbook distributed must include the toll free number of the Office of Consumer Services and Rights Protection in Central Office (1-800-252-8154), the toll free number of Advocacy, Inc. (1-800-223-4206), the name, telephone number, and mailing address of the rights protection officer, and the mailing address of the public responsibility committee for the facility or community center which distributes it.

(d) Immediately upon admission into services, each individual and the parent or conservator of a minor and the legal guardian of the person, when applicable, must be given the appropriate rights handbook. All handbooks must be printed in English and Spanish, and must be made available in any other language used by a significant percentage of the service area's population. Copies of the rights handbook must be displayed prominently at all times in all areas frequented by persons receiving services (e.g., dayrooms, recreational rooms, waiting rooms, lobby areas). A sufficient number of copies will be kept on hand in each of these areas in order that a copy may be made readily available to anyone requesting one. The head of each department facility and community centers shall appoint an individual responsible for ensuring that these requirements are met.

(e) Nothing in this section shall preclude the distribution of additional brochures prepared by advocacy organizations.

§404.161. Patient's Bill of Rights for Individuals Receiving Mental Health Services at Private Psychiatric Hospitals.

(a) The department will publish a Patient's Bill of Rights, which is herein adopted by reference as Exhibit A of this subchapter, with copies available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, which will contain interpretations written in simple and non-technical language of the various rights afforded individuals receiving mental health services, an explanation of the circumstances under which those rights may be limited, and organizations individuals may contact in the event of rights violations. The Patient's Bill of Rights will be revised as necessary.

(b) Only the Patient's Bill of Rights published by the department will be distrib-

uted to individuals admitted to private psychiatric hospitals.

(c) The Patient's Bill of Rights must be printed in English and Spanish, and must be made available in other languages of primary use by individuals admitted to each private psychiatric hospital.

(d) Immediately upon admission into services, each individual must be given the Patient's Bill of Rights. A copy must also be given to the individual's parent or conservator of a minor and the legal guardian of the person, when applicable, and to any other person requested by the individual.

(e) Copies of the rights handbook must be displayed prominently at all times in all areas frequented by persons receiving services (e.g., dayrooms, recreational rooms, waiting rooms, lobby areas). A sufficient number of copies will be kept on hand in each of these areas in order that a copy may be made readily available to anyone requesting one.

(f) Nothing in this section shall preclude the distribution of additional brochures prepared by advocacy organizations.

§404.162. Communication of Rights to Individuals Receiving Mental Health Services.

(a) In addition to receiving a rights handbook, each newly admitted individual, the parent or conservator of a minor, and the guardian of the person, shall be informed orally of all rights in his or her primary language using plain and simple terms within 24 hours of admission into services. The notification will also include an explanation of the circumstances under which those rights may be limited, and an explanation of the appeals process. This notification also must occur at least annually and upon any changes to this information. The method used to communicate the information should be designed for effective communication, tailored to meet each person's ability to comprehend, and responsive to any visual or hearing impairment.

(b) Oral communication of rights shall be documented on a form bearing the date and signatures of the individual and/or the parent, conservator, or guardian, and the staff member who explained the rights. The form should be filed in the individual's chart. Private psychiatric hospitals should use the form provided on the Patient's Bill of Rights.

(c) When the individual receiving services is unable or unwilling to sign the document which confirms that rights have been orally communicated, a brief explanation of the reason should be entered onto that document along with the signatures of the person who explained the rights and a third-party witness

(d) If the individual does not appear to understand the rights explanation, staff will attempt to provide another explanation periodically until understanding is reached or until discharge. The necessity for repeating the rights communication process will be documented, signed, and dated by staff.

§404.163. Rights Protection Officer at Department Facilities and Community Centers.

(a) The head of each department facility and each community center shall appoint a rights protection officer for the facility or center.

(b) The name, telephone number, and mailing address of the rights protection officer must be prominently posted in every program or residential area frequented by service recipients, including community outreach or contract programs Individuals desiring to contact the rights protection officer must be allowed access to facility or center telephones to do so.

(c) Duties required of the rights protection officer are specified at the discretion of the head of the facility or center, but must include the following:

(1) receiving complaints of violations of rights or inadequate provision of services and requests for advocacy from service recipients, their families, their friends, service providers, other facility or center personnel, other agencies, the general public, and the Office of Consumer Services and Rights Protection;

(2) thoroughly investigating each such complaint received;

(3) representing the expressed desires of the individuals served and advocating for the resolution of their grievances;

(4) reporting the results of investigations and advocacy to service recipients and the complainants, consistent with the protection of the service recipients' right to have any identifying information remain confidential;

(5) ensuring that the rights of individuals receiving services have been thoroughly explained to facility and center personnel through periodic training. The rights protection officer may provide the training directly or by consulting with facility or center training personnel; and

(6) reviewing all policies, procedures, behavior therapy programs, and rules which affect the rights of persons receiving services.

§404.164. Staff Training in Rights of Persons Receiving Mental Health Services. This subchapter shall be thoroughly and periodically explained to all employees of each department facility, community center, and private psychiatric hospital as follows.

(1) All new employees shall receive the instruction on the content of this subchapter during their orientation training and prior to beginning work.

(2) Within 60 days after the effective date of this subchapter, all current employees shall be briefed on its contents by the head of the department facility, community center, or private psychiatric hospital or designee.

(3) All supervisory personnel shall have a continuing responsibility to keep employees informed about rules governing rights of persons receiving mental health services and shall ensure that each employee receives training on the subject not less than once each calendar year. At department facilities and community centers, such training shall be reported to the department facility or community center's office for staff development. Private psychiatric hospitals shall develop an appropriate means for maintaining training records.

(4) A record shall be kept by the private psychiatric hospital or the department facility or community center's office for staff development on each employee receiving orientation, annual training, or additional instruction in compliance with this section, including the date training was provided and the name of the individual conducting the training.

§404.165. References. Reference is made to the following Texas laws, federal laws, departmental rules, and other standards:

(1) Texas Department of Mental Health and Mental Retardation (Texas Health and Safety Code, Chapters 531-535);

(2) Texas Mental Health Code (Texas Health and Safety Code, §§572.003, 573.025, 576.001-576.024, and 611.002);

(3) Treatment of Chemically Dependent Persons (Texas Health and Safety Code, Chapters 461 and 462);

(4) 42 Code of Federal Regulations, Part 2;

(5) Public Law 99-319, The Protection and Advocacy Act for Mentally Ill Individuals (42 United States Code §§10802, et seq);

(6) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);

(7) Chapter 404, Subchapter A of this title (relating to Abuse and Neglect of Persons Served by TXMHMR Facilities);

(8) Chapter 404, Subchapter B of this title (relating to Client Abuse and

Neglect in Community Mental Health and Mental Retardation Centers);

(9) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment With Psychoactive Medication);

(10) Fair Labor Standards Act;

(11) Joint Commission on the Accreditation of Healthcare Organizations, Consolidated Standards Manual (1991);

(12) Joint Commission on the Accreditation of Healthcare Organizations, Accreditation Manual for Hospitals (1991);

(13) TDMHMR Mental Health Community Services Standards (1991), Chapter 3; and

(14) RAJ *v.* Jones settlement agreement.

§404.166. Distribution.

(a) This subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation, the medical director, deputy commissioners, associate deputy commissioners, assistant deputy commissioners, and directors of Central Office; superintendents and directors of all TXMHMR mental health facilities; and executive directors and chairpersons of the boards of all Texas community mental health and mental retardation centers; chief executive officers of all private psychiatric hospitals in Texas, Advocacy Inc.; the Texas Mental Health Consumers; the Texas Alliance for the Mentally Ill; the Mental Health Association in Texas; and other interested advocacy organizations.

(b) The superintendent or director of each facility and the executive director of each community center provide a copy of this subchapter to the facility or center rights officer; the chair of the facility's or center's public responsibility committee; all appropriate staff; each contract agency which provides direct services; and any other person who requests a copy.

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 5, 1992.

TRD-9201803 Ann K. Utley
Chairman
Texas Board of Mental Health and Mental Retardation

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 465-4670

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 11. Health Maintenance Organizations

Subchapter A. General Provisions

• 28 TAC §11.1, §11.2

The State Board of Insurance of the Texas Department of Insurance proposes amendments to §11.1 and §11.2, concerning general provisions regarding health maintenance organizations (HMOs). The amendments are necessary to add definitions and to make editorial changes. The amendment to §11.1 makes editorial changes only. The amendment to §11.2 adds definitions of "admitted assets," "agent," "excess surplus," and "surplus."

Joan Kennedy, director of insurance related activities, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, and there will be no effect on local employment or local economy.

Ms. Kennedy also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the conformity of this subchapter to legislative revisions of the Texas Health Maintenance Organization Act. 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.

Comments on the proposal may be submitted to Joan Kennedy, Director of Insurance Related Activities Section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Act.

§11.1. Purpose and Scope. **This chapter** [The following subchapter] implements the Texas Health Maintenance Organization Act, Senate Bill 180, enacted by Acts 1975, 64th Legislature, [p. 514-530,] Chapter 214, **pages 514-530,** first effective December 1, 1975, as amended, codified as the **Texas** Insurance Code , **Chapter** [chapter] 20A.

(1) Severability. Where any terms or sections of this **chapter** [subchapter] are determined by a court of competent jurisdiction to be inconsistent with the Texas Health Maintenance Organization Act, as identified by **this section** [these sections], the Act will apply, but the remaining terms and provisions of **this chapter** [these sections] will continue in effect.

(2) Effect of rules. The sections **in this chapter** [set forth herein] are prescribed to govern the performance of appropriate statutory and regulatory functions and are not to be construed as limitations upon the exercise of statutory authority by the State Board of Insurance, the commissioner of insurance, or the Texas Department of Health.

(3) **Violation of rules.** A violation of the lawful rules, regulations, or orders of the commissioner or board made pursuant to **this chapter** [these sections] constitutes a violation of the Texas Health Maintenance Organization Act.

§11.2. Definitions.

(a) The definitions found in [§2 of] the Texas Health Maintenance Organization Act, **§2,** as amended, codified as the **Texas** Insurance Code, Article 20A.02, are hereby incorporated in this **chapter** [subchapter].

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

(1)]Act-The Texas Health Maintenance Organization Act, Senate Bill 180, enacted by Acts 1975, 64th Legislature,[p. 514-530,] Chapter 214, **pages 514-530**, first effective December 1, 1975, as amended, codified as the **Texas** Insurance Code**, Chapter** [chapter] 20A.

Admitted assets–All assets as defined by generally accepted accounting principles, except those specifically excluded by the Act and this chapter.

(2) (No charge.)

(3) Agent–**Any** [A] **person who solicits on behalf of any** health maintenance organization **(HMO) or who takes or transmits other than for himself or who advertises or otherwise gives notice that he will receive or transmit or who shall receive or transmit agreements or contracts for health care services to be provided by any HMO** [agent as defined in the Act, §15(a)].

(4) (No charge.)

(5) Code–The **Texas** Insurance Code, 1951, as amended.

(6) -(9) (No charge.)

Excess surplus–The surplus, net of uncovered liabilities, that is in excess of the minimum surplus required by the Texas Insurance Code, Article 20A.13, excluding from surplus those assets a health maintenance organization finds

necessary for its operations as set forth in §11.803(5) of this title (relating to Investments, Loans, and Other Assets).

(10) Primary care physician–A physician who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating referral for [specialist] care. [Primary care physicians usually include general practitioners, internists, pediatricians, obstetrician/gynecologists, and family practitioners.]

(11) Qualified HMO–An entity which has been federally approved under Title XIII of the Public Health Service Act, **Public Law** [P.L.] 93-222, as amended.

(12) Rules–All **sections** [rules] under **this** chapter [11 relating to HMOs].

(13) Schedule of charges–**The** [An exhibit showing:

[(A) the capitation and any formulas which are used by the HMO as the basis for computing the chargeable rate, or

[(B) the] specific rates or premiums to be charged for a single enrollee, a two-member family, three-member family, etc.

(14)-(15) (No change.)

Surplus–The net admitted assets minus uncovered liabilities.

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 4, 1992.

TRD-9201714 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 463-6327

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Subchapter B. Name Reservation Procedure

• 28 TAC §§11.101, 11.102, 11.106, 11.107

The State Board of Insurance of the Texas Department of Insurance proposes amendments to §§11.101, 11.102, 11.106, and 11.107, concerning name reservation procedures for health maintenance organizations (HMOs). The amendments are necessary to amplify or clarify the requirements of the sections. The amendment to §11.101 provides the complete address to which requests for reservation of name forms should be directed. The amendment to §11.102 makes an editorial change to the wording. The amendment to §11.106 provides that a requested name is reserved for 365 days from the date the name is accepted, rather than approved, by the commissioner of insurance. The amendment to §11. 107 clarifies the date on which a name reservation is cancelled in the event of denial of a certificate of authority.

Joan Kennedy, director of insurance related activities, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, and there will be no effect on the local employment or local economy.

Ms. Kennedy also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is a clearer, more concise statement of requirements concerning procedures for name reservations. 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.

Comments on the proposal may be submitted to Joan Kennedy, Director of Insurance Related Activities Section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 49104, Austin, Texas 78714-9104.

The amendments are proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Act.

§11.101. How to Obtain Forms. The **name reservation** [Reservation of Name] form and all other HMO forms may be obtained by contacting the [office of the] HMO **Unit, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104** [coordinator].

§11.102. Information Required. The **name reservation** [reservation of name] form (HMO Form #1) may be submitted with or at any time prior to submission of the application for certificate of authority.

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

§11.106. Time Limits; Renewal Requirements. The following time limits and renewal requirements have been established for names reserved for use by a proposed HMO.

(1) The requested name is reserved for 365 days from the date the name is **accepted** [approved] by the commissioner.

(2)-(6) (No change.)

§11.107. Effect of Filing for or Receiving Certificate of Authority. Once an application for a certificate of authority has been filed, the name reservation no longer must be renewed. If a certificate of authority is denied, the name reservation is cancelled on the date [of] the denial order **becomes final.** If a certificate of authority is granted, the name is reserved for use by the HMO as long as the certificate of authority is in 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 4, 1992.

TRD-9201717 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Proposed date of adoption: March 13, 1992

For further information, please call: (512) 463-6328

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Subchapter C. Application for Certificate of Authority

• 28 TAC §§11.201, 11.203-11.206, 11.208

The State Board of Insurance of the Texas Department of Insurance proposes amendments to §§11.201, 11.203-11.206, and 11.208, concerning requirements with respect to applications for certificate of authority for health maintenance organizations (HMOs). The amendments are necessary to clarify procedures followed in connection with review of an application for certificate of authority to become an HMO.

The amendment to §11.201 adds a reference to the board's rule governing regulatory fees.

The amendment to §11.203 clarifies the timing of the application review process in the event of required revisions.

The amendment to §11.204 clarifies and make changes to the requirements for the contents of an application for certificate of authority and delete the provision that authorizes the commissioner to require additional information relating to the itemized contents.

The amendment to §11.205 makes editorial changes.

The amendment to §11.206 deletes some specific steps in the application review process and refers the reader to the board's rules concerning notice and processing periods for permit applications.

The amendment to §11.208 adds a statutory reference with respect to delay of final action on an application.

Joan Kennedy, director of insurance related activities, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, and there will be

no effect on local employment or local economy.

Ms. Kennedy 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, concise application of legislative amendments to the Texas Health Maintenance Organization Act. 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.

Comments on the proposal may be submitted to Joan Kennedy, director of insurance related activities section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Act.

§11.201. Filing Fee. The filing fee required by the **Texas** Insurance Code, Article 20A.32(a), **as determined by §7. 1301 of this title (relating to Regulatory Fees),** must accompany the application. The fee is not returnable.

§11.203. Revisions during Review Process.

(a) Revisions during the review of the application must be addressed to: HMO **Unit** [Section], **Mail Code 106-3A, Texas Department of Insurance** [State Board of Insurance], **333 Guadalupe, P.O. Box 149104,** [1110 San Jacinto Street], Austin, Texas **78714-9104** [78701-1988]. The applicant must include an original and one copy of the transmittal letter, plus the number of copies of any revision specified in this subchapter [, and plus a completed HMO Form 6, certification of corrections, referred to in §11. 1001(7) of this title (relating to Forms Adopted by Reference)].

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

(d) If [substantial] revisions are **required as a result of the Texas Department of Health's review or the Texas Department of Insurance's qualifying examination, the application process as defined in Chapter 1, Subchapter G of this title (relating to Notice and Processing Periods for Permit Applications) will begin again** [submitted less than 30 days prior to the date scheduled for the hearing, the statutory time limit must be waived by the applicant in order to provide a minimum of 30 days from date of receipt of the additional information until the date of the hearing. The hearing will be reset accordingly. The commissioner may. in his discretion, set the hearing anytime within the 30 days].

§11.204. Contents. Contents of the application must include the following items in the order [as] listed:

(1) a completed HMO Form #1, **name reservation** [reservation of name], along with any certificate of reservation of corporate name issued by the secretary of state;

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

(6) **separate** [a general narrative description of the HMO's delivery system and personnel and three] organizational charts **or lists,** as described **in subparagraphs (A)-(C) of this paragraph** [following]:

(A)-(C) (No change.)

(7) **fidelity bond or deposit for officers and employees, which** [the originals or notarized certification that the copy is a true, accurate, and complete copy of the original bond for officers and employees. The bonds] must comply with **either subparagraph (A) or subparagraph (B) of this paragraph, as appropriate.** [the following:]

(A) **A bond must be in compliance with the Texas Insurance Code, Article 20A.30, and must be either the original bond or a copy of the bond with notarized certification bearing the original signature of an officer of the applicant that the copy is a true, accurate, and complete copy of the original bond.** [The commissioner may approve a fidelity bond, in an amount not less than $100,000 or in an amount prescribed by the commissioner, with a three-year discovery period and with a 90-day cancellation or termination provision, and written in accordance with the requirements of the Texas Health Maintenance Organization Act, §30.]

(B) **A cash deposit must be held under a joint control agreement, acceptable to the commissioner, in the same amount and subject to the same conditions as a bond** [Upon a showing by the applicant of its inability to obtain the fidelity bond listed in subparagraph (A) of this paragraph, the commissioner may approve as meeting or exceeding the requirements of the Texas Health Maintenance Organization Act, §30, a filing of both of the following:

[(i) a fidelity bond in an amount not less than $100,000 or in an amount prescribed by the commissioner, with a one-year discovery period and with a 15-day cancellation or termination provision. The fidelity bond shall obligate the surety according to the provisions of the Texas Health Maintenance Organization Act, §30(d); and

[(ii) a provision by the applicant for a joint control agreement, in form acceptable to the commissioner, whereby the applicant agrees to deposit $100,000 in cash in a bank insured by the Federal Deposit Insurance Corporation, subject to the joint control of the applicant and the commissioner. Such agreement must survive for a period of three years in the event the HMO goes out of business, is sold, is voluntarily liquidated, or becomes bankrupt, as provided for in the Texas Health Maintenance Organization Act, §30(b).

[(C) any fidelity bond filed must be written by an insurance company holding a certificate of authority to do business in Texas. Bond forms approved by the State Board of Insurance must be used and the bond must be issued in the name of the applicant;]

(8) **information related to out-of-state licensure and service of legal process for all applicants.** [if the applicant is licensed as an HMO in another state:]

(A) **An applicant licensed as an HMO in another state must furnish a** [A] copy of the certificate of authority from the domiciliary state's licensing authority, and [B] **a** [A] power of attorney executed by the applicant appointing the commissioner and his or her successors in office, or a duly authorized deputy, as the attorney of such applicant in and for the state, upon whom all lawful processes in any legal action or proceedings against the HMO on a cause of action arising in this state may be served.

(B) All applicants must furnish a statement acknowledging that all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state is valid if served in accordance with the Texas Insurance Code, Article 1.36.

(9) [a description of the procedure by which enrollees are afforded the opportunity to participate in matters of policy and operation;

[(10)] the evidence of coverage to be issued to enrollees, and any group agreement which is to be issued to employers, unions, trustees, or other organizations as described in Subchapter F of this chapter (relating to Evidence of Coverage);

(10) financial information, consisting of the following:

(A) a current financial statement, including balance sheet reflecting assets and liabilities, statement of

income and expenses, and sources and application of funds;

(B) projected financial statements for the 18-month period from the start of operations using quarterly balance sheet projections based on calendar quarters, quarterly cash flow schedules reflecting capital expenditures, and monthly revenue and expense projections, which financial statements must include the identity and credentials of the person making the projections; and

(C) the most recent audited financial statements of any sponsoring organization;

(11) the schedule of charges as defined in §11.2 of this title (relating to Definitions) to be used through the first 12 months of operation [and the estimated revenue per member per month until one year following break even];

(12) (No change.)

(13) [a description of the proposed method of marketing the plan;]

[(14)] a sample copy of the form of any contract executed or to be executed between the applicant and:

(A) any person listed on the officers and directors page;

(B) any physician, medical group[,] or association of physicians, or any other provider, plus a sample copy of the **subcontract** [contract] between the medical group, [or] physicians' association, [and] any [individual] physician, **or provider, who has contracted with any physician, medical group, association of physicians, or any other provider to provide health care services.** If such contracts include a hold-harmless provision, it shall be no less favorable **to enrollees** than that outlined in §11.1102 of this title (relating to Hold-Harmless Clause). **Such contracts must be in accord with the Texas Department of Health rules, and will be furnished by Texas Department of Insurance to the Texas Department of Health for their review and certification;**

(C) any exclusive agent or agency; and

(D) any person who will perform management, marketing, administrative, [or] data processing services, **or claims processing services. A bond or deposit meeting the requirements of the Texas Insurance Code, Article 20A.18, is required for management contracts. If a bond, the original must be submitted, or a copy of the bond must be accompanied by notarized certification that the copy is a true, accurate, and complete copy of the original;**

(14)[(15)] a description of the quality assurance program, including a peer review program **required by the Texas Insurance Code, Article 20A.05.** [to meet the quality of health care requirements outlined in the Act, §5(a)(2)(B).] Arrangements for sharing pertinent medical records between physicians **and/or** [and] providers **contracting or subcontracting pursuant to paragraph (13)(B) of this section with** [within] the HMO and assuring the record's confidentiality must be explained;

[(16) financial information:

[(A) a current financial statement including: balance sheets, statement of income and expenses, sources and application of funds, assets and liabilities;

[(B) projected financial statements for the period from the start of operations until the organization has had a net income for 12 consecutive months, including quarterly balance sheet projections based on a calendar year plus a balance sheet for the month during which the maximum cumulative loss is reached, quarterly cash flow schedules reflecting capital expenditures, and monthly revenue and expense projections for the first 12 months and quarterly thereafter until the HMO reaches a breakeven, and then monthly for the 12 months following breakeven. All other projected financial statements shall be on an annual basis. The identity and credentials of the person making the projections must be included;

[(C) the most recent audited financial statements of any sponsoring organization.]

(15)[(17)] insurance and other protection against insolvency:

(A) **any** [a] reinsurance agreement described in the **Texas Insurance Code, Article 20A.05(b)(2)(C)(iii)** [Act, §5(b)(2)(c) (iii)], covering excess of loss, stop-loss, and/or catastrophes. The agreement must provide that the commissioner **and HMO** will be notified no less than 60 days prior to cancellation or reduction of coverage **by the insurer**;

(B) **any** [a] conversion policy or policies which will be offered by an insurer to an HMO enrollee in the event of the HMO's insolvency;

(C) any other arrangements offering protection against insolvency;

[(D) with respect to a single health care service plan HMO the following applies:

[(i) a reinsurance agreement as described in subparagraph (A) of this paragraph must be secured if it is reasonably available or becomes reasonably available;

[(ii) a conversion policy as described in subparagraph (B) of this paragraph must be secured if it is available or becomes reasonably available;]

(16)[(18)] authorization for disclosure to the commissioner of the financial records of the applicant. Disclosure of financial records of affiliates may also be required. The individual to be contacted for a qualifying examination must be identified. [;]

[(19) the commissioner may require additional information relating to paragraphs (1)-(18) of this section as needed for proper consideration.]

§11.205. Documents to be Available During Qualifying Examination and/or the Texas Health Department Visit. The following documents must be available for inspection at the time of the qualifying **examination** at the administrative offices **and the Texas Health Department visit** of the applicant:

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

(4) a list of physicians, hospitals, and other providers to be used by the applicant inside the service area as follows:

(A) for physicians, indicate:

(i) medical **specialty** [speciality];

(ii)-(iv) (No change.)

(v) **any** hospitals at which primary care physicians have staff privileges;

(B) for hospitals contracting with or to be used by the applicant, indicate:

(i)-(ii) (No change.)

(iii) **JCAHO/AOA** [JCAH/AOA] accreditation status, if applicable;

(iv)-(v) (No change.)

(C) (No change.)

(5)-(6) (No change.)

§11.206. Review of Application. [The application is considered received as of the

date on which all material required by §11.204 of this title (relating to Contents) is filed with the HMO Coordinator.]

(a)[(1)] **The application will be processed pursuant to Chapter 1, Subchapter G of this title (relating to Notice and Processing Periods for Permit Applications)** [The coordinator will provide one copy of the application to the Department of Health].

(b) [(2)] After completion of the **Texas Department of Insurance** [State Board of Insurance] review and certification by the Department of Health under the Act, §5(a)(3), the HMO **Unit** [coordinator shall provide the applicant with a written list of deficiencies and] shall schedule a prehearing conference with the applicant.

[(A) The purpose of such conference is to discuss any deficiencies in the application.

[(B) From the date of such conference, the time period for review shall be held in abeyance until such applicant submits corrections to such deficiencies or files a letter stating that it is the applicant's intention to proceed to hearing without correcting such deficiencies.

[(i) Corrections to deficiencies shall be accompanied by a certification by an officer of the applicant that only those deficiencies outlined by the HMO Section have been corrected and that unrelated changes in the application have not been made. (Note: certain deficiencies may require corrections in relating provisions under evidence of coverage or other sections of application).

[(ii) Corrections to deficiencies shall be filed under the provisions of §11.203 of this title (relating to Revisions During Review Process) with sufficient detail in the cover letter to identify any changes in documents or sections of documents that were necessary to correct the deficiencies.

[(3)]The qualifying examination shall be conducted **prior to date of hearing** [after the provisions of paragraph (2) of this section are met]. For an applicant that is a foreign HMO, in lieu of a qualifying examination, a copy of the report on the most recent [latest] examination performed by the regulatory agency of its state of domicile may be requested.

(c)[(4)] A hearing will be scheduled under the provisions of the **Texas Insurance Code, Article 20A.05,** [Act, §5,] following the completion of the qualifying examinations.

§11.208. Request to Extend Review Period.

(a) (No change.)

(b) The commissioner may grant a delay of final action to an applicant who has demonstrated a need therefor, **pursuant to the Texas Insurance Code, Article 20A.05.**

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 4, 1992.

TRD-9201718 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Proposed date of adoption:

For further information, please call: (512) 463-6328

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Subchapter D. Regulatory Requirements for an HMO Subsequent to Issuance of a Certificate of Authority

• 28 TAC §§11.301-11.306

The State Board of Insurance of the Texas Department of Insurance proposes amendments to §§11.301-11.306, concerning regulatory requirements for a health maintenance organization (HMO) subsequent to issuance of a certificate of authority. The amendments conform the subchapter to legislative revisions to the Texas HMO Act and provide for clarification of the regulatory process subsequent to the issuance of a certificate of authority.

The amendment to §11.301 provides for the filing of additional information for approval with respect to management contracts, certain dividends, notice of loans, and amendments to organizational documents. The amendments provide that changes in the principal administrative office, and certain financial and solvency information must be filed for information. There are also editorial changes made to this section relating to form numbers and the number of copies of certain documents to be filed; and clarifying that any changes in certain documents should be filed.

Section 11.302 is amended to provide that items filed with respect to service area expansion requests should be filed either for approval or for information as determined in §11.301 and adds new requirements for the filing of financial information and information related to protection against insolvency, as well as providing for the filing of the formula or method for calculating the schedule of charges for any new or amended evidence of coverage.

Section 11.303 is amended to provide that the expenses of examinations, both by the Texas Department of Insurance and the Texas Department of Health, are offset against premium taxes. That section also provides that the documents set out in §11.205 shall be available on site unless the HMO has authority to move documents out of state. If such authority exists, the expenses of examination of those out-of-state records are not allowed as an offset against premium taxes. The amendment also provides that electronic access to documents meets the requirements of this section except that the Texas Department of Insurance or the Texas Department of Health have the authority to request paper copies of such records be produced within a reasonable time period.

Section 11.304 is amended to clarify the filing processes for the HMO's annual statement, the annual audited financial report where required by Texas Insurance Code, Article 1.15A, and an annual audit report of the sponsoring organization for those HMOs who have such an organization. An amendment to this section requires that all HMOs file quarterly reports. This section is also amended to provide for the payment of premium taxes and maintenance taxes to the Texas Department of Insurance pursuant to Texas Insurance Code, Articles 4.11, 20A.32 and 20A.33 and the regulations promulgated thereunder and the tax forms promulgated by the board. The premium taxes are subject to the adjustments set forth in the amendment.

Editorial changes are made to §11.305.

Section 11.306 is amended to provide clarification and notice that failure to comply with the Act, regulations, or orders of the commissioner or board are subject to actions authorized under the Texas Insurance Code, Article 1.10. Supervision, conservation, or receivership for failure to comply with the Act are also available remedies described in §11.306.

Joan Kennedy director of insurance related activities, has determined that, for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, and there will be no effect on local employment or local economy.

Ms. Kennedy, also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is a clearer, more concise statement of requirements for an HMO subsequent to issuance of a certificate of authority, in accordance with legislative revisions to the Texas HMO Act. The anticipated economic cost to persons who are required to comply with the proposed sections is the cost for filing. These costs will be those costs set by Texas Insurance Code, Article 20A. 32 and regulations promulgated thereunder. The costs will vary between $50-100 for each item filed on an as needed basis. The anticipated annual cost will vary depending upon each organization's need to make changes for each of the first five years the amendments are in effect. The cost of the annual audit report for sponsoring organizations will not exceed $15.00 per year for transmittal costs for each of the first five years the amendments are in effect, as the organizations

already have such annual audit reports. On the basis of costs per hour of labor, there will be no difference in cost of compliance between small businesses and larger businesses.

Comments on the proposal may be submitted to Joan Kennedy, Director of Insurance Related Activities Section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Texas Health Maintenance Act.

§11.301. Filing Requirements. Subsequent to the issuance of a certificate of authority, each health maintenance organization (HMO) is required to file certain information with the commissioner, either for approval prior to effectuation or for information only, as outlined in paragraphs (4) and (5) of this section and in §11.302 of this title (relating to Service Area Expansion Requests). These requirements include filing any changes necessitated by federal law or regulation.

(1) (No change.)

(2) Identifying **form** numbers required. Each item required to be filed pursuant to paragraphs (4) and (5) of this section must be identified by a unique **form** number, adequate to distinguish it from other items. Such identifying **form** numbers shall be composed of **a** total of no more than **12** [twelve] letters, numbers, symbols, and spaces.

(A) The identifying **form** number must appear in the lower left-hand corner of the page. In the case of a multiple page document, the identifying **form** number must appear on the lower left-hand corner of the first page. Page numbers should appear on subsequent pages.

(B) If an item is to be replaced or revised subsequent to issuance of a certificate of authority, a new identifying **form** number must be assigned. A new edition date added to the original identifying **form** number is an acceptable way of revising the number so that it is identifiable from any previously approved item;[.] [(]e.g., if G-100 was the originally approved number, the revision may be numbered G-100 12/79. Changing the case of the suffix is not considered to be a change in the number, e.g., "ED" and "ed" or "REV" and "rev" are the same for form numbering purposes.[)]

(3) Attachments for filings. The filings required in paragraphs (4) and (5) of this section must be accompanied by [an HMO form 5 and] the following:

(A) **four** [three] copies of an HMO Form **#5 and #8** for each new, revised, or replaced **item** [evidence of coverage, as described in §11.503(1) of this title (relating to Filing Requirements Subsequent to Receipt of Certificate of Authority)];

(B) **four** [three] copies of a transmittal letter including a statement of any prior approved forms to be replaced, with any applicable form number; [and]

(C) **four** [three] copies of such supporting documentation as considered necessary by the commissioner for review of the filing; **and** [.]

(D) the applicable filing fee as required by the Texas Insurance Code, Article 20A.32, as determined by §7.1301 of this title (relating to Regulatory Fees).

(4) Filings requiring approval. An HMO shall file with the commissioner a written request to **implement or** modify the following [previously approved] operations or documents and receive the commissioner's approval prior to effectuating such modifications:

(A)-(B) (No change.)

(C) the form of all contracts described in **§11.204(13)[§11.204**

(14)], subparagraphs (A), (C), and (D) of this title (relating to Contents), **including any amendments to contracts described in §11.204 subparagraph (A) and subparagraph (C) and prior approval of the cancellation of any management contracts in subparagraph (D) of §11.204(13) of this title;**

(D)-(E) (No change.)

(F) dividends which do not meet the requirements of §11.807 of this title (relating to Dividends);

(G)[(F)] a notice of any intention to make a loan or to make multiple loans, or to make any amendments thereto, to a medical group or to a corporation under the control of the HMO. If the total amount loaned is incidental to the HMO's operation and does not exceed an amount **expected to** be equal to the charges to be paid to that medical group or corporation for contractual services to be provided for a 30-day period immediately following **and provided that termination of services may not take place during that period of time, then** such notice need not be filed;

(H) a copy of any amendments to basic organizational documents which are proposed. Following approval by the commissioner a copy of the approved amendments must be filed with the secretary of state and an original, or a copy of such documents with notarized certification bearing the original signature of an officer that it is a true, accurate, and complete copy of the original file marked by the secretary of state, shall be filed with the commissioner;

(I) a copy of any amendments to bylaws of the HMO, with a notarized certification bearing the original signature of an officer of the company that it is a true, accurate, and complete copy of the original;

(J) any name, assumed name, service mark, or trademark on a reservation of name form, HMO Form #1; and

(K) any agreement by which an affiliate agrees to handle an HMO's investments under §11.804 of this title (relating to Investment Management by Affiliate Companies).

(5) Filings for information. Material filed under this paragraph is not to be considered approved but may be subject to [official] review **for compliance with Texas law and consistency with other HMO documents.** Each item filed under this paragraph must be accompanied by a completed HMO Form #7–Certification of Compliance, referred to in §11.1001(8) of this title (relating to Forms Adopted by Reference[.]) **in addition to those attachments required under paragraph (3) of this section.** Within 30 days of the effective date, an HMO must file with the commissioner, for information only, additions, deletions, and modifications to the following previously approved **or filed** operations and documents:

(A) the list of officers and directors and a biographical data sheet for each person listed under the **Texas Insurance Code, Article 20A.4(a)(3),** [Act, §4(a)(3)] **on HMO Form #3 and #4 referred to in §11.204(5)(A) and (B) of this title (relating to Contents);**

(B) **a copy of** any **notice of cancellation of bonds, new bonds, or** amendments to bonds for officers and em-

ployees, including notarized certification by an officer that the material is true, accurate, and complete, **as described in §11.204(7) and (13)(D) of this title (relating to Contents)**;

[(C) the sources of financial support;]

(C)[(D)]the **formula or method for calculating the** schedule of charges as **defined** [described] in Subchapter **A,** [H] **§11.2(b) of this title** [chapter] (relating to **General Provisions** [Schedule of Charges]);

(D)[(E)] any change in the **principal administrative office within the approved service area(s) of the HMO** [registered agent or registered office];

(E)[(F)] **any change of** the certificate of authority from the domiciliary state's licensing authority and a power of attorney, if the HMO is a foreign-licensed HMO;

(F)[(G)] **any new or any substantive change in the sample copy** [the form] of all contracts between the HMO and any physicians, or other providers [plus a sample copy of the form of any contract], described in **§11.204(13)(B) [§11.204(14)(B)] of this title [(relating to Contents)] , whether utilized with all contracts or on an individual basis;** [.]

