

Texas Register

Volume 17, Number 58, August 4, 1992

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- Governor** - Appointments, executive orders, and proclamations
- Attorney General** - summaries of requests for opinions, opinions, and open records decisions
- Secretary of State** - opinions based on the election laws
- Texas Ethics Commission** - summaries of requests for opinions and opinions
- Emergency Sections** - sections adopted by state agencies on an emergency basis
- Proposed Sections** - sections proposed for adoption
- Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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.

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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: "17 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 17 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).

Texas Register Art Project

This program is sponsored by the *Texas Register* to promote the artistic abilities of Texas students, grades K-12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the *Texas Register*. The blank pages are a result of the production process used to create the *Texas Register*. The artwork does not add additional pages and does not increase the cost of the *Texas Register*.

Texas Register Publications



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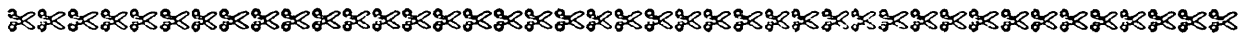
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*The Texas Register Readers Choice Award
continues with this issue!*

You will be able to continue to VOTE throughout the summer on what you think is the best of the 1991-1992 school art project submissions. In this issue, we continue publishing artwork from students in grades four through six. The pictures are labeled first by the category, and then by a number reflecting the individual piece. For example "4-1" will indicate that the picture is the first submission in the fourth through sixth grade group. You will be able to vote as often as you would like. Simply fill out the attached form, and mail it to the Texas Register, Roberta Knight, P.O. Box 13824, Austin, Texas 78711-3824.

The Secretary of State, Texas Register staff will then tabulate the votes and announce the winners in the fall of 1992.

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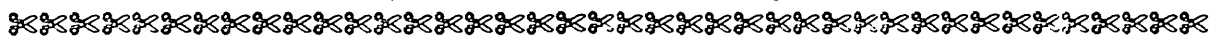
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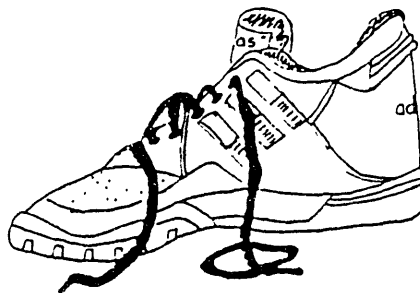
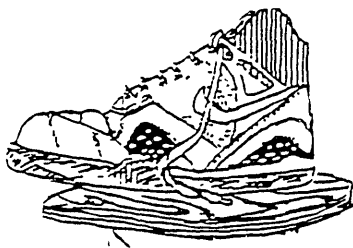
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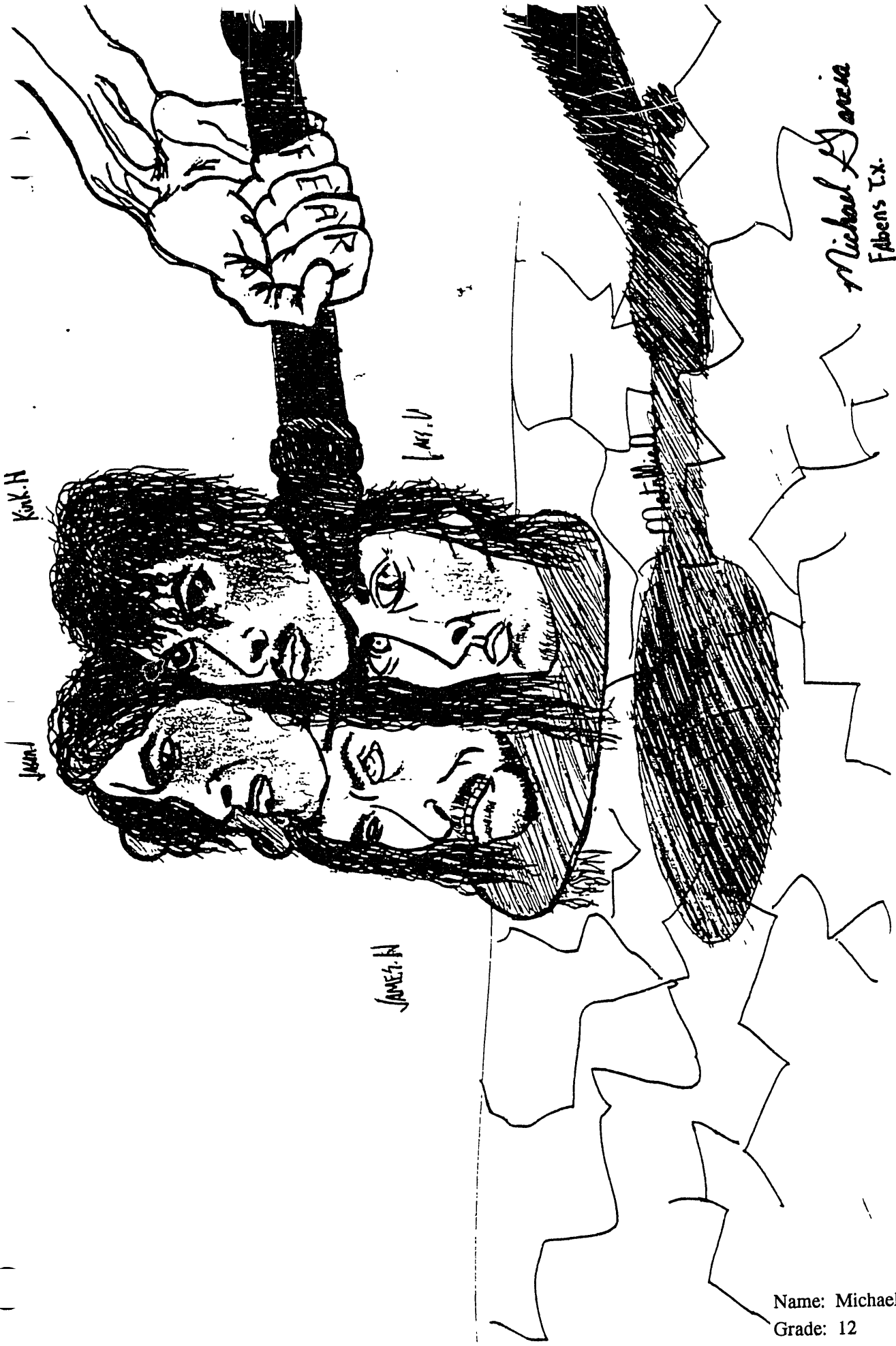
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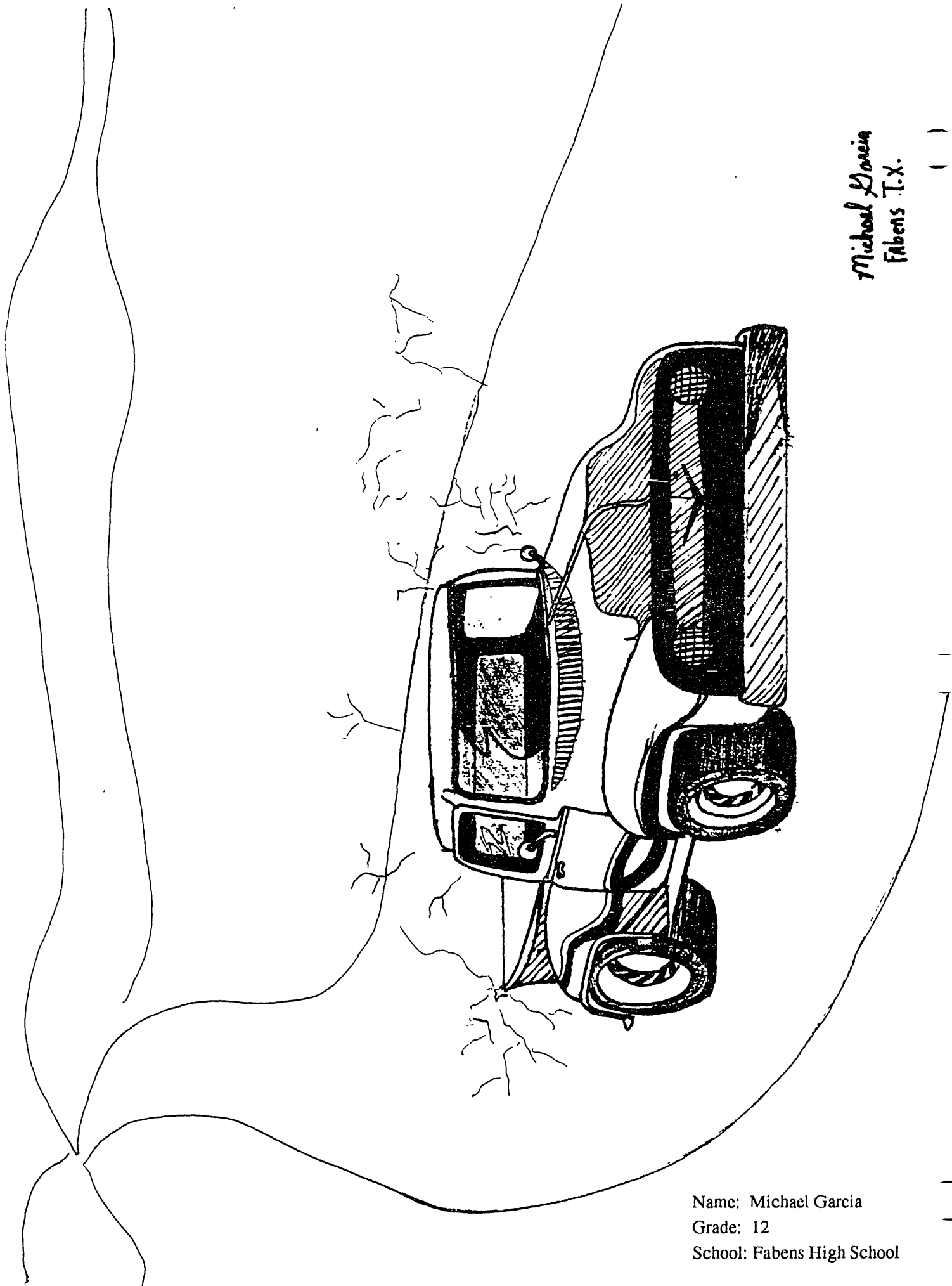
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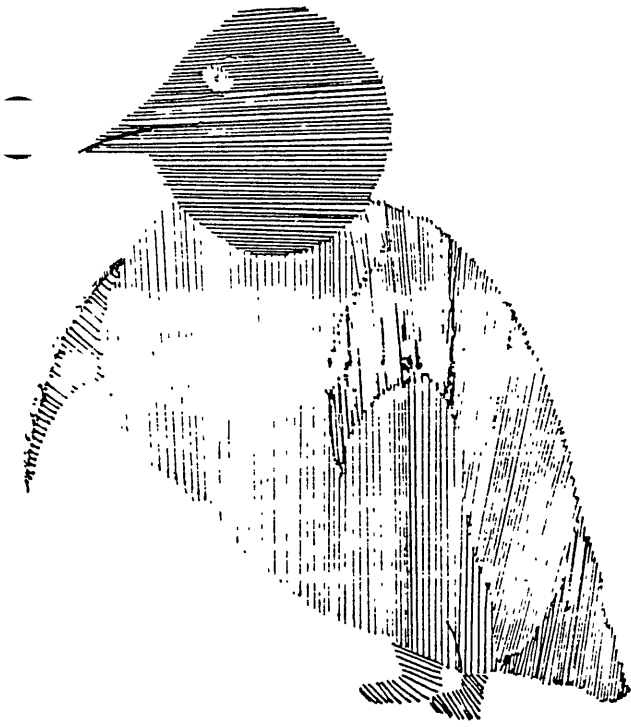


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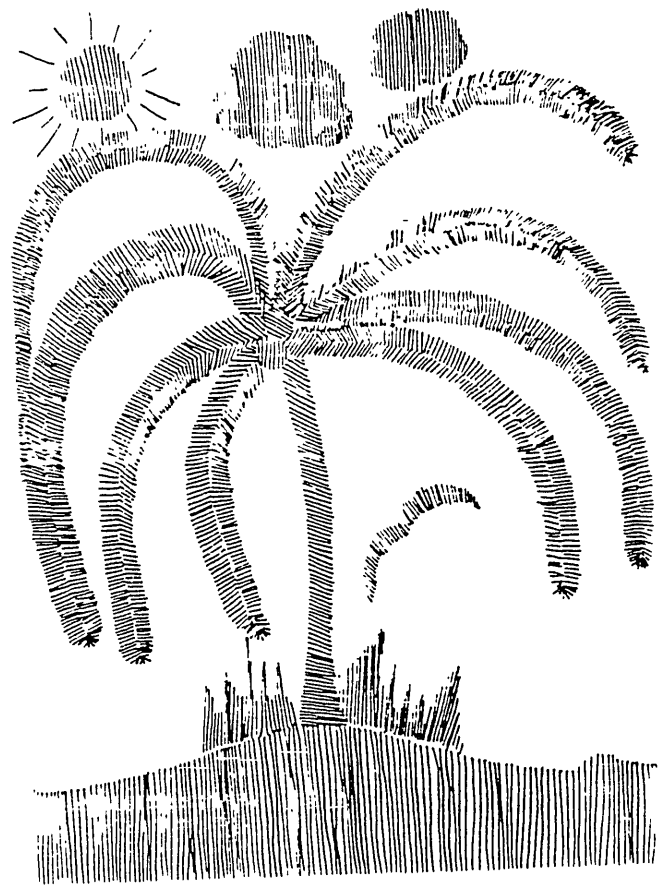
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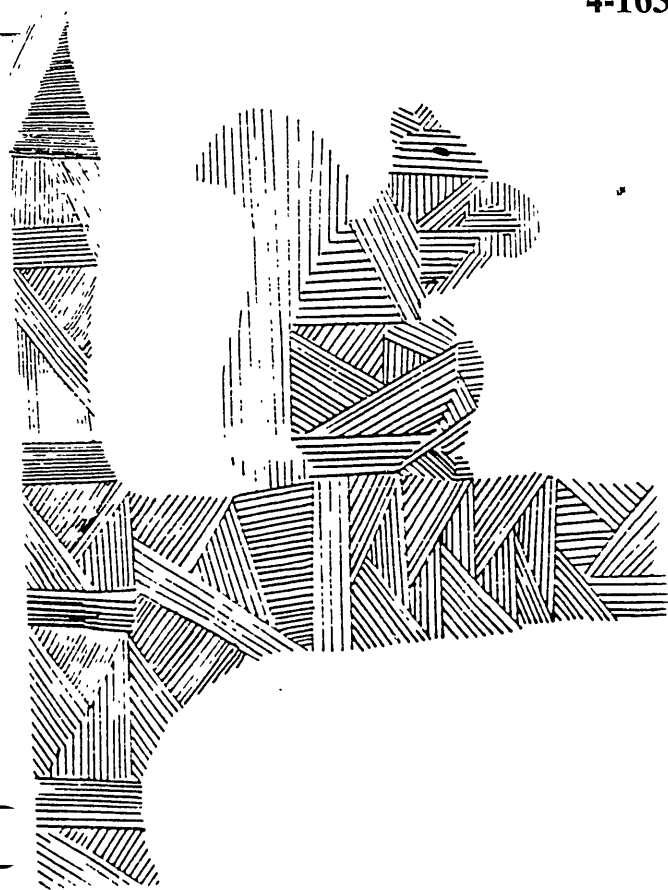
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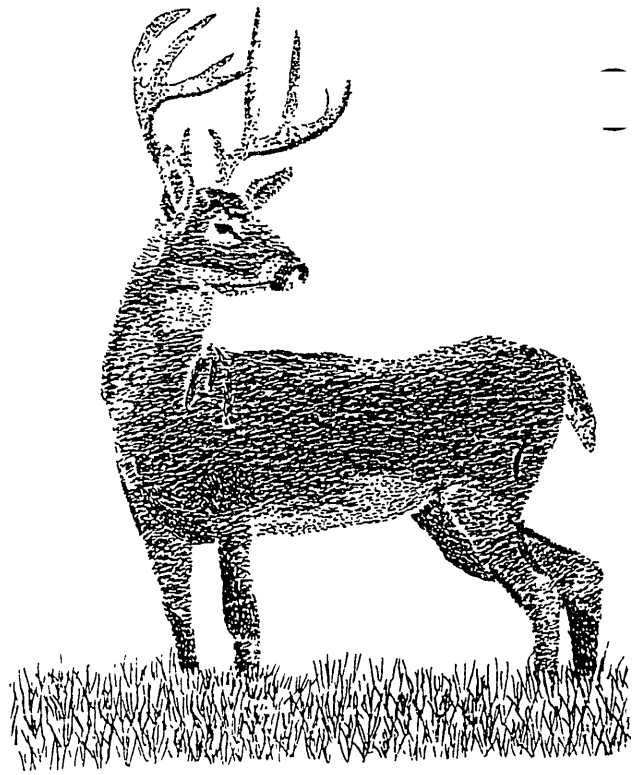
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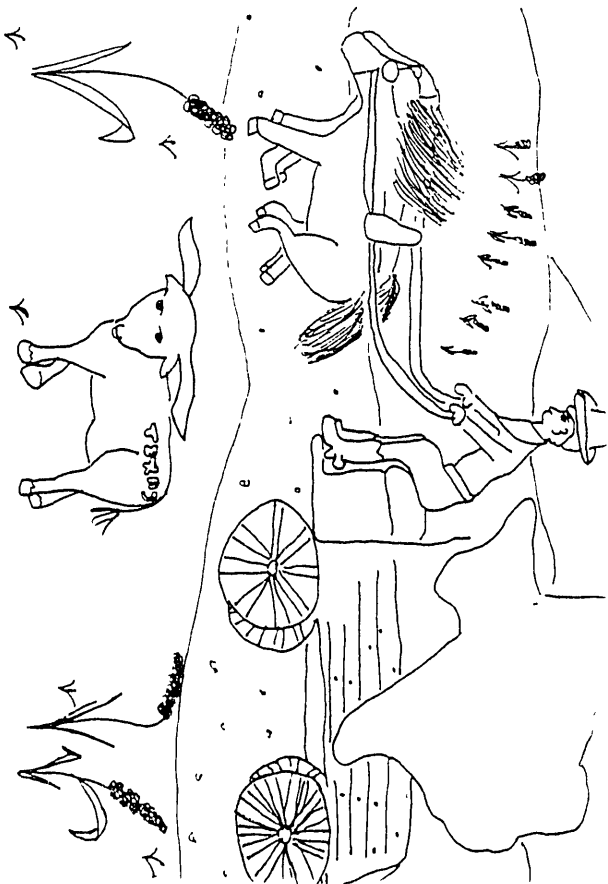
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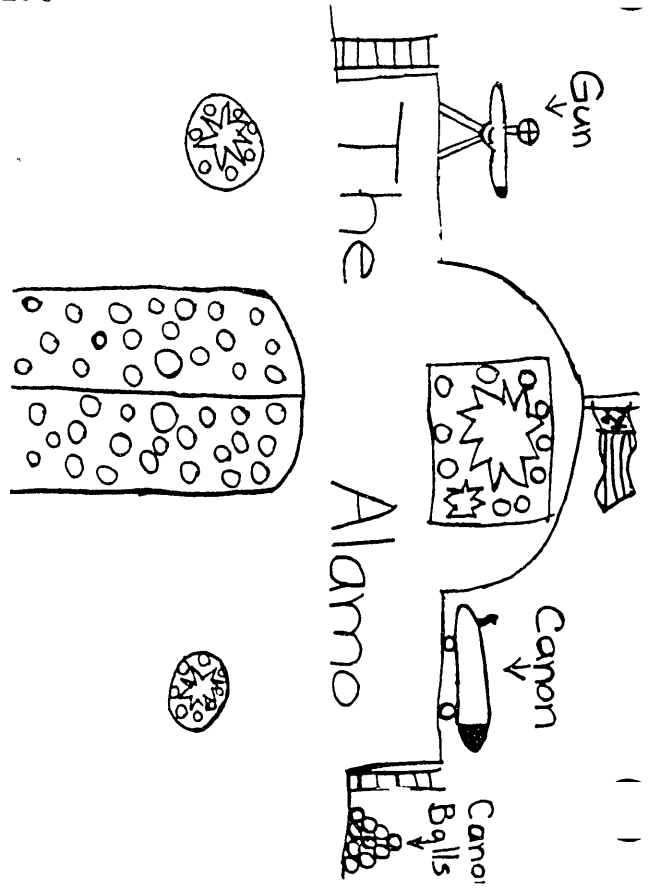
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Emergency Sections

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 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 60. Texas Commission of Licensing and Regulation

Subchapter C. Fees

• 16 TAC §60.64, §60.66

The Texas Department of Licensing and Regulation adopts on an emergency basis new §60.64 and §60.66, concerning fees established in the employers of certain temporary common workers program and the registration of property tax consultants. These sections are adopted on an emergency basis to protect the public and comply with the requirements of Article 8886 to register all property tax consultants by September 1, 1992. Application forms cannot be mailed to prospective registrants until the commission fees are approved and filed in the commission's rules.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 9100, which provide the Texas Commission of Licensing and Regulation with the authority to set fees to cover the cost of administering programs regulated by the department.

§60.64. *Employers of Certain Temporary Common Workers.*

(a) The fee for the initial license and each renewal is \$300.

(b) This fee is not refundable.

§60.66. *Property Tax Consultants.*

(a) Original registration.

(1) The application fee for a property tax consultant is \$100.

(2) The application fee for a senior property tax consultant is \$150.

(3) The refundable registration fee for a property tax consultant is \$50.

(4) The refundable registration fee for a senior property tax consultant is \$75.

(b) Renewal.

(1) The application fee for renewing a property tax consultant's registra-

tion is \$25 and the registration fee is \$125 for a total of \$150.

(2) The application fee for renewing a senior property tax consultant's registration is \$25 and the registration fee is \$125 for a total of \$150.

(3) A late renewal fee of \$50 will be charged for renewal applications postmarked between midnight of the date of expiration and midnight of the 30th day after the expiration. From the 31st day after expiration until one year, an additional \$50 will be charged.

(c) Duplicate registration. A \$25 fee will be charged for issuing a duplicate registration.

(d) Examination.

(1) A \$150 fee will be charged for each examination.

(2) This fee is refundable in accordance with §66.61 of this title (relating to Responsibility of Department-Examinations).

(e) License upgrade. A registrant who is licensed as a property tax consultant and who subsequently qualifies as a senior property tax consultant will be charged a renewal fee of \$25 and a registration fee of \$125 for a total of \$150. A \$25 credit will be made for any remaining period of one year or more of the property tax consultant registration fee.

(f) Recognized private provider fee.

(1) A nonrefundable \$125 application fee shall be paid by an applicant for the designation of recognized private provider.

(2) Applicants for recognized private provider shall pay an annual education provider's fee of \$75 which shall be refunded if the commissioner does not or ceases to recognize the provider's educational program or course offerings.

Issued in Austin, Texas, on July 24, 1992

TRD-9210215

Jack W. Garison
Acting Executive Director
Texas Department of
Licensing and
Regulation

Effective date: July 27, 1992

Expiration date: November 24, 1992

For further information, please call. (512) 463-3127

Chapter 66. Registration of Property Tax Consultants

• 16 TAC §66.1, 66.10, 66.20-66.23, 66.60, 66.61, 66.70, 66.71, 66.80-66.85, 66.90, 66.91

The Texas Department of Licensing and Regulation (department) adopts on an emergency basis an amendment to §66.1 and new §§66.10, 66.20-66.23, 66.60, 66.61, 66.70, 66.71, 66.80-66.85, 66.90, and 66.91, concerning the registration of property tax consultants. These sections are adopted on an emergency basis because the department has determined that adoption of the sections as soon as possible is in the public interest and is necessary to comply with the requirement of Texas Civil Statutes, Article 8886, to register all property tax consultants by September 1, 1992, to ensure that property tax consultants meet education, professional, and ethical standards. Proposed rules regarding the registration of property tax consultants were published in the May 12, 1992, issue of the *Texas Register* (17 TexReg 3445) and public hearings were held in Houston, Dallas, and Austin.

The amendment and new sections are adopted on an emergency basis under Texas Civil Statutes, Articles 8886 and 9100, which provide the department with the authority to regulate property tax consultants

§66.1. *Authority.* These [The] rules [in this chapter] are promulgated under the authority of the Registration of Property Tax Consultants Act, Texas Civil Statutes, Article 8886, and [the Texas Department of Licensing and Regulation Act.] Texas Civil Statutes, Article 9100.

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

Act-Texas Civil Statutes, Article 8886, Registration of Property Tax Consultants.

Property tax consultant-An individual who performs property tax consulting services and who on and after February 1, 1995, is employed by or under the supervision of a senior property tax consultant.

Private provider-An educational institution that is established, conducted, and

primarily supported by a nongovernmental person, as defined by Texas Civil Statutes, Article 8886, which meets program and accreditation standards comparable to public institutions of higher education as determined by the Texas Higher Education Coordinating Board.

Real estate property tax consultant—An individual who performs property tax consulting services in connection with property that is real property only and who has registered under Texas Civil Statutes, Article 8886, §2(f), and who on and after February 1, 1995, is employed by or under the supervision of a senior property tax consultant.

Senior property tax consultant—A registered property tax consultant who has met the additional requirements of Texas Civil Statutes, Article 8886 and these rules.

§66.20. *Registration Requirements General.*

(a) Any person who performs property tax consulting services as defined in Texas Civil Statutes, Article 8886, after September 1, 1992, must first become registered with the Texas Department of Licensing and Regulation.

(b) All applicants and registrants shall obtain all necessary forms from the Texas Department of Licensing and Regulation.

(c) An individual whose registration has expired may renew the registration up to one year from the expiration date by paying the unpaid renewal fees plus a late registration renewal fee without having to meet the original application requirements.

(d) All registrants shall promptly report any change of address to the Texas Department of Licensing and Regulation, Licensing and Certification Division, Austin.

(e) It has been determined that the professional designation requirements of Texas Civil Statutes, Article 8886, §(3)(c) can be met by the designation of certified member of the institute (CMI) conferred by the Institute of Property Taxation.

(f) Individuals who are registered under Texas Revised Civil Statutes, Article 8886 (the Act) shall certify that the registrant has read and submits to the code of ethics as follows:

(1) shall not participate, whether individually, or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act or commissioner rule;

(2) shall not directly or indirectly or in any manner whatsoever lend his/her registration or identification to any person, firm, or corporation for the purpose

of evading any provision of the Act or commissioner rule;

(3) shall exercise reasonable care and diligence to prevent persons under his/her supervision from engaging in conduct which would violate any provision of the Act or commissioner rule;

(4) shall not engage in any activity that constitutes dishonesty, fraud, or gross incompetency while performing property tax consulting services;

(5) shall promptly report to the commissioner any known violation of the Act or commissioner rule;

(6) shall cooperate fully with the commissioner or staff in the investigation of an alleged violation of the Act or commissioner rule;

(7) shall not offer or promise anything of value with the intent of inducing a person who is performing a public duty to perform or fail to perform any act related to such public duty;

(8) shall not contract for or accept compensation or anything of value for services not performed;

(9) shall not knowingly or intentionally engage in any false or misleading conduct or advertising with respect to client solicitation;

(10) shall not knowingly furnish inaccurate, deceitful, or misleading information to a client or employer, prospective client or employer, or to a public agency or representative of a public agency;

(11) shall not reveal information known to be confidential unless the release of such information is authorized by the source or required by law;

(12) shall not state or imply that the registrant represents a person or firm that the registrant does not in fact represent.

(g) Individuals who are registered under Texas Civil Statutes, Article 8886, §2(f) may not perform property tax consulting services for compensation in connection with a property that is not real property.

§66.21. *Registration Requirements.*

(a) It is expressly understood that any falsification is cause for denial and/or revocation of registration.

(b) The registration application must:

(1) state the name, physical address, and telephone number of the place of business and the residence of the person or individual making application. If the applicant has not established a place of business in this state, additionally state the name,

physical address, and telephone number of the agent for service of legal process, who is a resident of this state;

(2) have attached proof of education and work requirements, if applicable;

(3) contain a signed code of ethics, standards of professional conduct;

(4) certify that the applicant is 18 years of age or older;

(5) certify that the applicant holds a high school diploma or equivalent;

(6) include proof of classroom hours as required by Texas Civil Statutes, Article 8886 §3(b), if initial application on or after February 1, 1993;

(7) Also include, if initial application for senior property tax consultant:

(A) certification of acquisition of 25 credits as provided by Texas Civil Statutes, Article 8886, §3(d)-(h);

(B) verifiable resume indicating the applicant has performed or supervised other persons in the performance of property tax consulting services as the applicant's primary occupation for at least four of the seven years preceding the date of application;

(C) the requirements of Texas Civil Statutes, Article 8886, §3(c)(3); if requesting waiver of the examination, a copy of the applicant's CMI designation certificate from the Institute of Property Taxation, or verifiable resume indicating the applicant's primary occupation for at least 25 years preceding the date of the application involved the performance or supervision of property tax consulting services or property appraisal, assessment, or taxation, and who has performed or supervised the performance of property tax consulting services as the applicant's primary occupation for the seven years preceding the date of application.

(8) include proof of continuing education credit hour requirements on a form obtained from the department if renewal of registration; additionally, if a registered property tax consultant, proof of employment by or business association with a senior property tax consultant;

(9) include an appropriate non-refundable application fee and refundable registration fee.

(c) On and after February 1, 1995, a property tax consultant must be employed by or have an association with a registered senior property tax consultant and be under the direct supervision of the senior property tax consultant. A registered property tax consultant may only offer services to senior

property tax consultants. There must be a legitimate employee/employer relationship or business association established.

(d) Any change of employment by a registered property tax consultant must be submitted to the department's Austin office, by the registrant, within 30 days of beginning employment.

§66.22. Continuing Education.

(a) Registrants must complete 20 hours of recognized continuing education as a prerequisite for renewal. At least six hours of the instruction shall cover laws and legal issues as related to property tax consulting in Texas.

(b) Seminars or courses relating to property tax consulting conducted by a non-profit, voluntary trade association that has a membership primarily composed of individuals who perform property tax consulting services may be approved for continuing education.

(c) Seminars or courses conducted by a public institution of higher education (as determined by the Texas Higher Education Coordinating Board) and that relate directly to property taxes may be approved for continuing education.

§66.23. Registration-Waiver of Requirements.

(a) Competency standards of another state must be substantially equal to those of Texas. It is the responsibility of the applicant to furnish evidence substantiating the applicant's qualifications.

(b) The department will determine on the basis of the requirements for registration in another state whether the applicant qualifies for a property tax consultant registration or a senior property tax consultant registration.

(c) It is the applicant's responsibility to obtain certification of the registration issued by another state.

(d) If not a resident of this state, the applicant must establish an agent for service of legal process with a resident of this state.

§66.60. Responsibilities of Department-Investigations.

(a) All complaints concerning registrants will be investigated.

(b) The department will conduct other investigations as it deems necessary for the effective enforcement of the Act.

§66.61. Responsibility of Department-Examinations.

(a) The standard for passing the senior property tax consultant examination shall be a score of at least 70%.

(b) The examinations shall be given twice a year but may be given at other times at the discretion of the commissioner.

(c) Examination fees will be refunded only if the applicant has given proper notice that the examination will not be taken. Written notice must be received in the Austin office a minimum of five days prior to the scheduled examination.

§66.70. Responsibilities of Registrant-General.

(a) A registrant may not allow an employee or associate to perform property tax consulting services without first obtaining registration.

(b) All registrants shall notify service recipients of the name, mailing address, and telephone number of the department. The registrant may use a sticker or rubber stamp to convey the required information. The notification shall be included on any contract or on a sign prominently displayed at each place of business.

(c) Misleading and untruthful advertising by a registrant is prohibited.

§66.71. Responsibilities of Registrant-Records. The registrant must allow the department, as part of an inspection or investigation, to enter his business premises during reasonable business hours to examine and copy any records that are pertinent to an inspection or investigation being conducted.

§66.80. Fees-Original Registration.

(a) The application fee for a property tax consultant is \$100.

(b) The application fee for a senior property tax consultant is \$150.

(c) The refundable registration fee for a property tax consultant is \$50.

(d) The refundable registration fee for a senior property tax consultant is \$75.

§66.81. Fees-Renewal.

(a) The application fee for renewing a property tax consultant's registration is \$25 and the registration fee is \$125 for a total of \$150.

(b) The application fee for renewing a senior property tax consultant's registration is \$25 and the registration fee is \$125 for a total of \$150.

(c) The application fee for renewing a senior property tax consultant's registration is \$25 and the registration fee is \$125 for a total of \$150.

(d) A late renewal fee of \$50 will be charged for renewal applications post-

marked between midnight of the date of expiration and midnight of the 30th day after the expiration. From the 31st day after expiration until one year, an additional \$50 will be charged.

§66.82. Fees-Duplicate Registration. A \$25 fee will be charged for issuing a duplicate registration.

§66.83. Fees-Examination

(a) A \$150 fee will be charged for each examination.

(b) This fee is refundable in accordance with §66.61 of this title (relating to Responsibility of Department-Examinations).

§66.84. Fees-Registration Upgrade. A registrant who subsequently qualifies as a senior property tax consultant will be charged an upgrade application fee of \$25 and a registration fee of \$125 for a total of \$150. A \$25 credit will be made for any remaining period of one year or more of the property tax consultant registration fee.

§66.85. Recognized Private Provider Fee.

(a) A nonrefundable \$125 application fee shall be paid by an applicant for the designation of recognized private provider.

(b) Applicants for recognized private provider shall pay an annual education provider's fee of \$75 which shall be refunded if the commissioner does not or ceases to recognize the provider's educational program or course offerings.

§66.90. Sanctions-Administrative Sanctions/Penalties. If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may institute proceedings to impose administrative sanctions and/or recommend administrative penalties in accordance with Texas Civil Statutes, Article 9100 and 16 TAC, Chapter 60.

§66.91. Sanctions-Revocation, Suspension, or Denial Because of a Criminal Conviction. Pursuant to Texas Civil Statutes, Article 6252-13c, the commissioner, after a hearing, may suspend or revoke an existing registration, or disqualify a person from receiving a registration, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in the area in which the applicant will be registered. The commissioner may also, after hearing, suspend, revoke, or deny a registration because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

Issued in Austin, Texas, on July 24, 1992.

TRD-9210213

Jack W. Garlson
Acting Executive Director
Texas Department of
Licensing and
Regulation

Effective date: July 27, 1992

Expiration date: November 24, 1992

For further information, please call: (512)
463-3127

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**TITLE 25. HEALTH SER-
VICES**

**Part I. Texas Department
of Health**

**Chapter 98. HIV and STD
Control**

**Subchapter C. Texas HIV
Medication Program**

General Provisions

• **25 TAC §98. 104, §98.105**

The Texas Department of Health (department) adopts on an emergency basis amendments to §98.104, §98.105, concerning the Texas HIV Medication Program. The sections implement the provisions of the Communicable Disease Prevention and Control Act, Health and Safety Code, §§85.061-85.066, concerning the establishment of an HIV Medication Program in Texas. The program assists hospital districts, local health departments, public or non-profit hospitals and clinics, nonprofit community organizations, and HIV infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV related conditions. Generally, the sections cover eligibility for participation and medication coverage. The amendments expand coverage of the program to include the drugs Acyclovir and Zalcitabine for eligible participants and the procedures for administering the drugs

The amendments are adopted on an emergency basis in order to expeditiously provide medications to HIV infected individuals. It is imperative to address this serious and imminent threat to public health and safety by providing approved medications as soon as possible. The amendments also are being proposed for permanent adoption in this issue of the Texas Register.

The emergency amendments are adopted under the Communicable Disease Prevention and Control Act, Health and Safety Code, §85.063, which provides the Texas Board of Health with the authority to adopt rules concerning a Texas HIV Medication Program; §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health; and Texas Civil Statutes, Article 6252-13a, §5, which provides the board with authority to adopt emergency rules.

§98.104. Medication Coverage.

(a)-(h) (No change.)

(i) Acyclovir capsules must be provided in increments of 100, not to exceed 200 per month. Acyclovir suspension must be provided in 473 ml. bottles of 200 mg./ml., not to exceed two bottles per month. Acyclovir powder for injection must be provided in 500 mg. vials, not to exceed 2-10 ml. vials per month.

(j) Zalcitabine tablets must be provided in increments of 100 not to exceed 100 tablets per month.

§98.105. Drug Specific Eligibility Criteria. A person is eligible for:

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

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

(6) Fluconazole if he or she has an established cryptococcal infection and for prophylaxis after diagnosis; [.]

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

(8) Zalcitabine in combination with zidovudine is indicated for the treatment of adult patients with advanced HIV infection (CD4 cell count less than or equal to 300) who have demonstrated significant clinical or immunologic deterioration.

Issued in Austin, Texas, on July 27, 1992.

TRD-9210261

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

Effective date: July 27, 1992

Expiration date: November 24, 1992

For further information, please call: (512)
458-7357

◆ ◆ ◆
**TITLE 31. NATURAL RE-
SOURCE AND CONSER-
VATION**

**Part I. General Land
Office**

**Chapter 8. Gas Marketing
Program**

• **31 TAC §§8.1-8.10**

The General Land Office is renewing the effectiveness of the emergency adoption of new §§8.1-8.10, for a 60-day period effective August 1, 1992. The text of new §§8.1-8.10 was originally published in the April 10, 1992, issue of the *Texas Register* (17 TexReg 2535).

Issued in Austin, Texas on July 28, 1992.

TRD-9210290

Ruby Simpson
Administration Program
Specialist
General Land Office

Effective date: August 1, 1992

Expiration date: September 30, 1992

For further information, please call: (512)
463-5019

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 IV. Texas Department of Licensing and Regulation

Chapter 60. Texas Commission of Licensing and Regulation

Subchapter C. Fees

• 16 TAC §60.64, §60.66

(Editor's Note. The Texas Department of Licensing and Regulation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Department of Licensing and Regulation proposes new §60.64 and §60.66, concerning fees collected in the employers of certain temporary common workers program and the registration of property tax consultants.

James D. Brush II, director, policies and standards division, has determined that there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government concerning the employers of certain temporary common workers program for the first five-year period the section is in effect will be an estimated increase in revenue of \$14,823 in fiscal year (fy) 1992 and \$13,387 in fys 1993-1996. The effect on state government concerning the registration of property tax consultants sections for the first five-year period the sections are in effect will be an estimated additional cost of \$208,000 for fy 1992 and \$137,346 for fys 1993-1996; an estimated increase in revenue of \$47,500 for fy 1992; \$125,654 for fy 1994; and \$110,154 for fy 1996 and an estimated loss in revenue of \$110,346 for fy 1993 and \$128,346 for fy 1995. During the first five-year period the sections are in effect the increase in revenue will on the average cover the additional cost. However, the statute requirement that all property tax consultants be registered by September 1, 1992, coupled with a two-year registration period and the inability to transfer funds from one fiscal year to another creates a large cycle in the increase or loss of revenue. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Brush 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 health and welfare of temporary common workers and assurance that registered property tax consultants meet education, professional, and ethical standards as well as protect the citizens of Texas.

The cost of compliance with the sections relating to employers of certain temporary common workers for small businesses will be \$300 per year for a license. The cost of compliance with the section relating to regulation of property tax consultants for small businesses will be \$225 per senior property tax consultant for the first year; \$150 per property tax consultant for the first year; and \$150 for the senior examination, which will effect an estimated 5.0% of the registration population.

The cost of compliance for small businesses as compared to the cost of compliance for the largest businesses affected by the sections will be the same.

The anticipated economic cost to persons who are required to comply with the employers of certain temporary common workers section will be none and for the registration of property tax consultants it will be \$150 for fy 1992; \$0 for fy 1993; \$150 for fy 1994; \$0 for fy 1995; and \$150 for fy 1996 for property tax consultants and \$375 for fy 1992; \$0 for fy 1993; \$150 for fy 1994; \$0 for fy 1995; and \$150 for fy 1996 for senior property tax consultants.

Comments on the proposal may be submitted to James D. Brush, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. 12157, 920 Colorado, Austin, Texas 78711, (512) 463-7352.

The new sections are proposed under Texas Civil Statutes, Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to set fees to cover the cost of administering programs regulated by the department.

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

Issued in Austin, Texas, on July 24, 1992.

TRD-9210214

Jack W. Garrison
Acting Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 4, 1992

For further information, please call (512) 463-3127

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 98. HIV and STD Control

Subchapter C. Texas HIV Medication Program

General Provisions

• 25 TAC §98.104, §98.105

(Editor's Note: The Texas Department of Health proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Department of Health (department) proposes amendments to §98.104 and §98.105, concerning the Texas HIV Medication Program. The sections implement the provisions of the Communicable Disease Prevention and Control Act, Health and Safety Code, §§85.061-85.066, concerning the establishment of an HIV Medication Program in Texas. The program assists hospital districts, local health departments, public or non-profit hospitals and clinics, nonprofit community organizations, and HIV infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV related conditions. Generally, the sections cover eligibility for participation and medication coverage.

The amendments expand coverage of the program to include the drugs Acyclovir and Zalcitabine for eligible participants and the procedures for administering the drugs.

Jim Allen, R.Ph., director, Texas Department of Health, Division of Pharmacy, Texas HIV Medication Program, has determined that for the first five-year period the sections as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed.

Mr. Allen also has determined that for each year of the first five years that the sections as proposed are in effect, the public benefit an-

anticipated as a result of enforcing the sections will be to expand coverage of the program to include acyclovir and zalcitabine to treat HIV program participants. There is no anticipated economic cost to small or large businesses to comply with the sections as proposed. There is no anticipated cost for persons who may be required to comply with the sections as proposed. There will be no effect on local employment.

Comments on the proposal may be submitted to Jim Allen, R Ph., Director, Texas Department of Health, Division of Pharmacy, Texas HIV Medication Program, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7357. Comments will be accepted for 30 days after publication of the proposal in the Texas Register.

The amendments are proposed under the Communicable Disease Prevention and Control Act, Health and Safety Code, §85.063, which provides the Texas Board of Health with the authority to adopt rules concerning a Texas HIV Medication Program, and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health

This 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 July 27, 1992

TRD-9210264 Robert A MacLean, M D
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: September 26, 1992

For further information, please call. (512) 458-7357

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 404. Protection of Clients and Staff

Subchapter B. Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers

• 25 TAC §§404.41-404.50

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

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes the repeal of §§404.41-404.50, concerning client abuse and neglect in community mental

health and mental retardation centers. The proposal of new Chapter 404, Subchapter B, concerning abuse and neglect in community mental health and mental retardation centers, is proposed contemporaneously in this edition of the *Texas Register*.

The proposed new subchapter includes provisions directed towards preparing for the transfer of the abuse and neglect investigation function to the Texas Protective and Regulatory Services agency, expected to occur September 1, 1992. The proposed new subchapter updates provisions for the investigation of abuse and neglect at community mental health and mental retardation centers.

Leilani Rose, director, Office of Financial Services, has determined that for the first five-year period the repeals are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the repeals. Local economic impact is anticipated to be insignificant.

Pam Carley, director, Consumer Services and Rights Protection, 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 adoption of rules providing for the thorough and timely investigation of all allegations of abuse or neglect of persons served in community mental health and mental retardation centers. 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 Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication

The repeals are proposed under Texas Civil Statutes, Article 5547-202, §2 11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§404.41. Purpose.

§404.42. Application.

§404.43. Definitions.

§404.44. Client Abuse and Neglect Defined.

§404.45. Administrative Enforcement.

§404.46. Responsibilities of the Office of Client Services and Rights Protection.

§404.47. Appeals Process.

§404.48. Training in Prevention of Client Abuse and/or Neglect.

§404.49. References.

§404.50. Distribution.

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 July 29, 1992.

TRD-9210315 Anne K. Utley
Chair
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: September 4, 1992

For further information, please call: 465-4670

Subchapter B. Abuse and Neglect in Community Mental Health and Mental Retardation Centers

• 25 TAC §§404.41-404.56

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§404.41-404.56, concerning abuse and neglect in community mental health and mental retardation centers. The repeal of existing Chapter 404, Subchapter B, concerning client abuse and neglect in community mental health and mental retardation centers, is proposed contemporaneously in this edition of the *Texas Register*.

