

Texas Register

Volume 16, Number 10, February 8, 1991

Pages 689-799

In This Issue...

Governor

Appointments Made January 24, 1991

701-52nd Judicial District Court, Coryell County

701-Texas Board of Mental Health and Mental Retardation

701-Texas Parks and Wildlife Commission

Appointments Made January 28, 1991

701-Texas Board of Criminal Justice

701-Texas Department of Commerce

Appointments Made January 30, 1991

701-Third Court of Appeals

701-Texas Department of Commerce

701-Texas Board of Health

701-Texas Public Finance Authority

701-Texas Board of Mental Health and Mental Retardation

Emergency Sections

Credit Union Department

703-Chartering, Operations, Mergers, Liquidations

703-Texas Share Guaranty Credit Union

State Board of Insurance

704-Title Insurance

Proposed Sections

State Purchasing and General Services Commission

707-Central Purchasing Division

Texas Department of Agriculture

708-Herbicide Regulations

Credit Union Department

708-Chartering, Operations, Mergers, Liquidations

709-Texas Share Guaranty Credit Union

Public Utility Commission of Texas

709-Substantive Rules

Texas State Board of Examiners of Psychologists

710-Fees

State Board of Insurance

710-General Administration

711-Corporate and Financial Regulation

712-Insurance Premium Finance

713-State Fire Marshal

Texas Department of Human Services

714-Intermediate Care Facility for Mentally Retarded

CONTENTS CONTINUED INSIDE

Texas Register

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

Governor-Appointments, executive orders, and proclamations

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

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

Proposed Sections-sections proposed for adoption

Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings-notices of open meetings

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

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

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

In Order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 TexReg 3"

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

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Typographers
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Janice Rhea
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Circulation/Marketing
Cheryl Converse
Roberta Knight

TAC Editor
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TAC Typographer
Madeline Chrisner

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757-Child Protective Services

758-Memoranda of Understanding with Other State Agencies
Texas Department on Aging

759-Homemaker I Service Standards

763-Homemaker II/Home Health Aide Service Standards
Texas Employment Commission

767-Unemployment Insurance *Withdrawn Sections*
State Board of Insurance

769-General Administration

769-Trade Practices

Adopted Sections

Animal Health Commission

771-Interstate Shows and Fairs
State Preservation Board

771-Rules and Regulations of the Board
Texas State Board of Registration for
Professional Engineers

772-Practice and Procedure
Texas State Board of Pharmacy

773-Pharmacists
Texas State Board of Examiners of
Dietitians

773-Dietitians
Texas Workers' Compensation
Commission

774-Representation of Parties Before the Agency, Attorney's Fees
Texas Department of Human Services

776-Pharmacy Services
Texas Department on Aging

777-Memoranda of Understanding with Other State Agencies

777-Eldercare Policies of the Texas Department on Aging
State Department of Highways and
Public Transportation

778-Division of Motor Vehicles
Open Meetings

781-Texas Department of Agriculture

781-Texas Animal Health Commission

781-Bond Review Board

781-Texas Department of Commerce

781-Texas Department of Criminal Justice

781-Daughters of the Republic of Texas

782-Texas State board of Examiners of Dietitians

782-Advisory Commission on State Emergency Communications

782-Texas State Board of Registration for Professional Engineers

782-Governor's Office of Budget and Planning

782-Texas Department of Health

782-Texas Health and Human Services Coordinating Council

783-Texas Department of Human Services

783-State Board of Insurance

783-Texas Board of Irrigators

783-Texas Juvenile Probation Commission

783-Texas State Library and Archives Commission

784-Midwestern State University

784-Public Utility Commission of Texas

785-Texas Racing Commission

785-Railroad Commission of Texas

785-Texas Real Estate Commission

786-Texas Rehabilitation Commission

786-Texas Treasury Safekeeping Trust Company

786-On-Site Wastewater Treatment Research Council

786-Texas Water Commission

787-Texas Workers' Compensation Commission

787-Regional Meetings

In Addition

Texas Air Control Board

789-Notice of Contested Case Hearing Number 278

789-Notice of Hearing

790-Request for Proposal
Texas Commission on Alcohol and Drug Abuse

791-Internal Audit Service Request
Texas Department of Aviation

791-Consultant Contract Award

**Texas Committee on Purchases of
Products and Services of Blind and
Severely Disabled Persons**

791-Correction of Error

Capital Area Planning Council

792-Notice of Consultant Contract Award

Comptroller of Public Accounts

792-Correction of Error

Texas Education Agency

792-Notice of Contract Award

792-Request for Application

793-Request for Public Comment

Texas Department of Health

793-Intent to Revoke Certificates of Registration

794-Solid Waste Management Request for Proposals

Heart of Texas Council of Governments

794-Plan Announcement-Job Training

Texas High-Speed Rail Authority

795-Notice of Proceeding

Texas Department of Human Services

795-Notice of Award

796-Notice of Consultant Contract Award

796-Notice of Public Hearing

Texas Department of Public Safety

796-Consultant Contract Award

Public Utility Commission of Texas

796-Notice of Application

797-Notice of Proceeding for Approval of Extended Met-
ropolitan Exchange Service

**State Purchasing and General Services
Commission**

798-Request for Proposals

Texas Water Commission

798-Correction of Error

798-Public Notice

Texas Workers' Compensation

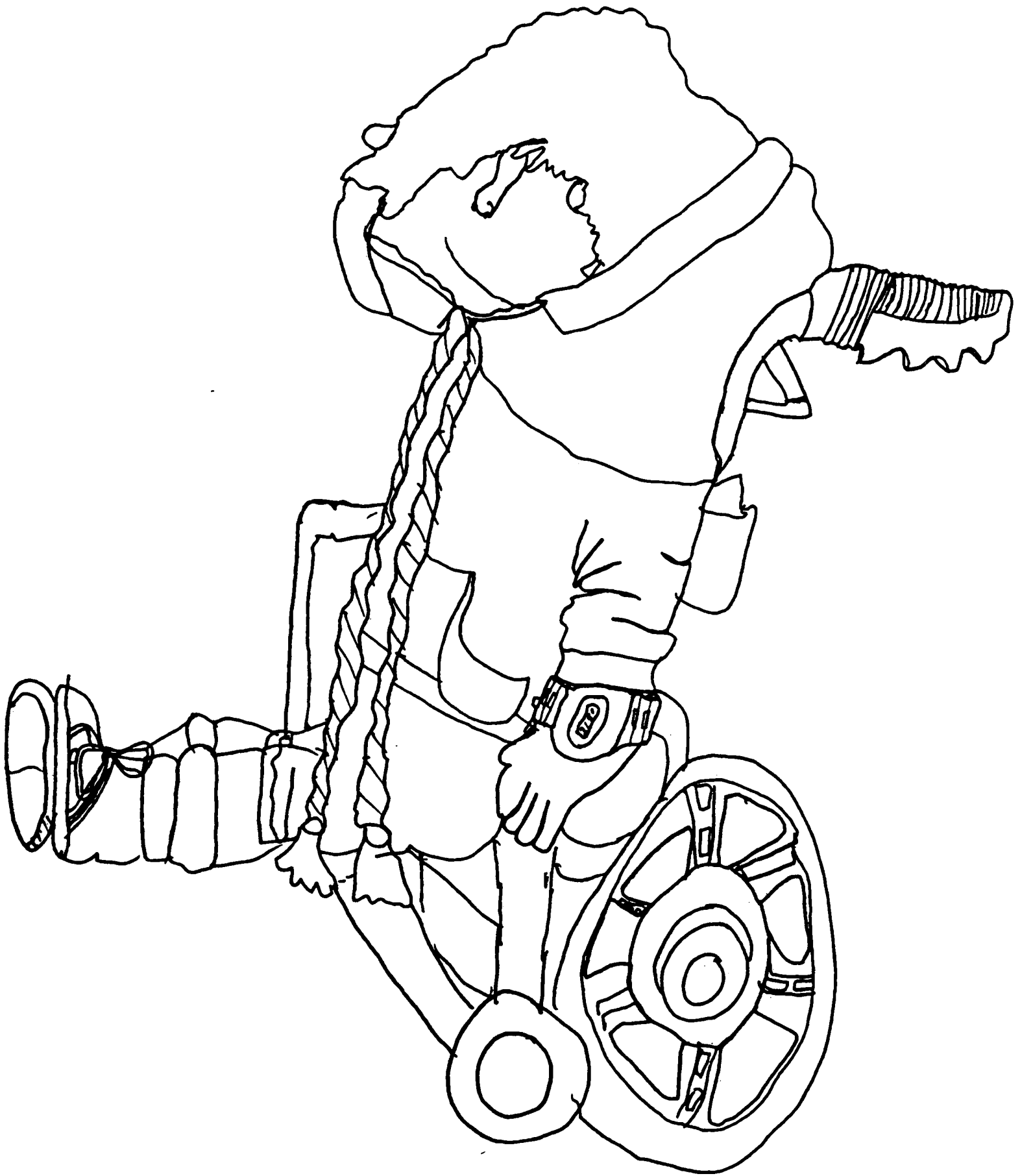
798-Correction of Error



Name: Joshua Rountree

Grade: 4

School: Northrich Elementary, Richardson ISD



Name: Stephanie Hardy

Grade: 4

School: Northrich Elementary, Richardson ISD



Name: Michael Dickerson
Grade: 4



Name: L.D. Smith

Grade: 4

School: Greenwood Hills Elementary, Richardson ISD

TAC Titles Affected

TAC Titles Affected—February

The following is a list of the administrative rules that have been published this month.

TITLE 1. ADMINISTRATION

Part V. State Purchasing and General Services Commission

1 TAC §113.13—707

1 TAC §113.73—707

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

4 TAC §11.2—708

Part II. Animal Health Commission

4 TAC §51.1—771

4 TAC §51.2—771

Part III. Texas Feed and Fertilizer Control Service

4 TAC §61.1—543

4 TAC §61.22—543

4 TAC §61.44—543

TITLE 7. BANKING AND SECURITIES

Part V. Office of Consumer Credit Commission

7 TAC §85.1—655

7 TAC §§85.1, 85.2, 85.4, 85.9, 85.12, 85.22, 85.30, 85.57, 85.58—655

Part VI. Credit Union Department

7 TAC §91.206—703, 708

7 TAC §95.3—703, 709

7 TAC §95.307—703, 709

Part VII. State Securities Board

7 TAC §109.3—669

7 TAC §109.5—629

7 TAC §113.13—670

7 TAC §115.2—670

7 TAC §115.3—670

7 TAC §117.1, §117.4—629

7 TAC §137.1—632.

7 TAC §139.4—671

TITLE 10. PRODUCT DEVELOPMENT

Part V. Texas Department of Commerce

10 TAC §§163.1-163.9—671

TITLE 13. CULTURAL RESOURCES

Part VII. State Preservation Board

13 TAC §111.19—771

13 TAC §111.23—772

13 TAC §111.24—772

13 TAC §111.25—772

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

16 TAC §3.54—632

16 TAC §5.152—537

16 TAC §5.227—653

Part II. Public Utility Commission of Texas

16 TAC §23.23—543

16 TAC §23.61—709

TITLE 19. EDUCATION

Part II. Texas Education Agency

19 TAC §§53.1-53.3—633

19 TAC §§53.21-53.25—633

19 TAC §§53.71-53.77—633

19 TAC §61.1, §61.2—634

19 TAC §61.21—545, 634

19 TAC §61.30, §61.31—546, 634

19 TAC §61.41—634

19 TAC §§61.61-61.65—634

19 TAC §61.71—635

19 TAC §61.81, §61.82—635

19 TAC §61.91, §61.92—635

19 TAC §§61.101, 61.102, 61.104—635

19 TAC §61.111, §61.112—635

19 TAC §61.121, §61.122—635

19 TAC §§61.141-61.146—636

19 TAC §§61.161-61.165, 61.167-61.170,
61.172-61.175—636

19 TAC §§61.191-61.193—636

19 TAC §61.211—636

19 TAC §61.231, §61.232—637

19 TAC §61.251—637

19 TAC §§61.271-61.273—637

19 TAC §§61.291-61.295—637

19 TAC §§65.1-65.3, 65.5—637

19 TAC §§69.11-69.16, 69.18-69.23—547

19 TAC §69.101—547

19 TAC §§69.121, 69.122, 69.124-69.127, 69.129—548

19 TAC §69.128—554

19 TAC §81.1, §81.2—638

19 TAC §§81.21-81.25—638

19 TAC §§81.41-81.43—638

19 TAC §§81.61-81.63—638

19 TAC §§81.71-81.73—639

19 TAC §81.81—639

19 TAC §§81.90-81.95—639

19 TAC §§81.101, 81.103-81.108, 81.110-81.137—639

19 TAC §§81.151-81.156, 81.158, 81.164—640

19 TAC §§81.171-81.179—640

19 TAC §§81.221-81.223—641

19 TAC §81.241—641

19 TAC §81.261—641

19 TAC §85.1—641

19 TAC §§85.21, §85.22—642

19 TAC §85.41—642

19 TAC §85.71—642

19 TAC §85.91—642

19 TAC §85.111—642

19 TAC §85.121—642

19 TAC §85.141—643

19 TAC §85.161—643

19 TAC §§85.171-85.173—643

19 TAC §§85.181-85.187—643

19 TAC §§85.212-85.219—643

19 TAC §85.232, §85.233—644

19 TAC §93.101—644

19 TAC §101.7, §101.8—554

19 TAC §141.443—555

19 TAC §149.25—555

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

22 TAC §3.123—556

22 TAC §§3.124-3.127—556

22 TAC §3.143, §3.146—556

Part V. Texas State Board of Dental Examiners

22 TAC §116.3—644

Part VI. State Board of Registration for Professional Engineers

22 TAC §131.92—772

22 TAC §131.133—773

Part XV. State Board of Pharmacy

22 TAC §295.1, §295.5—773

Part XXI. Texas State Board of Examiners of Psychologists

22 TAC §463.6—644

22 TAC §473.5—710

22 TAC §473.3—645

Part XXII. Texas State Board of Public Accountancy

22 TAC §505.10—645

22 TAC §519.14—646

Part XXXI. Texas State Board of Examiners of Dietitians

22 TAC §§711.1-711.15—773

TITLE 28. INSURANCE

Part I. State Board of Insurance

- 28 TAC §1.100—769
- 28 TAC §1.409—710
- 28 TAC §§5.6001-5.6003—541
- 28 TAC §5.6003, §5.6004—541
- 28 TAC §7.59—711
- 28 TAC §7.1009—712
- 28 TAC §9.11—704
- 28 TAC §21.105—556
- 28 TAC §21.113—557
- 28 TAC §§21.901-21.905—769
- 28 TAC §25.715—712
- 28 TAC §27.414—713
- 28 TAC §166.2—562
- 28 TAC §§166.100-166.109, 166.112, 166.113—562
- 28 TAC §166.110—541

Part II. Texas Workers' Compensation Commission

- 28 TAC §§134.800-134.802—671
- 28 TAC §§152.1-152.5—774
- 28 TAC §166.110—562
- 28 TAC §169.1, §169.2—646

TITLE 31. NATURAL RESOURCE AND CONSERVATION

Part II. Parks and Wildlife Department

- 31 TAC §§65.352, 65.354, 65.356-65.361, 65.364, 65.368—647

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

- 34 TAC §3.391—568
- 34 TAC §3.9—535

Part II. Texas State Treasury Department

- 34 TAC §§15.1-15.17—651
- 34 TAC §§15.3-15.17—651
- 34 TAC §16.1—

Part III. Teacher Retirement System of Texas

- 34 TAC §41.8, §41.9—651

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

- 37 TAC §§13.1-13.54—568
- 37 TAC §13.1, §13.2—568
- 37 TAC §§13.11-13.28—569
- 37 TAC §§13.41-13.47—569
- 37 TAC §§13.61-13.67—570
- 37 TAC §§13.71-13.88—574
- 37 TAC §§13.81-13.87—574
- 37 TAC §§13.101-13.113—575
- 37 TAC §§13.131-13.149—576

Part III. Texas Youth Commission

- 37 TAC §81.11—537

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

- 40 TAC §11.6002—537
- 40 TAC §15.460—577
- 40 TAC §19.101—577
- 40 TAC §§19.202-19.204, 19.206—577
- 40 TAC §19.220—579
- 40 TAC §19.301—579
- 40 TAC §19.601, §19.604—579
- 40 TAC §19.801, §19.810—581
- 40 TAC §19.1006, §19.1007—582
- 40 TAC §19.1106—582
- 40 TAC §19.1204, §19.1207—582
- 40 TAC §19.1306, §19.1308—582
- 40 TAC §19.1513—583
- 40 TAC §19.1607, §19.1608—583
- 40 TAC §19.1807—538, 583
- 40 TAC §§19.1903, 19.1910, 19.1912, 19.1917—584
- 40 TAC §19.2002, §19.2003—584
- 40 TAC §§27.101, 27.103, 27.105—716
- 40 TAC §§27.101-27.109—715

40 TAC §§27.201, 27.205, 27.207, 27.209, 27.211, 27.13,
27.115—716

40 TAC §27.301—720

40 TAC §§27.301, 27.303, 27.305, 27.307, 27.309—721

40 TAC §§27.401, 27.403, 27.405, 27.407, 27.409,
27.411, 27.413, 27.415, 27.417, 27.419, 27.421—721

40 TAC §§27.501, 27.503, 27.505, 27.507, 27.509,
27.511, 27.513, 27.515, 27.517, 27.519, 27.521, 27.523,
27.525, 27.527, 27.529, 27.531—735

40 TAC §§27.601, 27.603, 27.605, 27.607—740

40 TAC §§27.701, 27.703, 27.705, 27.707, 27.709,
27.711, 27.713, 27.715, 27.717—744

40 TAC §§27.801, 27.803, 27.805, 27.807, 27.809,
27.809, 27.811, 27.813, 27.815, 27.817, 27.819, 27.821,
27.823, 27.825, 27.827, 27.829, 27.831, 27.833, 27.835,
27.837, 27.839, 27.841, 27.843, 27.845, 27.847, 27.849,
27.851, 27.853, 27.855, 27.857, 27.859, 27.861, 27.863—
746

40 TAC §§27.1501, 27.1503, 27.1505, 27.1507, 27.1509,
27.1511, 27.1513, 27.1515, 27.1517, 27.1519, 27.1521,
27.1523, 27.1525, 27.1527, 27.1529, 27.1531, 27.1533,
27.1535, 27.1537, 27.1539, 27.1541, 27.1543, 27.1545,
27.1547, 27.1549, 27.1549, 27.1551, 27.1553, 27.1555,
27.1557, 27.1559, 27.1561, 27.1563—750

40 TAC §§27.1801-27.1805—751

40 TAC §§27.2301-27.2303—751

40 TAC §27.2403, §27.2405—751

40 TAC §§27.2501-27.2507—751

40 TAC §§27.2601-27.2604—752

40 TAC §§27.2701-27.2704—752

40 TAC §27.2801—752

40 TAC §§27.2901-27.2917—752

40 TAC §§27.3001-27.3011—752

40 TAC §§27.3101-27.3106—753

40 TAC §§27.3201-27.3221—753

40 TAC §§27.3301-27.3303—753

40 TAC §§27.3401-27.3406—754

40 TAC §27.3501, §27.3502—754

40 TAC §§27.3601-27.3609—754

40 TAC §§27.3701-27.3704—754

40 TAC §§27.3801-27.3804—754

40 TAC §§27.3901-27.3904—755

40 TAC §§27.4001-27.4003—755

40 TAC §27.4101, §27.4102—755

40 TAC §§27.4201-27.4203—755

40 TAC §27.4301, §27.4302—755

40 TAC §§27.4401-27.4403—755

40 TAC §§27.4501-27.4506—755

40 TAC §§27.4601-27.4608—756

40 TAC §§27.4701-27.4704—656

40 TAC §§27.4801-27.4804—756

40 TAC §27.9801—756

40 TAC §29.1104—538

40 TAC §35.201—776

40 TAC §48.2919— 585

40 TAC §48.3904—539

40 TAC §49.311—757

40 TAC §§49.501, 49.503, 49.515, 49.517—757

40 TAC §49.602—758

40 TAC §§56.901-56.905—652

40 TAC §§56.901-56.904—652

40 TAC §72.401—758

Part IX. Texas Department on Aging

40 TAC §251.11—777

40 TAC §251.12—777

40 TAC §294.1—777

40 TAC §§297.1, 297.3, 297.5, 297.7, 297.9, 297.11,
297.13, 297.15, 297.17—759

40 TAC §§298.1, 298.3, 298.5, 298.7, 298.9, 298.11,
298.13, 298.15, 298.17—763

Part X. Texas Employment Commission

40 TAC §301.9—767

TITLE 43. TRANSPORTATION

**Part I. State Department of Highways and Public
Transportation**

43 TAC §17.51—778

◆ ◆ ◆

The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in Chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Appointments Made January 24, 1991

To be Judge of the 52nd Judicial District Court, Coryell County, until the next General Election and until his successor shall be duly elected and qualified: Phillip H. Ziegler, 309 South 10th Street, Gatesville, Texas 76528. Mr. Ziegler will be replacing Judge Bob Cummings of Gatesville, who resigned to assume a seat on the 10th Court of Appeals.

To be a member of the Texas Board of Mental Health and Mental Retardation for a term to expire January 31, 1997: Virginia Eemisse, 710 South Hill, Alvin, Texas 77511. Mrs. Eemisse will be replacing Ralph Eads of Houston, whose term expired.

To be a member of the Texas Parks and Wildlife Commission for a term to expire February 1, 1997: Ygnacio D. Garza, 14 Thornhill Trail, Brownsville, Texas 78521. Mr. Garza will be replacing Robert L. Armstrong of Austin, who resigned.

To be a member of the Texas Parks and Wildlife Commission for a term to expire February 1, 1997: Thomas Walter Umphrey, P.O. Box 4905, Beaumont, Texas 77704. Mr. Umphrey will be replacing Antonio R. Sanchez, Jr. of Laredo, whose term expired.

To be a member of the Texas Parks and Wildlife Commission for a term to expire February 1, 1997: Terese Tarlton Hershey, 1 Longbow Lane, Houston, Texas 77024. Mrs. Hershey will be replacing Delo H. Caspary of Rockport, whose term expired.

Appointments Made January 28, 1991

To be a member of the Texas Board of Criminal Justice for a term to expire February 1, 1997: Joshua W. Allen, Sr., 4750 Chadwick, Beaumont, Texas 77706. Mr. Allen will be replacing Pete Diaz, Jr. of Rio Grande City, whose term expired.

To be a member of the Texas Board of Criminal Justice for a term to expire February 1, 1997: Ellen J. Halbert, 1407 Meadownear, Austin, Texas 78753. Mrs. Halbert will be replacing Robert Mann of Waco, whose term expired.

To be a member of the Texas Board of Criminal Justice for a term to expire February 1, 1997: Seldon B. Hale, III, 310 West 6th, Amarillo, Texas 79101. Mr. Hale will be replacing Richard Collins of Dallas, whose term expired.

To be a member of the Texas Department of Commerce Board of Directors for a term to expire February 1, 1997: Alan R. Kahn, 5008 Radbrook Place, Dallas, Texas 75220. Mr. Kahn will be replacing Robert F. McDermott of San Antonio, whose term expired.

Appointments Made January 30, 1991

To be Justice of the Third Court of Appeals until the next General Election and until her successor shall be duly elected and qualified: Bea Ann Smith, #18 Cromwell Hill, Austin, Texas 78703. Ms. Smith will be replacing Robert A. Gammage who was elected to the Supreme Court of Texas.

To be a member of the Texas Department of Commerce Board of Directors for a term to expire February 1, 1997: J. Jorge Verduzco, P.O. Drawer 1359, Laredo, Texas 78042. Mr. Verduzco will be replacing Dian Owen of Abilene, whose term expired.

To be a member of the Texas Board of Health for a term to expire February 1, 1997: Ron J. Anderson, M.D., 1022 Wind Ridge, Duncanville, Texas 75137. Dr. Anderson will be replacing Dr. Robert O. Robinson of Beaumont, whose term expired.

To be a member of the Texas Board of Health for a term to expire February 1, 1997: Dr. Susan B. Place, 6504 Elkhurst, Plano, Texas 75023. Dr. Place will be replacing Dr. Edward H. Zunker of Seguin, whose term expired.

To be a member of the Texas Public Finance Authority for a term to expire February 1, 1997: Marc R. Stanley, 7050 Orchid Lane, Dallas, Texas 75230. Mr. Stanley will be replacing Gerald Goff of Austin, whose term expired.

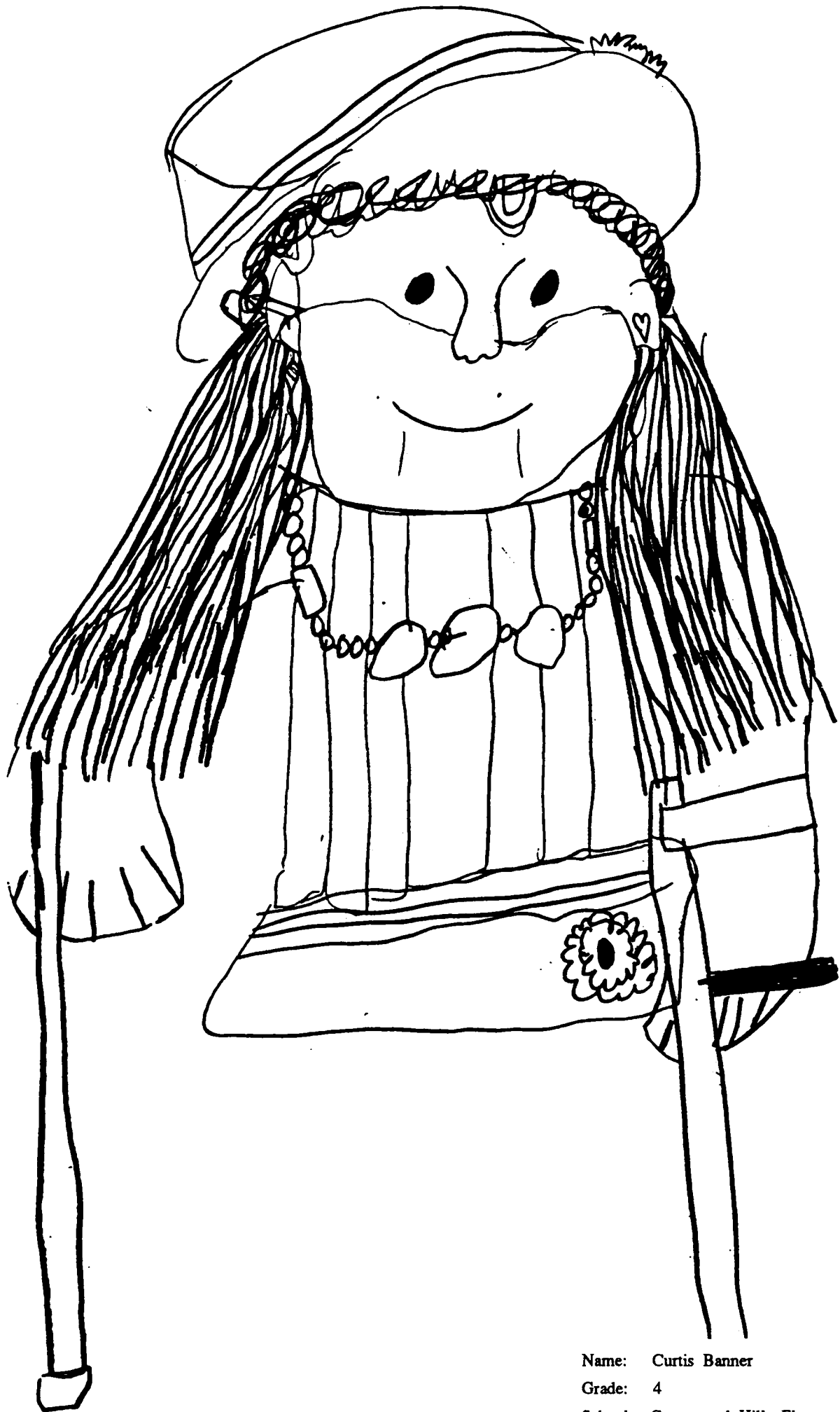
To be a member of the Texas Board of Mental Health and Mental Retardation for a term to expire January 31, 1997: Ann K. Utley, 6028 Connerly Drive, Dallas, Texas 75205. Mrs. Utley will be replacing Jack Taylor Dulworth of Houston, whose term expired.

Issued in Austin, Texas, on January 31, 1991.

TRD-0101252

Ann W. Richards
Governor of Texas





Name: Curtis Banner

Grade: 4

School: Greenwood Hills Elementary, Richardson ISD

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 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Organization Procedures

• 7 TAC §91.206

The Credit Union Commission adopts on an emergency basis an amendment to §91.206, concerning amendments to articles of incorporation and bylaws. The amendment is directly related to emergency rule §95.3 which requires federal share and deposit insurance for all credit unions through the national credit union share insurance fund. This amendment enables credit unions handling certain deferred compensation accounts to satisfy federal insurance requirements by providing immediate membership status to account holders who are not members of the credit union. The change is proposed on an emergency basis to enable an expeditious and orderly conversion of share and deposit insurance from a private plan to the federal system. Prompt action is necessary to preserve the public confidence in credit unions and assure that all members of state chartered credit unions will have their shares and deposits protected to the greatest extent possible. The commission finds that it is in the best interests of the public and that imminent peril to the public welfare requires that the commission adopt this rule on an emergency basis.

The amendment is adopted on an emergency basis under the Credit Union Act, §11.10(e), Texas Civil Statutes, Article 2461-11.10(e), which provides the Credit Union Commission with the authority to promulgate reasonable rules requiring credit unions to provide share and deposit insurance protection for their members and depositors.

§91.206. Amendments to Articles of Incorporation and Bylaws.