(G)[(H)] **any new or amendments to insurance or other protection against insolvency, including** the stop-loss or reinsurance agreements if changing the carrier or description of coverage **as described in §11.204(15) of this title** [(this requirement is only necessary if the agreements are obtainable)]; and

(H) any change in the affiliate chart as described in §11.204(6)(A) of this title;

[(I) the officers' and employees' bonds, including notarized certification by an officer that the material is true, accurate, and complete, if all bonds are to be cancelled or if the bonding company is to be changed].

(6) (No change.)

§11.302. Service Area Expansion Requests. If any of the following items are changed by a service area expansion request, the new item or any amendments to an existing item must be submitted **for approval or filed for information, as applicable under §11.301 of this title (relating to Filing Requirements):**

(1) (No change.)

(2) a sample of any new contracts or of the amendment of any existing contracts [with physicians and/or other providers] in the new area, as described in **§11.204(13)** [§11.204(14)] of this title (relating to Contents);

(3) a list of all physicians, hospitals, and/or other providers to be used to provide services in the new area with all information required by §11. 205(4) of this title (relating to Documents to Be Available During Qualifying Examination and/or the Health Department Visit);[.]

(4) (No change.)

(5) biographical data sheets for any new management staff assigned to the new area; [.]

[(6) a certification that the enrollee participation plan includes the new area;

[(7) a description of the proposed method of marketing the plan;

(6)[(8)] **any new or amendments to any** evidence of coverage to be used in the new area, in accordance with the requirements of Subchapter F of this chapter (relating to Evidence of Coverage);

(7)[(9)] the **formula or method for calculating the schedule of charges for any new or amended evidence of coverage in accordance with Subchapter H of this chapter (relating to Schedule of Charges)** [through 12 months following breakeven and actuarial certification];

(8)[(10)] copies of leases, loans, and contracts to be used in the proposed new area as described in §11.301(4)(C), (E), and (G) [(F)] of this title (relating to Filing Requirements);

(9)[(11)] separate and combined sources of financing and financial projections as described in **§11.204(10)** [§11.204] of this title; [.]

(10)[(12)] any **new or** amendments to officers and employees bonds, **in accordance with §11.204(7) and (13)(D) of this title;**

(11)[(13)] any **new or** amendments to reinsurance agreements, **insurance or other protection against insolvency as specified in §11.204(15) of this title; and**

(12)[(14)] a description of the method by which the complaint procedure will be made reasonably available in the new service area or division including a toll free call **and the information and complaint telephone number required by Texas Insurance Code, Article 21.71, where applicable. For HMOs covered by Article 21.71, the toll free call required by this rule and the toll free information and complaint number required by Texas Insurance Code, Article 21.71, may be the same number.** [; and]

[(15) The HMO shall provide such other information as the commissioner may consider necessary relating to items described in paragraphs (1) through (14) of this section.]

§11.303. Examination.

(a) The commissioner is authorized to make a complete examination of the affairs of each **HMO** [health maintenance organization] as often as is deemed necessary, but not less frequently than once every three years. Expenses of the examination must be paid by the HMO examined, **and such expenses shall be offset against premium taxes as provided in the Texas Insurance Code, Article 4.11, and in §11.304 of this title (relating to Annual Reports, Other Reports, and Taxes).**

(b) Quality of health care services examinations may be conducted under rules of the Texas Department of Health. Expenses of such examinations shall be paid by the HMO as provided in rules of the Texas Department of Health and shall be offset against premium taxes as provided by the Texas Insurance Code, Article 20A.32, and by §11.304 of this title.

(c) Documents enumerated in §11.205 of this title (relating to Documents to be Available During Qualifying Examination and/or the Texas Department of Health's visit) shall be available on site unless an HMO has obtained authority to move documents out of state under provisions of the Texas Insurance Code, Article 1.28. Expenses of examination of those records moved out of state shall not be allowed as an offset against premium taxes as provided in the Texas Insurance Code, Article 1.28. Electronic access to documents shall meet the requirements of this section, except that the Texas Department of Insurance or Texas Department of Health shall have authority to request that paper copies of records be produced in a reasonable time period.

§11.304. Annual Reports, [and] Other Reports, and Taxes.

(a) Annual reports.

(1) **Annual statement. On or before March 1 of each year, each HMO must file the original of its annual statement with the Financial Analysis Unit of the Texas Department of Insurance and must file a copy with the Texas Department of Health. The annual statement must be on forms prescribed by the State**

Board of Insurance. This statement [Each HMO must file an annual report and an annual financial statement with the commissioner on or before March 1 of each year. This report], covering the preceding calendar year, must be verified by at least two officers of the HMO and accompanied by the filing fees specified in Texas Insurance Code, Article 20A.32(b).

(2) **Audited financial report. On or before December 31 of each year, each HMO shall designate an accountant, and on or before June 30 of each year, each HMO shall file an annual financial report, if required by, and in compliance with, the Texas Insurance Code, Article 1.15A** [The annual report must be on forms prescribed by the State Board of Insurance, and the annual statement must be certified by an independent public accountant] .

(3) **Sponsoring organization audited reports. Each HMO with a sponsoring organization shall file the annual audited report certified by a certified public accountant of such organization within 30 days of the issuance by the sponsoring organization. The filing shall be made with the Financial Analysis Unit of the Texas Department of Insurance** [The original must be filed with the Corporate Activity Division of the State Board of Insurance. In addition, photocopies, including all attachments, must be sent to both the Health Department and the HMO coordinator].

(b) Other reports.

(1) **HMOs** [Until the HMO has experienced 12 consecutive months of net operating income, it] must file quarterly reports on forms prescribed by the State Board of Insurance within 45 days of the end of the quarter.

(2) (No change.)

(3) The quarterly reports need not be audited. The original must be submitted to the **Financial Analysis Unit** [Corporate Activities Division] of the **Texas Department of Insurance** [State Board of Insurance][, with photocopies to the HMO coordinator].

(4) (No change.)

(5) Subsequent to the issuance of a certificate of authority, on or before March 1 of each calendar year, each HMO must file two copies of an updated list of physicians and other providers, providing all information required in §11.205(4) of this title (relating to Documents **to** [To] **be** [Be] Available during Qualifying Examination **and/or the** [And/Or The] Health Department Visit). One copy must be sent to the HMO **unit** [coordinator] and one copy must be sent to the **Texas** Department of Health, HMO Program Section.

(c) **Taxes.**

(1) Subject to the adjustments provided for by the Texas Insurance Code, Article 4.11, and by the Texas Insurance Code, Article 20A.32, each HMO must pay premium taxes to the Texas Department of Insurance pursuant to the Texas Insurance Code, Article 20A.33 and the rules and tax forms promulgated by the State Board of Insurance.

(2) Each HMO must pay maintenance taxes to the Texas Department of Insurance pursuant to the Texas Insurance Code, Article 20A.33, and the rules and tax forms promulgated by the State Board of Insurance.

§11.305. Site Visits.

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

(c) The HMO must make available during such visits all books and records relating to its operations including, but not limited to, the following specific information:

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

(3) a log or list of all written complaints and responses which shall be retained for at least three years and shall classify each complaint by type and detail its disposition[; and]

[(4) the minutes of all meetings of enrollee committees or panels].

§11.306. Penalties. Failure to comply with the Act or these sections or other regulations or orders of the commissioner or State Board of Insurance may result in:

(1) additional reporting requirements; **and/or** [or]

(2) monetary forfeiture; and/or

(3)[(2)] a cease and desist order; **and/or** [or]

(4)[(3)] suspension or revocation of the certificate of authority; **and/or**

(5) supervision, conservation, or receivership; and/or;

(6) actions prescribed under the Texas Insurance Code, Article 1.10.

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 4, 1992.

TRD-9201719 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Proposed date of adoption: March 13, 1992

For further information, please call: (512) 463-6328

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Subchapter E. Licensing and Regulation of HMO Agents

• 28 TAC §§11.403-11.409

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §11.403 and new §§11.404-11.409, concerning licensing and regulation of health maintenance organization (HMO) agents. The amendment and new sections are necessary to conform the requirements of this subchapter to legislative revisions of the Texas HMO Act and to provide clearer and more effective regulation. The proposal of new §§11.404-11.409 is simultaneous with the proposed repeal of present §§11.404-11.411. Notice of the proposed repeal appears elsewhere in this issue of the **Texas Register.**

The amendment to §11.403 clarifies terminology regarding nonresident individuals who are licensed to act as an agent for one or more HMOs in their state of residency and provides that individuals who reside in an adjoining state may be licensed as resident agents if their principal business office is to be maintained in Texas.

Proposed §11.404 replaces existing §11.405, concerning license application requirements, and adds provisions with respect to corporate applicants.

Proposed §11.405 replaces existing §11.406, concerning the written license examination, and provides that, unless the examination is scheduled within nine months of the date an application is approved, the applicant must reapply.

New §11.406 would replace old §11.407, concerning renewal of licenses, and would delete the provision that allows an individual whose license has expired to renew within one year without retaking the examination, at the commissioner's discretion.

Proposed §11.407 replaces existing §11.408, concerning additional appointments and unauthorized agents, and adds a provision regarding payment of a percentage of an HMO's revenues, net income, or profit to persons under contract with the HMO for administrative, management, or health care services.

Proposed §11.408 replaces old §11.409, concerning termination of HMO agents' appointments, and additionally provides for suspension of the license of an HMO agent with no outstanding valid appointments.

Proposed §11.409, concerning suspension or revocation of license, replaces existing §11.410. The proposed new section adds a showing of financial irresponsibility by an applicant or agent to the enumerated grounds for denial, suspension, or revocation of a license and adds requirements regarding notice of hearing on a license.

Jack Evins, deputy commissioner, license group, 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, but there will be fiscal implications for small businesses as a result of enforcing or administering the sections, and there will be no effect on local employment or local economy.

Jack Evins, deputy commissioner, license group, has also determined that, for each year of the first five years the amendment and new sections are in effect, the public benefit anticipated as a result of enforcing the sections is the more effective regulation of HMO agents and protection of the consumer through the requirements for financial ability to pay claims by corporate agents. There is no anticipated economic cost to persons who are required to comply with the proposed sections, except for corporate agents. The anticipated economic cost to corporate agents who do not already have an errors and omissions policy is between $275-$1,000 for a premium for an errors and omissions policy to $25,000 for a cash deposit if the corporate agent chooses that option for meeting the financial accountability provisions or if the agent is unable to obtain an errors and omissions policy or a bond. There is no difference in the cost for small businesses and larger businesses on a cost per hour of labor basis.

Comments on the proposal may be submitted to Joan Kennedy, director of insurance related activities section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment and new sections are proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Texas Health Maintenance Organization Act; and Texas Insurance Code, Articles 20A.15 and 20A.15A which authorize the board to adopt reasonable rules necessary to provide for the licensing of agents under those articles.

§11.403. Nonresident Licenses.

(a) An individual who is not a resident of Texas may be licensed as an HMO agent upon compliance with the provisions of the Texas HMO Act and **this subchapter** [these sections], provided that the state in which the individual resides accords the same privilege to a citizen of Texas, that the applicant has no place of business in Texas for the transaction of business as an HMO agent, and that the applicant **holds a current license, under which the applicant is eligible** [is currently licensed] **to act as an agent for one or more HMOs** [as an HMO agent] in the applicant's state of residency. The commissioner is authorized to enter into reciprocal agreements with the appropriate official of any state whereby any examination of any applicant from such other state is waived, provided that:

(1) a written examination is required of applicants for **a** [an HMO agent's] license **to act as an agent for an HMO** in the other state;

(2) the appropriate official of the other state certifies that the applicant holds a currently valid license **authorizing the applicant to act as an agent for an HMO** [as an HMO agent] in such state by passing a written examination or holds a currently valid license issued because of the applicant's exemption from the requirements of an examination;

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

(b) **Individuals who reside in an adjoining state may be licensed as resident agents if their principal business office is to be maintained in this state, provided such adjoining state makes similar accommodations available for Texas resident agents.**

§11.404. License Application Requirements.

(a) In applying for a license as an HMO agent, each applicant must submit the following:

(1) a completed application, signed by an officer of the HMO which officer may not be the applicant;

(2) the license fee; and

(3) the initial appointment fee.

(b) A corporation applying for license shall have the ability to pay any sums up to $25,000 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business under the Act. The term "customer" as used herein shall mean any person, firm, or corporation to whom such corporation sells or attempts to sell an HMO contract or from whom such corporation accepts an application for enrollment. Such ability shall be proven in one of the following ways:

(1) an errors and omissions policy insuring such corporation against errors and omissions in at least the sum of $100,000 with no more than a $10,000 deductible issued by an insurance company authorized to do business in the State of Texas or, if a policy cannot be obtained from a company authorized to do business in Texas, a policy procured by a licensed surplus lines agent in compliance with the Texas Insurance Code, Article 1.14-2, on filing an affidavit with the commissioner of insurance stating the inability to obtain coverage and receiving the commissioner's approval; or

(2) a bond executed by such corporation as principal and a surety company authorized to do business in this state, as surety, in the principal sum of $25,000, payable to the Texas Department of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(3) a deposit with the State Treasurer of cash or securities of the class authorized by the Texas Insurance Code, Article 2.08 and Article 2.10, having a fair market value of at least $25,000, upon the following terms and conditions:

(A) the State Treasurer is authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation;

(B) such deposit may be withdrawn only upon filing with the commissioner evidence satisfactory to the commissioner that the corporation has withdrawn from business and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as otherwise provided in this subsection; and

(C) securities so deposited may be exchanged from time to time for other qualified securities.

(c) A binding commitment to issue an errors and omissions policy, as described in subsection (b)(1) of this section; a binding commitment to issue a bond, as described in subsection (b)(2) of this section; or the tender of cash or securities, as described in subsection (b)(3) of this section, shall be sufficient in connection with any application for license.

(d) A corporation which has filed an errors and omissions policy with the Texas Department of Insurance in connection with another license, need not file a separate policy under these rules.

(e) A corporation which applies for a license as an HMO agent under either the Texas Insurance Code, Article 20A.15 or Article 20A.15A, must meet the requirements of the Texas Insurance Code, Article 20A.15(n)-(u).

§11.405. Written Examination. The commissioner is authorized to issue an applicant a license as an HMO agent, after the applicant has passed a written examination approved by the commissioner, unless the applicant is exempt from examination requirements as provided in §11.403 of this title (relating to Nonresident Licenses).

(1) The examination shall cover the Texas HMO Act, rules and regulations for HMOs issued by the State Board of Insurance and by the Texas Department of Health, and pertinent sections of the Texas Insurance Code and the rules adopted thereunder.

(2) A content outline is available from the contracted testing service and is the sole source of examination questions. The content outline, the testing service, and the examination may be changed at any time.

(3) The examination is given at the same times and places as other agent examinations.

(A) Each applicant is mailed a schedule showing places and dates on which examinations are conducted and an examination reservation request form.

(B) Unless the examination is passed within nine months after the date an application is filed; the application shall be closed, and the applicant, if interested, must reapply as provided under §11. 404 of this title (relating to License Application Requirements).

(4) The applicant is notified if the applicant fails the examination.

(5) A new examination fee must be paid for each re-examination.

§11.406. Renewal. An HMO agent's license expires two years after the date of issue unless a completed renewal application and a renewal fee are filed with the Texas Department of Insurance on or before the expiration date of the license.

(1) Prior to the expiration date, a notice of the renewal date is mailed to the agent at the address on file in the Agents License Section, Texas Department of Insurance. The agent must immediately notify the Agents License Section, in writing, of any address change.

(2) When an agent renews a license, all appointments then in effect are automatically renewed, assuming all other requirements of law are met.

§11.407. Additional Appointments; Unauthorized Agents.

(a) An HMO agent may be appointed to represent more than one HMO upon the submission of an additional appointment form and payment of the appointment fee.

(b) No HMO doing business in this state may pay, directly or indirectly, any commission or other valuable consideration in lieu of commission, for any reason or purpose to any person, for services as an HMO agent within this state, unless such person holds a currently valid license to act as an HMO agent as required by the laws of this state and is appointed by such HMO under that license; nor may any person, other than a duly licensed HMO agent, accept any such commission or other valuable consideration; provided, however, that the provisions of this subsection shall not prohibit the payment or receipt of renewal or other deferred commissions to or by any person solely because such person has ceased to hold a license to act as an HMO agent, nor shall the provisions of this subsection prohibit the payment of compensation calculated as a percentage of an HMO's revenues, net income, or profit to a person or the employee of any person who has contracted to provide administrative, management, or health care services to an HMO in compliance with the Texas Insurance Code, Article 20A.18.

(c) Except as provided in subsection (b) of this section, no HMO agent may pay, allow, give, or offer to pay, allow, or give, directly or indirectly, any rebate of premiums payable, any commission, or any paid employment or contract for service of any kind or anything of value whatsoever, or any valuable consideration or inducement whatever, not specified in the policy or contract for health services, for or on account of the solicitation or negotiation of such contracts or policies, other than to another HMO agent.

§11.408. Termination of Appointment.

(a) Upon terminating the appointment of an HMO agent, the HMO must immediately file a completed "Notice of Cancellation of Appointment" form which may be obtained from the Agents License Section, to acknowledge the appointment cancellation of that agent. The notice of cancellation form must be mailed to the Agents License Section, Mail Code 107-1A Texas Department of Insurance, 333 Guadalupe Street, P. O. Box 149104, Austin, Texas 78714-9104. The appointment is cancelled as of the date on which the cancellation notice is received in the Agents License Section, License and Investigations Program, unless the license was terminated or expired prior to the date the notice is received.

(b) The license of any agent shall be suspended during any period in which the agent has no outstanding valid appointments. The suspension shall end upon receipt by the State Board of Insurance of an acceptable notice of a valid appointment.

§11.409. Suspension or Revocation of License. The commissioner may suspend, revoke, or refuse to renew an HMO agent's license for any statement or action which is untrue, unfair, misleading, deceptive, or which constitutes misrepresentation. Grounds and procedures for such actions are outlined as follows.

(1) A license may be denied, or a license duly issued may be suspended or revoked, or the renewal thereof refused by the commissioner if, after notice and hearing provided, the commissioner finds that the applicant or licensee:

(A) has willfully violated any provision of the HMO or insurance laws of this state; or

(B) has intentionally made a material misstatement in the application for such license; or

(C) has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(D) has misappropriated or converted to his or the HMO's own use or illegally withheld money belonging to an HMO or to an enrollee; or

(E) has shown himself or herself to be financially irresponsible or has otherwise demonstrated lack of trustworthiness or competence to act as an HMO agent; or

(F) has been guilty of fraudulent or dishonest practices; or

(G) has materially misrepresented the terms and conditions of HMO contracts; or

(H) has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any health coverage contract issued by an insurer or HMO, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with an HMO contract; or insurance contract; or

(I) has obtained, or attempted to obtain, such license, not for the purpose of holding himself or herself out to the general public as an HMO agent, but primarily for the purpose of soliciting, negotiating, or procuring contracts covering the agent or members of the agent's family or the agent's business associates; or

(J) is not of good character or reputation.

(2) Before any license is denied, except for failure to pass a required written examination, or is suspended or revoked, or the renewal thereof refused, the following procedure will occur.

(A) The commissioner will give reasonable notice of the intention to deny, revoke, or refuse the renewal of a license, by certified mail, to either of the following, as appropriate:

(i) to the applicant for such license and to the HMO who desires that the applicant be licensed; or

(ii) to the licensee and to any HMO with whom the agent holds an appointment and whose business is directly involved in the subject matter of any allegations of wrongdoing leveled against the agent.

(B) Such notice shall set a date not less than 20 days from the date of mailing the notice when the applicant or licensee and a duly authorized representative of the HMO may appear to be heard and produce evidence.

(C) The hearing to deny, revoke or refuse the renewal of a license will be held in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13(a), and Chapter 1, Subchapter A of this title (relating to Rules and Practice and Procedure).

(D) Upon termination of such hearing, findings will be reduced to writing and, upon approval by the commissioner, filed in the commissioner's office and notice of the findings sent by certified mail to the applicant or licensee at such applicant's or licensee's last known address and to the HMO concerned, if any.

(3) No applicant or licensee whose license has been denied, refused, or revoked under this section, except for failure to pass a required written examination, is entitled to file another application for a license as an HMO agent within one year from the effective date of such denial, refusal, or revocation, or, if judicial review of such denial, refusal, or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the commissioner unless the applicant shows good cause why the denial, refusal, or revocation of the license should not be considered a bar to the issuance of a new license.

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

Issued in Austin, Texas, on February 4, 1992.

TRD-9201715 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Proposed date of adoption: March 13, 1992

For further information, please call: (512) 463-6328

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• 28 TAC §§11.404-11.411

(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 State Board of Insurance of the Texas Department of Insurance proposes the repeal of §§11.404-11.411, concerning the licensing and regulation of health maintenance organization (HMO) agents. The repeal of these sections is necessary to provide implementation of legislative revisions to the Texas HMO Act and to provide clearer and more effective regulation. The proposed repeal of the sections enables the board simultaneously to propose new sections which replace these repealed sections with similar provisions with clearer language in conformance with amended statutory language, except for §11.411 relating to temporary licenses which has not been replaced. No temporary licenses will be allowed for HMO agents after the effective date of the repeal of these sections. Notification appears elsewhere in this issue of the *Texas Register* of proposal of the new sections which would substantially replace these sections proposed for repeal.

Joan Kennedy, director of insurance related activities, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals, and there will be no effect on the local employment or local economy.

Ms. Kennedy also has determined that, for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals is the conformity of this subchapter to legislative revisions of the Texas HMO Act. There will be no effect on small businesses. 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 Joan Kennedy, director, insurance related activities section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The repeals are proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Texas Health Maintenance Organization Act.

§11.404. Application for License prior to Certificate of Authority.

§11.405. License Application Requirements.

§11.406. Written Examination.

§11.407. Renewal.

§11.408. Additional Appointments; Unauthorized Agents.

§11.409. Termination of Appointment.

§11.410. Suspension of License.

§11.411. Temporary Licenses.

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

Issued in Austin, Texas, on February 4, 1992.

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Subchapter F. Evidence of Coverage

• 28 TAC §§11.502-11.504, 11.506, 11.509

The State Board of Insurance of the Texas Department of Insurance proposes amendments to §§11.502-11.504, 11.506, and 11.509, concerning requirements for evidences of coverage of health maintenance organizations (HMOs). The amendments are necessary to conform the subchapter to legislative revisions to the Texas HMO Act and to clarify existing regulations to provide better regulation.

The amendments to §11.502 contain references to form numbers, provide that any discrepancy between the language or form numbers of the final print and approved draft is grounds for revocation of the certificate of authority, provide for forms which are referenced in §11.1001(10), and make minor editorial changes.

The amendments to §11.503 provide for an additional form and require four rather than three copies of the transmittal letter.

The amendments to §11.504 add references to Articles 21.21A, 21.21-1 and 21. 21-3 and provide that violations of such statutes are grounds for disapproval of an evidence of coverage.

The amendments to §11.506 make changes in the mandatory provisions for both group and non-group agreements and certificates covering formatting, use of the legislatively mandated toll free number, variable copayments or deductibles, cancellation and cancellation time limits, conversion and continuation of coverage provisions; eligibility requirements, including those of dependents, and mandating coverage of certain dependents; changes to rates; service area descriptions; conformity with state law and with Medicare Supplement Minimum Standards and Long-Term Care Minimum Standards and other miscellaneous provisions dealing with mandatory provisions.

The amendments to §11.509 make certain editorial changes; provide that the subrogation provision may include a statement that the HMO may recover attorneys' fees and court costs, and contain rules which must be followed by an HMO which chooses to provide coverage for work-related injuries or illness.

Joan Kennedy, director of insurance related activities, 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 result of enforcing or administering the sections, and there will be no effect on local employment or local economy.

Ms. Kennedy, also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the sections is a clearer, more concise statement of requirements for evidences of coverage of HMOs, in accordance with legislative revisions to the Texas HMO Act. 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.

Comments on the proposal may be submitted to Joan Kennedy, director of insurance related activities section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Act.

§11.502. Filing Requirements with Application for Certificate of Authority. Filing requirements for the evidence of coverage and all related forms, when filed as part of the application for a certificate of authority, are as follows: [.]

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

(3) during the review period, applicant must submit two copies of each new page or form reflecting any revisions. [All deficiencies must be corrected and submitted not less than 15 working days prior to the public hearing.]

(4) an approval or disapproval order will be issued based on the content of final typed drafts. Printing must comply with the specifications described in §11.505 of this title (relating to Specifications for the Evidence of Coverage). Any discrepancy between the **language or form numbers of the** final print and the approved draft form is grounds for revocation of certificate of authority.

(5) Three copies of the final print must **be submitted to** the HMO **Unit** [Section] within 30 days following printing and must be certified by an officer of the HMO as being the same language as has been approved **on an HMO Form #9 referred to in §11.1001(10) of this title (relating to Forms Adopted by Reference).** One copy will be stamped with the original approval order number and date and returned to the HMO for its permanent file.

§11.503. Filing Requirements Subsequent to Receipt of Certificate of Authority. Subsequent to receipt of a certificate of authority, no evidence of coverage may be amended or altered in any manner, and no new evidence of coverage may be used, unless the proposed new or revised evidence of coverage has been filed for review and has received the approval of the commissioner.

(1) Four copies of HMO **Form #5 and** Form #8 must accompany any form or forms submitted for approval. All submissions must be addressed to the HMO **Unit** [coordinator]. **Four copies of a** [A] transmittal letter must list each form submitted and show the form's number and title or description.

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

(5) Three copies of the final print must be submitted to the HMO **Unit** [Coordinator] within 30 days following printing and must be certified by an officer of the HMO as being the same language as has been approved. One copy will be stamped with the original approval order number and date and returned to the HMO for its permanent file.

(6)-(8) (No change.)

§11.504. Disapproval of an Evidence of Coverage.

(a) If any portion of any evidence of coverage is disapproved, the commissioner will specify the reason for the disapproval. The commissioner is authorized to disapprove any form or withdraw any previous approval if:

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

(3) it contains any statements that are unclear, untrue, unjust, unfair, inequitable, misleading, or deceptive or that violate the Texas Insurance Code, Articles 21.21, **21.21A, 21.21-1,** [or Article] 21.21-2, **or 21.21-3, 21.21-5,** or **21.55 with respect to out-of-area or emergency claims in accordance with Article 20A.09(i)** or any regulations thereunder or any other applicable law; or

(4) –(8) (No change.)

(b)–(c) (No change.)

§11.506. Mandatory Provisions: Group and Non–Group Agreement and Group Certificate. Each group and **non–group** [nongroup] agreement and group certificate must contain the following provisions. Use of the standard language for each provision as presented in Subchapter L of this chapter (relating to Standard Language for Mandatory and Other Provisions) shall exempt from review that portion of the evidence of coverage where standard language is contained. Such standard language shall not be the only language accepted by the State Board [board] of Insurance for such provisions.

(1) The name, address, and phone number of the HMO, **the toll free number referred to in Texas Insurance Code, Article 21.71, where applicable,** and notice of any provision requiring arbitration, indicating the location of such provisions within the evidence of coverage, must appear on the face page.

(A) The face page of an agreement is the first page that contains any written material.

(B) If the agreements or certificates are in booklet form the first page inside the cover is considered the face page.

(C) The information regarding the toll fee number referred to in Article 21.71 must be in accordance with §1.601 of this title (relating to Notice of Toll–Free Telephone Numbers) .

(D) HMOs who wish to be exempt from Article 21.71 requirements for fiscal year 1991 must have filed for the exemption in accordance with the Commissioner's Bulletin of August 31, 1991. Exemptions will be governed by Texas Insurance Code, Article 21.71, §1.601 of this title (relating to Notice of Toll–Free Telephone Numbers) and the information contained in the instructions for the filing of the Annual Statement.

(2) Arbitration–a **statement** [description] of any required arbitration procedure. **If** [if] enrollee complaints and grievances are resolved through a specified arbitration agreement, the arbitration must be conducted pursuant to the Texas Arbitration Act, Texas Civil Statutes, Articles 224–238;

(3) Benefits–a schedule of all health care services that are available to enrollees under the health care plan or single health care service plan, including any **copayments** [co–payments] or deductibles and a description of where and how to obtain services. **A variable copayment or deductible schedule may be used. The copayment schedule must clearly indicate the benefit to which it applies.**

(4) Cancellation–a statement specifying the grounds for cancellation of coverage and the minimum notice period that will apply. The notice period will be [not less than 60 days, except] as described below:

(A) for an enrollee, **or if a subscriber, the subscriber and subscriber's enrolled dependents,** in the case of:

(i)-(iii) (No change.)

(iv) failure to meet eligibility requirements, coverage may be cancelled immediately, **subject to continuation of coverage and conversion privilege provisions;**

(v)-(vi) (No change.)

(B) For a group, in the case of:

(i) (No change.)

(ii) fraud on the part of the group, after 15 days written notice; **or**

(iii) **any cancellation other than described in (i) or (ii) above, the HMO must give the group at least 60 days prior notice.**

(5) Claim filing procedure–a provision that sets forth the procedure for filing claims, including:

(A) any required notice to the HMO of a claim;

(B) how, when and where to obtain claim forms, if required;

(C) requirements for filing proper proofs of loss;

(D) any time limit for payment of claims **which must be in accordance with Texas Insurance Code, Article 21.55 and Article 20A.09(i);** [and]

(E) notice of any requirement for arbitration of disputed claims.

(6) Complaint procedure–a description of the HMO's method for resolving enrollee complaints, including the address, [and] phone number to which complaints must be directed, **and toll free telephone number required by Article 21.71, where applicable;** and notice of time limits, appeal procedures, and any requirement for arbitration.

(7) Conversion privilege–group and **non–group** [nongroup] agreements and group certificates for an HMO **must contain a conversion privilege which provides that, upon termination of eligibility for membership, each enrollee who resides in the service area has the right to convert within 31 days to a non–group agreement issued by the HMO** without presenting evidence of insurability. No conversion privilege is required when the entire group withdraws from the HMO **or is cancelled by the HMO** or for any member whose coverage is cancelled pursuant to paragraph (4)(A),(i),(ii),(iii), (v), or (vi) of this section **or for any enrollee covered under a Medicare Risk or Medicare Cost Contract.**

(8)–(10) (No change.)

(11) Eligibility–a statement of the eligibility requirements for membership, including:

(A) **that the subscriber must live in the service area and the permanent legal residence of any enrolled dependents must be the same as the subscriber, or the subscriber must live in the service area and the residence of any enrolled dependents must be:**

(i) **in the service area with the person having temporary or permanent conservatorship or guardianship of such dependents, where the subscriber has legal responsibility for the health care of such dependents; or**

(ii) **in the service area under other circumstances where the subscriber is legally responsible for the health care of such dependents; or**

(iii) **in the service area with the subscriber's spouse;**

(B) the conditions under which dependent enrollees may be added to those originally covered;

(C)[(B)] any limiting age for subscriber and dependents, including effects of Medicare eligibility; [and]

(D)[(C)] a clear statement regarding the coverage of newborn children. No evidence of coverage may contain any provision excluding or limiting coverage for a newborn child of the subscriber or the subscriber's spouse. Congenital defects must be treated the same as any other illness or injury for which coverage is provided. The HMO may require that the subscriber notify the HMO during the initial 31 days after the birth of the child and pay any premium required **to continue** [for] coverage for the newborn child; [.]

(E) a clear statement regarding the coverage of the subscriber's grandchildren under the conditions under which such coverage is required by Texas Insurance Code, Article 3.70–2, Subsection (L).

(12)–(15) (No change.)

(16) **Incontestability** [Incontestibility]–In the absence of fraud, all statements made by a subscriber are considered representations and not warranties. **During** [during] the first two years, coverage can be voided for material misrepresentation contained in a written application. After two years, coverage can be voided only in the event of a fraudulent misstatement contained in the written application. A copy of the written application must have been furnished to the subscriber if the terms of the application or enrollment form are to be applied.

(17) Schedule of charges.

[(A)] A statement that discloses the HMO's right to change the rate charged **with 30 days written notice pursuant to the Texas Insurance Code, Article 3.51–10** [and indicates the amount of prior notice which must be given;].

[(B) pursuant to the Act, §9(a)(3)(B)(iv), a provision disclosing the total amount of payment for health care services or a single health care service which the enrollee is obligated to pay if covered by a nongroup agreement, and an indication in the certificate of whether the plan is contributory or noncontributory if coverage is through a group. This requirement may be satisfied by inclusion of this information on the nongroup application for membership or group subscriber enrollment form.]

(18) Service area–a map or clear description of the service area indicating major primary and emergency care delivery sites. **A zip code map and a provider list may be used to meet this requirement.**

(19) (No change.)

(20) Conformity with state law–A provision that if the agreement or certificate contains any provision not in conformity with the Act or other applica-

ble laws it shall not be rendered invalid but shall be construed and applied as if it were in full compliance with the Act and other applicable laws.

(21) Conformity with Medicare supplement minimum standards and long-term care minimum standards–Each group and non-group agreement and group certificate must comply with Subchapter T of Chapter 3 of this title (relating to Medicare Supplement Minimum Standards), referred to in this paragraph as Medicare Supplement Rules, and Subchapter Y of Chapter 3 of this title (relating to Long-Term Care Minimum Standards), referred to in this paragraph as long-term Care Rules, where applicable. If there is a conflict between the Medicare Supplement Rules and/or the long-term Care Rules and the HMO Rules, the Medicare Supplement Rules or long-term Care Rules shall govern to the exclusion of the conflicting provisions of the HMO Rules. Where there is no conflict, both the Medicare Supplement Rules and/or the long-term Care Rules and the HMO Rules shall be followed where applicable.

§11.509. Optional Provisions. Group and **non-group** [nongroup] agreements and group certificates may contain the following optional provisions.

(1) Coordination of benefits–a provision that the value of any benefits or services provided by the HMO may be coordinated with any other type of group insurance plan or coverage under governmental programs so no more than 100% of eligible expenses incurred is paid.

(A)–(B) (No change.)

[(C) Group and nongroup plans may not coordinate benefits with automobile coverage.]

(C)[(D)] Requirements of the **Texas** Insurance Code and rules promulgated by the State Board of Insurance relating to coordination of benefits by insurers should be followed by HMOs that wish to coordinate benefits.

(2) Subrogation–a provision that the HMO receives all rights of recovery acquired by an enrollee against any person or organization for negligence or any willful act resulting in illness or injury covered by HMO benefits, but only to the extent of such benefits. Upon receiving such benefits from the HMO, the enrollee is considered to have assigned such rights of recovery to the HMO and to have agreed to give the HMO any reasonable help required to secure the recovery. **The provision may include a statement that the HMO may recover attorney fees and court costs.**

(3) Sale of substitutes to Workers' Compensation Insurance–If an HMO chooses to market a product which provides coverage for on-the-job injuries or illness, the following provisions shall apply:

(A) No person, agent, or entity may represent any nongroup or group agreement or other evidences of coverage as a substitute for a policy of workers' compensation insurance nor may any person, agent, or entity represent to an employer that purchase of a nongroup or group agreement or other evidence of coverage providing benefits to the employer's employees:

***(i)* provides the same benefits for either the employee or the employer as are provided by workers' compensation insurance; or**

***(ii)* limits such employees to a claim for benefits under such agreements as the employees' sole remedy against the employer in the event the employee suffers a job related injury or disease.**

(B) All nongroup or group agreement or other evidences of insurance coverage which provides benefits to employees and which are marketed to or through employers that have elected, or may in the future elect, to be nonsubscribers to the workers' compensation system shall include the following statement in 10-point bold-face type on the first page of the agreement and on the first page of all materials used in advertising, marketing, and explaining the agreement: "THIS IS NOT A POLICY OF WORKERS' COMPENSATION INSURANCE. THE EMPLOYER DOES NOT BECOME A SUBSCRIBER TO THE WORKERS' COMPENSATION SYSTEM BY PURCHASING THIS AGREEMENT, AND IF THE EMPLOYER IS A NON-SUBSCRIBER, THE EMPLOYER LOSES THOSE BENEFITS WHICH WOULD OTHERWISE ACCRUE UNDER THE WORKERS' COMPENSATION LAWS. THE EMPLOYER MUST COMPLY WITH THE WORKERS' COMPENSATION LAW AS IT PERTAINS TO NON-SUBSCRIBERS AND THE REQUIRED NOTIFICATIONS THAT MUST BE FILED AND POSTED."