The proposed new subchapter includes provisions directed towards preparing for the transfer of the abuse and neglect investigation function to the Texas Protective and Regulatory Services agency, expected to occur September 1, 1992

The primary difference between the current proposed sections and the existing subchapter involves the addition of requirements for reporting of abuse and neglect and the addition of expanded requirements for action by the community MHMR center executive director (or designee) upon receipt of an allegation of abuse or neglect. The current proposed sections include guidelines for reporting allegations of abuse and neglect to the Office of Consumer Services and Rights Protection (until such time as the Office of MHMR Protective Services, DPRS, is established).

Other changes include the addition and/or revision of numerous definitions, and the expansion of the definition of Class II abuse to include "any act of excessive force or corporal punishment, including striking or pushing a person served, regardless of whether the act results in nonserious injury to a person served"

A new Exhibit A, "Procedures and Techniques for Investigation of Abuse and Neglect," has been added. The document outlines the methods to be used by the abuse and neglect investigator to ensure a thorough, efficient investigation of an allegation of abuse or neglect.

Leilani Rose, director, office of financial services, has determined that for the first five-

year period the sections are in effect there will be no significant fiscal implications for state or local government as a result of enforcing administering the sections. Local economic impact is anticipated to be insignificant.

Pam Carley, director, Office of Consumer Services and Rights Protection, 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 adoption of rules providing for the thorough and timely investigation of all allegations of abuse or neglect of persons served in community mental health and mental retardation centers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

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

§404.41. Purpose. The purpose of these rules is to identify and prohibit abuse and neglect of persons served by employees, contractors, and agents of community mental health and mental retardation centers and to prescribe principles for its report, investigation, and prevention.

§404.42. Application. These rules apply to all community mental health and mental retardation centers and their agents and contractors.

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

Abuse and neglect investigator—An employee or independent contractor (consultant) or team of investigators appointed or hired to conduct investigations of abuse or neglect.

Adult—A person 18 years of age or older.

Agent—Any individual not employed by the center but working under the auspices of the center, such as a volunteer, a student, etc.

Allegation—A report by a person believing or having knowledge that a person receiving services has been or is in a state of abuse, exploitation, or neglect as defined in this subchapter.

Center—A community mental health and mental retardation center.

Child—A person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes.

Clinical issues—Issues related to unsafe nursing or medical practice or viola-

tions of the Nursing Practice Act or Medical Practice Act.

Complainant—The person filing a complaint, whether the victim of alleged abuse and neglect, a third party filing a complaint on behalf of the alleged victim, or both.

Community mental health and mental retardation center—A community mental health center, mental retardation center, or mental health and mental retardation center, administered by a board of trustees appointed pursuant to the Texas Mental Health and Mental Retardation Act (Texas Civil Statutes, Article 5547-201 to 5547-206), offering services which either alone or in conjunction with other service agencies owned or operated by it, or affiliated by contract with such center, provides an effective mental health or mental retardation services program or both to persons residing in its area.

Confirmed—Term used to describe an allegation of abuse or neglect which is supported by the preponderance of the evidence.

Contractor—Any organization, entity, or individual associated by contract in a working alliance with a center.

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

Designee—A staff member immediately available who is temporarily appointed to assume designated responsibilities of the executive director.

Office of MHMR Protective Services, DPRS—The office located at the Texas Department of Protective and Regulatory Services which, upon its creation, will assume the responsibilities of the Office of Consumer Services as outlined in this subchapter.

Executive director—The head of a community mental health and mental retardation center.

Exploitation—The illegal or improper act or process of an employee using the resources of a person served for monetary or personal benefit, profit, or gain.

Incitement—To spur to action or instigate into activity; implies responsibility for initiating another's actions.

Inconclusive—Term used to describe an allegation leading to no conclusion or definite result due to lack of witnesses or other relevant evidence.

Negligence—An action that a person of ordinary prudence would not have taken under the same or similar circumstances, or the failure to take an action that a person of ordinary prudence would have taken under the same or similar circumstances.

Nonserious physical injury—Any injury determined not to be serious by the examining physician. Examples of nonserious injury may include the following: superficial laceration, contusion, abrasion.

Office of Consumer Services and Rights Protection—The office located at the Texas Department of Mental Health and

Mental Retardation until such time as the Office of MHMR Protective Services, DPRS, is created.

Perpetrator unknown—Term used to describe instances in which abuse or neglect is confirmed but positive identification of the responsible person cannot be made, and in which self-injury has been eliminated as the cause.

Person served—Any person receiving services from a community MHMR center or contractor.

Preponderance of evidence—The greater weight of evidence, or evidence which is more credible and convincing to the mind.

Prevention and management of aggressive behavior (PMAB)—The department's monitoring risk management program which uses the least intrusive, most effective options to reduce the risk of injury for persons receiving services and for staff from acts or potential acts of aggression.

Retaliatory action—Any action intended to inflict emotional or physical harm or inconvenience on an employee or person served that is taken because he or she has reported abuse or neglect. This includes, but is not limited to, harassment, disciplinary measures, discrimination, reprimands, threats, and criticism.

Serious physical injury—An injury determined to be serious by the examining physician. Examples of serious physical injury may include the following: fracture; dislocation of any joint; internal injury; any contusion larger than 2 1/2 inches in diameter; concussion; second or third degree burn.

Sexual assault—A criminal act as defined in the Texas Penal Code, §22.011, a copy of which is included as an attachment in Exhibit A.

Sexual exploitation—Any act in which a less able individual is coerced, manipulated, or otherwise used sexually, or is threatened with the same by a more physically and intellectually advanced or more socially able individual.

Sexually transmitted disease—Any infection of a person served, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during or as a result of sexual contact between persons.

Unconfirmed—Term used to describe an allegation of abuse or neglect which is not supported by the preponderance of the evidence.

§404.44. Classification of Abuse and Neglect. When the perpetrator is an employee, contractor, or agent, or the perpetrator is unknown, confirmed abuse or neglect shall be classified in accordance with the "Procedures and Techniques for Investigation of Abuse and Neglect," which is herein

adopted by reference in §404.54 of this title (relating to Exhibits) as Exhibit A.

(1) Class I abuse means:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused serious physical injury to a person served; or

(B) Without regard to injury, any sexual assault or sexual exploitation involving an employee, agent, or contractor and a person served, without regard to injury.

(2) Class II abuse means:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused nonserious physical injury to a person served;

(B) any act of force or corporal punishment, including striking or pushing a person served, regardless of whether the act results in nonserious injury to a person served; or

(C) exploitation.

(3) Class III abuse means any use of verbal or other communication to curse, vilify, or degrade a person served, or to threaten a person served with physical or emotional harm, or any act which vilifies, degrades, or threatens a person served with physical or emotional harm.

(4) Neglect means negligence which causes or could predictably lead to any physical or emotional injury to a person served.

§404.45. Prohibition Against Abuse and Neglect of Persons Served by Community MHMR Centers, Contractors, and Agents.

(a) Abuse or neglect of persons served by community MHMR centers, contractors, and agents shall be grounds for appropriate action, including reporting to law enforcement authorities; reporting to governing boards for professional practice; and, additionally, for employees, disciplinary action up to and including termination.

(b) Abuse shall not include:

(1) proper use of restraints or seclusion, the approved application of behavior modification techniques, or other actions taken in accordance with the written policies and procedures of the center;

(2) such actions as an employee may reasonably believe to be immediately necessary to avoid imminent harm to him-

self, persons served, or other persons if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances;

(3) other actions taken in accordance with applicable departmental rules and/or policies and procedures of the community centers.

§404.46. Reporting Responsibilities of All Employees.

(a) Without regard to the identity of the perpetrator, each employee who suspects or has knowledge of, or who is involved in an allegation of, abuse or neglect shall make a verbal report to the center executive director or designee immediately, if possible, but in no case more than one hour after the incident. The employee shall submit a written incident report to the center executive director or designee within two hours. Employees who become aware of a situation at any time after the fact shall make a verbal report to the center executive director or designee immediately, if possible, but in no case more than one hour after learning of the incident. The employee shall submit a written incident report to the center executive director or designee within two hours.

(1) The "Report of Suspected Abuse/Neglect" form, which is attached as Exhibit B, should be made available to all staff to expedite the process of submitting written reports. However, lack of availability of this form should not impede the reporting of abuse and neglect

(2) Failure to make such reports within the allotted time period without sufficient justification shall be considered a violation of this subsection and make the employee subject to disciplinary action and possible criminal prosecution.

(b) Without regard to the identity of the perpetrator, suspected sexual assault or sexual exploitation shall be reported to the center executive director or designee immediately, if possible, but in no case more than one hour later by the person making the allegation. If the person making the allegation is not an employee, e.g., a person receiving services, a guest, etc., staff shall assist the individual in making the report, if necessary. The employee shall submit a written incident report (such as the "Report of Suspected Abuse/Neglect") to the center executive director or designee within two hours.

(c) If there is reason to suspect that a person served was abused, neglected, or exploited during an absence from the center with a family member or guardian, the employee shall immediately, if possible, but in no case more than one hour later contact the Department of Human Services (1-800-252-

5400) (or DPRS, upon its creation) and the center executive director or designee.

(d) Upon receiving a report of an allegation of abuse or neglect, the center executive director or designee will immediately, if possible, but in no case more than one hour later report abuse-related allegations of a criminal nature to the appropriate local or state law enforcement agencies unless other reporting requirements have been agreed to with local or state law enforcement agencies. Such agreements shall be in writing and signed by both the head of the facility and a representative of the law enforcement agency.

(e) Anonymous allegations will be received and investigated following the same procedures that are used when the complainant is known.

(f) An allegation that sexual assault or other aggressive behavior has been committed by a person receiving services shall be reported and investigated following the procedures outlined in this subchapter with the understanding that negligence on the part of staff may have made it possible for the assault to have occurred.

§404.47 Responsibilities of the Executive Director or Designee: Immediate Actions Required.

(a) Immediately upon notification of an allegation of abuse or neglect, if possible, but in no case more than one hour later, the center executive director or designee shall ensure that adequate medical care has been provided to the victim, and shall take measures to ensure the safety of the individual, including the following actions.

(1) If the accused is an employee, the center executive director or designee will determine whether action should be taken regarding the employee, which may include immediately granting the employee emergency leave, reassigning the employee to a non-direct care area, allowing the employee to continue in a non-direct care post pending investigation, or allowing the employee to remain in his or her current position pending investigation.

(2) If the accused is a person receiving services, the center executive director or designee will take immediate appropriate action to protect the victim, e.g., one-on-one observation of the accused and/or the victim, separation, etc. For cases in which the accused is a person served, the center executive director or designee shall refer the allegation to that person's treatment team or interdisciplinary team within 24 hours, unless the allegation is made on a weekend or holiday, in which case the allegation may be referred to the treatment team or interdisciplinary team on the next working day.

(3) If the accused is a private citizen, the center executive director or designee will immediately, if possible, but in no case more than one hour later notify the Texas Department of Human Services (or DPRS, upon its creation) for their investigation.

(4) If the accused is an independent school district (ISD) employee, the center executive director or designee will immediately, if possible, but in no case more than one hour later contact the superintendent of the ISD, and the appropriate local or state law enforcement agency (if appropriate) for their investigation.

(5) If the allegation involves verbal abuse, physical abuse, sexual assault, or sexual exploitation, the center executive director or designee will ensure necessary immediate and ongoing medical and/or psychological attention is obtained for the victim, and, as needed, for the perpetrator, if a person receiving services. Such attention may include screening and treatment for sexually transmitted diseases, psychological counseling and support, etc., consistent with the procedures described in "Procedures and Techniques for Investigation of Abuse and Neglect," which is referenced in §404.54 of this title (relating to Exhibits) as Exhibit A.

(b) The center executive director or designee will immediately, if possible, but in no case later than 24 hours after notification of the allegation of abuse, neglect, or exploitation, notify the parents, guardian, spouse, or other appropriate relative of the alleged victim unless such notification is specifically prohibited by law (Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services)) or by rules of the department relating to confidentiality (Chapter 403, Subchapter K of this title (relating to Client-Identifying Information)).

(c) All allegations of Class I abuse and injuries of a serious nature must be reported to the Office of Consumer Services and Rights Protection within 24 hours of receiving an allegation, or at 8 a.m. on the first succeeding work day for reports received on weekends and holidays.

§404.48. Abuse and Neglect Investigator.

(a) Abuse and neglect investigator. The center executive director or designee shall select staff to investigate an allegation of abuse or neglect. In assigning staff to investigate an allegation, the executive director or designee shall ensure that the investigator is:

- (1) not from the same unit as the accused; and
- (2) not personally or professionally associated with the accused.

(b) Training. Staff members serving as abuse and neglect investigators will receive appropriate training in issues related to the efficient and effective investigation of all allegations, including, but not limited to, how to conduct investigations and rights of persons served.

(c) Consultants. The abuse and neglect investigator may retain a consultant for the purpose of assisting with investigations.

(d) Responsibilities. The abuse and neglect investigator shall fully investigate alleged incidents of abuse or neglect.

(1) The abuse and neglect investigator shall begin the investigation immediately, i.e., interview the complainant and assure the safety and medical examination/treatment for the person served, as needed.

(2) Investigative procedures outlined in "Procedures and Techniques for Investigation of Abuse and Neglect," which is referenced in §404.54 of this title (relating to Exhibits) as Exhibit A, are to be followed in all investigations.

(A) Written statements shall be obtained from all witnesses and any other persons who may provide collateral information.

(B) The abuse and neglect investigator shall ensure that all photographs relevant to the investigation, including photographs depicting the existence or nonexistence of injuries, are taken as soon as possible, but in no case more than 24 hours after the report of the allegation. Copies of all such photographs shall be submitted with the investigative report.

(C) The physician's examination and treatment of abuse-related injuries shall be documented and attached to the investigative report. The physician's remarks during or following the examination should address the injury's cause, age, and treatment, to the extent that can be determined, as well as the timing of the medical examination with regard to the date the injury was received.

(3) If at any point during the course of the investigation it becomes apparent (via witness statements and other evidence gathered) that the allegation is obviously spurious, the investigation may be closed as unfounded. The reason for the determination, based on specific evidence, will be included in the report, which will be signed by the center executive director. A copy of all such investigations shall be sent to the Office of Consumer Services and Rights Protection.

§404.49. Responsibilities of the Executive Director or Designee; Completion of Investigation.

(a) Within 10 working days of the commencement of the investigation, the center executive director or designee shall submit to the Office of Consumer Services and Rights Protection, two copies of:

(1) the investigative report, including a statement of the allegation(s), a summary of the investigation, an analysis of the evidence, and the abuse and neglect investigator's recommendations concerning whether or not abuse or neglect occurred;

(2) all witness statements;

(3) doctors' orders and notes, nurses' notes, and progress notes for the date in question;

(4) diagrams or photos of the area where the alleged abuse or neglect occurred;

(5) a copy of the hospital's policy (and checklist) regarding any special precautions the individual may have been in at the time of the alleged incident;

(6) photos depicting the existence or nonexistence of injuries, if injuries are alleged; and

(7) the AN-1-A form, which is referenced in §404.96 of this title (relating to Exhibits) as Exhibit C.

(b) The report of investigation and action taken shall be maintained by the center for a period of five years.

(c) If additional time is required to complete the investigative report, justification must be approved by the center executive director and this will be noted in the final report.

(d) In cases of abuse or neglect previously reported to a law enforcement agency, the center executive director or designee will submit a copy of the investigative report to the appropriate law enforcement agency.

(e) The center executive director or designee shall ensure that the alleged victim and the parents, guardian, spouse, or other appropriate relatives who were notified of the allegation are promptly notified of the final results of the investigation.

§404.50. Responsibilities of the Executive Director or Designee: Disciplinary Action. The center executive director or designee shall be responsible for taking prompt and proper disciplinary action when a charge of abuse or neglect is confirmed. Disciplinary action shall be based on criteria including, but not limited to:

(1) the seriousness of the abuse and/or neglect;

- (2) the circumstances surrounding the event;
- (3) the employee's record;
- (4) repeat offenses; and
- (5) if a second violation, the length of time between violations.

§404.51. Responsibilities of the Office of Consumer Services and Rights Protection. The Office of Consumer Services and Rights Protection shall.

- (1) provide technical assistance to community MHMR centers in the investigation of abuse and neglect allegations;
- (2) review the quality of abuse and neglect investigations;
- (3) determine closure and final determination on all investigations (an on-site investigation may be conducted when a complaint is made or the initial investigation was not satisfactory);
- (4) forward copies of closed investigations to the associate deputy commissioner of community MH services or the associate deputy commissioner of community MHMR centers, as appropriate; and
- (5) alert the associate deputy commissioner of community MH services or the associate deputy commissioner of community MHMR centers, as appropriate, of trends, statistical analyses, and any recommended corrective action.

§404.52. Appeals Process.

- (a) A complainant who makes an allegation of abuse or neglect is to be notified of the right to appeal the outcome of an investigation.
 - (b) A complainant who makes an allegation of abuse or neglect and wishes to appeal the findings shall request a review of the completed investigation by notifying the Office of Consumer Services and Rights Protections.
 - (1) Upon receipt of a request for an appeal from the complainant, a review of the findings of the investigation will commence. The appeal process will include a review of the investigative report and all supporting documents and records. An on-site investigation may occur in those instances in which new information is reported or there are inconsistencies with the witness statements.
 - (2) The appeal process will be completed within 30 days from the day the request was received.
 - (3) A letter reflecting the outcome of the appeal will be sent to the complainant with a copy to the center executive director.

§404.53. Training in Prevention of Abuse and/or Neglect of Persons Served.

- (a) Within 60 days after the effective date of these rules, all current employees shall be oriented to the contents of these rules by the executive director or designee. Within 30 days of the date of employment or association and, when possible, prior to coming into direct contact with persons served, new employees, contractors, or agents shall receive instruction of the contents of this subchapter. Acknowledgment of this instruction shall be certified by the employee, contractor, or agent and filed in his or her file.
 - (b) Documentation shall be maintained and updated for all employees, contractors, and agents receiving such training.
 - (c) All current employees in frequent, direct contact with persons served shall receive appropriate instructions on the prevention and management of aggressive behavior. Documentation shall be maintained and updated for employees receiving such instruction.

§404.54. Exhibits. The following documents are referenced in this documents as exhibits:

- (1) Exhibit A—"Procedures and Techniques for Investigation of Abuse and Neglect;"
- (2) Exhibit B—Report of Suspected Abuse/Neglect Form,
- (3) Exhibit C—"Abuse/Neglect Report" (AN-1-A Form).

§404.55. References. Reference is made to the following statutes, rules of the department, and attorney general opinions:

- (1) Texas Civil Statutes, Article 5547-201;
- (2) Texas Civil Statutes, Article 5547-202, §2.12;
- (3) Texas Civil Statutes, Article 5547-204;
- (4) Texas Civil Statutes, Article 5547-87;
- (5) Texas Civil Statutes, Article 695c-2, §9;
- (6) Texas Penal Code, Chapters 19 and 21, §§22.01, 22.02, 22.04, 22.05, 22.07, 22.08, 22.10;
- (7) Texas Family Code, §§11.01, 34.01, and 34.02;
- (8) Human Resources Code, Title 2, Chapter 25;
- (9) Human Resources Code, Chapter 48;

(10) Attorney General Opinions H-237 (1974), H-986 (1977), and H-494 (1975);

(11) Texas Civil Statutes, Article 5547-300.

§404.56. Distribution.

(a) The provisions of this subchapter shall be distributed to:

- (1) members of the Texas Board of Mental Health and Mental Retardation;
- (2) the medical director, deputy commissioners, assistant deputy commissioners, and directors of central office;
- (3) superintendents and directors of all TDMHMR facilities,
- (4) chairpersons of the boards of trustees of community mental health and mental retardation centers;
- (5) directors of community mental health and mental retardation centers,
- (6) the Texas Association for Retarded Citizens;
- (7) the Texas Association on Mental Deficiency;
- (8) the Parent Association for the Retarded of Texas,
- (9) the Texas Association for Mental Health,
- (10) the attorney general of Texas;
- (11) the Attorney General's Office of Youth Care Investigation,
- (12) the Texas Department of Health;
- (13) the Texas Department of Human Services;
- (14) the Texas Youth Commission;
- (15) the Alliance for Mental Recovery; and
- (16) Advocacy, Incorporated.

(b) The director of each community mental health and mental retardation center shall be responsible for duplicating and disseminating copies of this subchapter to:

- (1) appropriate staff; and
- (2) any person served, employee, or other person desiring a copy.

(c) The director of each community mental health and mental retardation center shall be responsible for ensuring that all employees have access to a copy of this rule.

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 July 29, 1992.

TRD-9210316

Anne K. Utley
Chair
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: September 4, 1992

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

Subchapter C. Patient Abuse in Private Psychiatric Hospi- tals

• 25 TAC §§404.81-404.87

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

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes the repeal of §§404.81-404.87 of this title, concerning patient abuse in private psychiatric hospitals. The proposal of new Chapter 404, Subchapter C, concerning abuse and neglect in private psychiatric hospitals, is proposed contemporaneously in this edition of the *Texas Register*.

The proposed new subchapter includes provisions directed towards preparing for the transfer of the abuse and neglect investigation function to the Texas Protective and Regulatory Services agency, expected to occur September 1, 1992. The proposed new subchapter updates provisions for the investigation of abuse and neglect at 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 as a result of administering the sections as proposed. Local economic impact is anticipated to be insignificant.

Pam Carley, director, Consumer Services and Rights Protection, has determined that the public benefit is the adoption of rules providing for the thorough and timely investigation of all allegations of abuse or neglect of persons served in community mental health and mental retardation centers. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the sections.

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

The repeals are proposed under Texas Civil Statutes, Article 5547-202, §2. 11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§404.81. Purpose.

§404.82. Application.

§404.83. Definitions.

§404.84. Patient Abuse and Neglect Defined.

§404.85. Responsibilities of Administrators

§404.86. Training in Prevention of Patient Abuse and/or Neglect.

§404.87. Notification of Patients of Abuse Reporting Procedures.

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 July 29, 1992

TRD-9210313

Anne K. Utley
Chair
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: September 4, 1992

For further information, please call: 465-4670

Subchapter C. Abuse and Ne- glect in Private Psychiatric Hospitals

• 25 TAC §§404.81-404.98

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§404.81-404.98 of this title, concerning abuse and neglect in private psychiatric hospitals. The repeal of existing Chapter 404, Subchapter C, concerning patient abuse and neglect, is proposed contemporaneously in this edition of the *Texas Register*.

The proposed new subchapter includes provisions directed towards preparing for the transfer of the abuse and neglect investigation function to the Texas Protective and Regulatory Services agency, expected to occur September 1, 1992.

The primary difference between the current proposed sections and the existing subchapter involves the addition of requirements for reporting of abuse and neglect and the addition of expanded requirements for action by the hospital administrator (or designee) upon receipt of an allegation of abuse or neglect. The current proposed sections include guidelines for reporting allegations of abuse and neglect to the Office of Consumer Services and Rights Protection (until such time as the Office of MHMR Protective Services, DPRS, is established).

Other changes include the addition and/or revision of numerous definitions, and the expansion of the definition of Class II abuse to

include "any act of excessive force or corporal punishment, including striking or pushing a person served, regardless of whether the act results in nonserious injury to a person served."

A new Exhibit A, "Procedures and Techniques for Investigation of Abuse and Neglect," has been added. The document outlines the methods to be used by the abuse and neglect investigator to ensure a thorough, efficient investigation of an allegation of abuse or neglect

Leilani Rose, director, Office of Financial Services, has determined that there will be no significant fiscal implications for state or local government 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 providing for the thorough and timely investigation of all allegations of abuse or neglect of persons served in private psychiatric hospitals. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the sections.

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

The new 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; and under the Texas Health and Safety Code, §577.010 (Texas Mental Health Code, Article 5547-95), which provides the Texas Department of Mental Health and Mental Retardation with rulemaking powers specific to private psychiatric hospitals.

§404.81. Purpose. The purpose of this subchapter is to identify and prohibit abuse and neglect of persons served by employees, contractors, and agents of private psychiatric hospitals and to prescribe principles for its report, investigation, and prevention.

§404.82. Application. This subchapter applies to all private psychiatric hospitals licensed by the department under Texas Civil Statutes, Article 5547-88, et seq., other than those operated by community mental health and mental retardation centers.

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

Abuse and neglect investigator—An employee or independent contractor (consultant) or team of investigators appointed or hired to conduct investigations of abuse or neglect

Adult—A person 18 years of age or older.

Agent—Any individual not employed by the facility but working under the auspices of the facility, such as a volunteer, a student, etc.

Administrator—The individual with primary responsibility for day-to-day operation of the hospital.

Allegation—A report by a person believing or having knowledge that a person receiving services has been or is in a state of abuse, exploitation, or neglect as defined in this subchapter.

Child—A person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes.

Clinical issues—Issues related to unsafe nursing or medical practice or violations of the Nursing Practice Act or Medical Practice Act.

Complainant—The person filing a complaint, whether the victim of alleged abuse and neglect, a third party filing a complaint on behalf of the alleged victim, or both.

Confirmed—Term used to describe an allegation of abuse or neglect which is supported by the preponderance of the evidence.

Contractor—Any organization, entity, or individual associated by contract in a working alliance with a private psychiatric hospital.

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

Designee—A staff member immediately available who is temporarily appointed to assume designated responsibilities of the hospital administrator.

Exploitation—The illegal or improper act or process of an employee using the resources of a person served for monetary or personal benefit, profit, or gain.

Incitement—To spur to action or instigate into activity; implies responsibility for initiating another's actions.

Inconclusive—Term used to describe an allegation leading to no conclusion or definite result due to lack of witnesses or other relevant evidence.

Negligence—An action that a person of ordinary prudence would not have taken under the same or similar circumstances, or the failure to take an action that a person of ordinary prudence would have taken under the same or similar circumstances.

Nonserious physical injury—Any injury determined not to be serious by the examining physician. Examples of nonserious injury may include the following: superficial laceration, contusion, abrasion.

Office of Consumer Services and Rights Protection—The office located at the Texas Department of Mental Health and Mental Retardation until such time as the Office of MHMR Protective Services, DPRS, is created.

Office of MHMR Protective Services, DPRS—The office located at the Texas Department of Protective and Regulatory Services which, upon its creation, will assume the responsibilities of the Office of Consumer Services as outlined in this subchapter.

Perpetrator unknown—Term used to describe instances in which abuse or neglect is confirmed but positive identification of the responsible person cannot be made, and in which self-injury has been eliminated as the cause.

Person served—Any person receiving services from a private psychiatric hospital, including those persons who are inpatients, outpatients receiving daycare or partial hospitalization services, or night care.

Preponderance of evidence—The greater weight of evidence, or evidence which is more credible and convincing to the mind.

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.

Serious physical injury—An injury determined to be serious by the examining physician. Examples of serious injury may include the following: fracture; dislocation of any joint; internal injury; any contusion larger than two and one half inches in diameter; concussion; second or third degree burn.

Sexual assault—A criminal act as defined in the Texas Penal Code, §22.011, a copy of which is included as an attachment in Exhibit A.

Sexual exploitation—Any act in which a less able individual is coerced, manipulated, or otherwise used sexually, or is threatened with the same by a more physically and intellectually advanced or more socially able individual.

Sexually transmitted disease—Any infection of a person served, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during or as a result of sexual contact between persons.

Threat—Action in response to a request for discharge that is illegal or unjustified by the condition of the person served. Also includes actions intended to coerce individuals into admitting themselves to a private psychiatric hospital.

Unconfirmed—Term used to describe an allegation of abuse or neglect which is not supported by the preponderance of the evidence.

§404.84. Abuse and Neglect Defined. When the perpetrator is an employee, contractor, or agent, or the

perpetrator is unknown, confirmed abuse or neglect shall be classified in accordance with the "Procedures and Techniques for Investigation of Abuse and Neglect," which is herein adopted by reference in §404.95 of this title (relating to Exhibits) as Exhibit A.

(1) Class I abuse means:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused serious physical injury, including death, to a person served; or

(B) any sexual assault or sexual exploitation involving an employee, agent, or contractor and a person served, without regard to injury.

(2) Class II abuse means:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused nonserious physical injury to a person served;

(B) any act of force or corporal punishment, including striking or pushing a person served, regardless of whether the act results in nonserious injury to a person served; or

(C) exploitation.

(3) Class III abuse means any use of verbal or other communication to curse, vilify, or degrade a person served, or to threaten a person served with physical or emotional harm, or any act which vilifies, degrades, or threatens a person served with physical or emotional harm. This includes any actions in response to a request for discharge that are illegal or unjustified by the condition of the person served, or actions for the purpose of coercing individuals into admitting themselves voluntarily to a hospital (i.e., threats).

(4) Neglect means negligence which caused or could predictably lead to any physical or emotional injury to a person served.

§404.85. Prohibition Against Abuse and Neglect of Persons Served by Private Psychiatric Hospitals, Contractors, or Agents.

(a) Abuse or neglect of persons served by private psychiatric hospitals, contractors, and agents shall be grounds for appropriate action, including reporting to law enforcement authorities; reporting to governing boards for professional practice; and additionally, for employees, disciplinary action up to and including termination.

(b) Abuse shall not include:

(1) proper use of restraint or seclusion, the approved application of behavior modification techniques, or other actions taken in accordance with the written policies and procedures of the hospital; or

(2) such actions as an employee may reasonably believe to be immediately necessary to avoid imminent harm to himself, persons served, or other persons if such actions are limited to those actions reasonably believed to be necessary under the existing circumstances.

§404.86. Reporting Responsibilities of All Employees.

(a) Without regard to the identity of the perpetrator, each employee who suspects or has knowledge of, or who is involved in an allegation of, abuse or neglect shall make a verbal report to the hospital administrator or designee immediately, if possible, but in no case more than one hour after the incident. The employee shall submit a written incident report to the hospital administrator or designee within two hours. Employees who become aware of a situation at any time after the fact shall make a verbal report to the hospital administrator or designee immediately, if possible, but in no case more than one hour after learning of the incident. The employee shall submit a written incident report to the hospital administrator or designee within two hours.

(1) The "Report of Suspected Abuse/Neglect" form, which is attached as Exhibit B, should be made available to all staff to expedite the process of submitting written reports. However, lack of availability of this form should not impede the reporting of abuse and neglect.

(2) Failure to make such reports within the allotted time period without sufficient justification shall be considered a violation of this subsection and make the employee subject to disciplinary action and possible criminal prosecution.

(b) Without regard to the identity of the perpetrator, suspected sexual assault or sexual exploitation shall be reported to the hospital administrator or designee immediately, if possible, but in no case more than one hour later by the person making the allegation. If the person making the allegation is not an employee, e.g., a person receiving services, a guest, etc., staff shall assist the individual in making the report, if necessary. The employee shall submit a written incident report (such as the "Report of Suspected Abuse/Neglect") to the hospital administrator or designee within two hours.

(c) If there is reason to suspect that a person served was abused, neglected, or exploited during an absence from the hospi-

tal with a family member or guardian, the employee shall immediately, if possible, but in no case more than one hour later contact the Department of Human Services (1-800-252-5400) (or the TDPRS, upon its creation) and the hospital administrator or designee.

(d) Upon receiving a report of an allegation of abuse or neglect, the hospital administrator or designee will immediately, if possible, but in no case more than one hour later report abuse-related allegations of a criminal nature to the appropriate local or state law enforcement agencies unless other reporting requirements have been agreed to with local or state law enforcement agencies. Such agreements shall be in writing and signed by both the head of the facility and a representative of the law enforcement agency.

(e) Anonymous allegations will be received and investigated following the same procedures that are used when the complainant is known.

(f) An allegation that sexual assault or other aggressive behavior has been committed by a person receiving services shall be reported and investigated following the procedures outlined in this subchapter with the understanding that negligence on the part of staff may have made it possible for the assault to have occurred.

§404.87. Responsibilities of Administrator or Designee: Immediate Actions Required.

(a) Immediately upon notification of an allegation of abuse or neglect, if possible, but in no case more than one hour later, the hospital administrator or designee shall ensure that adequate medical care has been provided to the victim, and shall take measures to ensure the safety of the individual, including the following actions.

(1) If the accused is an employee, the hospital administrator or designee will determine whether action should be taken regarding the employee, which may include immediately granting the employee emergency leave, reassigning the employee to a non-direct care area, allowing the employee to continue in a non-direct care post pending investigation, or allowing the employee to remain in his or her current position pending investigation.

(2) If the accused is a person receiving services, the hospital administrator or designee will take immediate appropriate action to protect the victim, e.g., one-on-one observation of the accused and/or the victim, separation, etc. For cases in which the accused is a person served, the hospital administrator or designee shall refer the allegation to that person's treatment team or interdisciplinary team within 24 hours, unless the allegation is made on a

weekend or holiday, in which case the allegation may be referred to the treatment team or interdisciplinary team on the next working day.

(3) If the accused is a private citizen, the hospital administrator or designee will immediately, if possible, but in no case more than one hour later notify the Texas Department of Human Services (or the TDPRS, upon its creation) for their investigation.

(4) If the accused is an Independent School District (ISD) employee, the hospital administrator or designee will immediately, if possible, but in no case more than one hour later contact the superintendent of the ISD, and the appropriate local or state law enforcement agency (if appropriate) for their investigation.

(5) If the allegation involves verbal abuse, physical abuse, sexual assault, or sexual exploitation, the hospital administrator or designee will ensure necessary immediate and ongoing medical and/or psychological attention is obtained for the victim, and, as needed, for the perpetrator, if a person receiving services. Such attention may include screening and treatment for sexually transmitted diseases, psychological counseling and support, etc., consistent with the procedures described in "Procedures and Techniques for Investigation of Abuse and Neglect," which is referenced in §404.95 of this title (relating to Exhibits) as Exhibit A.

(b) The administrator or designee will immediately, if possible, but in no case later than 24 hours after notification of the allegation of abuse, neglect, or exploitation, notify the parents, guardian, spouse or other appropriate relative of the alleged victim with appropriate consent.

(c) All allegations of abuse or neglect must be reported to the Office of Consumer Services and Rights Protection within 48 hours of receiving an allegation, or at 8 a.m. on the first succeeding work day for reports received on weekends and holidays. An investigation may be conducted by this office which may include the following elements when warranted:

(A) a visit to the hospital;

(B) interviews with the administrator, other staff, the alleged perpetrator, the victim, and other persons served; and

(C) review of documentation, such as photographs of injuries, medical reports, records of persons served, and hospital investigative reports.

§404.88. Abuse and Neglect Investigator.

(a) Abuse and neglect investigator. The administrator or designee shall select staff to investigate an allegation of abuse or neglect. In assigning staff to investigate an allegation, the administrator or designee shall ensure that the investigator is:

(1) not from the same unit as the accused, and

(2) not personally or professionally associated with the accused.

(b) Training. Staff members serving as abuse and neglect investigators will receive appropriate training in issues related to the efficient and effective investigation of all allegations, including, but not limited to, how to conduct investigations and rights of persons served.

(c) Consultants. The abuse and neglect investigator may retain a consultant for the purpose of assisting with investigations.

(d) Responsibilities. The abuse and neglect investigator shall fully investigate alleged incidents of abuse or neglect.

(1) The abuse and neglect investigator shall begin the investigation immediately, i.e., interview the complainant and assure the safety and medical examination/treatment for the person served, as needed.

(2) Allegations determined by the investigator to involve rights violations shall be reported to the Coordinator, Private Psychiatric Hospital Licensure, Office of Standards and Quality Assurance, Texas Department of Mental Health and Mental Retardation.

(3) Investigative procedures outlined in "Procedures and Techniques for Investigation of Abuse and Neglect," which is referenced in §404.95 of this title (relating to Exhibits) as Exhibit A, are to be followed in all investigations.

(A) Written statements shall be obtained from all witnesses and any other persons who may provide collateral information.

(B) The abuse and neglect investigator shall ensure that all photographs relevant to the investigation, including photographs depicting the existence or nonexistence of injuries, are taken as soon as possible, but in no case more than 24 hours after the report of the allegation. Copies of all such photographs shall be submitted with the investigative report.

(C) The physician's examination and treatment of abuse-related injuries shall be documented and attached to the

investigative report. The physician's remarks during or following the examination should address the injury's cause, age, and treatment, to the extent that can be determined, as well as the timing of the medical examination with regard to the date the injury was received.

§404.89. Responsibilities of the Administrator or Designee; Completion of Investigation.

(a) Within 10 working days of the commencement of the investigation, the administrator or designee shall submit to the Office of Consumer Services and Rights Protection, two copies of:

(1) the investigative report, including a statement of the allegation(s), a summary of the investigation, an analysis of the evidence, and the abuse and neglect investigator's recommendations concerning whether or not abuse or neglect occurred;

(2) all witness statements;

(3) doctors' orders and notes, nurses' notes, and progress notes for the date in question;

(4) diagrams or photos of the area where the alleged abuse or neglect occurred;

(5) a copy of the hospital's policy (and checklist) regarding any special precautions the individual may have been in at the time of the alleged incident; and

(6) photos depicting the existence or nonexistence of injuries, if injuries are alleged.

(b) The report of investigation and action taken shall be maintained by the hospital for a period of five years.

(c) If additional time is required to complete the investigative report, justification must be received by the Office of Consumer Services and Rights Protection, for approval or disapproval and this will be noted in the final report.

(d) In cases of abuse or neglect previously reported to a law enforcement agency, the administrator or designee will submit a copy of the investigative report to the appropriate law enforcement agency.

(e) The administrator or designee shall ensure that the alleged victim and the parents, guardian, spouse, or other appropriate relatives who were notified of the allegation are promptly notified of the final results of the investigation.

§404.90. Responsibilities of the Administrator or Designee: Disciplinary Action. The administrator or designee shall be responsible for taking prompt and proper disciplinary action when a charge of abuse or neglect is confirmed. Disciplinary action

shall be based on criteria including, but not limited to:

(1) the seriousness of the abuse and/or neglect;

(2) the circumstances surrounding the event;

(3) the employee's record;

(4) repeat offenses, and

(5) if a second violation, the length of time between violations.

§404.91. Responsibilities of the Office of Consumer Services and Rights Protection. The Office of Consumer Services and Rights Protection shall:

(1) provide technical assistance to private psychiatric hospitals in the investigation of abuse and neglect allegations;

(2) serve as liaison with the private psychiatric hospitals;

(3) review the quality of abuse and neglect investigations;

(4) determine closure and final determination on all investigations;

(5) forward copies of closed investigations to the Coordinator, Private Psychiatric Hospital Licensure, Office of Standards and Quality Assurance, TXMHMR; and

(6) alert the Coordinator, Private Psychiatric Hospital Licensure of trends, statistical analyses, and any recommended corrective action.

§404.92. Appeals Process.

(a) A complainant who makes an allegation of abuse or neglect is to be notified of the right to appeal the outcome of an investigation.

(b) A complainant who makes an allegation of abuse or neglect and wishes to appeal the findings shall request a review of the completed investigation by notifying the Office of Consumer Services and Rights Protection.

(1) Upon receipt of a request for an appeal from the complainant, a review of the findings of the investigation will commence. The appeal process will include a review of the investigative report and all supporting documents and records. An on-site investigation may occur in those instances in which new information is reported or there are inconsistencies with the witness statements.

(2) The appeal process will be completed within 30 days from the day the request was received.

(3) A letter reflecting the outcome of the appeal will be sent to the

complainant with a copy to the hospital administrator.

§404.93. Training in Prevention of Abuse and/or Neglect of Persons Served.

(a) Within 60 days after the effective date of this subchapter, all current employees shall be oriented to the contents of these rules by the administrator or designee. Within 30 days of the date of employment and, when possible, prior to coming into direct contact with persons served, new employees shall receive instruction on the contents of this subchapter. Acknowledgment of this instruction shall be certified by the employee and filed in his or her personnel file.

(b) Documentation shall be maintained and updated for all employees, contractors, and agents receiving such training.

§404.94. Notification of Persons Served of Abuse Reporting Procedures. All patients shall be notified of procedures to report abuse or neglect and their right to call the Office of Consumer Services and Rights Protection if they are victims or observers of abuse or neglect.

§404.95. Exhibits. The following exhibits are referenced in this document:

(1) Exhibit A—Procedures and Techniques for Investigation of Abuse and Neglect.

(2) Exhibit B—Report of Suspected Abuse and Neglect.

§404.96. References. Reference is made to the following statutes, rules of the department, and attorney general opinions:

(1) Texas Civil Statutes, Article 5547-201;

(2) Texas Civil Statutes, Article 5547-202, §2.12;

(3) Texas Civil Statutes, Article 5547-204;

(4) Texas Civil Statutes, Article 5547-87;

(5) Texas Civil Statutes, Article 695c-2, §9;

(6) Texas Penal Code, Chapters 19 and 21, §§22.01, 22.02, 22.04, 22.05, 22.07, 22.08, 22.10;

(7) Texas Family Code, §§11.01, 34.01, and 34.02;

(8) Human Resources Code, Title 2, Chapter 25;

(9) Human Resources Code, Chapter 48;

(10) Attorney General Opinions H-237 (1974), H-986 (1977), and H-494 (1975);

(11) Texas Civil Statutes, Article 5547-300.

§404.97. Distribution.

(a) The provisions of this subchapter shall be distributed to:

(1) members of the Texas Board of Mental Health and Mental Retardation;

(2) the medical director, deputy commissioners, assistant deputy commissioners, and directors of Central Office;

(3) superintendents and directors of all TDMHMR facilities;

(4) chairpersons of the boards of trustees of community mental health and mental retardation centers;

(5) directors of community mental health and mental retardation centers;

(6) the Texas Association for Retarded Citizens;

(7) the Texas Association on Mental Deficiency;

(8) the Parent Association for the Retarded of Texas;

(9) the Texas Association for Mental Health;

(10) the attorney general of Texas;

(11) the Attorney General's Office of Youth Care Investigation;

(12) the Texas Department of Health;

(13) the Texas Department of Human Services;

(14) the Texas Youth Commission;

(15) the Alliance for Mental Recovery; and

(16) Advocacy, Incorporated.

(b) The director of each community mental health and mental retardation center shall be responsible for duplicating and disseminating copies of this subchapter to:

(1) appropriate staff; and

(2) any person served, employee, or other person desiring a copy.

(c) The director of each community mental health and mental retardation center shall be responsible for ensuring that all employees have access to a copy of this rule.

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 July 29, 1992.

TRD-9210314

Anne K. Utley
Chair
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: September 4, 1992

For further information, please call: 465-4670

◆ ◆ ◆
Chapter 405. Client (Patient) Care

Subchapter V. Client Volunteer Program

• 25 TAC §§405.551-405.561

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

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes the repeal of §§405.551-.561 of this title, concerning the client volunteer program. The proposal of new Chapter 410, Subchapter B, concerning community relations, is proposed contemporaneously in this edition of the *Texas Register*.

The proposed new subchapter includes provisions for all volunteer programs operating at department facilities and at community centers upon commencement of TXMHMR funding for those programs (anticipated to begin in FY 1994). The proposed new subchapter also incorporates recommendations of the TXMHMR Board's Ad Hoc Committee on Volunteer Services, including a recommendation to rename the volunteer services function as "community relations."

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

Peg Barry, director, Volunteer Services and Public Information, has determined that the public benefit is the adoption of rules providing for the effective implementation of volunteer and revenue generating programs at facilities and community centers throughout the State of Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the sections.

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

The repeals are proposed under Texas Civil Statutes, Article 5547-202, §2. 11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§405.551. Purpose.

§405.552. Application.

§405.553. Definitions.

§405.554. Circumstances Under Which a Client May Perform Volunteer Services.

§405.555. Solicitation of Clients for the Volunteer Program Prohibited.

§405.556. Duties of the Volunteer Services Staff; Documentation and Recordation of Requests for Client Volunteers; Types of Volunteer Services Opportunities.

§405.557. How a Client May Become a Volunteer.

§405.558. Types of Volunteer Services that May be Performed by Clients.