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

(c) The commissioner shall review the application to determine whether the expansion of the field of membership creates an overlap. The commissioner shall consider the extent and the effect of the overlap. The commissioner may require the applicant credit union to limit or eliminate the overlap in order to achieve the purposes of the Act and promote the welfare and

stability of the applicant and the existing state or federal credit unions. For an application to expand a field of membership, the commissioner shall require that notice be given by first class mail to each credit union identified in the application whose field of membership might overlap if the application is approved. The commissioner may require notice be given to any other credit union or credit unions which the commissioner deems appropriate to receive notice. The commissioner shall also publish notice of an application to expand a field of membership in the commissioner's newsletter once the application is complete. The commissioner shall allow at least 30 days after the date of the commissioner's newsletter in which the notice is published for any affected credit union or credit unions to respond to the application prior to taking final action approving or denying the application. This subsection shall not apply to applications for standard optional field of membership provisions (1), (2), and (3) as contained in the *Standard Bylaws for State Chartered Credit Unions* (revised July 14, 1986), standard optional provision (4) with any radius up to 10 miles, field of membership amendments to enable membership for persons having deferred compensation accounts with credit unions that seek and obtain federal deposit insurance during the period provided by amended §95.3 of this title (relating to Share Deposit Guaranty Requirements), or any application submitted to accomplish a supervisory merger or consolidation pursuant to the Act, §10.03(f), unless the application encompasses a field of membership not presently served by the credit unions that are being merged or consolidated.

(d)-(i) (No change.)

Issued in Austin, Texas, on January 31, 1991.

TRD-9101272

John R. Hale
Commissioner
Credit Union Department

Effective date: January 31, 1991

Expiration date: May 31, 1991

For further information, please call: (512) 837-9236

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Chapter 95. Texas Share Guaranty Credit Union

General

• 7 TAC §95.3

The Credit Union Commission adopts on an emergency basis the repeal of §95.3, concerning share and deposit guaranty requirements. The repeal is adopted so that a new section can be adopted to require federal share and deposit insurance for all credit unions through the national credit union share insurance fund. The repeal is adopted on an emergency basis to enable an expeditious and orderly conversion of insurance coverage. Prompt action is necessary to preserve the public confidence in credit unions and assure that all members of state chartered credit unions will have their shares and deposits protected to the greatest extent possible. The commission finds that it is in the best interests of the public and that imminent peril to the public welfare requires that the commission adopt this rule on an emergency basis.

The repeal is adopted on an emergency basis under the Credit Union Act, §11.10(e), Texas Civil Statutes, Article 2461-11.10(e), which provides the Credit Union Commission with the authority to promulgate reasonable rules requiring credit unions to provide share and deposit insurance protection for their members and depositors.

§95.3. Share and Deposit Guaranty Requirements.

Issued in Austin, Texas, on January 31, 1991.

TRD-9101310

John R. Hale
Commissioner
Credit Union Department

Effective date: January 31, 1991

Expiration date: May 31, 1991

For further information, please call: (512) 837-9236

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The Credit Union Commission adopts on an emergency basis new §95.3, concerning share and deposit guaranty requirements. The new section is adopted to require federal share and deposit insurance for all credit unions through the national credit union share insurance fund. The new section is adopted on an emergency basis to enable an expeditious and orderly conversion of insurance coverage. Prompt action is necessary to preserve the public confidence in credit unions and assure that all members of state chartered credit unions will have their shares and deposits protected to the greatest extent possible.

sible. The commission finds that it is in the best interests of the public and that imminent peril to the public welfare requires that the commission adopt this rule on an emergency basis.

The new section is adopted on an emergency basis under the Credit Union Act, §11.10(e), Texas Civil Statutes, Article 2461-11.10(e), which provides the Credit Union Commission with the authority to promulgate reasonable rules requiring credit unions to provide share and deposit insurance protection for their members and depositors.

§95.3. Share Deposit Guaranty Requirements. All credit unions in the State of Texas shall provide federal share and deposit insurance through a program of the National Credit Union Administration or any successor agency. Credit unions presently insured by the Texas Share Guaranty Credit Union shall apply for federal insurance with the National Credit Union Administration no later than March 1, 1991, and obtain federal share and deposit insurance by April 1, 1991. Any credit unions unable to qualify for federal insurance by June 30, 1991, may be granted additional time by the commissioner to qualify for federal insurance, but in no event shall such additional time extend beyond December 31, 1992.

Issued in Austin, Texas, on January 31, 1991.

TRD-9101275 John R. Hale
Commissioner
Credit Union Department

Effective date: January 31, 1991

Expiration date: May 31, 1991

For further information, please call: (512) 837-9236

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Finance and Accounts

• 7 TAC §95.307

The Credit Union Commission adopts on an emergency basis an amendment to §95.307, concerning voluntary termination. The amendment is adopted on an emergency basis to enable federal share and deposit insurance for all credit unions through the national credit union share insurance fund. The change is adopted on an emergency basis in conjunction with the change of §95.3 to enable an expeditious and orderly conversion of insurance coverage. Prompt action is necessary to preserve the public confidence in credit unions and assure that all members of state chartered credit unions will have their shares and deposits protected to the greatest extent possible. The commission finds that it is in the best interests of the public and that imminent peril to the public welfare requires that the commission adopt this rule on an emergency basis.

The amendment is adopted on an emergency basis under the Credit Union Act, §11.10(e), Texas Civil Statutes, Article 2461-11.10(e), which provides the Credit Union Commission with the authority to promulgate reasonable rules requiring credit unions to provide share and deposit insurance protection for their members and depositors.

§95.307. Voluntary Termination. A member credit union may, with the approval of the commissioner, voluntarily terminate its membership by majority vote of its board of directors and by giving [90 days'] written notice to the TSGCU and the commissioner. If the commissioner finds that share and deposit protection [comparable to that provided by the TSGCU] will be obtained by the member credit union from the national credit union share insurance fund [prior to the expiration of said 90-day period], and that there will be no lapse in such protection from the termination of membership in the TSGCU, he shall approve such voluntary termination of membership in the TSGCU. **Termination is immediate upon approval by the commissioner.** The member credit union shall provide to the commissioner such information and evidence as the commissioner may require for his determination. The commissioner may refuse to approve such termination if the member credit union fails or refuses to provide to the commissioner any information or evidence reasonably requested by him.

Issued in Austin, Texas, on January 31, 1991.

TRD-9101277 John R. Hale
Commissioner
Credit Union Department

Effective date: January 31, 1991

Expiration date: May 31, 1991

For further information, please call: (512) 837-9236

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TITLE 28. INSURANCE

Part I. State Board of Insurance

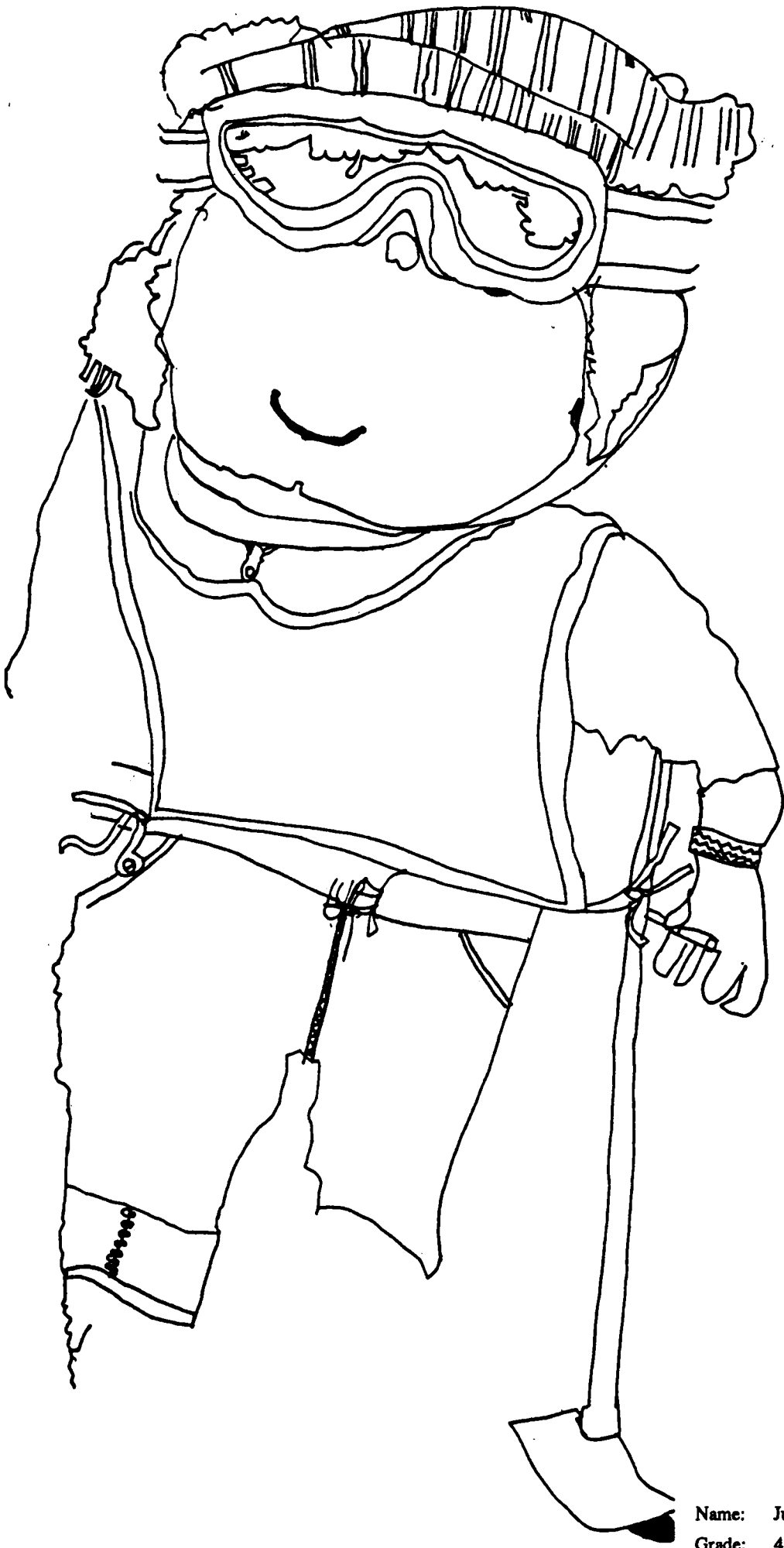
Chapter 9. Title Insurance

Subchapter A. Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas

• 28 TAC §9.11

The State Board of Insurance adopts on an emergency basis new §9.11, concerning the adoption by reference of certain amendments to the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas* (the manual). The new section is necessary to reflect amendments to the manual, which the section adopts by reference. The amendments to the manual are necessary to facilitate the administration of regulation of title insurance in this state by adopting new rules and forms and by modifying or replacing currently existing rules and forms. An imminent peril to the public welfare requires adoption of the new section on an emergency basis to avoid delay in the promulgation of revised insuring forms, rate rules, procedural rules, and administrative rules. The amendment to Rate Rule R-5, increasing the premium charge for a simulta-

neously issued owner or mortgagee policy from \$50 to \$100, as well as the amended Procedural Rule P-23 establishing the division of premium at 19% to title companies and 81% to title insurance agents, must be effective on February 1, 1991, to correlate the effective date with that of the revised title insurance premium rates promulgated by the board by Board Order Number 57690, dated January 16, 1991, which rates take effect on February 1, 1991. The new section would incorporate by reference certain amendments to the manual which the board considered as individual agenda items at a public hearing on December 10 and 11, 1990, during the annual hearing of the State Board of Insurance on rules concerning title insurance. The amendments to the manual would modify existing promulgated rate rules and would add or expand other rules and forms. Agenda Item 90-4 would amend Procedural Rule P-23 to include the experience of direct operations of a title insurance company with the experience of all affiliated and unaffiliated agents and to establish the division of premium as the same for all affiliated agents, unaffiliated agents, and direct operations. The amendment to Procedural Rule P-23 would further provide that, during 1991 and thereafter until changed by the board, the division of premiums shall be 19% to title insurance companies and 81% to title insurance agents, and would further provide that all assessment recoupment charges authorized and approved by the board shall be apportioned only to certain underwriters, pursuant to other orders and rules of the board, and not pursuant to Rule P-23. Agenda Item 90-5 would amend Rate Rule R-5 by increasing the premium charged for a simultaneously issued owner or mortgagee policy to \$100. Agenda Item 90-8 would amend §3 of the Facultative Reinsurance Agreement by adopting recent changes to the ALTA reinsurance agreement form. Agenda Item 90-9 would amend the certificate of title (USA) form, and would add a new Procedural Rule P-15 (replacing former P-15 which was withdrawn July 1, 1979). The new Procedural Rule P-15 would provide for a commitment for title insurance to or for the benefit of the Federal Deposit Insurance Corporation, Office of Thrift Supervision, or Resolution Trust Corporation, and would authorize a premium charge as provided in new Rate Rule R-25. New Rate Rule R-25 would provide a premium charge equal to the premium for a \$25,000 policy as set in the promulgated basic rate schedule. Agenda item 90-9 would also amend Rate Rule R-12 to provide that Rate Rule R-12 would not apply to any commitment for title insurance issued pursuant to Rate Rule R-23, R-25, or R-26. Agenda Item 90-10 would adopt new Endorsement Form T-39 as a balloon mortgage endorsement, would amend Procedural Rule P-9 by adding paragraph (10) authorizing a balloon mortgage endorsement, and would amend Rate Rule R-11 by adding new paragraph (h) authorizing a balloon mortgage endorsement premium of \$25 if issued at the time of the issuance of a mortgage policy, or \$50 if issued subsequent to the issuance of a mortgagee policy. Agenda Item 90-11 would amend Procedural Rule P-4 to require deletion of the entire restrictive covenants exception when an examination does not disclose applicable or enforceable restrictive covenants, or to cite specific recording reference when such restrictive covenants are disclosed. Agenda Item 90-11 would also amend



Name: Julie Ward

Grade: 4

School: Greenwood Hills Elementary, Richardson ISD

Proposed Sections

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

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

TITLE 1. ADMINISTRATION

Part V. State Purchasing and General Services Commission

Chapter 113. Central Purchasing Division

Purchasing

• 1 TAC §113.13

The State Purchasing and General Services Commission proposes amendments to §113.13 and §113.73, concerning the administration to bid lists for disposition of used school buses by school districts and surplus and salvage state property. The amendments are proposed to establish provisions for entry, removal and reinstatement to bid lists and to place an age restriction on sale of surplus handguns to conform to federal regulations on the sale of firearms.

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

Mr. Arnett, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is effective and efficient administration of a program for sale and disposition of surplus and salvage property. 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 Judith Porras, Acting General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the day of the publication of the proposed amendments in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 601b, §3.01, which provide the State Purchasing and General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Article 3.

§113.13. Purchases for School Districts. Texas Civil Statutes, Article 601b, §3.03 and the Texas Education Code, §§21.161-21.169, require all motor vehicles used for transporting school children, in-

cluding buses, bus chassis, and bus bodies, tires, and tubes, purchased for or by any school district participating in the foundation school program, to be purchased by and through the commission.

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

(3) The commission shall maintain a list of bidders who have indicated interest in bidding on used school buses. The bid list will be furnished to school districts that have received permission from the commission to dispose of a used school bus by competitive bidding. An individual or firm may be considered for the bidder's mailing list for used school buses by requesting an application from the commission, completing and returning the application to the commission.

(4) No individual or firm will be placed on the mailing list for information purposes or to receive bids at more than one address.

(5) An individual or firm may be deleted from the mailing list for failure to bid, failure to make payment, or failure to expeditiously remove a purchased bus from public property.

(6) Once a bidder has been removed from the bid list, he may not be reinstated except after presentation of a formal request for reinstatement to the director for purchasing which results in a favorable recommendation for reinstatement.

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

Issued in Austin, Texas, on January 30, 1991.

TRD-9101246

Judith Monaco Porras
Assistant General Counsel
State Purchasing and
General Services
Commission

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 463-3446

Surplus Property Sales

• 1 TAC §113.73

The amendment is proposed under Texas Civil Statutes, Article 601b, §3.01, which pro-

vide the State Purchasing and General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Article 3.

§113.73. Sale and Disposition of Surplus and Salvage Property.

(a)-(d) (No change.)

(e) Methods of disposing of surplus or salvage property. If no entity described in subsection (c) of this section desires to receive any property reported as surplus or salvage, the commission may dispose of the property by sealed bids or auction, or delegate to the state agency having possession of the property and the authority to sell the property on a competitive bid basis. The commission will maintain a mailing list of companies or individuals who have indicated a desire to bid on surplus or salvage property and have made application. Names may be deleted from the mailing list for: failure to bid, failure to make payment for or remove from state property in a timely manner, [on] items on which they were the successful bidder, or failure to renew the mailing list application. Once a bidder has been removed, he may not be reinstated to the bid list except after presentation of a formal request for reinstatement to the director for purchasing which results in a favorable recommendation for reinstatement. The commission or the agency shall assess and collect from the purchaser a 2.5% fee over and above the proceeds from the sale of the property to recover the costs associated with the sale of the property. The purchaser of a surplus firearm other than a shotgun or rifle, must not be less than 21 years of age.

(1)-(6) (No change.)

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

Issued in Austin, Texas, on January 30, 1991.

TRD-9101247

Judith Monaco Porras
Assistant General Counsel
State Purchasing and
General Services
Commission

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 463-3446

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 11. Herbicide Regulations

• 4 TAC §11.2

The Texas Department of Agriculture proposes an amendment to §11.2, concerning county special provisions under the Texas Herbicide Law. The amendment is made upon the request of the county commissioners courts for Dawson and Collingsworth Counties, and after public hearing as required by the Texas Agriculture Code, §75.018. The proposed amendment allows the use of 2,4-DB in Collingsworth County for weed control in peanut production, and adds special provisions for Dawson County.

Dale Burnett, director, Pesticide Enforcement Program, 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. Burnett, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be no measurable increased risk of economic loss and injury to susceptible crops from exposure to hormone type herbicides while benefiting producers who will be able to use certain herbicides as a weed control measure. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §75.018, which provides the Texas Department of Agriculture with the authority to promulgate rules, after notice and hearing, for the administration of the Texas Herbicide Law.

§11.2. County Special Provisions.

(a)-(ff) (No change.)

(gg) Collingsworth.

(1) (No change.)

(2) No hormone-type herbicides shall be applied to range or field crops between the dates of May 15 and October 15 of each year with the following exceptions. [, except for]

(A) Hormone-type herbicides may be applied in the Northeast part of the county with physical boundaries north of the Salt Fork of the Red River and east of U.S. Highway 83, [This area of the county may use hormone type herbicides] upon obtaining the required permit from the Texas Department of Agriculture.

(B) The ground application of 2,4-Dichlorophenoxy butyric acid (2,

4-DB) shall be allowed for weed control in peanut production between the dates of April 1 and October 1 of each year. A permit or permit fee is not required, however, the filing of a notice of intent to spray is required and should be filed with the Texas Department of Agriculture in accordance with the Texas Agriculture Code, §75.012.

(hh)-(kk) (No change.)

(ll) Dawson County.

(1) No permit is required for the application of regulated herbicides during the period from October 1 to April 15 of the following year, however, the filing of a notice of intent to spray is required and should be filed with the Texas Department of Agriculture. In addition, during this period:

(A) all Butyl Ester and/or other high volatile formulations of 2,4-D shall be prohibited; and

(B) only the less volatile Amlne formulations of 2,4-D and Dicamba shall be acceptable for use.

(2) No permit is required for the ground application of Dicamba herbicide at any time of the year; however a notice of intent to spray is to be filed with the Texas Department of Agriculture by all ground applicators if the herbicide is to be applied during the period from April 16 to September 30 of the same calendar year. All label precautions shall be observed and adhered to.

(3) The aerial application of Dicamba herbicide during the period from April 16 to September 30 of the same calendar year shall require a permit issued by the Texas Department of Agriculture, as currently required by the Texas Herbicide Law.

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

Issued in Austin, Texas, on January 31, 1991.

TRD-9101335
Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 463-7583

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TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Organization Procedures

• 91.206

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

The Credit Union Commission proposes an amendment to §91.206, concerning amendments to articles of incorporation and bylaws. The amendment is adopted on an emergency basis to provide membership status to individuals who have State of Texas deferred compensation accounts in state chartered credit unions and are not official members of those credit unions. This amendment will place them in the fields of membership of those credit unions; thereby, satisfying federal share and deposit insurance requirements.

John R. Hale, 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. Hale 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 as proposed will be that those individuals who have deferred compensation accounts in state chartered credit unions and are not official members of these credit unions will be given member status for the purpose of obtaining federal share and deposit insurance. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under Texas Civil Statutes, Article 2461-11.07 and 2461-11.10(e), which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

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

Issued in Austin, Texas, on January 31, 1991.

TRD-9101271
John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 836-9236

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Chapter 95. Texas Share Guaranty Credit Union

General

• 7 TAC §95.3

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

The Credit Union Commission proposes the repeal of §95.3, concerning provisions of share and deposit guaranty in the amount of not less than \$100,000 per account, and the authority for Texas Share Guaranty Credit Union (TSGCU) to operate and provide such guaranty for the members and depositors accounts in state chartered credit unions. TSGCU is currently transferring its member credit unions's guaranty to the federal government's insurance program for credit unions.

John R. Hale, 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. Hale, also has determined that for each year of the first five years the repeals is in effect the public benefit anticipated as a result of enforcing the repeal will be that all state chartered credit unions will be insured by the federal government's insurance program for credit unions; therefore, it is believed that the security offered by a guaranty plan supported by the federal government will exceed that of private insurance. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be negligible.

Comments on the proposal may be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

The repeal is proposed under Texas Civil Statutes, Article 2461-11.10(e), which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

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

Issued in Austin, Texas, on January 31, 1991.

TRD-9101274 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 837-9236

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

The Credit Union Commission proposes new §95.3, concerning share deposit guaranty requirements. The new section requires federal share and deposit insurance for all credit unions through the national credit union share insurance fund.

John R. Hale, 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. Hale 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 is in effect the public benefit anticipated as a result of enforcing the section will be to preserve the public confidence in credit unions and assure that all members of state chartered credit unions will have their shares and deposits protected to the greatest extent possible. There will be no effect on small businesses. The anticipated economic cost to credit unions which are required to comply with the section as proposed will be the same as the cost of having private insurance. Additional costs will be incurred as a result of application fee; and possibly an opportunity cost will result from having simultaneous investment deposits for a time with both the private and federal insurer. Such costs are indefinite but are not expected to be unduly burdensome to the affected credit unions.

Comments on the proposal will be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new section is proposed under the Credit Union Act, §11.10(e), Texas Civil Statutes, Article 2461-11.10(e), which provides the Credit Union Commission with the authority to promulgate reasonable rules requiring credit unions to provide share and deposit insurance protection for their members and depositors.

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

Issued in Austin, Texas, on January 31, 1991.

TRD-9101273 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 837-9236

Finance and Accounts

• 7 TAC §95.307

The Credit Union Commission proposes an amendment to §95.307, concerning voluntary termination. The amendment will require federal share and deposit insurance for all credit unions through the national credit union share insurance fund.

John R. Hale 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. Hale 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 preserve the public confidence in credit unions and assure that all members of state chartered credit unions will have their shares and deposits protected to the greatest extent possible. There will be no effect on small businesses. The anticipated economic cost to credit unions which are required to comply with the section as proposed will be the same as the cost of having private insurance. Additional costs will be incurred as a result of application fees; and possibly an opportunity cost will result from having simultaneous investment deposits for a time with both the private and federal insurer. Such costs are indefinite but are not expected to be unduly burdensome to the affected credit unions.

Comments on the proposal will be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under Texas Civil Statutes, Article 2461-11.07 and 2461-11.10(3), which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

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

Issued in Austin, Texas, on January 31, 1991.

TRD-9101276 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 837-9236

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Quality of Service

• 16 TAC §23.61

The Public Utility Commission of Texas proposes an amendment to §23.61, concerning telephone utilities. The amendment deletes subsection (m) in light of the permanent injunction entered in *US Sprint, et al v. Public Utility Commission, et al*, Cause Number 458,204 by the Travis County District Court on January 4, 1990. In that case, the court permanently enjoined the commission from enforcing subsection (m) on the grounds that subsection (m) was unreasonably discriminatory.

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

Mr. Morris 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 include nondiscriminatory treatment of interexchange carriers regarding the availability of WATS reseller credits. There will be no effect on small businesses as a result of enforcing the section. The anticipated economic cost to persons who are required to comply with the section to will be minimal.

Mr. Morris also has determined that for each year of the first five years the section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

Comments on the proposal (13 copies) may be submitted to Mary Ross McDonald, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.61. Telephone Utilities.

(a)-(l) (No change.)

(m) Reseller credits. No local exchange company shall grant or otherwise allow reseller credits to an interexchange carrier, including a specialized communication common carrier or a reseller of communications, unless the reselling interexchange carrier obtains its MTS, MTS-type, WATS, or WATS-type service from an interexchange carrier that paid originating carrier common line charges and interexchange carrier access charges on the traffic that is to be resold. To be eligible for reseller credits, an interexchange carrier that is a reseller of communications may not obtain its MTS, MTS-type, WATS, or WATS-type services from an affiliated company.

(1) In addition to any other restriction on reseller credits contained in this subsection, no local exchange company shall grant or otherwise allow reseller credits to a dominant carrier as that term is defined in Texas Civil Statutes, Article 1446c.

(2) An interexchange carrier that does not otherwise qualify to receive credits under this subsection may nonetheless receive reseller credits in any one month in an amount no greater than the largest amount of such monthly credits obtained by that interexchange carrier during calendar year 1988. This paragraph shall not apply to a local exchange company which has, subsequent to the adoption of this subsection, had a rate case in which the commission has ordered the manner in which reseller credits are to be allowed by that company.

(3) As used in this section, reseller credits shall include:

[(A) the provision of originating switched access at the PBX trunk rate to resell MTS, MTS-type, WATS, or WATS-type services;

[(B) the WATS prorate credit that permits resellers to receive credits against the payment of originating access charges to the extent those access charges were incurred to resell MTS, MTS-type, WATS, or WATS-type services; and

(C) the suppression of carrier common line and interexchange carrier access charges when a reseller uses trunk side Feature Group B and Feature Group D connections to resell only MTS, MTS-type, WATS, or WATS-type services.]

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

Issued in Austin, Texas, on January 31, 1991.

TRD-9101338 Mary Ross McDonald
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: March 11, 1991

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

TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 473. Fees

• 22 TAC §473.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §473.5, concerning miscellaneous fees, specifically the addition of a fee for Category V supervisees. Board §465.18 requires that psychologists register their supervisees with the board's office. Those supervisees in Category V are persons who are not applicants or certificands of the board. Additional administrative costs will have to be incurred to monitor the records of these persons within the agency.

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

Ms. Bizzell also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the monitoring of supervisees of licensed psychologists. The agency will be able to respond to public inquiry about these supervisees. There will be no effect on small businesses. There is no anticipated economic cost to persons who are

required to comply with the section as proposed will be \$250 per supervisee in Category V.

Comments on the proposal may be submitted to Patricia S. Bizzell, Executive Director, 9101 Burnet Road Suite 212, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provides the Texas State Board of Examiners of Psychologist with the authority to make all rules, not inconsistent with the Constitution and laws of this state, which are reasonable necessary for the proper performance of its duties and regulations of proceedings before it.

§473.5. Miscellaneous Fees (Not Refundable).

(a)-(e) (No change.)

(f) Category V Supervisee (see §465.18 of this title (relating to Supervision Guidelines))—\$250.

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

Issued in Austin, Texas, on January 31, 1991.

TRD-9101327 Patricia S. Bizzell
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 835-2036

TITLE 28. INSURANCE Part I. State Board of Insurance

Chapter 1. General Administration

Subchapter C. Maintenance Taxes

• 28 TAC §1.409

The State Board of Insurance proposes new §1.409, concerning assessment of maintenance taxes for payment during 1991. The new section was adopted on an emergency basis and became effective on December 28, 1990. Notice of the emergency adoption appeared in the January 8, 1991, issue of the *Texas Register* (16 TexReg 73). This new section is necessary to record rates of assessment for 1991 for maintenance taxes which the Insurance Code and the Texas Health Maintenance Organization Act require the board to determine annually on various types of insurance and related activities. Timely payment of the taxes is necessary to provide adequate support for the proper functioning of administrative regulation of insurance and related activities in Texas. The new section assesses and records rates of assessment for maintenance taxes for 1991 on the basis of gross premium receipts for calendar year 1990 or on some other statutorily

designated basis. The new section sets rates of assessment and applies those rates to life, accident, and health insurance; motor vehicle insurance; casualty and fidelity insurance and guaranty and surety bonds; fire and allied lines insurance, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and corporations issuing prepaid legal services contracts.

Ken Ramoin, director of accounting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no impact on local employment or local economy.

Mr. Ramoin also has determined that, for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the promulgation of a rate of assessment which will facilitate the proper collection of maintenance taxes to maintain the State Board of Insurance. The effect on small businesses as a result of enforcing the section will be payment of the tax at the rate specified. There is no difference in cost of compliance for large or small businesses based on cost per \$100 of sales. The anticipated economic cost to persons who are required to comply with the section as proposed will be payment of the tax at the rate specified. The amount of tax will depend on the type and amount of insurance written or business done.

Comments on the proposal may be submitted to Ken Ramoin, Director of Accounting, State Board of Insurance, Mail Code 009-2, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6, and 23.08; and the Texas Health Maintenance Organization Act, §33, which provide authorization for the State Board of Insurance to assess maintenance taxes for the lines of insurance and related activities specified in §1.409.

§1.409. Assessment of Maintenance Tax, 1991.

(a) The following rates for maintenance taxes are assessed on gross premiums of insurers as delineated in this section for the calendar year 1990 for the lines of insurance specified.