(C) The group agreements described in subsection (b) of this section shall include the following statement in 10-point bold-face type on the certificate or other evidence of coverage issued to the employees: "THE GROUP AGREEMENT UNDER WHICH THIS CERTIFICATE IS ISSUED IS NOT A POLICY OF WORKERS' COMPENSATION INSURANCE. YOU SHOULD CONSULT YOUR EMPLOYER TO DETERMINE WHETHER YOUR EMPLOYER IS A SUBSCRIBER TO THE WORKERS' COMPENSATION SYSTEM."

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 4, 1992.

TRD-9201720 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Proposed date of adoption: March 13, 1992

For further information, please call: (512) 463-6328

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Subchapter G. Advertising and Sales Material

- **28 TAC §11.602, §11.603**

The State Board of Insurance of the Texas Department of Insurance proposes amendments to §11.602 and §11.603, concerning the coverage of HMOs by the Texas Insurance Code, Articles 21.21, 21-21-1, and 21.21-2, and filings of advertisements. The amendments are necessary to clarify the requirements of the sections.

The amendment to §11.602 adds Article 21.21-1 as a statute to which an HMO is subject; and the amendment to §11.603 retitles the section "Filings" to indicate that the required filings which are to be made are not necessarily filings subsequent to certificate of authority.

Joan Kennedy, director of insurance related activities, has determined that, for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, and there will be no effect on the local employment or local economy.

Ms. Kennedy, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is a clearer, more concise statement of requirements concerning advertising. 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.

Comments on the proposal may be submitted to Joan Kennedy, Director of Insurance Related Activities Section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in

accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Texas Health Maintenance Organization Act.

§11.602. Health Maintenance Organizations Subject to the Texas Insurance Code, Articles 21.21, 21.21-1 and Article 21.21-2, and Related Rules. Health maintenance organizations must comply with the Texas Insurance Code, Article 21.21, 21.21-1 and Article 21.21-2, and [all advertising guidelines and] rules promulgated by the State Board of Insurance, pursuant to the Texas Insurance Code, Article 21.21, 21-21-1, and Article 21.21-2, to the extent these rules may be applied[,] in the same manner as insurance companies.

§11.603. Filings. [Subsequent to Certificate of Authority].

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

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

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For further information, please call:(512) 463-6328

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Subchapter H. Schedule of Charges

• 28 TAC §§11.701-11.707

The State Board of Insurance of the Texas Department of Insurance proposes amendments to §§11.701-11.704 and new §§11.705, 11.706, and 11.707, concerning the schedule of charges for enrollee coverage by health maintenance organizations (HMOs). The amendments and new sections are necessary to conform the subchapter to legislative revisions to the Texas HMO Act and to provide clarification of the regulations related to the schedule of charges. The amendment to §11.701 provides for the filing of the formula or method for calculating the schedule of charges and the required supporting documentation and clarifies the contents of the schedule of charges. The amendment to §11. 702 provides that the formula or method for calculating the schedule of charges must be accompanied by certification of a qualified actuary that it is appropriate to produce rates that are not excessive, inadequate, or unfairly discriminatory. The amendment to §11.703 provides that each formula or method for calculating the schedule of charges must be accompanied by adequate detail including assumptions to justify that the charges produced are not excessive, inadequate, or unfairly discriminatory. That amendment also provides that the calculations must be available in the HMO's office and that any changes in the assumptions in the formula or method for calculating the schedule of charges for a particular group need not be filed but justification of the variances must be retained at the HMO's office. The amendments to §11.704 establish the standards for establishing conversion rates and prohibit charges based on any individual's health status. New §11.705 establishes requirements concerning a one-time enrollment fee or a reinstatement fee for lapsed contracts. Section 11. 706 provides standards for determining reasonableness of HMO rates with respect to benefits. Section 11.707 requires review of an HMO's formula or method for calculating its schedule of charges after a one-year period. Proposal of new §11.705 and §11.706 is simultaneous with the proposed repeal of existing §11.705 and §11.706, concerning rate variations and schedule of charges projected in application for certificate of authority. Notice of the proposed repeal appears elsewhere in this issue of the *Texas Register.*

Joan Kennedy, director of insurance related activities, Bob Long, actuary, and Bill Beversdorff, examiner, have determined that for the first five-year period the sections are in effect fiscal implications to state or local government or small businesses will be a slight increase in the cost of group health coverage in some cases in order to offset decreases in individual conversion health coverage rates to affordable amounts, otherwise there will be no adverse fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, and there will be no effect on the local employment or the local economy.

Ms. Kennedy, Mr. Long, and Mr. Beversdorff 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 a clearer, more concise statement of requirements concerning an HMO's schedule of charges, in accordance with the amendments to the Texas HMO Act; a more affordable individual conversion coverage cost; assurance of some benefit to the consuming public as a result of the HMO's efforts to hold down health care costs by negotiating lower fees with providers; and an incentive to HMOs to encourage negotiations for discounts of health care service costs. There is some anticipated economic cost to persons who are required to comply with the proposed sections as actuarial reviews of rates are required once a year. Such costs will depend upon size, type, and complexity of the HMO but will range from $1,000 to $50,000 per year. Most HMOs have already provided for such reviews. Also, there would be an economic cost to HMOs which would otherwise charge rates in excess of that allowable by these sections, but because it does not appear there are any HMOs that could not comply with these sections without a decrease in revenue, no economic costs from loss of revenue are anticipated.

Comments on the proposal may be submitted to Joan Kennedy, Director of Insurance Related Activities Section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments and new sections are proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Texas Health Maintenance Organization Act.

§11.701. Must Be Filed Prior to Use.

(a) No **formula or method for calculating the** schedule of charges for enrollee coverage, as defined in **§11.2(b)** [§11.2(b)(13)] of this title (relating to Definitions), may be used until a copy of such **formula or method for calculating the** schedule of charges **with the required supporting documentation as defined in §11.703 of this title (relating to Supporting Documentation)** has been filed with the commissioner.

(b) The schedule of charges governed by this section includes all charges made for group or individual coverage except that any fee collected as an administrative service only fee, whereby the HMO assumes no risk, shall not be governed by this section.

(c) Each filing must be accompanied by HMO Form #6 (SC#1) as referenced in §11.1001 of this title (relating to Forms Adopted by Reference). This information may be submitted in the form of a computer printout.

§11.702. Actuarial Certification. Each **formula or method for calculating the** schedule of charges must be accompanied by the certification of a qualified actuary that, based on reasonable assumptions, the **formula is appropriate to produce rates that are not excessive, inadequate, or unfairly discriminatory** [rates to be charged are appropriate]. An actuary is considered qualified if he or she:

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

§11.703. Supporting Documentation. Each **formula or method for calculating the** schedule of charges must be accompanied by **adequate detail including assumptions** [supporting documentation adequate] to justify **that the charges produced by the formula or method are not excessive, inadequate, or unfairly discriminatory as defined in §11.706 of this title (relating to Factors to be Considered in Determination of Reasonability of Rates)** [rates to be charged].

(1) The calculations used to produce any schedule of charges as de-

fined in §11.2(b)(14) (A) of this title (relating to Definitions) must be available at the HMO's office.

(2) Any changes in the assumptions in the formula or method for calculating the schedule of charges due to special characteristics of a particular group need not be filed, but justification of the variances must be retained at the HMO's office so that compliance with §11.706 of this title (relating to Factors to be Considered in Determination of Reasonability of Rates) may be checked.

§11.704. Charges for Individuals [May not be Based on Health Status].

(a) Charges for any individual's coverage may not be based on the individual's health status.

(b) The charge by an HMO for individual coverage which has been converted from group coverage shall not exceed 120% of the HMO's group community rate for comparable coverage. The phrase "group community rate" as used herein is the rate which would be charged all persons in the service area if all persons were members of one group, within the parameters set out in §11.706 of this title (relating to Factors to be Considered in Determination of Reasonability of Rates). The conversion rate is, therefore, based on the experience of all persons in the service area and not on the converting individual's characteristics.

§11.705. Enrollment Fees. An HMO may charge a one-time enrollment fee or a reinstatement fee for lapsed contracts to offset the costs of initial enrollment or reinstatement, but said fee shall not exceed:

(1) for basic health care plans, the monthly rate attributable to administrative costs for a period of one month; or

(2) for single service health care plans, two months' premium.

§11.706. Factors to be Considered in Determination of Reasonability of Rates. HMO benefits must be reasonable with respect to the rates produced by the formula or method for calculating the schedule of charges. Rates shall be considered reasonable if charges are not excessive, inadequate, or unfairly discriminatory.

(1) A rate is presumed to be inadequate if the premium revenue expected to be earned from rates charged will result in a ratio of cost of benefits incurred to premiums earned of greater than 90%, unless total revenues plus all other sources of funds exceeds total expenses. An HMO may include any contributions of financial support from a parent company, sponsoring organization, or any other outside source in ascertaining the rate to be charged, but any rate that is reduced due to such support must be disclosed to the prospective contract holders and subscribers before execution of a contract or enrollment.

(2) A rate is presumed to be excessive if said rate is projected to produce a ratio of cost of benefits incurred to premiums earned of less than:

(A) 75% on evidence of coverage issued on a group basis by a basic health care plan including all riders issued in conjunction with said evidences of coverage;

(B) 65% on evidences of coverage issued on a individual by a basic health care plan including all riders issued in conjunction with said evidences of coverage;

(C) 65% on evidences of coverage issued on a group basis by a single service health care plan including all riders issued in conjunction with said evidences of coverage;

(D) 55% on evidences of coverage issued on an individual basis by a single service health care plan including riders issued in conjunction with said evidences of coverage.

(3) The calculation of a projected ratio of incurred benefit costs to premium revenue earned may not include fees by providers which are greater than usual and customary fees.

(4) The enrollment fees outlined in §11.705 of this title (relating to Enrollment Fees) may be excluded as an element of revenue in calculating the ratio of incurred benefit costs to premium revenue earned.

(5) Instead of actual costs, at the HMO's option, health care benefit costs incurred may be equivalent to the usual and customary fees expected to be paid if the same coverage were provided on a private pay basis (less any copayments or other charges that are the responsibility of the enrollee), considering community average rates for such services and benefits within the service area of the plan, but if an HMO claims that its charges negotiated and/or paid to physicians or other health care providers are less than the usual and customary fees, it shall be the responsibility of the HMO to prove that the negotiated fees are, actually in fact, less than usual and customary fees. Any proven savings resulting from the difference of negotiated fees being less than usual and customary fees must be divided whereby no less than 50% is directed towards the benefit of the contract holders or subscribers through decreases in rates. In no event, though, may premiums exceed the anticipated actual costs of health care benefits by more than 250%. An HMO may not include as a basis in its rate calculations usual and customary charges for discounted physician or other health care services when the HMO has included physician or other health care provider fee discounts to patients as benefits in evidences of coverage or otherwise advertised said discounts to the public in selling its products. The HMO may not recoup, in premium or by other charge to the contract holders, subscribers or enrollees, any amounts representing physician or other health care provider discounts to patients which are included as benefits in evidences of coverage or otherwise advertised to the public.

(6) The presumptions set out in paragraphs (1) and (2) of this section may be overcome by a showing that for a particular HMO the rates within the parameters set forth in this section do not generate rates that are reasonable with respect to the benefits provided.

(7) The phrase usual and customary fee as used in this section refers to the usual and customary fee for services provided by similar practitioners within the service area.

§11.707. Subsequent Review of the Formula or Method for Calculating the Schedule of Charges. If the formula or method for calculating the schedule of charges is to be continued beyond a one-year period, the HMO must file with the commissioner, by each anniversary of the effective date of that original filing, an actuarial statement stating that the previously filed formula or methodology has been consistently applied and the rates charged have proven and are expected to continue to be adequate, not excessive, nor unfairly discriminatory. This statement must be accompanied by HMO Form #6.

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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Linda K. von Quintus-Dorn
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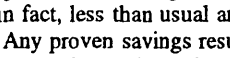

Subchapter H. Schedule of Charges

• 28 TAC §11.705, §11.706

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

The State Board of Insurance of the Texas Department of Insurance proposes the repeal of §11.705 and §11.706, concerning rate variations and schedule of charges projected in an application for certificate of authority. The repeal of these sections is necessary to provide implementation of legislative revisions to the Texas HMO Act and to provide clarification of the regulations under that Act. The proposed repeal of the sections enables the board simultaneously to propose new sections which replace these repealed sections. Notification appears elsewhere in this issue of the *Texas Register* of proposal of the new sections which would replace these sections proposed for repeal.

Joan Kennedy, director of insurance related activities, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals, and there will be no effect on the local employment or local economy.

Ms. Kennedy also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the conformity of this subchapter to legislative revisions of the Texas HMO Act. There will be no effect on small businesses. 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 Joan Kennedy, Director of Insurance Related Activities Section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The repeals are proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Texas Health Maintenance Organizational Act.

§11.705. Rate Variations.

§11.706. Schedule of Charges Projected in Application for Certificate of Authority.

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. Financial Requirements

• 28 TAC §11.801

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §11.801, concerning financial requirements. The amendment adds a new subsection (e) related to foreign HMOs and is necessary to provide clearer and more effective regulation of foreign health maintenance organizations. The amendment to §11.801 provides that foreign HMOs seeking admission to this state which are actively conducting business in other states and are applying for a certificate of authority shall be required to maintain only the minimum surplus requirement net of uncovered liabilities and may hold assets allowed existing certified HMOs at the time of the qualifying examination, because an existing HMO cannot be examined in the same way as a prospective HMO which cannot conduct business without a certificate of authority. This change is made to recognize the financial situation of an HMO which is currently conducting business as opposed to a prospective HMO which is not currently conducting business.

Bill Beversdorff, financial examiner, 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, and there will be no effect on local employment or local economy.

Mr. Beversdorff also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be a more equitable treatment of foreign HMOs who are actively conducting business. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Joan Kennedy, Director of Insurance Related Activities Section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Texas Health Maintenance Act.

§11.801. Capitalization.

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

(e) Notwithstanding the provision of subsection (c) of this section, existing foreign health maintenance organizations seeking admission to this state which are actively conducting business in other states shall be required to maintain only the minimum surplus requirement net of uncovered liabilities and may hold assets allowed existing certified HMOs at the time of the qualifying examination.

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

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Subchapter J. Requirements of the Texas Department of Health

• 28 TAC §11.901

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §11.901, concerning requirements of the Texas department of health with respect to health maintenance organizations. The amendment is necessary to change a numerical reference to regulations of the Department of Health and to make editorial changes.

Joan Kennedy, director of insurance related activities, 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, and there will be no effect on the local employment or local economy.

Ms. Kennedy also has determined that, for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the provision of correct, current information to health maintenance organizations concerning regulations that apply to them. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Joan Kennedy, Director of Insurance Related Activities Section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which

authorizes the board to promulgate rules to carry out the provisions of the Texas Health Maintenance Organization Act.

§11.901. Health Department May Request Additional Information or Make Additional Requirements. The Texas Department of Health has certain statutory responsibilities in the certification and regulation of **HMOs** [health maintenance organizations]. In addition to **this chapter** [these sections] promulgated by the Texas Department of Insurance, **HMOs** [health maintenance organizations] must comply with rules adopted by the Texas Department of Health, with the concurrence of the commissioner of insurance, pursuant to the Texas Insurance Code, Article 20A.05(a)(2)(B) and (C). (Note: Rules for **HMOs** [health maintenance organizations] issued by the Texas Department of Health are **found at 25 Texas Administrative Code** [25 TAC §119.1-119.12]).

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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Chief Clerk
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Subchapter K. Forms Adopted by Reference

• 28 TAC §11.1001

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §11.1001, concerning forms adopted by reference for use by health maintenance organizations (HMOs). The amendment is necessary to change the names of three forms and to add a revision date to the form numbers. The amendment changes the names of the forms referred to in paragraphs (1), (7), (8), and (10) and adds the notation "Rev. 7/90" to each form number.

Joan Kennedy, director of insurance related activities, 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, and there will be no effect on the local employment or local economy.

Ms. Kennedy also has also determined that, for each year of the first five years the secion is in effect the public benefit anticipated as a result of enforcing the section will be the provision of current, correct information to HMOs concerning requirements that apply to them. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Joan Kennedy, Director of Insurance Related Activities Section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Texas Health Maintenance Organization Act.

§11.1001. Forms Adopted by Reference. The Texas Department of Insurance adopts by reference certain application and filing forms, instructions, checklists, and other blanks to be used in conjunction with the rules adopted under this chapter. Copies of these forms may be obtained by contacting the HMO **Unit** [Section], **Mail Code 106-3A, Texas Department of Insurance** [State Board of Insurance], **333 Guadalupe, P.O. Box 149104** [1110 San Jacinto Street], Austin, Texas **78714-9104** [78701-1998]. Each HMO or other person or entity shall use such form or forms as are required by the rules adopted in this chapter and as are appropriate to its particular **activities** [activity]. The forms which are adopted by reference are more specifically identified as follows:

(1) HMO Form **#1 Rev. 7/90** [1]–**Name reservation** [Reservation of name];

(2) HMO Form **#2 Rev. 7/90** [2]–Application for a certificate of authority to do business in the State of Texas;

(3) HMO Form **#3 Rev. 7/90** [3]–State of Texas officers and directors page;

(4) HMO Form **#4 Rev. 7/90** [4] –Biographical data for the Texas [Insurance] Department of Insurance;

(5) HMO Form **#4A Rev.7/90** [4a]–Instructions for completion of biographical data forms;

(6) HMO Form **#5 Rev. 7/90** [5]–Texas certified HMO, Article 20A.04(b) filing;

(7) HMO Form **#6 Rev. 7/90** [6]–**Reconciliation of benefits to schedule of charges** [certification of corrections];

(8) HMO Form **#7 Rev. 7/90** [7]–**Certification** [certificate] (of compliance);

(9) HMO Form **#8 Rev.7/90** [8]–Texas Department of Insurance transmittal form for [evidence of coverage] submissions; and

(10) HMO Form **#9 Rev. 7/90** [9]–**Certification** [certification] (of language) .

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 4, 1992.

TRD-9201709 Linda K. von Quintur-Dorn
Chief Clerk
Texas Department of Insurance

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For further information, please call: (512) 463-6327

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Subchapter N. Health Maintenance Organization Solvency Surveillance Committee Plan of Operation

• 28 TAC §§11.1301-11.1306

The State Board of Insurance of the Texas Department of Insurance proposes amendments to §§11.1301-11.1306, concerning the health maintenance organization (HMO) solvency surveillance committee plan of operation. The amendments are necessary to conform the subchapter to legislative amendments to the Texas HMO Act and to make editorial changes. The amendments delete the article designation in the title of each section. In addition, the amendment to §11.1302 adds provisions concerning membership on the committee and meetings of the committee.

Joan Kennedy, director of insurance related activities, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, and there will be no effect on local employment or local economy.

Ms. Kennedy 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 a clear, concise application of legislative amendments to the HMO Act. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Joan Kennedy, Director of Insurance Related Activities Section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Texas Health Maintenance Organization Act.

§11.1301. [Article I;] Plan of Operation. (No change.)

§11.1302. [Article II;] Solvency Surveillance Committee.

(a) Members. **There shall be nine members of the committee appointed by the commissioner of insurance. A member is a Texas licensed health maintenance organization as defined in the Act or a public representative. Five of the members shall represent health maintenance organizations or their holding company system. The remaining four members shall be public representatives. The commissioner of insurance shall appoint the HMO members along with the officers or employees of the members who shall serve on the committee.** The **HMO** members shall be appointed **, based on plan characteristics.** [by the board in accordance with the provisions of the Act, §36]. **Of the HMO members, one shall be a single health care service plan as defined in the Act. The remaining HMO members shall be selected by the commissioner of insurance with due consideration of factors deemed appropriate including, but not limited to, the varying categories of premium income and geographical location. No two HMO members may be employees or officers of the same health maintenance organization or holding company system. Public representatives may not be officers, directors, or employees of a health maintenance organization, health maintenance organization agents, or any other business entities regulated by the State Board of Insurance; or persons required to register with the Secretary of State under the Government Code, Chapter 305, or related to persons described in this subsection within the second degree of the affinity or consanquinity.**

(1) The **HMO** members' terms shall last for three years unless otherwise appointed by the **commissioner** [board] and shall be staggered with three appointments expiring each year. **A member's term shall terminate if the member leaves the plan whose characteristics were the basis for appointment. The plan shall not automatically continue as a member.**

(2) (No change.)

(3) A member shall serve until a successor is appointed unless such member's term is in conflict with the Act **, or unless a member misses two or more consecutive meetings or engages in willful misconduct, in which case the commissioner may remove the member.** If a member's term is in conflict with the Act, the committee shall make recommendations to the commissioner and the board to fill this vacancy. The committee may at such other times make recommendations to the commissioner and the board regarding vacancies which may arise from time to time: Members shall not receive any remuneration or emolument of office.

(4) (No change.)

(b) (No change.)

(c) Meetings. On a day determined by the members, the committee shall hold meetings at the office of the commissioner of insurance no less frequently than quarterly [of] each year unless the officers, upon 10 days' notice, shall designate some other date or place. Such notice can be oral or written. **Notice of regular meetings shall be provided by the chairman or other officer acting on his behalf.** At each such meeting the committee may:

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

(3) **consider and provide for collection of assessments for operating expenses of the committee;**

(4)[(3)] consider facts relevant to, and provide for, the collection of assessments as determined by the commissioner;

(5)[(4)] consider any extension of funding for the expenses of supervision, rehabilitation, or conservation of an HMO beyond the statutory 150 days;

(6)[(5)] review latest financial statements of each HMO . [;] **Committee members shall be provided with reports regarding the financial condition of Texas licensed health maintenance organizations and regarding the financial condition, administration, and status of health maintenance organizations in rehabilitation, liquidation, supervision, or conservation at meetings. Committee members shall not reveal the condition of nor any information secured in the course of any meeting of the committee with regard to any corporation, form, or person examined by the committee.**

(7)[(6)] advise the commissioner on actions necessary to prevent financial impairment;

(8)[(7)] receive reports and advise the commissioner regarding management of HMO impairments and insolvencies;

(9)[(8)] authorize appropriate legal action to recover unpaid assessments;

(10)[(9)] review, consider, and act on the powers given the committee for a special meeting as outlined in [Article II of the plan of operation and set out herein as] subsection (d)(1)-(3) [,] of this section; and

(11)[(10)] review, consider, and act on other matters deemed by it to be necessary and proper for the administration of the committee.

(d)-(g) (No change.)

§11.1303. [Article III;] Operations.

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

§11.1304. [Article IV;] Records and Reports.

(a) Written record. A written record of the proceedings of each committee meeting shall be made. The original of this record shall be retained by the commissioner with copies being furnished to each member **, and to the State Board of Insurance.** Such record [as maintained by the commissioner] shall be subject to the pertinent provisions of law including those as to the confidentiality of the proceedings of the committee.

(b) (No change.)

§11.1305. [Article V;] Appeals.

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

§11.1306. [Article VI;] Conformity of Statute. **Texas Insurance Code, Article 20A.36,** [The Act,] as written, and as may be amended, is incorporated as a part of this plan.

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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Chief Clerk
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Subchapter O. Administrative Procedures

• 28 TAC §11.1401, §11.1402

The State Board of Insurance of the Texas Department of Insurance proposes new §11.1401 and §11.1402, concerning the ability of the commissioner to require additional information, and the necessity for HMOs to provide an annual 20-day period each calendar year during which providers and physicians may apply to participate in providing health care services or medical care. The new sections are necessary to amplify and clarify the requirements of the Texas Health Maintenance Organization Act, Texas Insurance Code, Chapter 20A, meet new statutory requirements, and provide for more effective regulation under such Act.

Joan Kennedy, director of insurance related activities, 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, local employment, or local economy.

Ms. Kennedy 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 sections will be more effective regulation. The anticipated economic cost to persons who are required to comply with proposed §11.1402 is $25 to $35 per publication of the notice of the application period and approximately $50 for filing the required information with the HMO Unit, for each of the first five years the amendment is in effect. There will be no difference in costs between large and small businesses.

Comments on the proposal may be submitted to Joan Kennedy, Director of Insurance Related Activities Section, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The new sections are proposed under the Texas Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Texas Insurance Code, Article 20A.22, which authorizes the board to promulgate rules to carry out the provisions of the Act.

§11.1401. Commissioner's Authority to Require Additional Information. The commissioner may require additional information as needed to make any determination required by the Texas Insurance Code, Chapter 20A, or these rules.

§11.1402. Notification to Providers.

(a) A health maintenance organization that provides coverage for health care services or medical care through one or more providers or physicians is required by the provisions of Texas Insurance Code, Article 20A.14(h), to provide a 20 calendar day period each calendar year during which any provider or physician in the geographic service area may apply to participate in providing health care services or medical care under the terms and conditions established by the health maintenance organization for the provision of such services and the designation of such providers and physicians. Article 20A.14(h) may not be construed to:

(1) require that a health maintenance organization utilize a particular type of provider or physician in its operation;

(2) require that a health maintenance organization accept a provider or physician of a category or type that does not meet the practice standards and qualifications established by the health maintenance organization; or

(3) require that a health maintenance organization contract directly with such providers or physicians. In order to effectively notify providers or physicians of the opportunity to apply to provide services, after January 1, 1992, an HMO which is covered by the Texas Insurance Code, Article 20A.14(h) must publish a notice of an application period to physicians and providers in the public notice section of at least one major newspaper with general circulation in each of its service areas. The notice must be published for five consecutive days during the period of January 2- January 23 of each calendar year and must include: this caption in bold type: Notice to Physicians and Providers; the name and address of the HMO; and what type of services the HMO provides; and the specific dates of the 20 day period during which physicians and providers may make application to be a participating physician or provider.

(b) A health maintenance organization must notify a physician or provider of acceptance or non-acceptance, in writing, no later than 90 days from receipt of an application for participation by that physician or provider.

(c) A health maintenance organization must file a copy of the published notice with the HMO Unit, for information, within 15 days of publication. The filing must include the following:

(1) the name of the newspaper; and

(2) the beginning and ending date of the publication.

(d) During the year 1992, HMOs must publish a notice meeting the requirements of this section within 60 days of the effective date of this section, and file a copy of the notice with the HMO Unit in accordance with subsection (c) of this section and must comply with subsection (b) of this section.

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

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 7. Administration of State Lottery Act

Subchapter C. Practice and Procedure

• 34 TAC §§7.201-7.227

The Comptroller of Public Accounts proposes new §§7.201-7.227, concerning: intent and scope of rules; construction of rules; contested cases; representation and participation; initiation of a hearing; extensions of time; content of request for hearing; preliminary conferences; motion to dismiss petition or set for hearing; notice of setting; administrative law judge to hear case; filing of documents; continuances (postponement of hearings); conduct of hearing; rules of evidence; oral evidence, witnesses, and penalty for false statements; evidence by official notice; proposed decision; comptroller's decision; motion for rehearing; computation of time; service; discovery; joint hearings; dismissal of case; burden of proof; and definitions. The purpose of the rules is to: state the intent and scope of the rules; provide for the construction of the rules; define what constitutes a contested case under the State Lottery Act; declare policy regarding representation and participation in administrative hearings; set forth the procedures for initiating a hearing on the denial of an application, or the revocation or suspension of a license; state policy concerning extensions of time to make certain filings in an administrative proceeding; set forth the requirements for the contents of a request for hearing and to allow a party to amend his pleadings with permission of the administrative law judge, at any time before a comptroller's decision becomes final; state policy concerning a preliminary conference between the party and the agency; state policy concerning motions to dismiss or set for hearing, or to request an extended hearing; state policy regarding the notice of setting in an administrative hearing; state policy, concerning the administrative law judge's being designated to hear contested case; state policy concerning the filing of documents in contested cases; state policy concerning continuances; state policy concerning the conduct of a contested case hearing; state policy concerning the rules of evidence applied during contested case hearings; state policy concerning oral evidence, witnesses, and the penalty for false statements; state policy concerning official notice of contested cases taken of all nonprivileged records of the agency; state policy concerning the proposed decision in a contested case; state policy concerning the comptroller's decision in a contested case; state policy concerning the motion for rehearing in a contested case; state policy concerning the computation of time in contested case matters; state policy concerning service of documents in a contested case hearing; state policy concerning discovery procedures in a contested case

proceeding; state policy concerning joint or consolidated hearings; state policy concerning dismissals of contested case proceedings; state policy concerning the burden of proof in contested case; and reflect the organizational structure at the comptroller's department as it relates to the State Lottery Act and defines terms used in the rules of practice and procedure from the comptroller's Lottery Division.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the sections are in effect there will be no significant revenue impact on state or local government as a result of enforcing or administering the sections. The sections are proposed under the State Lottery Act, §2.02, and do not require a statement of fiscal implications for small businesses.

Dr. Plaut 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 in allowing the comptroller to implement the lottery in a regulated and timely manner. There is no anticipated economic cost to persons who are required to comply with the proposed sections as proposed.

Comments on the new sections may be submitted to Nora Linares, Director, Lottery Division, 111 East 17th Street, Austin, Texas 78701.

The new sections are proposed under the State Lottery Act, §2.02, which provides the comptroller with the authority to adopt all rules necessary to administer the State Lottery Act.

§7.201. Intent and Scope of Rules. The rules of practice and procedure are intended to provide fair methods for hearing and resolving an applicant's or licensee's disagreement with certain official actions of the Comptroller of Public Accounts. These rules govern all contested case proceedings before the administrative law judges regarding the State Lottery Act.

§7.202. Construction of Rules. These rules will be given their most reasonable meaning taken in their total context, and will be construed to secure a just resolution or decision for every controversy. They will not be construed to limit or repeal rights afforded or requirements imposed by law. Unless otherwise expressly provided, the past, present, or future tense each includes the other; the masculine, feminine, or neuter gender each includes the other; and the singular and plural number each includes the other. Definitions of some of the words used in these rules are contained in §7.227 of this title (relating to Definitions).

§7.203. Contested Cases.

(a) A contested case is a proceeding in which the legal rights, duties, or privileges of an applicant or licensee are to be determined by the agency after an opportunity for adjudicative hearing. It includes a request for relief from actions initiated by the agency to deny, revoke, or suspend licenses administered by the agency regarding the state lottery with the exception of summary suspension proceedings described in subsection (b) of this section. Contested cases are within the jurisdiction of the administrative law judges.

(b) If the comptroller summarily suspends a license:

(1) the comptroller will notify the licensee in writing by registered or certified mail, return receipt requested, that the license has been summarily suspended and will state the reasons for the action. That notification shall also state the date, time, and place for a preliminary hearing on the summary suspension, which date shall not be later than 10 days after the date of the summary suspension, unless the parties agree to a later date;

(2) at the preliminary hearing, the licensee must show cause by a preponderance of the evidence why the license should not remain suspended pending a final hearing on the suspension or revocation of the license;

(3) the preliminary hearing will be held by the assigned administrative law judge and shall be governed by the principles of fundamental fairness. Preliminary hearings are not open to the public; and

(4) the final hearing will be held pursuant to the procedures for a contested case.

§7.204. Representation and Participation. A party may represent himself at any stage of a contested case or may be represented by an authorized representative, such as an attorney or other person of his choice. Hearings on contested cases are not open to the public. Any person desiring to observe or participate at any stage of a contested case who is not a party, not employed by a party, or not called as a witness, must obtain the permission of the assigned administrative law judge and the agreement of all parties.

§7.205. Initiation of a Hearing.

(a) Denial, suspension, or revocation of application.

(1) If the director of the Lottery Division determines that an applicant is not eligible for a license, he will notify the applicant, in writing, by personal service or by registered or certified mail, return receipt requested, that the application has been denied and will state the reasons for the denial. The applicant may, within 15 days of the date of the notice of denial, make a written request for a hearing to contest the denial. If the applicant does not request a hearing within 15 days of the date of the notice of denial, the hearing is waived and a final decision will be issued.

(2) The comptroller will notify the licensee in writing, by personal service or by registered or certified mail, return receipt requested, that the license will be suspended or revoked and will state the reasons for the action. The licensee may, within 15 days of the date of the notice of suspension or revocation, make a written request for a hearing to contest the action. If the licensee does not request a hearing within 15 days of the date of the notice of suspension or revocation, the hearing is waived and a final decision will be issued.

(b) Court reporters and transcripts.

(1) At such time as an applicant or licensee requests a hearing, he shall deposit with the comptroller an amount sufficient to cover the cost of the court reporter.

(2) In the event that the applicant or licensee or the agency determines to have a written transcript prepared by the court reporter, the applicant or licensee shall pay the cost of the original transcript as well as the cost of a copy for the agency.

§7.206. Extensions of Time.

(a) Motions for extension of the due date for submitting a request for hearing on the denial of an application or on the proposed suspension or revocation of a license may be granted in case of emergency or extraordinary circumstances. Motions for extension will not be routinely granted and each request will be closely scrutinized to insure that the applicant or licensee has made every effort to comply with the original deadline. Motions filed after the expiration of the original due date will not be considered. Motions must be directed to the chief administrative law judge or his designee, who will grant or deny the motion.

(b) A motion for an extension of any other deadline in these sections will not be granted unless good cause is established and the need for the extension is not due to the party's neglect, indifference, or lack of diligence. A motion must be made in writing at least seven days prior to the expiration of the time period. In the event of an emergency, a motion may be accepted if it is postmarked, sent by facsimile transmission, or deposited with a private mail or courier service, postage or delivery charges paid, not later than the date of the original deadline.

§7.207. Content of Request for Hearing.

(a) A request for hearing must contain the reasons the applicant or licensee

disagrees with the action of the agency. The applicant or licensee must list and number the items, individually or by category, with which he disagrees, and list and number the factual and legal grounds why the action of the agency should be reversed. Legal authority must be cited if the applicant or licensee disagrees with the agency's interpretation of the law.

(b) Evidence regarding issues raised in the request for hearing may be obtained through:

(1) a preliminary conference; and

(2) discovery as discussed in these rules.

(c) Time limits on discovery or preliminary conferences will be set by the assigned administrative law judge if the parties cannot reach agreement.

(d) A request for hearing may be amended up to the time that the hearing date is set, and not later, unless by permission of the assigned administrative law judge, and unless all evidence upon which the applicant or licensee intends to rely and which was not previously filed is filed with the amended request for hearing.

§7.208. Preliminary Conference. If both the applicant or licensee and the agency agree a preliminary conference would be beneficial, a conference will be scheduled as soon as is practical.

§7.209. Motion to Dismiss; Request for Extended Hearing.

(a) The agency may move to dismiss the hearing on the ground that the request for hearing was not timely filed or on the ground that it did not comply with the requirements of the sections of this subchapter.

(b) An applicant or licensee that believes it will require more than two hours for a hearing must file a written request for an extended hearing at the time the request for hearing is filed, and state the reasons why more time will be required; however, any party may later request an extended hearing for good cause shown.