§405.559. General Provisions Governing Client Volunteer Programs.

§405.560. Confidentiality.

§405.561. Distribution.

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 July 29, 1992.

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Anne K. Utley
Chair
Texas Board of Mental
Health and Mental
Retardation

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For further information, please call: 465-4670

◆ ◆ ◆
Chapter 407. Internal Facilities Management

Subchapter D. Volunteer Services

• 25 TAC §§407.71-407.102

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

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes the repeal of §§407.71-407.102, concerning volunteer services. The proposal of new Chapter 410, Subchapter B, concerning community

relations, is proposed contemporaneously in this edition of the *Texas Register*.

The proposed new subchapter includes provisions for all volunteer programs operating at department facilities and at community centers upon commencement of TXMHMR funding for those programs (anticipated to begin in FY '94). The proposed new subchapter also incorporates recommendations of the TXMHMR Board's Ad Hoc Committee on Volunteer Services, including a recommendation to rename the volunteer services function as "community relations."

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

Peg Barry, director, Volunteer Services and Public Information, has determined that the public benefit is the adoption of rules providing for the effective implementation of volunteer and revenue generating programs at facilities and community centers throughout the State of Texas. There will be no effect on small businesses. There is no anticipated economic cost to person required to comply with the sections.

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

The repeals are proposed under Texas Civil Statutes, Article 5547-202, §2. 11, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§407.71. Purpose.

§407.72. Application.

§407.73. Statement of Philosophy.

§407.74. Definitions.

§407.75. Chief, Volunteer Services.

§407.76. Coordinator, Volunteer Services: Administrative Status; Responsibilities.

§407.77. Coordinator, Volunteer Services: Selection Process; Orientation and Continuing Education.

§407.78. Volunteers: Age; Identification; Meals.

§407.79. Volunteers: Employee Volunteers; Former Employees; Client Volunteers; Clients' Relatives; Public Responsibility Committee.

§407.80. Volunteers: Standard Interview; Basic Orientation and Training; Placement Procedures; Assignment Descriptions; Evaluation.

§407.81. Volunteers: Insurance Coverage; Passengers in State Vehicles; Requirements for Drivers.

§407.82. Volunteers: Recording Hours of Service; Transferring Hours to Another Facility; Recognition Certificates.

§407.83. Volunteers: Commissioner's Award for Volunteer Services.

§407.84. Volunteers: Separation Process; Exit Interview.

§407.85. Constraints: Applicable Policy; Giving Money to Clients and Taking Money From Clients; Driving State Vehicles; Keys to State Buildings and Other Property.

§407.86. Constraints: Using Facility Letterheads.

§407.87. Constraints: Confidentiality; Taking Photographs of Clients.

§407.88. Constraints: Employee Participation in Council.

§407.89. Donations: Processed by Volunteer Services; Property of Council; Fire Safety Requirements; Acknowledgments by Council.

§407.90. Donations: Community Solicitations; Undesignated Funds.

§407.91. Donations: Staff Requests for Donated Items; Maintaining Records of Donations; Annual Report of Gifts, Grants, Contracts, and Donations.

§407.92. Donations: Setting Value of Donations; Value for Tax Purpose.

§407.93. Donations: Procedures for Night and Weekend Donations; Disposition of Unused Items.

§407.94. Donations: Capital Improvements Projects; Naming of Donated Gifts, Memorials, or Items.

§407.95. Donations: Petty Cash Funds in Coordinator's Office.

§407.96. Donations: Council Books Exempt from Audit.

§407.97. Donations: Food.

§407.98. Monthly Reports; Facility Volunteer Services; Outreach Locations.

§407.99. Other Provisions: Volunteer Services Emblem; Correspondence; Noon-Hour Coverage.

§407.100. Exhibits.

§407.101. References.

§407.102. Distribution.

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 July 29, 1992.

TRD-9210353 Anne K. Utley
Chair
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Chapter 410. Volunteer Services and Public Information

Subchapter B. Community Relations

• 25 TAC §§410.51-410.76

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§410.51-410.76, concerning community relations. The repeal of the subchapters the sections would replace, Chapter 405, Subchapter V (relating to Client Volunteers), and Chapter 407, Subchapter D (relating to Volunteer Services), are proposed contemporaneously in this edition of the *Texas Register*.

The proposed new subchapter reflects recommendations of the Texas Board of MHMR's Ad Hoc Committee on Volunteer Services. Those recommendations include the renaming of the volunteer services function as "community relations" to reflect that the effort includes both recruitment and retention of volunteers and resource generation. Other recommendations include the requirement that memorandums of understanding be developed between facilities or community centers and the nonprofit organization working on behalf of the facility or community center. The MOU is intended to outline the responsibilities of each party.

The application of the proposed new subchapter extends to community centers effective September 1, 1993, at which point the department will begin funding the community relations function at community centers. The proposed new subchapter deregulates to a great degree the way the functions of the community relations office are carried out, although general guidelines are provided.

It is anticipated that additional information regarding the function of community relations which does not affect private rights and interests will be included in an operating instruction which will supplement this subchapter. That document will be developed at a later date with the cooperation and input of interested and affected parties.

Leilani Rose, director, Office of Financial Services, has determined that for the first five-year period the sections are in effect the fiscal implications for state government will be approximately \$100,000 for the first year of implementation of this subchapter. That amount will increase to approximately \$1.85 million for each year thereafter as a result of the added cost of funding the community relations function at community MHMR centers. It is anticipated, however, that the cost will be offset quickly by the value of services and revenues donated as a result of the community relations program. The cost of funding the community relations program at TXMHMR facilities, for example, was estimated at \$2.5 million in fiscal year (fy) 1991:FY '91; the value of services and revenues donated in fy 1991 exceeded \$11.5 million. There will be no significant fiscal implications for local government.

Local economic impact is anticipated to be insignificant.

Peg Barry, director, volunteer services and public information, central office, has determined that for each year of the first five year the section is in effect the public benefit is anticipated as a result of enforcing the sections will be the adoption of rules providing for the effective implementation of volunteer and revenue generating programs at facilities and community centers throughout the State of Texas. The effect on small businesses is estimated at a total of \$100,000 statewide, the result of a provision requiring nonprofit organizations (volunteer services councils) to pay for their postage and printing costs. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to

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

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

§410.51. Purpose. The purpose of this subchapter is to delineate department policy

and establish uniform operating standards for volunteer services and fundraising at department facilities and community mental health and mental retardation centers.

§410.52. Application. The provisions of this subchapter shall apply to:

(1) all facilities of the Texas Department of Mental Health and Mental Retardation, including their community services and outpatient programs; and

(2) effective September 1, 1993, all community mental health and mental retardation centers.

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

Cash-Currency, checks, drafts, money orders, and other forms of legal tender.

Commissioner-The commissioner of the Texas Department of Mental Health and Mental Retardation.

Community mental health and mental retardation center (CMHMRC)-A mental health and mental retardation center established under the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-201 et seq, as amended.

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

Deputy commissioner-The deputy commissioner for Mental Health Services and/or Mental Retardation Services of the Texas Department of Mental Health and Mental Retardation.

Direct care-An assignment which involves working one-to-one with persons served.

Direct service volunteer-An individual who provides time and/or services to individuals served by TXMHMR. Direct service volunteers are not paid by TXMHMR for assistance and can include community citizens; family members of individuals receiving services when not acting on behalf of the individual receiving services; employees when not acting in the capacity of employment; and individuals receiving services when not acting solely on behalf of himself/herself. Examples of direct service volunteers include:

(A) Advocacy volunteers-Individuals who act in an advocacy capacity for individuals with mental retardation who have no legal guardians. This program is part of the intermediate care facilities for mental retardation (ICF/MR) program requirements.

(B) Community restitution volunteers-Individuals who are required by a court to provide a specified number of

hours of volunteer services in lieu of a jail sentence.

(C) Community service volunteers—Individuals who volunteer in programs operated by the facilities' community services divisions in counties for which they are the mental health or mental retardation authority.

(D) Foster grandparents—A volunteer program operated by the federal government through ACTION. Volunteers are provided a subsidy.

Donation—A contribution of anything of value freely given to benefit persons served by the department.

Donor—An individual who contributes financial or in-kind gifts such as property or goods, or who serves as a volunteer "member" of a nonprofit organization which generates revenue on behalf of TXMHMR.

Employee—A person who is legally employed to perform work and who is paid a salary or wage by the department, a facility, or a CMHMRC.

Executive director—The chief administrator of any CMHMRC.

Facility—A state school, state hospital, or state center, including their respective community services and outpatient programs, or other facilities of TXMHMR.

Facility or CMHMRC community relations office—The staff at a facility or CMHMRC who manage the volunteer programs and oversee volunteer fundraising activities. Community relations may include the public information function.

Individual served—Any individual receiving mental health or mental retardation services, in residence or through outpatient or community services programs, from a facility or CMHMRC.

Nonprofit organization or 501(c)(3)—An organization recognized by the Internal Revenue Service as a nonprofit corporation and granted the right to receive tax deductible contributions. The nonprofit organization works on behalf of the agency to generate resources.

Office of Community Relations, Central Office—Under the direct supervision of the commissioner, the central office department responsible for setting policy and directing the statewide community relations program.

Public responsibility committee (PRC)—Volunteers appointed by either the executive committee of a facility or CMHMRC nonprofit organization or the authorizing body of a community mental health and mental retardation center to provide independent investigation of consumer rights and abuse and neglect issues. The PRC is required by state statute for programs for individuals with mental retardation and authorized by TXMHMR for programs serving individuals with mental illness.

Superintendent/director—The chief administrator of any department facility.

Texas Foundation for Mental Health and Mental Retardation—A nonprofit organization acting on behalf of TXMHMR to raise funds to enhance the department's programs.

TXMHMR—The Texas Department of Mental Health and Mental Retardation, including facilities and CMHMRCs.

Volunteer services council (VSC)—A nonprofit organization of volunteers who work on behalf of a facility or CMHMRC.

Volunteer Services State Council (VSSC)—A statewide organization representing facility and CMHMRC volunteers and volunteer fundraising efforts.

§410.54. General.

(a) Volunteers and donors of the Texas Department of Mental Health and Mental Retardation are highly valued as an essential component of its functions. Direct service volunteers are recognized and supported in their efforts to provide goods, services, and personal attention for persons served which enhance and enrich the best treatment and habilitation the state can provide. Donors are recognized and supported in their efforts to enhance the fundraising capabilities and revenue development of the department, enabling the department to provide additional services and goods to the people it serves.

(b) By freely contributing their remarkable talents, resources, creativity, and energy in response to human needs, volunteers, both direct service and donors, consistently support the department in its vision of a Texas where:

(1) in partnership with TXMHMR, volunteers assist people with mental illness, mental retardation, and substance abuse to have the skills and opportunities they need to achieve their individual dreams;

(2) volunteers help people enjoy good health, safety, and security from harm, and a quality standard of living; and

(3) volunteers encourage this and future generations to enjoy the bountiful natural beauty and resources of Texas.

(c) In recognition of the talents, resources, creativity, and energy provided by direct service volunteers, TXMHMR has a responsibility to develop and support, through training and funding, volunteer programs which enhance the lives of the people served by the department. To facilitate the execution of this responsibility, every facility and CMHMRC authority shall operate a volunteer program. These programs shall be funded by the department at its facilities' campus and community service programs and by contract with CMHMRCs, and shall

be centrally overseen by the Office of Community Relations, Central Office.

(d) Since the superintendent/director or executive director is responsible for the overall operation of the facility or CMHMRCs in order to provide the best treatment and habilitation for persons served, it is essential that the nonprofit organization fully coordinate its activities with the facility or CMHMRC administration. The superintendent/director or executive director retains full authority over all functions and projects concerning the facility or CMHMRC, persons served, and the employees. It is also essential that administration and staff cooperate fully with the volunteer council and the volunteers who provide the services. To facilitate this relationship, a memorandum of understanding clearly outlining the responsibilities of both the nonprofit organization and the facility or CMHMRC, which is referenced in §410.74 of this title (relating to Exhibits) as Exhibit A, shall be adopted.

§410.55. Direct Service Volunteers: Current Employees; Former Employees.

(a) Current employees.

(1) Employees may volunteer their services at a facility or CMHMRC if their time is donated willingly without external pressure.

(A) The functional area and geographic location of employees' volunteer assignments must be as far removed as possible from their regular work assignments and duties.

(B) All employees must submit a statement verifying that they are volunteering their time without coercion. Facilities and CMHMRCs may use the standard "Employee Volunteer Statement," which is referred to in §410.74 of this title (relating to Exhibits) as Exhibit B, or they may develop a mechanism of their own. The facility or CMHMRC community relations office shall keep a signed copy of the employee volunteer's statement, and a copy shall be placed in the employee's personnel record.

(2) Hours of service donated by an employee volunteer are counted and recorded by the facility or CMHMRC community relations office staff for volunteer credit, but shall not be counted as part of the employee's regular paid assignment.

(b) Former employees.

(1) Former employees of facility or CMHMRC community relations offices may apply to volunteer at the facility or CMHMRC where they were previously employed after a waiting period of at least one year.

(2) Other former employees may apply to volunteer at the same or a different facility or CMHMRC after a waiting period specified by the facility or CMHMRC director of community relations.

(c) Requirements. All current and former employees applying for volunteer placement shall be subject to the standard interview, screening, training, and evaluation required of other applicants for volunteer placement.

§410.56. Direct Service Volunteers: Persons Served.

(a) A person served has the right to perform services as a volunteer if:

(1) the kinds of activity for which the individual volunteers are those which other volunteers usually and customarily perform in department facilities and CMHMRCs;

(2) the service does not constitute a job which is or should be the work of a paid employee;

(3) the individual understands that the activity is a free-will service and that "voluntarily" means "without pay; "

(4) there are no material benefits or privileges available to the individual which are not available to persons served who do not volunteer to provide services, except the possible wearing of a name tag or other means of identification during the performance of volunteer services or special recognition or benefits such as are available to other volunteers for their services (i.e., meals);

(5) appropriate orientation and on-the-job training is provided to enable the individual to understand the requirements of the volunteer assignment;

(6) the individual is able to perform the services and understands the boundaries or risks, if any, of the volunteer assignment; and

(7) the volunteer activities of the individual do not interfere with any regularly scheduled activity.

(b) If the person served is employed by the facility or CMHMRC, volunteer services are to be in activities which are not related to duties in the individual's paid job.

(c) A person served may not be placed in a volunteer assignment on the same unit where the person resides.

(d) A person served may become a volunteer in either of the following two ways.

(1) The individual may initiate a request through the facility or CMHMRC community relations office. The facility or

CMHMRC community relations office shall assist in securing a clearance through the treatment team.

(2) The individual may initiate a request through the treatment team. If the treatment team approves the request, the facility or CMHMRC community relations office shall be contacted and efforts shall be made to match the person served with a staff member's request for volunteers.

(e) A person served may not participate in volunteer activities without the concurrence of the individual's treatment team.

(f) Persons served may be advised that the volunteer program is available but may not be directed to participate in the volunteer program. A person served may offer to perform volunteer services if he or she wishes to and with the approval of the treatment team. To the greatest extent possible the volunteering of a person served for the performance of volunteer services is to be handled in essentially the same manner as the volunteering of any other citizen for the performance of volunteer services.

(g) The facility or CMHMRC community relations office shall confer with the appropriate facility or CMHMRC staff to work out specific methods of implementing a volunteer program for persons served at that facility or CMHMRC which shall comport with the requirements of this subchapter.

(h) The facility or CMHMRC community relations office shall obtain from the person served, on a one-time basis, a statement verifying that the individual is volunteering without coercion. Facilities and CMHMRCs may use the standard "Client Volunteer Statement," which is referred to in §410.74 of this title (relating to Exhibits) as Exhibit E, or may develop their own mechanism. A copy of the statement shall be filed in the facility or CMHMRC community relations office and in the medical records of the person served. A person served may not begin the performance of a volunteer assignment until the statement has been processed.

(i) Persons served who are engaged in activities for their own benefit as opposed to activities for the common benefit may continue to do so and need not be inducted through the facility or CMHMRC community relations office by means of the procedures set forth in this subchapter (e.g., gardening/cultivating a plant, as opposed to trimming the shrubs).

§410.57. Direct Service Volunteers: Relatives of Persons Served; Public Responsibility Committees.

(a) Relatives of persons served may request individual volunteer assignments. However, relatives of persons served re-

questing and assigned to direct care tasks must perform those assignments in an area not related to the person served.

(b) Rules and regulations governing volunteer service of public responsibility committee members are established and outlined in Chapter 410, Subchapter A of this title (relating to Public Responsibility Committees).

§410.58. Direct Service Volunteers: Standard Interview; Basic Orientation and Training; Placement Procedures; Assignment Descriptions; Evaluation.

(a) All applicants for volunteer placement, including persons served, shall complete an application for volunteer service as part of the interview process, a copy of which shall be kept on file with other volunteers' applications and records. A sample "Application for Volunteer Service" is referred to in §410.74 of this title (relating to Exhibits) as Exhibit C; facilities and CMHMRCs may use this form or develop their own.

(1) All prospective volunteers must complete a confidentiality agreement. No exception to this rule shall be made without prior consultation with the Office of Community Relations, Central Office. The "Confidentiality Agreement for Volunteers" form, which is referred to in §410.74 of this title as Exhibit D, may be used, although facilities and CMHMRCs may elect to develop their own mechanism.

(2) All prospective volunteers who may be assigned to direct care positions are subject to a criminal history record check as authorized in the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-202, §2.28.

(3) All prospective volunteers are subject to acceptance by the facility or CMHMRC director of community relations.

(4) Volunteers assigned to religious education shall be approved by the facility or CMHMRC chaplain or chaplaincy staff.

(5) No volunteer shall be subject to discrimination under any of the policies or procedures of the department or any of its component facilities based on race, color, national origin, religion, sex, handicap, veteran status, or political affiliation.

(b) Volunteers shall be required to complete a basic orientation conducted by the facility or CMHMRC community relations office prior to placement. In addition, volunteers shall receive training in any areas necessary to successfully perform duties outlined in the volunteer's job description.

(1) Whenever possible, the facility or CMHMRC community relations office should utilize the resources and con-

sultation available through the facility or CMHMRC offices for staff development.

(2) Training shall be offered at times which are convenient to volunteers, including weekends and evenings.

(c) Volunteers shall be placed in assignments only with the agreement of the staff member with whom the volunteer will be placed.

(1) Staff requests for volunteers shall be submitted to the facility or CMHMRC community relations office. Facilities and CMHMRCs shall develop an appropriate mechanism for submission of requests for volunteers.

(2) The facility or CMHMRC director of community relations shall confer with the staff member who shall be supervising the volunteers before making the placement. An interview between the volunteer and volunteer supervisor shall be conducted prior to placement. A job description shall be provided delineating responsibilities of the volunteer.

(d) A copy of the job description of each volunteer assignment shall be maintained by the facility or CMHMRC community relations office, and a copy of the job description of volunteer assignments for persons served shall also be placed in the individual's medical record. All job descriptions shall be reviewed periodically and revised as needed to accurately describe the tasks actually being performed by the volunteer.

(e) The facility or CMHMRC community relations office and facility or CMHMRC staff members who supervise the volunteer's work assignment shall periodically review and evaluate each volunteer's work assigned duties as delineated on the volunteer's job description using an appropriate mechanism. The "Evaluation of Volunteer" form, which is referred to in §410.74 of this title (relating to Exhibits) as Exhibit E, may be used for this purpose, although facilities and CMHMRCs may elect to develop a different mechanism.

(f) As part of the evaluation process, volunteers shall be given an opportunity to evaluate their volunteer experience.

§410.59. Direct Service Volunteers: Age Requirements; Identification; Meals.

(a) All persons applying for individual volunteer services placements must have had their 14th birthday before their applications shall be considered.

(1) Individual facilities may specify a minimum age above 14 years of age on specific assignments for individual volunteers.

(2) The minimum age requirement does not apply to members of volun-

teer groups which come to the facility or CMHMRC under the supervision of an adult sponsor or leader (i.e., families, school groups) and which are approved by the facility or CMHMRC's director of community relations.

(3) Volunteers age 14-17 shall be considered for placement in individual volunteer assignments only after the facility or CMHMRC community relations office has obtained the documented permission of the minor's parent or legal guardian. The "Parental Permission Form-For Volunteers Under the Age of 18," which is referred to in §410.74 of this title (relating to Exhibits) as Exhibit G, may be used for this purpose, although facilities and CMHMRCs may elect to develop their own mechanism.

(b) Volunteer assignments for minors should comply with the child labor requirements of the Department of Labor.

(c) A name tag, badge, or some other means of identification shall be provided for all volunteers.

(d) Volunteer workers may receive free meals provided by the facility or CMHMRC when on duty during mealtime.

§410.60. Volunteers: Insurance Coverage; Passengers in State Vehicles; Requirements for Drivers.

(a) Department funds shall provide coverage for direct service volunteers under volunteer program insurance.

(b) Volunteers may ride as passengers in facility or CMHMRC buses, vans, and other state vehicles in connection with their approved volunteer assignment.

(c) Volunteers may drive state vehicles as permitted by facility or CMHMRC policies and procedures.

(d) Volunteers who drive non-state vehicles transporting persons served must have at least the minimum auto liability insurance coverage required by state law. Volunteers who drive non-state vehicles in connection with their volunteer assignment must satisfy the requirements listed in the department's internal rules governing transportation.

(e) A volunteer whose driver's license is from another state may not transport persons served until he or she has obtained a valid Texas drivers' license or a military equivalent accepted by the Department of Public Safety in lieu of a valid Texas license.

§410.61. Awards for Volunteer Services.

(a) Direct service volunteers providing exemplary services may be recognized on the local level with the presentation of a "Star" award. The facility

or CMHMRC director of community relations may annually select two individuals to receive "Star" awards. These awards include a pin and a certificate of recognition provided by the department.

(b) Each "Star" award winner is automatically considered for receipt of a "Star of TXMHMR" award, a statewide volunteer award presented annually by the commissioner. The number of "Star of TXMHMR" awards presented each year shall be determined by the commissioner. A pin and a plaque shall be presented to recipients.

(c) Department funds may be used to provide additional recognition items for direct service volunteers provided the cost of such items does not exceed the \$75 limit established in state statute.

(d) Nonprofit organizations shall develop a means of recognizing those individuals who volunteer for their programs which benefit TXMHMR.

§410.62. Volunteers: Separation Process, Exit Interview.

(a) The facility or CMHMRC director of community relations may separate a volunteer if it is felt that the volunteer is unsuited to the assignment. No cause need be cited.

(b) Before a volunteer is separated, consideration should be given to discussion with the volunteer, discussion with the volunteer's staff supervisor, length of satisfactory work donated by the volunteer, and reassignment of the volunteer.

(c) If the volunteer is a person served, the approval of the individual's treatment team must also be obtained before the individual can be separated from a volunteer assignment.

(d) The facility or CMHMRC community relations office should make every effort to conduct an exit interview with all volunteers who are leaving the program or terminating their assignment. The "Exit Interview Form-Volunteer Services," which is referred to in §410.74 of this title (relating to Exhibits) as Exhibit H, may be used for this purpose, although facilities and CMHMRCs may elect to develop their own mechanisms.

§410.63. Direct Service Volunteers: General Guidelines.

(a) Volunteers shall be subject to all applicable rules, regulations, policies, and procedures of the department and the facility or CMHMRC where they are participating in the volunteer services program.

(b) A volunteer shall not give money directly to persons served. If a volunteer wishes to donate money to a specific individual, he or she must consult the facil-

ity or CMHMRC director of community relations for the procedure to be followed.

(c) Under no circumstances shall volunteers take or accept money from persons served.

(d) Keys to state buildings, state vehicles, or state equipment shall not be issued to individual volunteers. However, the facility or CMHMRC director of community relations may, in some rare instances, determine that a volunteer needs access to a room within a state building for a specific time and purpose in order to adequately perform a volunteer assignment. Under these conditions, the facility or CMHMRC director of community relations may elect to request that a key be issued to the volunteer for a limited period of time. No keys shall be issued to volunteers without the prior approval of the superintendent/director or the person authorized by the superintendent/director to issue keys.

(e) Volunteers may use state property only in connection with their assigned duties or in connection with council projects.

(f) Volunteers are not authorized to use the facility or CMHMRC letterhead.

(g) All volunteers shall be subject to the confidentiality statutes and regulations governing disclosure of information concerning persons served, including:

(1) Chapter 403, Subchapter K of this title (relating to Disclosure of Client-Identifying Information);

(2) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services); and

(3) Chapter 405, Subchapter Y of this title (relating to Client Rights-Mental Retardation Services).

(h) Volunteers shall not take any photographs of persons served without obtaining clearance through the facility or CMHMRC community relations office, which shall be responsible for obtaining legally adequate consent from the appropriate person.

(i) All volunteer records which directly or indirectly identify a person served or a person formerly served are confidential. The confidentiality of such records shall be maintained and protected, and the information contained in such records may not be disclosed to anyone except as authorized by law.

(j) Volunteers are required to observe the rights and responsibilities of identifying themselves as representatives of the department, including the responsibility to represent the department's position on issues when acting in such capacity.

§410.64. Acceptance of Donations.

(a) Donations through nonprofit organizations. All goods, services, and funds for persons served donated through the nonprofit organization shall be processed through the nonprofit organization. This is not a function or responsibility of the facility or CMHMRC community relations office, although the facility or community center and the nonprofit organization may establish a process for staff assistance and include it in the MOU between the entities as outlined in §410.69 of this title (relating to Nonprofit Organizations-Relationship to Agency and/or Its Facility or CMHMRC).

(1) The nonprofit organization, in coordination with the donor, shall determine the value of the donated items for tax purposes.

(2) All items shall remain the property of the nonprofit organization until such time as they are turned over to the facility or CMHMRC. Donated items which cannot be used to benefit persons served, directly or indirectly, may be distributed to other charitable agencies which have an appropriate use for them.

(3) Upon transfer of donated goods, services, and funds from the nonprofit organization to the facility or CMHMRC, the facility or CMHMRC community relations office shall place its own value on the goods, services, and funds which are accepted using values recommended by the Internal Revenue Service (IRS). These values shall be used by the facility or CMHMRC in completing its report of donations, as discussed in §410.72 of this title (relating to Audit Guidelines; Additional Reporting Guidelines).

(b) Donations made directly to facilities or CMHMRCs. Donations made directly to facilities or CMHMRCs shall be processed in keeping with policies and procedures outlined in department Directive 1, "Standard Operating Procedures."

(c) General guidelines for all donations.

(1) All donated items must meet the fire safety requirements outlined in the TXMHMR Safety Manual.

(2) All donations must be acknowledged.

(A) Donations to the nonprofit organization must be acknowledged by the nonprofit organization. The correspondence must be signed by a council member.

(B) Donations made directly to the facility or CMHMRC must be acknowledged by the facility or CMHMRC.

§410.65. Donations: Community Solicitations; Undesignated Donations.

(a) The staff of the facility or CMHMRC community relations office must be the facility or CMHMRC's only personnel authorized to solicit goods and services from the community.

(1) Other facility or CMHMRC staff members and designated personnel in community services programs may solicit donated goods, services, food, or funds after conferring with and attaining approval from the facility or CMHMRC community relations office.

(2) Donors often designate items for a particular individual, group, living unit, or section of the facility or CMHMRC. The facility or CMHMRC community relations office shall make every effort to ensure that designated donations do not contravene standards of care of persons served.

(b) Funds received at the facility or CMHMRC which do not specifically designate the volunteer service council, shall be directed to the council if:

(1) the funds are received in response to a specific fund appeal made to the community by the council;

(2) the funds refer to a program or activity sponsored, underwritten, or coordinated by the volunteer services council; or

(3) written authorization is obtained from donors of undesignated funds specifying that those funds be given to the council.

(c) Donated food not designated for a specific activity (e.g., birthday parties, holiday parties, picnics) shall be approved by the food service manager for quality and safety before it is distributed.

§410.66. Capital Improvements Projects; Naming of Donated Gifts, Memorials, or Items.

(a) Guidelines for capital improvement projects are established in Chapter 410, Subchapter C of this title (relating to Capital Improvements by Citizen Groups).

(b) The naming of any gift, memorial, or donated item which is a capital improvement project must be in accordance with guidelines established by the General Purchasing Commission and must have the approval of the Texas Board of Mental Health and Mental Retardation.

(c) The naming of any gift, memorial, or donated item which is not a capital improvement project must be in accordance with guidelines established by the General Purchasing Commission and, if the donation is to be referred to or officially known by

that name, must have the approval of the commissioner.

§410.67. Donations: Maintenance of Petty Cash Funds.

(a) Facility and CMHMRC directors of community relations may elect to maintain petty cash funds for nonprofit organizations in their offices. Information regarding the need for the maintenance of petty cash funds, the amount of funds to be maintained, and the uses of the funds shall be included in the memorandum of understanding between the facility or CMHMRC and the nonprofit organization. A sample copy of the MOU is referred to in §410.74 of this title (relating to Exhibits) as Exhibit A.

(b) The facility or CMHMRC director of community relations shall keep receipts and accurate documentation for all petty cash funds disbursed and shall furnish such records to the treasurer of the local nonprofit organization.

(c) Petty cash disbursements shall be included in the treasurer's reports to the local council and shall be included in the audit of the council's books.

§410.68. Fundraising at Local Level.

(a) Each facility or CMHMRC may have a nonprofit organization working on its behalf to enhance the facility's or CMHMRC's fundraising abilities. At facilities, the organization shall be known as the facility volunteer services council (VSC).

(b) The nonprofit organization shall have responsibility for raising funds on behalf of campus and community service programs for needs of persons served, employee projects, and enhanced operations.

(c) Employees may wish to conduct activities (i.e., bake sales, sales of merchandise) designed to raise money for employee activities. Such activities must be approved by the superintendent/director or executive director. Money collected from such efforts may be:

(1) submitted to the nonprofit organization and maintained in a restricted account; or

(2) deposited to a bank account established for that purpose by an employee in the employee's name. Any employee agreeing to create such an account accepts the responsibilities of such an account, including tax responsibilities.

§410.69. Nonprofit Organizations-Relationship To Agency and/or Its Facility or CMHMRC.

(a) The board of the nonprofit organization shall be cooperatively appointed by the facility superintendent/director or

CMHMRC executive director and the nonprofit organization.

(b) The superintendent/director or executive director shall have non-voting membership on the board of the nonprofit organization and executive committee.

(c) The facility or CMHMRC director of community relations shall be a non-voting member of the council board and executive committee.

(d) The council bylaws shall outline specific methodology for:

- (1) limiting terms of officers;
- (2) election of a nominating committee;
- (3) joining the nonprofit organization; and
- (4) replacing council board members.

(e) The facility or CMHMRC shall provide the following staff services to the nonprofit organization:

- (1) fundraising assistance;
- (2) clerical and administrative services, such as typing and accounting assistance;
- (3) training of volunteers and the officers or board; and
- (4) coordination of activities.

(f) The facility or CMHMRC may provide space.

(g) The council shall provide its own:

- (1) postage;
- (2) printing, including letterhead and newsletters;
- (3) special event insurance;
- (4) recognition of donors;
- (5) recognition event for direct services volunteers; and
- (6) bond for officers.

(h) A memorandum of understanding governing the relationship between the agency and/or its facility or CMHMRC and a nonprofit organization acting on its behalf shall be executed. A sample MOU is referred to in §410.74 of this title (relating to Exhibits) as Exhibit A. The MOU should require the nonprofit organization to be in compliance with existing state and federal laws and regulations. The MOU should also:

- (1) specify relationships between staff and the nonprofit organization and include a mechanism for conflict resolution;
- (2) specify a mechanism to ensure that solicitation:

(A) meets the mission, vision, and goals of TXMHMR;

(B) employs all accepted rules of ethical fundraising;

(C) is an appropriate type of fundraising for the nonprofit organization; and

(D) all proceeds less legitimate expenses shall be used for the benefit of the agency;

(3) specify a mechanism for receiving input from the nonprofit organization regarding the development of the department's legislative agenda; and

(4) assert the right of the department to review and approve all donations of real property and any improvements to existing real property.

(i) At facilities where employees are invited to participate in council meetings, employees may attend if their work schedules permit. Facility and CMHMRC employees may vote and hold office in the nonprofit organization unless such activity would create a conflict of interest, i.e., the employee is involved in a management capacity with the facility or CMHMRC that makes decisions concerning the business that is transacted with the board of the nonprofit organization.

§410.70. Fundraising at State Level-Texas Foundation on Mental Health and Mental Retardation. Fundraising on behalf of TXMHMR at the state level shall be conducted by the Texas Foundation on Mental Health and Mental Retardation, which is a §501(c)(3) organization. An MOU between the department and the foundation shall be developed outlining the working relationship between the agency and the foundation.

§410.71. Volunteer Services State Council (VSSC).

(a) The Volunteer Services State Council (VSSC) shall comprise one representative from each facility and CMHMRC and the Texas Foundation for MHMR.

(b) The commissioner and one member of the Texas Board of Mental Health and Mental Retardation shall be non-voting members of the board and executive committee.

(c) The director of the Office of Community Relations, Central Office, shall be a nonvoting member of the board and executive committee.

(d) The VSSC's bylaws shall specify a methodology for limiting the terms of officers and electing a nominating committee.

(e) A memorandum of understanding shall be developed specifying the relationship between the VSSC and the Office of Community Relations, Central Office. A sample MOU is referred to in §410.74 of this title (relating to Exhibits) as Exhibit I.

(f) The Office of Community Relations, Central Office, shall provide space for VSSC records, and shall also provide:

- (1) clerical and administrative services, such as typing;
- (2) training of members and the officers of the VSSC; and
- (3) coordination of activities.

(g) The VSSC shall provide its own:

- (1) postage;
- (2) printing, including letterhead and meeting materials; and
- (3) bond for officers.

§410.72. Auditing Guidelines; Additional Reporting Guidelines.

(a) The Office of Community Relations, Central Office, and the facility or CMHMRC community relations office are subject to audit by the Internal Audit Section of the department and the state auditor.

(b) Nonprofit organizations acting on behalf of a facility or CMHMRC to generate resources must:

- (1) submit an annual treasurer's report to the Office of Community Relations, Central Office;
- (2) obtain a three-year certified, independent audit every three years. Nonprofit organizations may elect to obtain audits more frequently; however, the three-year audit is required. Copies of all audits are to be submitted to the Office of Community Relations, Central Office.

(c) In addition to the three-year certified audit, any nonprofit organization acting on behalf of the agency to generate resources shall submit to the Office of Community Relations, Central Office:

- (1) a copy of each Form 990S filed with the IRS;
- (2) a copy of Form 5768 filed with the IRS;
- (3) a copy of articles of incorporation;
- (4) bylaws and revisions; and
- (5) a list of current officers.

(d) Facility and CMHMRC directors of community relations must submit to

the Office of Community Relations, Central Office, for inclusion in a report to the Legislative Budget Board:

(1) an annual report establishing the value of hours donated by volunteers; and

(2) an annual report establishing the value of donations received:

(A) directly from the public; and

(B) from the nonprofit organization existing on its behalf.

§410.73. Responsibility of Volunteers To Represent Department.

(a) Volunteers must represent the department's position if identifying him/herself as a volunteer for the agency or one of its facilities or programs.

(b) This does not preclude a volunteer from speaking freely about any matter as a private citizen, as long as the volunteer makes it clear that such comments are the individual's opinion and are not made on behalf of the program for which the individual volunteers, the facility, the CMHMRC, the department, the commissioner, or the state.

§410.74. Exhibits.

(a) The following exhibits are referred to in this subchapter:

- (1) Exhibit A-Sample Memorandum of Understanding (MOU) between the department and a nonprofit organization;
- (2) Exhibit B-Employee Volunteer Statement, TXMHMR Form P-36;
- (3) Exhibit C-Application for Volunteer Service, TXMHMR Form V-9;
- (4) Exhibit D-Confidentiality Agreement for Volunteers, TXMHMR Form V-12;
- (5) Exhibit E-Evaluation of Volunteer, Form V-19;
- (6) Exhibit F-Client Volunteer Statement, TXMHMR Form V-15;
- (7) Exhibit G-Parental Permission Form-For Volunteers Under 18 Years of Age, TXMHMR Form V-13;
- (8) Exhibit H-Exit Interview Form, TXMHMR Form V-8; and
- (9) Exhibit I-Sample Memorandum of Understanding (MOU) between TXMHMR and the VSSC.

§410.75. References. Reference is made to the following:

(1) Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-201, et seq, as amended.

(2) Chapter 410, Subchapter C of this title (relating to Capital Improvements by Citizens Groups);

(3) Chapter 403, Subchapter K of this title (relating to Disclosure of Client-Identifying Information);

(4) Chapter 410, Subchapter A of this title (relating to Public Responsibility Committees);

(5) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(6) Chapter 405, Subchapter Y of this title (relating to Client Rights Mental Retardation Services);

(7) Department of Labor: Child Labor Requirements; and

(8) TXMHMR Safety Manual.

§410.76. Distribution.

(a) The provisions of this subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; deputy commissioners, associate deputy commissioners, assistant deputy commissioners, directors, and section chiefs of central office; facility superintendents/directors, CMHMRC executive directors, and facility and CMHMRC directors of community relations; professional staff, Office of Community Relations, Central Office; chairpersons of the board of trustees of CMHMRCs; members of the executive committee of the Volunteer Services State Council; chairpersons of the nonprofit organizations working on behalf of department facilities and CMHMRCs.

(b) The superintendent or director of each department facility or community services program shall be responsible for the dissemination of the information contained in this subchapter to all appropriate staff members.

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 July 29, 1992.

TRD-9210354 Anne K. Utley
Chair
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: September 4, 1992

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 152. General Allocation Provisions

Subchapter A. Institutional Division Admissions

• 37 TAC §152.3

The Texas Department of Criminal Justice proposes an amendment to §152.3, concerning the allocation among the counties of the number of Institutional Division admissions available. The proposed allocation formula is required by the Government Code, §499.071. Under that statute, the Texas Department of Criminal Justice Board must give weight and consideration to seven statutory factors, and has discretion to give weight and consideration to other relevant factors.

The present allocation formula is based upon the seven factors mandated by statute, and three discretionary factors. In conformity with statutory mandate, new data for each factor is added to the data base annually. Therefore, every year the net number of beds which would be allocated under the prior years' formula would change.

The proposed amended formula is designed to keep the number of beds allocated to the largest Texas counties at approximately the same level as during the last year. To achieve that result, the proposed amendments change the weights of two of the three discretionary factors. The weight for probation completions is changed from 10 to five, while the weight for juvenile probation funding is changed from five to 10.

William C. McCray, deputy director for finance, Institutional Division, Texas Department of Criminal Justice, has determined that for the first five-year period, the proposed section will have not impact on state government.

The adoption of the rule will impose some additional costs on those counties which lose beds under the new formula, while somewhat reducing costs to those counties that gain beds. Since each county's costs for holding prisoners varies, it is not possible to ascertain the exact fiscal impact in each county.

Jackee Cox, general counsel, Texas Department of Criminal Justice, has determined that the public benefit anticipated as a result of enforcing this section is an equitable distribution of the capacity of the Institutional Division to receive new prisoners from county custody. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section.

Comments on the proposal may be submitted to Carl Jeffries, Assistant Director for Classification, P.O. Box 99, Huntsville, Texas 77342.

The amendment is proposed under the Texas Government Code, §499.071, which requires the Texas Board of Criminal Justice to adopt rules relating to the allocation of prison admissions, and the authority to use additional factors in the formula computation.

§152.3. Allocation Formula.

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

(c) The board assigns the following weights to each statutory and discretionary factor:

STATUTORY FACTORS

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

DISCRETIONARY FACTORS

(8) (No change.)