(1) For motor vehicle insurance, pursuant to the Insurance Code, Article 5.12, the rate is .091 of 1.0%.

(2) For casualty and fidelity insurance and guaranty and surety bonds, pursuant to the Insurance Code, Article 5.24, the rate is .297 of 1.0%.

(3) For fire insurance and allied lines, including inland marine, pursuant to the Insurance Code, Article 5.49, the rate is .711 of 1.0%.

(4) For workers' compensation insurance, pursuant to the Insurance Code, Article 5.68, the rate is .268 of 1.0%.

(5) For title insurance, pursuant to the Insurance Code, Article 9.46, the rate is .322 of 1.0%.

(b) The rate for the maintenance tax to be assessed on gross premiums for the calendar year 1990 for life, accident, and health insurance, pursuant to the Insurance Code, Article 4.17, is .040 of 1.0%.

(c) The following rates for maintenance taxes are assessed for the calendar year 1990 for the entities specified.

(1) For health maintenance organizations, pursuant to the Texas Health Maintenance Organization Act, §33, the rate is \$.60 per enrollee for single service health maintenance organizations and \$1.21 per enrollee for multi-service health maintenance organizations.

(2) For third party administrators, pursuant to the Insurance Code, Article 21.07-6, the rate is 1.000 of 1.0% of the correctly reported gross amount of administrative or service fees.

(3) For corporations issuing prepaid legal service contracts, pursuant to the Insurance Code, Article 23.08, the rate is 1.000 of 1.0% of correctly reported gross revenues.

(d) The taxes assessed under subsection (a) of this section shall be due and payable to the State Board of Insurance as follows: 50% on March 1, 1991, or on the date upon which the annual statement for such insurer is required to be filed during 1991; and 50% on September 15, 1991. This subsection shall not apply to those insurers whose maintenance tax liability for the previous tax year was less than \$2,000 on each of the lines of insurance specified in the Insurance Code, Articles 5.12, 5.24, 5.49, 5.68, and 9.46. Insurers not qualified to remit maintenance taxes on a semiannual basis shall remit 100% of such taxes on March 1, 1991, or on the date upon which the annual statement for such insurer is required to be filed during 1991.

(e) Taxes assessed under subsection (b) or (c) of this section shall be due and payable to the State Board of Insurance as follows: 50% on March 1, 1991, or the date upon which the annual statement for such insurer is required to be filed during 1991; and 50% on September 15, 1991.

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

Issued in Austin, Texas, on February 1, 1991.

TRD-9101347 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 463-6327



Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.59

The State Board of Insurance proposes new §7.59, concerning corporate and financial regulation. The new section concerns forms and instructions for the preparation and filing of tax returns by surplus lines agents for the 1990 calendar year. The new section was adopted on an emergency basis and became effective on December 11, 1990. Notice of the emergency adoption appeared in the December 18, 1990, issue of the *Texas Register* (15 TexReg 7361). This new section is necessary to provide forms and instructions which will facilitate compliance with statutory requirements for reporting and payment of taxes to the State Board of Insurance. The new section adopts by reference forms and instructions for the preparation of tax returns by surplus lines agents. Proposal of this section includes proposal for adoption by reference of forms and instructions. The Board has filed copies of these forms and instructions with the Secretary of State's Office, Texas Register Section. Persons desiring copies of the forms and instructions can obtain copies from the Tax Division of the State Board of Insurance, Three Republic Plaza, Room 284, 333 Guadalupe Street, Austin, Texas 78701; (512) 322-4233.

Phil Ballinger, director of tax administration, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section, and there will be no effect on local employment or local economy.

Mr. Ballinger 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 as proposed is the timely and more efficient collection of taxes due under the Insurance Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Phil Ballinger, Director of Tax Administration, Administrative Services Division, Mail Code 009-4, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 1.04 and Article 1.14-2. Article 1.04 provides the State Board of Insurance with the authority to determine rules in accordance with the laws of this state. Article 1.14-2 requires surplus lines agents to collect, report, and pay gross premium tax on premium collected by those agents on policies of insurance.

§7.59. Preparation of 1990 Tax Returns by Surplus Lines Agents. Forms and instructions for the preparation of tax returns by surplus lines agents for the 1990 calendar year are adopted by reference. These in-

structions and forms are published by the State Board of Insurance and may be obtained from the Tax Division of the State Board of Insurance, Three Republic Plaza, Room 284, 333 Guadalupe, Austin, Texas 78701, (512) 322-4233. The instructions and forms are more particularly identified as follows:

(1) a form identified as the 1990 surplus lines agents' semi-annual tax report of insurance placed with unauthorized insurers (Form SL-7); and

(2) a form identified as the instructions for filing the 1990 surplus lines agents' semi-annual tax report of insurance placed with unauthorized insurers (Form SL-7).

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

Issued in Austin, Texas, on February 1, 1991.

TRD-9101344

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 463-6327

Subchapter J. Examination Expenses and Assessments

• 28 TAC §7.1009

The State Board of Insurance proposes new §7.1009, concerning rates of assessments and charges to meet the expenses of examining insurance companies in 1991. The new section was adopted on an emergency basis and became effective on December 28, 1990. Notice of the emergency adoption appeared in the January 8, 1991, issue of the *Texas Register* (15 TexReg 77). This new section is necessary to provide rates of assessment and charges sufficient to meet the expenses of performing the board's statutory responsibilities for examining insurance companies. Under the new section, the board levies rates of assessment and collects from each domestic insurance company on the basis of admitted assets and gross premium receipts for the 1990 calendar year, and from each foreign insurance company under examination during the 1991 calendar year on the basis of a percentage of the gross salary the board paid to an examiner for each month or part of a month during the examination. The expenses and charges assessed under authority of this section are additional to and not in lieu of any other charge which may be made under law, including the Insurance Code, Article 1.16. The commissioner of insurance has certified the rates of assessment and charges set out in this section to be just and reasonable.

Ken Ramoin, director of accounting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no effect on local employment or local economy.

Mr. Ramoin 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 as proposed will be the adoption of a rate of assessment to meet the expenses of examination and of administering the laws relating to examinations. For the effect on small businesses, there is no anticipated cost of compliance with the section as proposed other than what is specified in this notification for all persons required to comply with this proposed section. There will be no difference between small and large businesses in rates of assessments or other costs of compliance except for the \$25 minimum charge specified in the proposed section. The anticipated economic cost to persons who are required to comply with the section as proposed is dependent on the amount of assessment against each company. In the case of domestic companies, this is dependent on rates as applied to the admitted assets and gross premium receipts in 1990. In the case of foreign insurers, it will depend on whether the company is examined by Texas examiners, on the gross salary of the examiners, and on the time necessary for the examination.

Comments on the proposal may be submitted to Ken Ramoin, Director of Accounting, State Board of Insurance, Mail Code 009-2, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 1.16, which authorizes and requires the State Board of Insurance to make assessments and charges to meet all expenses and disbursements required by law and necessary to comply with the provisions of the Insurance Code, Articles 1.16-1.18, relating to the examination of insurance companies.

§7.1009. Domestic and Foreign Insurance Company Examination Expenses and Assessments, 1991.

(a) Foreign insurance companies examined during the 1991 calendar year shall pay for examination expenses according to the overhead rate of assessment specified in this subsection in addition to all other payments required by law including, but not limited to, the Insurance Code, Article 1.16. Each foreign insurance company examined shall pay 34% of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay, state contributions to retirement and social security matching expenses, and the state-paid portion of insurance premiums and vacation and sick leave accrual. The overhead assessment will be levied with each month's billing.

(b) Domestic insurance companies shall pay according to this subsection and the rates of assessment herein for examination expenses as provided in the Insurance Code, Article 1.16.

(1) The actual salaries and expenses of the examiners allocable to such examination shall be paid. The annual salary of each examiner is to be divided by the

total number of working days in a year, and the company is to be assessed that part of the annual salary attributable to each working day the examiner is examining the company. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) An overhead charge to cover the cost of administrative departmental expenses attributable to examination of companies shall be paid and computed as follows:

(A) 0.00737 of 1.0% of the admitted assets of the company as of December 31, 1990; and

(B) 0.02082 of 1.0% of the gross premium receipts of the company for the year 1990.

(3) If the overhead charge, as computed under paragraph (2)(A) and (B) of this subsection, produces a overhead assessment of less than \$25, a minimum overhead assessment of \$25 shall be levied and collected.

(4) The overhead assessments are based on the admitted assets and premium receipts reported in the annual statements, except where there has been an understating of assets and/or premium receipts.

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

Issued in Austin, Texas, on February 1, 1991.

TRD-9101343

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 463-6327

Chapter 25. Insurance Premium Finance

Subchapter H. Annual Report, Examinations, and Assessments

• 28 TAC §25.715

The State Board of Insurance proposes new §25.715, concerning assessment of insurance premium finance companies in 1991. Section 25.715 was adopted on an emergency basis and became effective on December 28, 1990. Notice of the emergency adoption appeared in the January 8, 1991, issue of the *Texas Register* (16 TexReg 78). This new section is necessary to provide a rate of assessment sufficient to meet the expenses of performing the board's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under this new section the board

levies a rate of assessment for 1991 to cover general administrative expense and collects from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 1990 calendar year.

Ken Ramoin, director of accounting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no effect on local employment or local economy.

Mr. Ramoin also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the adoption of a rate of assessment to cover the general administrative expense attributable to the administrative regulation of insurance premium finance companies. The effect on small businesses will be the same as the anticipated economic cost to all persons who are required to comply with the section as proposed. Except that a minimum overhead assessment of \$150 shall be levied and collected, there is no difference in the rate of assessment between small and large businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be payment of the assessment at the rate specified.

Comments on the proposal may be submitted to Ken Ramoin, Director of Accounting, Mail Code 009-2, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 24.06(c) and Article 24.09. Article 24.06(c) provides that each insurance premium finance company licensed by the board shall pay an amount assessed by the board to cover the direct and indirect cost of examinations and investigations and a proportionate share of general expense attributable to regulations of insurance premium finance companies. Article 24.09 authorizes the State Board of Insurance to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium companies.

§25.715. General Administrative Expense Assessment, 1991. On or before April 1, 1991, each insurance premium finance company holding a license issued by the State Board of Insurance under the Insurance Code, Chapter 24, shall pay to the Texas State Board of Insurance overhead charge which the board shall assess to cover the general administrative expense attributable to the regulation of insurance premium finance companies. Payment shall be by check, which shall be filed with the report required by the Insurance Code, Article 24.10(b), at the offices of the State Board of Insurance at 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. The assessment to cover general administrative expense shall be computed and paid as follows.

(1) Payment shall be in the amount of 0.00920 of 1.0% of the total loan dollar volume of the company for the calendar year 1990.

(2) Should the overhead charge, as computed under paragraph (1) of this section, produce an overhead assessment of less than \$250, a minimum overhead assessment of \$250 shall be levied and collected.

(3) The overhead assessments are to be based on the total dollar volume which the insurance premium finance company has reported to the board, except where there has been an understating of total loan dollar volume.

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

Issued in Austin, Texas, on February 1, 1991.

TRD-9101346 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 463-6327

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Chapter 27. State Fire Marshal

Subchapter D. Storage and Sale of Fireworks

• 28 TAC §27.414

The State Board of Insurance proposes an amendment to 27.414, concerning license fees for firms and individuals engaged in the sale, distribution, and use of certain fireworks. The amendment was adopted on an emergency basis and became effective on January 11, 1991. Notice of the emergency adoption appeared in the January 18, 1991, issue of the *Texas Register* (16 TexReg 268). The amendment is necessary to increase fees because the current fees are generating revenue far less than the cost of administration and enforcement necessary for the licensing program. The amendment increases initial and renewal fees for all types of licenses and permits.

Ernest Emerson, state fire marshal, has determined that for the first five-year period the section is in effect there will be no fiscal implications for local government. There will be a fiscal implication for state government and for small businesses consisting of an increase in revenue to state government and a corresponding cost to small businesses in the amount of the fee increases, which are listed in subsections (c) and (f) of this section. On the basis of cost per hour of labor, there is no difference in the cost of compliance for small businesses and large businesses. There will be no effect on local employment or local economy.

Mr. Emerson 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 is that the cost of administration and enforcement of the fireworks licensing program will be borne by the fireworks industry. Other than the amount of the increased fees, there is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Ernest Emerson, State Fire Marshal, Mail Code 017-1, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendment is proposed under the Insurance Code, Article 1.04, which authorizes the State Board of Insurance to adopt rules in accordance with the laws of this state, and under the Insurance Code, Article 5.43-4, §5 and §16, which authorizes the board to adopt rules necessary for the protection, safety, and preservation of life and property in controlling the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state.

§27.414. Fees

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

(c) Fees shall be as follows:

(1) manufacturer license:

(A) initial fee \$1,000 [\$550];

(B) renewal fee (prior to expiration) \$1,000 [\$550];

(2) distributor license:

(A) initial fee \$1,500 [\$850];

(B) renewal fee (prior to expiration) \$1,500 [\$850];

(3) jobber license:

(A) initial fee \$1,000 [\$550];

(B) renewal fee (prior to expiration) \$1,000 [\$550];

(4) importer license:

(A) initial fee \$200 [\$150];

(B) renewal fee (prior to expiration) \$200 [\$150];

(5) pyrotechnic operator license:

(A) initial fee \$25 [\$15];

(B) renewal fee (prior to expiration) \$25 [\$10];

(6) public display license:

(A) initial fee \$400 [\$200];

(B) renewal fee (prior to expiration) \$400 [\$200];

(7) retail permit \$20 [\$10];

(8) Class B public display permit \$50 [\$25];

- (9) (No change.)
- (d)-(e) (No change.)
- (f) Late fees are as follows:

Expired 1 day to 90 days

	1 Renewal Fee	+	Late Fee (1/2 Initial Fee)	=	Total Fee
Manufacturer	\$1,000	[\$550.00]	\$500.00	[\$275.00]	\$1,500.00 [\$ 825.00]
Distributor	1,500	[850.00]	750.00	[425.00]	2,250.00 [1,275.00]
Jobber	1,000	[550.00]	500.00	[275.00]	1,500.00 [825.00]
Importer	200	[150.00]	100.00	[75.00]	300.00 [225.00]
Pyrotechnic Operator	25	[10.00]	12.50	[7.50]	37.50 [17.50]
Public Display License	400	[200.00]	200.00	[100.00]	600.00 [300.00]

Expired 91 days to 2 years

	1 Renewal Fee	+	(Late Fee)	=	Total Fee
Manufacturer	\$1,000	[\$550.00]	\$1,000.00	[\$550.00]	\$2,000.00 [\$1,100.00]
Distributor	1,500	[850.00]	1,500.00	[850.00]	3,000.00 [1,700.00]
Jobber	1,000	[550.00]	1,000.00	[550.00]	2,000.00 [1,100.00]
Importer	200	[150.00]	200.00	[150.00]	400.00 [300.00]
Pyrotechnic Operator	25	[10.00]	25.00	[15.00]	50.00 [25.00]
Public Display License	400	[200.00]	400.00	[200.00]	800.00 [400.00]

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

Issued in Austin, Texas, on February 1, 1991.

TRD-9101345 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 463-6327

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 27. Intermediate Care Facility for Mentally Retarded

Subchapter B. Criteria for ICF-MR Care

(Editor's note: Due to technical difficulties, the following chapter is being republished in its en-

tirety. This chapter was originally published in the January 29, 1991 issue of the Texas Register.)

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

The Texas Department of Human Services (DHS) proposes the repeal of §§27.101-27.109, 27.301, 27.1501, 27.1503, 27.1505, 27.1507, 27.1509, 27.1511, 27.1513, 27.1515, 27.1517, 27.1519, 27.1521, 27.1523, 27.1525, 27.1527, 27.1529, 27.1531, 27.1533, 27.1535, 27.1537, 27.1539, 27.1541, 27.1543, 27.1545, 27.1547, 27.1549, 27.1551, 27.1553, 27.1555, 27.1557, 27.1559, 27.1561, 27.1563, 27.1801-27.1805, 27.2301-27.2303, 27.2403, 27.2405, 27.2501-27.2507, 27.2601-27.2604, 27.2701-27.2704, 27.2801, 27.2901-27.2917, 27.3001-27.3011, 27.3101-27.3106, 27.3201-27.3221, 27.3301-27.3303, 27.3401-27.3406, 27.3501, 27.3502, 27.3601-27.3609, 27.3701-27.3704, 27.3801-27.3804, 27.3901-27.3904, 27.4001-27.4003, 27.4101, 27.4102, 27.4201-27.4203, 27.4301, 27.4302, 27.4401-27.4403, 27.4501-27.4506, 27.4601-27.4608, 27.4701-27.4704, 27.4801-27.4804, and 27.9801. DHS also proposes new §§27.101, 27.103, 27.105, 27.201, 27.205, 27.207, 27.209, 27.211,

27.213, 27.215, 27.217, 27.301, 27.303, 27.305, 27.307, 27.309, 27.401, 27.403, 27.405, 27.407, 27.409, 27.411, 27.413, 27.415, 27.417, 27.419, 27.421, 27.501, 27.503, 27.505, 27.507, 27.509, 27.511, 27.513, 27.515, 27.517, 27.519, 27.521, 27.523, 27.525, 27.527, 27.529, 27.531, 27.601, 27.603, 27.605, 27.607, 27.701, 27.703, 27.705, 27.707, 27.709, 27.711, 27.713, 27.715, 27.717, 27.801, 27.803, 27.805, 27.807, 27.809, 27.811, 27.813, 27.815, 27.817, 27.819, 27.821, 27.823, 27.825, 27.827, 27.829, 27.831, 27.833, 27.835, 27.837, 27.839, 27.841, 27.843, 27.845, 27.847, 27.849, 27.851, 27.853, 27.855, 27.857, 27.859, 27.861, and 27.863 concerning the Intermediate Care Facilities for the Mentally Retarded (ICF-MR) Standards for Participation.

The purpose for proposing repeals and new sections for the ICF-MR program is to:

eliminate current standards for provider participation in the ICF-MR program and to adopt new standards concerning Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded which were adopted June 3, 1988, in the *Federal Register* (Vol. 53, No. 107); and

develop a set of standards for provider participation in the ICF-MR program which simplifies program requirements, results in material which is suitable to a provider manual used by all interested parties, and ensures continued provision of quality services to eligible individuals.

The new chapter consists of eight subchapters that incorporate the following federal and state rules and regulations that DHS has determined are critical to service delivery:

The Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded, Part 483, Subpart D, §§483.400-483.480.

Joint Agency Policy Interpretations (JAPI's) for the state standards for participation in the ICF/MR program, as follows:

Out-patient services/23-hour observation, of August 18, 1986.

Integration of Educational Services and ICF/MR Services, of October 6, 1986.

Definition of "trust fund," "witness," and "recipient," of April 7, 1987.

Vendor Payments for ICF/MR Recipients Who Are Away from the Facility for Special Activities, of September 30, 1985.

Use of Individual Medication Containers by ICF/MR Residents Who Are Self-medicating, of March 27, 1984, as required by the Texas Department of Health.

The Texas Department of Health memorandum concerning the technique of venipuncture insertion of the nasogastric tube and gastrostomy tube by licensed vocational nurses, of July 15, 1983.

Current state standards for participation governing provisions required by ICF/MR facilities for contracting, vendor payments, reimbursement, client eligibility and review, trust funds, general service delivery, health care, and recordkeeping systems which were either not affected by the June 3, 1988, federal regulations or which DHS deems as necessary to retain.

Current state standards which exceed federal requirements but are necessary to ensure continued compliance with existing state regulations and continued delivery of quality services to individuals eligible for Medicaid assistance.

As appropriate, modifications to current state standards for participation, Joint Agency Policy Interpretations, and TDH policy were made to avoid duplication of the *Texas Minimum Licensing Standards for Facilities Serving the Mentally Retarded* and the June 3, 1988, ICF/MR federal regulations, and in some instances, to provide clarity to currently existing standards. Following is a brief summary of the contents of the new Chapter 27: Subchapter A, General Requirements.

Subchapter A includes current state standards concerning ICF/MR facility provisions and requirements from the Code of Federal Regulations. Additionally, included are the requirements for compliance with the June 3, 1988, ICF/MR federal regulations, which were adopted by reference in the *Texas Register* on October 13, 1989; and the requirement for compliance with standards that are additional to or more restrictive than the ICF/MR federal standards also adopted in the *Texas Register* on October 13, 1989. Subchapter B, Contracting Requirements.

The proposed standards for participation in this section are necessary to ensure continued compliance with state and local laws as well as other aspects of the ICF/MR program.

This section details currently existing provider responsibilities in the areas of contracting requirements, change of ownership, surety bonds or letters of credit, and sanction provisions for violations of Title XIX ICF/MR contractual agreements. This section additionally outlines provider responsibilities in the areas of participation requirements, disclosure of information, contract effective dates, and withdrawal from the ICF/MR program, and guidelines concerning appeal procedures, which although not new, have not previously been a part of the State Standards Manual. Subchapter C, Vendor Payments.

The proposed state standards in this subchapter are existing state standards which are necessary to inform the provider of the circumstances which must exist in order to be eligible for vendor payments, and address details of when vendor payments may be released for services performed. Also, included are proposed state standards regarding computation of daily reimbursement rates, supplementation of vendor payments and penalties for supplementation, and compliance audits. Subchapter D, Reimbursement Methodology.

The proposed state standards in this section present the existing standards used by DHS to determine reimbursement rates that are statewide and uniform by class of service. Areas included are cost reporting procedures, allowable and unallowable costs, cost finding methodology, rate setting methodology, and chart of accounts. Subchapter E, Eligibility and Review.

The proposed state standards in this section include the existing requirements for an assignment of a level-of-care (LOC) in the ICF/MR program to a client for program eligibility. The level-of-care criteria contain revisions to the previous criteria to incorporate current professionally accepted practices for evaluation of a client's adaptive behavior level, reference the applicable requirements of the 1985 Life Safety Code for individuals seeking a level-of-care, and incorporate the recently adopted level-of-care criteria for individuals with a related condition. Also, presented in this subchapter are existing standards concerning retroactive level-of-care determinations, discharge or transfer, utilization control, utilization review, inspection of care, continued-stay reviews, and payments for absences from the facility, which incorporates the Joint Agency Policy Interpretations of September 30, 1985, "Vendor Payments for ICF/MR Recipients Who Are Away from the Facility for Special Activities" and of August 18, 1986, "Out-patient Services/23-hour Observation." The section describing the preadmission and admission process incorporates the federal requirement concerning the need for a dietary evaluation. Subchapter F, Personal Finances and Funds.

The state standards in this subsection are the current state standards which detail the facility's responsibilities in the areas of clients' funds and finances to include expenditures of funds, protection of funds, and refunds. The Joint Agency Policy Interpretation, "Definition of 'Trust Fund,' 'Witness,' and 'Recipient'" dated April 7, 1987 is incorporated into this subchapter as well as guidelines prohibiting the expenditure of clients' personal funds for dental and other services and equipment that are now included in the Medicaid ICF/MR

benefit as a result of the new federal regulations. Subchapter G, Additional Facility Responsibilities.

The state standards presented in this subchapter detail additional facility/provider responsibilities. The subchapter includes current state standards, Joint Agency Policy Interpretations, TDH policy and two new standards concerning medical transportation and the provision of vocational, prevocational, and day program services as follows: a client's release from the ICF/MR (current); the provision of educational services (current); the provision of vocational, prevocational, and day program services (new); a requirement concerning a facility's rated capacity (current); client health and hygiene services (current); TDH policy concerning the technique of venipuncture (current); medical transportation (new); record retention requirements (current); and abuse and neglect reporting requirements (current). Subchapter H, Dental Program.

The state standards in this subchapter outline the state's reimbursement program for federally required dental services. The only change in this subchapter from the rules adopted in the *Texas Register* on October 13, 1989, is the renumbering of the subchapter and the sections.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed repeals and new sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals and new sections.

Mr. Raiford also has determined that for each year of the first five years the repeals and new sections are in effect the public benefit anticipated as a result of enforcing the repeals and new sections will be a smaller set of rules specific to the ICF-MR program in Texas. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals and new sections.

Questions about the content of this proposal may be directed to Trey Berndt at (512) 450-3169 in DHS's Institutional Care Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-550, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing to accept public comments at 9 a.m. on March 4, 1991, in the Public Hearing Room, east tower, first floor, in the John H. Winters Human Services Center, 701 East 51st Street, Austin.

• 40 TAC §§27.101-27.109

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.101. Purpose.

§27.102. Definitions for Level-of-care Criteria.

§27.103. Eligibility for Level-of-care Assignment.

§27.104. Level-of-care Determination.

§27.105. ICF-MR I Level-of-care Criteria.

§27.106. ICF-MR V Level-of-care Criteria.

§27.107. ICF-MR VI Level-of-care Criteria.

§27.108. Retroactive Level-of-care Determination.

§27.109. ICF-MR/RC VIII Level-of-care Criteria.

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100780 Nancy Murphy Agency liaison, Policy and Document Support Texas Department of Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

Subchapter A. General Requirements

• 40 TAC §§27.101, 27.103, 27.105

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.101. Service Qualifications for Intermediate Care Facilities for the Mentally Retarded (ICFs-MR). ICF-MR services consist of services in an institution for individuals with mental retardation or a related condition when:

(1) the primary purpose of the institution is to provide health and rehabilitative services for mentally retarded individuals or persons with related conditions, as defined in §27.503 of this title (relating to Definitions for Level-of-care Criteria);

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

(3) the Medicaid client for whom payment is requested is receiving active treatment as specified in 42 Code of Federal Regulations, §435.1009.

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

(a) The Texas Department of Human Services (DHS) adopts by reference

federal regulations governing conditions of participation for intermediate care facilities for the mentally retarded (ICFs/MR) as specified in Federal Register Document 88-12250, Volume 53, Number 107, Pages 20488-20505, which constitutes 42 Code of Federal Regulations (CFR), Part 483, Subpart D, §§483.400-483.480, as published in the June 3, 1988, issue of the Federal Register with a mandated effective date of October 3, 1988.

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

(c) In addition to complying with the requirements of this chapter, the facility must meet all applicable provisions of other United States Department of Health and Human Services regulations, including, but not limited to, those pertaining to nondiscrimination on the basis of race, color, or national origin in 45 CFR, Part 80, nondiscrimination on the basis of handicap in 45 CFR, Part 84, nondiscrimination on the basis of age in 45 CFR, Part 91, protection of human subjects of research in 45 CFR, Part 46, and fraud and abuse in 42 CFR, Part 455. Although these regulations are not considered federal conditions for participation in themselves, their violation may result in the termination or suspension of, or the refusal to grant or continue, federal financial assistance.

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

(1) exceed the level of room and board; and

(2) can be provided only by an institution.

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100811 Nancy Murphy Agency liaison, Policy and Document Support Texas Department of Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

Subchapter B. Contracting Requirements

• 40 TAC §§27.201, 27.205, 27.207, 27.209, 27.211, 27.213, 27.215, 27.217

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.201. Participation Requirements.

(a) To participate in the Title XIX Texas Medical Assistance Program and receive state and federal reimbursements for services to eligible individuals, intermediate care facilities for the mentally retarded (ICFs-MR) must satisfy the following conditions.

(1) the facility has filed an application with the ICF-MR section of the Texas Department of Mental Health and Mental Retardation (TDMHMR) to participate as an ICF-MR in the Title XIX Texas Medical Assistance Program, as specified in §27.203 of this title (relating to New Facility Applications);

(2) the Texas Department of Health (TDH) has furnished the Texas Department of Human Services (DHS) with a valid certification for the facility;

(3) the facility's owner or authorized representative has a written contract with DHS to provide services to eligible individuals;

(4) when applicable, the facility is currently licensed under TDH's minimum licensing standards for facilities serving the mentally retarded, as specified in 25 TAC §§145.211-145.218 and 145.231-145.244;

(5) the facility has specified in its application to TDMHMR the level of care the facility offers, as provided in §§27.509, 27.511, 27.513, and 27.515 of this title (relating to ICF-MR I Level-of-care Criteria, ICF-MR V Level-of-care Criteria, ICF-MR VI Level-of-care Criteria, and ICF-MR VIII Level-of-care Criteria).

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

(1) requesting payment of valid audit exceptions; and

(2) requiring contract compliance by a specified date.

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

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

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

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

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

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

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

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

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

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

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

§27.205. Disclosure of Information about the Provider.

(a) Each intermediate care facility for the mentally retarded (ICF-MR) must supply the Texas Department of Mental Health and Mental Retardation (TDMHMR) with information regarding the facility's status as a legal entity and its ownership, governance, management, and business transactions, as required in subsections (b)-(g) of this section. Failure to provide this information renders the provider ineligible to contract with the Texas Department of Human Services (DHS) to provide services, as specified in §69.261 of this title (relating to Application for Enrollment).

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

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

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

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

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

(5) the name of any and every director, officer, agent, or managing employee who has been convicted of a criminal offense related to his involvement in programs established or operated under Titles XVIII, XIX, or XX of the Social Security Act. DHS may refuse to enter into or may cancel any agreement with a provider that fails to disclose the information required in this paragraph, or that has a director, officer, agent, or managing employee who has been convicted of an offense specified in this paragraph, as provided in §69.261 of this title (relating to Application for Enrollment).

(c) If the provider is a profit-making corporation, the provider must supply TDMHMR with a copy of the following material:

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

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

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

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

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

(6) a copy of the certificate of good standing issued by the state comptroller's office.

(d) If the provider is a nonprofit corporation, the provider must supply TDMHMR with a copy of the following material:

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

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

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

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

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

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

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

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

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

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

(f) Within 35 days after the date of a written request from TDMHMR, providers must supply TDMHMR with complete information about the following business transactions and parties to business transactions:

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

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

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

§27.207. Duration of the Contract. The Texas Department of Human Services (DHS) enters only into time-limited contracts with intermediate care facilities for the mentally retarded (ICFs-MR). The term of DHS contracts with ICFs-MR cannot extend beyond one year. Five types of contract are permitted:

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

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

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

(4) a probationary contract of 30 days; and

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

§27.209. Initial Contract Effective Date.