§7.210. Notice of Setting. Upon receipt of a timely and sufficient request for hearing, the assigned administrative law judge will send a notice to the parties giving:

(1) the date, time, place, and nature of the oral hearing;

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

(3) a reference to the particular statutes and rules involved;

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

(5) upon request, briefing and evidentiary prefiling dates, and other appropriate orders.

§7.211. Administrative Law Judge to Hear Case. Hearings will be conducted by an assigned administrative law judge who has authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence. The administrative law judge has the authority to continue or recess any hearing, to control the record, and to propose decisions to the Comptroller of Public Accounts. If for any reason the assigned administrative law judge cannot continue on a contested case, another administrative law judge will become familiar with the record and perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case.

§7.212. Filing of Documents. All documents submitted after the notice of setting has been issued must be filed with the assigned administrative law judge with a copy to each party. In addition to any other order by the assigned administrative law judge, the time limit for filing documents with the administrative law judge and an opposing party shall be not later than 10 days prior to the hearing.

§7.213. Continuances (Postponement of Hearing). A motion for continuance of a contested case set for oral hearing must be in writing and filed with the assigned administrative law judge at least seven days prior to the date that the matter is to be heard. If an emergency occurs less than seven days prior to the hearing date, a motion for continuance may be filed. The motion must show that there is good cause for the continuance and that the need is not caused by neglect, indifference, or lack of diligence. A copy of the motion must be served upon all other parties of record at the time of filing.

§7.214. Conduct of Hearing. The hearing will be convened by the assigned administrative law judge, appearances will be noted, any motions or preliminary matters will be taken up, and then each party will have the opportunity to present its case, generally on an issue-by-issue basis, by calling and examining witnesses, offering documentary evidence, and making legal arguments. Each party will have the opportunity to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in direct examination. Any objection to testimony or evidentiary offers must be stated timely, along with the basis for the objection. The administrative law judge may question any party or any witness. The parties may agree to the order of proceeding or the administrative law judge may establish it, but in all cases, an applicant or licensee is entitled to conclude in presenting evidence and argument. The length of each hearing is limited to two hours; each party may use one hour to present its case. Upon a showing of good cause, the administrative law judge may schedule a hearing for a period longer than two hours. The administrative law judge is responsible for closing the record and may hold it open for stated purposes. Parties may submit proposed findings of fact and conclusions of law at any time after notice of setting and prior to the closing of the record. In an oral hearing, the administrative law judge may hold the record open to allow the parties to file proposed findings of fact and conclusions of law.

§7.215. Rules of Evidence. The Rules of Evidence promulgated by the Supreme Court of Texas apply to all oral hearings, except as provided by Texas Civil Statutes, Article 6252-13a, Administrative Procedure and Texas Register Act, §14.

§7.216. Oral Evidence, Witnesses, and Penalty for False Statements. Any party may request the assigned administrative law judge to subpoena witnesses or require the production of documents related to the subject matter of the hearing, or the administrative law judge may do so independently. The administrative law judge may require the parties to indicate the persons they expect to call as witnesses. The testimony of witnesses will be made under oath or affirmation and the making of false statements may subject a person to criminal prosecution under the Texas Penal Code.

§7.217. Evidence by Official Notice. The assigned administrative law judge may take official notice, on request of a party or acting independently, of matters which trial judges can judicially notice and of facts within the specialized knowledge of the agency. The taking of official notice must be stated on the record, and the parties must have an opportunity to contest the material noticed. A party requesting the official notice must give sufficient information to enable the administrative law judge to comply.

§7.218. Proposed Decision. The assigned administrative law judge will prepare a proposed decision within 30 days after the record is closed. The proposed decision will set out each finding of fact and conclusion of law necessary to the decision. The proposed decision will be served on the parties, and any party may file exceptions and briefs within 15 days, serving copies on all

parties. If a party files exceptions, the other parties will have 15 days after the filing to reply. The proposed decision will be reviewed after considering the exceptions, briefs, and replies.

§7.219. Comptroller's Decision. The proposed decision of the assigned administrative law judge must be approved by the Comptroller of Public Accounts before it is given effect. The comptroller's decision will be sent to the applicant or licensee and any authorized representative. It is final 20 days from the date mailed, unless a motion for rehearing is filed on or before midnight of the 20th day. If the motion for rehearing is granted, the decision is vacated pending a subsequent decision upon rehearing. If the motion for rehearing is overruled, whether by order or operation of law, the decision is final on the date it is overruled.

§7.220. Motion for Rehearing. A motion for rehearing may be filed by any party with the assigned administrative law judge within 20 days from the date the comptroller's decision is mailed. The motion must state each specific ground upon which the party believes the comptroller's decision is erroneous. Any reply to a motion for rehearing must be filed within 30 days after the date the decision is mailed. The motion will be acted on within 45 days after the date the decision is mailed, or the motion will be overruled by operation of law. These times may be varied as provided by Texas Civil Statutes, Article 6252-13a, Administrative Procedure and Texas Register Act, 16(e) and (f) . If a rehearing is granted, a notice will be issued to the parties setting out all pertinent information.

§7.221. Computation of Time. In computing any period of time prescribed or allowed by these rules, by order of the assigned administrative law judge, or by any applicable statute, the period begins on the day after the act, event, or default identified and concludes on the last day of the computed period, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. Documents required to be filed or served are considered filed or served when actually received or are deemed filed or served when deposited with the United States Postal Service or private mail service, postage or delivery charges paid, or sent by facsimile transmission. The postmark, shipping, or transmission date indicated on a document is presumed to be the date of service, but this is a rebuttable presumption.

§7.222. Service. Any document required to be served on other parties may be served by personal delivery or by mailing the document addressed to the party or the authorized representative at the last known address, postage paid. Facsimile transmission is acceptable. The document must indicate on its face that copies have been served on parties of record. Filings with the administrative law judges may be made by facsimile transmission, personal delivery, or public or private mail service.

§7.223. Discovery.

(a) Discovery. Texas Civil Statutes, Article 6252-13a, Administrative Procedure and Texas Register Act, as amended, applies to matters of discovery.

(b) Scope of discovery. Except for the exemptions from discovery provided in Texas Rules of Civil Procedure, Rule 166b(3), unless further limited by order of the assigned administrative law judge, the scope of discovery is as follows: parties may obtain discovery regarding any nonconfidential matter relevant to the subject matter in the pending action.

(c) Protective orders. Texas Rules of Civil Procedure, Rule 166b(5), is incorporated herein for the protection of the party from whom discovery is sought under this section.

(d) Objections. On or prior to the date on which a response to a discovery request is due, a party may serve written objections to a specific request or portions thereof. Objections served after the date on which the response to a discovery request is due are waived unless an extension of time has been obtained by agreement or order of the assigned administrative law judge for good cause shown for failure to object within such period; however, objections by the comptroller to discovery requests requiring the disclosure of confidential information cannot be waived. Responses only to those discovery requests or portions thereof to which objection is made are deferred until the objections are ruled upon, and for such additional time thereafter as the administrative law judge may direct. Either party may request a hearing on objections at the earliest possible time.

(e) Interrogatories to parties. Any party may serve upon any other party written interrogatories to be answered by the party served, or, if the party served is a public or private corporation or partnership or association, by an officer or agent who must furnish such information as is available to the party. Interrogatories may be served at any time after filing of a request for hearing. Interrogatories served upon the comptroller may be answered by his designee.

(1) Interrogatories and answers to interrogatories. Service of interrogatories and answers to interrogatories must be made on and by the authorized representative of a party unless service upon the party is ordered by the administrative law judge.

(2) Time to answer. The party upon whom the interrogatories have been served must serve answers on the party submitting the interrogatories within 30 days after the service of the interrogatories, unless the parties agree in writing to a longer or shorter period of time. The administrative law judge, on a showing of good cause, may lengthen or shorten the time for serving answers or objections.

(3) Number of interrogatories. The number of questions including subsections in a set of interrogatories must not require more than 30 answers. No more than two sets of interrogatories may be served by a party, except by order of the assigned administrative law judge. Interrogatories must be answered separately and fully in writing under oath. Answers to interrogatories must be preceded by the questions or interrogatories to which the answer pertains. Copies of the interrogatories, and answers and objections thereto, must be served on all parties or their representatives. The answers must be signed and verified by the person making them.

(f) Subpoenas, depositions, and orders to allow entry. The assigned administrative law judge, acting independently or on motion by any party, may:

(1) subpoena any person to appear and testify and to produce certain documents or other tangible items at an oral hearing;

(2) commission the taking of an oral deposition in the witness' county of residence or county where the witness does business and require production of certain documents or other tangible items at the time of deposition; and

(3) order any party to allow entry upon property under the party's control for the purpose of doing any act or making any inspection not protected by privilege and reasonably calculated to lead to the discovery of evidence material to the contested case.

§7.224. Joint Hearings. An applicant or licensee may file a written motion to have two or more cases involving only that person joined for purposes of hearing; or the assigned administrative law judge, acting independently, may join two or more such cases.

§7.225. Dismissal of Case.

(a) If a motion to dismiss is filed upon agreement between the applicant or

licensee and the agency, or upon the applicant's or licensee's decision to abandon the case, a decision will be issued that conforms with such disposition.

(b) The Lottery Division may move to dismiss a case based upon agreement reached between the applicant or licensee and the agency or for want of prosecution. The motion must be served on the applicant or licensee and its authorized representatives at its last address of record. If there is no reply from the applicant or licensee to the Lottery Division's motion to dismiss within 15 days, a decision will be issued denying the relief sought by the applicant or licensee.

(c) All motions to dismiss that are based upon a representation that both parties have agreed to dismiss a contested case on the basis that all issues have been settled, shall be in writing and signed by both parties or their authorized representatives.

§7.226. Burden of Proof. In all contested cases, not including preliminary hearings described in §7.205 of this title (relating to Initiation of a Hearing), the agency has the burden of proving a prima facie case; the burden of proof then shifts to the applicant or licensee, with the standard of proof being by a preponderance of the evidence.

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

Administrative law judge–An individual appointed by the comptroller to conduct hearings on matters within the comptroller's jurisdiction and to prepare proposed decisions to properly resolve such matters.

Agency–The Office of the Comptroller of Public Accounts.

Applicant–A party seeking a lottery license.

Authorized representative–An individual who represents a party in a contested case or in a preliminary hearing, and may be any individual other than the party.

Hearings attorney–An attorney, assigned to represent the lottery division in a contested case or a preliminary hearing.

License–The whole or any part of a license, permit, certificate, approval, registration, or similar form of permission, the issuance, renewal, amendment, suspension, or revocation of which is within the jurisdiction of the agency, regarding the operation of the lottery.

Licensee–A person who has been issued a license by the lottery division.

Licensing–The agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

Lottery division–The division within the agency responsible for the operation of the lottery.

Party–Any person who has filed a request for hearing, or the lottery division of the Comptroller's Office.

Person–Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character. It may also include an estate, trust, receiver, assignee for benefit of creditors, trustee, trustee in bankruptcy, assignee, or any other group or combination acting as a unit.

Pleading–Any document filed by a party concerning the position or assertions in a contested case or preliminary hearing.

Request for hearing–A request by an applicant or licensee for official action by the agency regarding the denial, revocation, or suspension of its license under the lottery laws of this state.

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 3, 1992.

TRD-9201636 Charles Johnstone
Senior Legal Counsel, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 463-4028

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Chapter 9. Property Tax Administration

Subchapter C. Appraisal District Administration

• 34 TAC §9.401

(Editor's Note: The Comptroller of Public Accounts proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Comptroller of Public Accounts proposes new §9.401, concerning the application form for a charitable organization property tax exemption. The new section is necessary because the 72nd Legislature, 1991, First Called Session, added a new function to the type of charitable activities that may qualify for the exemption. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section establishes requirements for the contents of a charitable organization property tax exemption application form and adopts by reference a model application form.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on the state or local government as a result of enforcing or administering the section.

Dr. Plaut also has determined that for each year of the first five years the section is in effect there would be no significant public cost or benefit. 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 Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of property tax exemption applications and contents of the notice of exemption 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.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201627 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

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• 34 TAC §9.402

(Editor's Note: The Comptroller of Public Accounts proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Comptroller of Public Accounts proposes new §9.402, concerning the application forms for special use appraisals. The new section is necessary because the 72nd Legislature, 1991, First Called Session, added a new use to the types of uses that qualify as an agricultural use of land. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section adopts by reference a model application for each available special use appraisal.

Tom Plaut, chief revenue estimator, 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.

Dr. Plaut 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 in providing new information regarding tax responsibilities. 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 Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of the property tax exemption applications and contents of the notice of exemption 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.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201629 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

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• 34 TAC §9.403

(Editor's Note: The Comptroller of Public Accounts proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Comptroller of Public Accounts proposes new §9.403, concerning application forms for miscellaneous property tax exemptions. The new section is necessary because the 72nd Legislature, 1991, First Called Session, created three new property tax exemptions. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section establishes general requirements for miscellaneous property tax exemption forms and adopts 11 property tax exemption application forms by reference.

Tom Plaut, chief revenue estimator, 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.

Dr. Plaut 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 no significant public cost or benefit. 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 Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of each exemption application form and the notice of exemption application 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.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201631 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 463-4028

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• 34 TAC §9.404

(Editor's Note: The Comptroller of Public Accounts proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Comptroller of Public Accounts proposes new §9.404, concerning the application form for a property tax exemption for goods exported from Texas. The new section is necessary because the 72nd Legislature, 1991, First Called Session, changed the qualification requirements for the exemption. In addition, the legislature, transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section prescribes the contents of the application form for exemption of goods exported from Texas, and adopts the form by reference.

Tom Plaut, chief revenue estimator, 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.

Dr. Plaut 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 in providing new information regarding tax responsibilities. 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 Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of each property tax exemption form and the notice of exemption 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.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201633 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 463-4028

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• 34 TAC §9.405

(Editor's Note: The Comptroller of Public Accounts proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Comptroller of Public Accounts proposes new §9.405, concerning the application form for a residence homestead property tax exemption. The new section is necessary because the 72nd Legislature, 1991, First Called Session, transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section establishes requirements for the contents of a residence homestead property tax exemption application form and adopts by reference a model application form.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Plaut 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 in providing new information regarding tax responsibilities. 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 Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of property tax exemption applications and contents of the notice of exemption 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.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201635 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 463-4028

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Subchapter D. Appraisal Review Board

• 34 TAC §9.801

(Editor's Note: The Comptroller of Public Accounts proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Comptroller of Public Accounts proposes new §9.801, concerning property tax receipts. The new section is necessary because the 72nd Legislature, 1991, First Called Session, added elements of information required on a notice of protest form. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section establishes requirements for a notice of protest form, including a provision giving the property owner an opportunity to request a copy of the appraisal review board's hearing procedures.

Tom Plaut, chief revenue estimator, 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.

Dr. Plaut 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 in providing new information regarding tax responsibilities. 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 Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §5.07, which provides the comptroller with the authority to prescribe the contents of all forms necessary for the administration of the property tax system, and §41.44, which provides the comptroller with the authority to prescribe the contents of a form for notice of protest.

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 3, 1992.

TRD-9201623 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 463-4028

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• 34 TAC §9.802

(Editor's Note: The Comptroller of Public Accounts proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Comptroller of Public Accounts proposes new §9.802, concerning the affidavit to be signed by an appraisal review member hearing a property owner's protest. The new section is necessary because the 72nd Legislature, 1991, First Called Session, required this affidavit of appraisal review board members. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section prescribes the contents of the appraisal review board member's affidavit stating that the member has not communicated with another person concerning the property under protest or any matter related to the property owner's protest.

Tom Plaut, chief revenue estimator, 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.

Dr. Plaut 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 in providing new information regarding tax responsibilities. 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 Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §5.07, which provides the comptroller with the authority to prescribe the contents of all forms necessary for the administration of the property tax system.

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 3, 1992.

TRD-9201625 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 463-4028

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Subchapter E. Tax Office Administration

• 34 TAC §9.1001

(Editor's Note: The Comptroller of Public Accounts proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Comptroller of Public Accounts proposes new §9.1001, concerning property tax receipts. The new section is necessary because the 72nd Legislature, 1991, First Called Session, added two elements of information required on a property tax receipt. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section establishes requirements for current and delinquent property tax receipts, including a provision requirement that the receipt show the tax rate and taxable value for the property for each year for which the receipt is requested.

Tom Plaut, chief revenue estimator, 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.

Dr. Plaut 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 in providing new information regarding tax responsibilities. 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 Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §31.075, which provides the comptroller with the authority to prescribe the description of property required on a property tax receipt.

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 3, 1992.

TRD-9201620 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 463-4028

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Part V. Texas County and District Retirement System

Chapter 105. Creditable Service

• 34 TAC §105.3

The Texas County and District Retirement System (System) proposes an amendment to §105.3, concerning definition of periods of "organized conflict or crisis." The amendment would add August 2, 1990-March 31, 1992 to the other periods during which military service is recognized as having been performed in a time of organized conflict or crisis.

J. Robert Brown, director of the system, 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. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be the recognition by the System of military service during the Persian Gulf Crisis for satisfaction of length-of-service requirements. 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 J. Robert Brown, Director, Texas County and District Retirement System, 400 West 14th Street, Austin, Texas 78701.

The amendment is proposed under the Texas Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for effective administration of the system.

§105.3. Definition of Periods of "Organized Conflict or Crisis." Military service performed between April 6, 1917, and November 11, 1919, **and** [or] between October 16, 1940, and October 31, 1974, **and between August 2, 1990, and March 31, 1992,** shall be recognized as military service performed during periods of organized conflict or crisis within the meaning of **the Texas Government Code, §843.601** [Acts 1975, 64th Legislature, Chapter 239].

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 4, 1992.

TRD-9201724 J. Robert Brown
Director
Texas County and District Retirement System

Earliest possible date of adoption: March 13, 1992

For further information, please call: (512) 476-6651

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter D. Medicaid Home Health Program

• 40 TAC §29. 304, §29.306

The Texas Department of Human Services (DHS) proposes amendments to §29. 304 and §29.306, concerning limitations on home health services and program exclusions in its Purchased Health Services rule chapter. The purpose of the amendments is to allow the Medicaid program to reimburse home health agencies for medically necessary physical therapy services provided in the home. The amendments were mandated by the Texas Legislature in its last session.

Services must be ordered by a physician and included in the patient's plan of care. Physical therapy benefits are available only for treatment of acute musculoskeletal or neuromuscular conditions or acute exacerbations of chronic musculoskeletal or neuromuscular conditions. All physical therapy services provided through a home health agency must be prior authorized before payment can be made to the home health agency for these services. These services are covered under the Purchased Health Services insured arrangement, and current premium amounts are sufficient to cover the additional costs.

Burton F. Raiford, interim commissioner, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of $335,743 for fiscal year 1992; $707, 046 for fiscal year 1993; $720,757 for fiscal year 1994; $723,937 for fiscal year 1995; and $722,943 for fiscal year 1996. There will be no fiscal implications for local government or small businesses 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 home health patients will have access to physical therapy services through the home health agency. Previously, to obtain physical therapy services, patients had to leave the home and obtain care through a physician's office, physical therapist's office, or hospital. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Questions about the content of the proposal may be directed to Penny Kendall at (512) 338-6521 in DHS's Purchased Health Services Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-026, Texas Department of Human Services E-503, 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 department with the authority to administer public and medical assistance programs.

§29.304. Limitations on Home Health Services. Home health services are limited to:

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

(8) services by a licensed physical therapist or physical therapist assistant under the direction of a licensed physical therapist.

(A) To be payable as a home health benefit, services must be:

***(i)* medically necessary;**

***(ii)* ordered by the physician;**

***(iii)* included in the physician's plan of care;**

***(iv)* for the treatment of an acute musculoskeletal or neuromuscular condition or an acute exacerbation of a chronic musculoskeletal or neuromuscular condition; and**

***(v)* expected to significantly improve the patient's condition in a reasonable and generally predictable period of time, based on the physician's assessment of the patient's restorative potential after any needed consultation with the therapist.**

(B) Benefits are not provided when the patient has reached the maximum level of improvement. Repetitive services designed to maintain function once the maximum level of improvement has been reached are not a benefit. Services related to activities for the general good and welfare of patients such as general exercises to promote overall fitness and flexibility and activities to provide diversion or general motivation are not reimbursable under the Texas Medical Assistance Program. To receive Medicaid payment for physical therapy through a home health agency, the client must meet all other requirements for receipt of home health services.

§29.306. Program Exclusions. Program benefits do not include payment for:

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

(3) speech [and physical] therapy.

(4)-(11) (No change.)

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

Issued in Austin, Texas, on February 4, 1992.

TRD-9201755 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: April 1, 1992

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

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Chapter 72. Memoranda of Understanding with Other State Agencies

Memorandum of Agreement Concerning the Texas Department on Aging Options for Independent Living Program

• **40 TAC §72.2001**

The Texas Department of Human Services (DHS) proposes an amendment to §72. 2001, concerning Memorandum of Agreement Concerning the Texas Department on Aging (TDoA) Options for Independent Living Program, in its Memoranda of Understanding with Other State Agencies chapter. The purpose of the amendment is to renew the memorandum of agreement that concerns TDoA's Options for Independent Living Program.

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

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be improved coordination of services and less duplication of effort. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Jim Essler at (512) 450-3223 in DHS's Long Term Care Department. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-030, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§72.2001. Memorandum of Agreement with the Texas Department on Aging.

(a) Introduction and purpose.

(1) The Texas Department on Aging's "Options for Independent Living" (Options) Program was established by the 71st Legislature, with enactment of Senate Bill 482, **amended by Senate Bill 1249 in the 72nd Legislature.** Its purpose is to help elderly persons remain at home despite limited self-care capacities, **and to prevent institutionalization,** through provision of short-term support services for the purposes of: restoring functional capacities after illness or hospitalization; and educating and preparing elderly persons and their caregivers to provide self-care.

(2) Through **House Bill 1 (the Appropriations Act of 1992-1993** [Senate Bill 222 (the Appropriations Act of Fiscal Year 1990-1991)], the **72nd** [71st] Legislature appropriated general revenue funds to The Texas Department on Aging (TDoA) for the options program and, in Rider 8, stated that: "It is the intent of the legislature that, in establishing the Options for Independent Living Program, the Texas Department on Aging will complete a memorandum of agreement with the Texas Department of Human Services (DHS) which specifies that there will be no duplication of services to elderly clients served by the 'Options' program and elderly clients served by the Texas Department of Human Services."

(3) In accordance with the requirements of the Appropriations Act of Fiscal Year **1992-1993** [1990-1991], enacted by the **72nd** [71st] Legislature and signed by the governor, the Texas Department of Human Services and the Texas Department on Aging hereby enter into this memorandum of agreement, concerning TDoA's Options for Independent Living Program.

(b) Location of options projects and services provided.

(1) The terms of this memorandum of agreement shall apply in those areas of the state in which TDoA, through area agencies on aging (AAAs), has established options projects. In Fiscal Year **1992-1993** [1990-1991], Options projects are located within, and serve one or more counties within, the service areas of the following AAAs: Alamo, Central Texas, Concho Valley, [Deep East Texas,] East Texas, [Harris County,] Houston-Galveston, Lower Rio Grande Valley, North Central Texas, **North Texas,** Panhandle, South East Texas, South Plains, [Tarrant County,] and Texoma. This agreement will apply to any additional Options Projects established by TDoA in FY **1992-1993** [1990-1991].

(2) Each options project is responsible for providing or arranging for the following services: case management, homemaker (including personal care), residential repair **and** [/] home modification, benefits counseling, respite care, emergency response, education and training for caregivers, home- delivered meals, [and] transportation, **and other available public and private services appropriate to the elderly person's needs identified by the case manager and client through the assessment and care planning process.**

(c) Persons to be served through options. As stated in 40 TAC §292.7, services of the Options program will be available to persons age 60 and over [whose income or resources disqualify them for entitlement programs, yet are insufficient to purchase needed support services]. Priority will be given to those who:

(1) have recently suffered a major illness or health care crisis or have recently been hospitalized;

(2) live in rural areas;

(3) have insufficient caregiver support; [and]

(4) have a mild to moderate impairment or a temporary severe impairment; **and** [.]

(5) are in great economic or social need, with particular attention to low-income minority older persons.

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

(f) Effective date and duration of agreement. This memorandum of agreement shall be effective upon approval by the Board of the Texas Department of Human Services and the Texas Board on Aging, and will remain in effect through August 31, **1993** [1991].

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 4, 1992.

TRD-9201756

Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: April 15, 1992

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

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Withdrawn Sections

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 325. Solid Waste Management

Subchapter A. General Information

• 25 TAC §325.3

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed amendment to §325.3 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6536). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201761 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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Subchapter C. Municipal Solid Waste Collection and Transportation

• 25 TAC §325.31, §325.32

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed amendments to §325.31 and §325.32 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6537). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201767 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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Subchapter D. Classification of Municipal Solid Waste Sites

• 25 TAC §325.42

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed repeal to §325.42 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6539). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201766 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed new to §325.42 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6539). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201765 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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Subchapter E. Permit Procedures and Design Criteria

• 25 TAC §§325.51, 325.52, 325.56, 325.60

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed amendments to §§325.51, 325.52, 325.56, and 325.60, which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6540). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201764 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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Permits

• 25 TAC §325.55

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed repeal to §325.55 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6542). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201770 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed new §325.55 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6542). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201763 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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• 25 TAC §325.73

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed repeal to §325.73 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6544). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201769 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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Application and Data Requirements

- **25 TAC §§325.74-325.76**

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed amendments to §§325.74-325.76 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6544). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201768 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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Subchapter F. Operation Standards for Solid Waste Land Disposal Sites

General

- **25 TAC §§325.111-325.114**

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed amendments to §§325.111-325.114 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6555). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201777 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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- **25 TAC §325.113**

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed repeal to §325.113 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6556). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201778 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed new §325.113 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6556). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201779 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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Standards for Protection of Groud and Surface Waters

- **25 TAC §325.121, §325.124**

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed repeal to §325.121 and §325.124, which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6557). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201780 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new §325.121 and §325.124 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6557). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201781 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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- **25 TAC §325.122, §325.123**

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed amendments to §325.122 and §325.123 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6557). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201782 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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Other Operational Standards for Type I, II, III, and IV Sites

- **25 TAC §§325.132, 325.124, 325.143, 325.145, 325.149, 325.150, 325.152, 325.154**

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed amendments to §§325.132, 325.124, 325.143, 325.145, 325.149, 325.150, 325.152, and 325.154, which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6560). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201771 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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- **25 TAC §§325.135, 325.137-325.139, 325.153**

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed repeals to §§325.135, 325.137-325.139, and 325.153, which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6560). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201773 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new §§325.135, 325.137-325.139, and 325.153, which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6560). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201772 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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Subchapter G. Operational Standards for Solid Waste Processing and Experimental Sites

General

• 25 TAC §325.171, §325.172

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed amendments to §325.171 and §325.172, which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6568). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201774 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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• 25 TAC §325.173

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed repeal to §325.173 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6568). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201776 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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• 25 TAC §325.173, §325.174

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new §325.173 and §325.174 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6568). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201775 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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Subchapter H. Surveillance and Enforcement

• 25 TAC §325.221, §325.222

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed amendments to §325.221 and §325.222 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6569). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201760 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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• 25 TAC §325.223

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed repeal to §325.223 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6570). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201762 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed new §325.223 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6570). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201759 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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Subchapter S. Assistance Grants and Contracts

• 25 TAC §325.890

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed amendment to §325.890 which appeared in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6572). The effective date of this withdrawal is February 24, 1992.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201754 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: February 24, 1992

For further information, please call: (512) 458-7236

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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 404. Protection of Clients and Staff

Subchapter E. Rights of Persons Receiving Mental Health Services

• 25 TAC §§404.151-404.164

The Texas Department of Mental Health and Mental Retardation has withdrawn from consideration for permanent adoption a proposed new to §§404.151-404.164 which appeared in the October 25, 1991, issue of the *Texas Register* (16 TexReg 1626). The effective date of this withdrawal is February 5, 1992.

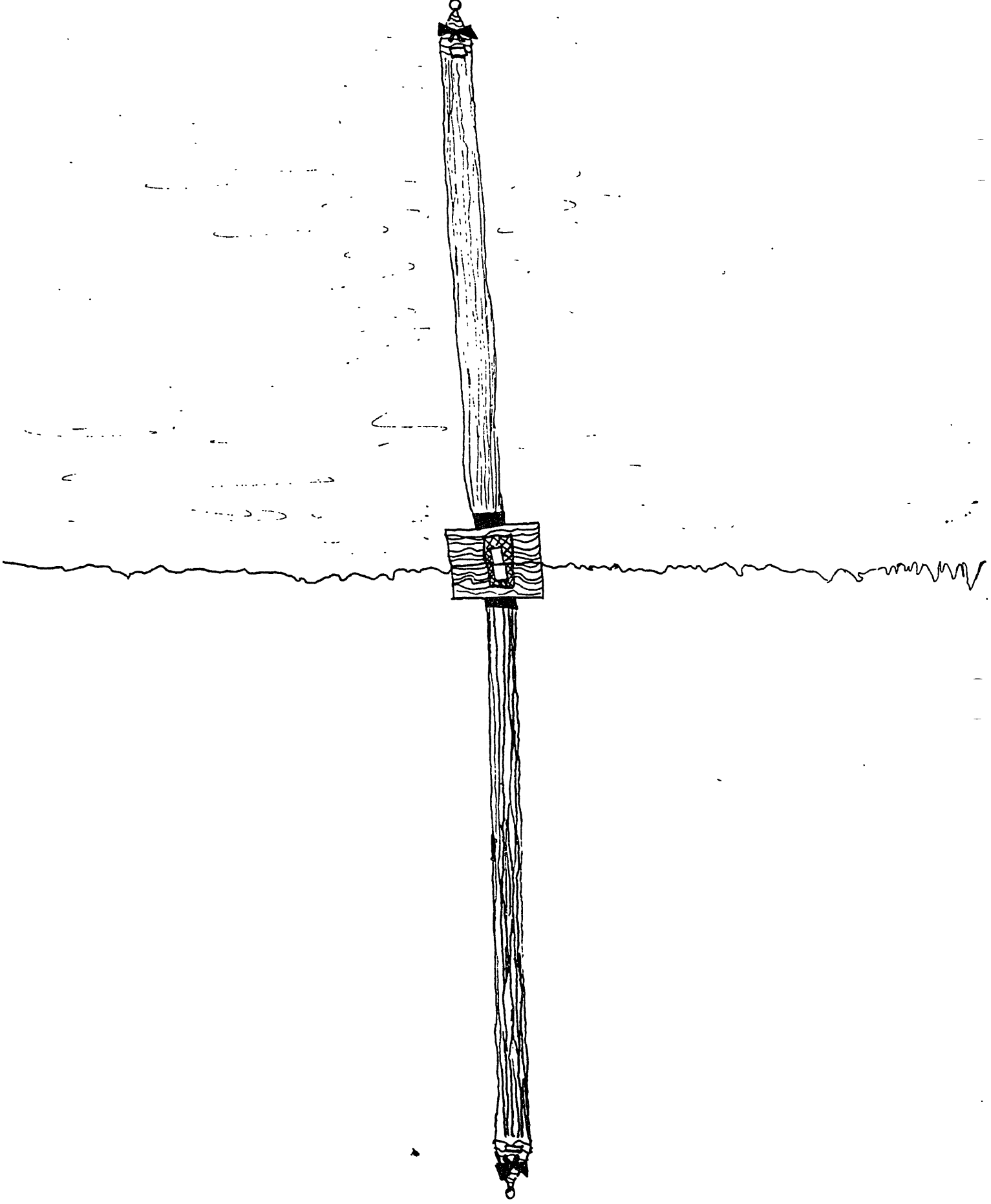
Issued in Austin, Texas, on February 4, 1992.

TRD-9201799 Harry Deckard
Attorney
Texas Department of Mental Health and Mental Retardation

Effective date: February 5, 1992

For further information, please call: (512) 465-4670

♦ ♦ ♦



Name: Courtney Johnson

Grade: 4

School: Kuehnle Elementary School, Klein ISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

- **16 TAC §3.5**

The Railroad Commission of Texas adopts amendments to §3.5, concerning applications to drill, deepen, plug back, or reenter, with changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6989).

The amendment will increase compliance with the Railroad Commission's safety and pollution rules, whose goal is to ensure clean water for Texas.

The amendment requires that for an organization to be eligible to apply for a permit to drill, deepen, plug back, or reenter a well that the organization or any person in the organization who holds a position of ownership or control not have committed any violation of a commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution or the Texas Natural Resources Code, Title 3, within the last five years, which has not been corrected or penalties or costs of remedying said violation have not been paid. An applicant organization will also be required to file any relevant information requested by the Railroad Commission.

The following is a summary of changes to the published version.

The Railroad Commission has made four changes to the section, in subsection (a), (c), (f), and (i), in response to comments received. The first change was to reference Statewide Rule 40 (Assignment of Acreage to Pooled Development and Proration Units) in subsections (a) and (f) because it concerns the assignment of acreage to a well for drilling, development, and allowable purposes. Second, the last sentence of subsection (a) was amended to limit relevant information to information that is "necessary to determine compliance with this rule and state law." Third, in subsection (c)(2) the following language was added: "relating to a violation". Fourth, a form change in subsection (i).

The following is a summary of comments.

One commenter recommended that subsection (d)(1) be modified to allow organizations to file a blanket bond with conditions that the operator will plug and abandon all wells and control, abate, and clean up pollution associated with all of the operator's oil and gas activities, instead of placing a burden on operators to determine that their organization has no outstanding final orders and that no organization previously under the control of it's officers and directors have outstanding final orders.

The commission disagrees with this comment because it does not comply with or aid in fulfilling the purposes of the Texas Natural Resources Code (TNRC), §91.110.

Two commenters wanted clarification of the term "relevant information" in subsection (a) because they believe the term is too broad.

The commission has added language which limits relevant information to information necessary to determine compliance with the section and state law. The commission has broad authority to request information under TNRC, §88.091.

One commenter is opposed to subsection (c)(2), which imputes personal liability to all corporate officers formerly employed by an organization which has an outstanding final order against it. They commenter believes this provision is unfair, unreasonable, and arbitrary to employers who will have to continually screen employees, and to officers who did not have control of pollution violations.

The commission disagrees with this comment. TNRC, §91.110 attributes responsibility for past violations of safety and pollution rules to persons holding positions of ownership or control in the subject organization and is intended to monitor persons who violate commission rules in order to obtain compliance with rules and orders of the commission.

One commenter recommended that a provision be added to prevent any person, in violation of commission regulations, from securing any drilling permits by changing the name of the company or by other questionable practices. The rule already provides this.

One commenter recommended that subsection (b)(5)(A) be amended to allow the permit moratorium to be held in abeyance if the operator is making a good-faith effort to correct the condition in accordance with a commission-approved plan.

The commission disagrees with this comment. TNRC, §91.110 states that the commission may not accept an application if an organization has committed a safety or pollution violation unless the conditions that constituted the violation are corrected. Present commission practice does not warrant such an exception. The overwhelming majority of agreed orders are for immediate compliance or within a short period of time.

One commenter is concerned that a permit may be invalidated after issuance by a subsequent commission order.

The commission disagrees with this comment. A permit will not be revoked under this section for a subsequent outstanding final order relating to a violation. A permit may be revoked if at the time the certification is made it contains false statements.

One commenter recommended that language be added to (c)(2) to clarify that "outstanding final order" relates to a violation.

The commission agrees with this comment and has added the language.

One commenter recommended the language in the emergency amendment for subsection (g) be used in subsection (i) of the current proposal.

The commission agrees in part. "Application" is defined in subsection (b). Therefore, language was not added in subsection (g) to define "application." Non-substantive language was added to comply with *Texas Register* form requirements.