(9) Section 152.3(b)(2)-(probation completions) (10)5

(10) Section 152.3(b)(3)-(juvenile probation funding) (5)10

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

(f) Based upon an estimated 36,367 available institutional divisions admissions annually, this formula produces the following number of new prisoner admissions which the institutional division would accept weekly/cyclically from each county, and the percentage of total admissions that each number represents:

TOP TEXAS COUNTIES

COUNTY	PERCENTAGE	WEEKLY ALLOCATION
HARRIS	[0.205846] <u>0.206961</u>	[149] <u>150</u>
DALLAS	[0.172668] <u>0.171881</u>	[125] <u>125</u>
TARRANT	[0.078782] <u>0.079399</u>	[57] <u>58</u>
BEXAR	[0.066926] <u>0.069323</u>	[49] <u>50</u>
TRAVIS	[0.039409] <u>0.041903</u>	[29] <u>30</u>
EL PASO	[0.033877] <u>0.033340</u>	[25] <u>24</u>
JEFFERSON	[0.019490] <u>0.018855</u>	[14] <u>14</u>
NUECES	[0.016987] <u>0.018509</u>	[12] <u>13</u>
HIDALGO	[0.017229] <u>0.017424</u>	[12] <u>13</u>
GALVESTON	[0.012508] <u>0.013360</u>	[9] <u>10</u>
CAMERON	[0.011743] <u>0.012895</u>	[9] <u>9</u>
LUBBOCK	[0.011624] <u>0.011019</u>	[8] <u>8</u>
MCLENNAN	[0.010162] <u>0.010091</u>	[7] <u>7</u>
ANDERSON	[0.002064] <u>0.001891</u>	[6] <u>5</u>
ANDREWS	[0.000668] <u>0.000679</u>	[2] <u>2</u>
ANGELINA	[0.003543] <u>0.003371</u>	[10] <u>9</u>
ARANSAS	[0.000906] <u>0.001024</u>	[3] <u>3</u>
ARCHER	[0.000150] <u>0.000129</u>	[(5)] <u>(5)</u>
ARMSTRONG	[0.000026] <u>0.000023</u>	[(1)] <u>(1)</u>
ATASCOSA	[0.000987] <u>0.000990</u>	[3] <u>3</u>
AUSTIN	[0.000523] <u>0.000633</u>	[1] <u>2</u>
BAILEY	[0.000266] <u>0.000251</u>	[1] <u>1</u>
BANDERA	[0.000399] <u>0.000321</u>	[1] <u>1</u>
BASTROP	[0.001274] <u>0.001298</u>	[4] <u>4</u>
BAYLOR	[0.000199] <u>0.000108</u>	[1] <u>(4)</u>
BEE	[0.001176] <u>0.000994</u>	[3] <u>3</u>

COUNTY	PERCENTAGE		CYCLIC ALLOCATION	
BELL	[0.008639]	<u>0.008976</u>	[24]	<u>25</u>
BLANCO	[0.000122]	<u>0.000140</u>	[(4)]	<u>(5)</u>
BORDEN	[0.000013]	<u>0.000010</u>	[(0)]	<u>(0)</u>
BOSQUE	[0.000376]	<u>0.000393</u>	[1]	<u>1</u>
BOWIE	[0.003788]	<u>0.003996</u>	[11]	<u>11</u>
BRAZORIA	[0.007634]	<u>0.007715</u>	[21]	<u>22</u>
BRAZOS	[0.006263]	<u>0.006562</u>	[17]	<u>18</u>
BREWSTER	[0.000223]	<u>0.000284</u>	[1]	<u>1</u>
BRISCOE	[0.000059]	<u>0.000016</u>	[(2)]	<u>(1)</u>
BROOKS	[0.000648]	<u>0.000729</u>	[2]	<u>2</u>
BROWN	[0.001762]	<u>0.001390</u>	[5]	<u>4</u>
BURLESON	[0.000670]	<u>0.000612</u>	[2]	<u>2</u>
BURNET	[0.000820]	<u>0.000816</u>	[2]	<u>2</u>
CALDWELL	[0.001312]	<u>0.001128</u>	[4]	<u>3</u>
CALHOUN	[0.000833]	<u>0.000797</u>	[2]	<u>2</u>
CALLAHAN	[0.000230]	<u>0.000218</u>	[1]	<u>1</u>
CAMP	[0.000507]	<u>0.000426</u>	[1]	<u>1</u>
CARSON	[0.000200]	<u>0.000246</u>	[1]	<u>1</u>
CASS	[0.001191]	<u>0.001200</u>	[3]	<u>3</u>
CASTRO	[0.000292]	<u>0.000288</u>	[1]	<u>1</u>
CHAMBERS	[0.001430]	<u>0.001316</u>	[4]	<u>4</u>
CHEROKEE	[0.001749]	<u>0.001585</u>	[5]	<u>4</u>
CHILDRESS	[0.000331]	<u>0.000303</u>	[1]	<u>1</u>
CLAY	[0.000184]	<u>0.000192</u>	[1]	<u>1</u>
COCHRAN	[0.000133]	<u>0.000136</u>	[(5)]	<u>(5)</u>
COKE	[0.000071]	<u>0.000077</u>	[(3)]	<u>(3)</u>
COLEMAN	[0.000339]	<u>0.000282</u>	[1]	<u>1</u>
COLLIN	[0.009393]	<u>0.008697</u>	[7]	<u>24</u>
COLLINGSWORTH	[0.000133]	<u>0.000151</u>	[(5)]	<u>(5)</u>
COLORADO	[0.000724]	<u>0.000770</u>	[2]	<u>2</u>
COMAL	[0.002080]	<u>0.002355</u>	[6]	<u>7</u>
COMANCHE	[0.000344]	<u>0.000367</u>	[1]	<u>1</u>
CONCHO	[0.000106]	<u>0.000083</u>	[(4)]	<u>(3)</u>
COOKE	[0.000962]	<u>0.001047</u>	[3]	<u>3</u>
CORYELL	[0.001704]	<u>0.001172</u>	[5]	<u>3</u>
COTTLE	[0.000076]	<u>0.000057</u>	[(3)]	<u>(2)</u>
CRANE	[0.000128]	<u>0.000175</u>	[(5)]	<u>(6)</u>
CROCKETT	[0.000151]	<u>0.000163</u>	[(5)]	<u>(6)</u>
CROSBY	[0.000150]	<u>0.000145</u>	[(5)]	<u>(5)</u>
CULBERSON	[0.000105]	<u>0.000087</u>	[(4)]	<u>(3)</u>
DALLAM	[0.000274]	<u>0.000260</u>	[1]	<u>1</u>
DAWSON	[0.000736]	<u>0.000775</u>	[2]	<u>2</u>
DEAF SMITH	[0.000933]	<u>0.000776</u>	[3]	<u>2</u>
DELTA	[0.000161]	<u>0.000137</u>	[(6)]	<u>(5)</u>
DENTON	[0.008081]	<u>0.008443</u>	[22]	<u>24</u>
DEWITT	[0.000483]	<u>0.000500</u>	[1]	<u>1</u>
DICKENS	[0.000053]	<u>0.000074</u>	[(2)]	<u>(3)</u>
DIMITT	[0.000186]	<u>0.000212</u>	[1]	<u>1</u>
DONLEY	[0.000200]	<u>0.000162</u>	[1]	<u>(6)</u>
DUVAL	[0.000480]	<u>0.000505</u>	[1]	<u>1</u>
EASTLAND	[0.000891]	<u>0.000715</u>	[2]	<u>2</u>
ECTOR	[0.007402]	<u>0.007385</u>	[21]	<u>21</u>
EDWARDS	[0.000084]	<u>0.000060</u>	[(3)]	<u>(2)</u>
ELLIS	[0.003270]	<u>0.003346</u>	[9]	<u>9</u>
ERATH	[0.000933]	<u>0.000919</u>	[3]	<u>3</u>
FALLS	[0.000733]	<u>0.000710</u>	[2]	<u>2</u>
FANNIN	[0.000823]	<u>0.000740</u>	[2]	<u>2</u>
FAYETTE	[0.000487]	<u>0.000560</u>	[1]	<u>2</u>
FISHER	[0.000130]	<u>0.000112</u>	[(5)]	<u>(4)</u>
FLOYD	[0.000240]	<u>0.000233</u>	[1]	<u>1</u>
FOARD	[0.000032]	<u>0.000036</u>	[(1)]	<u>(1)</u>
FORT BEND	[0.007553]	<u>0.008085</u>	[21]	<u>23</u>
FRANKLIN	[0.000277]	<u>0.000294</u>	[1]	<u>1</u>
FREESTONE	[0.000815]	<u>0.000604</u>	[2]	<u>2</u>
FRIO	[0.000565]	<u>0.000582</u>	[2]	<u>2</u>
GAINES	[0.000515]	<u>0.000469</u>	[1]	<u>1</u>
GARZA	[0.000204]	<u>0.000254</u>	[1]	<u>1</u>
GILLESPIE	[0.000423]	<u>0.000423</u>	[1]	<u>1</u>

() denotes annual amount

COUNTY	PFRCENTAGE		CYCLIC ALLOCATION	
GLASSCOCK	[0.000022]	<u>0.000013</u>	[(1)]	<u>(0)</u>
GOLIAD	[0.000157]	<u>0.000301</u>	[(6)]	<u>1</u>
GONZALES	[0.000513]	<u>0.000619</u>	[1]	<u>2</u>
GRAY	[0.001147]	<u>0.001184</u>	[3]	<u>3</u>
GRAYSON	[0.004629]	<u>0.004316</u>	[13]	<u>12</u>
GREGG	[0.006949]	<u>0.006733</u>	[19]	<u>19</u>
GRIMES	[0.000676]	<u>0.000669</u>	[2]	<u>2</u>
GUADALUPE	[0.002366]	<u>0.002306</u>	[7]	<u>6</u>
HALE	[0.001563]	<u>0.001409</u>	[4]	<u>4</u>
HALL	[0.000159]	<u>0.000163</u>	[(6)]	<u>(6)</u>
HAMILTON	[0.000257]	<u>0.000228</u>	[1]	<u>1</u>
HANSFORD	[0.000110]	<u>0.000093</u>	[(4)]	<u>(3)</u>
HARDEMAN	[0.000214]	<u>0.000191</u>	[1]	<u>1</u>
HARDIN	[0.001526]	<u>0.001482</u>	[4]	<u>4</u>
HARRISON	[0.002601]	<u>0.002776</u>	[7]	<u>8</u>
HARTLEY	[0.000058]	<u>0.000076</u>	[(2)]	<u>(3)</u>
HASKELL	[0.000218]	<u>0.000177</u>	[1]	<u>(6)</u>
HAYS	[0.002769]	<u>0.002331</u>	[8]	<u>6</u>
HEMPHILL	[0.000074]	<u>0.000057</u>	[(3)]	<u>(2)</u>
HENDERSON	[0.002649]	<u>0.002572</u>	[7]	<u>7</u>
HILL	[0.000939]	<u>0.000944</u>	[3]	<u>3</u>
HOCKLEY	[0.000868]	<u>0.000866</u>	[2]	<u>2</u>
HOOD	[0.001344]	<u>0.001058</u>	[4]	<u>3</u>
HOPKINS	[0.001282]	<u>0.001191</u>	[4]	<u>3</u>
HOUSTON	[0.000906]	<u>0.000677</u>	[3]	<u>2</u>
HOWARD	[0.001662]	<u>0.001312</u>	[5]	<u>4</u>
HUDSPETH	[0.000456]	<u>0.000361</u>	[1]	<u>1</u>
HUNT	[0.005437]	<u>0.004240</u>	[15]	<u>12</u>
HUTCHINSON	[0.000946]	<u>0.000950</u>	[3]	<u>3</u>
IRION	[0.000041]	<u>0.000036</u>	[(1)]	<u>(1)</u>
JACK	[0.000220]	<u>0.000166</u>	[1]	<u>(6)</u>
JACKSON	[0.000563]	<u>0.000376</u>	[2]	<u>1</u>
JASPER	[0.001019]	<u>0.001006</u>	[3]	<u>3</u>
JEFF DAVIS	[0.000033]	<u>0.000033</u>	[(1)]	<u>(1)</u>
JIM HOGG	[0.000441]	<u>0.000319</u>	[1]	<u>1</u>
JIM WELLS	[0.001834]	<u>0.001718</u>	[5]	<u>5</u>
JOHNSON	[0.003250]	<u>0.003242</u>	[9]	<u>9</u>
JONES	[0.000621]	<u>0.000550</u>	[2]	<u>2</u>
KARNES	[0.000430]	<u>0.000409</u>	[1]	<u>1</u>
KAUFMAN	[0.002862]	<u>0.002735</u>	[8]	<u>8</u>
KENDALL	[0.000408]	<u>0.000410</u>	[1]	<u>1</u>
KENEDY	[0.000140]	<u>0.000031</u>	[(5)]	<u>(1)</u>
KENT	[0.000010]	<u>0.000009</u>	[(0)]	<u>(0)</u>
KERR	[0.001808]	<u>0.001669</u>	[5]	<u>5</u>
KIMBLE	[0.000158]	<u>0.000152</u>	[(6)]	<u>(5)</u>
KING	[0.000026]	<u>0.000005</u>	[(1)]	<u>(0)</u>
KINNEY	[0.000086]	<u>0.000079</u>	[(3)]	<u>(3)</u>
KLEBERG	[0.002716]	<u>0.002303</u>	[8]	<u>6</u>
KNOX	[0.000143]	<u>0.000124</u>	[(5)]	<u>(5)</u>
LAMAR	[0.002926]	<u>0.002922</u>	[8]	<u>8</u>
LAMB	[0.000451]	<u>0.000357</u>	[1]	<u>1</u>
LAMPASAS	[0.000571]	<u>0.000534</u>	[2]	<u>1</u>
LA SALLE	[0.000152]	<u>0.000224</u>	[(5)]	<u>1</u>
LAVACA	[0.000400]	<u>0.000377</u>	[1]	<u>1</u>
LEE	[0.000506]	<u>0.000475</u>	[1]	<u>1</u>
LEON	[0.000285]	<u>0.000320</u>	[1]	<u>1</u>
LIBERTY	[0.002609]	<u>0.002450</u>	[7]	<u>7</u>
LIMESTONE	[0.000931]	<u>0.000989</u>	[3]	<u>3</u>
LIPSCOMB	[0.000086]	<u>0.000049</u>	[(3)]	<u>(2)</u>
LIVE OAK	[0.000265]	<u>0.000286</u>	[1]	<u>1</u>

() denotes annual amount

COUNTY	PERCENTAGE		CYCLIC ALLOCATION	
RUNNELS	[0.000353]	<u>0.000345</u>	[1]	<u>1</u>
RUSK	[0.001662]	<u>0.001702</u>	[5]	<u>5</u>
SABINE	[0.000227]	<u>0.000210</u>	[1]	<u>1</u>
SAN AUGUSTINE	[0.000341]	<u>0.000353</u>	[1]	<u>1</u>
SAN JACINTO	[0.000795]	<u>0.000652</u>	[2]	<u>2</u>
SAN PATRICIO	[0.002570]	<u>0.002455</u>	[7]	<u>7</u>
SAN SABA	[0.000200]	<u>0.000180</u>	[1]	<u>1</u>
SCHLEICHER	[0.000082]	<u>0.000074</u>	[(3)]	<u>(3)</u>
SCURRY	[0.000693]	<u>0.000632</u>	[2]	<u>2</u>
SHACKELFORD	[0.000122]	<u>0.000066</u>	[(4)]	<u>(2)</u>
SHELBY	[0.001022]	<u>0.000978</u>	[3]	<u>3</u>
SHERMAN	[0.000087]	<u>0.000102</u>	[(3)]	<u>(4)</u>
SMITH	[0.007642]	<u>0.007787</u>	[21]	<u>22</u>
SOMERVELL	[0.000224]	<u>0.000241</u>	[1]	<u>1</u>
STARR	[0.001739]	<u>0.001424</u>	[5]	<u>4</u>
STEPHENS	[0.000320]	<u>0.000275</u>	[1]	<u>1</u>
STERLING	[0.000035]	<u>0.000020</u>	[(1)]	<u>(1)</u>
STONEWALL	[0.000074]	<u>0.000050</u>	[(3)]	<u>(2)</u>
SUTTON	[0.000185]	<u>0.000149</u>	[1]	<u>(5)</u>
SWISHER	[0.000294]	<u>0.000332</u>	[1]	<u>1</u>
TAYLOR	[0.006136]	<u>0.006121</u>	[17]	<u>17</u>
TERRELL	[0.000026]	<u>0.000034</u>	[(1)]	<u>(1)</u>
TERRY	[0.000669]	<u>0.000764</u>	[2]	<u>2</u>
THROCKMORTON	[0.000031]	<u>0.000028</u>	[(1)]	<u>(1)</u>
TITUS	[0.000996]	<u>0.000911</u>	[3]	<u>3</u>
TOM GREEN	[0.005639]	<u>0.005271</u>	[16]	<u>15</u>
TRINITY	[0.000581]	<u>0.000408</u>	[2]	<u>1</u>
TYLER	[0.000694]	<u>0.000689</u>	[2]	<u>2</u>
UPSHUR	[0.000993]	<u>0.001052</u>	[3]	<u>3</u>
UPTON	[0.000181]	<u>0.000145</u>	[1]	<u>(5)</u>
UVALDE	[0.001424]	<u>0.001066</u>	[4]	<u>3</u>
VAL VERDE	[0.001501]	<u>0.001833</u>	[4]	<u>5</u>
VAN ZANDT	[0.000991]	<u>0.001000</u>	[3]	<u>3</u>
VICTORIA	[0.003613]	<u>0.003615</u>	[10]	<u>10</u>
WALKER	[0.002233]	<u>0.001993</u>	[6]	<u>6</u>
WALLER	[0.001097]	<u>0.001244</u>	[3]	<u>3</u>
WARD	[0.000608]	<u>0.000538</u>	[2]	<u>1</u>
WASHINGTON	[0.001007]	<u>0.001071</u>	[3]	<u>3</u>
WEBB	[0.006636]	<u>0.007567</u>	[18]	<u>21</u>
WHARTON	[0.001966]	<u>0.001819</u>	[5]	<u>5</u>
WHEELER	[0.000136]	<u>0.000120</u>	[(5)]	<u>(4)</u>
WICHITA	[0.007237]	<u>0.007247</u>	[20]	<u>20</u>
WILBARGER	[0.000687]	<u>0.000804</u>	[2]	<u>2</u>
WILLACY	[0.000950]	<u>0.000672</u>	[3]	<u>2</u>
WILLIAMSON	[0.004910]	<u>0.004808</u>	[14]	<u>13</u>
WILSON	[0.000556]	<u>0.000693</u>	[2]	<u>2</u>
WINKLER	[0.000357]	<u>0.000424</u>	[1]	<u>1</u>

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COUNTY	PERCENTAGE		CYCLIC ALLOCATION	
LLANO	[0.000283]	<u>0.000267</u>	[1]	<u>1</u>
LOVING	[0.000001]	<u>0.000002</u>	[(0)]	<u>(0)</u>
LYNN	[0.000189]	<u>0.000199</u>	[1]	<u>1</u>
MCCULLOCH	[0.000485]	<u>0.000319</u>	[1]	<u>1</u>
MCMULLEN	[0.000010]	<u>0.000007</u>	[(0)]	<u>(0)</u>
MADISON	[0.000532]	<u>0.000486</u>	[1]	<u>1</u>
MARION	[0.000407]	<u>0.000571</u>	[1]	<u>2</u>
MARTIN	[0.000141]	<u>0.000098</u>	[(5)]	<u>(4)</u>
MASON	[0.000068]	<u>0.000069</u>	[(2)]	<u>(2)</u>
MATAGORDA	[0.002330]	<u>0.002229</u>	[6]	<u>6</u>
MAVERICK	[0.001153]	<u>0.001155</u>	[3]	<u>3</u>
MEDINA	[0.001150]	<u>0.001174</u>	[3]	<u>3</u>
MENARD	[0.000096]	<u>0.000096</u>	[(3)]	<u>(3)</u>
MIDLAND	[0.005604]	<u>0.005894</u>	[16]	<u>16</u>
MILAM	[0.000806]	<u>0.000744</u>	[2]	<u>2</u>
MILLS	[0.000072]	<u>0.000058</u>	[(3)]	<u>(2)</u>
MITCHELL	[0.000332]	<u>0.000350</u>	[1]	<u>1</u>
MONTAGUE	[0.000561]	<u>0.000484</u>	[2]	<u>1</u>
MONTGOMERY	[0.007797]	<u>0.007792</u>	[22]	<u>22</u>
MOORE	[0.000598]	<u>0.000568</u>	[2]	<u>2</u>
MORRIS	[0.000576]	<u>0.000533</u>	[2]	<u>1</u>
MOTLEY	[0.000034]	<u>0.000014</u>	[(1)]	<u>(0)</u>
NACOGDOCHES	[0.002219]	<u>0.002168</u>	[6]	<u>6</u>
NAVARRO	[0.002401]	<u>0.002228</u>	[7]	<u>6</u>
NEWTON	[0.000454]	<u>0.000331</u>	[1]	<u>1</u>
NOLAN	[0.000840]	<u>0.000823</u>	[2]	<u>2</u>
OCHILTREE	[0.000362]	<u>0.000294</u>	[1]	<u>1</u>
OLDHAM	[0.000080]	<u>0.000089</u>	[(3)]	<u>(3)</u>
ORANGE	[0.004092]	<u>0.003914</u>	[11]	<u>11</u>
PALO PINTO	[0.001269]	<u>0.001118</u>	[4]	<u>3</u>
PANOLA	[0.000985]	<u>0.001143</u>	[3]	<u>3</u>
PARKER	[0.001795]	<u>0.001717</u>	[5]	<u>5</u>
PARMER	[0.000315]	<u>0.000242</u>	[1]	<u>1</u>
PECOS	[0.000650]	<u>0.000712</u>	[2]	<u>2</u>
POLK	[0.001371]	<u>0.001516</u>	[4]	<u>4</u>
POTTER	[0.008270]	<u>0.007826</u>	[23]	<u>22</u>
PRESIDIO	[0.000157]	<u>0.000194</u>	[(6)]	<u>1</u>
RAINS	[0.000222]	<u>0.000210</u>	[1]	<u>1</u>
RANDALL	[0.002008]	<u>0.001967</u>	[6]	<u>5</u>
REAGAN	[0.000138]	<u>0.000111</u>	[(5)]	<u>(4)</u>
REAL	[0.000133]	<u>0.000125</u>	[(5)]	<u>(5)</u>
RED RIVER	[0.000642]	<u>0.000601</u>	[2]	<u>2</u>
REEVES	[0.000884]	<u>0.000806</u>	[2]	<u>2</u>
REFUGIO	[0.000316]	<u>0.000359</u>	[1]	<u>1</u>
ROBERTS	[0.000030]	<u>0.000013</u>	[(1)]	<u>(0)</u>
ROBERTSON	[0.001230]	<u>0.000954</u>	[3]	<u>3</u>
ROCKWALL	[0.000837]	<u>0.000937</u>	[2]	<u>3</u>

() denotes annual amount

COUNTY	PERCENTAGE	PERCENTAGE	CYCLIC ALLOCATION	CYCLIC ALLOCATION
WISE	[0.001108]	<u>0.001090</u>	[3]	<u>3</u>
WOOD	[0.000947]	<u>0.000946</u>	[3]	<u>3</u>
YOAKUM	[0.000324]	<u>0.000344</u>	[1]	<u>1</u>
YOUNG	[0.000712]	<u>0.000650</u>	[2]	<u>2</u>
ZAPATA	[0.000270]	<u>0.000295</u>	[1]	<u>1</u>
ZAVALA	[0.000431]	<u>0.000408</u>	[1]	<u>1</u>

() denotes annual amount

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 July 29, 1992.

TRD-9210356 Jackee Cox
General Counsel
Texas Department of
Criminal Justice

Earliest possible date of adoption: September 4, 1992

For further information, please call: (512) 463-9988

Chapter 165. State Aid Distribution and Monitoring

Subchapter E. Performance Reward Program

37 TAC §§165.60-165.65, 165.68

The Texas Board of Criminal Justice proposes amendments to the following sections of 37 TAC concerning the Performance Reward Program: §165.60-Performance Reward Program-General; §165.61-Performance Ranking Process; §165.62-Formula for Computation of Performance Reward Rankings; §165.63-Data Collection; §165.64(b)(2)-County Plan Submission Requirements; §165.65(f)-Rules Governing Program Accountability and Audits; and §165.68(b)-Dispute Resolution Process.

The proposed amendment to §165.60 notes generally that the board proposes to change the methodology for computation of program eligibility. Under the current rules, a system of "decile rankings" is used to determine eligibility. Under the proposed rules, counties will be ranked on the basis of their performance on the individual factors, and the top-scoring 127 counties will be eligible for funding.

The proposed amendments to §165.61 alter the definitions of the statutory factors to be used to compute eligibility for funding. The amended definitions require that the following performance factor ratios shall be computed on the basis of individuals: personal bond utilization rates; pretrial diversion rates; deferred adjudication rates; probation rates; technical probation revocation rates; non-technical probation revocation rates; utilization rate of residential and nonresidential diversion programs in the county; and the Institutional Division commitment rate.

The Community Justice Assistance Division (CJAD) proposes to use the following factor definitions and instructions:

"Personal Bond Utilization Rate" equals total number of individuals released on personal bond divided by total number of individuals arrested and booked into county jails.

Counties will be instructed: "Release on a personal bond is defined as the release of a defendant after the setting of bail, but, in general, no money or only a small percentage of the total bond amount is deposited with the court. Property and deposit bonds, where collateral or a deposit is required as a condition of bail, may be included with personal bonds. Only include arrests and releases from county jails. Do not include cash bonds or surety bonds. Exclude Class "C" misdemeanants from arrests and releases."

Data sources will be County and District records, Community Supervision and Corrections Department (CSCD), Law Enforcement Authorities, Pretrial Release Agencies.

"Pretrial Diversion Rate" equals total number of individuals placed on pretrial diversion divided by total number of persons arrested and booked into county jails.

Counties will be instructed: "Of the total number of individuals arrested and booked into county jails, indicate the number of individuals that were placed on pretrial diversion. For purposes of this program, pretrial diversion is defined as deferred prosecution where charges will be dismissed, or its equivalent, if the individual successfully completes the conditions of the program. DO NOT include transfers to other jails or prison or dismissed cases as types of pretrial diversions. Exclude Class "C" misdemeanants from arrests and pretrial diversions."

Data sources will be County and District records, Law Enforcement Authorities, Pretrial Release Agencies, CSCD.

"Deferred Adjudication Rate" equals total number of individuals placed on deferred adjudication probation divided by total number of individuals convicted and individuals placed on deferred adjudication.

Counties will be instructed: "Count individuals sentenced in the county of jurisdiction. An individual can only be counted one time per criminal incident within each of the categories of: deferred adjudication; sentences to jail/prison; and probated sentences. For purposes of this program, a sentence is a revocation of probation, an imposition of punishment, or a term of imprisonment which has been ordered to be carried into execution

in the manner prescribed by law. Exclude Class "C" misdemeanants."

Data sources will be County and District records, Law Enforcement Authorities, CSCD.

"Probation Rate" equals total number of individuals receiving probated sentences divided by total number of individuals convicted and individuals placed on deferred adjudication.

Counties will be instructed: "Instructions and data sources for this factor are as set out with those for 'deferred adjudication rates.'"

There are two "Probation Revocation" rates. The "non-technical revocation rate" equals total number of individuals revoked on non-technical grounds divided by average probation population

"The technical revocation rate" equals total number of individuals revoked on technical grounds divided by average probation population.

Counties will be instructed: "Revocations on non-technical grounds are defined as revocations involving a conviction or an arrest for a subsequent offense. In order for an arrest to be counted as a non-technical revocation, the new offense must be alleged in the motion to revoke probation. Revocations on technical grounds are defined as revocations for reasons other than a conviction or an arrest for a subsequent offense. The average probation population is the 12-month average of the total number of adults receiving direct and indirect supervision on the last working day of the month. Include individuals on deferred adjudication probation. Do not include individuals receiving pretrial supervision."

Data sources will be County and District records, CSCD.

"Utilization Rate of Residential and Non-Residential Diversion Programs" equals total number of individuals placed in residential/non-residential diversion programs divided by total number of individuals convicted and individuals placed on deferred adjudication.

Counties will be instructed: "For purposes of this program, diversion is defined as an action to place an offender in a county program designed for risk control management as an alternative to jail or prison or in lieu of a jail sentence. Risk control management is defined as a combination of correction philosophies to address the specific risk/needs of offenders in an effort to prevent further criminal behavior and to achieve the overall mission of the jurisdiction. Programs that conform to CJAD standards/guidelines for

ISP, SCP, SUR, and RCP should be included in this count. To count participation in diversion programs, counties shall complete Attachment "A". Placements into residential diversion programs should be credited to the county making the placement (county of jurisdiction). Ancillary services such as urinalysis, electronic monitoring, community service restitution, etc., should not be included in the count. Regular probation supervision should not be included."

Data sources will be County and District records, CSCD, Law Enforcement Authorities.

"Institutional Division Commitment Rate" equals total number of individual felons sentenced to prison divided by total number of felons convicted and individuals placed on deferred adjudication.

Counties will be instructed: "Data for this factor are the same as for the 'deferred adjudication rate.' "

"Admissions Per Index Crime Rate" equals total number of court-generated admissions to TDCJ-ID (calendar year 1991) divided by total number of UCR index crimes (calendar year 1991).

Counties will be instructed: "Court-generated admissions to TDCJ-ID include admissions that resulted from sentences within the county. For purposes of this program, a sentence is a revocation of probation, an imposition of punishment, or a term of imprisonment which has been ordered to be carried into execution in the manner prescribed by law. Only include admissions during calendar year 1991. Court-generated admissions DO NOT include placements into the Alternative to Incarceration Program. Exclude parole revocations and bench warrants that do not result from a new conviction. Index Crimes include murder, rape, robbery, aggravated assault, burglary, theft and motor vehicle theft. In cases where law enforcement agencies serve more than one county, activity reported by the agency will be counted for the county with the greatest population. This data will be obtained from the Texas Department of Public Safety for calendar year 1991."

Data sources will be Department of Public Safety, County and District records.

"Frequency and Extent of Not Using Allocated Admissions" equals total number of allocated admissions minus total number of actual admissions to TDCJ-ID divided by total number of allocated admissions.

Counties will be instructed: "The total number of allocated admissions to the Institutional Division is defined as the final reallocated admissions, or the initial base allocated admissions, whichever is greater. Both data elements will be obtained from TDCJ-ID for fiscal year 1992."

Data sources will be the Institutional Division.

The proposed amendments to Section 165.62 rewrite the formula for computation of performance reward rankings. The Community Justice Assistance Division proposes to score factors as indicated below.

County rates for each factor are calculated based on data collected from each county of the state and from state data systems.

For factors where higher rates are indicative of better performance, counties shall be ranked from 254 downward beginning with the county with the highest rate. If two or more counties have exactly the same rates for a given factor, the rank assigned to each of the counties shall equal the mean of the ranks that would have been assigned if the rates had not been equal. A county's rank on a factor is their score for that factor. Counties that do not supply the data needed to calculate a specific rate shall receive a score equivalent to the lowest scoring county that did supply data for the factor.

For factors where lower rates are indicative of better performance, counties shall be ranked from 254 downward, beginning with the county with the lowest rate. If two or more counties have exactly the same rates for a given factor, the rank assigned to each of the counties shall equal the mean of the ranks that would have been assigned if the rates had not been equal. A county's rank on a factor is their score for that factor. Counties that do not supply the data needed to calculate a specific rate shall receive a score equivalent to the lowest scoring county that did supply data for the factor.

Individual scores for the technical and non-technical revocation rates shall be multiplied by 0.5 and summed to obtain a single score for the probation revocation rate.

The scores for each factor are summed to obtain the total score for the county.

The 127 counties with the highest total scores are eligible for performance rewards funding. If fewer than 127 counties submit data for the program, then only the counties that submit data will be eligible.

CJAD proposes to compute fund distributions as follows.

The number of eligible counties is multiplied by \$50,000 to obtain the amount of funds required to comply with the statutory \$50,000 minimum per eligible county. This amount is subtracted from the total amount of annual funds for the program to obtain the remainder to be allocated based on performance (bonus funding).

Bonus funding shall be based on the county's proportion of the state total of eligible counties for each of the following variables: total number of individuals released on personal bond; total number of individuals placed on pretrial diversion; total number of individuals placed on deferred adjudication probation; total number of individuals receiving probated sentences; total number of individuals placed in residential/non-residential diversion programs.

The county's proportion of the state total of the eligible counties shall be calculated for each variable in the following manner: the county totals for each variable are summed across eligible counties to obtain a state total; each eligible county's total is divided by the state total to determine the county's proportion of the state total.

The county's proportions for each variable are averaged to determine the overall proportion for the county.

Each eligible county's overall proportion is multiplied by the total bonus funding amount to obtain the bonus funding for the county.

The minimum \$50,000 plus the bonus funding equals the total performance rewards funding to the county.

The proposed amendments to §165.63 will require that the county judge for each county shall certify all information provided to CJAD.

The proposed amendments to §165.64(b)(2) will require the concurrence of the county commissioners' court on the county plan and budget to be submitted to CJAD.

The proposed amendment to §165.65(f) requires participating counties to provide CJAD with access to specified records.

The proposed amendment to §165.68(b) deletes a comma, to clarify the meaning of the sentence.

Bob Young, director of the Austin Budget Office of Finance and Administration, has determined the operation of the program under the proposed rule amendments will be within Legislative appropriations for the performance reward program for the year 1993. The continuation of the performance reward program is contingent upon future legislative funding, and the rules will not be operative if such funding is not continued.

The effect of these rules on local governments in 1993 will vary. Depending upon the success of their diversion efforts, some counties will receive more funding, while others will receive less.

Mr. Young also has determined that for the life of the program (which is contingent upon continued legislative funding after 1993), the public benefit to be obtained from operating the performance reward program will be to reward counties which successfully divert offenders from confinement in conformity with legislative intent. There will be no effect on small businesses. Since program participation is voluntary, the possible costs involved in data collection will vary at the discretion of the counties who may elect to participate, or not to participate.

Comments on the proposal may be submitted to John Newton, Texas Department of Criminal Justice, Community Justice Assistance Division, 8100 Cameron Road, Austin, Texas 78753, (512) 834-8188.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.13, §13, which provides the Texas Board of Criminal Justice with authority to develop and implement a performance rewards program.

§165.60. Performance Reward Program-General. Pursuant to the Texas Code of Criminal Procedures, Article 42.13, §13, the Community Justice Assistance Division (CJAD) of the Texas Department of Criminal Justice (TDCJ) establishes a performance rewards program for counties which successfully divert offenders from confinement. As is set forward in detail following, to be eligible for participation, a county

must conform to all of the following requirements:

(1) achieve a total [the state-wide] performance ranking score within the top 127 counties that submit data for [required by the Texas Board of Criminal Justice (board) on] the legislatively mandated performance rewards factors described in §165.61 of this title (relating to Performance Ranking Process); and

(2)-(5) (No change.)

§165.61. Performance Ranking Process. In conformity with the mandate of the Texas Code of Criminal Procedure, Article 42.13, §13(a), the board adopts the following mandatory performance reward factors, which are to be computed as indicated following:

(1) the personal bond utilization rate in the county, which shall be computed by dividing the total number of individuals released on personal bond[s] [(including both personal recognizance bonds and other bonds) issued] in the county by the total number of individuals arrested and booked into county jails [persons arrested] during the most recently completed state fiscal year;

(2) the pretrial diversion rate in the county, which shall be computed by dividing the total number of individuals placed on pretrial diversion in the county [persons accused of either a felony or a misdemeanor who were placed under some form of pretrial supervision (including programmatic placements)] by the total number of individuals arrested and booked into county jails [persons arrested for a misdemeanor or felony in the county] during the most recently completed state fiscal year;

(3) the deferred adjudication rate in the county, which shall be computed by dividing the total number of individuals [persons charged with either a felony or a misdemeanor who were] placed on deferred adjudication probation [status] in the county, [divided] by the sum of the total number of individuals [persons] convicted [in the county plus] and the total number of individuals placed on deferred adjudication[s] in the county during the most recently completed state fiscal year;

(4) the probation rate in the county, which shall be computed by dividing the total number of individuals receiving probated sentences [persons placed on felony and misdemeanor probation] in the county by the total number of individuals convicted and the total number of individuals placed on deferred adjudication [felony and misdemeanor convictions] in the county during the most recently completed state fiscal year;

(5) the probation revocation rates which shall be computed separately for non-technical and technical revocations.

(A) The technical probation revocation rate shall be determined by dividing the total number of individuals revoked on technical grounds [felony and misdemeanor probationers whose probation was revoked for any reason other than conviction of a subsequent offense] during the prior state fiscal year by the average probation population for the county during the prior state fiscal year [The average probation population for the county shall be determined by dividing the total number of persons on felony and misdemeanor probation for the prior state fiscal year by 12].

(B) The non-technical probation revocation rate for the county shall be determined by dividing the total number of individuals revoked on non-technical grounds [felony and misdemeanor probationers whose probation was revoked for the conviction of a subsequent offense] during the prior state fiscal year by the average probation population for the county during the prior state fiscal year [The average probation population shall be determined as set forth under subparagraph (A) of this paragraph].

[(C) The total probation revocation rate for the county shall be determined by dividing the total number of technical and non-technical probation revocations in the county by the average probation population, which shall be determined as set forth under subparagraph (A) of this paragraph.]

(6) the utilization rate of residential and nonresidential diversion programs in the county, which shall be computed by dividing the total number of individuals [county felony or misdemeanor probationers who were] placed in either a residential or nonresidential diversion program [(ie, an intensive supervision probation program, a specialized caseloads program, a surveillance program, an electronic monitoring program, or a restitution center program)] by the sum of the total number of individuals convicted and the total number of individuals placed on deferred adjudication in the county [county's average probation population] during the prior state fiscal year. [Average probation population shall be defined as set forth under paragraph (5)(A) of this section];

(7) the ID commitment rate for the county, which shall be computed by dividing the total number of individual felons sentenced [directly] to the Institutional

Division from the county by the sum of the total number of felons convicted and the total number of individuals placed on deferred adjudication in the county during the prior state fiscal year;

(8) the admissions per index crimes rate for the county, which shall be computed by dividing the total number of court-generated admissions into the ID during the last calendar [state fiscal] year by the total number of Uniform Crime Reports index crimes reported in the county during the last calendar year for which data is available, as reflected on the uniform index crime reports;

(9) the frequency and extent of not using allocated admissions rate for the county, which shall be computed by dividing the total number of allocated admissions to the ID minus the total number of actual admissions to the ID by the total number of allocated admissions to the ID [use of ID admissions].

[(A) The frequency with which admissions are not used shall be measured by the number of occasions on which a county did not use its weekly admissions divided by 52, or by dividing the number of occasions on which a county did not use its cyclical admissions by 13. The relevant computation shall be made using data from the most recently completed state fiscal year.]

[(B) The extent to which a county did not use its allocated admissions shall be measured by dividing its total number of allocated annual admissions by the total number of its actual admissions during the most recently completed state fiscal year.]

§165.62. Formula For Computation of Performance Reward Rankings and Distribution of Funds.

[(a)] It was the intent of the Legislature in establishing the performance reward program to provide financial incentives to those counties which successfully divert offenders from confinement. In conformity with that intent, the board hereby adopts the following formula for computation of performance reward rankings and distribution of funds.

(1) County rates for each factor are calculated based on data collected from each county of the state and from state data systems. [State-wide median scores will be ascertained for each factor.]

(2) For all factors except the probation revocation rates, the Institutional Division commitment rate, and the admissions per index crime rates, counties shall be ranked from 254 downward

beginning with the county with the highest rate. If two or more counties have exactly the same rates for a given factor, the rank assigned to each of the counties shall equal the mean of the ranks that would have been assigned if the rates had not been equal. A county's rank on a factor shall be their score for that factor. Counties that do not supply the data needed to calculate a specific rate shall receive a score equivalent to the lowest scoring county that did supply data for the factor [The rate distribution for each factor will be divided into deciles with five equal groups above the median and five equal groups below the median except where counties with equal rates for a factor prevent the division of the counties into ten equal groups. Counties with equal rates for a given factor will all be assigned to the highest group in which the tied rates are encountered].

(3) For the probation revocation rates, the Institutional Division commitment rates, and the admissions per index crime rate, counties shall be ranked from 254 downward beginning with the county with the lowest rate. If two or more counties have exactly the same rates for a given factor, the rank assigned to each of the counties shall equal the mean of the ranks that would have been assigned if the rates had not been equal. A county's rank on a factor shall be their score for that factor. Counties that do not supply the data needed to calculate a specific rate shall receive a score equivalent to the lowest scoring county that did supply data for the factor [Decile groupings and performance award points for the probation revocation rates, the ID commitment rate, and the admissions per index crimes factors. Counties with rates below the state-wide median for probation revocation rates, the ID commitment rate, and the admissions per index crimes factor will receive positive scores, and counties with rates above the statewide median for those factors will receive negative scores. The first group below the median will receive one positive point, the next group will receive two positive points, and so forth, with the counties in the lowest group receiving plus five points. Negative points will be assigned in a similar fashion to counties ranking above the median on these factors].

(4) The scores for the technical and non-technical revocation rates shall be multiplied by 0.5 and summed to obtain a single score for the probation revocation rates [Decile groupings and performance award points for all factors other than the probation revocation rates, the ID commitment rate, and the admissions per index crimes factors. Counties with rates above the state-wide median for factors other than the probation revocation

rates, the ID commitment rate, and the admissions per index crimes factors will receive positive scores, and counties with rates below the state-wide median for those factors will receive negative scores. The first group above the median will receive one positive point, the next group will receive two positive points, and so forth, with the counties in the highest group receiving plus five points. Negative points will be assigned in a similar fashion to counties ranking below the median on these factors].

(5) The scores for each factor are summed to obtain the total score for the county [All positive and negative performance award points shall then be totaled for each county to determine the overall performance award score for the county].

(6) The 127 counties with the highest total scores are eligible for performance rewards funding [Each county which obtains an overall performance award score greater than zero shall be eligible to receive the statutory minimum \$50,000 grant award, provided that the county complies with all of the other eligibility criteria set forth in the other provisions of these regulations].

(7) The number of eligible counties is multiplied by \$50,000 to obtain the amount of funds required to comply with the statutory \$50,000 minimum per eligible county. This amount is subtracted from the total amount of annual funds for the program to obtain the remainder to be allocated based on performance (bonus funding) [The Community Justice Assistance Division will then multiply the number of counties eligible for minimum grant funding times \$50,000 to determine what dollar amount of the annual appropriation for this program must be utilized to pay for the statutory minimum grant awards, and what dollar amount is available for distribution as performance ranking award funding].

(8) Bonus funding shall be based on the county's proportion of the state total of eligible counties for each of the following variables: [Performance ranking award funding shall be determined by the following computations.]

(A) total number of individuals released on personal bond; [All funds in excess of the amount which must be disbursed to counties eligible for the minimum \$50,000 award will be divided by the total number of positive performance award points earned by those counties eligible for the minimum award to determine the dollar value for each point.]

(B) total number of individuals placed on pretrial diversion; [Subject to the performance reward funding

limit set forward in subsection (b) of this section, each county's actual dollar award shall be determined by multiplying the county's positive performance award points by the dollar value per point. If through this process the total annual appropriation for this program has not been completely allocated, the remaining funds shall be divided by the total number of positive performance award points earned by those eligible counties that have not reached the funding limit set forward in subsection (b) of this section to determine additional performance reward funding for each point. These counties shall receive additional funding equal to the product of the positive performance award points and the additional performance reward funding per point. This process of allocating unutilized appropriations shall be repeated until all annually appropriated funds are expended or until the total dollar value per point reaches 10 times the initially calculated dollar value per point as set forward in subparagraph (A) of this paragraph.]

(C) total number of individuals placed on deferred adjudication probation;

(D) total number of individuals receiving probated sentences;

(E) total number of individuals placed in residential/non-residential diversions programs.

(9) The county's proportion of the state total of the eligible counties shall be calculated for each variable in the following manner.

(A) The county totals for each variable are summed across eligible counties to obtain a state total.

(B) Each eligible county's total is divided by the statewide total to determine the county's proportion of the state total.

(10) The county's proportions for each variable are averaged to determine the overall proportion for the county.

(11) Each eligible county's overall proportion is multiplied by the total bonus funding amount to obtain the bonus funding for the county.

(12) The minimum \$50,000 plus the bonus funding equals the total performance rewards funding to the county.

[(b) Performance reward funding limit. The maximum amount of performance ranking award funding above the

\$50,000 base referenced in subsection (a)(7) of this section that a county may receive shall be \$2.00 per capita, based on the total population of the county as recorded in the most recent census.]

§165.63. Data Collection. [Each Community Supervision and Corrections Department (CSCD) shall provide to the Community Justice Assistance Division (CJAD) data relating to the performance factors on each county within the CSCD's jurisdiction.] Data relating to the performance factors on each county are to be reported to CJAD [by CSCD] in a format determined by the division [CJAD, using definitions for the data elements provided by CJAD]. Except where specifically noted, the data reported [is] are to be on the most recent state fiscal year. The county judge must certify the information for the county that is provided to CJAD. The [CSCD shall report the] data for the performance factors shall be reported to CJAD within timelines determined by CJAD.

§165.64. County Plan Submission Requirements.

(a) (No change.)

(b) Requirements as to plan preparation and submission. To be eligible for funding, a county plan must be prepared and submitted in conformity with the following requirements.

(1) (No change.)

(2) The county judge or his designee, with the concurrence of the county commissioners' court, shall prepare the county plan and budget schedule, using formats provided by CJAD, which indicate the manner in which performance rewards shall be used. The county judge shall be the individual, on behalf of the county, to submit the county plan and budget schedule and any reports to CJAD. County plans shall be received by CJAD within the timelines determined by CJAD.

(3) (No change.)

§165.65. Rules Governing Program Accountability and Audits.

(a)-(e) (No change.)

(f) Counties participating in and receiving performance reward program funds shall make their financial records of transactions involving performance reward funds available to representatives of the Texas Department of Criminal Justice (TDCJ) for financial audit purposes. Counties participating and receiving performance reward program funds shall provide [make available to] representatives of CJAD and TDCJ access to those programs and their records

funded under the performance reward program in the county for the purposes of program monitoring and evaluation.

§165.68. Dispute Resolution Procedures.

(a) (No change.)

(b) If a staff member of the Texas Department of Criminal Justice believes that a county official, agent, or employee has knowingly committed any of the acts which are grounds for termination of funding[,] for failure to cooperate with the Institutional Division (ID), as set forward in §165.67 of this title (relating to Required Cooperation With Institutional Division Employees), that staff member shall contact the director of the ID or his designee. The director of the ID or his designee shall then contact the county judge or the chief district judge of the county alleged to be in violation to attempt to resolve the problem quickly and through informal means.

(c) (No change.)

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

Issued in Austin, Texas, on July 29, 1992.

TRD-9210357 Jackee Cox
General Counsel
Texas Department of
Criminal Justice

Earliest possible date of adoption: September 4, 1992

For further information, please call: (512) 463-9988

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Chapter 192. Parole Board and Parole Division Administrative Matters

• **37 TAC §192.1**

The Texas Board of Criminal Justice proposes new §192.1, concerning administrative review of parole panel actions.

The purpose of this new section will be to require the entire 18-member Board of Pardons and Paroles to provide an administrative review of any parole panel decision to release a person convicted of a capital offense.

Bob Young, director of the Austin Budget Office of Finance Administration, has determined that the cost to the state of implementing this rule will not be significant, assuming that the Board of Pardons and Paroles conduct these administrative reviews at their regularly schedule quarterly meetings. This will have no effect on local government, and no effect on small businesses.

Jackee Cox, general counsel for the Texas Board of Criminal Justice, has determined that the public benefit of enforcing this rule will be to increase the public confidence in the parole process. There will be no effect on small businesses.

Individuals will not be required to comply with this rule. If, however, the affected parolees wish to have representation by counsel at the administrative review proceedings, they may incur fees for such services. Since attorney's fees for representation are not standard, and the amount of work which might be performed on such a case would vary with the complexity of the case, it is not possible to predict with accuracy the economic impact of the rule on individuals.

Comments on the proposal may be submitted to Jackee Cox, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, 816 North Congress, Suite 500, Austin, Texas 78711.