(a) If the facility has met all the requirements for an initial certification by the Texas Department of Health (TDH), has satisfied all federal health and safety standards, and has met all requirements imposed by the Texas Department of Human Services (DHS), the effective date of the provider contract is the date on which TDH completes the on-site survey.

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

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

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

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

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

(1) Obligation of the seller, that is, the existing owner as specified on the contract with the Texas Department of Human Services (DHS). The seller must ensure that DHS receives written notification of a proposed change in ownership at least 10 days before the change occurs. Failure to provide this notification may, at DHS's option, result in the seller's liability for contract violations that occur from the date of the ownership change until DHS receives written notice and establishes an effective date on which DHS recognizes the ownership change. That effective date may be as many as 30 days after the date DHS receives the written notice of ownership change. The seller's vendor payments may be held, at DHS's option, when DHS receives information about a proposed or actual change in ownership. If satisfactory information is received that shows no change of ownership has occurred, the vendor hold will be released; otherwise, release of the vendor hold will be in accordance with §27.213 of this title (relating to Surety Bonds or Letters of Credit).

(2) Obligation of the purchaser. If a change in ownership occurs, DHS issues a new contract to the purchaser effective on the date of the ownership transfer.

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

(A) any plan of correction;

(B) an expiration date;

(C) compliance with applicable health and safety standards;

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

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

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

(G) any sanctions, as specified in §27.219 of this title (relating to Sanction Provisions for Violations of Title XIX ICF-MR Contractual Agreements), including deficiencies, vendor holds, compliance periods, notification for correction of contract violations, probationary contracts, and history of deficiencies.

§27.213. Surety Bonds or Letters of Credit.

(a) If an intermediate care facility for the mentally retarded (ICF-MR) undergoes a change in ownership or a voluntary or involuntary termination of contract, the Texas Department of Human Services (DHS) may withhold the selling or terminated facility's vendor payments until an audit is completed. Usually, the amount DHS withholds equals the facility's average monthly payment.

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

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

(2) the buyer's nontransferable written agreement that the buyer has agreed

to pay DHS for any liabilities that exist or may be found to exist during the period of the seller's contract with DHS; or

(3) written authority by the seller to withhold and retain funds normally due the seller from other Medicaid contracts the seller may have with DHS.

(c) A surety bond or an irrevocable letter of credit must be for a period of three years to cover the adjustments or exceptions resulting from an audit. The three-year period begins with the effective date of the facility's sale, as recognized by DHS according to the provisions of §27.211 of this title (relating to Change of Ownership). DHS specifies the amount of the surety bond or letter of credit. Usually the surety bond equals the average monthly vendor payments paid to the facility. Facilities terminating a contract for ICF-MR services are permitted to furnish a surety bond only if all required cost reports have been filed with DHS. If an acceptable surety bond or letter of credit is presented to DHS, DHS releases the vendor payments. Facilities must ensure that the bond or irrevocable letter of credit is in a format acceptable to DHS and that it does not include stipulations that, as a condition of receiving payment, DHS must:

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

(2) submit a sight draft or any other draft or demand requirement other than DHS's letter demanding payment.

§27.215. Termination of ICF-MR Participation. An intermediate care facility for the mentally retarded (ICF-MR) loses its status as a participating facility when one of the following events occurs:

(1) the facility voluntarily withdraws from the Title XIX Texas Medical Assistance Program. At least 60 days before the withdrawal date, the owner and administrator must give the Texas Department of Human Services (DHS) a written request to withdraw;

(2) the Texas Department of Health (TDH) does not recertify the facility for a new provider agreement;

(3) TDH decertifies the facility;

(4) the facility's license expires;

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

(6) DHS invokes the cancellation clause because the facility has not corrected deficiencies;

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

§27.217. Sanction Provisions for Violations of Title XIX ICF-MR Contractual Agreements.

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

(1) Direct or immediate adverse effect-A situation in which a significant, unfavorable risk or source of danger exists. Direct or immediate adverse effect does not include remote or minimal risk or effect.

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

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

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

(B) individuals who, after a temporary absence from the facility for a therapeutic visit or extended therapeutic visit as described in §27.519 of this title (relating to Payment for Absences from the Facility), are readmitted to beds reserved for them.

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

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

(A) does not offer a compliance period;

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

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

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

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

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

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

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

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

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

(C) When DHS cancels a facility's contract as specified in this paragraph, the department may enter into a probationary contract with the facility, as specified in §27.207(a)(4) of this title (relating to Duration of the Contract). DHS may enter into this contract only after TDH conducts an on-site, follow-up visit and notifies DHS that:

(i) all previously cited deficiencies have been corrected;

(ii) no other deficiencies have been found that pose immediate jeopardy to the facility's residents; and

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

(D) After the probationary contract period, DHS may enter into a nonprobationary contract as specified in §27.207(a)(1), (2), (3), or (5) of this title (relating to Duration of the Contract). DHS may enter into this contract only after TDH conducts an on-site, follow-up visit and notifies DHS that:

(i) no deficiencies have been found that pose immediate jeopardy to the facility's residents; and

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

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

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

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

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

(B) When DHS cancels a facility's contract as specified in this paragraph, the department may enter into a probationary contract with the facility, as specified in §27.207(a)(4) of this title (relating to Duration of the Contract). DHS may enter into this contract only after TDH conducts an on-site, follow-up visit and notifies DHS that:

(i) all previously cited deficiencies have been corrected;

(ii) no other deficiencies have been found that pose immediate jeopardy to the facility's residents; and

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

(C) After the probationary contract period, DHS may enter into a nonprobationary contract as specified in §27.207(a)(1), (2), (3), or (5) of this title (relating to Duration of the Contract). DHS may enter into this contract only after TDH conducts an on-site, follow-up visit and notifies DHS that:

(i) no deficiencies have been found that pose immediate jeopardy to the facility's residents; and

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

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

(1) TDH citations result in the following actions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) State statutes and Title XIX ICF-MR contracts secure providers' rights to appeal when DHS proposes to suspend their vendor payments or cancel their contracts. An aggrieved provider must send a written request for an appeals hearing within 15 calendar days after receiving a DHS letter that notifies the provider of a proposed adverse action. The facility must send the request for a hearing to the Associate Commissioner for Legal Services, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. Appeals hearings are held in Austin.

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

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

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Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
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For further information, please call: (512) 450-3765

Subchapter D. Federal Regulations

• 40 TAC §27.301

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

The repeal 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.

§27.301. Applicability of the Code of Federal Regulations.

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

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Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
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Subchapter C. Vendor Payments

- 40 TAC §§27.301, 27.303, 27.305, 27.307, 27.309

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.301. Eligibility Period for Vendor Payments.

(a) The Texas Department of Human Services (DHS) makes vendor payments only for periods of time in which all of the following conditions are met:

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

(2) the Texas Department of Health (TDH) has certified the facility for operation;

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

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

(b) TDH determines the effective date of eligibility for participation.

§27.303. Applied Income and the Daily Reimbursement Rate.

(a) DHS calculates the daily reimbursement rate for each Title XIX client by:

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

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

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

(b) DHS does not reimburse a facility for an individual's care unless the individual's LOC matches the LOC classification of the facility or of the distinct part of the facility in which the individual resides.

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

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

(e) If an individual does not have a payment plan, the facility contacts DHS to determine how much applied income the individual must pay. If DHS subsequently determines that the individual's correct payment amount is lower than initially specified, the facility must immediately return the amount overpaid and notify DHS of the refund.

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

§27.305. Special Provisions Regarding Reduced, Denied, and Incorrect Vendor Payments.

(a) If the Texas Department of Human Services (DHS) inadvertently makes vendor payments for services performed during a period in which a facility is not participating in the Title XIX Texas Medical Assistance Program, the facility must refund the inadvertent payments to DHS.

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

§27.307. Full Payment and Contributions.

(a) Participating providers must accept as payment in full the amounts paid under the Texas Department of Human Services (DHS) fee structure for ICF-MR services.

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

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

§27.309. Compliance Audits.

(a) The Texas Department of Human Services (DHS) periodically audits all

intermediate care facilities for the mentally retarded (ICFs-MR). DHS notifies each facility of the department's audit plans and gives each facility a report of its final audit findings. If the department discovers discrepancies in a facility's vendor payment records during an audit, the Nursing Home Billing Services Section of DHS's Provider Services Division works with the facility to reconcile the discrepancies. If the department's audit findings show that refunds are due to clients or their responsible parties, DHS regional staff help the facility to reconcile the findings. On receipt of an audit exception, the facility must provide additional documentation, reach a final agreement with DHS, make restitution within 60 days, or request a hearing within 10 days.

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

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

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

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Nancy Murphy
Agency Liaison, Policy and
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Texas Department of
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Subchapter D. Reimbursement Methodology

- 40 TAC §§27.401, 27.403, 27.405, 27.407, 27.409, 27.411, 27.413, 27.415, 27.417, 27.419, 27.421

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.401. General Reimbursement Information. The Texas Department of Human Services (DHS) reimburses Texas Medicaid contracted providers for care provided to recipients in intermediate care facilities for the mentally retarded (ICFs-MR) receiving ICF-MR I, ICF-MR V, ICF-MR VI, and ICF-MR/RC VIII levels of care. The Texas Board of Human Services determines reim-

bursement rates that are statewide and uniform by class of service as specified in §24.101 and §24.102 of this title (relating to General Specifications and Methodology).

(1) Uniform rates. Except for demonstration or pilot projects involving experimental classes as specified in §27.413(d) of this title (relating to Rate Setting Methodology), reimbursement rates are uniform statewide for the same class of service.

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

§27.403. Cost Reporting Procedures.

(a) Cost reports. Each provider must submit financial and statistical information on cost report forms provided by DHS or on facsimiles which are formatted according to DHS specifications and are preapproved by DHS staff.

(b) Accounting methods. Except for governmental entities operating on a cash basis, or where otherwise specified in §§27.407 and 27.409 of this title (relating to List of Allowable Costs and List of Unallowable Costs), all information submitted on cost reports must be based on the accrual method of accounting.

(c) Chart of accounts. Providers must complete cost reports according to DHS's prescribed chart of accounts.

(d) Recordkeeping requirements. Each provider must maintain records according to the requirements in Subchapter G of this chapter and §69.202 of this title (relating to Contractor's Records). Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and statistical information contained in the cost report.

(e) Noncompliance with recordkeeping and chart of accounts requirements. Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and other statistical information contained in the cost report. Failure to maintain records that support the information submitted on the cost report in a form which is in compliance with DHS's chart of accounts for long-term care providers constitutes grounds for contract cancellation and recovery of liquidated damages from the provider. In cases of noncompliance, DHS allows providers 90 days, subsequent to notification, to comply with DHS recordkeeping requirements. DHS may withhold all vendor payments to the provider during those 90 days or until the deficiency is corrected. If the provider does not correct the deficiencies within 90 days from the date of notification, DHS may cancel the provider's contract and recover liquidated damages from the provider, if any are specified in the contract.

(f) Allowable and unallowable costs. Providers must complete cost reports

according to DHS's statements of allowable and unallowable costs.

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

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

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

(2) no later than three months after the date that DHS mails the cost report to the provider.

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

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

(k) Failure to file an acceptable cost report. If a provider fails to file a cost report or files an unacceptable report and refuses to make necessary changes, DHS may withhold the provider's vendor payments until the deficiencies are corrected.

(l) Review of cost report. As specified in §24.201 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports) DHS staff review each cost report to ensure that the financial and statistical information submitted conforms to all applicable rules and instructions. Cost reports not completed according to DHS's instructions or rules are returned to the provider for proper completion.

(m) On-site cost report audits. DHS conducts on-site cost report audits as follows.

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

(2) On-site audit standards. DHS performs on-site cost report audits in a

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

(3) Access to records. Each provider or its designated agent(s) must allow access to any and all records necessary to verify information submitted to DHS on Medicaid cost reports. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider. If a provider does not allow inspection of pertinent records within 30 days following written notice from DHS, DHS withholds vendor payments until the provider allows access to the records. If a central office or other entity in a multifacility operation refuses access to pertinent records, DHS extends the vendor hold to all related parties that have Medicaid contracts with DHS. Additional rules regarding access to records that are out of state may be found in the Human Resources Code, Chapter 24.

(4) Reviews of cost report disallowances. A provider who disagrees with disallowances of items in a cost report may request an informal review and, when necessary, an administrative hearing as specified in §24.601 of this title (relating to Reviews and Administrative Hearings).

(n) Notification of exclusions and adjustments. DHS notifies providers of exclusions and adjustments to reported expenses made during the department's desk reviews and on-site audits of cost reports, as specified in §24.401 (relating to Notification).

§27.405. Allowable and Unallowable Costs.

(a) General information. DHS defines allowable and unallowable costs in order to identify expenses that are reasonable and necessary when an economical and efficient provider cares for Medicaid recipients. The primary objective of the cost reporting process is to determine fair and reasonable reimbursement rates. To achieve this objective, DHS compiles a rate base consisting, if possible, only of allowable cost information. When DHS classifies a particular type of expense as unallowable for purposes of compiling a rate base, the classification does not mean that individual providers must not make expenditures of this type. Allowable costs included in the rate base reflect only the costs and maximum reimbursement rates associated with an economical and efficient operator. DHS Medicaid-contracted providers must report costs in accordance with the generally accepted accounting principles (GAAP) of the American Institute of Certified Public Accountants. However, if particular DHS cost reporting requirements conflict with GAAP, with Internal Revenue Service require-

ments, or with other authorities, the DHS requirements take precedence for Medicaid provider cost reporting purposes.

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

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

(A) The word "reasonable" applies to the amount expended. The test of reasonableness is that the amount expended does not exceed the cost which would be incurred by a prudent business operator seeking to contain costs.

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

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

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

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

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

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

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

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

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

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

§27.407. List of Allowable Costs. The following list of allowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is not an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in §27.405 of this title (relating to Allowable and Unallowable Costs).

(1) Compensation of ICF-MR employees. This allowable cost includes compensation of only those employees who provide services directly to the client or staff of individual ICFs-MR in the normal conduct of operations relating to client care: qualified mental retardation professionals (QMRPs); director of nursing; registered nurses; licensed vocational nurses; trainers, aides, and other salaried direct care staff; medical clerks; food service supervisor; cooks and other food service personnel; laundry and housekeeping staff; recreational staff; social workers; administrator; assistant administrator; houseparents; accountants and bookkeepers; other clerical and secretarial staff; and buildings, equipment, and grounds maintenance staff. Compensation includes:

(A) wages and salaries;

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

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

(i) must represent a clearly enumerated liability of the employer to individual employees,

(ii) must not be incurred as a benefit to employees who do not provide services directly to the recipients or staff of individual facilities, and

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

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

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

(4) Management fees paid to unrelated parties.

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

(A) In multifacility organizations where the clear separation of costs to individual facilities is not always possible, the allowable portion of actual costs for materials, supplies, and services may be allocated to individual Texas facilities on a pro rata basis. Although the preferred allocation method for these costs is a resident-

day-of-service basis, providers who wish to use a pro rata cost basis may do so. Once a provider has chosen an allocation method, however, he must consistently use that method in subsequent cost reports.

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

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

(ii) The expense does not duplicate other expenses.

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

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

(C) Adequate documentation consists of all materials necessary to demonstrate the relationship of personnel, supplies, and services to the provision of client care. These materials may include, but are not limited to, accounting records, invoices, organizational charts, functional job descriptions, other written statements, and direct interviews with staff, as deemed necessary by DHS auditors to perform required tests of allowability. During the course of an audit, the facility must furnish any reasonable documentation requested by DHS auditors within 30 calendar days of the request. If the provider does not present the requested material within 30 days or during the course of the audit, whichever is longer, the audit is closed and DHS automatically disallows the costs in question.

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

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

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

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

(6) Utilization review committee. This includes professional fees.

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

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

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

(A) Depreciation and amortization expense. Property owned by the provider and improvements to owned, leased, or rented ICF-MR property that are valued at more than \$500 at the time of purchase must be depreciated or amortized, using the straight-line method. The minimum usable lives to be assigned to common classes of depreciable property are as follows:

(i) buildings: 30 years, with a minimum salvage value of 10%. Since rates are uniform by class of service, all buildings are uniformly depreciated on a 30-year-life basis regardless of the actual date of construction or purchase. In other words, allowable depreciation is calculated by deducting 10 percent from the allowable historical basis of the asset and dividing the remainder by 30. Exceptions to this rule are permissible when providers choose a useful-life basis in excess of 30 years;

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

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

(B) Provider-owned property. Property owned by the provider and improvements to property owned, leased, or rented by the provider that are valued at

less than \$500 at the time of purchase may be treated as ordinary expenses.

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

(D) Interest expense.

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

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

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

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

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

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

(E) Tax expense. This includes real and personal property taxes, motor vehicle registration fees, sales taxes, Texas corporate franchise taxes, and organization filing fees.

(F) Insurance expense. This includes facility fire and casualty, professional liability and malpractice, and transportation equipment insurance.

(10) Contract services by outside vendors. This includes daily direct care services, food service, laundry and linen service, housekeeping service, and professional services such as those of accountants and attorneys.

(11) Business and professional association dues. This cost is limited to associations devoted primarily to issues of client care.

(12) Outside training costs. These costs are limited to direct costs of transportation, meals, lodging, and registration fees for training personnel who render services directly to the clients or staff of individual facilities. To qualify as an allowable cost, the training must:

(A) take place in the continental United States; and

(B) be related directly and primarily to recipient care.

(13) Expenses for pre-vocational training. When these services are provided jointly to a variety of individuals in such a way that they may be classified as prevocational training or active treatment for some individuals and as vocational training for others, the allowable portion of the expenses is the portion that qualifies as active treatment. The allowable portion must be determined on a pro rata resident-day-of-service basis. It includes the cost of buildings, utilities, supplies, and staff utilized in the provision of such services.

§27.409. List of Unallowable Costs. The following list of unallowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in §27.405 of this title (relating to Allowable and Unallowable Costs):

- (1) vocational training expenses;
- (2) expenses for educational services;

(A) Educational services are unallowable if they are:

(i) provided in the buildings, rooms, or areas designated or used as a school or educational facility;

(ii) included in the individualized education plans (IEPs) of the individuals receiving them, or required by federal and state educational statutes and regulations; and

(iii) provided to students under 22 years of age.

(B) When the services are provided jointly to a variety of individuals and may be classified differently depending upon the characteristics of individuals, the allowable portion of the pertinent expenses must be determined on a pro rata resident-day-of-service basis as specified in §27.407(13) of this title (relating to List of Allowable Costs):

(3) compensation in the form of salaries, benefits, or any form of perquisite

provided to owners, partners, officers, directors, stockholders, employees, or others who do not provide client-care-related services directly to the clients or staff of individual facilities.

(4) personal expenses not directly related to the provision of client care in an ICF-MR;

(5) forms of compensation that are not clearly enumerated as to dollar amount or which represent profit distributions;

(6) management fees paid to a related organization that are not clearly derived from the actual costs of materials, supplies, or services provided directly to an individual facility;

(7) advertising expenses except for yellow pages advertising, advertising to recruit employees, and advertising to meet statutory or regulatory requirements;

(8) business expenses not directly related to the care of individuals in an ICF-MR. This includes business investment activities, stockholder and public relations activities, and farm and ranch operations;

(9) political contributions;

(10) depreciation and amortization of unallowable costs. This includes amounts in excess of those resulting from the straight-line method of depreciation, capitalized lease expenses in excess of actual lease payments, and goodwill or any excess above the actual value of physical assets at the time of purchase;

(11) trade discounts of all types;

(12) donated facilities, materials, supplies, and services;

(13) dues to all types of political and social organizations and to professional associations not directly and primarily concerned with client care;

(14) entertainment expenses except those incurred for entertainment provided to the staff of an ICF-MR as an employee benefit;

(15) expenses for medical services not provided to Medicaid clients;

(16) expenses incurred for services provided in an ICF-MR but not related to client care. This includes meals not provided to clients or to ICF-MR employees as part of an employment contract, nonmedical rentals, barber and beauty shop operations, canteens and gift shops, and vending machines;

(17) boards of directors fees;

(18) fines and penalties for violations of regulations, statutes, or ordinances of any type;

(19) fund raising and promotional expenses;

(20) expenses incurred in the purchase of goods and services with reve-

nues from gifts, donations, endowments, and trusts;

(21) interest expenses on loans pertaining to unallowable items and on that portion of interest paid which is reduced or offset by interest income;

(22) insurance premiums pertaining to items of unallowable cost;

(23) accrued expenses that are not legal obligations of the provider or are not clearly enumerated as to dollar amount. This includes any form of profit sharing and the accrued liabilities of deferred compensation plans;

(24) planning and evaluation expenses for the purchase of depreciable assets, except where purchases are actually made and the assets are put into service in the provision of client care;

(25) motor vehicles that are not generally suited or are not commonly used to transport clients or facility supplies. This includes motor homes and recreational vehicles; sports and luxury automobiles; motorcycles; heavy trucks, tractors, and equipment used in farming, ranching, and construction; and other activities unrelated to the provision of client care;

(26) values assigned to the services of unpaid workers and volunteers;

(27) returns, allowances, and refunds;

(28) costs of purchases from a related party which exceed the original cost to the related party;

(29) out-of-state travel expenses, except for provision of client-care-related services to ICF-MR personnel including training and quality assurance functions;

(30) contributions to self-insurance funds which do not represent payments based on current liabilities;

(31) any expense incurred because of imprudent business practices;

(32) expenses which cannot be adequately documented;

(33) any expense not allowable under other pertinent federal, state, or local laws and regulations;

(34) legal and other costs associated with litigation between a provider and state or federal agencies, unless the litigation is decided in the provider's favor;

(35) federal, state, and local income taxes, and all expenses related to preparing and filing income tax forms.

§27.411. Cost Finding Methodology.

(a) Exclusion of and adjustments to certain reported expenses. Providers must eliminate unallowable expenses from the cost report.

(1) DHS excludes from the rate base any unallowable expenses included in the cost report and makes adjustments to expenses reported by providers to ensure that the rate base reflects costs that:

(A) are reasonable and necessary for the provision of client care;

(B) represent economic and efficient use of resources; and

(C) are consistent with federal and state Medicaid regulations.

(2) When there is reasonable doubt about the accuracy or allowability of a significant part of the information reported, DHS may eliminate individual cost reports from the rate base. These adjustments include, but are not necessarily limited to, the following.

(A) Revenue offsets. DHS offsets against reported expenses certain types of nonoperating revenues, after reasonable allowances for overhead costs. Types of revenues offset against costs include: income from beauty and barber shop operations, prior year overpayments, vending machine proceeds, gift shop receipts, and payment for meals by employees and guests. Interest income is used to offset working capital interest expense, not to exceed total interest costs. An exception is interest income from funded depreciation accounts or qualified pension funds, which is not treated as a revenue offset item. For facilities reporting central office overhead expenses, interest income is offset against interest expenses before the allocation of central office costs to individual ICFs-MR.

(B) Fixed capital asset costs. DHS defines a historical base for fixed capital asset costs, which consists of allowable buildings depreciation, mortgage interest, and buildings rental and lease expense. The initial values constituting the starting point of the historical base are the allowable amounts of fixed capital asset costs as of July 18, 1984, as determined from pertinent cost report data. For newly constructed facilities contracted after July 18, 1984, and for others where historical cost information is not available from DHS records, fixed capital asset expenses are based on the historical cost to the first Medicaid provider of record after July 18, 1984. Annual increases in fixed capital asset costs to be included in the rate base are limited consistent with current Medicaid regulations, the Deficit Reduction Act of 1984, and the Consolidated Omnibus Reconciliation Act of 1985 in the following manner.

(i) Increases in building depreciation and rental or lease expense for buildings rented or leased from a related

party are allowed when facilities undergo changes in ownership, and are limited to the lesser of:

(I) the current expense reported by the provider; or

(II) the previous allowable expense from the historical base adjusted by a capital asset inflation index as specified in §24.301 of this title (relating to Determination of Inflation Indices).

(ii) If capital assets have undergone ownership changes since the previous reporting period, an increase in mortgage interest expense included in the rate base is limited to the lesser of:

(I) the actual mortgage interest expense incurred by the new owner of record during the current cost reporting period; or

(II) an amount based on allowable buildings depreciation and an appropriate index of interest rates pertaining to the year of sale. DHS determines an interest rate index appropriate for this purpose as specified in §24.301 of this title (relating to Determination of Inflation Indices).

(iii) Increases in rental or lease expense on buildings not rented or leased from related parties are limited to the lesser of:

(I) the current expense reported by the provider, or

(II) the allowable expense from the historical base adjusted by a capital asset inflation index as specified in §24.301 of this title (relating to Determination of Inflation Indices).

(C) Limits on other facility and administration costs. To ensure that the results of DHS's cost analyses accurately reflect the costs that an economic and efficient provider must incur, DHS may place upper limits or caps on expenses for specific line items and categories of line items included in the rate base for the administration and facility cost centers. DHS sets upper limits at the 90th percentile in the array of all costs per unit of service or total annualized cost, as appropriate, for a specific line item or category of line item, as reported by all contracted facilities, unless otherwise specified. The specific line items and categories of line items that are subject to the 90th percentile cap are:

(i) total buildings and equipment rental or lease expense;

(ii) total other rental or lease expense for transportation, departmental, and other equipment;

(iii) building depreciation;

(iv) building equipment depreciation;

(v) departmental equipment depreciation;

(vi) leasehold improvement amortization;

(vii) other amortization;

(viii) total interest expense;

(ix) total insurance for buildings and equipment;

(x) facility-administrator salary, wages, and/or benefits, with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xi) assistant administrator salary, wages, and/or benefits, with the cap based on an array of nonrelated-party assistant administrator salaries, wages, and/or benefits;

(xii) facility-owner, partner, or stockholder salaries, wages, and/or benefits, (when the owner, partner, or stockholder is not the facility administrator or assistant administrator), with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xiii) other administrative expenses including the cost of professional and facility malpractice insurance, advertising expenses, travel and seminar expenses, association dues, other dues, professional service fees, management consultant fees, interest expense on working capital, management fees, other fees, and miscellaneous office expenses; and

(xiv) total central-office overhead expenses or individual central-office line items. Individual line-item caps are based on an array of all corresponding line items.

(D) Occupancy adjustments. DHS adjusts the facility and administration costs of providers with occupancy rates below a target occupancy rate. The target occupancy rate is the lower of:

(i) 85%; or

(ii) the overall average occupancy rate by class of provider for contracted beds included in the rate base during the cost reporting periods included in the base.

(E) Cost projections. As specified in §24.301 of this title (relating to Determination of Inflation Indices), DHS projects certain expenses in the rate base to normalize or standardize the reporting period and to account for cost inflation between reporting periods and the period to which the prospective rate applies.

(b) Cost determination by class of provider. "Class of provider" incorporates references to large and small facilities: large facilities are those with more than six Medicaid-contracted beds; small facilities are those with six or fewer Medicaid-contracted beds. For rate determination purposes, DHS establishes four classes of ICF-MR providers:

(1) large ICF-MR V, and large ICF-MR VI community-based providers;

(2) ICF-MR I, small ICF-MR V and small ICF-MR VI community-based providers; and

(3) state schools;

(4) ICF-MR VIII community based providers.

(c) Cost determination by cost centers for large ICF-MR V, and large ICF-MR VI community-based providers. DHS combines adjusted expenses from the rate base into the following cost centers for large ICF-MR V, and large ICF-MR VI community-based providers:

(1) Resident care cost center. The resident care cost center includes all direct resident care expenses: nursing care; and consultant, social service, activity, training, laundry and housekeeping expenses.

(2) All other cost center. This composite cost center combines:

(A) dietary costs, consisting of food, food service, and dietary consultant expenses;

(B) facility costs, consisting of expenses to operate and maintain buildings, equipment, and capital necessary to provide client care; and

(C) administration costs, consisting of administrative salaries, supplies, and interest on working capital loans.

(d) Cost determination by cost centers for ICF-MR I, small ICF-MR V, and small ICF-MR VI community-based providers. DHS combines adjusted expenses from the rate base into the following cost centers for ICF-MR I, small ICF-MR V and small ICF-MR VI community-based providers.

(1) Labor cost center. The labor cost center includes all staff salaries and wages for persons working at the facility, regardless of the function of those staff, central office salaries and wages, and all consultant and contracted expenses.

(2) All other cost center. The all other cost center is comprised of all expenses not included in the labor cost center.

(e) Cost determination by cost centers for State Schools. DHS combines adjusted expenses from the rate base into the following cost centers for State Schools.

(1) Resident care cost center. The resident care cost center includes all direct care expenses: nursing care; and consultant, social service, activity, training, laundry, and housekeeping expenses.

(2) Dietary care cost center. The dietary care cost center includes food, food service, and dietary consultant expenses.

(3) Facility cost center. The facility cost center includes expenses to operate and maintain the buildings, equipment, and capital necessary to provide resident care.

(4) Administration cost center. The administration cost center includes administrative salaries, supplies, and interest on working capital loans.

(5) Comprehensive medical cost center. The comprehensive medical cost center includes medical expenses for services provided directly to state school residents. Since these services are not provided directly to community-based residents by ICF-MR providers, reimbursement for this cost center is limited to those state schools providing comprehensive medical care.

§27.413 Rate setting methodology.

(a) Classes of providers. Reimbursement rates are determined separately by level of care within each of the four classes of ICF-MR providers.

(b) Classes of service. A separate set of reimbursement rates corresponding to classes of service is determined within each provider class. The classes of service for state schools are ICF-MR I, ICF-MR V, and ICF-MR VI. The classes of service for community-based providers are ICF-MR I, large ICF-MR V facilities, small ICF-MR V facilities, large ICF-MR VI facilities, small ICF-MR VI facilities, and small ICF-MR VIII facilities. Large facilities are those with more than six Medicaid-contracted beds. Small facilities are those with six or fewer Medicaid-contracted beds.