The following commenters expressed general support for the proposal, although they suggested changes to various provisions: Exxon Company, U.S.A.; Permian Basin Petroleum Association; Rosewood Resources, Inc.; Texas Farm Bureau; Texas Independent Producers & Royalty Owners; and Texas Mid-Continent Oil & Gas

The amendment is adopted pursuant to the Texas Natural Resources Code, §§85. 202, 85.2021, and 91.110, which provides the Railroad Commission of Texas with the authority to adopt rules for the filing of drilling permit applications and for drilling permit fees.

§3.5. Application to Drill, Deepen, Reenter, or Plug Back.

(a) Permit requirements for spacing, density, and units. An application for a permit to drill, deepen, plug back, or reenter any oil well, gas well, or geothermal resource well, shall be made under the provisions of §§3.37, 3.38, 3.39, and/or 3.40 of this title (relating to Statewide Spacing Rule; Well Densities; Proration and Drilling

Units: Contiguity of Acreage and Exception Thereto; and Assignment of Acreage to Pooled Development and Proration Units) (Statewide Rules 37, 38, 39, and 40), or as an exception thereto, or under special rules governing any particular oil, gas, or geothermal resource field or as an exception thereto and filed with the commission on a form approved by the commission. An application must be accompanied by any relevant information, form, or certification required by the Railroad Commission or a commission representative necessary to determine compliance with this rule and state law.

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

(1) Application-Request by an organization on the appropriate form for a permit to drill, deepen, plug back, or reenter any oil well, gas well, or geothermal resource well.

(2) Commission-The Railroad Commission of Texas.

(3) Commission representative-A commission employee authorized to act for the commission. Any authority given to a commission representative is also retained by the commission. Any action taken by the commission representative is subject to review by the commission.

(4) Organization-Any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the commission.

(5) Outstanding final order-Either a commission order against an organization finding that the organization has committed a violation and all appeals have been exhausted or an agreed order entered into by the commission and an organization relating to an alleged violation, where:

(A) the conditions that constituted the violation or alleged violation have not been corrected;

(B) all administrative, civil, and criminal penalties, if any, relating to the violation or agreed settlement relating to an alleged violation have not been paid; or

(C) all reimbursements of costs and expenses, if any, assessed by the commission relating to the violation or to the alleged violation have not been collected.

(6) Position of ownership or control-A person holds a position of ownership or control in an organization if the person is:

(A) an officer or director of the organization;

(B) a general partner of the organization;

(C) the owner of an organization which is a sole proprietorship,

(D) the owner of more than a 25% ownership interest in the organization; or

(E) the designated trustee of the organization.

(7) Violation-Non-compliance with the Texas Natural Resources Code, Title 3, or a commission rule, order, license, permit, or certificate relating to safety or the prevention or control of pollution.

(c) Organization eligibility to file an application. The commission may not accept an application from an organization, if within the five years preceding the date on which the application is filed:

(1) the applicant organization has any outstanding final orders against it; or

(2) any person holding a position of ownership or control in the applicant organization also has held a position of ownership or control in any organization, including the applicant organization, registered with the commission that has an outstanding final order against it relating to a violation during that period of ownership or control.

(d) Compliance certification.

(1) The commission or a commission representative may require an applicant organization to file a compliance certification. The certification shall include a statement that within the last five years:

(A) the applicant organization has no outstanding final orders against it; and

(B) no person in a position of ownership or control of the applicant organization has held a position of ownership or control in any organization, including the named organization, that has an outstanding final order against it relating to a violation during that period of ownership or control.

(2) Failure to file a required certification will delay or prevent approval of the application. Knowingly filing a false certification may be a violation of the Texas Natural Resources Code, §91.143 and may also subject a permit to denial or revocation. A permit that is issued on the basis of a certification statement that is later determined to be incorrect is also subject to revocation.

(3) If the certification is signed by an agent of an applicant organization, the certification is binding on the agent and the organization as if signed by a person holding a position of ownership or control in the organization.

(e) Commencement of operations. Operations of drilling, deepening, plugging back, or reentering shall not be commenced until the permit has been granted by the commission and the waiting period, if any, has terminated, or authorization has been granted pursuant to subsection (f) of this section.

(f) Testing of existing wells in other reservoirs inside the casing. For an existing well, an operator may request authorization to commence operations to deepen inside the casing or plug back prior to the granting of a permit to deepen or plug back.

(1) This authorization shall be requested by filing with the district office a letter of intent to deepen inside the casing or plug back. The letter shall include:

(A) the operator name;

(B) the lease name;

(C) the lease number or gas identification number;

(D) well number;

(E) county;

(F) field name;

(G) a list of all reservoir(s) to be tested;

(H) the casing setting depth and the depth of the deepest reservoir to be tested;

(I) a plat showing the well location; and

(J) a statement as to whether or not the well location would require an exception to §§3.37, 3.38, 3.39, and/or 3.40 if completed in any of the reservoirs to be tested. If an exception would be required, the letter of intent shall also include a state-

ment that all affected offsets have been given written notice of the intent to test with the opportunity to witness the testing and the offsets shall be identified on the plat.

(2) Operations of deepening inside the casing or plugging back shall not be commenced until the district office has reviewed and signed the letter of intent. Testing pursuant to this authorization shall be completed within 90 days from the date the district office signs the letter of intent.

(A) No reservoir tested pursuant to the provisions of this subsection shall be tested for more than 15 days.

(B) If the operator desires to place the well on production, the operator shall shut-in the well, with no production being sold, and file a permit application for the tested reservoirs with the appropriate fees. If the permit application for the tested reservoirs requires an exception to §§3.37, 3.38, 3.39, and/or 3.40, no consideration will be given by the commission to the cost of recompleting and testing the well in determining whether or not to grant the exception.

(C) Within 30 days of completion of testing, the operator must either file an application for a permit to produce a reservoir tested pursuant to this subsection or file an amended completion report in accordance with §3.16 of this title (relating to Log and Completion of Plugging Report) (Statewide Rule 16) with a copy of the intent to test signed by the district office and a statement that a permit to produce a tested reservoir is not being sought, or if the well has been plugged and abandoned, a plugging report including reservoir and perforation data. If a permit is not obtained for the tested reservoirs and/or an allowable is not assigned, the producer shall report all test production in the producer's monthly report filed for the last permitted reservoir in which the well was completed and may request authorization to sell the test production. The test production may be sold after such authorization is granted.

(g) Exploratory and specialty wells. An application for any exploratory well, cathodic protection well that penetrates the base of the fresh water strata, fluid injection well, injection water source well, disposal well, brine solution mining well, or underground hydrocarbon storage well shall be made and filed with the commission on a form approved by the commission. Operations for drilling, deepening, plugging back, or reentering shall not be commenced until the permit has been granted by the commission. For an exploratory well, an exception to filing such form prior to commencing operations may be obtained if an application for a core hole test is filed with the commission.

(h) Exception permits. If an application for a permit presents a question of an exception to the applicable density rule as well as an exception to the spacing rule, the operator seeking a spacing and density exception must obtain such an exception as required under the applicable spacing and density rules.

(i) Drilling permit fee. With each application or materially amended application, the applicant shall submit to the commission a nonrefundable fee as determined by §3.76 of this title (relating to Fees, Bonds, and Alternative Forms of Financial Security Required to be Filed) (Statewide Rule 78).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 3, 1992.

TRD-9201681 Nolan Ward
Hearings Examiner-General Law, Legal Division
Railroad Commission of Texas

Effective date. February 24, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512)463-6941

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• 16 TAC §3.14

The Railroad Commission of Texas adopts an amendment to §3.14, concerning well plugging, with changes to the proposed text as published in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6524). The amendment shall take effect on March 1, 1992.

Adoption of the amendment will: require that certain classes of wells be tested to ensure that they do not pose a threat to natural resources; establish the requirements for obtaining an extension of time within which a well must be plugged; and establish the plugging requirements for horizontal drainhole wells. Adoption of the amendment will increase the assurance that inactive wells will either be plugged or monitored to ensure that they do not pose a threat to natural resources, including surface and subsurface water, oil, and gas.

Several commenters suggested that the time within which plugging operations must begin should not be reduced from the current one-year period to six months. The commission agrees.

Several commenters suggested that the length of time that extensions under subsection (b)(2)(A) are effective should be stated in the rule. The Commission agrees. Extensions are effective for a period of one year, but are subject to review at any time.

One commenter suggested that the extensions to the time within which plugging operations must begin should be two years. The commission disagrees. It is not necessary to provide for individual two-year extensions. Operators can obtain two years' worth of extensions by obtaining two consecutive annual extensions.

Several commenters expressed concern over the limit of four extensions available under subsection (b)(2)(A)(i). The comments were as follows: do not limit the number of extensions; specify the elements necessary to prove waste or the confiscation of property; and allow for more than four extensions if an additional extension is necessary to provide for "other beneficial use" of the well. The commission agrees in part. In general, after a well has been the subject of four such extensions, it should be placed under a bond to ensure that financial resources are available to plug the well. However, subsection (b)(2)(D) provides that a well may be the subject of more than four extensions upon a showing that no pollution of surface or subsurface water could occur as a result of granting the extension. The exception is stated in broad terms in order to allow the exception to be administered under a wide range of circumstances.

With regard to subsection (b)(2)(E), several commenters stated: a mechanical integrity test should not be required if there is no risk of harm to usable quality water, oil, gas, or other natural resources; specific alternatives to a mechanical integrity test should be listed; and the risk of harm to natural resources should dictate whether (and what type of) test is required. The commission agrees. Alternates to mechanical integrity tests are allowed in some cases. Fluid level tests are indicated as alternatives to mechanical integrity tests in many cases. The commission may require a mechanical integrity test if it appears that it is necessary to prevent the threat of harm to natural resources.

Several commenters suggested that the specific requirements for mechanical integrity tests be set out in the rule. The commission disagrees. The rule sets out a sufficient standard in that the tests should be conducted to ensure that the casing is sound and not subject to leakage.

Several commenters suggested that the minimum notification time for testing under subsection (b)(2)(E) and (F) be reduced from five days to one day. The commission disagrees. One day is too short a notification period for the commission to schedule personnel to be available to witness tests. However, the notification period has been reduced from five days to three days.

With regard to paragraph (b)(3), there were various comments. commenters were split on their preference as to who should be presumed liable for plugging a well-the person designated on the most recent commission-approved producer's transportation authority and certificate of compliance or the person who most recently filed the certificate. This part of the rule will not be amended. The existing language is sufficient to establish plugging responsibility.

Two commenters suggested deleting existing language that prohibits an employee of the service or cementing company hired to plug the well from being the operator's representative at the plugging. The commission disagrees. It is necessary to have an employee of the operator present when plugging the well because the service company is often ignorant of facts concerning the physical characteristics of the well such as the number of plugs, their location, and equipment in the hole that may inhibit proper plugging.

The following commenters opposed adoption of the amendments as originally proposed: Texas Independent Producers and Royalty Owners Association, Texas Mid-Continent Oil & Gas Association, Permian Basin Petroleum Association, West Central Texas Oil & Gas Association, and North Texas Oil & Gas Association.

The amendment is adopted pursuant to the sections of the Texas Natural Resources Code, Title 3, Chapters 85, 86, 89, and 91, that provides the Railroad Commission with authority to prevent pollution and other harm to natural resources.

§3.14. Plugging.

(a) Application to plug.

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

(4) Before plugging any well, notice shall be given to the surface owner of the well site tract, or the resident if the owner is absent. If they so desire, a representative of the surface owner, in addition to the commission representative, may be present to witness the plugging of the well. Plugging shall not be delayed because of the inability to deliver notice to the surface owner or resident.

(b) Plugging: commencement of operations, extensions, and responsibility.

(1) (No change.)

(2) Plugging operations on each dry or inactive well must be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed. For good cause, a reasonable extension of time in which to start the plugging operations may be granted pursuant to the following procedures.

(A) The commission or its delegate may administratively grant an extension of time of one year if the well is in compliance with all other laws and commission rules relating to conservation and safety or the prevention or control of pollution, is not a pollution hazard; and

(i) provided that the operator pays the proper fee as provided in §3.76, of this title (relating to Fees, Performance Bonds, and Alternate Forms of Financial Security Required to be Filed) (Statewide Rule 78), obtains a permit for this extension, and no more than three extensions have been granted after June 1, 1992 for the well under the provisions of this clause; or

(ii) the operator files an individual or blanket performance bond as provided in §3.76, or a letter of credit.

(B) Any administratively granted extension of time is subject to review by the commission or its delegate at any time.

(C) If the commission or its delegate declines administratively to grant or to continue an extension of time, the operator shall plug the well or request a hearing on the matter.

(D) The commission or its delegate may allow a well to be the subject of more than four extensions granted after June 1, 1992 under the provisions of subparagraph (A)(i) of this paragraph, upon written application and a showing that no pollution of surface or subsurface water could occur as a result of granting the extension. If such application is administratively denied, the commission may subsequently grant the extension.

(E) All wells more than 25 years old that become inactive and subject to the provisions of this paragraph shall be plugged or tested annually to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. In general, a fluid level test is a sufficient test for purposes of this subparagraph. However, the commission or its delegate may require alternate methods of testing, and more frequent tests, if it is necessary to ensure the well does not pose a potential threat of harm to natural resources. Wells that are returned to continuous production, as evidenced by three consecutive months of production, within a year after the well becomes inactive need not be tested. Alternate methods of testing may be approved by the commission or its delegate by written application and upon a showing that such a test will provide information sufficient to determine that the well does not pose a threat to natural resources. No test shall be conducted without prior approval from the district office. The district office shall be notified at least three days before the test is conducted. The test results shall be filed with the district office, on a commission-approved form, within 30 days of the completion of the test. Fluid level tests shall be conducted on an annual basis according to the following schedule.

(i) Wells that become both inactive and more than 25 years old after June 1, 1992 shall be tested within one year after the well becomes both inactive and more than 25 years old, unless the well has undergone a hydraulic pressure test within five years of the date a test is required under this clause and the results of such test are on file with the commission.

(ii) Wells that are both inactive and more than 45 years old as of June 1, 1992 shall be tested before June 1, 1993.

(iii) Wells that are both inactive and 35 to 45 years old as of June 1, 1992 shall be tested before June 1, 1994.

(iv) Wells that are both inactive and 25 to 35 years old as of June 1, 1992 shall be tested before June 1, 1995.

(F) As of January 1, 1997, all wells that are, or become, both more than 25 years old and inactive for more than 10 years, shall be tested for mechanical integrity so long as the well remains inactive. Such tests shall be conducted every five years. However, the commission or its delegate may require that a well undergo a mechanical integrity test more frequently than every five years if conditions indicate that more frequent testing is necessary to prevent the threat of harm to natural resources. A hydraulic pressure test is a sufficient mechanical integrity test for purposes of this section. Alternate methods of testing for mechanical integrity may be approved by the commission or its delegate upon written application and a showing that such alternate method of testing will provide information sufficient to determine that the casing is sound and not subject to leakage. No test shall be conducted without prior approval from the district office. The district office shall be notified at least three days before the test is conducted. The test results shall be filed with the district office, on a commission-approved form, within 30 days of the completion of the test. Wells for which mechanical integrity tests are conducted pursuant to this subparagraph are not subject to the annual test requirements of subparagraph (E) of this paragraph.

(3) Proper plugging is the responsibility of the operator of the well. For purposes of plugging responsibility, the commission will presume that the operator designated on the most recent commission-approved producer's transportation authority and certificate of compliance was the person responsible for the physical operation and control of the well at the time the well was abandoned or ceased operation. This presumption may be refuted at a hearing called for the purpose of determining plugging responsibility.

(c) General plugging requirements.

(1) In plugging wells, it is essential that all formations bearing usable quality water, oil, gas, or geothermal re-

sources be protected. All cementing operations during plugging must be performed under the direct supervision of the operator or his authorized representative, who shall not be an employee of the service or cementing company hired to plug the well. Direct supervision means supervision on location at the well site.

(2)-(11) (No change.)

(d)-(i) (No change.)

(j) Plugging horizontal drainhole wells. All plugs in horizontal drainhole wells shall be set in accordance with subsection (c)(10) of this section. The productive horizon isolation plug shall be set from a depth 50 feet below the top of the productive horizon to a depth either 50 feet above the top of the productive horizon, or 50 feet above the production casing shoe if the production casing is set above the top of the productive horizon. If the production casing shoe is set below the top of the productive horizon, then the productive horizon isolation plug shall be set from a depth 50 feet below the production casing shoe to a depth that is 50 feet above the top of the productive horizon. In accordance with subsection (c)(6) of this section, the commission or its delegate may require additional plugs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201749 Nolan Ward
Hearings Examiner, Legal Division-General Law
Railroad Commission of Texas

Effective date: March 1, 1992

Proposal publication date: November 12, 1991

For further information, please call: (512) 463-6864

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Conservation Rules and Regulations

• 16 TAC §3.76

The Railroad Commission of Texas adopts an amendment to §3.76, concerning conservation rules and regulations, without changes to the proposed text as published in the December 24, 1991, issue of the *Texas Register* (16 TexReg 7613).

The staff has determined for each year of the first five years the section as adopted is in effect the public benefit anticipated as a result of enforcing the section will be to increase compliance with the Railroad Commission's safety and pollution rules, the goal of which is to ensure clean water for Texas. Additionally, the requirement of up-front financial security for all persons performing commission-regulated operations will provide a source of funds for well-plugging, pollution control, and clean-up, with the anticipated benefit of fewer expenditures from the state oilfield cleanup fund for these purposes and will serve as an incentive to oil and gas operators to remain in compliance with the commission's safety and pollution rules. The anticipated economic cost to persons who are required to comply with the proposed section is determined by the fees set in the proposed section for each type of activity covered and by the particular activities of each persons, which may vary. Reference may be made to each provision in the section specifying required costs for fees or financial security. It is anticipated that those persons with an acceptable record of compliance with commission rules relating to safety and pollution will have a record or have an unacceptable record of compliance may have to bear the cost of a more expensive type of financial security option required by the Texas Natural Resources Code, Chapter 91.

The rule amendment, adopted pursuant to Senate Bill 1103 (Chapter 603, 1991 Session Laws, 72nd Legislature), sets out the statutorily required fee amounts to be charged by the commission in order to drill, deepen, plug back, or reenter a well; to file for an extension of time to plug a well; to discharge to surface water; to renew a canceled certificate of compliance, and to haul oil and gas waste; the definition language relating to the fee for expediting a permit application is also deleted. The proposed amendment sets out the types of bonds or alternate forms of financial security required by Senate Bill 1103 of all persons performing oil and gas operations and regulated by the commission. Options include an individual or blanket performance bond, a nonrefundable $100 fee for those persons with acceptable records of compliance with commission safety and pollution rules, a nonrefundable fee of 3.0% of the bond that otherwise would be required, or a first lien on tangible oil and gas property. The proposed amendment establishes deadlines for filing financial security; eligibility for bonds and alternate forms of financial security; and bond requirements and conditions, including expiration of bond obligations. Under the proposed amendment, persons performing oil and gas operations may also be required to file a compliance certification in order to choose the nonrefundable $100 fee. Definitions of the terms "violation," "outstanding violation," and "acceptable record of compliance" are also provided.

The following is a summary of comments; the following commenters expressed general support for the proposal, although they suggested changes to various provisions. Two comments were filed on this rule.

On January 20, 1992, Texas Mid-Continent Oil and Gas Association (TMOGA) filed a comment regarding subsection (a)(2)(B)(i), recommending that the commission not consider a violation as "outstanding" if the commission has approved a plan to correct the violation and the operator is making a good faith effort to correct the violation.

On January 24, 1992, the Texas Independent Producers and Royalty Owners Association (TIPRO) and the Permian Basin Petroleum Association (PBPA) filed comments.

TIPRO and PBPA suggest that in subsection (a)(3) and paragraph (1)(1)(A), the commission treat an acceptable record of compliance as no pending proposal for decision containing a finding of violation or no outstanding violation.

TIPRO and PBPA also expressed concern that the commission will include operators in an unacceptable record of compliance category when an enforcement action involves multiple parties and has not yet resulted in a proposal for decision.

TIPRO and PBPA's second recommendation is that the commission allow operators to obtain an individual bond during the first year of operations.

The Railroad Commission does not agree with the proposed changes recommended by Texas Mid-Continent Oil and Gas Association (TMOGA), Texas Independent Producers and Royalty Owners Association (TIPRO), and Permian Basin Petroleum Association (PBPA).

The amendments will increase compliance with the Railroad Commission's pollution and safety rules, whose goal is to ensure clean water for Texas.

The Railroad Commission disagrees with TMOGA's recommendation that the Railroad Commission should consider an acceptable record of compliance to include an approved plan and a good faith effort on the part of an operator overlooks the fact that such cases come to hearing after numerous contacts in the field with the commission relating to a problem. The suggested change would prolong and increase the cost of the intended function of Senate Bill Number 1103, to streamline the existing process.

The Railroad Commission disagrees with TIPRO and PBPA's characterization of the proposed standard of acceptable record of compliance. Violations are tied to field inspections and entries of commission orders; these mechanisms allow the Railroad Commission in implementing this bill, to compel operators to avoid amassing violation records. When multiple parties are involved in cases, the controversy serves to encourage the innocent party to come forward with exculpatory evidence.

The Railroad Commission disagrees with TIPRO and PBPA's recommendation concerning the filing of an individual bond during an operator's first year of operations. Filing an individual bond is not the only option allowed for first-year operators designating themselves with the Railroad Commission. The statute contemplates application only to existing well operators. Furthermore, when a new operator files a P-4, he or she has no record of property (wells) with the commission; therefore, the commission has no way to calculate the amount of an individual bond, which is measured at a rate of $2.00 for each foot of well depth per well.

The amendment is adopted under the Texas Natural Resources Code, §81.052, which provides the Railroad Commission with the authority to adopt rules to govern and regulate persons and their operations under the jurisdiction of the Railroad Commission.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201682 Nolan F. Ward
Hearings Examiner, Legal Division, General Law Section
Railroad Commission of Texas

Effective date: February 24, 1992

Proposal publication date: December 24, 1991

For further information, please call: (512) 463-6918

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Chapter 5. Transportation Division

Subchapter H. Tariffs and Schedules

• 16 TAC §5.133

The Railroad Commission of Texas adopts an amendment to §5.133, concerning allowances prohibited, without changes to the proposed text as published in the October 1, 1991, issue of the *Texas Register* (16 TexReg 5377).

The amendment, published pursuant to a petition filed by J. and H. Truck Service, Inc., will add provisions prohibiting allowances given by specialized motor carriers of sand and gravel commodities and affiliated shippers, producers, or distributors. The amendment is intended to prevent manipulations of the commission's rates and tariffs, and to deter business practices that have developed in the sand and gravel industry which interfere with the public's right to select a carrier of its choice.

The amendment will require those materials suppliers that control affiliated motor carriers, and that quote combined prices for materials and transportation, to separate the quote into its two components, and honor the quoted price for materials when another unaffiliated carrier is used.

Numerous comments were received regarding the proposed rule. Commenters in opposition to the proposed amendment questioned the commission's jurisdiction to enact rules which constitute a regulation of commodity pricing. Opponents also argue that the amendment will put them at a competitive disadvantage to suppliers with access to unregulated means of transportation, that many factors enter into the determination of a bid price, that the use of third-party carriers entails additional problems and difficulties, and that a producer cannot afford to supply materials below cost unless it can absorb that loss in trucking profits. Commenters in support of the proposed amendment argued that the proposed rules will eliminate a practice which is tantamount to illegal rate cutting, will reduce the competitive disadvantage of independent carriers and materials producers, and will aid owner-operators that bear the burden of the reduced rates.

The Sand & Gravel Motor Carrier Association, Inc. commented in favor of the proposed amendment. The Associated General Contractors of Texas-Highway, Heavy Utilities & Industrial Branch commented in opposition.

The commission disagrees with the comments received in opposition. Many of the practices which are asserted by the opponents are indistinguishable from charging below the tariff rate for the transportation provided. Such a practice is currently prohibited by commission rules, but the additional provisions are necessary to ensure that the spirit of the rules is not violated. While the new requirements and prohibitions may require some additional details and paperwork, such requirements have been made necessary by admitted practices which work to circumvent the commission's rules.

The amendment is adopted under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, §4(a)(1), which authorizes the commission to regulate the operations of motor carriers in all matters affecting the relationship between such carriers and the shipping public.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201680 Nolan F. Ward
Hearings Examiner, Legal Division-General Law
Railroad Commission of Texas

Effective date: February 24, 1992

Proposal publication date: October 1, 1991

For further information, please call: (512) 463-7094

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Subchapter AA. Rail Safety

• 16 TAC §5.625

The Railroad Commission of Texas adopts an amendment to §5.625, concerning hazardous materials reporting requirements, without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6991).

The commission wants to harmonize reporting requirements under subsection (c) with federal law and wants to enhance and clarify hazardous materials reporting by railroads.

The amendments will change reporting requirements under subsection (c) to harmonize those requirements with federal law, will require 24-hour operation of railroad dispatch telephones, will more accurately reflect the relative number of carloads of hazardous materials moving over railroad line segments identified within the state, will clarify peak density season reports, and will add a requirement that railroads report, for each identified line segment, the Texas counties and the railroad operating divisions traversed by that line segment.

A comment was received from one railroad company, which company was generally opposed to the entire rule. No comments on the proposal were received from groups or associations. The commission disagrees with the comment because the commission believes the amended rule will improve rail safety regulation.

The amendment is adopted pursuant to Texas Civil Statutes, Article 6419c, which authorize the commission to require hazardous materials reporting of railroad companies.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201685 Nolan F. Ward
Hearings Examiner, Legal Division-General Law
Railroad Commission of Texas

Effective date: February 24, 1992

Proposal publication date: December 6, 1992

For further information, please call: (512) 463-7094

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TITLE 22. EXAMINING BOARDS

Part VIII. Texas Appraiser Licensing and Certification Board

Chapter 151. Practice and Procedure

• 22 TAC §§151.1-151.30

The Texas Appraiser Licensing and Certification Board (the board) adopts new 22 TAC §§151.1-151.30, concerning practice and procedure for the licensing and certification of real estate appraisers, without changes to the proposed text as published in the November 19, 1991, issue of the *Texas Register* (16 TexReg 6679). These sections were previously adopted by the board on an emergency basis.

The adopted sections help implement the Texas appraiser Licensing and Certification Act (the Act), Texas Civil Statutes, Article 6573a.2. The sections help permit real estate appraisers to become licensed or certified and thereby remain eligible to appraise in federally related transactions. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires the use of state certified or licensed appraisers in connection with federally related transactions performed after December 31, 1992.

These sections provide for a simple and efficient system of procedure before the board; to insure uniform standards of practice and procedure, public participation and notice of board actions; and a fair and expeditious determination of causes.

Comments were received from one individual who subsequently withdrew the comments.

The new sections are adopted under the Texas Appraiser Licensing and Certification Act, Texas Civil Statutes 6572a.2, provides the Texas Appraiser Licensing and Certification Board with authority of adopt rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201691 Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board

Effective date: March 2, 1992

Proposal publication date: November 19, 1991

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

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

- **22 TAC §§153.1, 153.3, 153.5, 153.7, 153.9, 153.11, 153.13, 153.15, 153.17, 153.19, 153.21, 153.23**

The Texas Appraiser Licensing and Certification Board (the board) adopts new 22 TAC §§153.1, 153.3, 153.5, 153.7, 153.9, 153.11, 153.13, 153.15, 153.17, 153.19, 153.21, and 153.23, concerning provisions of the Texas Appraiser Licensing and Certification Act, without changes to the proposed text as published in the November 19, 1991, issue of the *Texas Register* (16 TexReg 6682). These sections were previously adopted by the board on an emergency basis.

The adopted sections implement the Texas Appraiser Licensing and Certification Act (the Act), Texas Civil Statutes, Article 6573a.2. The sections permit real estate appraisers become licensed or certified and thereby remain eligible to appraise in federally related transactions in compliance with the federal Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

Comments were received from the American Society of Farm Managers and Rural Appraisers, Foundation Coalition Appraisers of Texas, Inc., Independent Bankers Association of Texas, National Association of Independent Fee Appraisers, Texas Bankers Association and from two individuals.

Comments included limiting sponsorship of appraiser trainees to general certified appraisers; limiting sponsorship of appraiser trainees to general or residential certified appraisers; creating a "state certified real estate appraisal instructor" classification; requiring fees for educational course providers; requiring fees for each course submitted by educational providers; setting a fee for "state certified real estate appraisal instructors"; adding language regarding misrepresentation or falsification on various forms; concurring with the current 75% passing score on the competency examinations; assigning examinees to nearest examination site; adding to the types of calculators which may be used in the examinations; requiring a specific number of appraisal courses or a specific number of classroom hours of appraisal courses to meet the education requirements; listing specific college level courses which may receive partial credit for meeting the education requirements; listing those specific courses that must be completed to meet the education requirements; requesting clarification of continuing education requirements; requiring that no more than half of the required experience may be gained by teaching appraisal courses; using a formula (e.g. 1.5 times the actual number of hours spent in the actual performance or professional review of real estate appraisals) for bankers in meeting the experience requirements; adding more specifics to ad valorem tax appraisal definitions; requiring the use of a log and an affidavit for meeting experience requirements; requiring only the use of an affidavit for meeting experience requirements; limiting who may sign a joint affidavit; terminating a trainee's authorization if the sponsor's certification or license is revoked or suspended; requiring additional education for renewal of an appraiser trainee authorization; requiring an examination for renewal of appraiser trainee's authorization; limiting the number of renewals for appraiser trainees; providing for increased fees for each subsequent renewal by an appraiser trainee; and adding language concerning reciprocity with other states.

After consideration of the public comments, the Texas Appraiser Licensing and Certification Board (the board) determined that the rules as published, which have been adopted as emergency rules under which the board has been operating, are functioning well and that additional time and experience should be allowed before changes should be made to those rules.

Section 153.1 defines terms employed in the appraisal of real property or in sections relating to licensing and certification.

Section 153.3 concerns the Texas Appraiser Licensing and Certification Board (the board), and establishes minimum number of meetings, establishes a quorum of five members, establishes board officers, and confirms that the meetings of the board are subject to the Texas Open Meetings Act.

Section 153.5 establishes various fees for licensing and certification of appraisers, for appraiser trainees, for nonresident temporary registration, for the federal registry fee, and for changing a business address.

Section 153.7 establishes two categories of certified appraisers, state certified general real estate appraiser and state certified residential real estate appraiser.

Section 153.9 provides for the filing of applications; adopts application, experience verification, course approval, and change of address forms by reference; ground to disapprove applications; and provides for acceptance of applications transferred to the board pursuant to the Act, §24(d).

Section 153.11 provides for examinations for licensing and certification; establishes a minimum passing score; provides for retaking of failed examinations after payment of another examination fee; provides for the administration of special examinations for those with physical limitations; and requires examinees to comply with instructions.

Section 153.13 provides for the acceptance of education for meeting licensing and certification requirements; establishes minimum levels of education required, 165 classroom hours for certified general appraisers, 105 classroom hours for certified residential appraiser, and 75 classroom hours for state licenses appraisers; and provides for the prior approval of courses by educational providers.

Section 153.15 establishes required appraisal experience for certification and licensing in accordance with the criteria established by the Appraiser Qualifications Board of the Appraisal Foundation and with the Act; and provides that applicants must submit experience on forms promulgated by the board.

Section 153.17 establishes requirements for renewal of licensure and certification; provides a procedure for notifying appraisers and trainees to file renewal applications; and requires licensed or certified appraisers to complete 20 hours of approved continuing education in order to renew a license or certification.

Section 153.19 establishes criminal offenses which are deemed to be directly related to the occupation of real estate appraisers.

Section 153.21 provides for appraiser trainees under the sponsorship of a certified or licensed appraiser; hold the sponsoring licensed or certified appraiser responsible for the conduct of the appraiser trainee; and provide for notice and hearing for sanctions against the sponsoring licensed or certified appraiser.

Section 153.23 provides for the certification and licensing of appraisers who met the requirements for certification under the previous law (Section 22, the Real Estate License Act, Texas Civil Statutes, Article 6573a.

The new sections are adopted under the Texas Appraiser Licensing and Certification Act, Texas Civil Statutes, Article 6573a.2, which provides the Texas Appraiser Licensing and Certification Board with the authority to adopt rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201692 Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board

Effective date: March 2, 1992

Proposal publication date: November 19, 1991

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

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Chapter 155. Standards of Practice

• 22 TAC §155.1

The Texas Appraiser Licensing and Certification Board (the board) adopts new 22 TAC §155.1, concerning standards of practice for licensed and certified real estate appraisers, without changes to the proposed text as published in the November 19, 1991, issue of the *Texas Register* (16 TexReg 6686). The section was previously adopted by the board on an emergency basis.

The new section helps implement the Texas Appraiser Licensing and Certification Act (the Act), Texas Civil Statutes, Article 6573a.2. The section helps permit real estate appraisers to become licensed or certified and thereby remain eligible to appraise in federally related transactions. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires the use of state certified or licensed appraisers in connection with federally related transactions performed after December 31, 1992.

The section adopts the "Uniform Standards of Professional Appraisal Practice" (USPAP) and requires written appraisal reports for federally related transactions. The provisions are consistent with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). By December 31, 1991, appraisals performed in connection with federally related transactions must be performed only by persons licensed or certified in accordance with Title XI who adhere to the USPAP standards.

Comments were received from the National Association of Independent Fee Appraisers which supported adoption of this section as published.

The new section is adopted under the Texas Appraiser License and Certification Act, Texas Civil Statutes, Article 6573a.2, which provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201693 Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board

Effective date: March 2, 1992

Proposal publication date: November 19, 1991

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

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Part IX. State Board of Medical Examiners

Chapter 171. Institutional Permits

• 22 TAC §171.1

The Texas State Board of Medical Examiners adopts the repeal of §171.1, concerning institutional permits, without changes to the proposed text as published in the December 27, 1991, issue of the *Texas Register* (16 TexReg 7699).

Extensive rewrite of the section was felt necessary; therefore, repeal with simultaneous new section was presented.

The section will function by clarification of the rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201789 Homer R. Goehrs, M.D.
Executive Director
Texas State Board of Medical Examiners

Effective date: February 26, 1992

Proposal publication date: December 27, 1991

For further information, please call: (512) 834-4502

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The Texas State Board of Medical Examiners adopts new §171.1, concerning institutional permits, with changes to the proposed text as published in the December 27, 1991, issue of the *Texas Register* (16 TexReg 7699).

In order to expedite processing of institutional permit application and allow training programs to inspect documentation previously handled through the State Board of Medical Examiners, extensive rewrite of the section was felt necessary.

The new section will clarify the rules and allow more efficient use of agency time.

One written comment was received regarding the time frame in which the application and fee must be submitted. Verbal comments were made at the public hearing.

The names of groups or associations making comments for and against the section are as follows: for: medical school training program; against: hospital training program.

The number of days required to submit the application and fee prior to the beginning date of the program has been reduced from 90 to 45; further reduction would place under burden or processor.

The new section is adopted under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§171.1. Institutional Permits.

(a) Institutional permits may be issued to postgraduate training programs approved by the Accreditation Council for Graduate Medical Education, American Osteopathic Association, or the Texas State Board of Medical Examiners for interns, residents, and postresidency fellows.

(1) An intern is a physician who is in a clearly defined and delineated first postgraduate year program.

(2) A resident is a physician who is in a specialized, clearly defined, and delineated postgraduate program.

(3) A postresidency fellow is a physician who is in a specialized, clearly defined, and delineated program, following completion of a delineated residency program, for additional training in a medical specialty or subspecialty delivered in a program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or in a program approved by the Texas State Board of Medical Examiners.

(b) The executive director may, upon written request, approve training programs. If the executive director does note recommended approval, the program director may appeal to the full board for its consideration of the request.