The new section is proposed under the Texas Code of Criminal Procedure, Article 42.18, §7(d), which provides that: "The Texas Board of Criminal Justice may provide and promulgate a written plan for the administrative review by the entire membership of the board of the actions taken by a parole panel."

§192.1. Administrative Review of Parole Panel Actions.

(a) If a parole panel votes to release a person convicted of a capital offense (as the term "capital offense" was defined in the Texas Penal Code at the time when the offense was committed by the person), the panel's decision shall be referred for administrative review by the entire membership of the Board of Pardons and Paroles prior to the release of the person in question.

(b) The Board of Pardons and Paroles may promulgate their own rules governing the administrative review process and any actions to be taken subsequent to such administrative review.

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

Issued in Austin, Texas, on July 29, 1992.

TRD-9210358 Jackee Cox
General Counsel
Texas Department of
Criminal Justice

Earliest possible date of adoption: September 4, 1992

For further information, please call: (512) 463-9988

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

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

Subchapter U. State and Local Requirements

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

The Texas Department of Human Services (DHS) proposes the repeal of §19.2012 and new §§19.2201-19.2209 and §§19.2211-19.2216, concerning the imposition of remedies relating to violations of nursing facility contracts. The new sections are proposed in new Subchapter W, Remedies for Violations of Title XIX Nursing Facility Provider Agreements. The purpose of the repeal and new sections is to establish a new system of remedies against nursing facilities found by the Texas Department of Health to be out of compliance with the Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification. The repeal and new sections result from an amendment to the Human Resources Code, §32.021, by House Bill 7, 72nd Texas Legislature, 1991, which authorizes DHS to assess and collect remedies.

DHS proposed the repeal of §19.2012 and new §§19.2201-19.2213 in the April 24, 1992, issue of the *Texas Register* (17 TexReg 2967). Numerous comments were received during the public comment period indicating a need for substantive changes to the proposed rules. Therefore, DHS withdrew the proposal effective July 20, 1992, and presents this revised text for comment.

The following is a summary of the changes which DHS has made to the rules as previously proposed.

In response to a comment which expressed concern that the proposed rules would nullify a nursing facility's record of previous violations, DHS is proposing new §19.2216, Transition, which holds nursing facilities accountable, in certain instances, for previous violations.

DHS has deleted all licensure remedies, such as appointment of trustees and immediate closure of facilities, from these remedies rules. Licensure actions are addressed in the Texas Health and Safety Code, Chapter 242.

Section 19.2203(a)(1) and (2), Remedy Options, is clarified by listing separately remedies applicable by DHS and those applicable by the Texas Department of Health (TDH).

In §19.2204, Directed Plan of Correction, DHS, in response to a comment, has allowed for more input by nursing facilities into a directed plan of correction imposed by TDH.

In §19.2211, Exclusions, DHS has substituted new language which references rules concerning debarment which DHS proposed in the July 7, 1992, issue of the *Texas Register* (17 TexReg 4871).

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

Mr. Raiford 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 improved quality of care in nursing facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the persons as proposed.

Questions about the content of the proposal may be directed to Sue Syler at (512) 450-3111 in DHS's Institutional Programs Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-093, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §19.2012

The repeal is proposed under the Human Resources Code, Title 2, Chapter 32.021(d)-(g) and 32.024(a), which provides the department with the authority to levy and collect remedies from nursing facilities that fail to meet Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification, as cited by surveyors for the Texas Department of Health.

§19.2012. Remedies for Violations of Title XIX Nursing Facility Provider Agreements.

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 July 28, 1992

TRD-9210294 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: November 1, 1992

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

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Subchapter W. Remedies for Violations of Title XIX Nursing Facility Provider Agreements

• 40 TAC §§19.2201-19.2209, 19.2211-19.2216

The new sections are proposed under the Human Resources Code, Title 2, Chapter 32.021(d)-(g) and 32.024(a), which provides the department with the authority to levy and collect remedies from nursing facilities that fail to meet long term care nursing facility requirements for licensure and Medicaid certification, as cited by surveyors for the Texas Department of Health.

§19.2201. *Authority and Purpose for Rules Relating to the Imposition of Remedies.* The Texas Department of Human Services (DHS) is authorized, according to §19.1 of this title (relating to Basis and Scope), to establish a system of remedies for nursing facilities that do not meet the contractual requirements for Medicaid participation. The remedies are designed to result in faster compliance and to ensure the health, safety, and welfare of nursing facility residents.

§19.2202. *Definitions.* The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Accountability period—A 24-month period which begins each time a facility is cited for a resident-related contract violation. Two accountability periods may overlap.

Compliance letter—Written notification to the facility by the state survey agency of a resident-related contract violation, which, if not corrected within a stated time frame, will result in the imposition of a more stringent remedy.

Contract violation—The failure of a Medicaid-contracted nursing facility to comply with any of the terms of the Medicaid provider agreement. These failures may include resident-related deficiencies, nonresident-related deficiencies, and administrative violations of other applicable agency rules or contractual provisions. All contract violations cited during a single survey are considered in the aggregate for purposes of proposing remedies under this subchapter.

Deficiency—Noncompliance with a regulatory requirement for participation. A deficiency may be cited if there are situations identified during the course of a survey of sufficient severity and/or frequency that indicate an individual requirement is not met.

Immediate jeopardy to health and safety—A situation in which there is a high

probability that serious harm or injury to residents could occur at any time or already has occurred and may well occur again if residents are not protected effectively from the harm or if the threat is not removed.

New Medicaid admission—The admission of a Medicaid-eligible individual who has never been previously admitted to the facility or who, if previously admitted, was discharged or voluntarily left the facility. New admissions do not include individuals who:

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

(B) are readmitted to beds reserved for them, after a temporary absence from the facility for a therapeutic visit as described in §19.1703 of this title (relating to Therapeutic Home Visits Away from the Facility); or

(C) are readmitted to the same facility after a hospital stay.

On-Site Monitoring—Regular observation, as needed, of a facility by the state survey agency until the facility has demonstrated that it is in compliance with the requirements for participation and that it will remain in compliance.

Plan of correction—A written strategy for correcting a contract violation. A plan of correction may be developed by the facility and, in certain situations, directed by the state survey agency. Directed plans of correction may include, but are not limited to, requiring the facility to hire nursing, dietary, pharmacy, or management consultants; to hire additional staff; and to make structural repairs or renovations. The preceding examples are listed without regard to priority.

Requirements for participation—The single set of standards that are adopted by the Texas Department of Human Services (DHS) and that govern participation in the Medicaid nursing facility program.

Scope—The percentage of the residents surveyed who are affected by a facility's deficiencies cited in a single survey. The state survey agency determines the scope of a facility's deficiencies when recommending monetary penalties. Scope may vary as follows:

(A) "An isolated or occasional occurrence" affects up to and including 20% of the residents surveyed;

(B) "A pattern of occurrence," or "a widespread, pervasive occurrence" affects more than 20% of the residents surveyed.

Severity—The level of seriousness of the sum of deficiencies in a facility, considering the actual and/or potential resident harm that did or could occur in that facility. The state survey agency determines the level of severity of a facility's deficiencies when recommending monetary penalties. The levels of severity are:

(A) "No harm or likely potential for harm." No negative resident outcome or resident rights violation has occurred or is likely to occur, nor has the ability of the individual to achieve the highest practicable physical, mental, or psychosocial well-being been compromised or is likely to be compromised;

(B) "A potential for harm." If the deficiencies continue over time, a negative outcome or a resident rights violation would likely occur, and/or the ability of the individual to achieve the highest practicable physical, mental, or psychosocial well-being would, or would likely, be compromised;

(C) "Actual harm." A negative outcome or resident rights violation has occurred, and/or the ability of the individual to achieve the highest practicable physical, mental, or psychosocial well-being is, or has been, compromised;

(D) "Actual life-threatening harm or resident death."

Survey—All surveys, including standard, extended, partially extended, or those which result from a complaint.

Vendor hold—A remedy consisting of withholding vendor payment. Vendor hold is used for administrative contract violations such as trust fund violations, delayed cost reports, or late occupancy reports.

§19.2203. Resident-Related Contract Violations.

(a) **Remedy options.** The remedies described in this section do not preclude the application of other lawful actions, such as the licensing agency actions under the Texas Health and Safety Code, Chapter 242. Possible remedies for resident-related contract violations, listed without regard to priority, are as follows.

(1) State survey agency remedy options.

(A) Facility-developed plan of correction as specified in subsection (b)(1)(C) of this section.

(B) Compliance letter as specified in subsection (b) (1)(C) of this section.

(C) Directed plan of correction as specified in §19.2204 of this title (relating to Directed Plan of Correction).

(D) On-site monitoring as specified in subsection (b)(1)(A) and (b)(1)(B) of this section.

(E) Proposal to terminate certification for Medicaid participation as specified in subsection (b)(1)(A) and (B) of this section.

(F) Termination of certification for Medicaid participation as specified in 25 TAC §§145.141-145.147.

(2) DHS remedy options.

(A) Monetary penalties as specified in §19.2205 of this title.

(B) Denial of payment for new Medicaid admissions as specified in §19.2206 of this title (relating to Denial of Payment for New Medicaid Admissions).

(C) Contract cancellation as specified in §19.2208 of this title (relating to Contract Cancellation for Resident-Related Contract Violations).

(b) **Application of remedies.** The state survey agency must notify the facility of recommendations for remedies during the on-site exit conference. Facilities will be notified by the state survey agency of the imposition of remedies within 10 days of the on-site exit conference. The state survey agency must observe the following guidelines to ensure standard and consistent recommendations for remedies.

(1) Facilities cited for resident-related contract violation. Each time a facility is cited for a resident-related contract violation, as described in subparagraphs (A) and (B) of this paragraph, an accountability period begins on the date the facility is cited.

(A) **Immediate jeopardy to health and safety.** When the surveyors determine that a facility's contract violation immediately jeopardizes the health or safety of its residents, the state survey agency takes immediate action to remove the jeopardy and correct the contract violation through a proposal to terminate the facility's Medicaid certification in 23 days. If a facility notifies the state survey agency that the threat has been corrected, the state survey agency makes an on-site verification. The facility's certification is terminated and the Medicaid contract expires on the 23rd

day unless the state survey agency has conducted an on-site verification and confirmed that the jeopardy has been removed. Additionally, one or more of the remedies described in clauses (i)-(iii) of this subparagraph may also be applied if, in the judgment of the state survey agency, it is necessary to cause the facility to achieve and maintain compliance and/or to protect the health and safety of the residents:

- (i) on-site monitoring to ensure continued compliance;
- (ii) denial of payment by the Texas Department of Human Services (DHS) for all new Medicaid admissions;
- (iii) monetary penalties as specified in §19.2205 of this title.

(B) No immediate jeopardy to health and safety. If the surveyors determine that a facility's contract violation does not immediately jeopardize the health or safety of its residents, but does, or did, pose a health and/or safety hazard, or limits, or limited, the facility's capacity to render adequate care, the state survey agency proposes to terminate the facility's Medicaid certification within 90 days from the date of the on-site exit conference. In addition, the state survey agency imposes a directed plan of correction which addresses the facility's specific circumstances. The facility is responsible for paying all costs incurred to correct the deficiencies.

(i) Additionally, one or more of the remedies described in subparagraph (A) of this paragraph may also be applied if, in the judgment of the state survey agency, it is necessary to cause the facility to achieve and maintain compliance and/or to protect the health and safety of the residents.

(ii) If a facility has not corrected the contract violation within 90 days from the date of the exit conference, the facility's Medicaid certification is terminated.

(iii) If a facility has not corrected the contract violation within three months of the on-site exit conference, DHS denies payment for all new Medicaid admissions, as described in §19.2206 of this title.

(C) Violations not limiting rendering of adequate care. Violations which do not limit the facility's capacity to render adequate care result in a facility-developed plan of correction and/or a compliance letter. If a contract violation cited in a compliance letter is not corrected within the specified time period, not to exceed 90 days and beginning upon receipt of the letter, the additional remedy described in subsection (a)(1)(C) of this section is applied.

Contract violations described in this subparagraph are not considered for purposes of contract cancellation as described in §19.2208 of this title or for monetary penalties as described in §19.2205.

(2) Second contract violation. The second time, within an accountability period, the state survey agency notifies DHS in writing of a resident-related contract violation and recommends or imposes remedies.

(A) For a contract violation as described in paragraph (1)(A) of this subsection, the same remedies apply, except for the monetary penalties which are increased as specified in §19.2205(a)(2) of this title.

(B) For a contract violation as described in paragraph (1)(B) of this subsection, the same remedies apply, except for the monetary penalties which are increased as specified in §19.2205(a)(2) of this title.

(3) Third contract violation. The third time, within an accountability period, the state survey agency notifies DHS in writing of a resident-related contract violation, as described in paragraph (1)(A) or (1)(B) of this subsection, and recommends or imposes remedies, the following occur:

(A) DHS terminates the Medicaid contract;

(B) if the recommended or imposed remedies are the result of three standard surveys, until the Medicaid termination is effective, DHS:

(i) denies payment for new Medicaid admissions; and

(ii) requires on-site monitoring of the facility.

(4) Remedies overturned on appeal. Remedy recommendations which have been overturned on an appeal to the appropriate state agency or a court of law are not considered for purposes of contract cancellation as described in §19.2208(a)(2) of this title or for monetary penalties as described in §19.2205 of this title.

(5) Facility limitations on recipient charges. A facility must not charge Medicaid recipients, their families, or their responsible parties to recoup any vendor payments not received because of the imposition of remedies against the facility. The facility may collect only the applied income established in the resident's payment plan.

§19.2204. Directed Plan of Correction.

(a) The state survey agency may solicit information from the facility regard-

ing the corrective action necessary for correcting the contract violation and may develop a directed plan of correction.

(b) The state survey agency may require the facility to submit a plan of correction acceptable to the state survey agency to be adopted as the plan of correction.

(1) The survey agency provides the facility with a statement of deficiencies within 10 days of the exit conference.

(2) The facility must submit the proposed plan of correction to the state survey agency within 10 days of the date the facility receives the statement of deficiencies from the state survey agency.

(c) The directed plan addresses each specific deficiency to which the plan is applied.

(d) The period of time the plan is in effect is specified in the plan of correction. However, the plan ceases when either of the following occur:

(1) the facility can demonstrate to the satisfaction of the state survey agency that it has achieved and will maintain compliance; or

(2) decertification or contract cancellation occurs.

§19.2205. Monetary Penalties. Each time a facility is cited for resident-related contract violations, as specified in §19.2203(b)(1) of this title (relating to Resident-Related Contract Violations), an accountability period begins on the date the facility is cited. Monetary penalties may be imposed whether or not the facility has received a plan of correction from the state survey agency.

(1) Application of monetary penalties.

(A) The first time a facility is cited for a resident-related contract violation, an accountability period begins, and monetary penalties are assessed as follows, based upon the recommendation of the state survey agency.

(i) If the violation immediately jeopardizes the health or safety of its residents, the Texas Department of Human Services (DHS) notifies the facility in writing of the following monetary penalties:

(I) a severity of "actual life-threatening harm or resident death," in combination with any level of scope, results in monetary penalties of \$10 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency;

(II) a severity of "actual harm."

(-a-) with a scope of more than 20% results in monetary penalties of \$7.50 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency;

(-b-) with a scope of up to and including 20% results in monetary penalties of \$5.00 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(III) a severity of "a potential for harm" with a scope of more than 20% results in monetary penalties of \$5.00 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(ii) If the violation does not immediately jeopardize the health or safety of the facility's residents, but does or did pose a health and/or safety hazard, or limits or limited the facility's capacity to render adequate care, DHS notifies the facility in writing of the following monetary penalties:

(I) a severity of "actual harm":

(-a-) with a scope of more than 20% results in monetary penalties of \$5.00 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency;

(-b-) with a scope of up to and including 20% results in monetary penalties of \$2.50 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency;

(II) a severity of "potential for harm" with a scope of more than 20% results in monetary penalties of \$2.50 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(iii) If a resident-related contract violation constitutes the second vi-

olation within an existing accountability period, monetary penalties are assessed according to subparagraph (B) of this paragraph.

(B) The second time a facility is cited for a resident-related contract violation within an accountability period, penalties are assessed as follows, upon recommendation of the state survey agency.

(i) Immediate jeopardy to health and safety. If the violation immediately jeopardizes the health or safety of its residents, DHS notifies the facility in writing of the following monetary penalties:

(I) a severity of "actual life threatening harm or resident death" in combination with any level of scope results in monetary penalties of \$20 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency;

(II) a severity of "actual harm":

(-a-) with a scope of more than 20% results in monetary penalties of \$15 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency;

(-b-) with a scope of up to and including 20% results in monetary penalties of \$10 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency;

(III) a severity of "a potential for harm" with a scope of more than 20% results in monetary penalties of \$10 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(ii) No immediate jeopardy to health and safety. If the violation does not immediately jeopardize the health or safety of its residents, but does or did pose a health and/or safety hazard, and/or it limits or limited the facility's capacity to render adequate care, DHS notifies the facility in writing of the following monetary penalties:

(I) a severity of "actual harm":

(-a-) with a scope of more than 20% results in monetary penalties of \$10 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency;

(-b-) with a scope of up to and including 20% results in monetary penalties of \$5.00 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency;

(II) a severity of "potential for harm," with a scope of more than 20% results in monetary penalties of \$5 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(2) Duration and payment of monetary penalties.

(A) Unless the penalties are appealed, payment of assessed monetary penalties must be received in full by DHS within 20 days of receipt of a certified letter from DHS to the facility stipulating the amount of monetary penalties.

(B) Unless the facility appeals as specified in §19.2209 of this title (relating to Appeals Process for Resident-Related Contract Violations), interest on the monetary penalties accrues from the 21st day of receipt of the certified letter until paid, and at the rate of interest in effect during the interest period for judgments of the courts of Texas, as provided in Texas Civil Statutes, Article 5069-1.05, §2.

(C) Monetary penalties cease the same date as decertification or contract cancellation.

(D) Unless the facility is decertified or its contract is canceled, monetary penalties continue for a minimum of 15 days or until the survey agency is assured that the contract violation is corrected, whichever is later. The state survey agency may be notified in writing by the facility that the contract violation was corrected. The state survey agency staff must find on a subsequent visit that the contract violation was in fact corrected. Monetary penalties as described in this section will cease on the 16th day or the date of notification to the state survey agency, whichever is later, when:

(i) the state surveyors are unable to revisit the facility within five days after the date that the facility provided notification that the contract violation was corrected; and

(ii) the contract violation is later shown to be corrected based upon observation by the state survey agency and/or written documentation by the facility.

(E) If, on a subsequent visit, the state survey agency determines that the contract violation was in fact not corrected, the state survey agency notifies DHS, and DHS will double the most recent assessment of monetary penalties, effective the date the contract violation was erroneously reported corrected, and DHS will continue the assessment until the contract violation is corrected.

(F) DHS applies all funds collected, as a result of monetary penalties, to the protection of the health and property of residents of nursing facilities that DHS or the Health Care Financing Administration (HCFA) finds deficient. Funds may be used for the cost of relocating residents to other facilities, for maintenance or operation of a facility pending correction of a contract violation or closure, and for reimbursement of residents for lost personal funds.

§19.2206. Denial of Payment for New Medicaid Admissions.

(a) The Texas Department of Human Services (DHS) notifies a facility of its intent to deny payment for new Medicaid admissions if the facility has not corrected the contract violation cited by the state survey agency within three months after the date the facility is found to be out of compliance with the requirements for participation.

(b) A facility may appeal the finding of noncompliance, through an informal appeal to DHS. The informal hearing includes an opportunity for the facility to present evidence or documentation, in writing or in person, to refute the decision that the facility is out of compliance. DHS sends the facility a written decision setting forth the factual and legal bases pertinent to a resolution of the dispute. If the finding of noncompliance is upheld:

(1) DHS notifies the facility of the effective date and the reasons for the denial of payment at least 15 days before the effective date; and

(2) DHS notifies the public of the effective date and the reasons for denial of payment by publishing a notice in an area newspaper at least 15 days before the effective date. When the facility is again in

compliance, notice will be published in an area newspaper.

(c) The denial of payment for new admissions continues for 11 months after the month it was imposed, unless, before the end of that period, DHS is notified by the state survey agency that the facility has corrected the contract violation, or unless the contract violation warrants terminating the Medicaid contract.

(d) If, at the end of the denial-of-payment period, the facility is still unable to achieve compliance with the requirements for participation, the facility's Medicaid contract will be canceled effective the day following the last day of the denial of payment period.

(e) If the Health Care Financing Administration (HCFA) notifies DHS that HCFA is denying payment for new admissions to a Medicare-participating skilled nursing facility that also participates in Medicaid, DHS denies Medicaid payments for new admissions for the same period for which Medicare payments are denied. The procedure is stipulated in 42 Code of Federal Regulations, Part 489.

§19.2207. Administrative Contract Violations. If a facility has been cited in writing by the Texas Department of Human Services (DHS) for failure to meet nonresident-related requirements, other applicable agency rules, or contractual provisions, DHS takes the following action.

(1) DHS grants the facility a compliance period of no more than 30 days to correct a contract violation. At the end of the compliance period, if DHS determines that a contract violation is not corrected, but determines that the facility has made substantial progress toward correcting the contract violation, DHS may grant an additional one-time extension period of up to 15 days.

(2) If the contract violation is not corrected within the compliance period, DHS imposes vendor hold on state Medicaid payments to the facility.

(3) If a contract violation is not corrected within 60 days from the date the facility is placed on vendor hold, DHS cancels the facility's provider agreement on the 61st day. A facility may request an informal reconsideration and/or an appeal hearing. A request for an informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. Regulations governing these appeals are specified in §79.1605(a) of this title (relating to Request for a Hearing). If the facility appeals the contract cancellation by DHS and the adverse action is sustained by an administrative law judge or judicial

proceeding, the effective date of the contract cancellation is the date the administrative law judge's decision becomes final. Unless otherwise provided for in this section, DHS makes no payment for services provided by the facility after the effective date of the facility's contract cancellation. DHS may continue payments for no more than 30 days from the date DHS cancels or fails to renew a facility's contract if the state survey agency notifies DHS in writing, or DHS determines, that:

(A) reasonable efforts are being made to transfer the residents to another facility or to alternate care; and

(B) additional time is needed to effect an orderly transfer of the residents.

§19.2208. Contract Cancellation for Resident-Related Contract Violations.

(a) The Texas Department of Human Services (DHS) notifies the facility in writing of its intention to cancel the facility's contract when either of the following situations occur:

(1) the state survey agency terminates the facility's certification. DHS makes no payment for services provided by the facility after the effective date of the termination of a facility's certification;

(2) the facility has received three notifications within an accountability period of resident-related contract violations and recommendations for or imposition of remedies, excluding facility-developed plans of correction or compliance letters.

(A) If the contract cancellation is not appealed, the contract is canceled on the 20th day after the facility receives notice of DHS's decision to cancel the contract.

(B) If the contract cancellation is appealed, the contract will be canceled on the date the administrative law judge's decision upholding the cancellation becomes final.

(b) DHS may continue payments for no more than 30 days from the date DHS cancels or fails to renew a facility's contract if the state survey agency notifies DHS in writing that:

(1) reasonable efforts are being made to transfer the residents to another facility or to alternate care; and

(2) additional time is needed to effect an orderly transfer of the residents.

(c) When a facility's contract is canceled by DHS under the provisions of subsection (a) of this section, there is a

30-day period of no vendor payment to the facility. If the facility reapplies for a contract, the state survey agency conducts an on-site visit and notifies DHS whether or not the facility is complying with Medicaid requirements. If the facility is complying with Medicaid requirements and a contract with the facility is not prohibited by DHS debarment rules, DHS enters into a 30-day probationary contract with the facility. After the probationary period, if the state survey agency notifies DHS that:

(1) the facility is complying with Medicaid requirements, DHS enters into a nonprobationary contract as specified in §19.2005(a)(1), (2), (3), or (5) of this title (relating to Contract Requirements);

(2) the facility is not complying with Medicaid requirements, no contract can be issued. An additional 30-day period of no vendor payment begins. The facility must be in compliance with Medicaid requirements before applying for a probationary contract with DHS, according to the procedures stated in this subsection.

§19.2209. Appeals Process for Resident-Related Contract Violations.

(a) Facilities may appeal the application of the Texas Department of Human Services (DHS) remedies listed in §19.2203(a)(2) of this title (relating to Resident-Related Contract Violations) by requesting an informal reconsideration and/or an appeals hearing. A request for an informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. Appeal procedures involving state statutes, monetary penalties, and Title XIX nursing facility contracts are held in accordance with §§79.1601-79.1614 of this title (relating to Contract Appeals).

(1) Monetary penalties. If a facility requests an appeals hearing, no monetary penalties are collected until the outcome of the hearing. The appeals hearing on the monetary penalties may not be held until the nursing facility has been notified of the total amount of the penalty. Interest on the assessed monetary penalties is calculated at the rate of interest in effect during the interest period for judgments of the courts of Texas, as provided in Texas Civil Statutes, Article 5069-1.05, §2. The interest period begins on the date of the written request by the facility for an appeals hearing and ends on the date the monetary penalties are paid.

(A) Assessed monetary penalties and any interest must be paid in full within 20 days of receipt of a certified letter from DHS of the amount of the monetary penalties.

(B) No monetary penalties or interest are charged the facility if the appeals hearing results in the administrative law judge (ALJ) or judicial proceeding overturning the initial decision.

(2) Contract cancellation.

(A) In an appeals hearing regarding contract cancellation resulting from three recommendations for remedies, as specified in §19.2208(a)(2) of this title (relating to Contract Cancellation for Resident-Related Contract Violations), the facility may challenge the contract violation(s) that are the basis for the cancellation unless, as specified in §§79.1601-79.1614:

(i) the facility was given an opportunity for a hearing previously on the same violations and did not request a hearing within the required time limit; or

(ii) a final decision has been rendered by a DHS ALJ in a prior hearing on the same violations, and the ALJ upheld the violations. Prior failure to request a hearing or a final decision(s) in a prior hearing as described in this subparagraph are considered *res judicata*, that is, conclusive proof of the prior violations.

(B) In an appeals hearing involving contract cancellation resulting from decertification, as specified in §19.2208(a)(1) of this title, the final decision rendered by the state survey agency in the termination of certification hearing is considered *res judicata* or conclusive of the issue of decertification.

(b) Facilities may appeal termination of certification to the state survey agency under 25 TAC §§145.141-145.147 (relating to Procedures Covering Certification and Termination of Certification of Long-Term Care Facilities which Participate in the Title XIX Medical Assistance Program).

§19.2211. Exclusions. This subchapter governs the cancellation of current Texas Department of Human Services (DHS) Medicaid contracts with nursing facilities. Debarment of former or potential contractors is governed by §§69.275-69.279 of this title (concerning Debarment and Suspension of Current and Potential Contractor's Rights, Causes for and Conditions of Debarment, Causes for and Conditions of Suspension, Proof Required for Debarment and Suspension, and Notice Requirements for Debarment and for Suspension).

§19.2212. Fraud Referral. None of the options listed in §§19.2202-19.2209 of this

title (relating to Definitions; Resident-Related Contract Violations; Directed Plan of Correction; Monetary Penalties; Denial of Payment for New Medicaid Admissions; Administrative Contract Violations; Contract Cancellation for Resident-Related Contract Violations; and Appeals Process for Resident-Related Contract Violations) or further described in this subchapter are intended to restrict the Texas Department of Human Services (DHS) from imposing, as necessary, appropriate remedies for program violations listed in §79.2105 of this title (relating to Grounds for Fraud Referral and Administrative Sanction).

§19.2213. Notice to Physicians and Nursing Facility Administrator Licensing Board. If the state survey agency finds that a facility has provided substandard quality of care, as described in §19.2203(b)(1)(A) or (B) of this title (relating to Resident-Related Contract Violations), the state survey agency notifies:

(1) the attending physician of each resident whose care was found to be substandard; and

(2) the Texas Board of Licensure for Nursing Home Administrators.

§19.2214. Licensing Requirements. The remedies described in this subchapter for violation of Title XIX Nursing Facility Provider Agreements do not preclude the application of all lawful actions as specified in the Texas Health and Safety Code, Chapter 242, and the rules adopted pursuant to that law by the licensing agency. These remedies for contract violations may be applied concurrently with remedies available for license violations. Remedies for license violations include, but are not limited to the following:

(1) suspension or revocation of the facility's license under Texas Health and Safety Code, §242.061;

(2) emergency suspension or closure of the facility under Texas Health and Safety Code, §242.062; and

(3) appointment of a trustee under Texas Health and Safety Code, §§242.091 et seq.

§19.2215. Construction. The remedies provided under this subchapter are in addition to those otherwise available under state and federal law and are not to be construed as limiting any other remedies, including any remedy available to an individual at common law.

§19.2216. Transition Period. If, under §19.2012 of this title (relating to Remedies for Violations of Title XIX Nursing Facility

Provider Agreements) in effect prior to November 1, 1992, the state survey agency has notified the Texas Department of Human Services (DHS) on two occasions of cited deficiencies (as the term is used under the prior rule) at a facility, both notifications will remain in effect as contract violations under this subchapter for 18 months from the date of the first notification. Notifications of deficiencies that resulted solely in a monetary penalty under the prior rule and found to be invalid in an administrative or judicial proceeding are not considered for purposes of this section. The notifications under former §19.2012 of this title will be used in determining when the third contract violation within an accountability period has occurred, for purposes of contract cancellation only.

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 July 28, 1992.

TRD-9210295 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: November 1, 1992

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

Chapter 48. Community Care for Aged and Disabled

Support Documents

• 40 TAC §48.9801

The Texas Department of Human Services (DHS) proposes an amendment to §48.9801, concerning reimbursement methodology for special services to persons with disabilities—shared attendant care, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to delete all the references to a unit rate ceiling in the reimbursement methodology.

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

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow contractors to negotiate a competitive and adequate unit rate that considers local cost factors.

Questions about the content of the proposal may be directed to German Valtierra at (512) 450-3136 in DHS's Community Care Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-169, 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 provides the department with the authority to administer public and medical assistance programs.

§48.9801. Reimbursement Methodology for Special Services to Persons with Disabilities [for Handicapped Adults]-Shared Attendant Care.

(a) Cost reporting.

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

(9) Amended cost report due dates. All contracted providers must submit cost reports to the Texas Department of Human Services (DHS) in a manner prescribed by the department. DHS accepts amended cost reports submitted on the request of the provider until 180 days after the due date of the cost report [or 15 working days prior to the public hearing on proposed rates, whichever occurs first. Since this is a prospective reimbursement system without a provision for reconciliation, amended cost reports filed after this date have no effect on the rate and are not accepted. Amended cost report information that cannot be verified by 10 working days prior to the hearing will not be used in rate determination].

(10) (No change.)

(b) Reimbursement rate ceiling determination.

(1) The reimbursement rate ceiling applies to all providers uniformly, regardless of geographic location or other factors.

(2) The reimbursement rate ceiling is determined on a per diem basis.

(3) A recommended reimbursement rate ceiling is determined initially by the analysis of financial and statistical data currently submitted by the providers to the department. Future recommended rate ceilings are determined through the analysis of provider-submitted cost reports.

(4) The reimbursement rate ceiling is determined prospectively by projecting expenses reported on cost reports for a specific cost report year to the next ensuing rate period.

(5) The cost report analysis process recasts reported expense data in a consistent manner to determine the allowable expense per day of service. The allowable expense per day of service is adjusted by economic inflators or adjusters determined reasonable and appropriate by the department to calculate a prospective expense per day of service.

(6) The Texas Board of Human Services is responsible for approving the reimbursement ceiling.

(7) The reimbursement rate ceiling may not exceed the intermediate care facility (ICF) reimbursement rate set by the TDHS board.]

(b) [(c)] Contract-specific unit rate.

(1) The actual rate for each contract is determined through the procurement process with the department staff and the provider. [In no instance may the rate exceed the ceiling set by the TDHS board.]

(2) The reimbursement rate is on a per diem basis.

(3) The reimbursement rate may not exceed the average Medicaid nursing facility rate.

(c)[(d)] Factors affecting allowable costs. To be allowable under this program, the provider must ensure that costs are:

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

(d) [(e)] Definition of reasonableness. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, the department considers the following:

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

(e)[(f)] Unallowable costs. The following list of expenses is not intended to be inclusive of all possible unallowable costs. It is a general guide to the various unallowable costs frequently encountered in cost reports submitted by providers. Unallowable costs are expenses incurred by a provider which are not directly or indirectly related to the provision of contracted services according to applicable laws, rules, and standards. Unallowable costs are:

(1)-(22) (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 July 28, 1992.

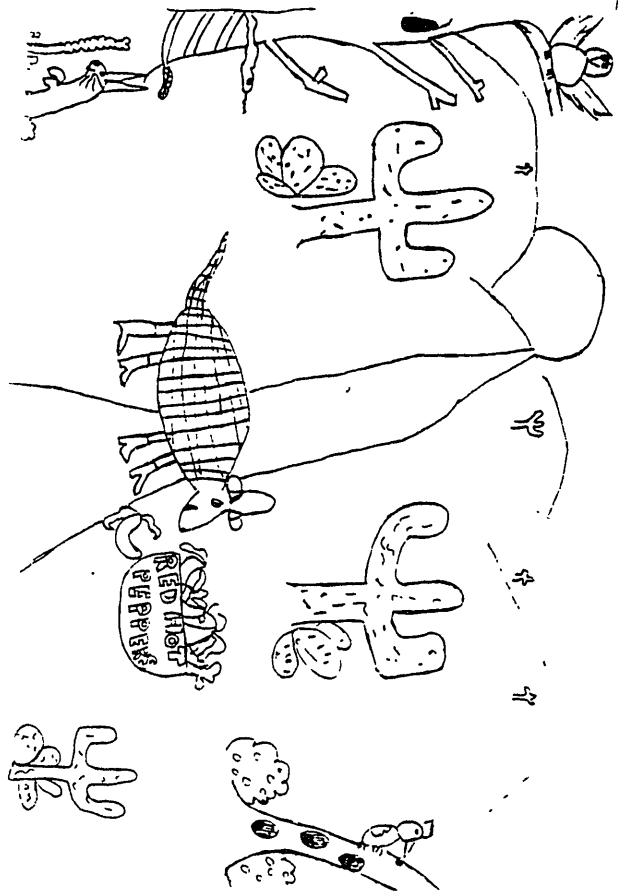
TRD-9210289 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: October 1, 1992

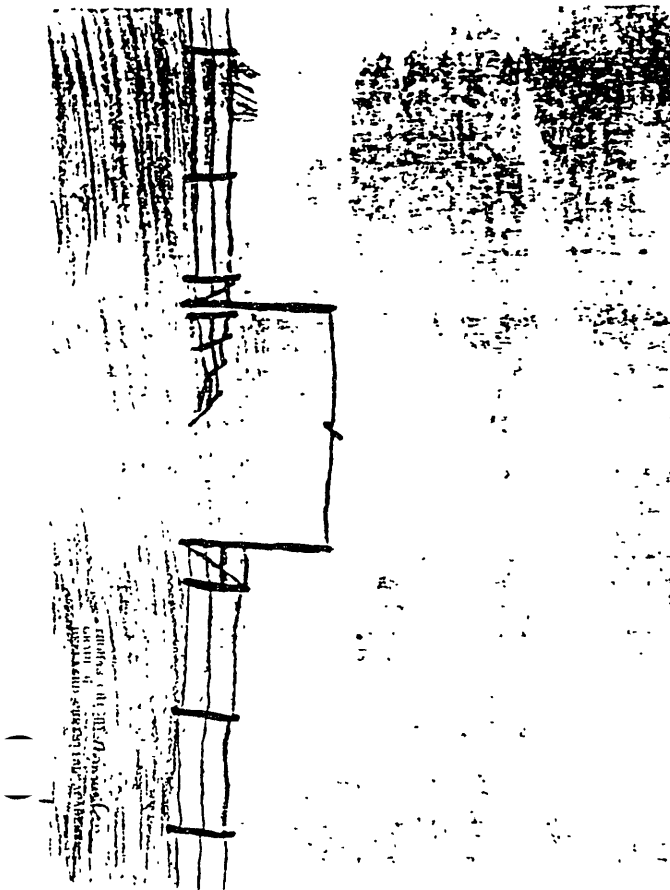
For further information, please call: (512) 450-3765



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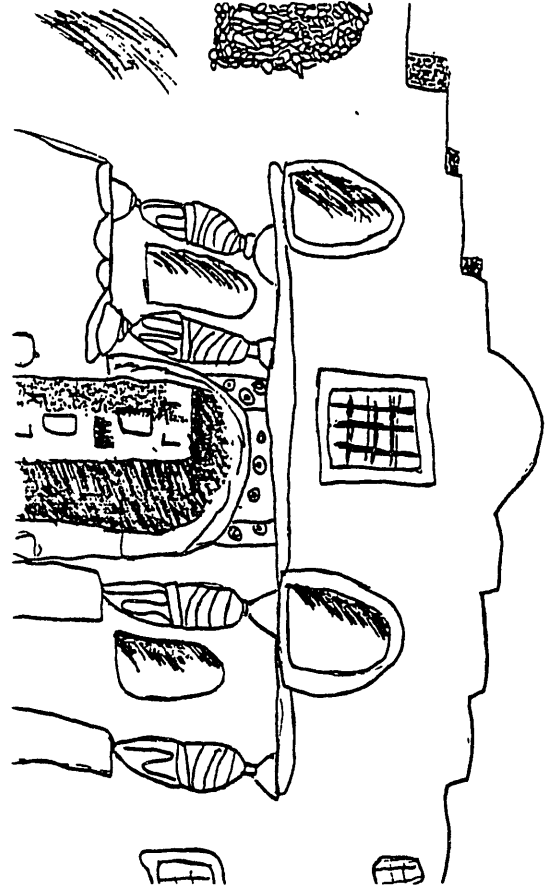


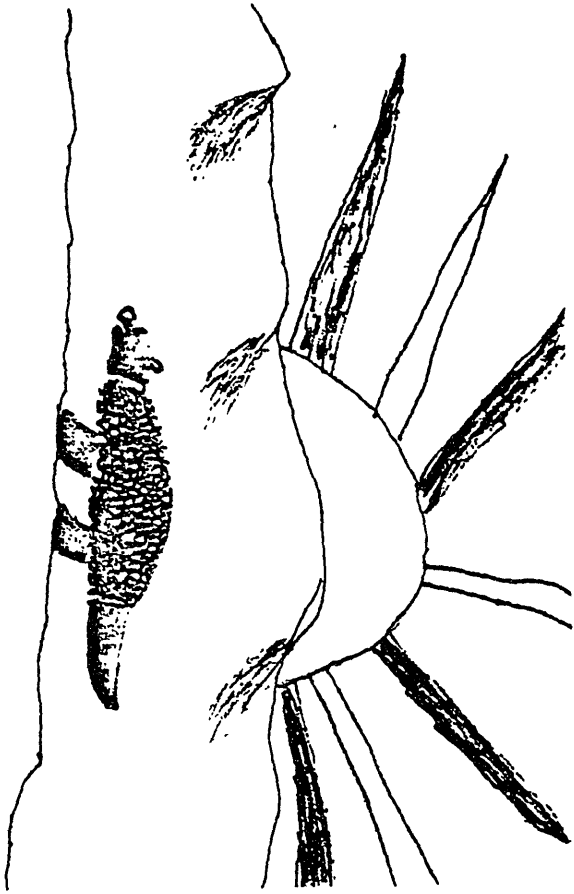
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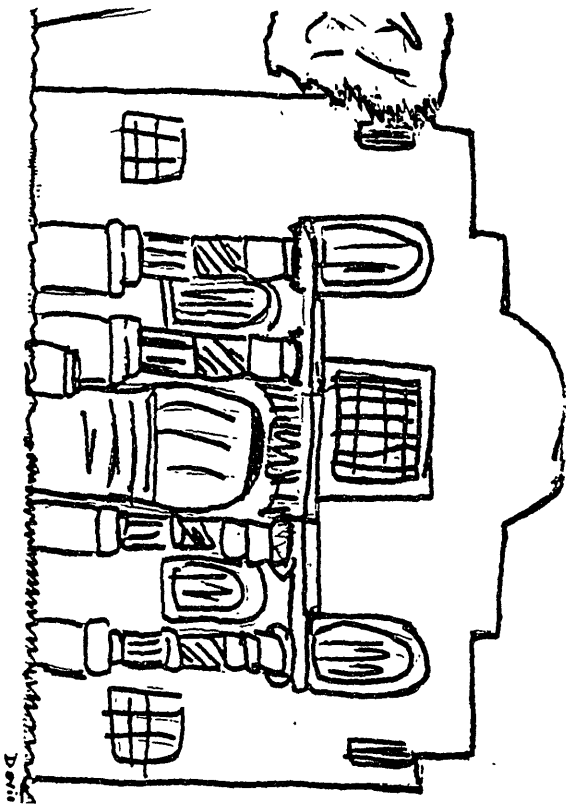




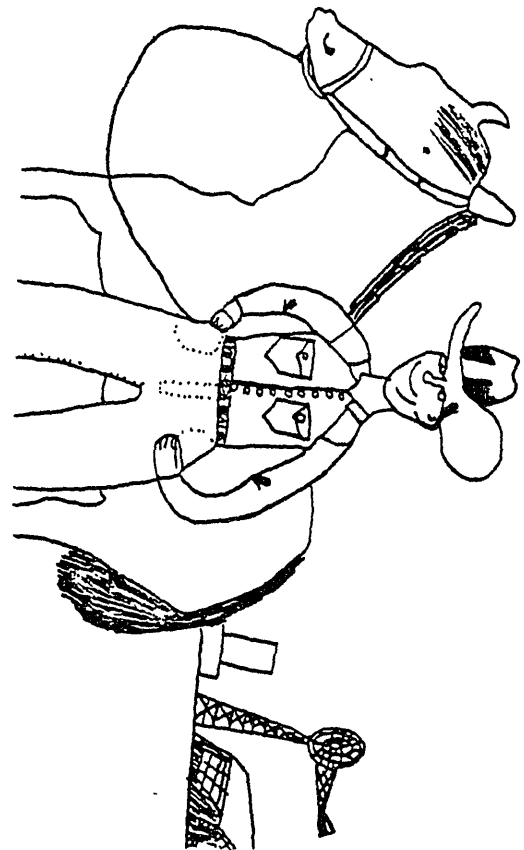
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Withdrawn Sections

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 98. HIV and STD Control

Subchapter C. Texas HIV Medication Program

General Provisions

• 25 TAC §98.104, §98.105

The Texas Department of Health (department) withdraws the emergency effectiveness of amendments to §98.104 and §98.105, which were published in the July 7, 1992, issue of the *Texas Register* (17 TexReg 4845). The effective date of this withdrawal is immediate upon filing.

Issued in Austin, Texas, on July 27, 1992.

TRD-9210262

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

Effective date: July 27, 1992

For further information, please call: (512) 458-7357



The Texas Department of Health (department) withdraws the proposed amendments to §98.104 and §98.105, which were published in the July 7, 1992, issue of the *Texas Register* (17 TexReg 4870). The effective date of this withdrawal is immediately upon filing.

Issued in Austin, Texas, on July 27, 1992.

TRD-9210263

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

Effective date: July 27, 1992

For further information, please call: (512) 458-7357



Chapter 133. Hospital Licensing

Standards

• 25 TAC §133.21

The Texas Department of Health (department) is withdrawing the effectiveness of the emergency amendment to §133.21 effective September 1, 1992. The emergency amendment was published in the May 29, 1992, issue of the *Texas Register* (17 TexReg 3882). The amendment is being permanently adopted in this issue of the *Texas Register*. This agency hereby certifies that the withdrawal of the emergency amendment has been reviewed by legal counsel and found to be within the agency's authority.

Issued in Austin, Texas, on July 28, 1992.