(c) Rate determination. The Texas Board of Human Services determines general reimbursement rates for medical assistance programs for Medicaid recipients under the provisions of chapter 24 of this title (relating to Reimbursement Methodology). The Texas Board of Human Services determines particular reimbursement rates for each class of ICF-MR provider by class

of service based on consideration of DHS staff recommendations. To develop a separate set of reimbursement rate recommendations for each class of service within each provider class, DHS staff apply the following procedures.

(1) For each class of service, a cost component for each cost center is calculated at the adjusted per diem expense corresponding to the provider delivering the median day of service. (In calculating the median day of service, days of service delivered by each provider included in the rate base are summed cumulatively in the order which corresponds to the array of adjusted per diem costs, from lowest to highest.)

(2) The cost component for each cost center is multiplied by an incentive factor, and the resulting rate components are summed by class of service to calculate the recommended total reimbursement rates. The Texas Board of Human Services determines the incentive factor based on consideration of staff recommendations and input from interested parties. The incentive factor must not exceed 1.07.

(d) Experimental class. DHS may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless the Texas Board of Human Services and the Health Care Financing Administration (HCFA) approve the experimental methodology.

(e) Exception to the reimbursement rate determined by the Texas Board of Human Services. The reimbursement rate set by the Texas Board of Human Services for each reimbursement class is lowered to the provider's customary charge if the provider's customary charge is less than the Medicaid reimbursement rate for the same services. Customary charge is defined in this case as the average rate charged to non-Medicaid clients for the same services.

(f) Supplemental reimbursement rate determination. The reimbursement rate for community based ICF-MR IV individuals whose needs require a significantly greater than normal amount of care is supplemented on an individual client basis when the appropriate score is indicated for all of the six criteria on the level-of-care assessment form.

(1) The client must meet all of the following six criteria on the level-of-care assessment form:

Conditions/Procedures

Qualifying Score

Mobility/Ambulation	6
Transferring	7
Bathing	7
Dressing/Grooming	7
Eating	6
Toileting	7

(2) The department determines the appropriate amount of supplemental reimbursement in the following manner.

(A) The estimated time required by the class of direct care personnel is derived from appropriate and applicable time studies to determine the delivery cost for the supplemental ICF-MR VI rate. Each time estimate is multiplied by a projected hourly wage rate and by class personnel, including a factor for payroll, taxes and benefit expenses. The employee compensation costs are estimated from TDHS Medicaid provider cost reports and wage-and-hour survey data.

(B) The portion of the ICF-MR VI class rate which covers employee compensation costs for direct care personnel is determined.

(C) The amount of the ICF-MR VI supplemental reimbursement rate is determined by calculating the difference between the amounts in subparagraphs (A) and (B) of this paragraph.

§27.415. ICF-MR/RC VIII Experimental Class. DHS defines community-based facilities that are certified as intermediate care facilities for the mentally retarded/related conditions (ICF-MR/RC) VIII and that have no more than six Medicaid-contracted beds as an experimental class.

(1) ICF-MR/RC VIII rate methodology. Facilities in the ICF-MR/RC VIII class receive per diem rates based on pro forma budgets for operation of facilities in this class. DHS staff develop rates for this class of providers on a pro forma basis because of a lack of cost-report information about the cost of client care by this class of providers. DHS staff develop pro forma budgets based on the number of facility staff necessary to comply with Medicaid program standards and based on reasonable costs for employee compensation, contracted services, capital equipment, and supplies. DHS estimates of reasonable cost are derived from relevant Medicaid cost-report data for other levels of care, sample surveys, consultations with service providers and other professionals knowledgeable about the care needed by these clients, and other sources.

(2) ICF-MR/RC VIII rate determination. The Board of Human Services revises ICF-MR/RC VIII rates at least annually based on anticipated cost increases. The board continues to set rates for this class in this manner until enough Medicaid cost-report data become available to determine rates on the basis of cost reports. Cost reports of ICF-MR/RC VIII providers are not included in the data base for determining rates for small-facility or community-based providers.

§27.417. Case mix payment pilot project.

(a) Project Scope. As permitted in §27.413 (d) of this title (relating to Ratesetting Methodology) DHS is conducting a pilot project in cooperation with the Texas Department of Mental Health and Mental Retardation (TDMHMR) from January 1, 1988, through December 31, 1992. This pilot project tests a case-mix reimbursement methodology in six selected ICF-MR facilities.

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

(1) Project staff—DHS or TDMHMR personnel responsible for implementing the case-mix payment pilot project.

(2) State agencies—Either TDHS or TDMHMR or both.

(c) Selected facilities. The selected facilities for phase one of the pilot project are:

(1) Ada Wilson Hospital, Vendor Number 3730;

(2) the Children's Center of Austin, Vendor Number 3731;

(3) Crossroads Development Center, Vendor Number 3756;

(4) Denton Development Center, Vendor Number 3764;

(5) Human Development Center, Vendor Number 3751; and

(6) Thomas Care Center, vendor number 3747.

(d) Required participation. Each ICF-MR facility identified in subsection (c) of this section must participate in the pilot project as long as the facility remains under contract with the Medicaid program.

(1) Contract cancellation. A selected facility cannot participate during any period in which its Medicaid contract is cancelled. A selected facility must participate in the pilot project upon re-contracting for Medicaid. Failure of a selected facility to participate upon re-contracting may result in the application of sanctions against that facility as described in §27.217(c)(2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF-MR Contractual Agreements).

(2) ICF-MR facility on vendor hold. A selected facility placed on vendor hold during the pilot project must continue to participate in the pilot project. Failure of a selected facility to participate while on vendor hold may result in the application of sanctions against that facility as described in §27.217(c) (2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF-MR Contractual Agreements).

(3) Change of ownership. If a selected facility's ownership changes, the new owner(s) must participate in the pilot project upon contracting with Medicaid.

(4) Failure to comply with rules. Failure of a selected facility to comply with the rules of the pilot project stated in this paragraph may result in the application of sanctions against the selected facility as described in §27.217(c)(2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF-MR Contractual Agreements).

(e) Case-mix assessment of clients. Each selected facility must complete client assessment profile (CAP) forms for every Medicaid and consenting non-Medicaid client living in the facility. Selected facilities must attempt to obtain written consent to participate in the pilot project from all their non-Medicaid clients. The written consent must be signed by the client, the client's parents in the case of a minor, or the client's legal guardian. Each selected facility's CAP forms must be completed and signed by a trained qualified mental retardation professional (QMRP) on the facility's staff. State agency project staff train all designated CAP assessors. CAP assessment forms are completed and submitted at the following times during phase one of the pilot project.

(1) Initial CAP form completions. On a schedule determined by state agency project staff, selected facilities com-

plete CAP forms for all Medicaid and consenting non-Medicaid clients living in the facilities at the outset of phase one.

(2) Subsequent CAP form completions. Selected facilities also complete a CAP form for each Medicaid and consenting non-Medicaid client who is admitted to the facility for the first time or enters the Medicaid program after phase one has begun. If the client has a preadmission level of care (LOC) or if a consenting non-Medicaid client is admitted, the facility has 37 days to send the completed CAP form to the ICF-MR Case Mix Project, Texas Department of Human Services, Provider Reimbursement Section, E-601, P.O. Box 149030, Austin, Texas 78714-9030. If, however, the facility is completing an initial TDHS LOC assessment form for a new client, the facility must send both the CAP assessment and the LOC assessment to the Texas Department of Health within the 37 days.

(3) Reassessment of clients. A selected facility may submit an off-cycle assessment for a Medicaid client or consenting non-Medicaid client if the client's condition or functioning changes to the extent that the client qualifies for a different case mix group in the case mix classification system described in subsection (g)(2) of this section. No more than two reassessments may be initiated by the facility for any one client during a 12-month period. Reassessments must be submitted to the address specified in paragraph (2) of this subsection. A state agency reviewer reviews each reassessment.

(4) Assessment limitation. CAP assessments for rate setting purposes are limited to the assessment periods described in paragraphs (1)-(3) of this subsection.

(f) Review of CAP forms. To evaluate the accuracy of assessments and adherence to CAP form instructions, state agency project staff conduct a 100% desk review and a reassessment of a 20% selected sample of completed CAP forms on-site. At their discretion, project staff may reassess a more extensive sample than 20%. Before final assignment of a client to a Texas index for level of effort for ICF-MR (TILE-MR) category, project staff correct any errors detected in the CAP review in order to accurately represent the client's condition and functioning level.

(g) Case mix payment methodology. The following case mix payment methodology is implemented in all selected facilities during phase one of the pilot project:

(1) cost center affected. The case mix payment methodology applies only to the resident care cost center;

(2) case mix classification system. Medicaid clients in selected facilities are assessed using the CAP assessment form and are classified according to the

TILE-MR classification system. The TILE-MR classification system includes three age categories, which are further subdivided on the basis of functional abilities, for a total of 13 case mix groups. Each case mix group is assigned a case mix weight unique to the group. The case mix weight indicates the relative amount of staff time required to deliver direct care to clients in that group. Case mix weights for TILE-MR groups are determined through statistical and clinical analyses of client resource utilization data previously collected in a sample of Texas ICF-MR facilities;

(3) case mix rate setting methods. Per diem rates are determined for each of the 13 TILE-MR groups according to the following procedures:

(A) average resident care price. Calculate the average resident care price by:

(i) determining the statewide uniform class rate, including the supplemental reimbursement rate where eligible, associated with the level of care assigned to each client in the selected facilities at the time of the initial assessment; and

(ii) computing the average of the resulting client rates;

(B) case mix pricing factors. To determine the case mix pricing factors, standardize the case mix weight from paragraph (2) of this subsection by dividing the case mix weight for each of the 13 TILE-MR groups by the weighted average case mix weight for the selected facilities at the time of the initial assessment;

(C) case mix resident care per diem rate components. Calculate the resident care per diem rate components for each of the 13 TILE-MR groups by multiplying the case mix pricing factors from subparagraph (B) of this paragraph by the average resident care price from subparagraph (A) of this paragraph.

(D) total case mix payment rates. The total per diem rate for each of the 13 TILE-MR groups is the sum of the case mix resident care per diem rate component calculated in subparagraph (C) of this paragraph for each group, plus the all other per diem rate component from the statewide uniform class rate methodology;

(E) effective date of case mix rates. The case mix per diem rate associated with each client remains in effect until the statewide uniform class rates change or the client changes TILE-MR groups;

(4) special rate adjustments. Two special rate adjustments are automatically applied to selected facilities that

would receive lower revenues under case mix rates than under current individual facility rates. If a selected facility qualifies for both adjustments, the larger of the two is applied.

(A) historical expenditure provision (HEP). This upward rate adjustment is based on comparison of the resident care component of the case mix payment rate, the resident care current individual facility payment rate, and an estimate of the per diem historical expenditure rate in the resident care cost center for each selected facility:

(i) definition of the per diem HEP historical expenditure rate in the resident care cost center. This historical expenditure rate is a per diem rate calculated on the basis of a valid cost report in the current Medicaid ICF-MR cost report data base. The current statewide Medicaid reimbursement methodology is applied to this cost report to arrive at a per diem cost for the resident care cost center and then to inflate that cost to the midpoint of the current statewide rate period;

(ii) qualification for the HEP adjustment. To qualify for a HEP adjustment, a selected facility must have a valid cost report in the current ICF-MR cost report data base and must meet two additional conditions:

(I) the monthly resident care payment to the selected facility would be higher under the current individual facility rates than under the case mix rates; and

(II) the monthly resident care payment to the selected facility would be higher under the HEP historical expenditure rate than under the case mix rates;

(iii) amount of the HEP adjustment. The HEP adjustment bases the monthly payment to the selected facility on the current individual facility rates or the selected facility's HEP historical expenditure rate, whichever results in the lower payment;

(iv) monthly determination of eligibility for and amount of the HEP adjustment. DHS determines the eligibility for and the amount of HEP adjustments on a monthly basis. To allow time for collection of complete billing information, DHS makes its determinations approximately 120 days after the end of the month. If a selected facility qualifies for a HEP adjustment for a particular month, DHS includes the appropriate adjustment amount in the selected facility's payment following the calendar quarter after determination;

(B) stop loss insolvency provision (SLIP). This upward rate adjustment

is based on comparison of the case mix payment rate, the current individual facility payment rate, and an estimate of the per diem historical expenditure rate across all cost centers for each selected facility:

(i) definition of the per diem SLIP historical expenditure rate. This historical expenditure rate is a per diem rate calculated on the basis of a valid cost report in the current Medicaid ICF-MR cost report data base. The current statewide Medicaid reimbursement methodology is applied to this cost report to arrive at a per diem total cost across all cost centers and then to inflate that cost to the midpoint of the current statewide rate period. This inflated per diem total cost serves as the per diem historical expenditure rate for the application of SLIP;

(ii) qualification for the SLIP adjustment. To qualify for a SLIP adjustment, a selected facility must have a valid cost report in the current Medicaid ICF-MR cost report data base and must meet two additional conditions:

(I) the total monthly payment to the selected facility would be higher under the current individual facility rates than under the case mix rates; and

(II) the total monthly payment to the selected facility would be higher under the SLIP historical expenditure rate than under the case mix rates;

(iii) amount of the SLIP adjustment. The SLIP adjustment bases the monthly payment to the selected facility on the current individual facility rates or the selected facility's SLIP historical expenditure rate, whichever results in the lower payment;

(iv) monthly determination of eligibility for and amount of the SLIP adjustment. DHS determines the eligibility for and the amount of SLIP adjustments on a monthly basis. To allow time for collection of complete billing information, DHS makes its determinations approximately 120 days after the end of the month. If a selected facility qualifies for a SLIP adjustment for a particular month, DHS includes the appropriate adjustment amount in the selected facility's payment following the calendar quarter after determination;

(C) selected facilities without valid cost reports. A selected facility without a valid cost report in the current Medicaid ICF-MR cost report data base cannot receive either a HEP or a SLIP adjustment;

(D) selected facilities with management or ownership changes. A selected facility that has changed management or ownership may choose whether or not DHS uses the previous management's or ownership's cost report, which is included

in DHS's Medicaid ICF-MR cost report data base, in determining eligibility for a HEP or a SLIP adjustment. If the new management or ownership chooses to rely on the previous management's or ownership's cost report, the selected facility may be eligible for a HEP or a SLIP adjustment. The facility is not eligible for these adjustments, however, if the new management or ownership chooses not to rely on the previous management's or ownership's cost report. A selected facility must notify TDHS in writing that the facility wants DHS to use the previous management's or ownership's cost report. Otherwise, in determining eligibility for a HEP or a SLIP adjustment, DHS treats the selected facility as a facility without a valid cost report in the data base. The selected facility sends its written notification to the address specified in subsection (f)(2) of this section. DHS must receive the written notification within 30 days after the effective date of this amendment for management or ownership changes. A selected facility can not reverse its choice regarding DHS's use of the previous management's or ownership's cost report during the pilot project;

(E) prepayment of HEP and SLIP adjustments. To offset the delay in determinations of eligibility for and amounts of HEP and SLIP adjustments, DHS prepays the adjustments under the following conditions:

(i) qualification for prepayment. A selected facility qualifies for prepayment of a HEP or SLIP adjustment if the amount of the estimated HEP or SLIP adjustment is 2.0% or more of the most recent month's average case mix rate;

(ii) monthly qualification for and determination of amount of prepayment. TDHS determines the eligibility for and amount of the prepayment on a monthly basis. The determination is based on historical spending in the selected facility's most recent cost report;

(iii) amount of prepayment of HEP and SLIP rate adjustment. The amount of prepayment to each qualified selected facility is 90% of the estimated HEP or SLIP adjustment;

(iv) final determination of HEP or SLIP adjustment. When DHS makes its final determination of the correct amount of the HEP or SLIP adjustment as described in subparagraphs (A)(iv) and (B)(iv) of this paragraph, DHS applies the difference between the prepaid amount and the final determination to the facility's next payment.

(h) Spending requirement. Selected facilities that receive a greater payment under the case mix payment methodology than they would have received under statewide uniform class rates must spend 90% of the total payment due to the facility on allowable costs. DHS evaluates compliance with

this spending requirement by comparing cost report expenditures from a selected facility's fiscal year cost report, as described in §27.403 of this title (relating to Cost Reporting Procedures), to payments due to the facility for Medicaid clients.

(1) Determination of required per diem spending floor. The per diem spending floor is 90% of the total payment due to the facility for Medicaid clients during the cost reporting period divided by the number of Medicaid days of service for the cost reporting period.

(2) Determination of allowable per diem expenditure. The current statewide Medicaid reimbursement methodology is applied to the cost report to arrive at the allowable per diem expenditure.

(3) Adjustment resulting from the spending requirement. If the allowable per diem expenditure determined in paragraph (2) of this subsection is less than the required per diem spending floor determined in paragraph (1) of this subsection, then the difference between the allowable per diem expenditure and the required per diem spending floor is the amount of overpayment due to DHS for each Medicaid day of service for the cost reporting period. DHS notifies selected facilities of overpayments and arranges methods of repayment on an individual basis.

(i) Reviews of client TILE-MR assignments, special rate adjustment qualification, and noncompliance with the spending requirement. A provider who disagrees with decisions regarding assignment of a client into a particular TILE-MR category, the qualification for a special rate adjustment, or noncompliance with the care spending requirement may request a review of the decisions. Within 10 calendar days following notification of the decision, the provider must write to the address specified in subsection (f)(2) of this section, and request a review. At the earliest possible date for all parties concerned, state agencies arrange a review at which the provider may present information supporting his disagreement with the decisions in question. Two DHS project staff members and one TDMHMR project staff member consider the provider's case and render a written decision within 30 days of the review.

(j) Facility information sheet. Each selected facility must complete a facility information sheet as required by state agency project staff.

(k) Allowable costs. The provisions defining allowable and unallowable costs in §§27.405, 27.407, and 27.409 of this title (relating to Allowable and Unallowable Costs, List of Allowable Costs, and List of Unallowable Costs) apply to expenses incurred in the case mix pilot project. Special expenses incurred as a direct and necessary result of participation in the pilot project are also allowable.

(l) Nonapplicable subsections. Subsections (e) and (f) of this section regarding the provider's customary charge and the supplemental reimbursement rate in §27. 413 of this title (relating to Rate Setting Methodology) do not apply to selected facilities during the case mix pilot project.

§27.419. *Chart of Accounts for Large Level V and Large Level VI Providers.* A chart of accounts is a listing of account titles indicating the method of classifying financial and other statistical data in accounting records. Each participating provider must maintain records according to the department's chart of accounts for long-term care providers. The detailed items in the department's chart of accounts are as follows.

- (1) Assets:
 - (A) current assets:
 - (i) cash;
 - (ii) cash; individual's trust funds (fiduciary account not to be added to facility asset total);
 - (iii) short-term investments;
 - (iv) accounts receivable;
 - (v) notes and other receivables;
 - (vi) inventory;
 - (vii) prepaid expenses;
 - (viii) other current assets.
 - (B) noncurrent assets:
 - (i) long-term investments;
 - (ii) buildings and equipment;
 - (iii) land and land improvements;
 - (iv) other tangible assets;
 - (v) leasehold improvements: leasehold improvements, accumulated amortization—leasehold improvements;
 - (vi) other intangible assets: pre-opening and other organizational costs, miscellaneous tangible assets, accumulated amortization—other intangible assets;
 - (vii) other assets.
- (2) Liabilities and capital:
 - (A) current liabilities:
 - (i) accounts payable;
 - (ii) accounts payable—individual's trust fund (fiduciary account not to be added to facility liability total);
 - (iii) notes payable;

- (iv) salaries, wages, and employee benefits payable;
- (v) payroll taxes and insurance payable:
 - (I) FICA taxes payable;
 - (II) federal income taxes withheld;
 - (III) other payroll insurance payable;
 - (vi) other taxes payable:
 - (I) Texas ad valorem taxes payable;
 - (II) Texas franchise taxes payable;
 - (III) other taxes payable;
- (B) other current liabilities:
- (C) long-term liabilities:
 - (i) long-term mortgages payable;
 - (ii) long-term notes payable;
 - (iii) other long-term liabilities;
- (D) capital:
 - (i) capital: nonprofit organizations or governmental units. Principal fund balance;
 - (ii) capital: business corporation:
 - (I) capital stock;
 - (II) additional contributed capital;
 - (III) retained earnings;
 - (IV) dividends declared;
 - (V) net income (or loss);
 - (iii) capital: partnership or sole proprietorship:
 - (I) capital;
 - (II) net income (or loss);

- (III) drawings.
- (3) Revenue accounts:
 - (A) ICF-MR VI contracted beds:
 - (i) ICF-MR VI—Medicaid.
 - (ii) other clients;
 - (B) ICF-MR V contracted beds.
 - (i) ICF-MR V—Medicaid;
 - (ii) other clients;
 - (C) noncontracted ICF-MR beds (all other clients);
 - (D) other gross revenue;
 - (i) gifts, grants, donations, endowments, and trusts;
 - (ii) room, bed holds, and reservations;
 - (iii) drugs and medications;
 - (iv) meals: employees and guests;
 - (v) rentals: medical;
 - (vi) rentals: nonmedical;
 - (vii) interest sources;
 - (viii) barber and beauty shop;
 - (ix) vending machines;
 - (x) canteen and gift shop;
 - (xi) social service and activity service;
 - (xii) other revenues
 - (E) adjustments to gross revenue:
 - (i) allowance for uncollectibles—Medicaid;
 - (ii) other adjustments to gross revenue.
- (4) Expense accounts:
 - (A) routine daily service expense:
 - (i) ICF-MR VI contracted beds:
 - (I) salaries and wages: professional staff;
 - (II) salaries and wages: other staff;

(III) medical supplies and nonlegend drugs;

(IV) contract or outside services;

(V) other expenses;

(ii) ICF-MR V contracted beds:

(I) salaries and wages: professional staff;

(II) salaries and wages: other staff;

(III) medical supplies and nonlegend drugs;

(IV) contract or outside services;

(V) other expenses;

(iii) noncontracted ICF-MR beds:

(I) salaries and wages: professional staff;

(II) salaries and wages: other staff;

(III) medical supplies and nonlegend drugs;

(IV) other expenses;

(B) consultant service expense (except dietary);

(C) durable medical equipment (DME) expense:

(i) purchased DME;

(ii) leased DME;

(D) training expense:

(i) salaries and wages;

(ii) supplies;

(iii) contract or outside services;

(iv) other expenses;

(E) social services expense:

(i) salaries and wages;

(ii) supplies;

(iii) contract or outside services;

(iv) other expenses;

(F) activity service expense:

(i) salaries and wages;

(ii) supplies;

(iii) contract or outside services;

(iv) other expenses;

(G) laundry, linen, and housekeeping expense:

(i) salaries and wages;

(ii) supplies;

(iii) contract or outside services;

(iv) linen and bedding;

(v) other expenses;

(H) dietary expense:

(i) salaries and wages: supervisory and professional staff;

(ii) salaries and wages: chefs, cooks, and other food service staff;

(iii) food;

(iv) supplies (dishes, flatware, napkins, utensils);

(v) consultant service: dietician/nutritionist;

(vi) contract or outside services;

(vii) other services;

(I) operation and maintenance expense:

(i) salaries and wages;

(ii) gas, electricity, water, and wastewater;

(iii) telephone and telegraph;

(iv) garbage disposal;

(v) supplies;

(vi) maintenance and repairs: buildings, building equipment, and grounds;

(vii) maintenance and repairs: transportation equipment;

(viii) maintenance and repairs: departmental equipment;

(ix) gasoline and oil;

(x) pest control service;

(xi) security service;

(xii) contract or outside services;

(xiii) other expenses;

(J) buildings, equipment, and other capital expense:

(i) current year assessed valuation of property from local tax district;

(ii) cost to acquire the facility by the present owner;

(iii) rental or lease expense: building and fixed equipment;

(iv) rental or lease expense: transportation equipment;

(v) rental or lease expense: other equipment;

(vi) depreciation: building;

(vii) depreciation: building equipment;

(viii) depreciation: land improvements;

(ix) depreciation: departmental equipment;

(x) depreciation: transportation equipment;

(xi) amortization: leasehold improvements;

(xii) amortization: pre-opening and other organization expense;

(xiii) amortization: other;

(xiv) interest: mortgage loans;

(xv) interest: working capital loans;

(xvi) interest: other;

(xvii) taxes: ad valorem;

(xviii) taxes: Texas corporate franchise;

(xix) taxes: other;

(xx) insurance: building, contents, and grounds;

(xxi) insurance: transportation expense;

(xxii) insurance: other;

(K) general administrative expense:

(i) salaries and wages: administrator;

(ii) employee benefits: administrator;

(iii) salaries and wages: assistant administrator;

(iv) employee benefits: assistant administrator;

(v) salaries and wages: owner, partners, or stockholders (if not administrator or assistant administrator);

(vi) employee benefits: owner, partners, or stockholder (if not administrator or assistant administrator);

(vii) salaries and wages: professional administrative staff;

(viii) salaries and wages: clerical and secretarial staff;

(ix) insurance: professional and facility malpractice;

(x) insurance: other;

(xi) advertising;

(xii) travel and seminars;

(xiii) dues: Associations which represent the interests of Medicaid facilities in Texas;

(xiv) dues: other;

(xv) fees: professional services;

(xvi) fees: other;

(xvii) miscellaneous office expense;

(xviii) central office overhead;

(I) salaries and wages;

(II) payroll taxes;

(III) employee benefits;

(IV) advertising;

(V) travel and seminars;

(VI) dues: association;

(VII) dues: other;

(VIII) fees: professional services;

(IX) fees: other;

(X) miscellaneous office expense;

(XI) rental or lease expense;

(XII) depreciation and amortization expense;

(XIII) interest expense;

(XIV) taxes: ad valorem;

(XV) taxes: Texas corporate franchise;

(XVI) taxes: other;

(XVII) insurance expenses;

(XVIII) operation and maintenance expense;

(XIX) other;

(L) facility payroll tax and employee benefit expense:

(i) FICA contributions: all facility employees;

(ii) unemployment insurance: all facility employees;

(iii) worker's compensation insurance: all facility employees;

(iv) employee benefits: all facility employees except administrator, assistant administrator, owner, partner, or stockholder (if not administrator or assistant administrator).

(5) Purchases of services, facilities, and supplies from related organizations:

(A) purchases of facilities and supplies from related parties:

(i) price paid by facility;

(ii) cost to related organization;

(B) purchases of services from related parties:

(i) price paid by facility;

(ii) prevailing price in area for same service;

(C) loans from related parties:

(i) principal payments during reporting period;

(ii) remaining liability at end of reporting period;

(iii) interest expense during reporting period.

(6) Other statistical accounts.

(A) fixed assets land—number of acres;

(B) ICF-MR VI contracted beds—Resident days of service provided:

(i) ICF-MR VI—Medicaid;

(ii) other clients;

(C) ICF-MR V contracted beds—Resident days of service provided:

(i) ICF-MR V—Medicaid;

(ii) Other clients.

§27.421. Chart of Accounts for Level I Providers, Small Level V and Small Level VI Providers, and Level VIII Providers. A chart of accounts is a listing of account titles indicating the method of classifying financial and other statistical data in accounting records. Each participating provider must maintain records according to the department's chart of accounts for long-term care providers. The detailed items in the department's chart of accounts for the providers identified previously are as follows.

(1) Assets:

(A) Current assets:

(i) cash;

(ii) cash; individual's trust funds (fiduciary account not to be added to facility asset total);

(iii) short-term investments;

(iv) accounts receivable;

(v) notes and other receivables;

(vi) inventory;

(vii) prepaid expenses;

(viii) other current assets;

(B) noncurrent assets:

(i) long-term investments;

(ii) buildings and equipment;

(iii) land and land improvements;

(iv) other tangible assets;

(v) leasehold improvements: leasehold improvements, accumulated amortization—leasehold improvements;

(vi) other intangible assets: Pre-opening and other organizational costs, miscellaneous tangible assets, accumulated amortization—other intangible assets;

(vii) other assets.

(2) Liabilities and capital:

(A) current liabilities:

(i) accounts payable;

(ii) accounts payable—individual's trust funds (fiduciary account not to be added to facility liability total);

(iii) notes payable;
(iv) salaries, wages, and employee benefits payable;
(v) Payroll taxes and insurance payable:

(I) FICA taxes payable;

(II) federal income taxes withheld;

(III) other payroll insurance payable:

(vi) other taxes payable:

(I) Texas ad valorem taxes payable;

(II) Texas franchise taxes payable;

(III) other taxes payable;

(B) other current liabilities;

(C) long-term liabilities:

(i) long-term mortgages payable;

(ii) long-term notes payable;

(iii) other long-term liabilities;

(D) capital:

(i) capital: nonprofit organizations or governmental units. Principal fund balance;

(ii) capital: business corporation:

(I) capital stock;

(II) additional contributed capital;

(III) retained earnings;

(IV) dividends declared;

(V) net income (or loss);

(iii) capital: partnership or sole proprietorship:

(I) capital;

(II) net income (or loss);

(III) drawings.

(3) Revenue accounts:

(A) ICF-MR contracted beds:

(i) Medicaid;

(ii) other clients;

(B) noncontracted ICF-MR beds (all other clients);

(C) other gross revenue:

(i) gifts, grants, donations, endowments, and trusts;

(ii) room bed holds and reservations;

(iii) meals: employees and guests;

(iv) rental or lease: DME;

(v) interest sources;

(vi) miscellaneous;

(vii) prior year overpayments, life insurance proceeds, etc;

(D) adjustments to gross revenue:

(i) allowance for uncollectibles—Medicaid;

(ii) other adjustments to gross revenue.