(c) Applicants who have graduated from a medical school approved by the Accreditation Council for Graduate Medical Education, or American Osteopathic Association must submit:

(1) a completed application and fee 45 days prior to the beginning date of the program; and

(2) certification by the director of medical education of the program that the internship, residency, or fellowship meets the appropriate definition.

(d) Applicants who have graduated from a medical school outside the United State or Canada must submit:

(1) a completed application and fee 45 days prior to the beginning date of the program;

(2) a notarized copy of medical school diploma or 5th Pathway Certificate;

(A) copies should be notarized as being a "true copy" of the original document. The notary public must sign, date, and affix his/her notary seal to the document;

(B) if the document is in a foreign language, an official word-for-word translation must be furnished. The board's definition of an official translation is one prepared by a government official, official translation agency, or a college or university official, on official letterhead. The translator must certify that it is a "true translation to the best of his or her knowledge, that he or she is fluent in the language, and is qualified to translate." He or she must sign the translation with his or her signature notarized by a notary public. The translator's name and title must be typed/printed under the signature;

(3) a notarized copy of a valid ECFMG document, or:

(A) proof of an unrestricted license from another state in the United States or Canada; or

(B) proof of citizenship in the United States and residency of the State of Texas prior to entering medical school as provided in Texas Civil Statutes, Article 4437(g);

(4) certification by the direction of medical education that the internship, residency, or fellowship program meets the appropriate definition;

(5) certification by the director of medical education that the original medical school diploma, certified medical school transcript from each medical school, valid ECFMG document, and an original dean's certification has been inspected.

(e) The board's executive director may, on a case-by-case basis, allow substitute documents where exhaustive efforts have been made to secure the required documents.

(f) Institutional permits are issued for a one-year period and may be renewed up to seven times depending upon the requirements of the physician's specialty training program.

(g) Physicians holding an institutional permit must confine their practice of medicine to the designated teaching program. The permit may be cancelled if §3.08 or any other provision of the Medical Practice Act is violated; or if the permit is used to practice medicine outside the teaching program.

(h) If the training is terminated for any reason other than illness or other reasons acceptable to the board, the permit is void and no additional permit will be issued.

(i) Denial of a permanent Texas license is grounds for revoking or not issuing an institutional permit.

(j) Failure of any hospital or medical institution to comply with these provisions shall be grounds for the denial of the institutional permit and any future permits for persons wishing to serve at that institution.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201788 Homer R. Goehrs, M.D.
Executive Director
Texas State Board of Medical Examiners

Effective date: February 26, 1992

Proposal publication date: December 27, 1991

For further information, please call: (512) 834-4502

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Part X. Texas Funeral Service Commission

Chapter 203. Licensing and Enforcement-Specific Substantive Rules

• 22 TAC §203.4

The Texas Funeral Service Commission adopts an amendment to §203.4, concerning transfer of licenses, without changes to the proposed text as published in the December 24, 1991, issue of the *Texas Register* (16 TexReg 7620).

The amendment requires amended form be submitted on change of establishment name or change of funeral director in charge within 30 days of the date of change.

The amendment insures change of establishment name or change of funeral director in charge is submitted on amended form within 30 days of the date of change.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 30, 1992.

TRD-9201599 Larry A. Farrow
Executive Director
Texas Funeral Service Commission

Effective date: February 24, 1992

Proposal publication date: December 24, 1991

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

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• 22 TAC §203.6

The Texas Funeral Service Commission adopts an amendment to §203.6, concerning apprenticeships, without changes to the proposed text as published in the December 24, 1991, issue of the *Texas Register* (16 TexReg 7620).

The amendment will insure apprentices are fully informed all requirements of the apprenticeship program. In subsection (d) "(consisting)" is being deleted and in subsection (e) "(that individual)" is being deleted.

The amendment insures apprentices are fully informed of apprenticeship program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

§203.6. Apprenticeships.

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

(c) A case report will be submitted on all cases performed each month by the apprentice.

(1) The case report will be made on a form prescribed by the commission.

(2) No more than two apprentices will receive credit due for work on the same body.

(3) All case reports will be submitted to the commission by the 10th day of each succeeding month.

(4) The apprentice shall report on at least one case each calendar month. In any month that the apprentice does not perform a case, a report shall be made to the commission, notwithstanding. Any month where a notwith- standing case report is submitted, will not be credited to the 12-month apprenticeship.

(5) The commission may start an apprenticeship over any time the apprentice has submitted notwithstanding reports for two or more consecutive months.

(6) The commission may start an apprenticeship over after the second time an apprentice has failed to either file a case report or has failed to file the case report in a timely manner.

(7) Of the 40 cases required, at least 10 of the cases must be complete cases and reported during the last three months of the apprenticeship. A complete case is de-

fined as a case where the apprentice takes the responsibility for the case and handles all major actions from the time of first call through interment or other disposition of the body.

(8) The funeral director's and embalmer's apprenticeship must be served for a minimum of 12 consecutive months and may be served simultaneously.

(9) Each case report submitted will be certified by the licensee under which the apprentice performed the work. The supervising licensee as well as the apprentice is subject to disciplinary action if the information submitted is misrepresented.

(d) A student may register as a funeral director apprentice upon completion of a minimum of 60 quarter hours or 40 semester hours in an accredited college of mortuary science and achieving a minimum cumulative grade point average of 3.0. The student must be engaged in learning the practice of funeral directing in a licensed funeral establishment during regular employment, such employment, during the period of time the apprentice is enrolled in school, shall consist of a minimum of 20 hours per week. Upon completion of this required study, the student will receive credit not to exceed 10 required case reports and three months required apprenticeship.

(e) Any funeral director apprentice that begins the apprenticeship during attendance at mortuary school will apply for and take the written examination given by the commission upon graduation from mortuary school unless the apprentice petitions the commission for authorization to delay taking the examination.

(f) The commission may hear testimony or receive evidence as to why standards or requirements of apprenticeship cannot be met by an apprentice. Where, because of hardship, the applicant has been unable to meet such standards in spite of diligent effort, the commission can make a finding of substantial compliance by such apprentice.

(g) An embalmer apprentice shall be required to assist in the embalming of six autopsied remains during the course of the embalming apprenticeship, with the provisions that a certificate from a mortuary college stating the number of autopsied eases had been completed during the course of the college program, would count towards the six required cases. However, any autopsied cases completed during the course of mortuary college, would not count towards the stated 40 cases required to complete the embalmer apprenticeship.

(h) In order to ensure the maximum exposure possible to all aspects of funeral directing, the one-year funeral director apprenticeship will not be served in a commercial embalming establishment.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 30, 1992.

TRD-9201600 Larry A. Farrow
Executive Director
Texas Funeral Service Commission

Effective date: February 24, 1992

Proposal publication date: December 24, 1991

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

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• **22 TAC §203.7**

The Texas Funeral Service Commission adopts an amendment to §203.7, concerning applicants for licensure, without changes to the proposed text as published in the December 24, 1991, issue of the *Texas Register* (16 TexReg 7621).

The amendment is adopted to satisfactorily demonstrate proficiency related to the duties of a funeral director and/or embalmer.

The amendment will ensure funeral director and/or embalmer apprentice demonstrate proficiency related to their duties.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 30, 1992.

TRD-9201601 Larry A. Farrow
Executive Director
Texas Funeral Service Commission

Effective date: February 24, 1992

Proposal publication date: December 24, 1991

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

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• **22 TAC §203.24**

The Texas Funeral Service Commission adopts new §203.24, concerning apprentice sponsors, without changes to the proposed text as published in the December 24, 1991, issue of the *Texas Register* (16 TexReg 7621).

The new section sets requirements for apprentice sponsors.

No comments were received regarding adoption of the new sections.

The new section is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 30, 1992.

TRD-9201602 Larry A. Farrow
Executive Director
Texas Funeral Service Commission

Effective date: February 24, 1992

Proposal publication date: December 24, 1991

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

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• **22 TAC §203.25**

The Texas Funeral Service Commission adopts new §203.25, concerning establishment license, without changes to the proposed text as published in the December 24, 1991, issue of the *Texas Register* (16 TexReg 7622).

The new section insures that all facilities can be properly identified, and that a revocation of license cannot be evaded.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 30, 1992.

TRD-9201603 Larry A. Farrow
Executive Director
Texas Funeral Service Commission

Effective date: February 24, 1992

Proposal publication date: December 24, 1991

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

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

• **28 TAC §7.51**

The State Board of Insurance of the Texas Department of Insurance adopts the repeal of

28 TAC §7.51, concerning preparation of 1982 tax returns, without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6992).

The department adopts the repeal of 28 TAC §7.51 because the existing section is outdated and obsolete.

The repeal of this section will delete obsolete requirements from the rules of this agency.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Insurance Code, Articles 1.04, 1.10 §9, 1.14-1, 4.07, 4.10, 4.11, 5.12, 5.24, 5.49, 5.68, 9.46, and 23.08; the Texas Health Maintenance Organization Act, 20A.22 and 20A.33; and Texas Civil Statutes, Article 6252-13a §4, and Article 8308 §2.22. The Texas Insurance Code, Article 1.04, places original jurisdiction for the adoption of rules in the Texas Department of Insurance. Article 1.10 §9, requires the department to furnish companies with blank forms for the statements required. Article 1.14-1 requires payment of taxes on gross premiums written by unauthorized insurers. Article 4.07 specifies the charges for certain fees. The Texas Insurance Code, Articles 4.10 and 4.11; Texas Civil Statutes, Article 8308 §2.22; and the Texas Health Maintenance Organization Act, 20A.33 require payment of taxes on gross premiums by entities regulated by the department or on gross amounts of similar revenue by health maintenance organizations. The Texas Insurance Code, Articles 5.12, 5.24, 5.49, 5.68, 9.46, and 23.08 require the payment of maintenance taxes by certain entities regulated by the department. The Texas Insurance Code, Articles 4.10 and 4.11 and the Texas Health Maintenance Organization Act, 20A.22 give the department rulemaking authority. Texas Civil Statutes, Article 6252-13a, §4 requires and authorizes the department to adopt rules of practice setting forth the nature and requirements of all procedures available.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 5, 1992.

TRD-9201797 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: February 26, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512) 463-6327

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The State Board of Insurance of the Texas Department of Insurance adopts new 28 TAC §7.51 concerning preparation of 1991 tax returns, with changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6992).

Section 7.51 concerns forms and instructions for the filing of tax returns by insurers and other entities required to file tax returns with the Texas Department of Insurance for the 1991 calendar year and those required to file quarterly premium tax returns with the department during the 1992 calendar year. This new section is necessary to provide forms and instructions to facilitate compliance with statutory requirements for reporting and paying of premium taxes, retaliatory taxes, filing fees and maintenance taxes to the Texas Department of Insurance. Changes to the introductory language of the proposed text were made to clarify the location and telephone number of the Texas Department of Insurance. Changes in the proposed text of the titles of the forms were made to clarify the identities of the forms to be adopted. In addition, proposed paragraphs (21), (22), (23), and (24) have been deleted because the Texas Insurance Code, Article 4.11A, the statute authorizing the tax to be collected by these paragraphs, was determined to be unconstitutional.

New §7.51 adopts by reference forms and instructions for the preparation of annual and quarterly tax returns by insurers and other entities subject to premium taxes, retaliatory taxes, filing fees, and maintenance taxes. The new section provides insurers and other entities with the necessary forms and instructions for filing tax returns as required by statute.

Commentors suggested clarification of the instructions for the assessment for the Office of Public Insurance Counsel for life, accident, and health companies and for health maintenance organizations. Such commentors were concerned that the proposed instructions were not clear regarding the application of the assessment to certificates of insurance issued to group plan participants and to renewal contracts. The department reworded the instructions to clarify the application of the assessment to policies and certificates of insurance.

A commentor suggested that the General Instructions of each tax form include an explanation of the use of the Rapid Deposit Programs (Electronic Funds Transfer), also known as TexNet. Since the number of taxpayers who qualify for remittance through TexNet is small, the department routinely notifies qualifying taxpayers of the TexNet program. Since the department believes that mentioning the TexNet program would be confusing to many non-qualifying taxpayers, the department has not changed the instructions accordingly.

A commentor suggested that the annual guaranty fund assessments, examination assessments, and overhead assessments be included in the retaliatory calculations related to the life, accident and health, property and casualty and title annual tax returns, since they constitute part of the aggregate burden of doing business in Texas. Another commentor stated that inclusion of the assessments in retaliatory calculations is not appropriate since the assessments are entirely recoupable through tax writeoffs. The commentor also expressed concern that inclusion of the assessments could result in greater tax liabilities for domestic companies operating in other states. The department modified the forms to include the assessments in the retaliatory calculations to the extent that the assessments will not be recouped as a writeoff.

Another commentor suggested changes clarifying the annual title tax return regarding the guaranty fund calculation for tax writeoffs and the assessment for the Office of Public Insurance Counsel (OPIC). The department modified the form to streamline the guaranty fund calculation and to clarify the OPIC assessment.

A final commentor suggested that the Workers' Compensation bond debt surcharge be removed from the maintenance tax exhibit of the annual property and casualty tax return. The concern was that this surcharge might be construed by other states as another fee or assessment that should be included in retaliatory tax calculations, thereby increasing the foreign tax liabilities of domestic companies doing business in other states. The department concurs with this suggestion, and has removed the bond debt surcharge calculation from the maintenance tax exhibit. Instead the bond debt surcharge will be collected by the department with a separate calculation form.

All commentors were generally in favor of the proposed section with suggestions for changes to the tax forms or instructions. However, Highlands Insurance Group objected to the inclusion of the Workers' Compensation bond debt surcharge on the other maintenance tax exhibit of the annual property and casualty tax forms.

The Texas Attorney General's Office and USAA Property and Casualty Insurance Company made comments regarding the inclusion of guaranty fund assessment and examination payments in the retaliatory calculations. The law firm of Johnson & Gibbs made comments in support of the 1991 annual title tax return and instructions with suggestions for minor changes to the title guaranty fund calculation for tax writeoffs and for the assessment for the Office of Public Insurance Counsel. Republic Life Insurance Company made supporting comments regarding the tax forms with specific suggestions regarding the assessment for the Office of Public Insurance Counsel and the Rapid Deposit Programs (TexNet). The Attorney General's Office advised the department to delete the 1991 Annual Tax Return and Instructions and the 1992 Quarterly Tax Returns and Instructions for Administrative Services Taxes due to the recent decision in the E-Systems case which declared the Administrative Service Tax Act unconstitutional.

The new section is adopted under the Texas Insurance Code, Articles 1.04, 1. 10 §9, 1.14-1, 1.35B, 4.07, 4.10, 4 11, 4.11B, 4.11C, 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 9.48, 9.59, 21.07-6, 21.28-C, 21.28-D, 21.54, and 23.08; the Texas Health Maintenance Organization Act, Articles 20A.22 and 20A.33; and Texas Civil Statutes, Article 6252-13a, §4, and Article 8308, §2.22 and §11.09. The Texas Insurance Code, Article 1.04, places original jurisdiction for the adoption of rules in the department. Article 1.10 §9 requires the department to furnish companies required to report to the department with blank forms for the statements required Article 1 14-1 requires payment of taxes on gross premiums

written by unauthorized insurers. Article 1.35B imposes an assessment for support of the Office of Public Insurance Counsel. Article 4.07 specifies the charges for certain fees The Texas Insurance Code, Articles 4.10, 4.11, 4. 11B, 4.11C, 9.59, and 21.54; Texas Civil Statutes, Article 8308, §2.22 and §11.09; and the Texas Health Maintenance Organization Act Article, 20A.33, require payment of taxes on gross premiums by entities regulated by the department or on gross amounts of similar revenue by health maintenance organizations. The Texas Insurance Code, Articles 9.48, 21.28-C, and 21.28-D provide for premium tax writeoffs based on guaranty fund association payments. The Texas Insurance Code, Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6, and 23.08, require the payment of maintenance taxes by certain entities regulated by the department. The Texas Insurance Code, Articles 4.10, and 4.11, and Texas Health Maintenance Organization Act, Article 20A.22, give the department rulemaking authority. Texas Civil Statutes, Article 6252-13a, §4, requires and authorizes the department to adopt rules of practice setting forth the nature and requirements of all procedures available.

§7.51. Preparation of 1991 Tax Returns by Insurers and Other Entities. Forms and instructions for the preparation of tax returns and certain fees for insurance companies and other principals for the 1991 calendar year are adopted by reference. These instructions and forms are published by the Texas Department of Insurance and may be obtained from Tax Administration of the Texas Department of Insurance, William P. Hobby State Office, Tower One, Room 860, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104; (512) 322-4233. Each insurer or other entity shall follow such instructions and use and report on such forms as appropriate to its operations. The instructions and forms are more particularly identified as follows:

(1) a form identified as the Instructions for Filing and Preparing the 1991 Texas Annual Tax Return-Domestic, Foreign, and Alien Carriers Transacting Life, Health, and Accident Business;

(2) form identified as the 1991 Annual Tax Return for Domestic, Foreign, and Alien Carriers Transacting Life, Health, and Accident Business;

(3) a form identified as the Instructions for Filing and Preparing the 1991 Texas Annual Tax Return-Domestic, Foreign and Alien Carriers, Lloyds, Reciprocal Exchanges and Miscellaneous Organizations Transacting Property and Casualty Business;

(4) a form identified as the 1991 Annual Tax Return to be completed by Domestic, Foreign, and Alien Carriers, Lloyds, Reciprocals, and Miscellaneous Organizations Transacting Property and Casualty Business;

(5) a form identified as the Instructions for Filing and Preparing the 1991 Texas Annual Tax Return for Health Maintenance Organizations;

(6) a form identified as the 1991 Annual Tax Return to be completed by Health Maintenance Organizations;

(7) a form identified as the 1991 Annual Tax Return to be completed by Prepaid Legal Organizations;

(8) a form identified as the 1991 Annual Tax Return, to be completed by Local Mutual Aid Associations;

(9) a form identified as the Instructions for Filing and Preparing the 1992 Texas Quarterly Premium Tax Return-Domestic, Foreign, and Alien Carriers Transacting Life, Health, and Accident Business;

(10) a form identified as the 1992 Quarterly Tax Return for Life, Health, and Accident Insurance Carriers;

(11) a form identified as the Specific Instructions for Preparing and Filing the 1992 Texas Quarterly Premium Tax Return-Domestic, Foreign, and Alien Carriers Transacting Property and Casualty Business;

(12) a form identified as the 1992 Quarterly Tax Return for Property and Casualty Insurance Carriers;

(13) a form identified as the Instructions for Filing and Preparing the 1992 Texas Quarterly Premium Tax Return-Health Maintenance Organizations;

(14) a form identified as the 1992 Quarterly Tax Return for Health Maintenance Organizations;

(15) a form identified as the Specific Instructions for Preparing and Filing the 1992 Texas Quarterly Premium Tax Return-Domestic, Foreign, and Alien Carriers Transacting Title Business;

(16) a form identified as the 1992 Quarterly Tax Return for Title Insurance Carriers;

(17) a form identified as the Instructions for Filing and Preparing the 1991 Texas Annual Tax Return-Foreign and Alien Life, Health and Accident Insurance Carriers operating under Articles 3.25 and 3.59, Texas Insurance Code;

(18) a form identified as the 1991 Annual Tax Return to be completed by Foreign and Alien Life, Health and Accident Insurance Carriers operating under Articles 3.25 and 3.59;

(19) a form identified as the 1991 Maintenance Tax Return, for Third Party Administrators, Certain Insurers, and Health Maintenance Organizations providing services of a Third Party Administrator;

(20) a form identified as General Instructions for Filing the 1991 Maintenance Tax Return for Third Party Administrators;

(21) a form identified as the Specific Instructions for Completing the 1991 Texas Annual Tax Return for Title Business;

(22) a form identified as the 1991 Annual Tax Return to be completed by Domestic and Foreign Title Carriers;

(23) a form identified as the Instructions for Filing Annual Tax Return of Insured Applicable to Independently Procured Insurance (FT-1);

(24) a form identified as the Annual Tax Report of Insured Applicable to Independently Procured Insurance;

(25) a form identified as the Instructions for Filing-Annual Purchasing Group Premium Tax Report;

(26) a form identified as the Annual Purchasing Group Report;

(27) a form identified as the Specific Instructions for Completing the 1991 Texas Annual and Quarterly Tax Returns for Registered Risk Retention Groups; and

(28) a form identified as the 1991 Texas Workers' Compensation Maintenance Tax Surcharge.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 5, 1992.

TRD-9201798 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: February 26, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512) 463-6327

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 21. Division of Right of Way

Control of Signs Along Rural Roads

• 43 TAC §21.441, §21.561

Texas Department of Transportation adopts the repeal of §21.441 and §21. 561, concerning control of signs along rural roads, without changes to the proposed text as published in

the November 8, 1991, issue of the *Texas Register* (16 TexReg 6436).

The department has determined that currently there is an inequity between the higher permit fees for signs along rural roads than for signs along interstate and primary highways and this could cause detrimental effects on the sign industry, Texas' economy, and the public welfare. The department has also determined that the sign permit fees should be adjusted and that the procedures should be expanded and clarified for permit periods, renewals, transfers, and cancellation and that requirements for removal of signs should be consolidated in one section. Therefore, the department is repealing the existing sections and simultaneously adopting on a permanent basis new sections which more accurately outline the updated procedures and requisites.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Texas Civil Statutes, Article 7784v-3, which provide the commission with the authority to adopt rules to regulate the orderly and effective display of outdoor advertising signs along rural roads and to prescribe permit fees in amounts sufficient to recover costs for enforcing that article.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201612 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Effective date: February 24, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-8630

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• 43 TAC §§21.441, 21.561, 21.572

The Texas Department of Transportation adopts new §§21.441, 21.561, and 21.572, concerning control of signs along rural roads, without changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 TexReg 6437).

The department has determined that currently there is an inequity between the higher permit fees for signs along rural roads than for signs along interstate and primary highways and this could cause detrimental effects on the sign industry, Texas' economy, and the public welfare. The department has also determined that the sign permit fees should be adjusted and that the procedures should be expanded and clarified for permit periods, renewals, transfers, and cancellation and that requirements for removal of signs should be consolidated in one section.

Section 21.441 outlines applicability, application, and issuance, permit renewals, and permit fees. The section provides for a permit fee in the amount of $96 for one year; a permit renewal fee of $40 per year; and a transfer fee of $25. Section 21.561 consolidates the requirements for removal of signs into one section. Section 21.572 establishes procedures for notice and appeal. New section 21.441 and §21.561 replace existing sections which are simultaneously being repealed.

On November 20, 1991, the department conducted a public hearing to receive data, comments, and views concerning the proposed new sections. No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Texas Civil Statutes, Article 7784v-3, which provide the commission with the authority to adopt rules to regulate the orderly and effective display of outdoor advertising signs along rural roads and to prescribe permit fees in amounts sufficient to recover costs for enforcing that article.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201611 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Effective date: February 24, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-8630

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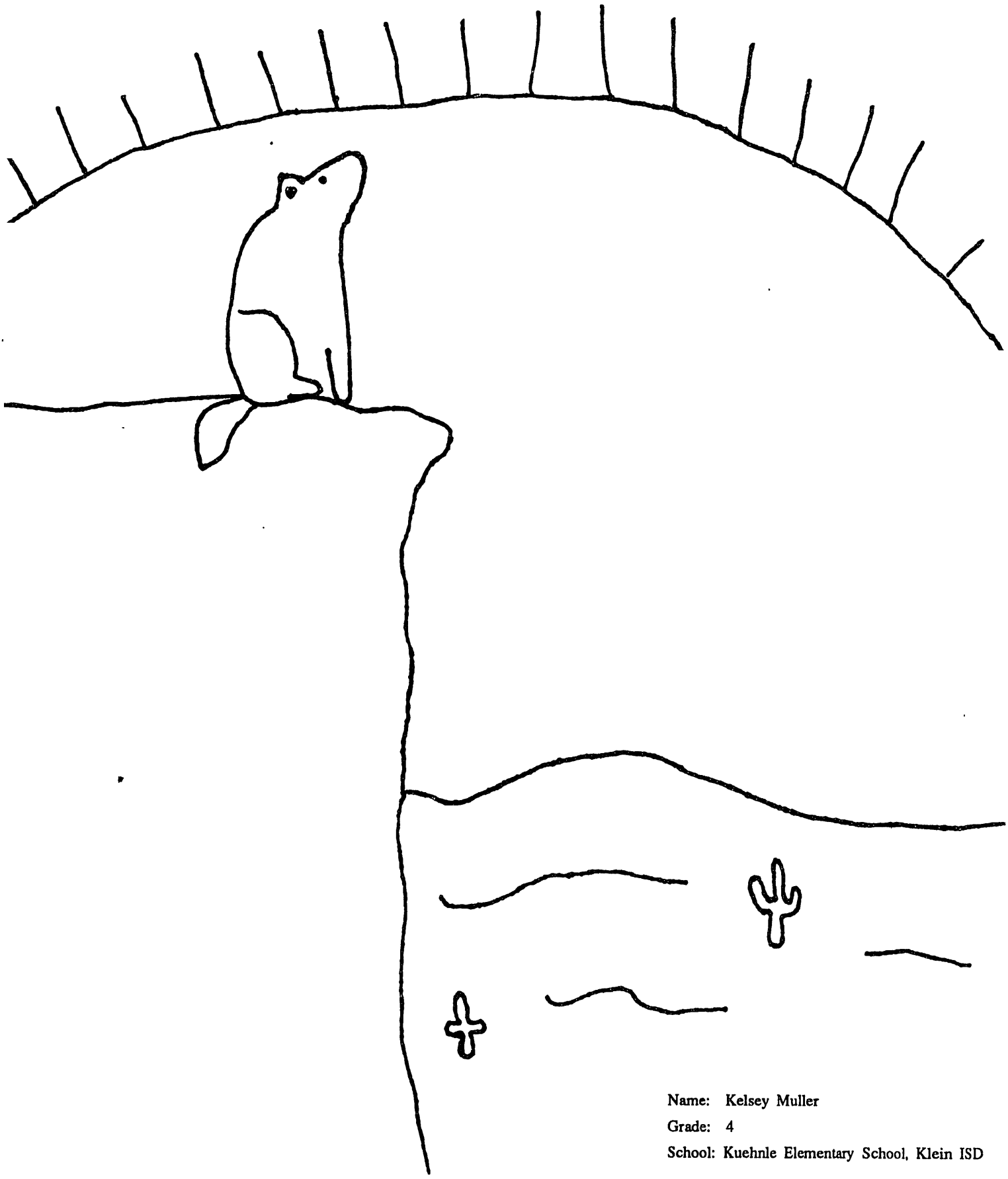

Name: Kelsey Muller

Grade: 4

School: Kuehnle Elementary School, Klein ISD

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register.*

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register.*

Texas Department on Aging

Thursday, February 13, 1992, 8:30 a.m. The Texas Board on Aging's Ad Hoc Committee on Nominations for Appointment/Reappointment to the Citizens Advisory Council will meet at the Texas Department on Aging, 1949 South IH-35, Third Floor Conference Room, Austin. According to the complete agenda, the committee will call the meeting to order; review nominations for appointments/reappointments to the Citizens Advisory Council and prepare recommendation regarding slate for the Board on Aging; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: February 5, 1992, 4:04 p.m.

TRD-9201889

Thursday, February 13, 1992, 9:30 a.m. The Texas Board on Aging of the Texas Department on Aging will meet at the Texas Department on Aging, 1949 South IH-35, Third Floor Conference Room, Austin. According to the complete agenda, the board will consider and possibly also act on: approval of staff's recommendations on funding and grant conditions regarding the Panhandle AAA's options for independent living program; and clarification of board's intent regarding approval of protecting federal reversionary interest in multipurpose senior centers policy.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: February 4, 1992, 3:05 p.m.

TRD-9201758

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Texas Department of Agriculture

Thursday, February 27, 1992, 10 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture, Stephen F. Austin Building, 1700 North Congress Avenue, Room 928B, Austin. According to the complete agenda, the department will hold a continuation of previous administrative hearing held on December 17, 1991 regarding TDA Docket Number 53-91-AEP; and Texas Department of Agriculture versus Laurie Russell.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: February 5, 1992, 10:43 a.m.

TRD-9201829

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State Bar of Texas

Thursday-Friday, February 13-14, 1992, 10 a.m. and 9 a.m. respectively. The Commission for Lawyer Discipline of the State Bar of Texas will meet at the Texas Law Center, 1414 Colorado Street, Room 204 (both days), Austin. According to the agenda summary, the commission will call the meeting to order; discuss pending litigation pursuant to Article 6252-17(2)(e); discuss pending grievance matters pursuant to §4.06(e) and §2.15; discuss representation of Victor Speert; consider special counsel assignment of cases; discuss personnel matters; introduction of visitors; authorization of settlements; authorization of committee judgments; review statistical reports; discuss resolved cases; Mike Crowley presentation; discuss special counsel program; review prior minutes; review advisory committee reports; discuss operating rules; review duties and authority of commission; review General Counsel's budget; review appointments and membership of new committees; discuss grievance committees; discuss commission procedures; review commission's compliance of State Bar Act-orders of Supreme Court; discuss toll free hotline; backlog of cases; discuss media plan; recovery of attorney's fees; hear public comment; and adjourn.

Contact: Lori Markham, 400 West 15th Street, Suite 1500, Austin, Texas 78701, (512) 463-1381.

Filed: February 5, 1992, 4:56 p.m.

TRD-9201891

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Texas Bond Review Board

Tuesday, February 11, 1992, 10 a.m. The Texas Bond Review Board Staff met at the Reagan Building, 105 West 15th Street, Room 106, Austin. According to the emergency revised agenda summary, the staff will discuss proposed issues: application of Texas Water Commission, lease-purchase of computer equipment. The emergency status is necessary to allow timely consideration of application by board.

Contact: Tom K. Pollard, 506 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1741.

Filed: February 5, 1992, 4:34 p.m.

TRD-9201890

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Texas Cancer Council

Wednesday, February 19, 1992, 9 a.m. The Board of Directors of the Texas Cancer Council will meet at the Texas Department of Health, 1100 West 49th Street, Room M-739, Austin. According to the complete agenda, the board will call the meeting to order; adoption of minutes; hear executive director's report; donation from Janssen Pharmaceutica; distribution of equipment; discussion/adoption of strategic plan; FY 1992 funding requests; future council activities; announcements; discuss other business; and adjourn.

Contact: Emily F. Untermeyer, 211 East Seventh Street, Suite 710, Austin, Texas 78701, (512) 463-3190.

Filed: February 5, 1992, 9:08 a.m.

TRD-9201790

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Texas Department of Commerce

Wednesday, February 12, 1992, 9:30 a.m. The Board of Directors of the Texas Department of Commerce will meet at the First City Centre Building, 816 Congress Avenue, 11th Floor Board Room, Austin. According to the agenda summary, the board will call the meeting to order and recess into executive session to discuss litigation; call to order in open meeting; introduction of board members; adopt minutes from meetings of January 7-8, 1992; report from the executive director to include strategic planning report; status report on Sunset Review process; executive director bond; report on status of bond financing plan; discussion of policy issues; and adjourn.

Contact: Mike Regan, P.O. Box 12728, Austin, Texas 78711, (512) 320-9611.

Filed: February 4, 1992, 4:41 p.m.

TRD-9201785

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Advisory Commission on State Emergency Communications

Wednesday, February 12, 1992, 10 a.m. The Executive Committee of the Advisory Commission on State Emergency Communications will meet at 1101 Capital of Texas Highway South, Building B-100, Austin. According to the agenda summary, the committee will call the meeting to order and recognize guests; hear public comment; consider for approval of West Central Texas Council of Governments' plan amendment; report and update on the Coastal Bend Council of Governments' regional plan; report and discussion of proposed meeting with the Emergency Communications Districts; discussion of the upcoming meeting with the Texas Association of Regional Councils' executive board; discussion and reorganization of ACSEC's Committees structure and appointees; staff report and discussion on ACSEC's Five-Year Plan; staff report on 9-1-1 participation of Kinney County; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: February 4, 1992, 4:26 p.m.

TRD-9201783

Wednesday, February 12, 1992, 1:30 p.m. The Addressing Committee of the Advisory Commission on State Emergency Communications will meet at 1101 Capital of Texas Highway South, Building B-100, Austin. According to the complete agenda, the committee will call the meeting to order and recognize guests; hear public comment; review elements of addressing from committee's adopted recommendations; discuss procedures for determining addressing costs; discuss ACSEC's role in addressing and funding criteria; discuss the regional plan amendment process for addressing; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: February 4, 1992, 4:26 p.m.

TRD-9201784

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Governor's Health Policy Task Force

Thursday, February 13, 1992, 9 a.m. The Subcommittee on Essential Services of the Governor's Health Policy Task Force will meet at the John H. Reagan Building, 105 West 15th Street, Room 103, Austin. According to the agenda summary, the subcommittee will have a presentation on Texas Demographics/Mr. John Hugg, Health Data and Policy Planning, M.A. Bureau of State; discussion; presentation on state provided services; Medicaid and Medicare-Mr. Steve Svadlenak, Director for Acute Care Services/Texas Department of Human Services; discussion; private insurance providers/small business, large business insurers: market climate/background issues; state mandate and regulation/federal regulation/ERISA; discussion of subcommittee business; and adjourn.

Contact: Pamela Crail, P.O. Box 149133, Austin, Texas 78714-9133, (512) 463-6473.

Filed: February 4, 1992, 3:46 p.m.

TRD-9201747

Thursday, February 13, 1992, 10 a.m. The Subcommittee on Cost Containment of the Governor's Health Policy Task Force will meet at the John H. Reagan Building, 105 West 15th Street, Room 101, Austin. According to the agenda summary, the subcommittee will call the meeting to order; introduction to health care economics and cost containment; health expenditures in Texas-Charles Begley, Ph.D., Jeffrey Guidry, M.P.A.; health care markets-Dave Warner, Ph.D.; overview of cost containment programs-Anne Dunkelberg, M.P.A.; review of health facilities bed supply-Dora McDonald, M.P.A.; and scope of subcommittee work.

Contact: Pamela Crail, P.O. Box 149133, Austin, Texas 78714-9133, (512) 463-6473.

Filed: February 4, 1992, 3:47 p.m.

TRD-9201748

Friday, February 14, 1992, 9 a.m. The Subcommittee on Finance of the Governor's Health Policy Task Force will meet at the John H. Reagan Building, 105 West 15th Street, Room 101, Austin. According to the agenda summary, the subcommittee will meet with Ms. Pat Cole, Director of Health and Human Services Policy, Office of the Governor; overview of state programs-DeAnn Friedholm, Special Assistant for Health and Human Services-Lieutenant Governor's Office; discussion; single payer versus multiple payer system-M. David Lowe, M.D., Ph.D., President, University of Texas Health Science Center; subcommittee business; and adjourn.

Contact: Pamela Crail, P.O. Box 149133, Austin, Texas 78714-9133, (512) 463-6473.

Filed: February 4, 1992, 3:44 p.m.

TRD-9201745

Friday, February 14, 1992, 10 a.m. The Subcommittee on Availability of the Governor's Health Policy Task Force will meet at the John H. Reagan Building, 105 West 15th Street, Room 103, Austin. According to the agenda summary, the subcommittee will convene; discuss primary care programs, current programs/federal, state and local models/panel discussion; EMS systems and services including proposed trauma system; and discuss other business.

Contact: Pamela Crail, P.O. Box 149133, Austin, Texas 78714-9133, (512) 463-6473.

Filed: February 4, 1992, 3:45 p.m.