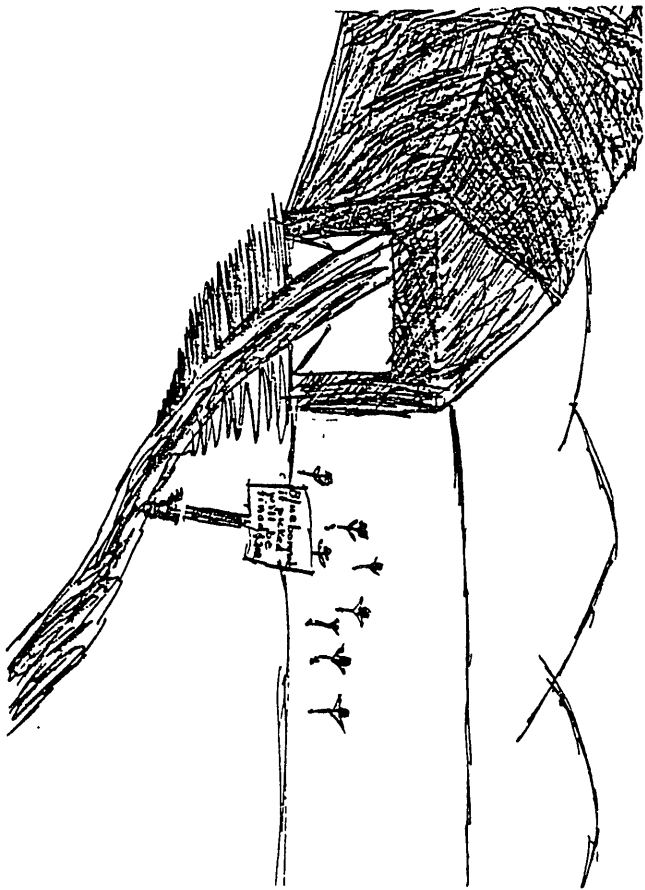
TRD-9210285

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

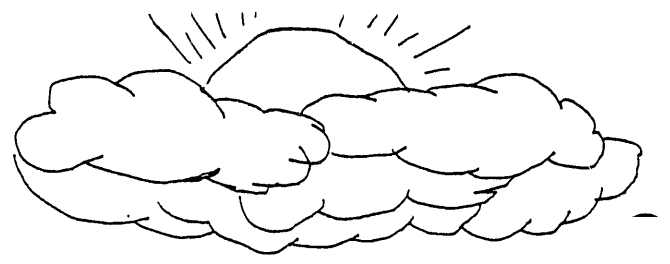
Filed: July 28, 1992

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

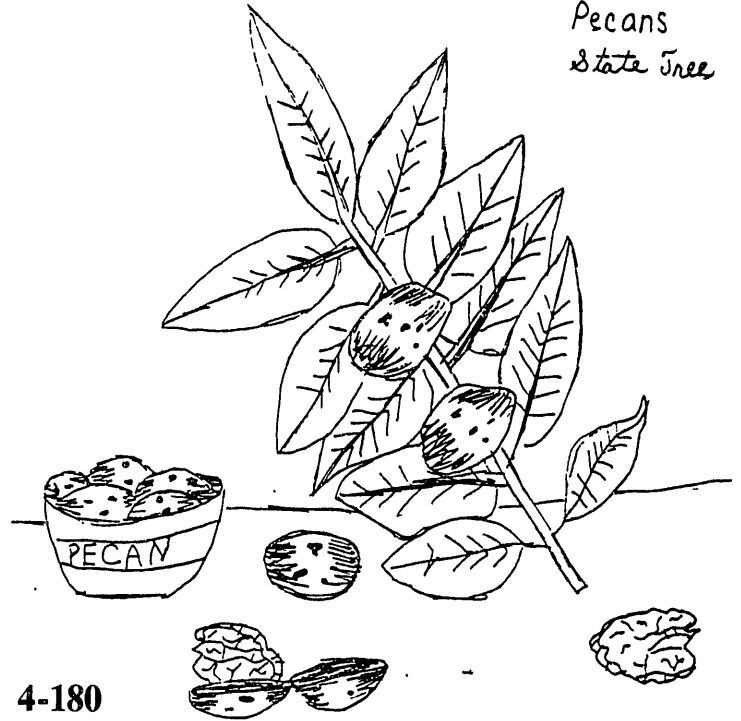




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Pecans
State Tree

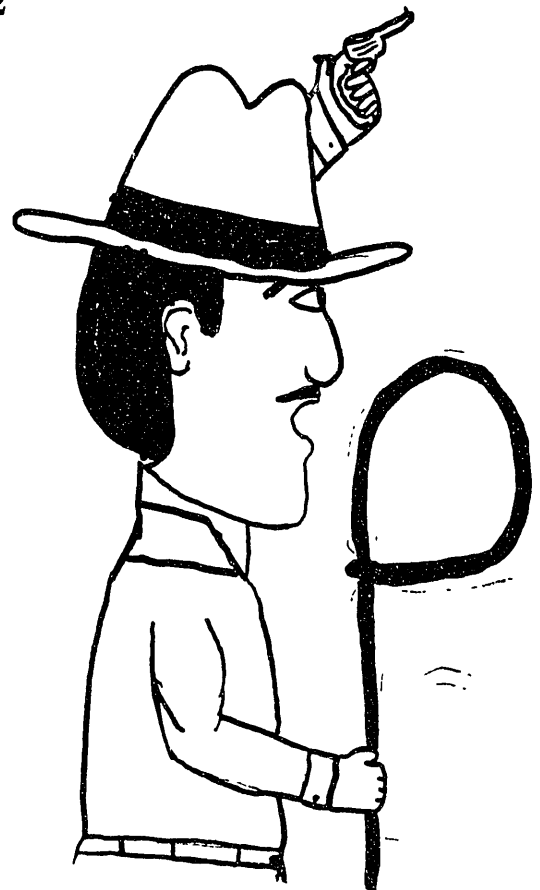


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Adopted Sections

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 1. ADMINISTRATION

Part V. General Services Commission

Chapter 125. Travel and Transportation Division

Travel Management Services

• 1 TAC §125.3

The General Services Commission adopts an amendment to §125.3, concerning definitions, without changes to the proposed text as published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4037).

The amendment will benefit the public by providing clearer regulations.

The amendment specifies technical definitions utilized in the statewide vehicle fleet management and alternative fuels compliance program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 601b, §14.01, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 14.

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 July 27, 1992.

TRD-9210282 Judith M. Porras
General Counsel
General Services
Commission

Effective date: August 18, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 463-3446

State Vehicle Fleet Management

• 1 TAC §§125.41, 125.45, 125.47

The General Services Commission adopts amendments to §§125.41, 125.45, and 125.47, concerning vehicle fleet management and vehicle maintenance, without changes to the proposed text as published in the June 5,

1992, issue of the *Texas Register* (17 TexReg 4038).

The amendments are nonsubstantive technical changes to streamline text.

These sections specify the services provided through the vehicle fleet management and vehicle maintenance program.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 601b, §14.01, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 14.

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 July 27, 1992.

TRD-9210281 Judith M. Porras
General Counsel
General Services
Commission

Effective date: August 18, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 463-3446

• 1 TAC §§125.43, 125.49, 125.51, 125.53

The General Services Commission adopts the repeal of §§125.43, 125.49, 125.51, and 125.53, concerning definitions and vehicle fleet management, without changes to the proposed text as published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4040).

The repeals will benefit the public through simplified regulations.

The repeals are a technical change to eliminate an unnecessary repetition of sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 601b, §14.01, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 14.

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 July 27, 1992.

TRD-9210279

Judith M. Porras
General Counsel
General Services
Commission

Effective date: August 18, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 463-3446

Texas Alternative Fuels Program

• 1 TAC §125.61

The General Services Commission adopts the repeal of §125.61, concerning definitions and the alternative fuels program, without changes to the proposed text as published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4040).

This repeal will benefit the public through simplified regulations.

This repeal is a technical change to eliminate an unnecessary repetition of sections.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 601b, §14.01, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 14.

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 July 27, 1992.

TRD-9210280 Judith M. Porras
General Counsel
General Services
Commission

Effective date: August 18, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 463-3446

• 1 TAC §125.63, §125.65

The General Services Commission adopts amendments to §125.63 and §125.65, concerning alternative fuels, without changes to the proposed text as published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4040).

These amendments are nonsubstantive technical changes to streamline text, and autho-

alize waivers or reductions from alternative fuels compliance requirements for up to two years.

These sections specify the requirements for alternative fuels compliance and for waivers or reductions from these requirements.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 601b, §14.01, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 14.

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 July 27, 1992.

TRD-9210283 Judith M. Porras
General Counsel
General Services
Commission

Effective date: August 18, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 463-3446

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 6. State Records

Fee Schedules

• 13 TAC §6.121

The Texas State Library and Archives Commission adopts new §6.121, concerning micrographics services fee schedule, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2665).

The Records Management Division of the Texas State Library operates a full-service micrographics laboratory for Texas state and local governments. Services include archival quality microfilming, preservation microfilming, micropublishing, microfiche production, quality control testing and analysis, and microfilm processing and duplication. The commission is adopting a fee schedule to comply with the Texas Government Code, §441.168(b), and the 72nd Legislature, 1991, First Called Session, Chapter 19, Article V, §89, Cost Recovery Program.

The new section will improve access to public information created and maintained by state and local governments through the orderly and systematic preservation of long-term, permanent, archival, and vital records.

No comments were received regarding adoption of the new section.

The new section is proposed under the Government Code, §§441.032(b)(2), 441.168(b),

771.007(a), and the 72nd Legislature, 1991, First Called Session, Chapter 19, Article V, §69, Cost Recovery Program, which provides the Texas State Library and Archives Commission with authority to operate a micrographics laboratory for state and local governments and to recover the costs for such services.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 24, 1992.

TRD-9210230 Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Effective date: August 17, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 463-5440

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 66. Registration of Property Tax Consultants

• 16 TAC §§66.1, 66.10, 66.20-66.23, 66.60, 66.61, 66.70, 66.71, 66.80-66.84, 66.90, 66.91

The Texas Department of Licensing and Regulation adopts an amendment to §66.1 and new §§66.10, 66.20-66.23, 66.60, 66.61, 66.70, 66.71, 66.80-66.84, 66.90, and 66.91. Sections 66.10, 66.20-66.23, 66.60, 66.61, 66.70, 66.71, 66.80, 66.84, and 66.91 are adopted with changes to the proposed text as published in the May 12, 1992, issue of the *Texas Register* (17 TexReg 3445). Sections 66.1, 66.81-66.83 and 66.90 are adopted without changes and will not be republished.

These rules are adopted to implement requirements of Texas Civil Statutes, Article 8886, Registration of Property Tax Consultants.

The sections set requirements for registration of property tax consultants and senior property tax consultants, define terms, set educational requirements and ethical standards, and define responsibility of the department and the registrant.

The Texas Department of Licensing and Regulation received verbal and written comment on §§66.10, 66.20(f), 66.21(d), 66.22(a)-(c), 66.23(b), 66.61(b), and 66.85. The comment received regarding §66.10 was simply to write a definition for private provider, and the department complied. The department did not agree or comply with a request to add §66.20(f) to designate real estate brokers who applied for registration under the grandfather clause with a registration number ending with the letter "R". The department agreed with comments to §66.21(b)(7)(C) and

changed it to read "the requirements of Texas Civil Statutes, Article 8886, §(3)(c)(3); if requesting waiver of the examination, a copy of the applicant's CMI designation certificate from the Institute of Property Taxation, or verifiable resume indicating the applicant's primary occupation for at least 25 years preceding the date of application involved the performance or supervision of property tax consulting services or property appraisal, assessment, or taxation, and who has performed or supervised the performance of property tax consulting services as the applicant's primary occupation for seven years preceding the date of application." The department changed §66.22(a) to §66.22(b), changed §66.22(b) to §66.22(c) and changed §66.22(a) to read "Registrants must complete 20 classroom hours of recognized continuing education as prerequisite for renewal. At least six hours of the instruction shall cover laws and legal issues as related to property tax consulting in Texas."

Section 66.23(b) was deleted because the department found no statutory authority for the rule. Section 66.60 was changed for clarification. Section 66.61(b) was changed to read as follows: "The examinations shall be given in Austin twice a year but may be given at other times at the discretion of the commissioner." All other comments received did not involve a need or desire for change. Changes made to §66.70 and §66.80 were rewordings to clarify the sections.

The American Society of Appraisers and the Texas Association of Property Tax Professionals made comments in favor of the proposal.

The amendment and new sections are adopted under Texas Civil Statutes, Article 8886, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take action necessary to assure compliance with the intent and purposes of the Act.

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

Act—Texas Civil Statutes, Article 8886, Registration of Property Tax Consultants.

Property tax consultant—An individual who performs property tax consulting services and who on and after February 1, 1995, is employed by or under the supervision of a senior property tax consultant.

Private provider—An educational institution that is established, conducted, and primarily supported by a nongovernmental person, as defined by Texas Civil Statutes, Article 8886, which meets program and accreditation standards comparable to public institutions of higher education as determined by the Texas Higher Education Coordinating Board.

Senior property tax consultant—A registered property tax consultant who has met the additional requirements of Texas Civil Statutes, Article 8886 and these rules.

§66.20. Registration Requirement General.

(a) Any person who performs property tax consulting services as defined in Texas Civil Statutes, Article 8886 after September 1, 1992, must first become registered with the Texas Department of Licensing and Regulation.

(b) All applicants and registrants shall obtain all necessary forms from the Texas Department of Licensing and Regulation.

(c) An individual whose registration has expired may renew the registration up to one year from the expiration date by paying the unpaid renewal fees plus a late registration renewal fee without having to meet the original application requirements.

(d) All registrants shall promptly report any change of address to the Texas Department of Licensing and Regulation, Licensing and Certification Division, Austin.

(e) It has been determined that the professional designation requirements of Texas Civil Statutes, Article 8886, §(3)(c) can be met by the designation of certified member of the institute (CMI) conferred by the Institute of Property Taxation.

(f) Individuals who are registered under Texas Civil Statutes, Article 8886 (the Act) shall certify that the registrant has read and submits to the code of ethics as follows:

(1) shall not participate, whether individually, or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act or commissioner rule;

(2) shall not directly or indirectly or in any manner whatsoever lend his/her license or identification to any person, firm, or corporation for the purpose of evading any provision of the Act or commissioner rule;

(3) shall exercise reasonable care and diligence to prevent persons under his/her supervision from engaging in conduct which would violate any provision of the Act or commissioner rule;

(4) shall not engage in any activity that constitutes dishonesty, fraud, or gross incompetency while performing property tax consulting services;

(5) shall promptly report to the commissioner any known violation of the Act or commissioner rule;

(6) shall cooperate fully with the commissioner or staff in the investigation of an alleged violation of the Act or commissioner rule;

(7) shall not offer or promise anything of value with the intent of induc-

ing a person who is performing a public duty to perform or fail to perform any act related to such public duty;

(8) shall not contract for or accept compensation or anything of value for services not performed;

(9) shall not knowingly or intentionally engage in any false or misleading conduct or advertising with respect to client solicitation;

(10) shall not knowingly furnish inaccurate, deceitful, or misleading information to a client or employer, prospective client or employer, or to a public agency or representative of a public agency;

(11) shall not reveal information known to be confidential unless the release of such information is authorized by the source or required by law;

(12) shall not state or imply that the registrant represents a person or firm that the registrant does not in fact represent.

§66.21. Registration Requirements.

(a) It is expressly understood that any falsification is cause for denial and/or revocation of registration.

(b) The registration application must:

(1) state the name, physical address, and telephone number of the place of business and the residence of the person or individual making application. If the applicant has not established a place of business in this state, additionally state the name, physical address, and telephone number of the agent for service of legal process, who is a resident of this state;

(2) have attached proof of education and work requirements, if applicable;

(3) contain a signed code of ethics, standards of professional conduct;

(4) certify that the applicant is 18 years of age or older;

(5) certify that the applicant holds a high school diploma or equivalent;

(6) include proof of classroom hours as required by Texas Civil Statutes, Article 8886, §3(b), if initial application on or after February 1, 1993;

(7) Also include, if initial application for senior property tax consultant:

(A) certification of acquisition of 25 credits as provided by Texas Civil Statutes, Article 8886, §3(d)-(h);

(B) verifiable resume indicating the applicant has performed or super-

vised other persons in the performance of property tax consulting services as the applicant's primary occupation for at least four of the seven years preceding the date of application;

(C) the requirements of Texas Civil Statutes, Article 8886, §3(c)(3); if requesting waiver of the examination, a copy of the applicant's CMI designation certificate from the Institute of Property Taxation, or verifiable resume indicating the applicant's primary occupation for at least 25 years preceding the date of the application involved the performance or supervision of property tax consulting services or property appraisal, assessment, or taxation, and who has performed or supervised the performance of property tax consulting services as the applicant's primary occupation for the seven years preceding the date of application;

(8) include proof of continuing education credit hour requirements on a form obtained from the department if renewal of registration; additionally, if a registered property tax consultant, proof of employment by or business association with a senior property tax consultant;

(9) include an appropriate non-refundable application fee and refundable registration fee.

(c) On and after February 1, 1995, a property tax consultant must be employed by or have an association with a registered senior property tax consultant and be under the direct supervision of the senior property tax consultant. A registered property tax consultant may only offer services to senior property tax consultants. There must be a legitimate employee/employer relationship or business association established.

(d) Any change of employment by a registered property tax consultant must be submitted to the department's Austin office, by the registrant, within 30 days of beginning employment.

§66.22. Continuing Education.

(a) Registrants must complete 20 hours of recognized continuing education as a prerequisite for renewal. At least six hours of the instruction shall cover laws and legal issues as related to property tax consulting in Texas.

(b) Seminars or courses relating to property tax consulting conducted by a non-profit, voluntary trade association that has a membership primarily composed of individuals who perform property tax consulting services may be approved for continuing education.

(c) Seminars or courses conducted by a public institution of higher education (as determined by the Texas Higher Educa-

tion Coordinating Board) and that relate directly to property taxes may be approved for continuing education.

§66.23. Registration-Waiver of Requirements.

(a) Competency standards of another state must be substantially equal to those of Texas. It is the responsibility of the applicant to furnish evidence substantiating the applicant's qualifications.

(b) The department will determine on the basis of the requirements for registration in another state whether the applicant qualifies for a property tax consultant registration or a senior property tax consultant registration.

(c) It is the applicant's responsibility to obtain certification of the registration issued by another state.

(d) If not a resident of this state, the applicant must establish an agent for service of legal process with a resident of this state.

§66.60. Responsibilities of Department-Investigations.

(a) All complaints concerning registrants will be investigated.

(b) The department will conduct other investigations as it deems necessary for the effective enforcement of the Act.

§66.61. Responsibility of Department-Examinations.

(a) The standard for passing the senior property tax consultant examination shall be a score of at least 70%.

(b) The examinations shall be given twice a year but may be given at other times at the discretion of the commissioner.

(c) Examination fees will be refunded only if the applicant has given proper notice that the examination will not be taken. Written notice must be received in the Austin office a minimum of five days prior to the scheduled examination.

§66.70. Responsibilities of Registrant-General.

(a) A registrant may not allow an employee or associate to perform property tax consulting services without first obtaining registration.

(b) All registrants shall notify service recipients of the name, mailing address, and telephone number of the department. The registrant may use a sticker or rubber stamp to convey the required information. The notification shall be included on any contract or on a sign prominently displayed at each place of business.

(c) Misleading and untruthful advertising by a registrant is prohibited.

§66.71. Responsibilities of Registrant-Records. The registrant must allow the department, as part of an inspection or investigation, to enter his business premises during reasonable business hours to examine and copy any records that are pertinent to an inspection or investigation being conducted.

§66.80. Fee-Original Registration.

(a) The application fee for a property tax consultant is \$100.

(b) The application fee for a senior property tax consultant is \$150.

(c) The refundable registration fee for a property tax consultant is \$50.

(d) The refundable registration fee for a senior property tax consultant is \$75.

§66.84. Fees-Registration Upgrade. A registrant who subsequently qualifies as a senior property tax consultant will be charged an upgrade application fee of \$25 and a registration fee of \$125 for a total of \$150. A \$25 credit will be made for any remaining period of one year or more of the property tax consultant registration fee.

§66.91. Sanction-Revocation, Suspension, or Denial Because of a Criminal Conviction. Pursuant to Texas Civil Statutes, Article 6252-13c, the commissioner, after a hearing, may suspend or revoke an existing registration, or disqualify a person from receiving a registration, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in the area in which the applicant will be registered. The commissioner may also, after hearing, suspend, revoke, or deny a registration because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

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 July 24, 1992.

TRD-9210212 Jack W. Garison
Acting Executive Director
Texas Department of
Licensing and
Regulation

Effective date: August 17, 1992

Proposal publication date: May 12, 1992

For further information, please call: (512) 463-3127

TITLE 22. EXAMINING BOARDS

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Application for Registration

• 22 TAC §§131.51, 131.54, 131.55, 131.57

The Texas State Board of Registration for Professional Engineers adopts amendments to §§131.51, 131.54, 131.55, and 131.57, concerning application for registration. Section 131.54 is adopted with changes to the proposed text as published in the May 26, 1992, issue of the *Texas Register* (17 TexReg 3819). Sections 131.51, 131.55, and 131.57 are adopted without changes and will not be republished.

Sections 131.51, 131.55, and 131.57 incorporate the new requirements for registration as set out in the Texas Engineering Practice Act, §12(a)(1) or (2), which become effective September 1, 1992. Section 131.54, adopted with changes to subsection (d) for clarification, provides clear and concise requirements for submitting an application for registration under the new provisions of the Act effective September 1, 1992.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271 a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.54. General Application Information.

(a) An individual must pass or be exempted from the fundamentals of engineering examination before submitting an application for registration. Those who have passed the examination in a state or territory of the United States other than Texas must furnish verification of the passage of the examination with the application for registration.

(b) Applications for registration may be submitted at any time; however, in order for the board to review and approve the application in sufficient time for the applicant to schedule the next available principles and practice of engineering examination, the board must receive and accept a completed application by the following deadline dates:

(1) the end of the second week in May for the fall (October) principles and practice of engineering examination;

(2) the end of the second week

in October for the spring (April) principles and practice of engineering examination.

(c) The applicant will be notified in writing of the board's approval of the applicant's engineering experience and education and that the applicant has been approved to take the examination. Appropriate forms for the applicant to schedule the examination will be included with the written notification from the board as described in §131.101 of this title (relating to Engineering Examinations Required for Registration as a Professional Engineer.)

(d) The executive director may accept an application prior to the receipt of supplemental documents such as transcripts of degrees over which the applicant has no control as to time of submission to the board. The board will not consider an application until the following are provided:

- (1) a completed application for registration form;
- (2) a supplementary experience record;
- (3) transcript(s) of degree(s);
- (4) five reference statements (three must be from professional engineers);
- (5) documentation verifying that the applicant has passed the fundamentals of engineering examination; and
- (6) the current registration fee.

(e) The board may request additional information or the executive director may recommend the applicant provide additional information. If an applicant declines to provide additional information for an accepted application as recommended by the executive director, the application will be referred for board consideration with documentation of such declination. If, after notification in writing, the applicant fails to provide any part of the required information for an accepted application by the deadlines set by the executive director, the application will be referred to the board to be not approved as an incomplete application. For an accepted application to be considered complete, it must contain at minimum the application form, the supplementary experience record, transcript(s) of degree(s), and reference statements. Withholding information, misrepresentation, or untrue statements on the application for registration or supplemental documents will be cause for rejection of the application.

(f) Applicants must be able to speak and write the English language. An applicant who is a native of a country in which the primary language is other than English, shall be required to include with his application evidence that the applicant has passed a TOEFL (test of English as a foreign language) with a score of 550 or above, and a TSE (test of spoken English)

with a score of 200 or above. These tests shall have been taken within two years of the time the application is submitted if the applicant has lived in a non-English speaking country for more than two consecutive years after initially taking the test. An applicant who has received a four-year degree from an ABET-accredited course or who has successfully completed at least six semesters of full-time academic work toward an advanced engineering degree in the United States shall be exempted from this requirement. An applicant may request exemption from the TOEFL and TSE requirements for other reasons by submitting substantiating evidence and documentary proof of his English proficiency which is satisfactory to the executive director.

(g) If in the review of an application or in other communications with an applicant, other than an applicant specified in subsection (f) of this section, the board or the executive director finds there is sufficient reason to doubt the English speaking or writing ability of the applicant, the applicant may be required to take the same tests as specified in subsection (f) of this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210318

Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: September 1, 1992

Proposal publication date: May 26, 1992

For further information, please call: (512) 440-7723

References

• 22 TAC §131.73

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.73, concerning reference communication, without changes to the proposed text as published in the May 26, 1992, issue of the *Texas Register* (17 TexReg 3820).

The section as adopted deletes subsection (d) which stipulated that references dated more than one year prior to board review would not be acceptable.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210319

Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: August 19, 1992

Proposal publication date: May 26, 1992

For further information, please call: (512) 440-7723

Engineering Experience

• 22 TAC §131.81

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.81, concerning experience evaluation, with changes to the proposed text as published in the May 29, 1992, issue of the *Texas Register* (17 TexReg 3891).

The section as adopted incorporates the new requirements for registration as set out in the Texas Engineering Practice Act, §12(a)(1) or (2), which become effective September 1, 1992, and clarifies acceptable engineering experience under the new registration requirements. Additional language was added to paragraph (12) and subparagraph (A) of paragraph (14) for clarification.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.81. Experience Evaluation. The evaluation of the engineering experience claimed by an applicant for registration under the Texas Engineering Practice Act (the Act), §12(a)(1), (2), or §21, will include, but not be restricted to, the following.

(1)-(11) (No change.)

(12) Applicants who claim foreign engineering experience must have, in addition to other experience, at least two years of engineering experience in the United States and show that they have learned to use the United States standards, codes, and other engineering procedures in their engineering practice except those who are applying under the Act, §21. Engineering experience claimed for a graduate degree in engineering will not be acceptable for the experience requirement of this paragraph.

(13) (No change.)

(14) Engineering experience, to be considered creditable for registration purposes, shall have been gained after the receipt of the first engineering or related science degree. Those applicants who are applying under the Act, §12(a)(2), must pass or be exempted from the fundamentals

of engineering examination before the required eight years of engineering experience will begin to accrue as creditable experience. Exceptions to this requirement include the following.

(A) Individuals who have graduated prior to September 1, 1992, from a four-year curriculum in a non-EAC/ABET-accredited degree program in engineering or related science which has been approved by the board must apply under the Act, §12(a)(2), and may claim engineering experience gained up to September 1, 1992, but must pass the fundamentals of engineering examination before any additional experience will be considered creditable for registration purposes.

(B) All individuals who claim engineering experience prior to the receipt of a four-year degree from an EAC/ABET-accredited engineering program, and subsequently receive such a degree, must furnish documented proof to the board explaining the circumstances under which the experience was gained. Such applicant must have gained an additional one year of engineering experience after the receipt of the degree to prove competence in the practice of engineering. The credit for one year of engineering experience allowed for a graduate degree in engineering as described in paragraph (9) of this section will not be acceptable for this one year of additional engineering practice. The applicant may be required to make a personal appearance before the board at the request of the board.

(15) Persons applying under the Act, §12(a)(2), must first show evidence to the board's satisfaction that they have acquired the ability to do acceptable engineering by education, work experience, or a combination of both.

(16) Nonresident applicants applying under the Act, §21, must have met the experience requirements of either §12(a)(1) or (2) at the time their out-of-state registration being used as a basis for application was granted.

(17)-(18) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210320 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: September 1, 1992

Proposal publication date: May 29, 1992

For further information, please call: (512) 440-7723

Education

• 22 TAC §131.92

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.92, concerning education, with changes to the proposed text as published in the May 29, 1992, issue of the *Texas Register* (17 TexReg 3892).

The section incorporates the new requirements for registration as set out in the Texas Engineering Practice Act, §12(a)(1) or (2), which become effective September 1, 1992. New language added to subsection (b) in the proposed amendment, which requires verification from the ABET counterpart organizations in Australia, Canada, Ireland, New Zealand, and the United Kingdom stating that the foreign degree awarded was suitable for registration as a professional or chartered engineer in the country where the degree was awarded must accompany an application for registration in Texas, was moved to paragraph (2) of subsection (a). Subsection (b) is adopted with an additional requirement that applicants must furnish an evaluation of their foreign degree.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.92. Foreign Degrees.

(a) An individual who has completed an undergraduate engineering education and received the equivalent of a baccalaureate degree from an institution other than one located in the United States and its possessions must apply under the Texas Engineering Practice Act (the Act), §12(a)(2), except as follows.

(1) If, in addition to the foreign degree, an individual presents an advanced engineering degree meeting the conditions set out in §131.91(a)(3) of this title (relating to Educational Requirements for Registration), that individual may apply under the provisions of the Act, §12(a)(1).

(2) Applicants having engineering degrees accredited by the ABET counterpart organizations in Australia, Canada, Ireland, New Zealand, and the United Kingdom may apply under the Act, §12(a)(1). Verification from the ABET counterpart organizations (such as an Engineering Council) in the foreign country where the engineering degrees were awarded must be submitted with the application for registration. The verification must include the statement that such engineering degrees were suitable for registration purposes as a pro-

fessional or chartered engineer in that country at the time the degrees were awarded.

(3) If registered in another state by passing a minimum 16-hour written examination acceptable to the board, an applicant with a foreign engineering education may apply under the Act, §21 (concerning registration by nonresidents), or §12(a)(2), whichever is applicable.

(b) Applicants who do not meet the requirements of subsection (a)(1) or (2) of this section must furnish at their own expense an evaluation of their foreign degree(s) from a commercial evaluation service selected by the board. The degree evaluation must be sent directly to the board by the evaluation service. Applicants must submit with their applications complete certified copies or documented proof of all engineering degrees, diplomas, certificates, etc., showing the type of engineering degree awarded (B.S., M.S., Ph.D.), date awarded, branch of engineering, dates attended, and scores, grades, or honors awarded. Documents written in languages other than English shall be accompanied by a certified English translation.

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 July 28, 1992.

TRD-9210321 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: September 1, 1992

Proposal publication date: May 29, 1992

For further information, please call: (512) 440-7723

Examination

• 22 TAC §131.101, §131.103

The Texas State Board of Registration for Professional Engineers adopts the repeal of §131.101 and §131.103, concerning engineering examinations and engineer-in-training, without changes to the proposed text as published in the June 2, 1992, issue of the *Texas Register* (17 TexReg 3953).

The repeal of §131.101 was necessary as it will no longer be applicable when the new registration and examination requirements set out in the Texas Engineering Practice Act, §12(a)(1) and (2), become effective September 1, 1992. Section 131.103 was also repealed because it becomes obsolete on September 1, 1992, in accordance with the Act, §12.1.

The repeals will allow the board to promulgate new §131.101 and §131.103 describing the examination requirements for the registration and the new provisions for certification as an engineer-in-training which are effective September 1, 1992.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210322

Charles E. Némir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: September 1, 1992

Proposal publication date: June 2, 1992

For further information, please call: (512) 440-7723

◆ ◆ ◆
• 22 TAC §131.101, §131.103

The Texas State Board of Registration for Professional Engineers adopts new §131.101 and §131.103, concerning engineering examinations. Section 131.101 is adopted with changes to the proposed text as published in the June 2, 1992, issue of the *Texas Register* (17 TexReg 3952). Section 131.103 is adopted without changes and will not be republished.

The new sections are necessary to establish the examination requirements for registration as a professional engineer and the provisions for certification as an engineer-in-training as set out in the Texas Engineering Practice Act, §12 and §12.1, which become effective September 1, 1992. Section 131.101 is adopted with clarifying language added to subsections (c) and (f), and minor grammatical changes to subsection (g), paragraphs (2) and (3).

Comments were received from one individual who suggested that several clarifications and grammatical changes be made to §131.101. The board concurred with the comments and incorporated the changes to the rule as adopted.

The new sections are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.101. Engineering Examinations Required for Registration as a Professional Engineer.

(a) The written examinations required under the Texas Engineering Practice Act (the Act), §12(a)(1) and (2), will consist of an eight-hour fundamentals of engineering examination and an eight-hour principles and practice of engineering examination. Normally, these examinations will be offered twice each year, once in the first six months (April) and once in the

second six months (October) of each calendar year. Written examinations will be held in Austin or places designated by the board.

(b) Individuals and applicants who have been approved to take the examinations for registration will be charged an established fee for each examination scheduled.

(c) All examinations will be in the English language. Examinations are prepared by and the examination dates are established by the National Council of Examiners for Engineering and Surveying (NCEES) for 10 years in advance and are subject to change only by NCEES. To schedule either examination, an individual may telephone, write, or visit the board office to obtain the necessary forms and information. Students may obtain the scheduling forms for the fundamentals of engineering examination at their college or from the board office. Individuals who plan to take an examination in the spring (April) must have their completed examination request form and the appropriate fee in the board office or have their request postmarked no later than the third Friday in February. Those who plan to take an examination in the fall (October) must have their completed examination request form and the appropriate fee in the board office or have their request postmarked no later than the third Friday in September.

(d) Individuals may be exempt from one or both of the written examinations for the following reasons.

(1) Individuals may be exempt from either or both of the examinations if the professional engineering licensing authority of any state, territory, or possession of the United States certifies the individual has passed a similar examination.

(2) Individuals who have 20 or more years of outstanding technical achievement and widespread professional recognition in their field of engineering practice indicating competence in the engineering profession may be exempt from one or both of the examinations. A personal interview before the board will be required.

(3) Individuals with at least 20 years or more of board-approved engineering experience may be exempt from the fundamentals of engineering examination.

(4) Individuals who have a Ph.D. degree in engineering from a recognized college or university that offers an EAC/ABET-approved undergraduate or master's engineering curriculum in the same branch of engineering may be exempt from the fundamentals of engineering examination, provided the individual also has a bachelor's degree in an EAC/ABET-accredited engineering program of four years or more from a recognized college or

university that offers an EAC/ABET-approved engineering curriculum in the same branch.

(e) If an individual claims an exemption from either examination, such individual may file an application for registration complete with additional information substantiating the claim for the exemption. If the board approves the exemption from the fundamentals of engineering examination, the applicant will be notified and will be sent the appropriate forms required to schedule the principles and practice of engineering examination.

(1) If the initial staff review does not support the individual's request for an exemption from the fundamentals of engineering examination, the application and registration fee will be returned to the individual. Appropriate forms will be included for the individual to schedule the fundamentals of engineering examination. After the individual has taken and passed the examination, an application for registration may be resubmitted with the registration fee applicable at the time of resubmittal.

(2) If the individual does not agree with the staff review and desires an opinion by the board of the request for an exemption, the individual may resubmit the application with the appropriate fee for the board's consideration. If the board does not approve the exemption, the individual will be notified of the board's action. In accordance with the provisions of §131.53 of this title (relating to Submission of Applications), the application and fee will not be returned to the individual.

(3) If the applicant requests exemption from both of the examinations or the principles and practice of engineering examination, the applicant will be required to make a personal appearance before the board to answer any questions that the board may have regarding the applicant's engineering experience and education and basis for eminence.

(f) An individual must pass the fundamentals of engineering examination before an application for registration may be filed with the board unless that individual is eligible to apply for exemption under subsection (d) of this section.

(1) A student who is classified as a senior in college within one calendar year of graduating and who is enrolled in an EAC/ABET-accredited engineering course, or an engineering or engineering-related science program of four years or more that has been approved by the board, may take the fundamentals of engineering examination at his or her school provided the school will administer the examination as prescribed by the board.

(2) Students who have a degree in a non-engineering related curriculum and who are enrolled in an EAC/ABET-accredited graduate degree program having an undergraduate degree that is EAC/ABET accredited, or an engineering or engineering-related science program that has been approved by the board and who have completed a minimum of 20 semester hours of graduate level engineering courses may take the fundamentals of engineering examination at their school.

(3) Individuals who have not passed the fundamentals of engineering examination while in college may apply to the board to take the examination in Austin or at other sites designated by the board. The individual may schedule and take the examination at any time provided the rules for scheduling are followed and the appropriate fee for each examination is paid.

(g) Applicants must either pass or be exempt from the fundamentals of engineering examination in order to be eligible to take the principles and practice of engineering examination.

(1) The following individuals may apply to take the principles and practice of engineering examination:

(A) registrants in the State of Texas who are taking the examination for record purposes in accordance with §131.102 of this title (relating to Examination for Record Purposes);

(B) individuals who have made application for registration in Texas and have met the engineering educational and experience requirements and the application for registration has been approved by the board;

(C) other individuals who have been approved or directed by the board to take the examination.

(2) Individuals who have been approved to take the examination for registration purposes will be advised of the first examination date for which they are eligible. Applicants must elect to start the examination schedule on the first examination date for which they are eligible. Once started, the schedule shall consist of consecutive examination dates, not to exceed three, required to pass the principles and practice of engineering examination with the exception of those persons applying under the Act, §21 (those who are registered in another state or jurisdiction). Those persons must pass the principles and practice of engineering examination of the first attempt.

(3) Failure to pass the examination within the schedule will be cause for

the applicant to be not approved. An applicant whose application for registration has been not approved for not scheduling the examination within the limits set by the schedule in paragraph (2) of this subsection will be required to file a new application and pay a new registration fee. An applicant whose application for registration has been not approved for failure to pass the examination within the limits will be required to wait one year from the date the application is not approved before filing a new application. The new application must include evidence the applicant has acquired additional education or experience that would indicate the applicant may be able to pass the required examination.

(4) There are two groups of the principles and practice examination offered. Group I examinations are offered both in the spring and the fall and include examinations in the following branches of engineering: chemical, civil, (civil, sanitary, structural), electrical, mechanical and the Special Structural Examinations I and II. Group II examinations are offered only in the fall and include examination in the following branches of engineering: aeronautical/aerospace, agriculture, control systems, fire protection, industrial, manufacturing, metallurgical, mining/mineral, nuclear and petroleum.

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 July 28, 1992.

TRD-9210323 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: September 1, 1992

Proposal publication date: June 2, 1992

For further information, please call: (512) 440-7723

◆ ◆ ◆
• 22 TAC §131.102, §131.104

The Texas State Board of Registration for Professional Engineers adopts the amendments to §131.102 and §131.104, concerning examination for record purposes and engineer-in-training certificates, without changes to the proposed text as published in the June 2, 1992, issue of the *Texas Register* (17 TexReg 3955).

The amendments were necessary to incorporate the new examination requirements for registration and the new provisions regarding engineer-in-training certificates as set out in the Texas Engineering Practice Act, §12 and §12.1, which become effective September 1, 1992.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210324 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: September 1, 1992

Proposal publication date: June 2, 1992

For further information, please call: (512) 440-7723

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Board Review of Application

• 22 TAC §131.112

The Texas State Board of Registration for Professional Engineers adopts the repeal of §131.112, concerning approved applications, without changes to the proposed text as published in the June 2, 1992, issue of the *Texas Register* (17 TexReg 3956).

The repeals of §131.112 was necessary as it will become obsolete when the new registration and examination requirements set out in the Texas Engineering Practice Act, §12, become effective September 1, 1992.

The repeal will allow the board to promulgate new §131.112 which establishes the procedures pertaining to application approval and nonapproval effective September 1, 1992.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210325 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: September 1, 1992

Proposal publication date: June 2, 1992

For further information, please call: (512) 440-7723

◆ ◆ ◆
The Texas State Board of Registration for Professional Engineers adopts new §131.112, concerning approved applications, without changes to the proposed text as pub-

lished in the June 2, 1992, issue of the *Texas Register* (17 TexReg 3956).

The new section establishes the procedures pertaining to the approval or nonapproval of an application for registration in accordance with the examination and registration requirements as set out in the Texas Engineering Practice Act, §12, which become effective September 1, 1992.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210326 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: September 1, 1992

Proposal publication date: June 2, 1992

For further information, please call: (512) 440-7723

◆ ◆ ◆
• 22 TAC §131.113, §131.114

The Texas State Board of Registration for Professional Engineers adopts amendments to §131.113 and §131.114, concerning board review of applications, without changes to the proposed text as published in the June 2, 1992, issue of the *Texas Register* (17 TexReg 3956).

The amendments were necessary in order to incorporate the new requirements for registration as set out in the Texas Engineering Practice Act, §12, which become effective September 1, 1992.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210327 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: September 1, 1992

Proposal publication date: June 2, 1992

For further information, please call: (512) 440-7723

Registration

• 22 TAC §131.139

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.139, concerning registration, without changes to the proposed text as published in the June 2, 1992, issue of the *Texas Register* (17 TexReg 3957).

The amendment was necessary to incorporate the new registration requirements as set out in the Texas Engineering Practice Act, §12, which become effective September 1, 1992.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210328 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: September 1, 1992

Proposal publication date: June 2, 1992

For further information, please call: (512) 440-7723

◆ ◆ ◆
Complaints

• 22 TAC §131.172

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.172, concerning complaints, without changes to the proposed text as published in the June 2, 1992, issue of the *Texas Register* (17 TexReg 3957).

The section was amended to correct the title from complaints against unlicensed persons to complaints against nonregistrants so as to provide consistency between the language contained in Texas Civil Statutes, Article 3271a and the board rules of practice and procedure.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210329 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: August 19, 1992

Proposal publication date: June 2, 1992

For further information, please call: (512) 440-7723

◆ ◆ ◆
Part VIII. Texas Appraiser
Licensing and
Certification Board

Chapter 153. Provisions of the
Texas Appraiser Licensing
and Certification Act

• 22 TAC §153.15

The Texas Appraiser Licensing and Certification Board adopts an amendment to §153.15, concerning experience required for certification or licensing, without changes to the proposed text as published in the June 12, 1992, issue of the *Texas Register* (17 TexReg 4233).

The amendment allows applicants for the state licensed real estate appraiser category only, to meet the experience requirement by submitting only an experience affidavit, rather than by submitting an affidavit together with an experience log. This does not effect the requirements for either the certified general real estate appraiser or certified residential real estate appraiser.

Three written comments were received regarding the adoption of this amendment. The comments by the Independent Bankers Association of Texas (IBAT), Foundation Appraisers Coalition of Texas (FACT), and Texas Bankers Association (TBA) all supported the proposed amendment to the rule.

The amendment is 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 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 July 27, 1992.

TRD-9210209 Renil C. Limer
Commissioner
Texas Appraiser Licensing
and Certification Board

Effective date: August 17, 1992

Proposal publication date: June 12, 1992

For further information, please call: (512) 465-3950

◆ ◆ ◆
• 22 TAC §461.15

The Texas State Board of Examiners of Psychologists adopts an amendment to §461.15, concerning general rulings, without changes to the proposed text as published in the June 19, 1992, issue of the *Texas Register* (17 TexReg 4419).

The board expressed a need to broaden the scope of this rule.

The amendment will allow the board to consider issues of concern to the board in a more timely manner in that persons not complying with board directives, rules, and state statutes will proceed through the hearing procedure to reach a conclusion.

No comments were received regarding adoption of the amendment.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 22, 1992.

TRD-9210339 Patricia S. Bizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Effective date: August 19, 1992

Proposal publication date: June 19, 1992

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

Chapter 463. Applications

• 22 TAC §463.5

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.5, concerning application file requirements, with changes to the proposed text as published in the June 19, 1992, issue of the *Texas Register* (17 TexReg 4419).

The amendment will clarify both board and statutory requirements for certification and licensure by reciprocity.

The amendment will clarify requirements for certification and licensure by reciprocity. It allows psychologists from other states to be considered for licensure.

No comments were received regarding adoption of the amendment.

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

§463.5. Application File Requirements. An application file must be complete and contain whatever information or examination results the board requires. An incomplete application remains in the active file for 90 days, at the end of which time, if

still incomplete, it is void. If certification or licensure is sought again, a new application and filing fee must be submitted. An applicant cannot have two types of applications for certification or licensure pending before the board.

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

(4) A completed application for certification and licensure by reciprocity as a psychologist includes:

(A) (No change.)