(4) Expense accounts:

(A) staff salaries and wages:

(i) professional staff;

(ii) other staff;

(iii) central office staff;

(B) consultant and contracted expenses:

(i) outside consultant fees;

(ii) contracted expenses;

(C) payroll tax and employee benefit expense: all facility employees:

(i) FICA contributions;

(ii) unemployment insurance;

(iii) worker's compensation insurance;

(iv) alternate employee injury insurance;

(D) employee benefits:

(i) health insurance;

(ii) life insurance;

(iii) bonuses, retirement contributions, etc.: available only to administrator, C.E.O., assistant administrator, owners, partners, or stockholders;

(iv) bonuses, retirement contributions, etc.: available to employees other than administrator, C.E.O., assistant administrator, owners, partners, or stockholders;

(E) supplies expenses:

(i) medical supplies and nonlegend drugs;

(ii) Hepatitis B vaccine (for staff);

(iii) food;

(iv) special dietary supplements/supplies;

(v) linen and bedding; materials;

(vi) training supplies and

(vii) office supplies;

(viii) miscellaneous supplies;

(F) activities and recreational expenses;

(G) durable medical equipment:

(i) purchased DME;

(ii) leased DME;

(H) buildings, equipment, and other capital expense:

(i) current year assessed valuation of property from local tax district;

(ii) cost to acquire the facility by the present owner;

(iii) rental or lease expense: building and fixed equipment;

(iv) rental or lease expense: transportation equipment;

(v) rental or lease expense: household equipment;

(vi) rental or lease expense: other equipment;

(vii) depreciation: building;

(viii) depreciation: building equipment;

(ix) depreciation: land improvements;

(x) depreciation: departmental equipment;

(xi) depreciation: transportation equipment;

(xii) amortization: leasehold improvements;

(xiii) amortization: pre-opening and other organization expense;

(xiv) amortization: other;

(xv) interest: mortgage loans;

(xvi) interest: working capital loans;

(xvii) interest: other;

(xviii) taxes: ad valorem;

(xix) taxes: Texas corporate franchise;

(xx) taxes: other;

(xxi) insurance: building, contents, and grounds;

(xxii) insurance: transportation expense;

(xxiii) insurance: other;

(I) miscellaneous expenses:

(i) travel and seminar expense;

(ii) association and other dues;

(iii) advertising expense;

(iv) maintenance and repairs: buildings, building equipment, and grounds;

(v) maintenance and repairs: household equipment;

(vi) maintenance and repairs: transportation equipment;

(vii) gasoline and oil: motor vehicles;

(viii) miscellaneous;

(J) central office overhead expenses:

(i) advertising;

(ii) travel and seminars;

(iii) dues: association;

(iv) dues: other;

(v) miscellaneous office expense;

(vi) rental or lease expense;

(vii) depreciation and amortization expense;

(viii) interest expense;

(ix) taxes: ad valorem;

(x) taxes: Texas corporate franchise;

(xi) taxes: other;

(xii) insurance expenses;

(xiii) operation and maintenance expense;

(xiv) other.

(5) Purchases of services, facilities, and supplies from related organizations:

(A) purchases of facilities and supplies from related parties:

(i) price paid by facility;

(ii) cost to related organization;

(B) purchases of services from related parties:

(i) price paid by facility;

(ii) prevailing price in area for same service;

(C) loans from related parties:

(i) principal payments during reporting period;

(ii) remaining liability at end of reporting period;

(iii) interest expense during reporting period.

(6) Other statistical accounts:

(A) fixed assets, land—number of acres;

(B) ICF-MR contracted beds—resident days of service provided:

(i) ICF-MR—Medicaid;

(ii) other clients.

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

Issued in Austin, Texas on January 22, 1991.

TRD-9100814 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

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Subchapter E. Eligibility and Review

• 40 TAC §§27.501, 27.503, 27.505, 27.507, 27.509, 27.511, 27.513, 27.515, 27.517, 27.519, 27.521, 27.523, 27.525, 27.527, 27.529, 27.531

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22

and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.501. *Purpose.* The rules in this subchapter state the requirements for an assignment of a level of care in the intermediate care facility for mentally retarded (ICF-MR) program. These criteria are used in determining a level of care for individuals who apply for admission to the ICF-MR Program and in the redetermining of a level of care during the continued stay review.

§27.503. *Definitions for Level-of-care Criteria.* The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Active treatment—Continuous aggressive, consistent implementation of a program of habilitation, specialized and generic training, treatment, health services, and related services. The program must be directed toward:

(A) the acquisition or maintenance of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

Adaptive behavior level (ABL)—The effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group. For the purpose of these rules, deficits in adaptive behavior are identified according to the American Association on Mental Deficiency's adaptive behavior levels (ABL I, II, III, or IV) as presented in the association's *Classification in Mental Retardation*, 1983 revision. Assignment of an adaptive behavior level includes assessment of any maladaptive behavior. Maladaptive behaviors may influence the individual's independence in skills performance, self-motivation, and acceptability within his community. Maladaptive behaviors are inappropriate behaviors, emotional disturbances, or personality disorders.

Ambulatory—Able to walk independently, without assistance.

Cerebral palsy—A group of disabling conditions that results from nonprogressive damage to the central nervous system which usually occurs before, during, or shortly after birth. The disability is characterized by an inability to fully control motor functions.

Continued stay review—The individual client review conducted by the Texas

Department of Health (TDH) no later than six months following the individual's admission to an ICF-MR facility and at least every six months thereafter. The purpose of each review is to determine if the individual continues to need the care and services provided by the ICF-MR Program and if the level-of-care assignment is appropriate. The Texas Department of Health may determine that the individual no longer needs the care and services provided by the ICF-MR Program or that the level-of-care assignment is not appropriate. In this case, TDH staff members make a new level-of-care assignment.

Epilepsy—A paroxysmal transient disturbance of brain function that may be manifested as episodic impairment or loss of consciousness, abnormal motor phenomena, psychic or sensory disturbances, and perturbation of the autonomic nervous system. Symptoms are the result of paroxysmal disturbance of the electrical activity of the brain.

Medical care plan—A plan developed by a physician, in cooperation with licensed nursing personnel, for an individual who requires 24-hour supervision by licensed nurses.

Mental retardation—Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period. Subaverage general intellectual functioning refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age group mean for the test used. Developmental period means the period of time from conception to 18 years. Arrest or deterioration of intellectual ability that occurs after this period is functional retardation and does not meet the definition of mental retardation.

Mobile nonambulatory—Unable to walk without assistance but able to move one's self from place to place with the use of a device.

Nonmobile—Unable to move one's self from place to place even with the use of a device.

Persons with related conditions—Individuals who have a severe, chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for mentally retarded persons;

(B) is manifested before the person reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitations in at least three of the following areas of major life activity:

- (i) self-care;
- (ii) understanding and use of language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction;
- (vi) capacity for independent living.

§27.505. Eligibility for Level-of-care Assignment.

(a) The ICF-MR Program provides services to the following three classes of individuals who have the developmental disability of mental retardation or a related condition:

(1) individuals with mental retardation. These individuals must have an IQ of 69 or below as measured by a standardized psychometric instrument;

(2) individuals with related conditions as defined in §27.503 of this title (relating to Definitions for Level-of-care Criteria) who have IQs of 75 or below and deficits in adaptive behavior. These individuals' related condition(s) must be diagnosed through formal testing and evaluation;

(3) individuals with related conditions as defined in §27.503 of this title (relating to Definitions for Level-of-care Criteria). These individuals' related condition(s) must be identified through formal evaluation, and meet all five conditions listed in the summary of "Related Conditions Eligibility Screening Instrument." Assessments of IQ are not needed.

(b) Individuals must be in need of and able to benefit from the active treatment provided in the 24-hour supervised residential setting of an ICF-MR facility. This must be evidenced by information submitted for a level-of-care assignment and determined by the Texas Department of Health.

(c) For a facility to be paid for services, individuals must meet the Title XIX Medicaid financial eligibility criteria and the level-of-care criteria. The level-of-care determination is made independently of the financial need determination.

§27.507. Level-of-care Determination.

(a) The level-of-care determination is performed by the Texas Department of Health according to the level-of-care criteria in this subchapter. Information submit-

ted to the Texas Department of Health must be based on current data obtained from standardized evaluations and formal assessments which include physical, emotional, social, and cognitive factors.

(b) If an individual or someone legally empowered to act on his behalf does not agree with the level-of-care determination, the level-of-care decision may be appealed according to the Texas Department of Human Services' fair hearing procedures.

(c) The ICF-MR Program has four levels of care: ICF-MR I, ICF-MR V, ICF-MR VI, and ICF-MR/RC VIII. Level-of-care determinations for the ICF-MR I, ICF-MR V, and ICF-MR VI levels of care are based on the individual's intellectual functioning. Level-of-care determinations are based on the following variables regarding the developmental needs of each individual:

- (1) adaptive behavior;
- (2) health status; and
- (3) ambulation status.

(d) A single, specific deficit or developmental need does not necessarily indicate a need for active treatment.

(e) If an I.Q. score cannot be obtained for a severely or profoundly retarded individual, a social composite score (S.C.) obtained on the Vineland Adaptive Behavior Scale or other professionally accepted scale must be submitted. Documentation must be available that an assessment of intelligence with a standardized instrument was attempted.

(f) An individual is not eligible for the ICF-MR Program if he:

(1) has been medically diagnosed as having "brain death," which includes no evidence of sensory receptivity or sensory responsiveness on a permanent basis; or

(2) does not respond in any way to his environment, but needs continuous care for medical reasons.

(g) Some individuals may have special health care needs or other special requirements that necessitate placement in a facility which meets provisions of the National Fire Protection Association's *Life Safety Code*, 1985 edition, for accommodating special needs. When this occurs, placement in a facility that meets appropriate *Life Safety Code* requirements takes precedence over placement in a facility that matches the individual's level of care. In other words, if an individual with special needs cannot be placed in a facility that matches his level of care because no available facility has the capacity to meet his special needs, the individual may be placed in a facility with a higher level of care if it can meet his special needs in accordance with the *Life Safety Code*. This policy entails the following additional stipulations.

(1) Regardless of his level-of-care assignment, an individual who requires a medical care plan is eligible for residence only in a facility that meets the provisions of either Chapter 12 or Chapter 13 of the 1985 *Life Safety Code*.

(2) A mobile, nonambulatory individual with an ICF-MR I level-of-care assignment is eligible for care in an ICF-MR V facility if no beds are available in an ICF-MR I facility that meets the individual's needs under Chapter 21 of the 1985 *Life Safety Code*.

(h) If the Texas Department of Health determines that information submitted for a level of care was not correct, the level-of-care assignment is reevaluated. If information originally submitted has changed, the level-of-care assignment is also reevaluated.

(i) If an individual's IQ, adaptive behavior level, health status, and/or ambulation status are such that he does not meet all the criteria for any one level of care, TDH conducts a special review of his application for a level of care. TDH may ask him to submit current psychological, social, medical, and/or other evaluations.

(j) The criteria for each level of care includes a profile of typical developmental needs for that level of care. Based on I.Q., adaptive behavior level, health status, and ambulation status, an individual may meet the criteria for two levels of care. In this situation, application is made for the level of care that best meets the individual's developmental needs. This determination is based on the profile that most closely describes the individual. A single deficit in any of the categories of skills noted in a profile does not necessarily make the individual ineligible for that level of care.

§27.509. ICF-MR I Level-of-care Criteria. The individual eligible for the ICF-MR I Program must have the potential to participate in a training program that will prepare him for eventual placement in a less structured living setting. The individual requires training in the skills of independent living. This training includes using community resources, maintaining the home, managing money, and acquiring independence in self-care areas. If appropriate to the individual's age, the individual requires placement in a sheltered workshop or in community employment training. The individual demonstrates sufficient self-direction to participate in the active treatment of the program. The individual may have maladaptive behaviors that require programmatic intervention but do not prevent his participation in the active treatment of the program.

(1) Intellectual functioning. The individual functions in the mild to moderate range of mental retardation as evidenced by a full scale I.Q. score within the range of 35 to 69 obtained by formal assessment. If the

individual has been diagnosed as having a related condition as defined in §27.503 of this title (relating to Definitions for Level-of-care Criteria), the individual must have a full scale I.Q. score within the range of 35 to 75 obtained by formal assessment. If the individual has a sensory or motor handicap for which a specialty standardized intelligence test or a certain portion of a standardized intelligence test is appropriate, then that score must be reported as the I.Q. score for compliance with this criterion.

(2) Adaptive behavior level. The individual exhibits mild to moderate deficits in adaptive behavior with an adaptive behavior level of I or II obtained by formal assessment.

(3) Health status. The individual's health status does not interfere with participation in the active treatment program.

(4) Ambulation status. The individual is fully ambulatory or mobile nonambulatory.

§27.511. ICF-MR V Level-of-care Criteria. The individual eligible for the ICF-MR V Program may need assistance and supervision in the refinement of self-help skills. The individual may require training in socialization skills, work skills and behaviors (if appropriate to the individual's age), motor skills, care of belongings and personal area, and group recreation skills. The individual may require daily supervision and management to ensure completion of scheduled activities and compliance with staff requests. The individual may have maladaptive behaviors that require programmatic intervention. The individual may also have health care needs requiring daily supervision by licensed nursing personnel.

(1) Intellectual functioning. The individual functions in the mild to severe range of mental retardation as evidenced by an I.Q. score within the range of 20 to 69 obtained by formal assessment. If the individual has been diagnosed as having a related condition as defined in §27.503 of this title (relating to Definitions for Level-of-care Criteria), the individual must have a full scale I.Q. score within the range of 20 to 75 obtained by formal assessment. If the individual has a sensory or motor handicap for which a specialty standardized intelligence test or a certain portion of a standardized intelligence test is appropriate, then that score must be reported as the I.Q. score for compliance with this criterion.

(2) Adaptive behavior level. The individual exhibits moderate to severe deficits in adaptive behavior with an adaptive behavior level of II or III obtained by formal assessment.

(3) Health status. The individual's health status does not interfere with participation in the active treatment program. The individual may have health care

needs requiring daily supervision by licensed nursing personnel.

(4) Ambulation status. The individual may be ambulatory, mobile nonambulatory, or nonmobile.

§27.513. ICF-MR VI Level-of-care Criteria. The individual eligible for the ICF-MR VI Program requires extensive supervision and assistance in the completion of self-help activities. The individual requires a highly structured environment with ongoing supervision. The individual may also have medical needs requiring close supervision and nursing intervention. Training is necessary in basic self-help skills, sensory-motor development, compliance with daily routines and group activities, and socially appropriate behaviors. Maladaptive behaviors often are present and require active programmatic intervention.

(1) Intellectual functioning. The individual functions in the severe to profound range of mental retardation as evidenced by a full scale I.Q. score of 39 or below obtained by formal assessment. If the individual has a sensory or motor handicap where a specialty standardized intelligence test or a certain portion of a standardized intelligence test is appropriate, then that score must be reported as the I.Q. score for compliance with this criterion. If an I.Q. score cannot be obtained for a severely or profoundly retarded individual, a social composite score (S.C.) obtained on the Vineland Adaptive Behavior Scale or other professionally accepted scale must be submitted. Documentation must be available that an assessment of intelligence with a standardized intelligence test was attempted.

(2) Adaptive behavior level. The individual exhibits extreme deficits in adaptive behavior with an adaptive behavior level of II or IV obtained by formal assessment.

(3) Health status. The individual's health status does not interfere with participation in the active treatment program. The individual may require close daily supervision and nursing intervention. The individual, however, must be able medically to be out of the bedroom/bedroom area for active treatment during waking hours.

(4) Ambulation status. The individual may be ambulatory, mobile nonambulatory, or nonmobile.

§27.515. ICF-MR/RC VIII Level-of-care Criteria.

(a) The individual eligible for the ICF-MR/RC VIII program:

(1) does not have mental retardation, but does have a related condition as defined in §27.503 of this title (relating to Definitions for Level-of-care Criteria);

(2) requires services to assist him or her to function with as much self-determination and independence as possible. These services may include training and assistance in maintaining the home, managing money, using community resources, acquiring independence, and improving skills and/or behaviors related to self-care, socialization, cognitive development, sensory-motor functions, communications, and work (when appropriate to the individual's age);

(3) requires habilitative or medical interventions to prevent or decelerate loss of current functional status. These interventions may include physical, occupational, rehabilitative, and speech therapy services;

(4) may need augmentative communication devices and corrective, orthodontic, prosthetic, and support devices to improve his functional status;

(5) may have medical, dental, or nursing needs that require close supervision, or maladaptive behaviors that require programmatic intervention.

(b) Except as specified in §27.507(i) of this title (relating to Level-of-care Determination), individuals must meet all the following criteria to qualify for the ICF-MR/RC VIII level of care.

(1) Related condition. The individual has a related condition as defined in §27.503 of this title (relating to Definitions for Level-of-care Criteria). An IQ score is not required to qualify for this level of care.

(2) Primary diagnosis of a related condition. The determination that the individual has a related condition is evidenced by an appropriate primary diagnosis on the Texas Department of Human Service's (DHS'S) level-of-care assessment form. The primary diagnosis must be one of a group of DHS approved diagnoses.

(3) Adaptive behavior level. The individual exhibits moderate to extreme deficits in adaptive behavior as evidenced by an adaptive behavior level of II, III, or IV which has been obtained by formal assessment.

(4) Health status. The individual's health status does not prevent participation in the active treatment program. Although the individual may require close daily supervision and nursing intervention, he must be medically able to participate in active treatment outside the bedroom area during waking hours.

(5) Ambulation status. The individual may be ambulatory, mobile nonambulatory, or nonmobile.

§27.517. Retroactive Level-of-care Determination. Private-pay individuals living in medicaid-certified ICF-MR facilities who do not receive SSI cash benefits may be eligible for "three-months prior"

vendor payments. To ensure that vendor payments begin on the date that an individual's financial resources are exhausted, the potential recipient must have a valid level of care and the ICF-MR facility staff should maintain his records in compliance with the Medicaid utilization review (UR) requirements.

(1) To be in compliance with UR requirements, potential recipients' records must be maintained and reviewed as follows.

(A) Facility staff must conduct an interdisciplinary team evaluation before the applicant's admission to the Medicaid program. The team, which consists of health-care professionals and includes a qualified mental retardation professional (QMRP), must make a comprehensive medical, social, and psychological evaluation of the applicant's need for ICF-MR services. If the evaluation indicates the applicant's needs could be met by alternative services, facility staff must document this fact in the applicant's record and must document attempts to locate the services. Facility staff must comply with 42 Code of Federal Regulations §456.370 and §456.371.

(B) The potential client must have a current individual program plan. The physician's certification of need for ICF-MR services must be dated no more than 30 days before the date that the facility administrator learned about the resident's application for Medicaid assistance, or before authorization for vendor payment.

(C) The physician's recertification must be obtained as described in §27.529 of this title (relating to Preadmission and Admission Process).

(2) If an individual is found to be otherwise eligible for vendor payments for all or part of the three months prior to the date of his application for Medicaid assistance, facility staff may use either of the options described in subparagraphs (A) and (B) of this paragraph to ensure that the individual has a valid level of care.

(A) When the facility administrator or QMRP learns about an individual's need for Medicaid assistance, facility staff submit a level-of-care (LOC) assessment form to the TDH MR program unit requesting a preadmission LOC evaluation. The preadmission LOC must be updated every 30 days until the resident's financial eligibility is established.

(B) If an individual's preadmission LOC has not been maintained as described in subparagraph (A) of this paragraph, and Texas Department of Human Services (DHS) Medicaid-eligibility

staff notify the facility about an applicant's potential eligibility for all or part of the three-month-prior coverage, facility staff must review the applicant's records to ensure that they meet the UR requirements and submit a LOC assessment form for the retroactive period. Facility staff must ensure that the form:

(i) indicates potential eligibility for Medicaid;

(ii) clearly identifies, in the form's comment section, the applicable retroactive period(s) for which payment is requested; and

(iii) includes, in the form's comment section, a statement of certification that the applicant required ICF-MR services during the applicable period(s).

(3) If an applicant meets all other eligibility criteria for three-months-prior coverage, DHS makes retroactive vendor payments according to:

(A) The assigned LOC on the preadmission LOC assessment submitted by the facility as described in paragraph (2)(A) of this subsection; or

(B) The assigned LOC for the period indicated on the second LOC assessment form submitted by the facility as described in paragraph (2)(B) of this subsection.

(4) DHS makes retroactive vendor payments for only those months during which physician's certification, individual program plan, and level-of-care requirements are met. The TDH MR program staff verifies, during the first inspection-of-care visit to the facility after establishment of any retroactive level of care, that the applicant's record includes the physician's certification, recertification, and individual program plans, and that the plans were reviewed as required during the applicable period(s).

(5) The effective date of the new level of care for the retroactive period of eligibility is the first day of the earliest month in which the applicant qualified for a level of care.

§27.519. Payment for Absences from the Facility.

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

(1) Day—A 24-hour period extending from midnight to midnight. For counting days of absence from a facility, the first day is the first 24-hour period beginning at midnight after the individual's departure.

(2) Extended therapeutic visit—An individual's absence from a facility for as many as 10 consecutive days for therapeutic purposes.

(3) Therapeutic visit—An individual's absence from a facility for as many as three consecutive days for therapeutic purposes.

(b) The Texas Department of Human Services (DHS) makes vendor payments for ICF-MR clients who are absent from a facility for therapeutic or extended therapeutic visits when the following criteria are met.

(1) The individual program plan must provide for therapeutic or extended therapeutic visits or both.

(2) The individual's qualified mental retardation professional (QMRP) must authorize and document each therapeutic and extended therapeutic visit, subject to the approval of the physician.

(3) Each individual is permitted an unlimited number of therapeutic visits per calendar year. However, if a particular therapeutic visit exceeds the three-day limit, the facility must submit a discharge form effective on the fourth day of absence.

(4) Each individual is permitted one extended therapeutic visit per calendar year. The individual, a responsible member of his family, or another responsible party must document in writing the specific days selected for an extended therapeutic visit. When an extended therapeutic visit begins during one calendar year and extends into the next, the absence constitutes the individual's extended therapeutic visit for the calendar year in which the visit begins. If an extended therapeutic visit exceeds the 10-day limit, the facility must submit a discharge form effective on the 11th day of absence.

(5) Facility staff must be available to the individual during therapeutic and extended therapeutic visits, even if all the residents are away from the facility at the same time.

(6) The facility must maintain a record of each therapeutic and extended therapeutic visit and must ensure that these records are available to DHS for review. The facility's records must include statistics regarding the number of visits for which vendor payments have not been made. When DHS audits the facility, it reviews the facility's documentation of therapeutic and extended therapeutic visits and verifies the facility's compliance with the provisions of this subsection.

(c) DHS does not make vendor payments when a Title XIX client is absent from a facility for:

(1) an inpatient hospitalization;

(2) a therapeutic visit that exceeds three consecutive days;

(3) an extended therapeutic visit that exceeds 10 consecutive days; or

(4) an unauthorized departure.

(d) An individual or the party responsible for an individual may voluntarily enter into a written agreement with a facility to hold a bed during a temporary absence from the facility. The written agreement must be signed and dated by the facility administrator or QMRP and by the individual or his responsible party each time a bed is held. The facility may charge the recipient to hold the bed as long as the amount charged does not exceed DHS's daily vendor rate for the recipient's level of care at the time he leaves the facility. When DHS audits the facility, it reviews the facility's bed-hold charges to ensure that:

(1) the facility documents each bed-hold charge in the individual's financial record at the time the bed is held; and

(2) the facility complies with §27.605 of this title (relating to Protection of Funds) whenever it makes a bed-hold charge against the individual's personal funds account at the facility.

(e) When an individual is absent from a facility for special activities such as the Special Olympics and camping trips, DHS makes vendor payments if:

(1) the need for the special activity is documented in the individual program plan (IPP) as part of the IPP training;

(2) enough facility personnel are present at the special activity to meet the staff requirements for direct care specified in 42 Code of Federal Regulations 483.430(d)(2); and

(3) the facility continues to incur the usual costs for caring for the individual, including, but not limited to, costs for meals, lodging, staff, supervision, and administration of medication; and

(4) the facility continues to provide the active treatment program specified in the IPP.

§27.521. Discharge and Transfer.

(a) If an individual is discharged from a facility or transferred to a section of a facility providing a different level of care, the administrator of the facility must complete a resident transaction notice to document the change. Within 72 hours of the discharge or transfer, the facility must submit the resident transaction notice to the Nursing Home Billing Services Section of the Texas Department of Human Services (DHS) and to the appropriate DHS Medicaid eligibility worker. The facility must include the individual's post-discharge address, if known, on the resident transaction notice.

(b) If an individual is discharged to another Title XIX facility, the admitting facility must initiate a level-of-care assessment if:

(1) more than 30 days have elapsed since the discharge;

(2) the individual's current level of care has expired; or

(3) the admitting facility's level of care is different from the individual's current level of care.

(c) If an individual is discharged from and subsequently readmitted to a facility, the facility must initiate a level-of-care assessment if:

(1) more than 30 days have elapsed between the discharge and readmission; or

(2) the individual's current level-of-care assignment has expired.

§27.523. Utilization Control. Utilization control (UC) includes patterns of care and services provided by an intermediate care facility for the mentally retarded (ICF-MR), including the provision of active treatment. Reviewers consider necessity, appropriateness, and availability of the facility's services. UC consists of:

(1) inspection of care, that is, inspection of services provided by the facility;

(2) a physician's certification or recertification of an individual's-resident's need for ICF-MR care; and

(3) utilization review (UR) consisting of preadmission, admission, and continued-stay review of the individual's eligibility for services.

§27.525. Utilization Review.

(a) Utilization review (UR) plans and procedures must conform with policies of the Department of Health and Human Services, as required by 42 Code of Federal Regulations, §456. The Texas State Plan for Title XIX requires a UR process for ICF-MR facilities participating in the Texas Medical Assistance Program.

(b) ICF/MR Program teams of the Texas Department of Health (TDH), acting as inspection-of-care teams, perform the UR functions for Title XIX clients in the facility.

(c) The Texas Department of Human Services (DHS) is responsible for developing and maintaining level-of-care criteria to evaluate the necessity for each individual's continued stay. These level-of-care criteria are specified in §§27.509-27.515 of this title (relating to ICF-MR I Level-of-care Criteria, ICF-MR V Level-of-care Criteria, ICF-MR VI Level-of-care Criteria, ICF-MR/RC VIII Level-of-care Criteria).

(d) UR-plan objectives are to:

(1) promote quality care and to promote training that meets individual needs;

(2) determine whether needed services are available and are provided on a continuing basis;

(3) ensure that the services provided are necessary; and

(4) review the individual program plan.

§27.527. Inspection of Care.

(a) An inspection of care (IOC) includes, but is not limited to, a review of the level of services provided to a recipient to meet his individual care and training needs.

(b) TDH conducts an annual IOC at each facility. The IOC review is conducted according to policies of DHS. A review team must include at least a registered nurse and other appropriate health and social-services personnel. At least one of these team members must be a qualified mental retardation professional. A physician is available to the review team for consultation about UR activities.

(c) ICF-MR facility staff must cooperate with the professional review team and must provide pertinent information regarding individuals.

§27.529. Preadmission and Admission Process.

(a) The Texas Department of Health (TDH) performs preadmission and admission level-of-care assessments when it receives notification that a Medicaid applicant or client has requested vendor assistance for care in a contracted facility. An ICF-MR I, ICF-MR V, and ICF-MR VI preadmission level-of-care assessment is valid for 30 days or until the individual assessed is admitted to an ICF-MR facility, whichever is sooner. An ICF-MR/RC VIII preadmission level-of-care assessment is valid for 90 days or until the individual assessed is admitted to an ICF-MR/RC facility, whichever is sooner. An admission level-of-care assessment is valid for 180 days after the date of admission.

(b) Before an individual's admission, an interdisciplinary team of health care professionals, including a QMRP, must conduct a comprehensive medical, nutritional, social, and psychological review of the individual's status and need for ICF-MR care. If the evaluation indicates that the individual's needs could be met by alternative services, facility staff must enter this fact in the individual's record and document attempts to locate the services.

(c) A physician must certify that each applicant or Medicaid client needs ICF-MR services at the time of admission to the Medicaid program, six months later, and annually thereafter. This certification is documented on the level-of-care assessment form for each individual. DHS processes only those level-of-care assessment forms

that include physicians' signatures. This physician certification is part of each individual's record and is reviewed annually as part of the inspection-of-care process. Facility staff must ensure that the recertification states: "I hereby certify that this individual continues to require ICF-MR care."

§27.531. Continued-stay Review.

(a) The Texas Department of Health (TDH) conducts a continued-stay review 180 days after the initial admission level-of-care assessment specified in §27.529 of this title (relating to Preadmission and Admission Process), and every 180 days thereafter. Each continued-stay review includes a certification of the individual's continuing need for ICF-MR services and an assessment of his continuing eligibility for a level of care under the criteria specified in this subchapter. Each review reestablishes the individual's level of care for the next 180 days.

(b) TDH conducts continued-stay reviews based on the documentation that the Texas Department of Human Services (DHS) requires the facility to furnish. To ensure that DHS's vendor payments are uninterrupted, the facility must submit all required DHS forms to TDH before an individual's current level-of-care assignment expires.

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

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Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

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For further information, please call: (512) 450-3765

◆ ◆ ◆ Subchapter F. Personal Finances and Funds

• 40 TAC §§27.601, 27.603, 27.605, 27.607

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.601. Personal Funds.

(a) The facility must have written policies and procedures that protect the financial interests of each person.

(b) If large sums of money accrue to an individual, the facility must ensure that its policies and procedures provide for appropriate protection of these funds and for counseling the individual about their use.

(c) The facility must permit each individual to possess and use money in normal ways, or ensure that he learns to do so to the extent of his abilities.