TRD-9201746

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Texas Department of Health

Monday, February 10, 1992, 8 a.m. The Texas State Board of Examiners of Marriage and Family Therapists of the Texas Department of Health held an emergency meeting at 8407 Wall Street, Austin. According to the complete agenda, the board approved minutes of previous meeting; discussed and possibly acted on: executive director's report; proposed rules as submitted to the Texas Board of Health and published in the *Texas Register* concerning marriage and family therapists; comments received concerning proposed rules; final rules for submittal to the Texas Board of Health; supervision issues (student application, approval of supervisors, role of board members as supervisors); assisting training institutions with curriculum; and licensure examination for marriage and family therapists. The emergency status was necessary due to unforeseeable circumstances of having to act promptly on rules and related matters concerning marriage and family therapists.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628.

Filed: February 5, 1992, 1:24 p.m.

TRD-9201843

Thursday, February 13, 1992, 10 a.m. The Respiratory Care Practitioners Advisory Board of the Texas Department of Health will meet at The Exchange Building, 8407 Wall Street, Room 402, Austin. According to the complete agenda, the board will approve minutes of October 18, 1991 meeting; hear reports of chairperson and program administrator; discuss and possibly act on: amendments to rules §§123.1-123.14 for recommendation to Texas Board of Health for final adoption; applications for approval/disapproval of David Richard Allen, Anthony Wallace Baird, and Loren Kager; complaints on Jeffrey Johnson (forged document and practicing without a certificate), Niki Crossland Witt (forged document and practicing without a certificate), and Thelma Gray (possible abuse of patient); election of officers; and discuss other matters relating to the certification of respiratory care practitioners not requiring advisory board action.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628.

Filed: February 5, 1992, 1:25 p.m.

TRD-9201844

Friday, February 14, 1992, 9:30 a.m. The Texas Emergency Medical Services Advisory Council of the Texas Department of Health will meet at the Red Lion Hotel, 6121 IH-35 North at Highway 290, Austin. According to the complete agenda, the council will hear opening remarks by acting commission of health; approve minutes of previous meeting; discuss and possibly act on nomination report and election of officers, appointment of committees and committee chairs, and rules; hear reports of chairman, Chief of Bureau of Emergency Management, committees (provider; education; public information and education; medical directors); and hear announcements and comments.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550.

Filed: February 5, 1992, 1:22 p.m.

TRD-9201840

Friday, February 14, 1992, 9:30 a.m. The General Advisory Committee of the Chronically Ill and Disabled Children's (CIDC) Services Bureau of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-418, Austin. According to the complete agenda, the committee will approve minutes of October 11, 1991 meeting; discuss and possibly act on: CIDC program update; National Association of Child Hospitals and Related Institutions survey update; medical home and primary care; CIDC grant proposals (supplemental security income outreach; grassroots/family interface); issue statements; Social Security Act, Title V plan progress; and the committee will have an open discussion.

Contact: John Evans, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7355.

Filed: February 5, 1992, 1:24 p.m.

TRD-9201842

Saturday, February 15, 1992, 9:30 a.m. The Cardiovascular Advisory Committee of the Chronically Ill and Disabled Children's (CIDC) Services Bureau of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-418, Austin. According to the complete agenda, the committee will approve minutes of October 12, 1991 meeting; discuss and possibly act on: CIDC program update; concept development; cardiac center site visit reports (University of Texas Medical Branch, Galveston and Cook/Fort Worth Children's Hospital; Driscoll Foundation Children's Hospital; Brackenridge Children's Hospital); parent input to site visit guidelines; University Medical Center, Lubbock, report on catheterizations (first quarter); physicians for approval; upcoming site visits; and supplemental security income grant.

Contact: John Evans, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7355.

Filed: February 5, 1992, 1:23 p.m.

TRD-9201841

Thursday, February 20, 1992, 9 a.m. The Case Management Sub-Committee of the Maternal and Child Health Advisory Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-103, Austin. According to the complete agenda, the sub-committee will approve minutes from previous meeting, and discuss and possibly act on: case management status report concerning family health services initiatives and targeted case management; provider outreach concerning target audience and methods for reaching target audience; models for reaching providers (early childhood intervention model; and development of implementation strategies.

Contact: Patti Patterson, M.D., 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700.

Filed: February 5, 1992, 1:25 p.m.

TRD-9201845

Thursday, February 27, 1992, 1 p.m. The Primary Health Care Services Program Advisory Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room T-607, Austin. According to the complete agenda, the committee will approve minutes of previous meeting; consider and possibly act on: reorganization; budget preparation; physical move; other program issues; fiscal year 1993 continuation and new application cycle; annual report; and health care in China.

Contact: John Dambroski, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7771.

Filed: February 5, 1992, 1:26 p.m.

TRD-9201846

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Texas High-Speed Rail Authority

Wednesday, February 12, 1992, 9:30 a.m. The Board of Directors of the Texas High-Speed Rail Authority will meet at the John H. Reagan Building, 15th and Congress Avenue, Room 109, Austin. According to the agenda summary, the board will discuss approval of minutes; environmental consultant selection; meet in executive session to receive attorney's advice regarding litigation; election of board treasurer; and citizen communication.

Contact: Allan Rutter, 823 Congress Avenue, Suite 1502, Austin, Texas 78701, (512) 478-5484.

Filed: February 4, 1992, 3:21 p.m.

TRD-9201740

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Texas Historical Commission

Thursday, February 13, 1992, 10 a.m. The Los Caminos del Rio Task Force of the Texas Historical Commission will meet at the Texas Parks and Wildlife Main Conference Room, 4200 Smith School Road, Austin. According to the complete agenda, the task force will review accomplishments during 1991; overview of upcoming projects; NHL and NR nominations; and interest of the world monuments funds and friends.

Contact: Mario L. Sanchez, 16th and Colorado Streets, Austin, Texas 78711, (512) 475-7978.

Filed: February 5, 1992, 1:06 p.m.

TRD-9201838

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Texas Department of Human Services

Friday, February 14, 1992, 9 a.m. The EPSDT Dental Professional Advisory and Review Subcommittee of the Texas Depart-

ment of Human Services will meet at 701 West 51st Street, First Floor, West Tower, Room 103-W, Austin. According to the complete agenda, the subcommittee will call the meeting to order; take roll call; discuss approval of October 25, 1991 meeting minutes; House Bill 7 department reorganization; revised rule for advisory committees and subcommittees; changes in reimbursement methodology for anesthesiologists; FY 1992 activity report; dental periodicity schedule; implementation of ADA codes; follow-up on payment system issues; NHIC report; meet in executive session; and adjourn.

Contact: Bridget Cook, P.O. Box 149030, Austin, Texas 78714-9030, (512) 338-6944.

Filed: February 5, 1992, 11:08 a.m.

TRD-9201832

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Texas Department of Insurance

Tuesday, February 18, 1992, 2 p.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1861 to consider the appeal by Mary Kathleen Davis from Order Number 91-1610 of the Commissioner of Insurance, and request to stay the order.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: February 6, 1992, 9:50 a.m.

TRD-9201902

Wednesday, February 19, 1992, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will hold a public hearing to consider amendments to proposed 28 TAC §1.601 relating to notice to policy-holders of the Texas Department of Insurance toll free telephone number and proposed new 28 TAC §1.602 concerning insurer toll free telephone number and the consolidation or combination of the two rules under Docket Number 1862.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: February 6, 1992, 9:16 a.m.

TRD-9201899

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Texas Board of Professional Land Surveying

Friday, February 14, 1992, 8:30 a.m. The Texas Board of Professional Land Surveying will meet at 7701 North Lamar Boulevard, Suite 400, Austin. According to the complete agenda, the board will conduct a formal hearing before an Administrative Law Judge on Complaints 91-18 and 92-7 to determine whether any disciplinary action should be taken against Registered Professional Land Surveyors who holds license number 1184 and 4101 respectively.

Contact: Sandy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: February 5, 1992, 10:43 a.m.

TRD-9201828

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Texas Municipal League Intergovernmental Risk Pool

Saturday, February 8, 1992, 1 p.m. The Board of Trustees Executive Committee of the Texas Municipal League Intergovernmental Risk Pool met at the Four Seasons Hotel, 98 San Jacinto Street, Austin. According to the complete agenda, the committee reviewed applicants for position of executive director of the Texas Municipal League Intergovernmental Risk Pool.

Contact: Marvin Townsend, 211 East Seventh Street, Austin, Texas 78701, (512) 320-1325.

Filed: February 4, 1992, 2:24 p.m.

TRD-9201729

Saturday, February 8, 1992, 3 p.m. The Board of Trustees Underwriting Committee of the Texas Municipal League Intergovernmental Risk Pool met at the Four Seasons Hotel, 98 San Jacinto Street, Austin. According to the complete agenda, the committee considered a partial return of members' equity; status report regarding TEIA-employers claims and claims review by Northshore International establishment of life time benefit fund; and considered serving member-sponsored non-profit corporations.

Contact: Marvin Townsend, 211 East Seventh Street, Austin, Texas 78701, (512) 320-1325.

Filed: February 4, 1992, 2:23 p.m.

TRD-9201725

Saturday, February 8, 1992, 3 p.m. The Board of Trustees Finance Committee of the Texas Municipal League Intergovernmental Risk Pool met at the Four Seasons Hotel, 98 San Jacinto Street, Austin. According to the complete agenda, the committee presented the 1990-1991 audit; receipt of site selection feasibility study; salary survey report; considered staffing requests; financial and investment reports; and reestablishment of the property fund.

Contact: Marvin Townsend, 211 East Seventh Street, Austin, Texas 78701, (512) 320-1325.

Filed: February 4, 1992, 2:22 p.m.

TRD-9201726

Sunday, February 9, 1992, 8 a.m. The Board of Trustees of the Texas Municipal League Intergovernmental Risk Pool met at the Four Seasons Hotel, 98 San Jacinto Street, Austin. According to the agenda summary, the board considered bylaws amendment; presented 1990-1991 audit; discussed financial and investment reports; considered a partial return of member equity; established life-time benefit fund; considered TMRS amendments; and heard staff reports.

Contact: Marvin Townsend, 211 East Seventh Street, Austin, Texas 78701, (512) 320-1325.

Filed: February 4, 1992, 2:24 p.m.

TRD-9201728

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Public Utility Commission of Texas

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10921, Brazos Electric Power Cooperative, Inc. standard avoided cost calculation for purchases of capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:04 p.m.

TRD-9201866

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10917, Gulf States Utilities standard avoided cost calculation for purchases of capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:04 p.m.

TRD-9201867

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10915, Lower Colorado River Authority standard avoided cost calculation for purchases of capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:05 p.m.

TRD-9201868

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10913, Sam Rayburn G&T Electric Cooperative, Inc. standard avoided cost calculation for purchases capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:05 p.m.

TRD-9201869

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10912, Tex-La Electric Cooperative, Inc. standard avoided cost calculation for purchases capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:07 p.m.

TRD-9201870

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10911, Northeast Texas Electric Cooperative, Inc. standard avoided cost calculation for purchases capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:07 p.m.

TRD-9201871

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10856, Texas-New Mexico Power standard avoided cost calculation for purchases capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:08 p.m.

TRD-9201872

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10836, Southwestern Public Service standard avoided cost calculation for purchases capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:08 p.m.

TRD-9201873

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10833, Texas Utilities Electric standard avoided cost calculation for purchases capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:09 p.m.

TRD-9201874

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10832, Houston Power and Light standard avoided cost calculation for purchases capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:09 p.m.

TRD-9201875

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10826, Central Power and Light standard avoided cost calculation for purchases capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:10 p.m.

TRD-9201876

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10825, Southwestern Electric Power Company standard avoided cost calculation for purchases capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:10 p.m.

TRD-9201877

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10824, El Paso Electric standard avoided cost calculation for purchases capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:11 p.m.

TRD-9201878

Tuesday, February 18, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10823, West Texas Utilities standard avoided cost calculation for

purchases of capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66(h).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:11 p.m.

TRD-9201879

Thursday, February 20, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10127, application of Southwestern Bell Telephone Company to revise Section 2 of its intrastate access service tariff.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:59 p.m.

TRD-9201752

Thursday, March 19, 1992, 10 a.m. (Rescheduled from Monday, March 16, 1992, at 10 a.m.). The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. The division will hold a hearing on the merits in Docket Number 10875-petition for waiver from requirements of Substantive Rule 23.55(e)(1) and (2) of Fort Bend Telephone Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:02 p.m.

TRD-9201863

Thursday, March 19, 1992, 10 a.m.(rescheduled from Monday, March 16, 1992, 10 a.m.) The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10874-petition for waiver from requirements of Substantive Rule 23.55(e) (1) and (2) of Ganado Telephone Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:02 p.m.

TRD-9201864

Thursday, March 19, 1992, 10 a.m. (Rescheduled from Monday, March 16, 1992, 10 a.m.). According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10876, petition for waiver from requirements of Substantive Rule 23.55(e)(1) and (2) of La Ward Telephone Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1992, 3:03 p.m.

TRD-9201865

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Texas Rehabilitation Commission

Thursday, February 13, 1992, 9 a.m. The Board of the Texas Rehabilitation Commission will meet at the Stouffer Hotel, 9721 Arboretum Boulevard, Arboretum Center, Trinity Rooms A & B, Austin. According to the complete agenda, the board will take roll call; introduction of guests; invocation; commissioner's comments; approval of six-year strategic plan concept and associated costs; hear public comment; meet in executive session to review potential litigation; personnel practices; staff presentations involving the Texas Rehabilitation Commission; and disability determination services and management audit. These subjects will be discussed in executive session pursuant to Sections 2(e), 2(g), and 2(r) Open Meetings Act (Article 6252-17, Vernon's Texas Civil Statutes) and adjourn.

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4051.

Filed: February 5, 1992, 9:53 a.m.

TRD-9201805

Friday, February 14, 1992, 9 a.m. The Board of the Texas Rehabilitation Commission will meet at the Stouffer Hotel, 9721 Arboretum Boulevard, Arboretum Center, Trinity Rooms A & B, Austin. According to the complete agenda, the board will take roll call; introduction of guests; continuation of board agenda from February 13, 1992; meet in executive session to review potential litigation; personnel practices; staff presentations involving the Texas Rehabilitation Commission; and disability determination services and management audit. These subjects will be discussed in executive session pursuant to Sections 2(e), 2(g), and 2(r) Open Meetings Act (Article 6252-17, Vernon's Texas Civil Statutes) and adjourn.

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4051.

Filed: February 5, 1992, 9:55 a.m.

TRD-9201806

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School Land Board

Thursday-Friday, February 13-14, 1992, 11 a.m. The School Land Board will meet at the Embassy Suites, 6100 Gateway East, El Paso. According to the agenda summary, the board will travel to inspect permanent school fund lands in the El Paso area.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: February 5, 1992, 5:49 p.m.

TRD-9201893

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Structural Pest Control Board

Tuesday, February 18, 1992, 9 a.m. The Structural Pest Control Board will meet at the Thompson Conference Center, Room 2.122, 2405 East Campus Drive, Austin. According to the agenda summary, the board will discuss approval of the minutes of December 11, 1991 meeting; hear public comment; Charles Villareal, Hearing Number 92-4 at 9:30 a.m.; Rickey Rushing doing business as Rushing Pest Control at 10 a.m.; Thomas J. Carter, Jr. at 10:30 a.m.; consider for adoption sections 593.21 and 593.22; consider proposed amendments to regulations 591.21, 593.1, 593.3, 593.23, 593.24, 595.6, 595.7, 595.8, 593.7 and new section 593.13; committee report on strategic plan; committee report on continuing education; executive director's report; and approval of administrative penalties and consent agreements.

Contact: Benny M. Mathis, Jr., 9101 Burnet Road, #201, Austin, Texas 78758, (512) 835-4066.

Filed: February 5, 1992, 10:44 a.m.

TRD-9201827

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Texas Guaranteed Student Loan Corporation

Wednesday, February 12, 1992, 8:30 a.m. The Finance Committee of the Texas Guaranteed Student Loan Corporation will meet at 12015 Park 35 Circle, The Colonnade Building, Suite 300, Austin. According to the complete agenda, the committee will discuss approval of the minutes of December 13, 1991; review of minority vendor policy; report of FY 1991 financial statement; report of FY 1992 financial statement, first quarter; meet in executive session to discuss legal matters: consultation between finance committee and general counsel concerning collections; and personnel matters: evaluation of the management of loan servicing and related issues.

Contact: Peggy Irby, 12015 Park 35 Circle, Austin, Texas 78758, (512) 835-1900.

Filed: February 4, 1992, 1:11 p.m.

TRD-9201704

Wednesday, February 12, 1992, 10 a.m. The Board of Directors of the Texas Guaranteed Student Loan Corporation will meet at 12015 Park 35 Circle, The Colonnade Building, Suite 300, Austin. According to the complete agenda, the board will discuss approval of the minutes of September 26, 1991; discuss corporate status report-first quarter; financial report: Cooper's audit; first quarter finance; discuss legislation: reauthorization; legislative affairs-a recommendation; new business: lender advisory committee report; school advisory committee report; nominations to lender and school advisory committee; discuss old business: future meeting dates; report from policy committee; report from finance committee; meet in executive session to discuss legal matters: consultation between finance committee and general counsel concerning collections; personnel matters: evaluation of the management of loan servicing and related issues; evaluation and action related to executive management; and adjourn.

Contact: Peggy Irby, 12015 Park 35 Circle, Austin, Texas 78758, (512) 835-1900.

Filed: February 4, 1992, 1:11 p.m.

TRD-9201703

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University of Houston System

Monday, February 10, 1992, 10 a.m. The Board of Regents Executive Committee of the University of Houston System met at the University of Houston System Offices, 1600 Smith, 34th Floor, Conference Room I, Houston. According to the complete agenda, the committee discussed and/or approved the following: appointment, evaluation, or dismissal of personnel; informational reports from employees; purchase, exchange, lease or value of real property, negotiated contracts for prospective gifts or donations; and heard report and action from executive session.

Contact: Peggy Cervenka, 1600 Smith, 34th Floor, Houston, Texas 77002, (713) 754-7442.

Filed: February 4, 1992, 10:56 a.m.

TRD-9201694

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University Interscholastic League

February 6, 1992, 9 a.m. The State Executive Committee of the University Interscholastic League held an emergency meeting at the Red Lion Hotel, IH-35 at Highway 290 East, Austin. According to the agenda summary, the committee heard appeals of automatic penalty: Banquete; Shelbyville; Loop; Brownfield; San Perlita; El Paso, Parkland; Alief, Olle; Victor Salazar of Gonzales High School, Violation of Section 1206; Randy Parks and student representative from Lingleville High School, Section 1201 and 1200; Marty Renner of Hooks High School, Violation of 1208(h)(2); Henry Paige of Hidalgo Junior High School, Violation of 1201(b)(3) and termination of game; Larry King and Dave Brown of Weslaco High School, Violation of Section 1201(b)(3); and Larry Berman of Marble Falls High School, Violation of Section 1201(c)(3). The emergency status was necessary as agenda was held for case just added this morning.

Contact: B. J. Stamps, 2622 Wichita Street, Austin, Texas 78705, (512) 471-5883.

Filed: February 4, 1992, 11:22 a.m.

TRD-9201701

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Texas Water Commission

Wednesday, February 5, 1992, 10 a.m. The Texas Water Commission met at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the emergency revised agenda summary, the commission considered various matters within the regulatory jurisdiction. In addition, the commission considered items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in the entirety or for particular action at a future date or time. The emergency status was necessary due to unforeseeable circumstances these items had to be placed on agenda.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: February 4, 1992, 11:25 a.m.

TRD-9201702

Friday, February 14, 1992, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 123, Austin. According to the special agenda summary, the commission will consider budget amendment for petroleum storage tank program.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: February 5, 1992, 3:29 p.m.

TRD-9201883

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Texas Water Development Board

Wednesday, February 12, 1992, 3 p.m. The Audit Committee of the Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 513-F, Austin. According to the complete agenda, the committee (additional non-committee board members may be present to deliberate but will not vote in the meeting) will consider approval of the minutes of the October 16, 1991 meeting; be briefed on the annual financial report for the year ended August 31, 1991; be briefed on the FYE August 31, 1991 annual audit and findings to date of the State Auditor; be briefed on the status of the Internal Audit Plan and project in progress; and the committee may recess into executive session to consider a performance evaluation of the Internal Auditor and may reconvene in open meeting if action is needed.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: February 4, 1992, 3:35 p.m.

TRD-9201742

Wednesday, February 12, 1992, 4 p.m. The Finance Committee of the Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 513-F, Austin. According to the complete agenda, the committee (additional non-committee board members may be present to deliberate but will not vote in the meeting) will consider approval of the minutes of the January 14, 1992 meeting; consider items relating to any pending or prospective applications for funding; and may discuss items on the agenda of the February 13, 1992 board meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: February 4, 1992, 3:35 p.m.

TRD-9201741

Thursday, February 13, 1992, 9 a.m. The Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the board will consider minutes; development fund manager's report; extension of commitment for City of Bridgeport; financial assistance for Fallbrook Utility District, South Texas Water Authority (Ricardo), Sebastian WSC, Cities of La Coste, Angeleton, El Paso, Eagle Pass, Sandy Land UWCD and Dallam County, Salt Fork, Wharton, Palo Duro, Panhandle and Hemphill S&WCD's; invitation to bid and contract for conservation materials and training; 31 TAC 355 amendments; planning assistance agreement with United States Army Corps of Engineers; lending rate scale for 1992A-1992F bond proceeds; district refunding criteria; economically dis-

tressed areas program policies; interim financing program for the State Water Pollution Control Revolving Fund; agency strategic plan; and meet in emergency session regarding litigation.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: February 5, 1992, 1:02 p.m.

TRD-9201836

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Regional Meetings

Meetings Filed February 4, 1992

The County Education District #14 met at the Pampa Middle School Library, 2401 Charles Street, Pampa, February 10, 1992, at 7 p.m. Information may be obtained from Dawson Orr, 321 West Albert Street, Pampa, Texas 79065, (806) 669-4700. TRD-9201723.

The High Plains Underground Water Conservation District Number One Board of Directors will meet at 2930 Avenue Q, Conference Room, Lubbock, February 11, 1992, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9201730.

The Jasper County Appraisal District Board of Directors will meet at Highways 105 and 2246, Evandale, February 11, 1992, at 7 p.m. Information may be obtained from David W. Luther, P.O. Box 1300, Jasper, Texas 75951, (409) 384-2544. TRD-9201731.

The Kendall County Appraisal District Board of Directors met at 207 East San Antonio Street, Kendall Appraisal District Office, Boerne, February 7, 1992, at 9 a.m. Information may be obtained from Ed W. Mergele, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9201705.

The Permian Basin Regional Planning Commission Board of Directors will meet at the PBRPC Offices, 2910 LaForce Boulevard, Midland International Airport, Midland, February 12, 1992, at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9201732.

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Meetings Filed February 5, 1992

The Brazos Valley Development Council Executive Committee will meet at the Council Conference Room, 3006 East 29th Street, Door Two, Bryan, February 13, 1992, at 1:30 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9201792.

The Brazos Valley Development Council Executive Committee will meet at the Council Conference Room, 3006 East 29th Street, Door Two, Bryan, February 13, 1992, at 1:30 p.m. (revised agenda). Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9201792.

The Canyon Regional Water Authority Board met at the Marion Independent School District Central Offices, FM 465 and FM 78, Marion, February 10, 1992, at 7:30 p.m. Information may be obtained from David J. Davenport, P.O. Box 188, Marion, Texas 78124, (512) 420-2323. TRD-9201826.

The Capital Area Planning Council Executive Committee will meet at 2520 IH-35 South, Suite 100, Austin, February 12, 1992, at 1:30 p.m. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653. TRD-9201823.

The Cass County Appraisal District Board of Directors met at the Cass County Appraisal District, 502 North Main Street, Linden, February 3, 1992, at 7 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9201793.

The Central Appraisal District of Taylor County Board of Directors will meet at 1534 South Treadaway, Abilene, February 12, 1992, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9201884.

The Central Texas Economic Development District Executive Committee will meet at the Miller Family Steak House, 1620 Lake Brazos Drive, Waco, February 13, 1992, at 1 p.m. Information may be obtained from Bruce Gaines, P.O. Box 154118, Waco, Texas 76715, (817) 799-0258. TRD-9201839.

The Denton Central Appraisal District Appraisal Review Board will meet at 3911 Morse Street, Denton, February 19, 1992, at 9 a.m. Information may be obtained from John D. Brown, 3911 Morse Street, Denton, Texas 76205, (817) 566-0904. TRD-9201837.

The Education Service Center, Region II Board of Directors will meet at 209 North Water, Board Room, Corpus Christi, February 11, 1992, at 6:30 p.m. Information may be obtained from Dr. Ernest Zamora, 209 North Water Street, Corpus Christi, Texas 78401, (512) 883-9288. TRD-9201825.

The Education Service Center, Region VI Board of Directors will meet at the Education Service Center, Region VI, Huntsville, February 13, 1992, at 5 p.m. Information may be obtained from B. Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9201791.

The Hunt County Appraisal District Board of Directors met at the Hunt County Appraisal District, Board Room, 4801 King Street, Greenville, February 10, 1992, at 10 a.m. Information may be obtained from Triena Rogers, P. O. Box 1339, Greenville, Texas 75401, (214) 454-3510. TRD-9201834.

The Hunt County Appraisal District Board of Directors will meet at the Hunt County Appraisal District, Board Room, 4801 King Street, Greenville, February 13, 1992, at 6:30 p.m. Information may be obtained from Triena Rogers, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510. TRD-9201833.

The Nolan County Central Appraisal District Board of Directors will meet at the Nolan County Courthouse, Third Floor, Sweetwater, February 11, 1992, at 7 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9201886.

The Palo Pinto County Education District met at the Palo Pinto County Courthouse, Commissioners Court, Palo Pinto, February 10, 1992, at 6:30 p. m. Information may be obtained from Ron Munday, 102 North West Sixth Avenue, Mineral Wells, Texas 76067, (817) 325-6404. TRD-9201892.

The South Franklin Water Supply Corporation Board of Directors will meet at the Office of South Franklin Water Supply Corporation, Highway 115 South of Mt. Vernon, February 11, 1992, at 7 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mt. Vernon, Texas 75457, (903) 860-3400. TRD-9201885.

The South Franklin Water Supply Corporation will hold a special meeting 1 1/2 Miles South West of the South Franklin School Building on FM 1448, Scroggins, February 18, 1992, at 7 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mt. Vernon, Texas 75457, (903) 860-3400. TRD-9201887.

The Swisher County Appraisal District Appraisal Review Board will meet at 130 North Armstrong, Tulia, February 11, 1992, at 11 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9201795.

The Swisher County Appraisal District Board of Directors will meet at the Conestaga Restaurant, North Highway 87, Tulia, February 13, 1992, at 7:30 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9201794.

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Meetings Filed February 6, 1992

The Brown County Appraisal District Board of Directors met at 403 Fisk Avenue, Brownwood, February 10, 1992, at 7 p.m. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9201898.

The Concho Valley Council of Governments Executive Committee will meet at 5014 Knickerbocker Road, San Angelo, February 12, 1992, at 7 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9201903.

The Education Service Center Region 10 Board of Directors will meet at the Region 10 Board Room, 400 East Spring Valley, Richardson, February 12, 1992, at 12:30 p.m. Information may be obtained from Joe Farmer, 400 East Spring Valley, Richardson, Texas 75081, (214) 231-6301. TRD-9201896.

The Hockley County Appraisal District Board of Directors met at 1103-C Houston Street, Levelland, February 10, 1992, at 7 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9201900.

The Kempner Water Supply Corporation Board of Directors will meet at the Kempner Water Supply Corporation Office, Highway 190, Kempner, February 13, 1992, at 6 p.m. Information may be obtained from Doug Lavender or Alton Myers, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9201895.

The Scurry County Appraisal District Board of Directors will meet at 2612 College Avenue, Snyder, February 11, 1992, at 8 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9201897.

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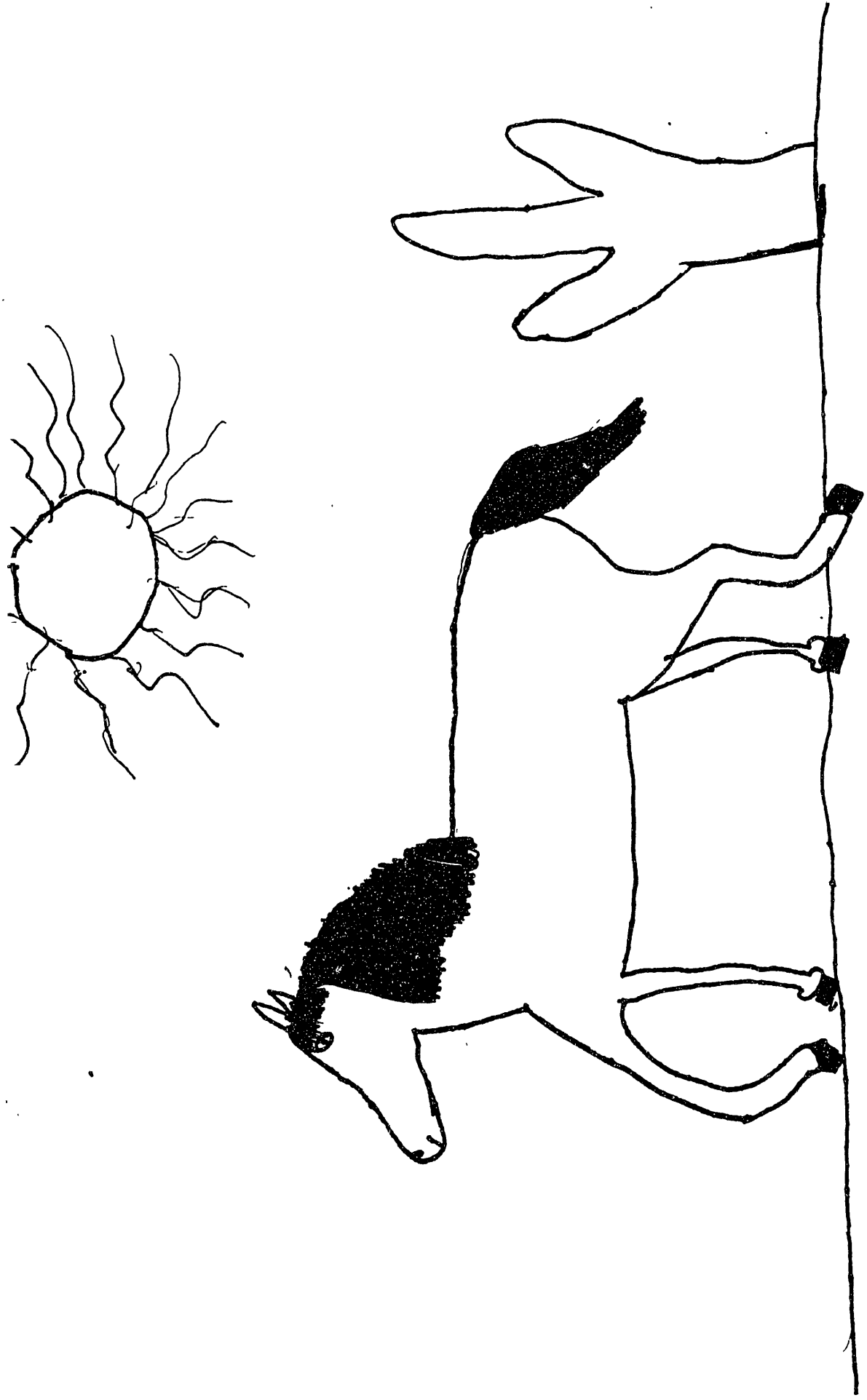

Name: Stacey Simmons

Grade: 4

School: Kuehnle Elementary School, Klein ISD

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Attorney General

1992 Tax Code

OFFICE OF THE ATTORNEY GENERAL
1992 TAX CHARTS

Pursuant to Texas Family Code 14 053(h), the Attorney General of Texas as the "agency charged with enforcing child support orders under Part D of Title IV of the federal Social Security Act" has promulgated the following charts to assist courts in establishing the amount of a child support order These tax charts are applicable to employed and self-employed persons in computing net monthly income

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income Then recompute to determine the obligor's average monthly gross income These tables provide a method for calculating monthly net income ' for child support purposes, subtracting from monthly gross income the social security tax and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations For example, Section 14 053 provides for appropriate additions to "income ' as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes Computation of the obligee's net resources should follow similar steps.

EMPLOYED PERSONS
1992 TAX CHART

Monthly Gross Wages	Social Security Taxes: Old-age, Survivors and Disability Insurance Taxes (6 2%)*	Social Security Taxes: Hospital (Medicare) Insurance Taxes (1.45%)*	Federal Income Taxes**	Net Monthly Income
100 00	6 20	1 45	0-	92 35
200 00	12 40	2.90	0-	184 70
300.00	18 60	4.35	0-	277 05
400 00	24 80	5 80	0-	369 40
500 00	31 00	7 25	1 25	460 50
600.00	37 20	8 70	16.25	537 85
700 00	43.40	10 15	31 25	615 20
800 00	49 60	11 60	46 25	692 55
900.00	55.80	13 05	61 25	769 90
1,000 00	62.00	14 50	76 25	847 25
1,100.00	68.20	15.95	91 25	924 60
1,200 00	74 40	17.40	106.25	1,001 95
1,300 00	80.60	18 85	121 25	1,079 30
1,400 00	86 80	20 30	136 25	1,156.65
1,500.00	93 00	21 75	151 25	1,234 00
1,600 00	99.20	23 20	166 25	1,311 35
1,700.00	105.40	24 65	181 25	1,388 70
1,800 00	111.60	26.10	196 25	1,466 05
1,900.00	117.80	27.55	211 25	1,543 40
2,000.00	124 00	29 00	226 25	1,620 75
2,100 00	130.20	30.45	241.25	1,698.10
2,200.00	136.40	31 90	256.25	1,775 45
2,300 00	142 60	33 35	273 96	1,850 09
2,400 00	148.80	34 80	301.96	1,914 44
2,500 00	155.00	36 25	329 96	1,978 79
2,600.00	161.20	37 70	357 96	2,043 14
2,700 00	167 40	39 15	385 96	2,107.49
2,800.00	173.60	40.60	413.96	2.171 84
2,900 00	179 80	42.05	441.96	2,236 19
3,000.00	186.00	43.50	469.96	2.300 54
3,100 00	192 20	44.95	497.96	2,364 89
3,200.00	198 40	46.40	525.96	2,429 24
3,300.00	204 60	47 85	553.96	2,493 59
3,400.00	210.80	49 30	581 96	2,557 94
3,500 00	217 00	50.75	609 96	2,622 29
3,600.00	223.20	52.20	637 96	2,686 64
3,700 00	229.40	53.65	665 96	2,750 99
3,800 00	235.60	55 10	693.96	2,815 34
3,900.00	241.80	56.55	721 96	2,879 69
4,000 00	248 00	58.00	749 96	2,944 04
4,250 00	263 50	61.63	819.96	3,104 91
4,500.00	279 00	65 25	889 96	3,265 79
4,750.00	286 75***	68.88	959 96	3,434.41
5,000 00	286 75	72 50	1,035 46	3.605 29
5,250 00	286.75	76 13	1,112 96	3,774 16
5,500.00	286.75	79 75	1,190 46	3,943 04
5,750.00	286.75	83 38	1,267 96	4,111 91
6,000.00	286 75	87.00	1,345 46	4,280 79
6,250 00	286 75	90 63	1,422.96	4,449 66
6,500.00	286.75	94 25	1,500 46	4,618 54
6,750.00	286.75	97 88	1,577 96	4,787 41
7,000.00	286.75	101 50	1,655.46	4,956 29
7,500 00	286.75	108.75	1,810 46	5,294 04
8,000 00	286 75	116 00	1,965 46	5,631 79
8,500 00	286.75	123.25	2,120 46	5,969 54

9,000 00	286 75	130 50	2,277 84	6,304.91
9,500 00	286.75	137 75	2,435 21	6,640.29
10,000.00	286 75	145.00	2,592 59	6,975 66
10,500 00	286 75	152 25	2,751 15	7,309 85
11,000 00	286.75	157 33****	2,908 53	7,647 39
11,500 00	286.75	157 33	3,067 10	7,988 82
12,000.00	286 75	157 33	3,224.47	8,331 45
12,500 00	286.75	157.33	3,381 85	8,674 07
13,000.00	286.75	157.33	3,540.41	9,015 51

Footnotes to Employed Persons 1992 Tax Chart:

* An employed person not subject to the Old-age, Survivors and Disability Insurance/Hospital (Medicare) Insurance taxes will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** These amounts represent one-twelfth (1/12) of the annual Federal income tax calculated for a single taxpayer claiming one personal exemption ($2,300.00, subject to reduction in certain cases, as described in the next paragraph of this footnote) and taking the standard deduction ($3,600 00).