(B) official transcripts sent directly to the board's office from all colleges/universities where post-baccalaureate course work was completed;

(C) if providing psychological services in Texas before receiving license, must be employed in an exempt agency, or must have a temporary permit, or must have a supervision contract which indicates the applicant is being supervised in an acceptable setting which is appropriate for the education/experience background of the applicant;

(D) documentation that applicant is currently licensed and has been in good standing in one jurisdiction for the five years immediately preceding filing application in Texas;

(E) proof that applicant is the identical person to whom the original license was issued;

(F) documentation that there is no pending action against the applicant's license in any jurisdiction;

(G) a sworn statement that applicant has never had any professional license suspended, revoked, cancelled, or otherwise restricted;

(H) proof that applicant has passed the board's Jurisprudence Examination;

(I) three professional reference letters from three separate psychologists, each of whom must attest without reservation to the applicant's professional competence, ethics, and current fitness to practice. An applicant whose file contains any negative reference letters will be asked to provide a written explanation and/or to meet with the board prior to final approval of the application file;

(J) if licensed in a foreign country, proof that the requirements of §463.17 of this title (relating to Foreign Graduates) have been satisfied;

(5) For an applicant who is practicing psychology in Texas under a temporary permit, a supervision affidavit, or employment in a statutorily exempt agency and a complaint is filed against the applicant, the application process will be held in abeyance until the board has made a final determination on the complaint filed.

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 July 22, 1992.

TRD-9210340 Patricia S. Bizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Effective date: August 19, 1992

Proposal publication date: June 19, 1992

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

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 463. Applications

• 22 TAC §463.29

The Texas State Board of Examiners of Psychologists adopts new §463.29, concerning reciprocity requirements, without changes to the proposed text as published in the June 19, 1992, issue of the *Texas Register* (17 TexReg 4420).

This rule establishes guidelines for the board to follow in determining whether a person satisfies the requirements for certification and licensure by reciprocity as set down in legislation passed by the 72nd Legislature.

A person will be able to receive services from an experienced professional.

No comments were received regarding adoption of the new section.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 22, 1992.

TRD-9210337 Patricia S. Bizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Effective date: August 19, 1992

Proposal publication date: June 19, 1992
For further information, please call: (512) 835-2036

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• 22 TAC §463.30

The Texas State Board of Examiners of Psychologists adopts new §463.30 without changes to the proposed text as published in the June 19, 1992, issue of the *Texas Register* (17 TexReg 4421).

The board determined that applicants for certification and licensure by reciprocity will be able to sit for the board's Jurisprudence Examination throughout the year, rather than having to wait for the regularly scheduled examination dates.

The application process will be expedited for qualified professionals from other jurisdictions, and the public will be able to receive service from an experienced professional.

No comments were received regarding adoption of the new section.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 22, 1992.

TRD-9210338 Patricia S. Blizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Effective date: August 19, 1992

Proposal publication date: June 19, 1992

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

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Chapter 465. Rules of Practice

• 22 TAC §465.26

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.26, concerning temporary permit to practice, with changes to the proposed text as published in the June 19, 1992, issue of the *Texas Register* (17 TexReg 4421).

The amendment will clarify possibly ambiguous language and amend the rule so that it more closely reflects the statutory requirements for certification and licensure in Texas.

The public will be able to receive psychological services from a person licensed in another jurisdiction while he/she is applying in Texas. The public will be able to receive services from an experienced professional.

No comments were received regarding adoption of the amendment.

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

§465.26. *Temporary Permit to Practice.*

(a) An application for certification must be on file with the board.

(b) A completed application for temporary permit as a psychologist includes:

(1) an application and required fees for temporary permit;

(2) two current passport pictures of the applicant;

(3) official transcript from the regionally accredited educational institution which indicates that an applicant has received a doctoral degree in psychology;

(4) a statement which has a notary seal or a state seal from the appropriate psychology licensing agency in another jurisdiction confirming:

(A) the applicant has an active license to practice psychology;

(B) the applicant has been licensed to practice psychology for at least five years immediately prior to the date of application;

(C) the license is unencumbered and the applicant has never been found guilty of violation of ethical principles or board rules and regulations, or the law governing the practice of psychology in any jurisdiction.

(c) The temporary permit is valid for no more than one year from the date of issue and may not be renewed or reissued.

(d) The temporary permit is terminated immediately if the applicant fails written or oral examinations administered by the board.

(e) The temporary permit is terminated if the certificate and/or license applicant fails to appear for a scheduled written or oral examination, unless the applicant notifies the board in advance of the inability to appear.

(f) The temporary permit is canceled by the board if:

(1) at any time a review of the application for certification and licensure indicates the applicant lacks successful passage of all exams and or the experience and training necessary to be licensed by the

board and cannot rectify the deficiency within one year of the temporary permit;

(2) if the psychologist is found to violate any board rule or regulation or any portion of the Psychologists' Certification and Licensing Act.

(g) An applicant for temporary permit to practice acknowledges that a temporary permit carries with it no vested property right.

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 July 22, 1992.

TRD-9210341 Patricia S. Blizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Effective date: August 19, 1992

Proposal publication date: June 19, 1992

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

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 133. Hospital Licensing

Standards

• 25 TAC §133.21

The Texas Department of Health (department) adopts an amendment to §133.21, concerning hospital licensing standards (standards) which the section adopts by reference, without changes to the proposed text as published in the May 29, 1992, issue of the *Texas Register* (17 TexReg 3894).

The amendment is to Chapter 12 of the standards, relating to special licensing standards governing the provision of mental health services in hospitals licensed by the department. The amendment modifies the definition of "hospital" in §12.3-7 of Chapter 12 by including special hospitals in the definition, thereby covering all hospitals licensed by the department. The Texas Hospital Licensing Law, Health and Safety Code, Chapter 241, allows for the licensing of both general and special hospitals. Because both general and special hospitals may have an identifiable unit for the provision of mental health services, the department believes the rule should apply to special hospitals which provide mental health services as well as general hospitals.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Health and Safety Code, §241.027, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce

minimum standards for the licensing of hospitals; and §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

§133.21. Adoption by Reference.

(a) The Texas Department of Health adopts by reference the rules contained in the department publication effective September 1, 1985, entitled "Hospital Licensing Standards," as amended through September 1, 1992.

(b) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210284 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: September 1, 1992

Proposal publication date: May 29, 1992

For further information, please call: (512) 834-6645

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TITLE 28. INSURANCE
Part I. Texas Department
of Insurance
Chapter 21. Trade Practices
Subchapter C. Unfair Claims
Settlement Practices

• 28 TAC §§21.202-21.204

The State Board of Insurance of the Texas Department of Insurance adopts amendments to §§21.202-21.204, concerning unfair claims settlement practices, with changes to the proposed text as published in the May 29, 1992, issue of the *Texas Register* (17 TexReg 3895).

Section 21.202 is amended by deleting a requirement that an insurer do business under the Insurance code, Chapter 3, Subchapter G or Chapter 5, Subchapter A, B, or C in order to be subject to this subchapter. Section 21.203 and §21.204 are amended by deleting a requirement that defined acts in the regulation be committed with frequency before the defined acts could be considered an unfair claims settlement practice. Section 21.203(19) is added to define the use of federal income tax returns in settling claims. The foregoing amendments are necessary to conform the regulation to amendments to Insurance Code, Article 21.21-2, by the Legislature in 1991. Additionally, the board adopts §21.203(18) to add a violation of Insurance Code, Article 21.55, which sets standards for the prompt payment of first party claims, as an unfair claims settlement practice. Also the Board adopts amendments to §21.203(10) to

delete the use of nonwaiver agreements as a means of complying with this paragraph and to provide clearer safe guards for policyholders in the use of reservation of rights letters by insurers, and §21.203(12) to provide additional protection to policyholders by expanding the kind of information that may mislead a policyholder about the coverage she or he has.

The amended sections expand the protection of policyholders and other claimants from unfair claims settlement practices and permit the agency to take action on single violations of the regulation.

Three commenters objected to the breadth of the definition of insurer in §21.203. They said the proposed definition included claims adjusters and they argued there was no legislative intent evidenced to subject them to this regulation.

Seven commenters objected to the deletion of the requirement that any unfair claim settlement practices must be committed with a frequency that would indicate a general business practice before the defined practice would be considered an unfair claims settlement practice. They recommended it be amended to require the act be intentional.

Six commenters objected to the amendments to §21.203(10). They said that the deletion of non-waiver agreements would interfere with settlement of claims. They said the new language exceeded statutory authority by requiring the provision of counsel prior to determination of coverage.

Nine commenters objected to the deletion of "reasonable" in §21.203(12) in setting the standard for which an offer of settlement should be judged with reference to representations previously made by the insurer. They argued that the change would inhibit insurers from offering settlements since there would be no standard.

Five commenters objected to the amendment to §21.203(12) and the definition of advertisement. They were concerned that the expansion of the material that could influence a person's expectations would lead to increased litigation. They also objected to subparagraph (G) in the definition of advertisement because of its vagueness.

Four commenters objected to the addition of a violation of Insurance Code, Article 21.55, as a defined act in the regulation. They argued that this was unnecessary duplication of regulation and was punitive.

Three commenters objected to the deletion of language in §21.204 requiring complaints to be substantially out of line as a basis for this agency to require reports. They said the changes were inconsistent with the intent of Insurance Code, Article 21.21-2.

Two commenters said there would be increased costs for persons who are required to comply with the regulation. They said the new regulation would require increased paperwork and the standard of a single act being a violation would increase litigation costs.

Commenting against some of the amendments were Texas Claims Association, Hous-

ton Claims Association, Texas Farm Bureau Insurance Companies, State Farm Insurance Companies, Alliance of American Insurers, National Association of Independent Insurers, Texas Legal Reserve Officials Association, Texas Life Insurance Association, Association of Fire and Casualty Companies, Chubb Group of Insurance Companies, and Cigna Companies. Consumers Union commented for the sections.

The board agrees that insurers should not include claims adjusters licensed by the agency. The definition of insurer is changed to include only those insurers listed in the Insurance Code, Article 21.21-2, §7, and health maintenance organizations under certain conditions.

The board believes the legislature intended for the Board to delete the frequency standard from the regulation when it was deleted from the statute.

The board disagrees with the comments regarding §21.203(10). The goal of paragraph 10 is to assure prompt resolution of the issue of coverage of a claim. The amendments to paragraph (10) minimize the potential for abuse of devices designed to allow the settlement process to proceed when coverage is in question. The language concerning providing counsel to the insured is not adopted.

The board agrees that the standard to judge offers of settlement should be a reasonable person, therefore that change is not adopted.

The board believes consumers should not be strictly limited to certain material on which they must base their understanding of what their insurance coverage is, as they are under the existing rule. The amended rule will generally approximate all the information an insurance company will use to persuade a consumer to buy insurance from them. The definition of advertising in §21.202 of this title is incorporated by reference.

The board believes a violation of the Insurance Code, Article 21.55 should be defined as an unfair claims settlement practice since that law sets a standard for the payment of claims.

The board believes the deletion of language in §21.204 requiring complaints to be substantially out of line as a basis for this agency to require reports is appropriate since the commitment of one unfair claims settlement practice is a violation of the regulation.

The deletion of adjusters from the definition of insurer will eliminate any new paperwork requirement under this regulation. Compliance with the regulation will avoid litigation costs.

The amendments are adopted under the Insurance Code, Article 21.21-2, which provides the State Board of Insurance with the authority to adopt regulations defining unfair claims settlement practices.

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

Business day—A day other than a Saturday, Sunday, or holiday recognized by this state.

Claim—A request or demand reduced to writing and filed by a Texas resident with an insurer for payment of funds or the providing of services under the terms of a policy, certificate, or binder of insurance.

Claimant—A person making or having made a claim.

Complaint—Any written communication, not solicited by an insurer, primarily expressing a grievance relating to an unfair claims settlement practice as defined in §21.203 of this title (relating to Unfair Claims Settlement Practices).

First-party coverage—Benefits and other rights provided by an insurance contract to an insured.

Insurer—Stock and mutual life, health, accident, fire, casualty, fire and casualty, hail, storm, title, and mortgage guarantee companies; mutual assessment companies; local mutual aid associations; local mutual burial associations; statewide mutual assessment companies; stipulated premium companies; fraternal benefit societies; group hospital service organizations; county mutual insurance companies; Lloyds; reciprocal or interinsurance exchanges; health maintenance organizations operating under Insurance Code, Chapter 20A, for claims made by enrollees for reimbursement of payments for emergency and out of area covered services; and farm mutual insurance companies.

Policyholder—The owner of a policy, certificate, or binder of insurance, and any insured, named insured, or obligee under a bond.

Third-party coverage—Benefits and other rights provided by an insurance contract to any person other than the insured.

§21.203. Unfair Claim Settlement Practices. No insurer shall engage in unfair claim settlement practices. Unfair claim settlement practices means committing or performing any of the following:

(1) (No change.)

(2) failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies, provided that "pertinent communications" shall exclude written communications that are direct responses to specific inquiries made by the insurer after initial report of a claim. An acknowledgment within 15 business days is presumed to be reasonably prompt;

(3)-(5) (No change.)

(6) failure of any insurer to maintain a complete record of all complaints which it has received during the preceding three years or since the date of its last examination by the Commissioner of Insurance, whichever time is shorter. This record must indicate the total number of complaints, their classification by line of

insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. A record of such complaints maintained in substantially the form as indicated on Consumer Complaint Record will be presumed to be in compliance with this requirement, but Consumer Complaint Record shall not be considered as the exclusive method to record such complaints. A copy of Consumer Complaint Record may be obtained from the Consumer Services Division, (111-1A), P.O. Box 149091, Austin 78714-9091;

(7)-(9) (No change.)

(10) failing to affirm or deny coverage of a claim to a policyholder within a reasonable time. The reasonable submission of a reservation of rights letter by an insurer to a policyholder within a reasonable time is deemed compliance with the provisions of this paragraph.

(11) (No change.)

(12) attempting to settle a claim for less than the amount to which a reasonable person would have believed she/he was entitled by reference to an advertisement, as described in §21.102 of this title (relating to scope); made by an insurer or person acting on behalf of an insurer;

(13)-(17) (No change.)

(18) a violation of Insurance Code, Article 21.55 by an insurer subject to its provisions;

(19) requiring a claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination or investigation by the insurer unless the claimant is ordered to produce those tax returns by a court of competent jurisdiction, the claim involves a fire loss, or the claim involves a loss of profits or income.

§21.204. Special Claim Reports and Statistical Plan. If it should be found by the Texas Department of Insurance based on complaint or complaints of unfair claim settlement practices as described in §21.203 of this title (relating to Unfair Claims Settlement Practices), that an insurer should be subjected to closer supervision with respect to such practices, it may require such insurer to file a report at such periodic intervals as the department deems necessary. Such periodical reports shall contain the following information:

(1)-(5) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 29, 1992.

TRD-9210343

Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Effective date: August 19, 1992

Proposal publication date: May 29, 1992

For further information, please call: (512) 463-6327

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 3. Traffic Law Enforcement

Traffic Supervision

• 37 TAC §3.62

The Texas Department of Public Safety adopts an amendment to §3.62, concerning regulations governing transportation safety, without changes to the proposed text as published in the May 1, 1992, issue of the *Texas Register* (17 TexReg 3134).

The adoption of this amendment is necessary to ensure the public that a motor carrier is in compliance with all statutes and regulations pertaining to safe transportation of persons, property, and hazardous materials.

The adoption of this amendment adds subsection (e) which will clarify the authority of the Department to inspect the safety records of a motor carrier subject to the regulations adopted under Texas Civil Statutes, Article 6701d, §139.

A public hearing was held on May 26, 1992, at which no one appeared to comment. No written comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Civil Statutes, Article 6701d, §139, which provide the Public Safety Commission with the authority to adopt such regulations as may be deemed necessary for the safe operation of motor carriers.

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 July 24, 1992.

TRD-9210336

James R. Wilson
Director
Texas Department of
Public Safety

Effective date: August 19, 1992

Proposal publication date: May 1, 1992

For further information, please call: (512) 465-2000

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

In-Home and Family Support Program

• 40 TAC §48.2702, §48.2705

The Texas Department of Human Services (DHS) adopts amendments to §48.2702 and §48.2705, without changes to the proposed text as published in the June 12, 1992, issue of the *Texas Register* (17 Tex Reg 4239).

The justification for the amendment to §48.2702 is to simplify the application process. The justification for the amendment to §48.2705 is to make the bid procedure consistent with state purchasing bid requirements.

The amendments will function by making policy clearer and providing faster services to applicants.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

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 July 28, 1992.

TRD-9210288 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: September 1, 1992

Proposal publication date: June 12, 1992

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

Part V. Veterans Land Board

Chapter 175. General Rules of the Veterans Land Board

• 40 TAC §175.23

The Veterans Land Board adopts new §175.23, concerning county committees, with changes to the proposed text as published in the May 12, 1992, issue of the *Texas Register* (17 TexReg 3459). The change is found in subsection (b) where the phrase "the county in," was inadvertently omitted. Under the new section, each applicant is required to submit a

copy of his or her application to the county committee in the county in which the land is located. Each veteran applicant may also be required to submit a copy of his or her application to the county committee in the county of his or her residence. In addition, should a county committee delay in submitting its report to the Veterans Land Board, the chairman, executive secretary, or assistant executive secretary may waive the requirement of receiving that report.

The new section was adopted to streamline and speed up the loan process.

As adopted the new section will require each veteran applicant to submit his or her application to only one county committee, unless requested to do otherwise. It will also allow for the waiver of receiving a county committee report when such report is not received in a timely fashion.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Natural Resources Code, §161.061 and §161.063, which provides the Veterans Land Board with the authority to adopt rules that it considers necessary or advisable to ensure the proper administration of the Veterans Land Program.

§175.23. County Committees.

(a) There is appointed by the commissioners court of each county a committee of three resident real property owners. Upon application for a loan through the Veterans Land Program, each applicant shall also submit a copy of his or her application to the county committee in the county in which the land is located. This committee shall consider the forms and submit a report to the board as to the amount the committee considers to be the reasonable value of the land in question, the financial responsibility and credit rating of the veteran applicant, if known, and a statement of opinion as to whether or not the transaction is bona fide.

(b) If the property which the veteran applicant wishes to purchase is in a county different from the veteran applicant's home county, the chairman of the board, executive secretary, or assistant executive secretary, may also require each applicant to submit a copy of his or her application to the county committee in the county in which the veteran resides, for review. This committee shall submit a report concerning the financial responsibility and credit rating of the veteran applicant, if known, and a statement of opinion as to whether or not the transaction is bona fide.

(c) Should the county committee in any county be nonfunctioning, or should a county committee fail to submit its report to the board within a reasonable length of time, the chairman, executive secretary, or assistant executive secretary may waive the requirement of receiving said report.

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 July 27, 1992.

TRD-9210291 Garry Mauro
Chairman
Veterans Land Board of the State of Texas

Effective date: August 18, 1992

Proposal publication date: May 12, 1992

For further information, please call: (512) 463-5019

Part XXVIII. Texas Child Care Development Board

Chapter 631. Standards for State Agency Employee Child Care Facilities

• 40 TAC §631.1, §631.2

The Texas Child Care Development Board adopts new §631.1, and §631.2, concerning standards for state agency employee child care facilities, with changes to the proposed text as published in the April 7, 1992, issue of the *Texas Register* (17 TexReg 2461).

The Child Care Development Board adopts the following rules to comply with the statutory directives to develop and administer a program to provide child care services for state employees; to set specific performance standards for child care services under the program; and to prescribe the number of children a facility may serve. The sections are adopted to require state employee child care facilities to meet high quality standards that will assure the safety and well-being of all children in the care of these programs. It is further intended that these standards will promote interagency cooperation in the development of child care services and will maximize the benefit of state dollars expended for the purpose of child care.

The sections require any state employee child care facilities developed to comply with minimum quality standards set by the board. The board also requires state agencies to conduct a thorough needs assessment to determine the feasibility of developing child care services; to report child care development activity to the board; and to maximize interagency cooperation.

The Texas Department of Transportation; and Austin Families Inc. commented against adoption of the new sections.

Concerning §631.1(b), the Texas Department of Transportation's comment relates to the department's status as a state agency whose facilities are not operated by the General Services Commission. The department suggests that the board's statutory authority relates only to agencies under GSC and, therefore, TxDOT should be exempt from any rules promulgated by the board.

The board disagrees with this comment. Texas Civil Statutes, Article 6252-3e, §3 di-

rects the board to develop and administer a program to provide child care services for state employees and provides that the board by rule may establish methods to administer and supervise the program. This language reflects the primary grant of authority to the board, which is broad in scope and intended to cover child care services for all state employees.

Concerning §631.2(c)-(e), the Department of Transportation requests that this section be rewritten to provide more flexibility.

The board agrees with this comment. The board has done so, allowing each agency to determine the need and feasibility of establishing child care centers based on criteria set by the board.

TxDOT also bases its objections to the board's proposed rules on what the department perceives to be a conflict between the board's rules and Rider 41 to the department's appropriation in Article I of the General Appropriations Act.

The board disagrees because an appropriations rider may not enact or amend general law. To the extent, if any, that Rider 41 conflicts with Article 6252-3e, the rider does not effectively amend the statute.

Concerning §631.2(f), the Department of Transportation objects to this section as being too vague.

The board disagrees with this comment. The board believes that this section's requirement that the center must meet high quality standards, taken in context with the accompanying subsections, provides a clear indication of minimum quality standards that must be maintained in a state employee child care facility.

The Department of Transportation requests that §631.2(f)(1) be reworded to eliminate the unnecessary burden for agencies required to use CCDB contracts.

While the board strongly recommends that agencies use the forms that have been developed through collaborative efforts of several state offices, the language has been amended to allow agencies to use their own contracts.

Concerning §631.2(g), the Department of Transportation objects to the requirement that a state employee child care center must establish a minimum enrollment to ensure financial viability of the center.

The board disagrees with this comment. The board is concerned that any center opened to serve the children of state employees remain open and financial viability is one of the key factors affecting the ability to maintain service to employees.

Concerning §631.2(h), Austin Families Inc. and the Department of Transportation object to the language limiting the use of consultants to obtain advice and services in the area of child care.

The board agrees and therefore this language has been deleted.

The new sections are adopted under Texas Civil Statutes, Article 6252-3e, which provides the Texas Child Care Development Board with the authority to develop and administer a program to provide child care services for state employees.

§631.1. Purpose.

(a) Quality child care for all children is a critical need for Texas families. In 1989, the legislature established the Texas Child Care Development Board to develop and administer a program to provide child care services for state employees. The board is composed of the governor, lieutenant governor, attorney general, state treasurer, comptroller, and commissioner of the General Land Office.

(b) The Child Care Development Board is required by statute to set specific performance standards for child care services under the program and to prescribe the number of children a facility may serve. The board by rule may establish methods to administer and supervise the program.

(c) It is the intent of the Child Care Development Board to maximize child care options for state employees and to establish the state as a model employer in the area of child care.

§631.2. Standards and Procedures.

(a) State agencies shall comply with standards set by the Texas Child Care Development Board in order to ensure quality and to minimize administrative costs. The board will work with agencies to plan and develop facilities that maximize the use of available resources in meeting state employees' needs.

(b) State agencies should notify the Child Care Development Board as early as possible of interest in establishing a center.

(c) Each agency or group of agencies that intends to establish a child care center must submit an implementation plan to the board for approval before proceeding with implementation.

(d) The implementation plan must include:

(1) a survey which defines the need for a center by determining:

(A) the number of state employees with children of child care age;

(B) the number of state employees with children of child care age who are interested in using the center;

(C) the lack of available private facilities;

(D) the lack of available private facilities that meet quality standards;

(2) a strategy for interagency cooperation to maximize the use of state resources and facilities;

(3) provisions for meeting high quality standards; and

(4) the proposed use of consultants, if any.

(e) No consultant or provider contract may be finalized unless and until it has been approved by the board included as part of an implementation plan.

(f) Any reports, surveys, research materials, or other documents developed by consultants shall be made available to the Child Care Development Board upon completion and to other agencies upon request.

(g) Any revision to the implementation plan must be approved by the board.

(h) Each center must meet high quality standards.

(1) Providers must comply with all federal, state, municipal, and other laws, codes, ordinances, rules, and regulations applicable to its operations.

(2) All centers established by state agencies must become accredited by the National Association for the Education of Young Children.

(3) The Child Care Development Board will assist state agencies in all stages of the process of establishing a child care center, including, but not limited to, needs assessment; bids; contracts; leases; and provider selection.

(i) Any child care facility established for state employees must establish a minimum enrollment to ensure financial viability of the center.

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 July 23, 1992.

TRD-9210242

Mary E. Fero
Secretary
Texas Child Care
Development Board

Effective date: August 17, 1992

Proposal publication date: April 7, 1992

For further information, please call: (512) 463-2172

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Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5. 97, the Texas Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 333 Guadalupe, Austin.)

The State Board of Insurance of the Texas Department of Insurance in Docket Number R-1906, July 15, 1992, adopted amendments to Rule 48 of the Texas Automobile Rules

and Rating Manual (the manual) and to the Automobile Liability Experience Rating Plan (the plan).

The proposed amendments are primarily to implement the removal of a qualified entity (as that expression is used in the current Manual and Plan) from having any role in experience rating functions. Many of the functions that are currently performed by a qualified entity will be performed by insurers, and other such functions will be performed by the department through these proposals.

The amendments to Manual Rule 48 and the Plan are adopted to be effective on and after 12:01 a.m., January 1, 1993. For further information or to request copies of the board order, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number A-0692-30-1).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register 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 July 28, 1992.

TRD-9210273

Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Effective date: August 19, 1992

For further information, please call: (512) 463-6327



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*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Advisory Board of Athletic Trainers

Sunday, August 2, 1992, 11 a.m. The Advisory Board of Athletic Trainers will meet at 8407 Wall, the Exchange Building, Room S-402, Austin. According to the agenda, the board will discuss approval of July 21, 1992, meeting; discuss and possibly act on order concerning Terry Alan Bunker, license number AT1108; and hear announcements and comments not requiring action.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6615.

Filed: July 22, 1992, 4 p.m.

TRD-9210052

The Advisory Commission on State Emergency Communications

Thursday, August 6, 1992, 10 a.m. The 9-1-1 Day Award Criteria Subcommittee of the Advisory Commission on State Emergency will meet at the ACSEC offices, 1101 Capital of Texas Highway, South B-100, Austin. According to the complete agenda, the subcommittee will call the meeting to order; review and score nominations for public safety telecommunicator of the year awards; and adjourn.

Contact: Velia Williams, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

Filed: July 29, 1992, 3:16 p.m.

TRD-9210380

Texas Department of Agriculture

Wednesday, August 5, 1992, 8 p.m. The Southern Rolling Plains Cotton Producers Board of the Texas Department of Agriculture will meet at the Miles Co-op Gin, 1 1/2 Miles North West of Miles, FM 1692, Miles. According to the agenda summary, the board will discuss approval of minutes of prior meeting; hear treasurer's report; report of activities by board reporter; committee reports, reports from special guests with discussion and action on proposals; 1991 delinquent assessments; 1992 cotton crop assessment; changing of by-laws of SRPCPB to have fewer meetings per year; and establishing agenda for next meeting.

Contact: Sid Long, P.O. Box 30036, San Angelo, Texas 76903, (915) 456-2383.

Filed: July 28, 1992, 1:35 p.m.

TRD-9210296

Wednesday, August 5, 1992, 1 p.m. The Texas Agricultural Finance Authority of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 924A, Austin. According to the complete agenda, the department will discuss and act on minutes of previous meeting; loan applications deferred from previous meeting; loan applications recommended by Credit Review Committee; discussion on loan portfolio and commercial paper; discussion and action on revenue bond program; and other business.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

Filed: July 28, 1992, 2:27 p.m.

TRD-9210303

Monday, August 10, 1992, 7:30 a.m. The Texas Grain Sorghum Producers Board of the Texas Department of Agriculture will meet at the LeBaron Hotel/Convention Center, 1055 Regal Row, Ambassador I Meeting Room, Dallas. According to the agenda summary, the board will discuss approval of the minutes of prior meeting; discuss financial reports; 1992-1993 budget approval; building renovations committee report; market analysis; research updates and proposals; other funding considerations; program reports; and discuss other business.

Contact: Jack Cobb, P.O. Box 560, Abernathy, Texas 79311, (806) 298-2543.

Filed: July 29, 1992, 1:42 p.m.

TRD-9210362

Texas Appraiser Licensing and Certification Board

Thursday, August 27, 1992, 9 a.m. The Texas Appraiser Licensing and Certification Board will meet at the Joe C. Thompson Conference Center Room 3.120, 26th and Red River (University of Texas) Austin. According to the complete agenda, the board will discuss workshop/seminar concerning the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation.

Contact: Renil C. Lner, 1101 Camino La Costa, Austin, Texas 78752, (512) 465-3950.

Filed: July 30, 1992

TRD-9210396

Texas Board of Architectural Examiners

Friday, August 7, 1992, 9 a.m. The Texas Board of Architectural Examiners will meet at 8213 Shoal Creek Boulevard, Suite 107, Austin. According to the agenda summary, the board will call the meeting to order; recognize guests; take roll call; hear chairman's opening remarks; consider/act on the following categories; discuss approval of minutes; consent on director's report; personal appearances; discuss committee matters; examinations; legislative matters; professional building designers eligibility for interior designer registration; reciprocity; rules and regulations; disciplinary matters; board policies; renewals; future meetings; public comment; meet in executive session on legal advice. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Carolyn Lewis at (512) 458-1363 two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Robert H. Norris, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

Filed: July 29, 1992, 3:35 p.m.

TRD-9210381

Coastal Coordination Council

Thursday, August 6, 1992, 10 a.m. The Coastal Coordination Council will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the council will hear report from the special staff subcommittee on procedural rules; review/adoption of procedural rules; report on Coastal Zone Management Program development grant; review/approval of Texas Coastal Management Program draft statement of goals; review of federal coastal legislation; briefing/discussion on Texas Bays and Estuaries Program; status of Railroad Commission tidal discharge permitting; report on the role of the CCC in regulatory decision-making within the agencies; status of General Land Office rules on dune protection, beach access, erosion response and flood protection; and Supreme Court decision in the case of Lucas versus South Carolina Coastal Council.

Contact: Peggy Spies, 1700 North Congress Avenue, Room 730, Austin, Texas 78701, (512) 463-5385.

Filed: July 28, 1992, 3:58 p.m.

TRD-9210308

Texas Department of Criminal Justice

Friday, July 24, 1992, 9 a.m. The Texas Board of Criminal Justice of the Texas Department of Criminal Justice will meet at 509 East Seventh Street, Amarillo City Hall, City Commissioners' Chambers, Third Floor, Amarillo. According to the agenda summary, board will meet in executive session-discussion with attorneys concerning Ruiz, Alberti, Lamar, Moore, McLennan County, Angelina County and Johnson litigation; acquisition of real property-site selection; meet in regular session to discuss consent items; extension of employment; dual employment requests; hear board reports; discuss performance reward rules; director, inmate legal services; RFP-2,000 additional beds; resolution authorizing exercise domain proceedings to acquire six detention facilities; hear proposed rule-administrative review of parole panel actions; parole consultants; finance; construction; prior pending business; and adjourn. Convene Windham School Board-discuss consent items; discuss items; WSS budget for 1992-1993; and adjourn.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: July 16, 1992, 3:58 p.m.

TRD-9209807

Thursday, August 6, 1992, 9 a.m. The Community Justice Assistant Division-Judicial Advisory Council of the Texas Department of Criminal Justice will meet at the Hilton Hotel, 6000 Middle Fiskville Road, Austin. According to the complete agenda, the council will call the meeting to order; discuss standard conditions to FY 1993 grant awards; and staff presentations: community justice plans, funding proposals and requests.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753, (512) 834-8188.

Filed: July 29, 1992, 1:44 p.m.

TRD-9210363

Friday, August 7, 1992, 10 a.m. The Community Justice Assistant Division-Judicial Advisory Council of the Texas Department of Criminal Justice will meet at the Hilton Hotel, 6000 Middle Fiskville Road, Austin. According to the complete agenda, the council will call the meeting to order; introduce guests; discuss approval of minutes; grants review committee; staff briefings: substance abuse felony punishment facilities update, performance review program update, standard conditions to FY 1993 grant awards, CJAD standards update, other issues; The Honorable Paul Banner-Hunt County; discuss other administrative busi-

ness; date and site selection of next meeting; and adjourn.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753, (512) 834-8188.

Filed: July 29, 1992, 1:44 p.m.

TRD-9210364

Texas Education Agency

Wednesday, August 26, 1992, 10 a.m. The Advisory Committee for Budgeting, Accounting, and Auditing of the Texas Education Agency will meet at the Texas Education Agency, 1701 North Congress Avenue, Room 1-109, Austin. According to the complete agenda, the committee will review and discuss Change 27 to Bulletin 679, Financial Accounting Manual, relating to changes in accounting procedures for school districts and revisions to fund codes.

Contact: Thomas D. Canby, Jr., 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9095.

Filed: July 28, 1992, 3:59 p.m.

TRD-9210311

The Advisory Commission on State Emergency Communications

Thursday, August 6, 1992, 10 a.m. The 9-1-1 Day Award Criteria Subcommittee of the The Advisory Commission on State Emergency Communications will meet at the ACSEC Offices, 1101 Capital of Texas Highway South, B-100, Austin. According to the complete agenda, the subcommittee will call the meeting to order; review and score nominations for public safety telecommunicator of the year awards; and adjourn.

Contact: Velia Williams, 1101 Capitol of Texas Highway, Suite B-100, Austin, Texas 78746, (512) 327-1911

Filed: July 26, 1992, 3:46 p.m.

TRD-9210380

Texas Health Policy Task Force

Thursday, August 6, 1992, 10 a.m. The task force will meet at One Capitol Square, 300 West 15th Street, Austin. According to the complete agenda, the task force will call the meeting to order; task force deliberations; lunch; task force deliberations; and recess. Persons requesting interpreter services for the hearing impaired, please contact this office.

Contact: Pamela Crail, P.O. Box 149133, Austin, Texas 78714-9133, (512) 463-6473.

Filed: July 29, 1992, 4:35 p.m.

TRD-9210394

Friday, August 7, 1992, 9 a.m. The Texas Health Policy Task Force will meet at One Capitol Square, 300 West 15th Street, Senate Room 1, Austin. According to the complete agenda, the task force will conduct task force deliberations; lunch; task force deliberations; and adjourn. Persons requesting interpreter services for the hearing impaired, please contact this office.

Contact: Pamela Crail, P.O. Box 149133, Austin, Texas 78714-9133, (512) 463-6473.

Filed: July 29, 1992, 4:35 p.m.

TRD-9210395

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Texas Department of Human Services

Friday, August 7, 1992, 10 a.m. The State Advisory Committee on Child Care Programs of the Texas Department of Human Services will meet at the Joe C. Thompson Conference Center, U.T. of Austin, Room 3.110, 26th and Red River Streets, Austin. According to the complete agenda, the committee will discuss approval of minutes of June meeting; hear staff reports/information items concerning designated vendor criteria update; report on the collaborative planning projects; report on the caregiver training and quality improvement assistance projects; discuss program plans for FY 93; and schedule next meeting.

Contact: Mary Beth O'Hanlon, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4169.

Filed: July 29, 1992, 10 a.m.

TRD-9210355

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Texas Department of Insurance

Wednesday, August 5, 1992, 9 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 under Docket R-1922 to consider possible adoption of amendments to 28 TAC §5.401, concerning temporary and permanent requirements regarding underwriting treatment of and disclosure to applicants for private passenger automobile liability insurance. The proposed amendments were published in the July 3, 1992 issue of the *Texas Register* (17 TexReg 4725). The comment period expires on August 3, 1992. The board will also consider possible adoption of a proposed form of special call for Texas automobile private passenger automobile experience, to gather data on the

differences in risk of loss, if any, between drivers lacking prior insurance and those possessing prior insurance at the time of application for private passenger automobile insurance to monitor the effectiveness of and compliance with 28 TAC §5.401.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 28, 1992, 3:59 p.m.

TRD-9210309

Wednesday, August 5, 1992, 10:30 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 agenda summary, the board will discuss personnel; litigation; commissioner's orders; solvency; consider appointment of insurer representative to Life Guaranty Association; consider approval of terms of office for directors of Texas Title and Life Guaranty Associations; consider workers' compensation negotiated deductible endorsement; consider request by Highlands Insurance Company for cessation of small premium policies; consider filings by several different insurers as itemized on the complete agenda; consider amendments to Rule VII-Texas maintenance tax surcharge recoupment and corresponding endorsement; consider adoption of new 28 TAC §28.3 concerning merger of insurers; consider several procedural changes/amendments presented by staff as itemized on the complete agenda; and matters from the hearings' officer.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 28, 1992, 3:59 p.m.

TRD-9210310

Thursday, August 6, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Claude Harold Knight, of Murchison and Dallas, who holds a Group I, Legal Reserve Life Insurance Agent's license, and who is currently applying for a Group II Insurance Agent's license. Docket Number 11535.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: July 29, 1992, 2:13 p.m.

TRD-9210376

Texas Department of Licensing and Regulation

Tuesday, August 18, 1992, 9 a.m. The Inspections and Investigations, Vehicle Storage Facilities of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Milam Street Auto Storage, Inc. for violation of Texas Civil Statutes, Articles 6687-9a and 9100.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 475-2899.

Filed: July 29, 1992, 4:18 p.m.

TRD-9210388

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Midwestern State University

Thursday, August 6, 1992, 3 p.m. The Executive Committee of the Board of Regents of Midwestern State University will meet at Midwestern State University, Hardin Board Room, Wichita Falls. According to the complete agenda, the committee will review and discuss information concerning Texas Educational Opportunities Plan annual report and board of regents committee appointments; recommendations for consideration will be made concerning regents meeting dates 1992-1993; university liability insurance; Texans contract 1992-93; McCullough-Trigg Hall Construction; Clark Student Center long-range use; energy cost reduction system (selection and runding); professional engineers 1992-93 and one percent for art allocation; ratification of prior action concerning Southwestern Bell utilities easement; Vinson Health Center renovation; and Killingsworth and Pierce Halls renovation will also be considered.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4211.

Filed: July 29, 1992, 2:02 p.m.

TRD-9210368

Thursday, August 6, 1992, 3:45 p.m. The Finance and Audit Committee of the Board of Regents of Midwestern State University will meet at Midwestern State University, Hardin Board Room, Wichita Falls. According to the complete agenda, the committee will consider recommendations concerning acceptance of financial disclosure statements; allocation of existing fund balances; natural science course fee increases; deletion of foreign student fee; increase of graduate tuition; items \$15,000 and under approved by the president will be presented

for ratification by the board; 1992-93 operating budget will be presented for approval by the Board of Regents; and discussion of personnel and salary related matters will be held in executive session as allowed by the Texas Open Meetings Act, §2(g).

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4211.

Filed: July 29, 1992, 2:02 p.m.

TRD-9210369

Thursday, August 6, 1992, 4:30 p.m. The Personnel and Curriculum Committee of the Board of Regents of Midwestern State University will meet at Midwestern State University, Hardin Board Room, Wichita Falls. According to the complete agenda, the committee will present enrollment report and small class reports for summer 1992 as information only as will last day enrollment reports for the spring 1992 semester; recommendations will be made concerning position changes in the FY 91-92 budget; faculty moving to non-tenure track status (discussed in executive session if necessary as allowed by the Texas Open Meetings Act, §2g); and deletion of public history option in the M.A. degree; policy manual revisions concerning the following will be presented: adoption of university motto, changing of Board Committee name to Student Services Committee, change to contract signing authorization for president, and proposed non-smoking campus.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4211.

Filed: July 29, 1992, 2:02 p.m.

TRD-9210370

Thursday, August 6, 1992, 5 p.m. The Student Affairs Committee of the Board of Regents of Midwestern State University will meet at Midwestern State University, Hardin Board Room, Wichita Falls. According to the complete agenda, the committee will consider recommendations concerning a yearbook contract for 1992-93 and possible long-term commitment with professional food management; and additional information will be presented concerning housing and the renovation of Killingsworth and Pierce Halls.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4211.

Filed: July 29, 1992, 2:02 p.m.

TRD-9210371

Thursday, August 6, 1992, 5:10 p.m. The University Development Committee of the Board of Regents of Midwestern State University will meet at Midwestern State University, Hardin Board Room, Wichita Falls. According to the complete agenda, the com-

mittee will present summary of gifts, grants and pledges received September 1, 1991-July 15, 1992, for information only; and resolutions of appreciation will be presented for the three retiring regents, Estes, Watson and Hendrickson.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4211.

Filed: July 29, 1992, 2:02 p.m.

TRD-9210372

Thursday, August 6, 1992, 5:20 p.m. The Athletics Committee of the Board of Regents of Midwestern State University will meet at Midwestern State University, Hardin Board Room, Wichita Falls. According to the complete agenda, the committee will present an athletics update report for information only.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4211.

Filed: July 29, 1992, 2:02 p.m.

TRD-9210373

Friday, August 7, 1992, 9 a.m. The Board of Regents of Midwestern State University will meet at Midwestern State University, Hardin Board Room, Wichita Falls. According to the agenda summary, the board will discuss approval of minutes of prior meetings and accept financial reports (April, May and June 1992); recommendations for consideration made through the executive, finance, personnel and curriculum, student affairs and university development committees; and reports will be presented through the athletics committee and the president. The MSU Board of Regents reserves the right to discuss any items in executive session whenever legally justified under the Texas Open Meetings Act.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4211.

Filed: July 29, 1992, 2:03 p.m.

TRD-9210374

Texas Motor Vehicle Commission

Wednesday, August 5, 1992, 9 a.m. The Texas Motor Vehicle Commission will meet at 815 Brazos Street, Suite 302, Brazos Building, Austin. According to the agenda summary, the commission will call the meeting to order; take roll call; discuss approval of minutes of commission meetings of June 18, 1992; argument on proposals for decision-licensing and enforcement; argument on motions for rehearing in lemon law cases granted by commission; agreed orders; orders of dismissal-licensing and en-

forcement; review of agency budget and appropriations for FY 1992; review of consumer complaint recap report and report of decisions made by executive director; review of litigation status report; presentation ceremony; discussion of staff sponsored end of the commission ceremonies and resolution concerning authority of commission chairman and members, respectively; and adjourn.

Contact: Russell Harding, 815 Brazos Street, Suite 300, Austin, Texas 78701, (512) 476-3587.

Filed: July 28, 1992, 10:19 a.m.

TRD-9210286

Texas Parks and Wildlife Department

Thursday, August 6, 1992, 3 p.m. The Aquaculture Executive Committee of the Texas Parks and Wildlife Department will meet at the Executive Director's Conference Room, TPWD Headquarters, 4200 Smith School Road, Austin. According to the complete agenda, the committee will elect new aquaculture executive committee chairman; update on aquaculture strategic plan; and hear public comment.

Contact: Dr. Bill Harvey, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: July 29, 1992, 2 p.m.

TRD-9210366

Public Utility Commission of Texas

Wednesday, August 5, 1992, 9 a.m. The Administrative Committee of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Commissioners Hearing Room, Austin. According to the agenda summary, the commission will meet in executive session to consider litigation matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and adjourn.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 28, 1992, 2:45 p.m.

TRD-9210304

Monday, April 10, 1992, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division

will hold a prehearing conference at the above date and time in Docket Number 11336. General Counsel's inquiry into the reasonableness of the rate, terms, and conditions of Southwestern Bell Telephone Company's Central Office-Based PBX-Type Services for which flexible pricing is permitted.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 29, 1992, 3:08 p.m.

TRD-9210378

Monday, April 5, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hear the merits as scheduled for the above date and time of Docket Number 11293: petition of the General Counsel to inquire into the reasonableness of the rates and services of Eastex Telephone Cooperative, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 29, 1992, 3:09 p.m.

TRD-9210379

Texas Low-Level Radioactive Waste Disposal Authority

Tuesday, August 11, 1992, 7 a.m. The Public Information Committee of the Texas Low-Level Radioactive Waste Disposal Authority will meet at 6505 IH-35 North, Austin. According to the complete agenda, the committee will call to order to discuss staff presentation of Public Information Program, update on Sierra Blanca Working Groups, update on community development projects and adjourn.

Contact: L.R. Jacobi, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292.

Filed: July 29, 1992, 4:05 p.m.