(d) The facility must maintain a current, written financial record for each Medicaid client. On request, the facility must make the financial record available to the individual, his guardian, his representative payee, or the person legally responsible for him or his finances. The facility must ensure that the financial record includes written receipts for all:

(1) personal possessions and funds received by or deposited with the facility on his behalf; and

(2) disbursements made to or on behalf of the individual according to §27.605(c)(4) of this title (relating to Protection of Funds).

(e) The facility is responsible for meeting the needs of its clients. The facility must accept the Texas Department of Human Services' (DHS's) vendor payment as payment in full for providing the care and services that the clients need.

(f) The facility must furnish its clients with basic personal items and supplies. These items include, but are not limited to:

(1) toothbrush;

(2) toothpaste;

(3) shampoo;

(4) shaving cream;

(5) razors;

(6) facial tissues;

(7) razor blades;

(8) sanitary napkins;

(9) comb or hair brush;

(10) soap;

(11) body lotion;

(12) clothing, if unavailable from another source; and

(13) school supplies, if unavailable from another source.

(g) If a client prefers to use a specific type or brand of a personal need item instead of the item that the facility furnishes under the provisions of subsection (f) of this section, the individual may use his personal funds to purchase the item. Each personal need item that an individual purchases is reserved for his sole use, regardless of how the individual makes the purchase. The facility must ensure that each such item is kept in an individual container or package which is labeled with the person's name. However, the facility is not responsible for labeling personal need items that have been brought into the facility without being reported to the management.

(h) The facility must have written policies and procedures for the purchase of items and services with the individual's personal funds. At a minimum, the facility must ensure that these policies and procedures include the following elements:

(1) appropriate participation by the individual, his guardian, or the responsible party in the selection of the items or services purchased;

(2) a system for ensuring that all purchases are either necessary to meet individual needs or to respond to a direct request by the individual, the guardian, or the responsible party;

(3) a method of procurement that ensures that items and services are purchased at a reasonable cost to the individual and at a cost comparable to the costs of similar items and services generally available in the community; and

(4) assurances that personal funds are not used to purchase items and services that are available through Medicaid, Medicare, or other public assistance programs.

(i) Appropriate uses of an individual's personal funds include, but are not limited to, the following expenditures:

- (1) soft drinks;
- (2) personal clothing;
- (3) a personal television or stereo;
- (4) an allowance of spending money; and
- (5) transportation for home visits.

§27.603. Expenditures of Personal Funds.

(a) Individuals' personal funds must not be expended for services, supplies, or equipment that are allowable costs to the facility as specified in §27.405 and §27.407 of this title (relating to Allowable and Unallowable Costs and to List of Allowable Costs) or that are otherwise reimbursed by Medicaid.

(b) Items and services that are the responsibility of the facility and that must not be charged to the recipient's personal funds include, but are not limited to:

(1) personal need items, including diapers, as specified in §27.601(f) of this title (relating to Personal Funds);

(2) noncosmetic dental services including, but not limited to, initial and annual comprehensive intra- and extra-oral examinations, prescribed dental treatments and follow-up visits, dentures, braces, crowns, toothbrushes, mouthwash, floss, disclosing solution, and other dental supplies;

(3) transportation expenses to program, recreation, and health care ser-

VICES, including sheltered workshop programs;

(4) banking charges when individuals' personal fund accounts are pooled;

(5) prescriptions not covered by other Medicaid services;

(6) prescribed laboratory services not covered by other Medicaid services;

(7) repairs to and maintenance of the facility's physical plant;

(8) meals, snacks, special diets, and sack lunches;

(9) behavioral reinforcers used in behavior modification programs, including, but not limited to, candy, cigarettes, soft drinks, cereal, coffee, toys, and magazines;

(10) purchase, repair, and maintenance of specialized equipment and adaptive devices not covered by other Medicaid services;

(11) prescribed medical equipment and supplies not covered by other Medicaid services, including, but not limited to, nasogastric tubes, feeding pumps, catheters, sheepskins, and egg crate pads;

(12) medical services and therapies not covered by other Medicaid services, including, but not limited to, initial and annual physical exams, physical therapy, occupational therapy, and nutritional, speech, audiological, psychological, social, and medical evaluations;

(13) recreational evaluation services and general recreational activities for the facility population whether provided at the facility or in the community;

(14) all training and habilitation services, including, but not limited to, vocational training, sheltered workshop services, and day activity center services, whether provided in-house or through contractual arrangements;

(15) eye exams;

(16) eyeglasses not covered by other Medicaid services, except for the difference between the Medicaid payment and the actual cost of the eyeglasses when the individual requests a specific style or feature not provided by the facility or Medicaid;

(17) laundering of personal clothing;

(18) hygienic haircuts, shaves, and shampoos; and

(19) special activities, including, but not limited to, meals, lodging, staff supervision, registrations, and tickets.

(c) Individuals' personal funds may be expended for the following items and services:

(1) personal need items when the individual requests a specific type or

brand other than the one furnished by the facility;

(2) clothing;

(3) cosmetic dental procedures;

(4) public transportation when the individual is travelling on his own initiative without staff supervision, and public transportation to and from home visits;

(5) banking charges if the individual's personal funds are in an individual account;

(6) prescribed over-the-counter medications when the individual wants another brand or type than the one furnished by the facility;

(7) damages or replacement at cost of other person's personal property after approval by the facility's Human Rights Committee;

(8) snacks or meals when the individual chooses items other than those provided by the planned menu;

(9) an allowance disbursed to the individual in accordance with the facility's policies and procedures as long as access to the individual's personal funds is not restricted without the written consent of the individual or his legal guardian;

(10) recreational activities that are away from the facility and that are independently chosen by the individual, or activities that the individual elects which are not part of the facility's general recreation program and which are provided without on-duty staff;

(11) the difference between the Medicaid payment and the actual cost for eyeglasses when the individual requests a specific style or feature other than the one furnished by the facility or Medicaid;

(12) dry cleaning of the individual's personal clothing;

(13) professional barber and cosmetology services including, but not limited to, styling, hair setting, permanent waves, hair color treatments, hair rollers, hair spray, cosmetics, and perfume;

(14) bed reservation fees as long as the individual, his legal guardian, or other responsible party gives written consent and as long as the charge does not exceed the daily Medicaid vendor rate; and

(15) school supplies, school fees, and other educational expenses.

§27.605. Protection of Funds.

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

(1) Receipt—A cash register tape or sales statement from a seller, or the buyer's cancelled check, which shows the following:

- (A) the client's name;
- (B) the date the receipt was written or created;
- (C) the amount of money spent;
- (D) the specific item(s) purchased;
- (E) the name of the seller; and
- (F) the client's signature.

(2) **Witness**—A third party who is present at a financial transaction and who attests to its having taken place. No person who is responsible for client trust funds or who supervises anyone responsible for such funds may act as witness to a financial transaction that involves a client's personal funds.

(3) **Trust fund accounts**—All accounts in the facility's control or safekeeping that contain the personal funds of clients. This definition includes a client's personal banking account if the facility's staff or consultants in any way help the client to use it.

(b) At the time of admission, the facility must provide to each client, his guardian, and/or other legally responsible parties a written statement that meets the following specifications:

(1) the statement lists all of the facility's services and charges, distinguishing between services included in the facility's basic rate and services excluded from the basic rate which, if used, are charged to the individual;

(2) the statement indicates that the individual is under no obligation to deposit funds with the facility;

(3) the statement explains the individual's right to decide how his personal funds are to be handled. The explanation must include the following options, and the facility must document which options the individual or the responsible party selects.

(A) The individual may receive, retain, and manage personal funds himself or have a legal guardian receive, retain, and manage such funds on his behalf.

(B) The individual or the guardian may have the Social Security Administration appoint a representative payee for receipt of the individual's federal benefits, if any.

(C) The individual or the guardian may designate, in writing, another person to manage the individual's personal funds (except for his federal benefits when a representative payee has been appointed).

(D) The facility must hold, safeguard, and account for the individual's personal funds upon receipt of the written authorization of the individual, the guardian, or other legally responsible party;

(4) the statement explains that the cost to the facility for handling a individual's personal funds is included in the facility's basic rate;

(5) the statement indicates that the facility must have the written permission of the individual or the individual's legal guardian to handle the individual's personal funds;

(6) the statement declares that the facility is required to notify the Department of Human Services' (DHS's) regional Medicaid eligibility worker if the individual:

(A) becomes incapable of managing his personal funds himself;

(B) has no representative payee; and

(C) has no responsible party to manage his personal funds on his behalf.

(c) The facility must provide updated lists of services and charges whenever they change during the individual's stay.

(d) The facility must maintain a separate, current, written record of all financial transactions involving an individual's personal funds held in the facility's trust. The facility must keep this record according to the generally accepted accounting principles of the American Institute of Certified Public Accountants. At a minimum, the record must include the following information:

(1) the individual's name;

(2) identification of the individual's guardian, representative payee, and all other responsible parties, as applicable;

(3) the date of the individual's admission to the facility;

(4) all earned interest; and

(5) the date and amount of each deposit and withdrawal, the name of the person accepting the withdrawn funds, and the balance after each transaction. Except as noted in this paragraph, the record must also include a written receipt for the expenditure of each withdrawal. This receipt must be signed by the individual and/or a witness. A witnessed receipt must show the witness's relationship to the individual. A written receipt is not required in any of the following circumstances:

(A) a written request for a specific amount to be withdrawn is submitted by the client, by his guardian or other responsible party, or by an individual who has the client's written authorization and is not employed by the facility;

(B) the withdrawn funds are used to make purchases from vending machines; or

(C) the expenditure is \$1.00 or less.

(e) Unless DHS has given prior written approval, it does not accept alternate types of documentation, including affidavits, to verify expenditures of individuals' personal funds or to demonstrate compliance with the requirements in this subchapter regarding individuals' personal funds.

(f) When a facility holds an individual's personal funds in trust, it must provide a written statement to the individual, guardian, representative payee, or other responsible party upon receipt of a verbal or written request. In addition to reporting on funds that the facility has deposited in an account on the individual's behalf, the statement must report on any of the individual's funds that the facility holds in a petty cash account. At a minimum, the statement must include the following information:

(1) the identification number and location of all accounts in which the individual's personal funds have been deposited;

(2) the balance in each account at the beginning of the statement period;

(3) all deposits and withdrawals;

(4) all interest earned; and

(5) the ending balance in each account.

(g) The facility must keep funds received from clients for holding, safeguarding, and accounting separate from the facility's funds. The separate account for these funds must be identified "Trustee (name of facility), Clients' Trust Fund Account." The facility may commingle the trust funds of Medicaid clients and private-pay clients. If these trust funds are commingled, the facility must provide, on request, the following information to DHS, the Texas Department of Health (TDH), the Texas Attorney General's Medicaid Fraud Control Unit, and the United State Department of Health and Human Services.

(1) For each private-pay client whose funds are commingled, the facility must provide a copy of a release form that the client, his guardian, or other responsible party has signed and dated. The facility must obtain each client's signed release form upon his admission or within 30 days

of the effective date of the adoption of this subsection. The release form must require the facility to maintain trust fund records for private-pay clients in the same way that it maintains such records for Medicaid clients. The form must also include a provision permitting the agencies referenced in this subsection to inspect the private-pay client's trust fund records.

(2) The facility must provide legible copies of the trust fund records of private-pay clients whose funds are commingled.

(h) The facility must observe the following policies regarding types of trust fund accounts and distribution of interest.

(1) The facility may keep a client's money in an account or petty cash fund that does not bear interest.

(2) The facility may deposit a client's money in an interest-bearing account.

(3) The facility may either keep a separate trust fund account for each client or pool the funds it holds for clients in a single account. If the facility pools client trust funds in a single account, the account must individually identify each client's funds. Each client trust fund account must clearly indicate that the facility has no ownership interest in the funds. Each account must be insured under federal or state law.

(4) The facility must distribute all interest earned on a pooled account in one of the following two ways, at its own discretion:

(A) the facility prorates interest to each client on an actual interest-earned basis; or

(B) the facility prorates interest to each client on the basis of the average monthly balance for the quarter of proration.

(i) The facility must observe the following policies with regard to banking charges on trust fund accounts.

(1) Charges for checks, deposit slips, and banking services for pooled checking accounts are the facility's responsibility and must not be charged to the client, his guardian, family, or other responsible party. The facility may include these charges, however, as allowable costs in its cost report to DHS.

(2) Because individual checking accounts promote the dignity and independence of clients and exist for their personal use, charges for checks, deposit slips, and banking services may be deducted from these accounts.

(3) The facility must not charge the client, his guardian, family, or other responsible party for its administrative expenses in handling either individual or

pooled client trust fund accounts. However, the facility may include its handling expenses as allowable costs in its cost report to DHS.

(4) If the facility invests client funds in saving accounts, certificates of deposit, or in other situations in which the funds accrue interest or other benefits, the facility must distribute the interest or other benefits to each participating client on an equitable basis by depositing the investment income in the clients' pooled or individual checking accounts, as appropriate.

(j) The facility must return to the client, his guardian, or other legally responsible party the full balance of the client's personal funds within 30 days of the client's request or of his discharge or transfer. The facility must observe this policy regarding individual access to trust funds whether the client's funds are held in the facility or outside it.

(k) If a facility's ownership changes, the previous owner must transfer to the new owner all client trust fund bank balances and all client trust funds held in the facility, along with a complete list of the clients and their current balances. For auditing purposes, the previous owner must get and keep a receipt from the new owner for the transfer of these funds.

(l) When an individual dies, the facility must make a good faith effort to locate the individual's guardian or other responsible party or the heir to the individual's estate. Within 45 days after the individual's death, the facility must clear the individual's account according to the following procedures.

(1) To hold the deceased individual's money in trust, the facility must either establish a new trust fund account or deposit the money in an already existing trust fund account.

(2) After DHS verifies that the deceased individual's money is on hand and held in trust, the facility gives DHS a notarized affidavit that presents the following information:

(A) the individual's name;

(B) the amount of money being held;

(C) documentation of the facility's efforts to locate the individual's guardian, other responsible party, or heir(s);

(D) a statement acknowledging that the money being held is solely the property of the deceased individual's estate; and

(E) a statement that the facility will hold the money in trust either until

the guardian, other responsible party, or legal heirs are located or until the money escheats to the state. DHS reviews the trust account each time the facility is audited. DHS considers the account cleared upon receipt of the affidavit specified in this paragraph.

(3) If a facility decides not to hold a deceased individual's money in trust, the facility must send it to the Texas Department of Human Services, Fiscal Division, E-411, P.O. Box 149030, Austin, Texas 78714-9030, at any time before the money escheats to the state. The facility must identify the money as escheatable funds and must include with it a notarized affidavit that contains the information required in paragraph (2)(A)-(C) of this subsection.

§27.607. Refunds.

(a) The facility must refund all private payments it receives for period covered by Medicaid, including retroactive periods of Medicaid coverage, whenever:

(1) the facility has accepted the Medicaid vendor payment; or

(2) the Texas Department of Human Services (DHS) has notified the facility about an individual's eligibility for Medicaid, and the individual, his guardian, or another responsible party makes an oral or written request for a refund for the period that Medicaid covers.

(b) The facility must make the refund within 30 days of receiving DHS's vendor payment for the covered period.

(c) When the facility becomes aware of the need for a refund as indicated in subsection (a) of this section, facility staff must write to the individual, his guardian, or other responsible party to notify him about his right to a refund and the amount due. The written notification must include a statement to be signed by the individual or his responsible party to acknowledge receipt of the notification. Facility staff must file the signed acknowledgment in the individual's financial record.

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

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Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
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For further information, please call: (512) 450-3765

Subchapter G. Additional Facility Responsibilities

- 40 TAC §§27.701, 27.703, 27.705, 27.707, 27.709, 27.711, 27.713, 27.715, 27.717

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.701. *Agreements with Local School Districts.*

(a) As a condition of contracting to participate in the Title XIX Texas Medical Assistance Program, a facility that serves individuals between the ages of three and 21, inclusively, must meet the following requirements.

(1) The facility must establish a written agreement with the local school district. The agreement must contain the responsibilities, functions, objectives, and other terms agreed to by both parties.

(2) The facility must develop written policies and procedures to ensure that each eligible individual between the ages of three and 21, inclusively, is enrolled in an education program approved by the Texas Education Agency (TEA), unless the individual has already successfully completed or graduated from the required program.

(b) To provide and administer its own educational program(s), a facility must secure and maintain TEA certification as a nonpublic school.

(c) In accordance with the requirements of 42 Code of Federal Regulations, §483.410(d)(3) and §483.440(a), each facility must ensure that each individual's educational services are integrated with the other components of his treatment program.

§27.703. *Vocational, Prevocational, and Day Program Services.*

(a) In accordance with the requirements of 42 Code of Federal Regulations, (CFR) §483.410(d)(3) and §483.440(a), each facility must ensure that all vocational, prevocational, and day program services provided to an individual are integrated with the other components of the individual's active treatment program.

(b) When an independent service provider furnishes vocational, prevocational, or day program services to a facility's resident(s), the facility must establish and maintain a written agreement with the service provider in accordance with 42 CFR, §483.410(d)(1)-(3).

(c) A provider of vocational services must maintain the appropriate certification required by the United States Department of Labor if subminimum wages are paid to an ICF/MR client.

§27.705. *Facility Capacity.* The number of individuals that a facility admits must not exceed its rated capacity or its programming capabilities.

§27.707. *Release from the Facility.*

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

(1) **Emergency release**—The individual is absent from the facility for more than 24 hours for reasons specified in subsection (d)(1) of this section. The nature of the release prevents the facility from accomplishing prerelease planning.

(2) **Mental retardation authority (MRA)**—The Texas Department of Mental Health and Mental Retardation (TDMHMR) entity that directs, operates, facilitates, or coordinates services required by state law and TDMHMR for persons with mental retardation in a local service area. A local service area consists of one or more counties.

(3) **Permanent release**—The individual moves from the facility to another residence and the facility does not intend that the individual return for continued services, or the individual is absent from the facility for more than 30 days. TDMHMR state schools comply with permanent-release requirements when an individual is placed on extended furlough status (a furlough longer than 30 days).

(4) **Temporary release**—The individual is absent from ICF-MR care for more than 24 hours but no longer than 30 days from the date of departure. The absence is for reasons other than a therapeutic visit, or for a therapeutic visit that exceeds the allowed length of stay. The facility intends that the individual return for continued services and provides a bed upon his return.

(5) **Therapeutic visit or extended therapeutic visit**—An individual's absence from the facility meets the criteria stated in §27.519 of this title (relating to Payment for Absences from the Facility).

(b) Requirements for temporary release are as follows.

(1) The facility may temporarily release an individual if:

(A) the individual, parent, if individual is a minor, or legal guardian requests the release;

(B) the interdisciplinary team plans or approves the absence;

(C) the individual transfers to an acute care medical setting; or

(D) the individual's absence is not authorized. This includes, but is not limited to, an individual who leaves without permission or is being held by legal authorities.

(2) The facility must notify the individual's family, parent, if individual is a minor, or legal guardian about the release.

(3) The facility must document the temporary release in the individual's record, including the date of departure, the circumstances causing the absence, and the date of return.

(4) Upon the individual's return, the facility must conduct an interdisciplinary team meeting attended by the QMRP and any other appropriate team member. The purpose of the meeting is to review the individual program plan, identify new needs, and make necessary changes to the plan.

(5) If the individual's absence from the facility exceeds 30 days, the facility must permanently release him.

(c) Requirements for permanent release are as follows.

(1) The facility must complete permanent-release requirements in any of the following situations:

(A) the individual makes a planned move to an alternate living arrangement, including, but not limited to, another facility, apartment, foster home, or home;

(B) the individual, parent, if individual is a minor, or legal guardian requests the release;

(C) the individual loses financial (Medicaid) eligibility for ICF-MR services, and the facility chooses to release him;

(D) the facility stops operating or voluntarily withdraws from the Medicaid program;

(E) the individual does not pay allowable fees including but not limited to applied income and bed-hold charges, and the facility chooses to release him; or

(F) the individual's temporary release exceeds 30 days.

(2) Except in cases when a individual's temporary release exceeds 30 days, the facility must meet the following requirements before release. When an individual's temporary release exceeds 30 days, the facility must complete the following items within seven calendar days after the individual's permanent release.

(A) Except in cases when an individual makes a planned move as described in paragraph (1)(A) of this subsection, the facility must notify the individual, parent, if individual is a minor, legal guardian, or other family members about the proposed release. When an individual makes a planned move, the facility must provide the notification at least 30 days before release.

(B) The facility must counsel the individual, parent, or legal guardian about the advantages and disadvantages of the release. These persons should participate in release planning whenever possible.

(C) The facility must notify the mental retardation authority (MRA) of the catchment area in which the individual will live regarding the release and the reason for it.

(D) The facility must develop a plan for providing appropriate services, including protective supervision and other follow-up services. The facility must ensure that the individual's record contains the following documentation from service agencies identified in the plan as responsible for providing after-care services:

(i) letters of intent to provide the services identified in the plan; or

(ii) signatures of service-agency representatives verifying their attendance at the interdisciplinary team meeting in which the plan is developed; or

(iii) letters of attempts to secure such services, if service agencies have not provided documentation described in clauses (i) and (ii) of this subparagraph.

(3) When the facility must release an individual because of maladaptive behavior(s) that the facility is unable to address successfully, the facility must provide evidence, in the individual's record, of the interdisciplinary team's attempts to manage the behavior(s). These attempts must include active participation of the facility's psychologist and review by the facility's human rights committee.

(4) Within seven calendar days after the individual's release, the facility must ensure that the individual's record contains a release summary including the following:

(A) the reason for permanent release. If the individual is released to another residence, the facility must include an explanation of why the facility is no longer appropriate or no longer able to provide services;

(B) a description of findings, events, and progress of the individual during residence. If the individual is released

because of behaviors or active treatment needs the facility is unable to address, the facility must ensure that the summary describes the actions taken by the interdisciplinary team to meet those needs before discharge planning was initiated;

(C) a comprehensive statement of the individual's service needs, the plan for addressing those needs, and the agency(ies) and other service providers responsible for providing the services.

(5) The facility must send a copy of the release-summary to the individual, parent, if individual is a minor, or legal guardian; to the local MRA in whose catchment area the client will live; and to any alternative residence, if requested and legal consent is obtained.

(6) The psychologist must participate in the release planning if the reason for release is the individual's display of maladaptive behavior that the facility is unable to address successfully.

(7) If the facility voluntarily withdraws from the Medicaid program or ceases to operate, the facility implements a release plan for each individual, in cooperation with DHS and TDMHMR.

(8) If the individual dies, the facility must complete a release-summary as described in paragraph (4)(A) and (B) of this subsection.

(d) Requirements for emergency release are as follows.

(1) The facility may release the individual on an emergency basis for any of the following reasons:

(A) the individual, parent, if individual is a minor, or legal guardian requests an immediate permanent release. The facility must counsel the party(ies) about the advantages and disadvantages of the release;

(B) the individual's physician determines that failure to release the individual will threaten the individual's health and safety or the health and safety of others; or

(C) the individual requires an acute-care medical setting.

(2) The facility must notify, at least orally, the individual's family, parent, if individual is a minor, or legal guardian before the release unless the individual's well-being will be jeopardized. If the individual's well-being will be jeopardized, the facility must attempt to contact the family, parent, or legal guardian within 24 hours of the release. The facility must document in the individual's record all contacts or attempted contacts.

(3) If the release is temporary, the facility must comply with subsection (b)(3)-(5) of this section.

(4) If the release is permanent, the facility must comply with subsection (c) of this section. The facility must notify the local MRA within 72 hours of the individual's release.

(e) When an individual is absent from the facility for 24 hours or more, except for purposes of a therapeutic visit, the facility must meet the requirements for termination of state reimbursement for services as described in §27.521 of this title (relating to Discharge and Transfer).

§27.709. Health and Hygiene Services.

(a) The facility must:

(1) weigh each individual quarterly;

(2) measure the height of each individual quarterly until the individual reaches the age of maximum growth; and

(3) maintain weight and height records for each individual.

(b) An individual who is incontinent must be bathed or cleaned immediately upon voiding or soiling unless specifically contraindicated by the training program; and all soiled items must be changed.

(c) If a facility requires a licensed vocational nurse (LVN) to practice the techniques of venipuncture or of insertion of a naso-gastric tube or a gastrostomy tube, the facility must:

(1) verify that the LVN has received sufficient instructions in the techniques and is qualified to perform the specific procedures needed; and

(2) maintain documentation of the qualifying training in the LVN's record.

§27.711. Requirements for Self-administration of Medication.

(a) The facility must develop policies and procedures governing the self-administration of medication. The policies must ensure adequate supervision of the individual and describe the facility's training program for self-administration of medication.

(b) Individuals who meet the requirements stated in 42 Code of Federal Regulations, §483.460(k) may remove medications from their pharmacy-labeled containers and place the selected medications in an individual container that holds a seven-day supply or less.

(c) A container that holds transferred medications as specified in subsection (b) of this section must be labeled with:

(1) the name of the individual;

(2) the name and strength of the medications;

(3) the name of the physician; and

(4) the address of the facility.

(d) Authorization to transfer medications as permitted in subsection (b) of this section must be included in the individual program plan.

§27.713. Medical Transportation.

(a) The facility must provide each individual with normal transportation to medical services outside the facility when the attending physician orders the services.

(b) Throughout this section, the term "normal transportation" refers to transportation to and from the medical care provider of an individual's choice, as long as the provider is generally available and used by residents of the locality for medical care covered by the Texas Medical Assistance Program. When there is no Title XIX provider in the locality, the term "transportation" refers to transportation to and from the nearest appropriate Title XIX provider that the individual chooses. The term "locality" refers to the service area surrounding the facility from which individuals ordinarily come or are expected to come for inpatient or outpatient services.

(c) The facility is responsible to pay transportation charges, including non-emergency, routine ambulance services, related to an individual's certification or recertification.

(d) The facility must not charge the Texas Department of Human Services' (DHS's) insuring agent, the Medicaid client, his family, or any other party responsible for the Medicaid client for normal transportation as defined in this section. Normal transportation charges are covered in DHS's monthly vendor rate. The facility is not permitted to use DHS's community-based Title XIX Medical Transportation Program.

(e) The facility is not responsible for charges for medically necessary ambulance services when they are properly documented with a physician's authorization and when they conform to DHS's health insuring agent's guidelines for payment of ambulance services. These services are payable by DHS's insuring agent as Medicaid benefits. The services include:

(1) emergency ambulance services; and

(2) non-emergency ambulance services (except for certification or recertification) for individuals who must be transported by litter or who require a life-sustaining support system. This group includes severely disabled individuals who must be transported by ambulance and individuals who are unable to use other means of transportation for stated medical reasons.

(f) Ambulance services that are reimbursable by DHS's health insuring agent are not the responsibility of the Medicaid client, his family, or any other party responsible for the Medicaid client.

§27.715. Record Retention and Other Related Record Requirements.

(a) The facility must promptly make records and supporting documents available for review by the following agencies at any time without prior notification or consent:

(1) the United States Department of Health and Human Services;

(2) the Texas Department of Health;

(3) the Texas Department of Mental Health and Mental Retardation;

(4) the Texas Attorney General's Medicaid fraud control unit;

(5) the Texas Department of Human Services; and

(6) the Comptroller General of the United States.

(b) The facility must retain program, financial, and medical records as specified in §69.202 of this title (relating to Contractor's Records).

(c) The facility must keep the records of an individual under age 18 for three years beyond his 18th birthday even if this retention period exceeds the retention periods specified in §69.202.

(d) The facility must retain financial records in their original form during the applicable retention period specified in §69.202. Microfilming and other methods of data storage are not acceptable.

§27.717. Abuse and Neglect Reporting Requirements In accordance with 42 Code of Federal Regulations, §483.420(d)(2), the facility must immediately report to the facility administrator, and to other officials, all allegations and suspected incidents of mistreatment, neglect, or abuse, as well as injuries of unknown source, in accordance with state law and through established procedures, as follows.

(1) Facilities licensed by the Texas Department of Health (TDH) must report each allegation and suspected incident of mistreatment, abuse, or neglect to TDH in accordance with Texas Civil Statutes, Article 4442(c). Additionally, allegations of physical, verbal, or sexual abuse shall be reported immediately to the local law enforcement agency. The facility must have a current copy of TDH's procedure for reporting abuse and neglect and must make this procedure known to appropriate staff. TDH's reporting procedure is available from TDH, Bureau of Long-term Care, Complaints Management and Public Disclosure Section, 1100 West 49th Street, Austin, Texas 78756-3199.

(2) Texas Department of Mental Health and Mental Retardation (TDMHMR) facilities must report investigative findings

about each suspected incident of abuse or neglect to TDMHMR, Client Services and Rights Protection, P.O. Box 12668, Austin, Texas 78711-2668.

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

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Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

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For further information, please call: (512) 450-3765

◆ ◆ ◆ Subchapter H. Dental Program

• 40 TAC §§27.801, 27.803, 27.805, 27.807, 27.809, 27.811, 27.813, 27.815, 27.817, 27.819, 27.821, 27.823, 27.825, 27.827, 27.829, 27.831, 27.833, 27.835, 27.837, 27.839, 27.841, 27.843, 27.845, 27.847, 27.849, 27.851, 27.853, 27.855, 27.857, 27.859, 27.861, 27.863

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.801. Program Basis. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) must ensure that Medicaid clients in their facilities receive comprehensive dental services, as specified in 42 Code of Federal Regulations (CFR), §483.460. The Texas Department of Human Services (DHS) reimburses participating dental providers for services to ICF-MR Medicaid clients who are 21 years old or older through the department's ICF-MR dental program. Services to ICF-MR clients under age 21 are reimbursed through the EPSDT Dental Program.

§27.803. Eligibility. To be eligible for the Texas Department of Human Services' (DHS's) Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) dental program, a person must:

(1) be a current Texas recipient of Title XIX ICF-MR services;

(2) have a current Texas Medical Care Identification Card that indicates eligibility with a "Y" or an "R" in the ICF-MR dental blank, or have a Medicaid verification letter;

(3) be 21 years old or older; and

(4) reside in a community-based ICF-MR.