For a single taxpayer with an adjusted gross income in excess of $105.250 00, the deduction for the personal exemption is reduced by two percent (2%) for each $2,500.00 or fraction thereof by which adjusted gross income exceeds $105,250.00. In no case is the deduction for the personal exemption reduced by more than 100% For example, monthly gross wages of $9,500 00 times 12 months equals $114,000.00. The excess over $105,250 00 is $8,750.00 $8,750.00 divided by $2,500 00 equals 3 50 The 3 50 amount is rounded up to 4 The reduction percentage is 8% (4 x 2% = 8%) The $2,300.00 deduction for one personal exemption is reduced by $184 00 ($2,300.00 x 8% = $184 00) to $2,116.00 ($2,300 00—$184.00 = $2,116.00).

*** For annual gross wages above $55,500.00, this amount represents a monthly average of the Old-age, Survivors and Disability Insurance tax based on the 1992 maximum Old-age, Survivors and Disability Insurance tax of $3,441 00 per person (6.2% of the first $55,500 00 of annual gross wages equals $3,441.00) One-twelfth (1/12) of $3,441 00 equals $286 75.

**** For annual gross wages above $130,200 00, this amount represents a monthly average of the Hospital (Medicare) Insurance tax based on the 1992 maximum Hospital (Medicare) Insurance tax of $1,887.90 per person (1.45% of the first $130,200.00 of annual gross wages equals $1,887.90). One-twelfth (1/12) of $1,887.90 equals $157 33.

. . . . . .

References Relating to Employed Persons 1992 Tax Chart:

1 **Old-age, Survivors and Disability Insurance Tax**

(a) **Contribution Base**

(1) Social Security Administration's notice dated October 21, 1991, and appearing in 56 Fed. Reg. 55,325 (October 25, 1991)

(2) Section 3121(x)(1) of the Internal Revenue Code of 1986, as amended (26 U S.C. § 3121(x)(1))

(3) Section 230 of the Social Security Act, as amended (42 U.S C. § 430)

(b) **Tax Rate**

(1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S C § 3101(a))

2. **Hospital (Medicare) Insurance Tax**

(a) Contribution Base

(1) Social Security Administration's notice dated October 21, 1991, and appearing in 56 Fed. Reg. 55,325 (October 25, 1991)

(2) Section 3121(x)(2) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(x)(2))

(3) Section 230 of the Social Security Act, as amended (42 U S.C. § 430)

(b) Tax Rate

(1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(b))

3. **Federal Income Tax**

(a) **Inflation Adjusted Tax Rate Table for 1992 for Single Taxpayers**

(1) Revenue Procedure 91-65, Section 2, Table 3, which appears at page 13 of Internal Revenue Bulletin 1991-50, dated December 16, 1991

(2) Section 1(c) and (f) of the Internal Revenue Code of 1986, as amended (26 U.S.C § 1(c) and (f))

(b) **Standard Reduction**

(1) Revenue Procedure 91-65, Section 3, which appears at page 14 of Internal Revenue Bulletin 1991-50, dated December 16, 1991

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U S C. § 63(c))

(c) **Personal Exemption**

(1) Revenue Procedure 91-65, Section 4, which appears at page 14 of Internal Revenue Bulletin 1991 50, dated December 16, 1991

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U S C. § 151(d))

SELF-EMPLOYED PERSONS
1992 TAX CHART

Monthly Net Earnings From Self-Employment*	Social Security Taxes: Old-age, Survivors and Liability Insurance Taxes (12.4%)**	Social Security Taxes: Hospital (Medicare) Insurance Taxes (2.9%)**	Federal Income Taxes***	Net Monthly Income
100 00	11 45	2 68	-0-	85.87
200.00	22.90	5.36	0-	171 74
300.00	34 35	8.03	0-	257 62
400 00	45 81	10 71	-0-	343.48
500 00	57 26	13.39	0-	429 35
600.00	68.71	16 07	9 89	505 33
700 00	80 16	18.75	23.83	577 26
800 00	91.61	21 43	37 77	649.19
900.00	103 06	24.10	51.71	721 13
1,000.00	114 51	26.78	65 65	793 06
1,100.00	125 97	29 46	79.59	864.98
1,200.00	137 42	32 14	93 53	936 91
1,300.00	148.87	34 82	107.47	1,008 84
1,400 00	160 32	37.49	121 41	1,080.78
1,500.00	171 77	40.17	135.35	1,152.71
1,600.00	183.22	42 85	149 29	1,224.64
1,700 00	194 67	45 53	163 23	1,296.57
1,800 00	206 13	48 21	177 18	1,368.48
1,900.00	217.58	50 88	191 12	1,440.42
2,000.00	229 03	53.56	205.06	1,512 35
2,100.00	240.48	56 24	219.00	1,584.28
2,200.00	251.93	58 92	232 94	1,656.21
2,300 00	263.38	61 60	246 88	1,728.14
2,400.00	274.83	64 28	260 82	1,800 07
2,500.00	286 29	66.95	280.51	1,866 25
2,600.00	297.74	69 63	306.53	1,926.10
2,700 00	309.19	72.31	332.55	1,985 95
2,800.00	320 64	74 99	358.57	2,045 80
2,900 00	332 09	77.67	384.59	2,105 65
3,000.00	343.54	80 34	410 61	2,165.51
3,100.00	354 99	83.02	436.64	2,225.35
3,200.00	366.44	85.70	462.66	2,285 20
3,300.00	377 90	88 38	488.68	2,345.04
3,400 00	389.35	91.06	514.70	2,404 89
3,500.00	400.80	93 74	540.72	2,464.74
3,600 00	412.25	96 41	566 75	2,524.59
3,700 00	423 70	99.09	592.77	2,584 44
3,800 00	435 15	101.77	618.79	2,644 29
3,900 00	446 60	104 45	644 81	2,704.14
4,000.00	458 06	107.13	670 83	2,763.98
4,250 00	486.68	113.82	735 89	2,913.61
4,500 00	515 31	120.52	800 94	3,063 23
4,750 00	543 94	127 21	866 00	3,212.85
5,000 00	572.57	133.91	931.05	3,362.47
5,250 00	573 50****	140 60	1,002 27	3,533.63
5,500 00	573.50	147.30	1,078 74	3,700.46
5,750 00	573 50	153 99	1,155 20	3,867 31
6,000.00	573 50	160.69	1,231 66	4,034.15
6,250.00	573.50	167.38	1,308 12	4,201 00
6,500.00	573.50	174.08	1,384.58	4,367 84
6,750.00	573 50	180.78	1,461.05	4,534.67
7,000.00	573.50	187.47	1,537.51	4,701 52
7,500 00	573.50	200.86	1,690.43	5,035.21
8,000 00	573.50	214 25	1,843.36	5,368.89
8,500.00	573 50	227 64	1,996.28	5,702.58
9,000.00	573 50	241 03	2,149.21	6,036 26
9,500.00	573 50	254 42	2,304.51	6,367 57
10,000.00	573 50	267 82	2,459.81	6,698 87
10,500 00	573.50	281 21	2,616.30	7,028.99
11,000.00	573.50	294 60	2,771.60	7,360 30
11,500 00	573 50	307 99	2,926 90	7,691.61
12,000.00	573 50	314.65*****	3,084.43	8,027 42
12,500.00	573.50	314 65	3,241 81	8,370.04
13,000.00	573 50	314 65	3,400.37	8,711.48

Footnotes to Self-Employed Persons 1992 Tax Chart:

Determined without regard to Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C.) (the "Code")

** In calculating each of the Old-age, Survivors and Disability Insurance tax and the Hospital (Medicare) Insurance tax, net earnings from self employment are reduced by the deduction under Section 1402(a)(12) of the Code. The deduction under Section 1402(a)(12) of the Code is equal to net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) multiplied by one-half (1/2) of the sum of the Old age, Survivors and Disability Insurance tax rate (12.4%) and the Hospital (Medicare) Insurance tax rate (2.9%) The sum of these rates is 15 3% (12.4% + 2 9% = 15 3%). One-half (1/2) of the combined rate is 7 65% (15 3% x 1/2 = 7 65%) The deduction can be computed by multiplying the net earnings from self employment (determined without regard to Section 1402(a)(12) of the Code) by 92.35% This gives the same deduction as multiplying the net earnings from self employment (determined without regard to Section 1402(a)(12) of the Code) by 7 65% and then subtracting the result.

For example, the Social Security taxes imposed on monthly net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) of $2,500 00 are calculated as follows.

(i) Old-age, Survivors and Disability Insurance Taxes:

$2,500 00 x 92.35% x 12.4% = $286 29

(ii) Hospital (Medicare) Insurance Taxes:

$2,500 00 x 92.35% x 2 9% = $66 95

*** These amounts represent one-twelfth (1/12) of the annual Federal income tax calculated for a single taxpayer claiming one personal exemption ($2,300.00, subject to reduction in certain cases, as described below in this footnote) and taking the standard deduction ($3,600 00)

In calculating the annual Federal income tax, gross income is reduced by the deduction under Section 164(f) of the Code. The deduction under Section 164(f) of the Code is equal to one-half (1/2) of the self-employment taxes imposed by Section 1401 of the Code for the taxable year For example, monthly net earnings from self-employment of $9,500 00 times 12 months equals $114,000 00 The Old-age, Survivors and Disability Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $6,882 00 ($55,500 00 x 12.4% = $6,882 00) The Hospital (Medicare) Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $3,053 09 ($114,000.00 x 9235 x 2 9% = $3,053 09) The sum of the taxes imposed by Section 1401 of the Code for the taxable year equals $9,935 09 ($6,882 00 + $3,053 09 = $9,935.09) The deduction under Section 164(f) of the Code is equal to one-half (1/2) of $9,935 09 or $4,967 55.

For a single taxpayer with an adjusted gross income in excess of $105.250 00, the deduction for the personal exemption is reduced by two percent (2%) for each $2,500.00 or fraction thereof by which adjusted gross income exceeds $105,250.00. In no case is the deduction for the personal exemption reduced by more than 100% For example, monthly net earnings from self-employment of $9,500.00 times 12 months equals $114,000.00. The $114,000.00 amount is reduced by $4,967 55 (i.e., the deduction under Section 164(f) of the Code — see the immediately preceding paragraph of this footnote for the computation) to arrive at adjusted gross income of $109,032.45 The excess over $105,250 00 is $3,782.45. $3,782.45 divided by $2,500 00 equals 1.51 The 1 51 amount is rounded up to 2 The reduction percentage is 4% (2 x 2% = 4%). The $2,300 00 deduction for one personal exemption is reduced by $92 00 ($2,300 00 x 4% = $92.00) to $2,208.00 ($2,300 00—$92.00 = $2,208 00).

**** For annual net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) above $55,500 00, this amount represents a monthly average of the Old-age, Survivors and Disability Insurance tax based on the 1992 maximum Old-age, Survivors and Disability Insurance tax of $6,882 00 per person (12.4% of the first $55,500 00 of net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) equals $6,882 00) One-twelfth (1/12) of $6,882.00 equals $573 50

***** For annual net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) above $130,200.00, this amount represents a monthly average of the Hospital (Medicare) Insurance tax based on the 1992 maximum Hospital (Medicare) Insurance tax of $3,775.80 per person (2.9% of the first $130,200 00 of net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) equals $3,775 80). One-twelfth (1/12) of $3,775.80 equals $314.65

. . . . . .

References Relating to Self-Employed Persons 1992 Tax Chart:

1 **Old-age, Survivors and Disability Insurance Tax**

(a) **Contribution Base**

(1) Social Security Administration's notice dated October 21, 1991, and appearing in 56 Fed. Reg. 55,325 (October 25, 1991)

(2) Section 1402(k)(1) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(k)(1))

(3) Section 230 of the Social Security Act, as amended (42 U.S C. § 430)
(2) Section 1402(k)(1) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(k)(1))

(3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

(b) **Tax Rate**

(1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U S.C. § 1401(a))

(c) **Deduction Under Section 1402(a)(12)**

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C § 1402(a)(12))

2 **Hospital (Medicare) Insurance Tax**

(a) **Contribution Base**

(1) Social Security Administration's notice dated October 21, 1991, and appearing in 56 Fed. Reg. 55,325 (October 25, 1991)

(2) Sections 1402(k)(2) and 3121(x)(2) of the Internal Revenue Code of 1986, as amended (26 U S.C. §§ 1402(k)(2) and 3121 (x)(2))

(3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

(b) **Tax Rate**

(1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U S C. § 1401(b))

(c) **Deduction Under Section 1402(a)(12)**

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U S.C. § 1402(a)(12))

3 **Federal Income Tax**

(a) **Inflation Adjusted Tax Rate Table for 1992 for Single Taxpayers**

(1) Revenue Procedure 91 65, Section 2, Table 3, which appears at page 13 of Internal Revenue Bulletin 1991-50, dated December 16, 1991

(2) Section 1(c) and (f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(c) and (f))

(b) **Standard Deduction**

(1) Revenue Procedure 91-65, Section 3 which appears at page 14 of Internal Revenue Bulletin 1991-50, dated December 16, 1991

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) **Personal Exemption**

(1) Revenue Procedure 91 65, Section 4 which appears at page 14 of Internal Revenue Bulletin 1991-50, dated December 16, 1991

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U S.C. § 151(d))

(d) **Deduction Under Section 164(f)**

(1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U S C § 164(f))

Issued in Austin, Texas, on February 6, 1992.

TRD-9201739 Will Pryor
First Assistant Attorney General
Office of the Attorney General

Filed: February 4, 1992

For further information, please call: (512) 463-2040

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Office of the State Auditor

Consultant Proposal Request

Notice of Invitation for Proposal. Pursuant to Texas Civil Statutes, Article 6252-11c, the State Auditor's Office (SAO) invites private consultants to submit proposals to provide a continuation of services relating to the development of an officewide performance appraisal system for the SAO. The SAO originally entered into a contract with the firm of Jeanneret and Associates, Inc., for the development of an appraisal system for SAO's Performance Audit Division. The period of performance of such contract was April 15, 1991-December 31, 1991, and costs incurred under such contract totaled $8,735.09.

Due to recent organizational changes SAO is seeking to expand upon performances delivered under the original contract by developing an office wide performance appraisal system. It is presently estimated that the value of such expanded services will not exceed $6,300. Since this amount, when coupled with costs incurred under the original contract, would exceed $10,000, this invitation for proposals is being issued to ensure compliance with Texas Civil Statutes, Article 6252-11c, §7(b), if applicable.

Services will entail the development of the plan for the officewide performance appraisal system, the collection of data through task analysis and critical incident groups, the development/revision of appraisal forms and the appraisal manual, and the presentation of project results to SAO administrators.

Continuation of Services Previously Performed. The services desired by SAO are a continuation of service previously provided by Jeanneret & Associates, Inc., a management consultant firm with office at 3223 Smith Street, Suite 212, Houston, Texas 77006-6685. The SAO intends to award a contract for the services described in this invitation for proposal to the private consultant that previously performed the services unless a better offer is received, price and other factors being considered.

Period of Performance. The period of performance is anticipated to begin approximately March 9, 1992, and extend through August 31, 1992. The level of funding for the requested services is not anticipated to exceed $6,300, inclusive of all travel, materials, and related developmental costs; however, SAO expressly reserves the right to negotiate and execute amendments to any resulting contract to extend the period of performance or to obligate additional funds as SAO determined necessary.

Qualifications Desired by the SAO. To be eligible: offerors must have at least 10 years' experience in the practice of human resources consulting in the discipline of personnel management and appraisal; offerors must provide a schedule of fees which include the fees customarily charged for services of this nature; offerors must submit samples of performance appraisal materials that they have developed for use with audit/accounting firms or comparable entities; if considered necessary by SAO, offerors may be required to make a presentation to SAO staff at their cost during the selection process.

Deadline for Submission. This invitation for proposal will close as of 5 p.m. on February 25, 1992, except for those proposals received after that date which were postmarked on or before February 21, 1992.

General Information. The SAO reserves the right to accept or reject any (or all) proposals submitted. The information contained is this proposal request is intended to serve only as a general description of the services desired by SAO, and SAO intends to use responses as a basis for further negotiation of specific project details with offerors. In the event SAO selects a contractor to provide the services described, SAO will base its choice on demonstrated competence and qualifications and the reasonableness of the fee for services. This request does not commit SAO to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this invitation for proposal in no way obligates SAO to award a contract or to pay any costs incurred in the preparation of a response.

Form and Format. Three copies of the proposal are requested and should be sent by registered mail or delivered in person to Deborah L. Kerr, Ph. D. Audit Director, Texas State Auditor's Office, 209 East Ninth Street, Suite 1900, Austin, Texas 78711, no later than the deadline for submission of proposals specified above. The proposals should be typed, preferably double spaced, with all pages sequentially numbered and either stapled or bound together.

Contract Person. Any inquiries concerning this invitation for proposal should be made in writing to Deborah L. Kerr, Ph.D., at the address specified previously.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201707 Lawrence F. Alwin, CPA
State Auditor
Office of the State Auditor

Filed: February 4, 1992

For further information, please call: (512) 479-4490

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Office of Consumer Credit Commissioner

Request for Interpretation of Title 79

Under provisions of Revised Statutes, Title 79, Article 2.02A, §10, (Texas Civil Statutes, Article 5069-2.02A) the consumer credit commissioner may issue interpretations of Revised Statutes, Title 79 (Texas Civil Statutes, Article 5069-1.01 et seq). The consumer credit commissioner has received the following request for interpretations.

Request Number 92-3. Request from Thomas H. Weed at Bonham, Carrington & Fox, P.C., 910 Louisiana, Houston, interpreting the provisions of Texas Civil Statutes, Articles 5069-1.07 and 5069-5.01, concerning the permissibility of making a loan secured both by a first lien on one lot or tract of real property and a second lien on another lot or tract of real property and whether Article 5069-5.01, et seq would be applicable to such loan.

Request Number 92-4. Request from A. M. Zavoina, Vice President, First National Bank, 507 North Gray Street, Killeen, interpreting Texas Civil Statutes, Article 5069-3.16, concerning the permissibility of setting first installment due dates on loans for periods less than or greater than one month.

Issued in Austin, Texas, on January 31, 1992.

TRD-9201605 Al Endsley
Consumer Credit Commissioner
Office of Consumer Credit Commissioner

Filed: February 3, 1992

For further information, please call: (512) 479-1280

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Texas Education Agency

Request for Exhibits

The Texas Education Agency (TEA) is requesting exhibits on commercially available materials and services pertaining to dropout prevention and recovery at the Fifth Annual Texas Conference on Students in At-Risk Situations to be held in Austin at the Doubletree and Red Lion Hotels on April 12-15, 1992. The conference will be attended by approximately 1,500 participants from Texas school districts as well as other educational and governmental entities and Job Training Partnership Act service delivery areas. Exhibitors will be selected on a first-come basis but will need to demonstrate the relevance of their programs and materials to dropout prevention and recovery. No more than 60 exhibits will be accepted due to space limitations. A flat fee of $250 will be charged to each exhibitor. The exhibits are scheduled for Sunday, April 12 (3 p.m. until 9 p.m.), Monday, April 13 (7 a.m. until 5 p.m.), and Tuesday, April 14 (11 a.m. until 5: 30 p.m.).

Minority-owned businesses are encouraged to apply. All inquires should be made to Sylvia Marquez, Texas Education Agency, Dropout Information Clearinghouse, William B. Travis State Office Building, 1701 North Congress Avenue, Austin, Texas 78701-1494 at (512) 463-9444 or at 1-800-828-7475.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201804 Lionel R. Meno
Commissioner of Education

Filed: February 5, 1992

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

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Texas Employment Commission

Request for Qualifications

The Texas Employment Commission (TEC) requests that any state certified appraiser who is familiar with the Austin area and interested in being considered to provide a building and land appraisal of the TEC Headquarters Buildings located at 101 East 15th Street, 1411 Brazos, and 1117 Trinity Street, Austin, submit information regarding qualifications, experience, education, and resources. Such information should include, at a minimum, the names, qualifications, and experience of all individuals who may be assigned to work on this project along with references, list of recent appraisals in the Austin area, and list of appraisals for federal real properties.

The appraisal will consist of current fair market value of the land, buildings, and parking facilities as well as current replacement costs. Selection will be based on demonstrated experience on appraisals of similar size; demonstrated experience on appraisals for federal real properties; knowledge, skills, and abilities of key personnel who will

be assigned duties for the appraisal; and resources available to perform the appraisal within the time period of 30-45 days on issuance of authority to proceed.

By publication of this request for qualifications (RFQ), TEC in no way obligates itself to award any contract or accept any proposal, and may reject any and all proposals. TEC reserves the right to enter into negotiations with any or all respondents hereto.

For further information regarding this RFQ, please contact Doyle W. Cox, Room 428, TEC Building, Austin, Texas 78778, (512) 463-2537. To be considered, statement of qualifications submitted in response to this RFQ must be received by TEC, 101 East 15th, Room 428, Austin, Texas 78778, no later than 5 p.m. on February 28, 1992.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201670 C. Ed Davis
Deputy Administrator for Legal Affairs
Texas Employment Commission

Filed: February 3, 1992

For further information, please call: (512) 463-2291

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Texas Department of Health

Correction of Error

The Texas Department of Health adopted new 25 TAC §§325.1141-325.1152, concerning Used Oil Collection Management and Recycling. The rules were published in the December 17, 1991, *Texas Register* (16 TexReg 7353). Due to errors in the department's submission, a comment in the preamble, which appears in the third column, first paragraph, on page 16 TexReg 7353, the department's response is incorrect. The correct response should read as follows.

"In response, the department has added to the section an effective date of April 1, 1992, which should be sufficient time for the department to prepare the signs and for retailers to request, receive, and properly install them."

Concerning §325.1144, the language "Effective March 1, 1992, a retail dealer..." is incorrect. The date should read "Effective April 1, 1992, a retail dealer...".

These corrections are necessary to comply with the requirements of Senate Bill 1340, 72nd Legislature, 1991.

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Designation of Sites Serving Medically Underserved Populations

The Department of Health is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Gregory Maternal and Child Health Clinic, Inc. , 1902 North Frazier, Conroe, Texas 77301. Designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on the designations may be directed to Carol Daniels, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; (512) 458-7261. Comments will be accepted for 30 days from the date of this notice.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201618 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: February 3, 1992

For further information, please call: (512) 458-7261

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Primary Health Care Program Request for Proposals

The Texas Department of Health published a request for proposal for expanding the Primary Health Care Services Program (PHCSP) in the January 28, 1992, issue of the *Texas Register* (17 TexReg 724).The department is now revising the request by adding two counties to the list of eligible counties, Rusk and Cherokee counties. This brings the total list of eligible counties to 183. If you have any questions, please contact John Dombroski, Director of the Primary Health Care Services Program, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7771.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201679 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: February 3, 1992

For further information, please call: (512) 458-7111

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Texas Department of Insurance

Company Licenses

The following applications have been filed with the Texas Department of Insurance and are under consideration.

(1) Application for name change in Texas for Usable Insurance Company, a foreign life insurance company. The home office is in Little Rock, Arkansas. The proposed new name is The First Pyramid Life Insurance Company of America.

(2) Application for name change in Texas TCL Fire & Casualty Insurance Company, a domestic fire insurance company. The home office is in Austin, Texas. The proposed new name is First Texas Fire & Casualty Insurance Company.

(3) Application for name change in Texas for New England General Life Insurance Company, a foreign life insurance company. The home office is in Des Moines, Iowa. The proposed new name is Nippon Life Insurance Company of America.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201798 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: February 5, 1992

For further information, please call: (512) 463-6327

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Public Utility Commission of Texas

Notice of Application To Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 30, 1992, to amend a certificate of convenience and necessity pursuant to the Public Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Brazos Electric Power Cooperative, Inc. for a certificate of convenience and necessity for proposed transmission line within Erath County, Docket Number 10909 before the Public Utility Commission of Texas.

The Application: In Docket Number 10909, Brazos Electric Power Cooperative, Inc. requests approval of its application to construct 13.86 miles of 69-kV transmission line in Erath County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201750 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed. February 4, 1992

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

♦ ♦ ♦

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 30, 1992, to amend a certificate of convenience and necessity pursuant to the Public Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Brazos Electric Power Cooperative, Inc. for a certificate of convenience and necessity for proposed transmission line within Young and Throckmorton Counties, Docket Number 10910 before the Public Utility Commission of Texas.

The Application: In Docket Number 10910, Brazos Electric Power Cooperative requests approval of its application to construct 6.53 miles of 69-kV transmission line.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on February 4, 1992.

TRD-9201751 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed February 4, 1992

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

♦ ♦ ♦

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application of January 27, 1992, to amend a certificate of convenience and necessity pursuant to the Public Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of South Texas Electric Cooperative, Inc. to amend a certificate of convenience and necessity for proposed transmission line within Calhoun County, Docket Number 10903 before the Public Utility Commission of Texas.

The Application: In Docket Number 10903, South Texas Electric Cooperative, Inc. requests approval of its application to construct 0.5 mile of 69-kV transmission line.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201753 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: February 4, 1992

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

♦ ♦ ♦

Texas Water Commission

Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of January 27, 1992-January 31, 1992.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application–new permit, amendment, or renewal.

Georgia-Pacific Resins, Inc.; a plant that manufactures formaldehyde, and phenol/formaldehyde; amino resins; the plant site is approximately 1/4 mile east of U.S. Highway

59 on the north side of East Lufkin Avenue in the City of Lufkin, Angelina County; renewal; 01737.

City of Gregory; the wastewater treatment facilities; are located at the intersection of Sunset Road and Blackwelder Street, approximately 1/2 mile northwest of the convergence of U.S. Highway 181 and State Highway 35 and southwest of the City of Gregory in San Patricio County; renewal; 10092-01.

Richard Hessee; cattle feedlot; the feedlot is one mile north of State Highway 15 and approximately three miles east of the intersection of State Highway 15 and State Highway 305 in Lipscomb County; amendment; 01680.

City of Hutto; the wastewater treatment facilities; are located 1,500 feet south of State Highway 79 and 1,300 feet east of FM Road 1660 in the City of Hutto in Williamson County; renewal; 11324-01.

Lumberton Municipal Utility District; the wastewater treatment facilities; are approximately 200 feet east of U.S. Highway 69, approximately two miles north of the intersection of Tram Road in U.S. Highway 69 in Hardin County; renewal; 11709-01.

R.W. McDonnel Construction Company, Inc.; the Woodlands Nursing Center; the wastewater treatment facility, evaporation pond, and irrigation site are approximately 0.8 mile east of the intersection of FM Road 753 and State Highway 31 in Henderson County; new; 13587-01.

Lloyd Mitchell; a sheep/goat feedlot; the feedlot operation is on the east side of State Highway 55 1/2 mile south of the intersection of State Highway 55 and U.S. Highway 377 in Edwards County; new; 03418.

Moscow Water Supply Corporation; the wastewater treatment facilities; are approximately 600 feet southeast of the intersection of U.S. Highway 59 and Loop 177 in the City of Moscow in Polk. County; renewal; 11139-01.

City of Penelope; the wastewater treatment facility; the plant site is to be 1,000 feet north of the intersection of FM Road 2114 and FM Road 308, approximately 1,000 feet northwest of FM Road 308 in Hill County; new; 13586-01.

Dr. Albert P. Ribisi; the wastewater treatment facilities; are approximately 300 feet northwest of Cain Road on Old Wellborn Road, approximately 3,500 feet south-southeast of the intersection of FM Road 2818 (West By-Pass) and FM Road 2154 in Brazos County; renewal; 11284-01.

Sandia Agricultural Enterprises, Inc.; a dairy; the dairy is on the southwest side of FM Road 70, at the intersection of FM Road 70 and Country Road 1570 in Jim Wells County; new; 03435.

Issued in Austin, Texas, on January 31, 1992

TRD-9201604 Laurie J. Lancaster
Chief Clerk
Texas Water Commission

Filed: February 3, 1992

For further information, please call (512) 463-7906

1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 *Friday, January 3	Friday, December 27	Tuesday, December 31
2 *Tuesday, January 7	Tuesday, December 31	Thursday, January 2
3 Friday, January 10	Monday, January 6	Tuesday, January 7
4 Tuesday, January 14	Wednesday, January 8	Thursday, January 9
5 Friday, January 17	Monday, January 13	Tuesday, January 14
6 Tuesday, January 21	Wednesday, January 15	Thursday, January 16
Friday, January 24	1991 ANNUAL INDEX	
7 Tuesday, January 28	Wednesday, January 22	Thursday, January 23
8 Friday, January 31	Monday, January 27	Tuesday, January 28
9 Tuesday, February 4	Wednesday, January 29	Thursday, January 30
10 Friday, February 7	Monday, February 3	Tuesday, February 4
11 Tuesday, February 11	Wednesday, February 5	Thursday, February 6
12 Friday, February 14	Monday, February 10	Tuesday, February 11
13 Tuesday, February 18	Wednesday, February 12	Thursday, February 13
14 *Friday, February 21	Friday, February 14	Tuesday, February 18
15 Tuesday, February 25	Wednesday, February 19	Thursday, February 20
Friday, February 28	NO ISSUE PUBLISHED	
16 Tuesday, March 3	Wednesday, February 26	Thursday, February 27
17 Friday, March 6	Monday, March 2	Tuesday, March 3
18 Tuesday, March 10	Wednesday, March 4	Thursday, March 5
19 Friday, March 13	Monday, March 9	Tuesday, March 10
20 Tuesday, March 17	Wednesday, March 11	Thursday, March 12
21 Friday, March 20	Monday, March 16	Tuesday, March 17
22 Tuesday, March 24	Wednesday, March 18	Thursday, March 19
23 Friday, March 27	Monday, March 23	Tuesday, March 24
24 Tuesday, March 31	Wednesday, March 25	Thursday, March 26
25 Friday, April 3	Monday, March 30	Tuesday, March 31
26 Tuesday, April 7	Wednesday, April 1	Thursday, April 2
27 Friday, April 10	Monday, April 6	Tuesday, April 7
Tuesday, April 14	FIRST QUARTERLY INDEX	
28 Friday, April 17	Monday, April 13	Tuesday, April 14
29 Tuesday, April 21	Wednesday, April 15	Thursday, April 16

30 Friday, April 24	Monday, April 20	Tuesday, April 21
31 Tuesday, April 28	Wednesday, April 22	Thursday, April 23
32 Friday, May 1	Monday, April 27	Tuesday, April 28
33 Tuesday, May 5	Wednesday, April 29	Thursday, April 30
34 Friday, May 8	Monday, May 4	Tuesday, May 5
35 Tuesday, May 12	Wednesday, May 6	Thursday, May 7
36 Friday, May 15	Monday, May 11	Tuesday, May 12
37 Tuesday, May 19	Wednesday, May 13	Thursday, May 14
38 Friday, May 22	Monday, May 18	Tuesday, May 19
39 Tuesday, May 26	Wednesday, May 20	Thursday, May 21
40 *Friday, May 29	Friday, May 22	Tuesday, May 26
41 Tuesday, June 2	Wednesday, May 27	Thursday, May 28
42 Friday, June 5	Monday, June 1	Tuesday, June 2
43 Tuesday, June 9	Wednesday, June 3	Thursday, June 4
44 Friday, June 12	Monday, June 8	Tuesday, June 9
45 Tuesday, June 16	Wednesday, June 10	Thursday, June 11
46 Friday, June 19	Monday, June 15	Tuesday, June 16
47 Tuesday, June 23	Wednesday, June 17	Thursday, June 18
48 Friday, June 26	Monday, June 22	Tuesday, June 23
49 Tuesday, June 30	Wednesday, June 24	Thursday, June 25
50 Friday, July 3	Monday, June 29	Tuesday, June 30
51 Tuesday, July 7	Wednesday, July 1	Thursday, July 2
52 Friday, July 10	Monday, July 6	Tuesday, July 7
Tuesday, July 14	SECOND QUARTERLY INDEX	
53 Friday, July 17	Monday, July 13	Tuesday, July 14
54 Tuesday, July 21	Wednesday, July 15	Thursday, July 16
55 Friday, July 24	Monday, July 20	Tuesday, July 21
56 Tuesday, July 28	Wednesday, July 22	Thursday, July 23
57 Friday, July 31	Monday, July 27	Tuesday, July 28
58 Tuesday, August 4	Wednesday, July 29	Thursday, July 30
59 Friday, August 7	Monday, August 3	Tuesday, August 4
60 Tuesday, August 11	Wednesday, August 5	Thursday, August 6
61 Friday, August 14	Monday, August 10	Tuesday, August 11
62 Tuesday, August 18	Wednesday, August 12	Thursday, August 13
63 Friday, August 21	Monday, August 17	Tuesday, August 18
64 Tuesday, August 25	Wednesday, August 19	Thursday, August 20
65 Friday, August 28	Monday, August 24	Tuesday, August 25
66 Tuesday, September 1	Wednesday, August 26	Thursday, August 27
67 Friday, September 4	Monday, August 31	Tuesday, September 1
68 Tuesday, September 8	Wednesday, September 2	Thursday, September 3
69 *Friday, September 11	Friday, September 4	Tuesday, September 8

70 Tuesday, September 15	Wednesday, September 9	Thursday, September 10
71 Friday, September 18	Monday, September 14	Tuesday, September 15
72 Tuesday, September 22	Wednesday, September 16	Thursday, September 17
73 Friday, September 25	Monday, September 21	Tuesday, September 22
74 Tuesday, September 29	Wednesday, September 23	Thursday, September 24
75 Friday, October 2	Monday, September 28	Tuesday, September 29
76 Tuesday, October 6	Wednesday, September 30	Thursday, October 1
77 Friday, October 9	Monday, October 5	Tuesday, October 6
Tuesday, October 13	THIRD QUARTERLY INDEX	
78 Friday, October 16	Monday, October 12	Tuesday, October 13
79 Tuesday, October 20	Wednesday, October 14	Thursday, October 15
80 Friday, October 23	Monday, October 19	Tuesday, October 20
81 Tuesday, October 27	Wednesday, October 21	Thursday, October 22
82 Friday, October 30	Monday, October 26	Tuesday, October 27
83 Tuesday, November 3	Wednesday, October 28	Thursday, October 29
Friday, November 6	NO ISSUE PUBLISHED	
84 Tuesday, November 10	Wednesday, November 4	Thursday, November 5
85 Friday, November 13	Monday, November 9	Tuesday, November 10
*86 Tuesday, November 17	Tuesday, November 10	Thursday, November 12
87 Friday, November 20	Monday, November 16	Tuesday, November 17
88 Tuesday, November 24	Wednesday, November 18	Thursday, November 19
89 Friday, November 27	Monday, November 23	Tuesday, November 24
Tuesday, December 1	NO ISSUE PUBLISHED	
90 Friday, December 4	Monday, November 30	Tuesday, December 1
91 Tuesday, December 8	Wednesday, December 2	Thursday, December 3
92 Friday, December 11	Monday, December 7	Tuesday, December 8
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15
95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesday, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 (1993) Friday, January 1	Monday, December 28	Tuesday, December 29

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