TRD-9210391

Wednesday, August 12, 1992, 8:30 a.m. The Board of Directors of the Texas Low-Level Radioactive Waste Disposal Authority will meet at 105 West 15th Street, Room 106, John H. Reagan Building, Austin. According to the agenda summary, the board will meet in executive session, approve minutes; hear board committee and citizen working group reports; hear the general

manager's report on year-to-date financial status, approve the 1993 operating budget; approve 1994-1995 appropriations requests; hear a report on the Supreme Court's decision on the constitutionality of the federal act; hear a report on site characterization at the Faskin Ranch; the status of the facility design, hear a report on community development program. Under older business, the board will consider the approval of the final report, pursuant to §402.092, Health and Safety Code. Under new business, the board will consider the approval of new and amended FY 1993 contracts and the financial statements of the L.R. Jacobi and L.H. Mathews. The board will hear public comments and adjourn.

Contact: L.R. Jacobi, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292.

Filed: July 29, 1992, 4:05 p.m.

TRD-9210392

Secretary of State

Thursday, August 6, 1992, 10 a.m. The Elections Advisory Committee of the Office of the Secretary of State will meet at the Reagan Building, Room 109, Austin. According to the complete agenda, the committee will hear welcoming remarks; take roll call and introduction of members; introductory remarks; overview of Secretary of State Election Night Returns: programming, features of the system, data entry procedures, charges for election night returns services; observer's report from March, 1992 primary elections; designation of one or more Elections Advisory Committee members to be present on election night; and closing remarks.

Contact: Kim Sutton, P.O. Box 12060, Austin, Texas 78711, (512) 463-5650.

Filed: July 28, 1992, 3:05 p.m.

TRD-9210307

Board of Tax Professional Examiners

Monday, August 17, 1992, 6:30 p.m. The Board of Tax Professional Examiners will meet at the Westin Paso del Norte Hotel, Kohlberg Room, El Paso. According to the agenda summary, the board will call the meeting to order; administer oath of office to Esther Z. Perez; discuss approval of minutes of the June 1, 1992 meeting; discuss and possibly act on certification; recertification registrants; budget request 1994-1995; use of IAAO book for appraisal courses; registrants titles and identification; professional standards committee report; curriculum course in ethical conduct; information

items are population and classifications; education activities and projects; status of complaints; status of Attorney General opinion requests; property tax consultant program; Texas appraisers licensing and certification board; state office of administrative hearings (SOAH); other business includes planning calendar; legislative budget hearings; hear public comment; and adjourn.

Contact: Sam H. Smith, 4301 Westbank Drive, Austin, Texas 78746-6565, (512) 329-7981.

Filed: July 29, 1992, 9:21 a.m.

TRD-9210333

Texas Department of Transportation

Wednesday, July 29, 1992, 9:30 a.m. (Emergency revised agenda). The Texas Transportation Commission of the Texas Department of Transportation met at the Dewitt C. Greer Building, First Floor, 125 East 11th Street, Austin. According to the agenda summary, the commission established wage brackets for hourly maintenance and marine employees. The emergency action was required in order to implement 1% salary increase (authorized by the Legislature and certified by the Comptroller) to avoid undue economic hardship on hourly employees and to comply with state law.

Contact: Myrna Klipple, 125 East 11th Street, Austin, Texas 78701, (512) 463-8576.

Filed: July 28, 1992, 11:52 a.m.

TRD-9210293

Texas Workers' Compensation Commission

Monday, August 3, 1992, 9:30 a.m. The Texas Workers' Compensation Commission met at the Southfield Building, Rooms 910-911, 4000 South IH-35, Austin. According to the agenda summary, the commission called the meeting to order; discussed approval of minutes for the public meeting of July 17, 1992; discussed, considered and possibly acted on amendments to existing rules and rules for proposal; considered operational issues with regard to implementation of the self-insurance program; rules for adoption; discussed and considered TWCC FY93 budget; discussed, considered and possibly acted on the Texas Public Finance Authority lease resolution; met in executive session; acted on matters considered in executive session; report on donations and gifts received; general reports, discussed and possibly acted on is-

sues relating to commission activities which may have included, but are not limited to, the following: discussed future public meetings; and adjourned.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 448-7962.

Filed: July 29, 1992, 8:56 a.m.

TRD-9210330

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Regional Meetings

Meetings Filed July 28, 1992

The Central Texas Quality Work Force Planning Committee will meet at the Central Texas College Student Center, U.S. Highway 190, Killeen, August 7, 1992, at 2 p.m. Information may be obtained from Joseph F. Kiefer, Jr., 2600 South First Street, Temple, Texas 76504, (817) 773-9961, ext. 311. TRD-9210301.

The Middle Rio Grande Development Council Texas Review and Comment System Committee met at the Civic Center Reading Room, 300 East Main, Uvalde, July 29, 1992, at 1 p.m. The emergency status was necessary as United Medical Centers application had to be included in order for them to meet their deadline; and needed to be reviewed before the end of the month. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9210287.

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Meetings Filed July 29, 1992

The Angelina and Neches River Authority Board of Directors will meet at the Fredonia Hotel, 200 North Fredonia Street,

in the Rusk Room, Nacogdoches, August 4, 1992, at 10 a.m. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75902-0387, (409) 632-7795, fax (409) 632-2564. TRD-9210393.

The Austin Transportation Study Policy Advisory Committee will meet at the Joe C. Thompson Conference Center, Room 2.102, 26th and Red River Streets, Austin, August 4, 1992, at 6 p.m. Information may be obtained from Joseph P. Gieselman, 811 Barton Springs Road, Suite 700, Austin, Texas 78704, (512) 472-7483. TRD-9210365.

The Aqua Water Supply Corporation met at 305 Eskew, Aqua Office, Bastrop, August 3, 1992, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas 78602, (512) 321-3943. TRD-9210383.

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The Brazos Valley Development Council Regional Advisory Committee on Aging will meet at the Council Offices, 3006 East 29th Street, Suite #2, Bryan, August 6, 1992, at 2 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9210332.

The Dawson County Central Appraisal District Board of Directors will meet at 920 North Dallas Avenue, Lamesa, August 5, 1992, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9210335.

The Education Service Center Region 10 Board of Directors will meet at the Prestonwood Country Club, 15909 Preston Road, Dallas, August 5, 1992, at 1:15 p.m.

Information may be obtained from Joe Farmer, 400 East Spring Valley, Richardson, Texas 75081, (214) 231-6301. TRD-9210334.

The Golden Crescent Private Industry Council, Inc. Quality Work Force Planning Committee will meet at the Ramada Inn, 3901 Houston Highway, Victoria, August 4, 1992, at 10:10 a.m. Information may be obtained from Carol Matula, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9210360.

The Jasper County Appraisal District Appraisal Review Board will meet at 137 North Main Street, Jasper, August 7, 11-12, 1992, at 9 a.m. Information may be obtained from David W. Luther, Jasper County Appraisal District, Jasper, Texas 75951, (409) 384-2544. TRD-9210331.

The Region III Education Service Center Board of Directors will meet at the Region III ESC, 1905 Leary Lane, Victoria, August 5, 1992, at 3:30 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9210361.

Meetings Filed July 30, 1992

The East Texas Council of Governments Executive Committee will meet at the ETCOG Office, Kilgore, August 6, 1992, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9210398

The Region 14 Quality Work Force Planning Committee will meet at the Center Plywood, Center, August 13, 1992, at 10:30 a.m. Information may be obtained from Richard Pulaski, P.O. Box 1768, Lufkin, Texas 75902, (512) 409-633-5371. TRD-9210397.

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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board Notice of Public Hearing-Ethanol

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act, §382.017(a); the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; §103.11(4) of the procedural rules of the Texas Air Control Board (TACB); and 40 Code of Federal Regulations 51.102 of the U.S. Environmental Protection Agency regulations concerning state implementation plans, TACB will conduct a public hearing to receive testimony concerning revisions to its rules.

The TACB proposes to amend §114.1, concerning maintenance and operations of air pollution control systems or devices used to control emissions from motor vehicles, to restrict aftermarket alternative fuel conversion equipment and configurations in regard to emissions and safety concerns and to enhance anti-tampering provisions. Also, TACB proposes to delete subsection (c) of §114.5, concerning exclusions and exceptions, to improve consistency of the section with §114.1.

Finally, TACB proposes to amend §114.11, concerning alternative fuel requirements for transit authorities, to add ethanol and ethanol/gasoline blends to the choices of alternative fuels.

A public hearing on the proposals will be held on September 10, 1992, at 10 a.m. in the Auditorium (Room 201S) of the TACB Central Office, Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted, however, a TACB staff member will be available to discuss the proposal and answer questions at 9:30 a.m., prior to the hearing.

Written comments not presented at the hearing may be submitted to TACB, 12124 Park 35 Circle, Austin, Texas 78753 through September 11, 1992. Material received by the Mobile Source Division by 4 p.m. on that date will be considered by the board prior to any final action on the proposed program. Copies of the proposed revisions are available at the central office of TACB, Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, and at all TACB regional offices. For further information contact Mr. Sam Wells at (512) 908-1516.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210346

Lane Hartscock
Deputy Director, Air Quality Planning
Texas Air Control Board

Filed: July 29, 1992

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Notice of Public Hearings- Inspection/Maintenance

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act, §382.017(a); the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; §103.11(4) of the procedural rules of the Texas Air Control Board (TACB); and 40 Code of Federal Regulations 51.102 of the U.S. Environmental Protection Agency (EPA) regulations concerning state implementation plans (SIPs), TACB will conduct public hearings to receive testimony concerning revisions to the SIP.

The TACB proposes to commit to an enhanced vehicle inspection/maintenance (I/M) program which is required in the El Paso nonattainment area and the Houston/Galveston nonattainment area. The program being proposed by TACB includes a separation of the inspection and repair functions. A contractor-operated program will inspect all 1968 and newer model year gasoline powered light-duty vehicles, light-duty trucks, and heavy-duty trucks. The Beaumont/Port Arthur and Dallas/Fort Worth nonattainment areas require a basic I/M program. The TACB proposes to commit to a program that will meet or exceed the I/M performance standards established by EPA. The proposal also includes a voluntary certification program for automotive repair technicians.

Public hearings on the proposal will be held at the following times and places: September 2, 1992, 1 p.m., City of Houston Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston; September 3, 1992, 1 p.m., John Gray Institute, 855 Florida Avenue, Beaumont; September 9, 1992, 3 p.m. City of El Paso, 10th Floor Conference Room, 2 Civic Center Plaza, El Paso; September 10, 1992, 2 p.m., City of Arlington Council Chambers, 101 West Abram Street, Arlington.

The hearings are structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted; however, a TACB staff member will be available to discuss the proposal and answer questions 30 minutes prior to each hearing.

Written comments not presented at the hearings may be submitted to the TACB, 12124 Park 35 Circle, Austin, Texas 78753 through September 11, 1992. Material received by the Mobile Source Division by 4 p.m. on that date will be considered by the board prior to any final action on the proposal. Copies of the proposal are available at the central office of the TACB, Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Tech-

nology Center, Building A, Austin, and at all TACB regional offices. For further information, contact Candy Garrett (512) 908-1489.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210348 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Filed: July 29, 1992

Notice of Public Hearing-NOX

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act, §382.017(a); the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; §103.11(4) of the procedural rules of the Texas Air Control Board (TACB); and 40 Code of Federal Regulations 51.102 of the U.S. Environmental Protection Agency (EPA) regulations concerning state implementation plans (SIPs), TACB will conduct a public hearing to receive testimony concerning revisions to the SIP.

The TACB proposes to commit to adopting changes to Regulation VII, concerning control of air pollution from nitrogen compounds, by April 30, 1993. The proposed changes will be developed in response to requirements by EPA and the 1990 Federal Clean Air Act amendments to apply reasonably available control technology requirements to major sources of nitrogen oxides in ozone nonattainment counties (Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties).

A public hearing on this proposal will be held September 2, 1992, at 2 p.m. in the Auditorium (Room 201S) of the TACB Central Office, Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted; however, a TACB staff member will be available to discuss the proposal and answer questions at 1:30 p.m., prior to the hearing.

Written comments not presented at the hearing may be submitted to TACB, 12124 Park 35 Circle, Austin, Texas 78753 through September 4, 1992. Material received by the Regulation Development Division by 4 p.m. on that date will be considered by the board prior to any final action on the proposed revisions. Copies of the proposal are available at the central office of the TACB, Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, and at all TACB regional offices. For further information, contact Randy Hamilton at (512) 908-1512.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210347

Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Filed: July 29, 1992

Notice of Public Hearings-Small Business Assistance

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act, §382.017(a); the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; §103.11(4) of the procedural rules of the Texas Air Control Board (TACB); and 40 Code of Federal Regulations 51.102 of the U.S. Environmental Protection Agency regulations concerning state implementation plans (SIPs), TACB will conduct public hearings to receive testimony concerning revisions to the SIP.

The TACB proposes to commit to establishing a Texas Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The new program is required by 42 United States Code, §7661f of the Federal Clean Air Act (FCAA) for the purpose of ensuring that small businesses have access to the technical and compliance information necessary to comply with applicable requirements of the FCAA.

Public hearings on the proposals will be held at the following times and locations: September 2, 1992, 10 a.m., TACB Central Office, Air Quality Planning Annex, 12118 North IH-35, Park 35 Technology Center, Building A, Room 201S, Austin; September 2, 1992, 7 p.m., City of Houston Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston; September 3, 1992, 10 a.m., John Gray Institute, 855 Florida Avenue, Beaumont; September 8, 1992, 6 p.m., City of Harlingen Town Hall, 118 East Tyler, Harlingen; September 9, 1992, 6 p.m., City of El Paso Council Chambers, 2 Civic Center Plaza, El Paso; September 10, 1992, 7 p.m., City of Arlington Council Chambers, 101 West Abram Street, Arlington.

The hearings are structured for the receipt or oral or written comments by interested persons. Interrogation or cross-examination is not permitted, however, a TACB staff member will be available to discuss the proposal and answer questions 30 minutes prior to each hearing.

Written comments not presented at the hearings may be submitted to Denise Simmons at the TACB, 12124 Park 35 Circle, Austin, Texas 78753 through September 11, 1992. Material received by the Small Business Assistance Program by 4 p.m. on that date will be considered by the board prior to any final action on the proposed program. Copies of the proposal are available at the central office of the TACB, Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, and at all TACB regional offices. For further information, contact Denise Simmons at (512) 908-1112.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210349 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Filed: July 29, 1992

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Notice of Public Hearing-TCM/VMT

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act, §382.017(a); the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; §103.11(4) of the procedural rules of the Texas Air Control Board (TACB); and 40 Code of Federal Regulations 51.102 of the U.S. Environmental Protection Agency regulations concerning state implementation plans (SIPs), TACB will conduct a public hearing to receive testimony concerning revisions to the SIP.

The TACB proposes to commit to the identification and adoption of specific enforceable transportation control strategies and transportation control measures (TCMs) to offset increased emissions which result from growth in vehicle miles traveled (VMT) or number of vehicle trips. The TACB plan is a commitment to the development and implementation of TCMs for the Houston/Galveston nonattainment area which satisfy the VMT offset requirements of the Federal Clean Air Act. Action will be taken to prevent an increase in emissions by application of specific and enforceable TCMs and strategies. Counties affected by the requirements include Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.

A public hearing on the proposal will be held on September 2, 1992, at 4 p. m. in the City of Houston Pollution Control Building Auditorium located at 7411 Park Place Boulevard, Houston. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted; however, a TACB staff member will be available to discuss the proposal and answer questions at 3:30 p.m. prior to the hearing.

Written comments not presented at the hearing may be submitted to TACB, 12124 Park 35 Circle, Austin, Texas 78753 through September 4, 1992. Material received by the Mobil Source Division by 4 p.m. on that date will be considered by the board prior to any final action on the proposal. Copies of the proposal are available at the central office of the TACB, Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, and at all TACB regional offices. For further information, contact Al Giles at (512) 908-1943.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210345 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Filed: July 29, 1992
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**Texas Committee on Purchases of
Products and Services of Blind and
Severely Disabled Persons**

List of Suitable Products

The purpose of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons is to further the state's policy of encouraging and assisting disabled citizens to achieve maximum personal independence. This purpose is carried out by employing disabled persons in activities which provide products and services to state and local governments. As required by Title 40, Texas Administrative Code, §189.14, the committee has published a list of suitable products selected by the committee for placement in a catalog. This listing contains information regarding the products, delivery schedules, freight, and packaging.

The listing is available for public inspection at the Texas Commission for the Blind, 4800 North Lamar Boulevard, Administrative Building, Suite 320, Austin (Attention: Michael T. Phillips) and at the General Services Commission, Central Services Building, 1711 San Jacinto, 3rd Floor, Austin (Attention: Ron Arnett).

Issued in Austin, Texas, on July 23, 1992.

TRD-9210237 Michael T. Phillips
Committee Member
Texas Committee on Purchases of
Products and Services of Blind and
Severely Disabled Persons

Filed: July 27, 1992
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Texas Bond Review Board

**Bi-Weekly Report on the 1992
Allocation on the State Ceiling on
Certain Private Activity Bonds**

The information that follows is a report of the allocation activity for the period on July 11, 1992-July 24, 1992.

Total amount of state ceiling remaining unreserved for the \$242,886,000 subceiling for qualified mortgage bonds under the Act as of July 24, 1992: \$60, 400.

Total amount of state ceiling remaining unreserved for the \$151,803,750 subceiling for state-voted issues under the Act as of July 24, 1992: \$51,803, 750.

Total amount of state ceiling remaining unreserved for the \$65,058,750 subceiling for qualified small issues under the Act as of July 24, 1992: \$54, 808,750.

Total amount of state ceiling remaining unreserved for the \$43,372,500 subceiling for residential rental project issues under the Act as of July 24, 1992: \$9,807,500.

total amount of state ceiling remaining unreserved for the \$364,329,000 subceiling for all other bonds requiring an allocation under the Act as of July 24, 1992: \$64,000.

Total amount of the \$867,450,000 state ceiling remaining unreserved as of July 24, 1992: \$120,672,900.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from July 11, 1992-July 24, 1992: None.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a certificate of allocation pursuant to the Act from July 11, 1992-July 24, 1992: None.

Following is a comprehensive listing of applications which were either withdrawn or cancelled pursuant to the Act from July 11, 1992-July 24, 1992: San Antonio HFC; Magi/Stonegate; residential rental; \$8,500,000.

Following is a comprehensive listing of applications which released a portion of their reserved amount pursuant to the Act from July 11, 1992-July 24, 1992: None.

Issued in Austin, Texas, on July 24, 1992.

TRD-9210292 Tom K. Pollard
Executive Director
Texas Bond Review Board

Filed: July 28, 1992



<u>City Name</u>	<u>City Code</u>	<u>New Rate</u>	<u>Combined Rate</u>
Bellmead	2161050	1 1/2%	8 1/4%
Ranger	2067028	1 1/2%	7 3/4%
Rusk	2037034	1 1/2%	8 1/4%
*South Padre Island	2031101	2%	8 1/4%

An additional 1/8% sales tax for property tax relief will become effective October 1, 1992, in the following cities: Levelland, City Code 2110016, New Rate 1 1/2%, Com-

<u>City Name</u>	<u>City Code</u>	<u>New Rate</u>	<u>Combined Rate</u>
* Carthage	2183018	1 1/2%	7 3/4%
El Campo	2241027	1 1/2%	8 1/4%
Longview (Gregg Co.)	2092018	1 1/2%	8 1/4%
Longview (Harrison Co.)	2092018	1 1/2%	7 3/4%

An additional 3/8% sales tax for property tax relief will become effective October 1, 1992, in: * Hillsboro, City Code 2109019, New Rate 1 1/2%, Combined Rate 8 1/4%.

Comptroller of Public Accounts Local Sales Tax Changes Effective October 1, 1992

The 1/0% city sales tax will become effective October 1, 1992, in the following two cities: Oak Leaf, 75154, City Code 2070158, Ellis County, Combined Rate 7 1/4%; Yantis, 75497, City Code 2250061, Wood County, Combined Rate 7 3/4%.

An additional 1/8% sales tax for improving and promoting economic and industrial development will become effective October 1, 1992, in the city of: * Hillsboro, City Code 2109019, New Rate 1 1/2%, Combined Rate 8 1/4%. * Carthage, City Code 2183018, New Rate 1 1/2%, Combined Rate 7 3/4%.

An additional 1/2% sales tax for improving and promoting economic and industrial development will become effective October 1, 1992, in the following cities:

bined Rate 7 3/4%; Snyder, City Code 2208019, New Rate 1 1/2%, Combined Rate 8 1/4%.

An additional 1/4% sales tax for property tax relief will become effective October 1, 1992, in the following cities:

An additional 1/2% sales tax for property tax relief will become effective October 1, 1992, in the following cities.

<u>City Name</u>	<u>City Code</u>	<u>New Rate</u>	<u>Combined Rate</u>
Brazoria	2020131	1 1/2%	8 1/4%
Bridge City	2181047	1 1/2%	8 1/4%
Brownsville	2031076	2%	8 1/4%
Canton	2234044	1 1/2%	7 3/4%
Conroe	2170022	1 1/2%	7 3/4%
Fort Gates	2050045	1 1/2%	8 1/4%
Gun Barrel City	2107057	1 1/2%	7 3/4%
Henderson	2201016	2%	8 1/4%
Hewitt	2161041	1 1/2%	8 1/4%
Lake Bridgeport	2249092	1 1/2%	8 1/4%
Memphis	2096014	1 1/2%	7 3/4%
Mesquite (Dallas Co.)	2057039	1 1/2%	7 3/4%
Oak Ridge North	2170102	1 1/2%	7 3/4%
Pampa	2090010	2%	8 1/4%
** Premont	2125037	1 1/2%	8 1/4%
Raymondville	2245014	2%	8 1/4%
* South Padre Island	2031101	2%	8 1/4%
Wellington	2044017	2%	8 1/4%

Two cities have voted to join the Fort Worth MTA, Transit Code 3220996. The 1/2% MTA sales tax will become effective October 1, 1992, in: Blue Mound,

Tarrant County, City Code 2220291, Combined Rate 7 3/4%; Richland Hills, Tarrant County, City Code 2220157, Combined Rate 7 3/4%.

A 1/2% county sales tax for property tax relief will become effective October 1, 1992, in the following counties.

<u>County Name</u>	<u>County Code</u>	<u>Rate</u>	<u>Combined Rate</u>	<u>Mail Code</u>
Delta	4060007	1/2%	SEE FOLLOWING	016
Jackson	4120005	1/2%	SEE FOLLOWING	004
Jim Wells	4125000	1/2%	SEE FOLLOWING	020

DELTA: The combined rate for the seven cities in Delta County without city sales tax will be 6 3/4%.

Cooper and Pecan Gap are currently collecting a 1.0% city sales tax within Delta County. Their combined rate will be 7 3/4%. Pecan Gap's combined rate in Fannin County will remain 7 3/4%.

The combined rate for the four cities in Jackson County without city sales tax will be 6 3/4%.

Ganado and La Ward are currently collecting a 1.0% city sales tax within Jackson County. Their combined rate will be 7 3/4%.

Edna is currently collecting a 1 1/2% city sales tax within Jackson County. Its combined rate will be 8 1/4%.

Jim Wells: The combined rate for the eight cities in Jim Wells County without city sales tax will be 6 3/4%.

San Diego is currently collecting a 1% city sales tax within Jim Wells County. The combined rate within Jim Wells County will be 7 3/4% and within Duval County its combined rate will remain 7 1/4%.

Premont is currently collecting a 1.0% city sales tax within Jim Wells County, but will begin collecting a 1 1/2% city sales tax on October 1, 1992. Its combined rate will then be 8 1/4%.

Alice and Orange Grove are currently collecting a 1 1/2% city sales tax within Jim Wells County. Their combined rate will be 8 1/4%.

* These cities have rate increases both for economic and industrial development and for property tax relief effective October 1, 1992. The combined rate includes both increases.

** This city is in Jim Wells County which adopted county tax also effective October 1, 1992. The combined rate includes both increases.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210305 Charles Johnstone
Senior Legal Counsel, General Law
Section
Comptroller of Public Accounts

Filed: July 28, 1992



Office of Consumer Credit Commissioner Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Article 1.04 as amended (Texas Civil Statutes, Articles 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	08/03/92-08/09/92	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	08/01/92-08/31/92	18.00%	18.00%

Issued in Austin, Texas, on July 27, 1992.

TRD-9210302 Al Endsley
Consumer Credit Commissioner

Filed: July 28, 1992



Texas Education Agency RFA #701-92-049

RFA #701-92-049: This request for applications is filed in accordance with the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77 and Public Law 101-645, as amended, Subtitle VII-B.

Eligible Applicants: The Texas Education Agency (TEA) is requesting applications (RFA #701-92-049) from school districts, cooperatives of school districts, and education service centers in Texas for the development of programs to provide comprehensive educational and services (beyond those provided in the general education program) to facilitate the enrollment, attendance, and school success of homeless children and youth.

Description: Applicants should describe plans to provide tutoring and other academic assistance (at least 50% of each grant award), and other related services (at least 35% of each grant award) that might improve the access of homeless children and youth to a free and appropriate public education. Project evaluations will include input from shelter personnel, homeless parents, and school personnel on the impact of the project on the enrollment, school attendance, and academic success of homeless students.

Dates of Project: The educational and related services for homeless children and youth project will begin no earlier than October 23, 1992, and will end no later than December 31, 1993.

Project Amount: Funding will be provided for an unspecified number of projects. The number of projects will be dependent upon the amounts for which applicants apply. Each project will receive funding at a level not to exceed \$200,000 per grant award. Second year funding at the same level will be available contingent upon the satisfac-

tory completion of the first year of the project and continued funding by the federal government. Approximately \$1.3 million in federal funds is available for this project. One hundred percent of project costs will be funded from federal funds.

Selection Criteria: Applications will be approved based upon the ability of each applicant to carry out all requirements contained in the request for application. TEA reserves the right to select from the highest-ranking applications those which will provide the most effective comprehensive educational services to homeless students.

Requesting the Application: To obtain a copy of the Request for Application (RFA 701-92-049), call (512) 463-9304 or write the Document Control Center, Texas Education Agency, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701-1494. Please refer to the RFA number in your request.

Further Information: For clarifying information about this request, Contact Barbara Wand, Division of Accelerated Instruction, Texas Education Agency, (512) 463-9694.

Deadline for Receipt of Applications: Applications may be delivered by mail or in person to the Texas Education Agency, Document Control Center, Room 6-108. The Document Control Center is open Monday-Friday, 8 a.m. to 5 p.m., excluding holidays. To be considered for funding, applications must be received no later than 5 p.m. on Wednesday, September 30, 1992.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210312 Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: July 28, 1992



RFA #701-92-045

RFA #701-92-045. The Texas Education Agency (TEA) is accepting applications for federal community-based organization programs under the Carl D. Perkins Vocational and Applied Technology Education Act of 1990 as amended. A copy of the complete request for applications may be obtained from the Texas Education Agency, Docu-

ment Control Center, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304. This request for applications is filed in accordance with Federal Public Law 101-392 and the Texas State Plan for Vocational and Applied Technology Education.

Eligible grant recipients for federal vocational and applied technology education funds are local education agencies in coordination with community-based organizations that have the capacity to provide services and activities. Local education agencies and community-based organizations that desire to conduct such programs shall prepare jointly an application. The community-based organization will be responsible for delivery of services in coordination with the local education agency. Special consideration in the delivery of services will be given to the needs of severely economically and educationally disadvantaged in-school and/or out-of-school youth ages 16-21 inclusive. Maximum funding for each project cannot exceed \$50,000.

Local education agencies, as eligible grant recipients, may apply directly to the TEA for funding so that community-based organizations may provide the following services and activities: outreach programs to facilitate the entrance of youth into a program of transitional services and subsequent entrance into vocational education, employment, or other education and training; transitional services such as attitudinal and motivational prevocational training programs; prevocational education preparation and basis skills development conducted in cooperation with business concerns; special prevocational preparation programs targeted to inner-city youth, non-English speaking youth, and the youth of other urban and rural areas having a high density of poverty who need special prevocational education programs; career intern programs; model programs for school dropouts; assessment of students' needs in relation to vocational education and jobs; and guidance and counseling to assist students with occupational choices and with the selection of a vocational education program.

The cost of each project will not exceed \$50,000.

The closing date of the application period is 5 p.m., August 31, 1992. Applications will be reviewed by TEA staff and external reviewers, as appropriate. Review criteria are included in the request for applications.

Issued in Austin, Texas, on July 27, 1992.

TRD-9210208 Criss Cloudt
Director for Policy Planning and Evaluation
Texas Education Agency

Filed: July 27, 1992

Texas Department of Health

Notice of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Urology Associates of San Antonio, P.A. (registrant-R02873) of San Antonio to cease and desist using any sources of radiation in their possession until all violations found during a recent inspection of their facility have been corrected. The bureau determined that the continued use of sources of radiation at this facility constitutes a threat to public health and safety. The registrant is further required to provide written evidence satisfactory to the bureau regarding the actions to correct the violations and the methods to prevent their recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on July 28, 1992.

TRD-9210276 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: July 28, 1992

Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Aaction Dental Company, Austin, R17014; John T. Greer, D.D.S., Midland, R04156; Dennis D. Shaver, D.C., Marble Falls, R16371; Craig H. Cromar, D.D.S., El Paso, R09114; Jeffrey C. Tanenbaum, D.P.M., P.C., Houston, R10639; G. William Tate, M.D., P.A., Channelview, R17836; Don Dixon, D.D.S., El Paso, R04133; David S. Turner, D.D.S., M.S., San Antonio, R10598; William M. Sullivan, D.D.S., Azle, R15553; Andrew H. Mager, D.C., Lubbock, R17921; Accetek, Richmond, R18593; Danforth Memorial Hospital, Texas City, Z00347.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on July 28, 1992.

TRD-9210277 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: July 28, 1992

Notice of Intent to Revoke a Radioactive Material License

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of

Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: Gulf and Western Oil Corporation, Giddings, L03972.

The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive material; order the licensee to divest himself of the radioactive material; and order the licensee to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material license will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on July 28, 1992.

TRD-9210275 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: July 28, 1992

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Houston-Galveston Area Council Consultant Proposal Request

This consultant proposal request is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The purpose of this project is to collect and analyze data on residential and employment travel patterns for the Cities of Humble, Katy, El Lago/Taylor Lake Village, and Missouri City. A copy of the detailed scope of work will be furnished upon request. Anyone wishing to submit a proposal must do so by 5 p. m., on August 27, at the address listed following.

The proposed professional services contract would involve extracting statistically significant survey samples, collecting the survey data, survey data coding and data entry, and selected survey data analysis. Funding for this project will be provided through a grant from the Federal Transit Administration.

The proposals will be evaluated on the following criteria: comprehension of project requirements and methodologies; qualifications of personnel assigned; demonstrated knowledge of the study area; and previous related work experience.

Further inquiries as to the scope of work should be directed to: Nancy Bentch, Senior Transportation Planner, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227.

Issued in Austin, Texas, on July 24, 1992.

TRD-9210351 Jack Steele
Executive Director
Houston-Galveston Area Council

Filed: July 29, 1992

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Texas Department of Insurance Company Licensing

The following applications have been filed with the Texas Department of Insurance and are under consideration:

1. Application for name change in Texas for RBH Direct Group, Inc., a foreign third party administrator. The home office is in Trevoose, Pennsylvania. The proposed new name is Aon Direct Group, Inc.
2. Application for Admission to do business in Texas for HCPP (assumed name for Health Care Pharmacy Providers, Inc.), a foreign third party administrator. The home office is in Wilmington, Delaware.
3. Application for name change in Texas for Dixie Insurance Company, a foreign fire insurance company. The home office is in Tampa, Florida. The proposed new name is Infinity Insurance Company.
4. Application for Admission to do business in Texas for Starmount Life Insurance Company, a foreign life insurance company. The home office is in Baton Rouge, Louisiana.
5. Application for name change in Texas for Western Reserve Life Assurance Co. of Ohio, a foreign life insurance company. The home office is in Columbus, Ohio. The proposed new name is Western Reserve Life Assurance Company.

Issued in Austin, Texas, on July 29, 1992.

TRD-9210344 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: July 29, 1992

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Texas Commission on Law Enforcement Officer Standards and Education

Correction of Error

The Texas Commission on Law Enforcement Officer Standards and Education proposed new §221.30, concerning the authority of the executive director to waive rules. The rule was published in the July 21, 1992, *Texas Register* (17 TexReg 5077).

Due to an error in the agency's submission, the following language in subsection (a) should be deleted from the proposed rule. "The commissioners delegate to the executive director the authority to waive the rules of the commission".... The subsection should read as follows.

"(a) The commissioners have determined that good cause exists to delegate to the executive director the authority to waive the rules of the commission in order to update existing courses, to add new courses and curriculum, to add new exams or to update existing state licensing or

certification exams, or other special projects as approved by the commissioners."

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Senate Interim Committee on Health and Human Services

Public Notice of Meeting

The Senate Interim Committee on Health and Human Services will hold its next work session in Austin on August 5, 1992, to further discuss and adopt committee recommendations pertaining to private psychiatric and substance abuse services. The committee also will receive staff briefings on other interim activities.

The work session will begin at 10 a.m. in Room 101 of the John H. Reagan Building at 105 West 15th Street. Visitor parking is available at 15th Street and Congress Avenue. Although the committee does not plan to take any testimony, the work session is an open meeting, and the public is encouraged and welcome to attend.

If you have any questions or need additional information, please feel free to call the committee office at (512) 463-0360.

Issued in Austin, Texas, on July 28, 1992.

TRD-9210219 Sandra Bernal-Malone
Committee Clerk
Senate Interim Committee on Health and
Human Services

Filed: July 27, 1992

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Teacher Retirement System Real Estate Consulting Agreement

This consultant contract information is filed in compliance with the notice requirement under Texas Civil Statutes, Article 6252-11c, §2(a)(6) and §6.

The Board of Trustees of the Teacher Retirement System of Texas (TRS) has determined that it is necessary for the performance of its fiduciary duties under the state constitution to use a private consultant to perform a real estate portfolio evaluation which describes changes to TRS' real estate portfolio occurring after June 30, 1991 through June 30, 1992; analyzes portfolio composition including diversification relative to appropriate standards; and analyzes the performance of the portfolio, including a comparison of results to appropriate industry indexes and to performance during the 12-month period immediately prior to this evaluation period, performance analysis of the major components of the portfolio, and advisor performance and portfolio performance from inception of the real estate portfolio through June 30, 1992.

On July 20, 1992, TRS executed a contract with Deloitte & Touche, Two Prudential Plaza, 180 North Stetson Avenue, Chicago, Illinois 60601 to provide the above services.

The agreed compensation set forth in the contract is \$45,000 plus reimbursement of all necessary travel expenses.

The contract beginning date is July 20, 1992, and the contract ending date is September 30, 1992, unless completed or terminated as otherwise provided in the contract.

The finished final report is due on or before September 3, 1992. The consultant shall make a presentation of its final report to the Investment Advisory Committee of TRS on or about September 10, 1992; and, upon request by TRS, consultant shall also make a presentation of its final report to the Board of Trustees and/or the Real Estate Committee of the Board on such dates as specified by TRS.

Issued in Austin, Texas, on July 20, 1992.

TRD-9210306 Wayne Blevins
Executive Secretary
Teacher Retirement System

Filed: July 28, 1992

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Texas Department of Transportation Consultant Proposal Request

As required by Texas Civil Statutes, Article 6252-11c, the following notice for request for proposals is filed.

Notice of Invitation. The Texas Department of Transportation (TxDOT) requests a proposal for the preparation of a business plan that will be used to guide the preparation of a multi-modal state transportation plan (STP), required by Texas Civil Statutes, Article 6663(f)(1) and (2). A similar plan is also required by the recent enactment of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), codified as Title 23, United States Code, §135. The STP must meet the requirements of both laws as a minimum.

Purpose of the Business Plan. The business plan is intended to guide the development of the STP. The business plan should identify the required elements of a STP, the process through which the plan should be developed, the financial and human resources required to develop the plan, and the timetable for preparation of the STP. TxDOT anticipates that the preparation of the STP will take place over a period of 2 1/2 years with substantial completion of the STP being obtained by January 1995 as required by federal guidelines. An interim report must be prepared and presented to the 73rd Texas Legislature at the end of its regular session in May 1993.

TxDOT anticipates that a significant part of the work required in the preparation of the STP will require TxDOT to contract for the qualified services of individuals or firms to assist the TxDOT. TxDOT will require that the preparation of the STP be divided into phases, with each phase clearly defined by the completion of a major part of the STP. Procurement of services for all or parts of subsequent phases of the STP will be accomplished by TxDOT in the manner required by applicable law.

Scope of Business Plan. The business plan should respond to the requirements of state and federal law for the STP by addressing the effort necessary to meet those requirements. TxDOT believes that in addition to any requirements of the state and federal law and subsequent administrative orders or regulations implementing the law, the STP should: address all modes of passenger and commodity transportation within and through the state, both public and private; identify the future socio-economic character of the State of Texas to be served by the transportation system plan; emphasize points of modal connectivity, the potential for modal substitution, and the impact of trade with Mexico; thoroughly analyze existing Texas transportation facilities and functions; forecast future Texas transportation activity; identify the applicability

of current state and federal legislation and funding sources to future transportation system needs; quantify social, economic, and environmental impacts of the future system plan; recommend a process for the coordination of urban and statewide planning; and recommend a process for preparing a supportive and coordinated set of 20-year facility development plans.

A conference will be held with prospective offerors on Tuesday, August 18, 1992, at 1:30 p.m. in the first floor conference room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin. Questions from offerors will be addressed at this time. Offerors are encouraged to submit questions in writing before the meeting to help ensure a prompt response from TxDOT. Questions initiated at the meeting may have to be answered after the meeting. A written response to each question will be furnished to all offerors who have requested an RFP.

Agency Contact. Additional information and copies of the complete request for proposals may be obtained by contacting Don Dial, P.E., Texas Department of Transportation, Division of Transportation Planning, P.O. Box 5051, Austin, Texas 78763, (512) 465-7466.

Response Date. To be considered, four sealed copies of a proposal must arrive at the Texas Department of Transportation, Division of Transportation Planning, P.O. Box 5051, Austin, Texas 78763, or be hand-delivered to Don Dial, P.E., Room 310, Building 1, 40th and Jackson Streets, Austin, in either case no later than 5 p.m. on September 21, 1992. Envelopes containing proposals should be marked "Business Plan for Statewide Transportation Plan: Attention: Don Dial, P.E."

Selection Criteria. Evaluation of the proposals will be conducted by the TxDOT multi-modal planning team. The planning team consists of the associate executive director for planning and policy, the directors of six headquarters divisions, and the district engineers of four TxDOT districts. Offerors may be asked to submit additional information or may be asked to give an oral presentation before the planning team.

Proposals will be rated based on a weighted score of 1-10 with the maximum score being 100. The criteria and weight follow: a demonstrated understanding of the state and federal STP requirements-2.0; thoroughness of the approach and amount of ingenuity brought into the planning process-2.0; reasonableness of fee for the business plan in relation to the proposed scope of the work-1.5; qualifications of the personnel responsible for the business plan-2.0; documented experience of the firm in preparing business plans, particularly those concerned with statewide transportation planning-2.5.

The planning team will make a recommendation to the TxDOT administration as to the best qualified offeror. Final selection will be made by the TxDOT administration. The business plan must be delivered 60 days from the notice to proceed.

Issued in Austin, Texas, on July 29, 1992.

TRD-9210342 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: July 29, 1992



Texas Water Commission Enforcement Orders

Pursuant to the Texas Water Code which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to BMC Inc. (SWR 32438) on July 23, 1992, assessing \$74,222 in administrative penalties. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Sharon Smith, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on July 27, 1992.

TRD-9210297 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: July 28, 1992



Pursuant to the Texas Water Code which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Elf Atochem North America, Inc. (SWR 30458) on July 23, 1992, assessing \$29,480 in administrative penalties with \$9,826.66 deferred and foregone pending compliance.

Information concerning any aspect of this order may be obtained by contacting Sally Jo Hahn, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on July 27, 1992.

TRD-9210298 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: July 28, 1992



Pursuant to the Texas Water Code which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Empak, Inc. (Permit WDW157; SWR 30567) on July 23, 1992, assessing \$136,400 in administrative penalties with \$11,200 deferred and foregone pending compliance.

Information concerning any aspect of this order may be obtained by contacting R. Kevin McLeod, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on July 27, 1992.

TRD-9210299 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: July 28, 1992

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Pursuant to the Texas Water Code which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Wilhelmus Kasbergen Dairy (Permit 03262) on July 23, 1992, assessing \$8,700 in administrative penalties with \$2,175 deferred and forgone pending compliance. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Jennifer Smith, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on July 27, 1992.

TRD-9210300 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: July 28, 1992

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to San Angelo City of (Permit 10641-03) on July 17, 1992, assessing \$115,000 in administrative penalties with \$75,000 deferred and waived pending compliance. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Margaret Ligarde, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on July 20, 1992.

TRD-9210228 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: July 27, 1992

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**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 July 20-July 24, 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.

Amber Refining, Inc.; a petroleum product storage and shipping terminal; the plant site is at the northwest corner of intersection of State Highway 183 and North Sylvania Avenue in the City of Fort Worth, Tarrant County; renewal; 00570.

City of Bowie; wastewater treatment facilities; the plant site is approximately 3/4 miles southwest of the intersection of State Highway 287 and F.M. Road 1125, approximately 1.8 miles south of the City of Bowie in Montague County; new; 10071-003.

Eldridge Road Municipal Utility District; The wastewater treatment facilities; are located approximately 0.8 mile east-southeast of the intersection of Eldridge Road and Belknap Road and north of the City of Sugarland in Fort Bend County; renewal; 12240-001.

Harris County Municipal Utility District Number 107; the wastewater treatment facilities are located immediately south of Buffalo Bayou, approximately 0.1 mile southeast of the intersection of State Highway 6 and Interstate Highway 10 in Harris County; renewal; 11619-001.

Jochem, Jongsma; a dairy; the dairy is approximately 2.1 miles west of the intersection of State Highway 11 and F.M. Road 852, approximately 0.1 mile south of the intersection of County Road 4200 and F.M. Road 852, in Wood County; new; 03431.

Ray Johnston; the dairy is approximately 2-1/2 miles northwest of Comanche, approximately 1-3/4 miles west of State Highway 36 on an unnamed county road in Comanche County; amendment; 03314.

City of Pearsall; the wastewater treatment facilities are located on Old Loma Vista Road, approximately 0.25 of a mile northeast of the intersection of F.M. Road 1581 and Interstate Highway 35 in Frio County; renewal; 10360-001.

Remington Municipal Utility District Number 1; the wastewater treatment facilities are located approximately 7,300 feet southeast of the intersection of U.S. Highway 290 and Barker Cypress Road; 3,000 feet southwest of Cypress Fairbanks High School in Harris County; renewal; 13327-001.

Stowaway Bay Property Owners Association; the wastewater treatment facilities are located approximately two miles south of the intersection of State Highway 190 and

F.M. Road 3186, on the west side of F.M. Road 3186 in Polk County; renewal; 11779-001.

Texas Department of Transportation; the Bolivar Ferry Comfort Station Wastewater Treatment Facilities are located adjacent to State Highway 87 at the south end of the Bolivar Peninsula at the embarking point of the Bolivar-Galveston Ferry in Galveston County; renewal; 11672-001.

Texas Industries, Inc.; the applicant proposes to operate a sand and gravel mining operation; the plant site is approximately 1.3 miles west of F.M. Road 157 on the north side of the Trinity River in Tarrant County; new; 03493.

Issued in Austin, Texas, on July 24, 1992

TRD-9210229

Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: July 27, 1992



1992 Publication Schedule for the Texas Register

Listed below are the deadline dates for the September-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.
52 Friday, July 10	Monday, July 6	Tuesday, July 7
Tuesday, July 14	Wednesday, July 8	Thursday, July 9
53 Friday, July 17	SECOND QUARTERLY INDEX	
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 Friday, January 1	Monday, December 28	Tuesday, December 29

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