§27.805. Confidentiality of Records.

(a) The information contained in the individual's clinical record is confidential. Medicaid regulations prohibit the disclosure of information about Medicaid clients without their consent, as specified in the following circumstances.

(1) Information may be provided to service providers only with the prior written consent of the individual, the parent of a minor, the legal guardian, or another responsible party.

(2) Lists of names and addresses of individuals may be provided to service providers only with appropriate written consent.

(3) Contracted agencies performing certain administrative functions for the ICF-MR dental program may receive confidential information without consent. These agencies are bound by the same standards of confidentiality as the Texas Department of Human Services (DHS) and must provide effective safeguards to ensure confidentiality.

(b) If an agency or a person who has not contracted with DHS to provide services requests information directly, that agency or person must provide written consent as required in subsection (a)(1) of this section.

(c) Statistical information or other general information that does not identify individuals is not subject to the restrictions specified in subsections (a) and (b) of this section.

(d) An individual may release any information about himself that he chooses to release.

§27.807. Freedom of Choice.

(a) All ICF-MR dental program clients have the right to choose from participating providers of dental treatment services.

(b) The facility must furnish clients with complete information about available services, advise them how to obtain these services, and fully explain their rights to freely choose service providers as specified in subsection (a) of this section.

(c) The facility must advise the individual that he may request a hearing before the Texas Department of Human Services (DHS) if he believes that his right to freely choose providers has been abridged without due process.

§27.809. Allowable Services and Limitations. The ICF-MR dental program pays only for medically necessary covered and allowable services as specified by DHS, or its insuring entity, the National Heritage Insurance Company (NHIC).

§27.811. Dental Examination and Treatment. The Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) dental program provides emergency, preventive, therapeutic, and orthodontic dental services.

§27.813. Emergency Services.

(a) Emergency dental services are those procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent loss of teeth; and treatment of injuries to the teeth or supporting structures. Prior authorization is not required for emergency dental services. Emergency claims exceeding \$80 are subject to review and reduction of payment if the nature of the emergency is not clearly documented. Only one emergency claim a day may be submitted for each individual.

(b) Based on the definition of emergency services approved by the Council of Dental Health of the American Dental Association, routine restorative procedures and root canal therapy are not considered emergency procedures.

(c) The Texas Department of Human Services (DHS) may increase the maximum fee by publishing a new maximum in the *Texas Register*.

§27.815. Preventive Services. Preventive dental services include an examination, oral prophylaxis, and a topical fluoride application.

§27.817. Therapeutic Services. Therapeutic dental services include, but are not limited to, pulp therapy for permanent and primary teeth; restoration of carious permanent and primary teeth; maintenance of space; and limited provision of removable prostheses when masticatory function is impaired, when an existing prosthesis is un-serviceable, or when aesthetic considerations interfere with employment or social development.

§27.819. Orthodontic Services.

(a) Orthodontic services are limited to treatment of:

- (1) retained deciduous teeth;
- (2) crossbite therapy;
- (3) facial accidents involving severe traumatic deviations;
- (4) cleft palates with gross malocclusion that will benefit from early treatment; and

(5) severe, handicapping malocclusion with a minimum score of 26 as measured on the Handicapping Labio-Lingual Deviation (HLD) Index. Only permanent dentition cases are allowable.

(b) Cosmetic orthodontia is not covered.

§27.821. Eligibility for Orthodontic Services. To qualify for orthodontic services, the individual must be at least 21 years old and a current ICF-MR client on the date that the prior authorization request is submitted and on the date that orthodontic appliances are first applied.

§27.823. Application for Participation.

(a) Dentists who are licensed and authorized by the Texas State Board of Dental Examiners and who reside and practice in the United States may apply for participation as providers. Private and public agencies that employ dentists may also apply to become providers in their communities.

(b) If an individual who is eligible for ICF-MR dental services requires emergency dental services while out of state, the requirement that the provider have a Texas dental license and current registration with the Texas Board of Dental Examiners may be waived as long as the provider is a licensed dentist in the state where the services are rendered and as long as he is authorized to provide Title XIX services in that state.

(c) To request provider enrollment application forms for the ICF-MR dental program, dentists, private dental agencies, and public nonprofit dental agencies contact Provider Enrollment, National Heritage Insurance Company, 11044 Research Boulevard, Building C, Austin, Texas 78759-5239.

§27.825. Requirements for Participation.

(a) Requirements for participation are stated in the provider agreement signed between the provider and the Texas Department of Human Services (DHS).

(b) Providers must render services in accordance with the reimbursement policies and operational instructions established by DHS, and in compliance with the "rules and regulations relating to the practice of dentistry set forth by the Texas State Board of Dental Examiners.

(c) Participation in the program is voluntary.

(d) The provider agreement is not transferable or assignable.

(e) Each provider must notify DHS or the National Heritage Insurance Company (NHIC) of all changes in the provider's telephone number(s) or office mailing address(es).

(f) If the Texas State Board of Dental Examiners (TSBDE) revokes or suspends a dental provider's license, the provider must notify DHS and NHIC and stop providing ICF-MR services. A provider placed on probation by TSBDE may continue to participate in the ICF-MR den-

tal program during the probationary period except when:

(1) the conduct for which the provider has been placed on probation is related to fraud or abuse of Medicaid or other federally funded state health programs; or

(2) the provider's conduct or practice has caused or could cause harm to ICF-MR dental program Medicaid recipients or other patients.

§27.827. Orthodontic Provider Participation.

(a) To provide orthodontic services under the ICF-MR dental program, dentists must be licensed by the Texas State Board of Dental Examiners and be enrolled as providers in the ICF-MR dental program as providers of orthodontic services.

(b) The National Heritage Insurance Company (NHIC) associate dental director must authorize all orthodontic treatment. Providers must submit the following documentation with each request for prior authorization:

(1) properly occluded and trimmed dental models;

(2) cephalometric radiograph with tracing models;

(3) completed and scored Handicapping Labio-Lingual Deviation (HLD) sheet with diagnosis of angle class;

(4) facial photographs;

(5) treatment plan;

(6) full series of radiographs or a panorex; and

(7) additional pertinent information as determined by the provider or requested by the NHIC associate dental director.

(c) The NHIC associate dental director returns all submittals to the provider.

(d) If a case is not approved, the provider may file a claim and receive payment to defray the costs of the diagnostic materials necessary to obtain the prior authorization. However, the provider may receive payment for no more than two denials out of 10 cases he submitted.

§27.829. Post-payment Review.

(a) The National Heritage Insurance Company (NHIC) associate dental director performs on-site utilization reviews.

(b) At the provider's expense, the provider must submit study models and diagnostic work-up information on patients with questionable review results.

§27.831. Termination of a Provider Agreement. The agreement between the provider and the Texas Department of Human Ser-

vices (DHS) for provision of ICF-MR dental services may be terminated in the following circumstances.

(1) The agreement may be terminated voluntarily by either party by giving 30 days notice in writing to the other party.

(2) If the provider is suspended or has his license revoked by the Texas State Board of Dental Examiners, the agreement is void on the date of the state board's action.

(3) The department terminates the agreement if a provider is convicted for fraud in the program.

(4) The agreement may be terminated by either party for breach of the agreement. A termination for breach of the agreement is effective when the other party receives written notice of the termination or on a later date specified in the notice.

(5) The department and the provider may end the agreement if federal or state laws or other requirements are amended or judicially interpreted in a way that would make it infeasible or impossible for either party to fulfill the agreement, or if either party is unable to agree on changes necessary for the substantial continuation of the agreement. Any respective accrued interests up to the date of termination must be settled equitably.

§27.833. Maximum Payment.

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

(1) Usual fee—The fee a provider usually charges private-pay individuals for a service.

(2) Maximum fee—The highest fee that the Texas Department of Human Services (DHS) pays for an allowable procedure. DHS advises participating providers in writing of the maximum fee schedule when the provider is enrolled in the program and whenever maximum fees change.

(3) Adjusted fee—The fee derived when the National Heritage Insurance Company (NHIC) associate dental director adjusts the charge for a dental procedure that has a payment limitation as specified in the chart of allowable services, procedure codes, and limitations included in the Early and Periodic Screening, Diagnosis, and Testing (EPSDT) dental services section of NHIC's Provider Procedures Manual. The NHIC associate dental director adjusts payment for a specific dental procedure below the maximum fee for the procedure when DHS has partially paid for service on the same tooth or when the degree of difficulty, as determined by a review of the x-rays or itemized laboratory statement, does not justify the maximum fee.

(b) Payments for dental services rendered in the ICF-MR dental program are the lowest of:

- (1) the provider's usual fee;
- (2) the maximum fee listed on the fee schedule; or
- (3) the adjusted authorized fee.

§27.835. Charges to ICFs-MR.

(a) The dental provider may charge the ICF-MR only for services that are not covered by the ICF-MR dental program.

(b) Providers must not charge for Medicaid-covered services for which payment was denied because of claim-filing errors or because of late filing.

(c) Providers must not charge for missed appointments.

§27.837. Payment of Claims.

(a) Under the agreement with the Texas Department of Human Services (DHS), the provider must accept payment by DHS as payment in full for services.

(b) DHS reimburses providers for services properly rendered in accordance with applicable laws, regulations, operational instructions, and the DHS provider agreement. DHS may withhold or suspend payment for services that are not properly rendered.

(c) The ICF-MR dental program makes no payment for services that are available under any other Texas Medical Assistance Program.

(d) In case of the provider's death, DHS pays a completed claim only after the executor of the estate signs it.

§27.839. Change to Another Provider.

(a) A change of provider may be made for one or more of the following reasons:

(1) treatment by a specialist, such as a pedodontist, oral surgeon, or endodontist, is indicated;

(2) the provider does not want to continue treatment with a particular recipient because of missed appointments, a lack of appointment time, or a personality conflict;

(3) the individual prefers a provider nearer to his home or place of employment; or

(4) the individual does not want to continue treatment with the provider because of conflicts with the provider.

(b) A provider may initiate a change of provider for the two reasons specified in subsection (a)(1) and (2) of this section. If arrangements have been made with another provider or a specific special-

ist, the referring provider notes the name of the provider and a brief reason for the referral when he submits his claim for the initial exam for payment.

(c) The provider receiving the referral examines the individual and notes on his claim form the referring dentist's name, address, or Medicaid number. The provider checks the individual's eligibility for ICF-MR dental services and completes the treatment unless prior authorization is necessary.

(d) A recipient may initiate a change of provider for the two reasons specified in subsection (a)(3) and (4) of this section. The individual or the facility notifies the initial provider, and the initial provider then submits his claim for payment of services.

(e) If the combined total payment allowed by Medicaid for both providers is less than \$300 and if none of the services requires x-rays for prior authorization, the second provider is not required to obtain prior authorization. This requirement applies whether the provider or the individual initiated the change to another provider.

§27.841. Time Limits, Return, and Denial of Claims.

(a) The ICF-MR dental program denies payment when the following time limits for submitting claims are not met.

(1) Dental services claims must be submitted to the National Heritage Insurance Company (NHIC) within 90 days of the service date, with an additional allowance of five days for mail time.

(2) If a service is billed to another insurance resource, the NHIC claim must be filed within 90 days of the disposition by the other resource.

(3) If a service is billed to a third-party resource but the third party does not respond, the NHIC claim must be filed within 12 months of the service date. However, the claim must not be submitted to NHIC sooner than 110 days after the third party billing.

(b) If the services of a treatment plan cannot all be completed within the 90-day filing limit, the provider must complete a claim form for the completed services and request authorization for the uncompleted services. The provider submits the claim and the authorization request together to NHIC. As appropriate, NHIC pays for the completed services and authorizes the remaining services.

(c) To reconsider a claim that has been denied because additional information is needed, NHIC must receive the needed information within 180 days of the date of NHIC's remittance and status report.

(d) NHIC must receive all claims appeals and requests for adjustments within 180 days of the claim's disposition date.

The disposition date is the date on the remittance and status report on which the claim appears.

(e) NHIC denies claims for any of the following reasons:

(1) the individual is not eligible for ICF-MR dental services;

(2) the services billed are not allowable procedures in the ICF-MR dental program;

(3) the claim is submitted after the 90-day time limit;

(4) a duplicate claim has already been submitted, or the claim is for dental services already paid;

(5) the services required, but did not receive, prior authorization;

(6) services were provided by a nonparticipating or a suspended provider;

(7) required information is missing from the claim; or

(8) the lifetime limitations on certain procedures have been exhausted.

§27.843. Dental Problems Discovered by the Utilization-review Dentist.

(a) If a utilization-review dentist finds an obvious need for additional dental care with no absence of service to date, a claim for the additional, medically necessary care may be submitted.

(b) The claim must indicate that the need for additional treatment was discovered by utilization review.

(c) The individual must still be eligible for the ICF-MR dental program.

(d) When required, prior authorization must be obtained for the additional procedure. When obtaining prior approval, the provider indicates that the need for additional treatment was discovered by utilization review.

(e) If a procedure requires x-rays for prior authorization, the x-rays must be submitted with the prior authorization request. The provider writes "discovered by utilization review" at the top of the claim when submitting it for prior authorization.

§27.845. Utilization of Peer Review or Grievance Committees.

(a) The ICF-MR dental program has agreed with the Texas Dental Association that, when appropriate, the program may rely on local peer review or grievance committees to resolve disputes:

(1) including complaints and questions about the quality of service; and

(2) involving clients, providers, and the program.

(b) Any one of the parties specified in subsection (a)(2) of this section may

utilize either type of committee to try to settle a dispute. The dispute resolution process is initiated by contacting the National Heritage Insurance Company (NHIC) associate dental director. The associate dental director contacts the president of the local dental society or peer review committee and requests that the committee meet to resolve the problem.

(c) Clients, providers, Texas Department of Human Services (DHS) staff, or NHIC may also contact the local dental society or peer review committee directly if they consider it necessary.

§27.847. Utilization of State Board of Dental Examiners. Dental services under the ICF-MR dental program must be performed by the provider except for work normally expected to be done by a dental hygienist, a dental assistant, or a commercial or office dental laboratory when denture service is involved. The State Board of Dental Examiners' Rules and Regulations, Section V, outlines the scope of work that dental auxiliary personnel can perform. The Texas State Board of Dental Examiners' "Laws Relating to the Practice of Dentistry," Texas Civil Statutes, Article 4551(f), outlines the scope of work that can be performed by dental technicians. Any suspected or reported deviations from these practices must be reported to the Texas State Board of Dental Examiners.

§27.849. Types of Reviews. The department conducts prepayment and postpayment utilization reviews of participating dental providers.

§27.851. Notification to Provider about Utilization Review. The provider is entitled to prior notification of ICF-MR dental program utilization reviews.

§27.853. Provider Cooperation. The provider must not contact, examine, or treat clients to be reviewed, except for emergency services, from the time he is notified of the individuals to be reviewed until after the review. The provider must have each individual's office records, including x-rays, available for the reviewing dentist.

§27.855. Report of Findings. ICF-MR dental program utilization review staff must notify the provider in writing of the review findings. The provider must also be notified of any administrative action to be taken by the Texas Department of Human Services (DHS). The notification may occur after an action taken by another professional dental or governmental organization.

§27.857. Classification of Review Findings.

(a) Review findings are classified as acceptable, questionable, or unacceptable. A review finding is classified as acceptable if:

(1) the tangible service discrepancy rate is 5.0% or less; and

(2) the monetary discrepancy rate is 3.0% or less; and

(3) the overall quality of the work performed complies with the Texas State Board of Dental Examiners' "Laws Relating to the Practice of Dentistry," Texas Civil Statutes, Article 4551(f).

(b) A review finding is classified as questionable if:

(1) the tangible service discrepancy rate is greater than 5.0% but less than 10%; or

(2) the monetary discrepancy rate is greater than 3.0% but less than 6.0%; or

(3) the quality of the work for a specific dental procedure(s) did not comply with the Texas State Board of Dental Examiners' "Laws Relating to the Practice of Dentistry," Texas Civil Statutes, Article 4551(f).

(c) A review finding is classified as unacceptable if:

(1) the tangible service discrepancy rate is greater than 10%; or

(2) the monetary discrepancy rate is greater than 6.0%; or

(3) the overall quality of the work performed for all dental procedures did not comply with the Texas State Board of Dental Examiners' "Laws Relating to the Practice of Dentistry," Texas Civil Statutes, Article 4551(f).

§27.859. Restitution of Overpayments. If, during the review, exceptions are found which indicate overpayment for services rendered or payment for services not rendered, the department requires restitution. The provider must reimburse the Texas Department of Human Services (DHS) for all amounts owed as a result of overpayments and payments for services not rendered. The amount of money to be repaid includes the dollar value of the discrepancies in the claims reviewed. The amount also includes a dollar value derived by applying the monetary discrepancy rate to all of the provider's other treatment claims paid during the period under review.

§27.861. Administrative Actions.

(a) If discrepancies or irregularities are found during the review, the Texas Department of Human Services (DHS) may take one or more administrative actions. These actions include, but are not limited to, the following:

(1) recoupment of funds;

(2) referral to a professional dental advisory and review committee for review and recommendation;

(3) probation;

(4) referral to peer review committee for review and recommendation;

(5) termination of the provider agreement;

(6) referral to the Texas State Board of Dental Examiners; and

(7) referral to DHS's fraud and abuse division.

(b) If DHS takes adverse action against a provider, the provider has a right to a fair hearing as specified in Chapter 79 of this title (relating to Legal Services).

§27.863. Fraud and Abuse.

(a) The Texas Department of Human Services (DHS) may request a fraud investigation of any provider suspected of fraud or abuse of the program.

(b) Suspected cases of fraud or abuse are referred to DHS's fraud and abuse division for review. This is done before any action is taken to recoup overpayments. The fraud and abuse division determines whether actions and/or sanctions are appropriate and whether to request a fraud investigation by the Medicaid Fraud Control Unit, Office of the Attorney General.

(c) If DHS takes adverse action against a provider, the provider has a right to a fair hearing as specified in Chapter 79 of this title (relating to Legal Services).

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

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Nancy Murphy
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Subchapter O. Dental Program

- 40 TAC §§27.1501, 27.1503, 27.1505, 27.1507, 27.1509, 27.1511, 27.1513, 27.1515, 27.1517, 27.1519, 27.1521, 27.1523, 27.1525, 27.1527, 27.1529, 27.1531, 27.1533, 27.1535, 27.1537, 27.1539, 27.1541, 27.1543, 27.1545, 27.1547, 27.1549, 27.1551, 27.1553, 27.1555, 27.1557, 27.1559, 27.1561, and 27.1563

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.1501. Program Basis.

§27.1503. Eligibility.

§27.1505. Confidentiality of Records.

§27.1507. Freedom of Choice.

§27.1509. Allowable Services and Limitations.

§27.1511. Dental Examination and Treatment.

§27.1513. Emergency Services.

§27.1515. Preventive Services.

§27.1517. Therapeutic Services.

§27.1519. Orthodontic Services.

§27.1521. Recipient's Eligibility for Orthodontic Services.

§27.1523. Application for Participation.

§27.1525. Requirements for Participation.

§27.1527. Orthodontic Provider Participation.

§27.1529. Post-payment Review.

§27.1531. Termination of a Provider Agreement.

§27.1533. Maximum Payment.

§27.1535. Charges to Recipients.

§27.1537. Payment of Claims.

§27.1539. Change to Another Provider.

§27.1541. Time Limits, Return, and Denial of Claims.

§27.1543. Dental Problems Discovered by the Utilization-review Dentist.

§27.1545. *Utilization of Peer Review or Grievance Committees.*

§27.1547. *Utilization of State Board of Dental Examiners.*

§27.1549. *Types of Reviews.*

§27.1551. *Notification to Provider about Utilization Review.*

§27.1553. *Provider Cooperation.*

§27.1555. *Report of Findings.*

§27.1557. *Classification of Review Findings.*

§27.1559. *Restitution of Overpayments.*

§27.1561. *Administrative Actions.*

§27.1563. *Fraud and Abuse.*

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TRD-9100782 Nancy Murphy
Agency liaison, Policy and
Document Support
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Subchapter S. Utilization Review and Reevaluation

◆ ◆ ◆
• 40 TAC §§27.1801-27.1805

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.1801. *Utilization Control*

§27.1802. *Utilization Review*

§27.1803. *Inspections of Care*

§27.1804. *Preadmission and Admission Process*

§27.1805. *Continued-stay 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.

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Document Support
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Subchapter X. Housekeeping and Maintenance Services

◆ ◆ ◆
• 40 TAC §§27.2301-27.2303

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.2301. *Provision of Housekeeping and Maintenance Services.*

§27.2302. *Pest Control.*

§27.2303. *Linen.*

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

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TRD-9100784 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
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Subchapter Y. Physical Environment

◆ ◆ ◆
• 40 TAC §27.2403, §27.2405

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.2403. *Elevators.*

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§27.2405. *Isolation Requirements.*

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

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Subchapter Z. Change in Status of Intermediate Care MR Sections

◆ ◆ ◆
• 40 TAC §§27.2501-27.2507

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.2501. *Eligibility for Vendor Payments.*

§27.2502. *Contract.*

§27.2503. *Vendor Payments.*

§27.2504. *Contract Requirements.*

§27.2505. *Sanction Provisions for Violations of Title XIX Nursing Facility Contractual Agreements.*

§27.2506. *Change of Ownership.*

§27.2507. *Surety Bonds or Letters of Credit.*

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

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Subchapter AA. Standards for Compliance of Intermediate Care MR Facilities with Title VI of the Civil Rights Act of 1964

• 40 TAC §§27.2601-27.2604

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.2601. Title VI of the Civil Rights Act of 1964.

§27.2602. Section 504 of the Rehabilitation Act of 1973.

§27.2603. Age Discrimination Act of 1975.

§27.2604. Title VII of the Civil Rights Act of 1964.

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

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Subchapter BB. Facilities with More than 15 Beds

• 40 TAC §§27.2701-27.2704

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.2701. Criteria relating to ICF-MR Facility Status.

§27.2702. ICF-MR Facility Services.

§27.2703. State Licensing Standards.

§27.2704. State Safety and Sanitation Standards.

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

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Subchapter CC. Special Criteria for Facilities with 15 Beds or Fewer

• 40 TAC §27.2801

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

The repeal 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.

§27.2801. Definitions.

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

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Subchapter DD. Administrative Policies and Procedures

• 40 TAC §§27.2901-27.2917

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.2901. Philosophy, Objectives, and Goals.

§27.2902. Residents' Civil Rights.

§27.2903. Residents' Bill of Rights.

§27.2904. Delegation of Rights and Responsibilities.

§27.2906. Policy and Procedure Manuals.

§27.2907. Management Audit Plan.

§27.2908. Governing Body.

§27.2909. Chief Executive Officer.

§27.2910. Qualified Mental Retardation Professional.

§27.2911. Organization Chart.

§27.2912. Staff-resident Communications.

§27.2913. Communication with Residents and Parents.

§27.2914. Health and Safety Laws.

§27.2915. Research Statement.

§27.2916. Agreements with Outside Resources.

§27.2917. Agreements with Local Independent School Districts.

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

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Subchapter EE. Admission and Release

• 40 TAC §§27.3001-27.3011

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the

authority to administer public and medical assistance programs.

§27.3001. *Admission Criteria and Evaluations.*

§27.3002. *Availability of Rules and Procedures.*

§27.3003. *Number of Residents.*

§27.3004. *Review of Preadmission Evaluation.*

§27.3005. *Annual Review of Resident's Status.*

§27.3006. *Record and Reports of Reviews.*

§27.3007. *Release from the ICF-MR.*

§27.3008. *Transfer to Another Facility.*

§27.3009. *Emergencies or Death of a Resident.*

§27.3010. *Payment for Absences from the Facility.*

§27.3011. *Discharge or Transfer.*

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

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Subchapter FF. Personnel Policies

◆ ◆ ◆
• 40 TAC §§27.3101-27.3106

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.3101. *Written Policies.*

§27.3102. *Licensure and Professional Standards.*

§27.3103. *Suspension and Dismissal.*

§27.3104. *Staff Treatment of Residents.*

§27.3105. *Sufficient Staffing and Resident Work.*

§27.3106. *Staff Training Program.*

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

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TRD-9100792 Nancy Murphy
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Subchapter GG. Resident Living

• 40 TAC §§27.3201-27.3221

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.3201. *Responsibilities of Living Unit Staff.*

§27.3202. *Resident Evaluation and Program Plans.*

§27.3203. *Resident Activities.*

§27.3204. *Personal Possessions.*

§27.3205. *Control and Discipline of Residents.*

§27.3206. *Physical Restraint of Residents.*

§27.3207. *Mechanical Devices Used for Physical Restraint.*

§27.3208. *Chemical Restraint of Residents.*

§27.3209. *Behavior Modification Programs.*

§27.3210. *Resident Clothing.*

§27.3211. *Health, Hygiene, Grooming, and Toilet Training.*

§27.3212. *Grouping and Organization of Living Units.*

§27.3213. *Resident Living Staff.*

§27.3214. *Resident Living Areas.*

§27.3215. *Resident Bedrooms: Space and Occupancy.*

§27.3216. *Resident Bedrooms: Furniture and Bedding.*

§27.3217. *Storage Space in Living Units.*

§27.3218. *Resident Bathrooms.*

§27.3219. *Heating and Ventilation in Living Units.*

§27.3220. *Floors in Living Units.*

§27.3221. *Emergency Lighting.*

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

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Subchapter HH. Professional and Special Program and Services

◆ ◆ ◆
• 40 TAC §§27.3301-27.3303

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.3301. *Needed Services.*

§27.3302. *Quality Standards for Outside Resources.*

§27.3303. *Planning and Evaluation.*

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

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Subchapter II. Dental Services

• 40 TAC §§27.3401-27.3406

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The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.3401. *Diagnostic Services.*

§27.3402. *Treatment.*

§27.3403. *Education and Training.*

§27.3404. *Records.*

§27.3405. *Formal Arrangements.*

§27.3406. *Staff.*

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Subchapter JJ. Training and Habilitation Services

• 40 TAC §§27.3501, §27.3502

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The repeals are proposed under the Human

Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.3501. *Required Services.*

§27.3502. *Staff.*

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Subchapter KK. Food and Nutrition Services

• 40 TAC §§27.3601-27.3609

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.3601. *Required Services.*

§27.3602. *Diet Requirements.*

§27.3603. *Meal Service.*

§27.3604. *Menus.*

§27.3605. *Food Storage.*

§27.3606. *Work Areas.*

§27.3607. *Dining Areas and Service.*

§27.3608. *Training of Residents and Direct-care Staff.*

§27.3609. *Staff.*

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100797 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

Subchapter LL. Medical Services

• 40 TAC §§27.3701-27.3704

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.3701. *Required Services.*

§27.3702. *Goals and Evaluations.*

§27.3703. *Arrangements with Outside Resources.*

§27.3704. *Preventive Health Services.*

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

Issued in Austin, Texas, on January 22, 1991

TRD-9100798 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
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For further information, please call: (512) 450-3765

Subchapter MM. Nursing Services

• 40 TAC §§27.3801-27.3804

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.3801. *Required Services.*

§27.3802. *Training.*

§27.3803. *Staff.*

§27.3804. Supervision of Health Services.

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100799 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

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Subchapter NN. Pharmacy Services

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• 40 TAC §§27.3901-27.3904

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.3901. Required Services.

§27.3902. Pharmacist.

§27.3903. Drugs and Medications.

§27.3904. Drug Storage.

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

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TRD-9100800 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

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Subchapter OO. Physical and Occupational Therapy Services

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• 40 TAC §§27.4001-27.4003

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and

32, which provides the department with the authority to administer public and medical assistance programs.

§27.4001. Required Services.

§27.4002. Records and Evaluations.

§27.4003. Staff and Facilities.

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

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TRD-9100801 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

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Subchapter PP. Psychological Services

◆ ◆ ◆
• 40 TAC §§27.4101, §27.4102

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.4101. Required Services.

§27.4102. Psychologist.

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100802 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

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Subchapter QQ. Recreational Services

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• 40 TAC §§27.4201-27.4203

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.4201. Required Services.

§27.4202. Records.

§27.4203. Staff.

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100803 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

◆ ◆ ◆
Subchapter RR. Social Services

◆ ◆ ◆
• 40 TAC §§27.4301, §27.4302

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.4301. Required Services.

§27.4302. Social Workers.

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100804 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

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Subchapter SS. Special Pathology and Audiology Services

◆ ◆ ◆
• 40 TAC §§27.4401-27.4403

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs. SS. Special Pathology and Audiology Services

§27.4401. *Requires Services*

§27.4402. *Evaluations and Assessments.*

§27.4403. *Staff and Facilities.*

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100805 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Earliest possible date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

Subchapter TT. Records

• 40 TAC §§27.4501-27.4506

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.4501. *Maintenance of Resident Records.*

§27.4502. *Admission Records.*

§27.4503. *Record Entries during Residence.*

§27.4504. *Confidentiality.*

§27.4505. *Central Record Service.*

§27.4506. *Staff and Facilities.*

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100806 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

Subchapter UU. Safety and Sanitation

• 40 TAC §§27.4601-27.4608

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.4601. *Emergency Plan and Procedures.*

§27.4602. *Evacuation Drills.*

§27.4603. *Fire Protection.*

§27.4605. *Fire Protection Waivers.*

§27.4606. *Paints.*

§27.4607. *Building Accessibility and Use.*

§27.4608. *Sanitation Records and Reports.*

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100807 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

Subchapter VV. Administrative Services

• 40 TAC §§27.4701-27.4704 Proposed

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.4701. *Support Services.*

§27.4702. *Communications System.*

§27.4703. *Engineering and Maintenance.*

§27.4704. *Laundry Services.*

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100808 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

Subchapter WW. Residents' Personal Funds and Property

• 40 TAC §§27.4801-27.4804

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.4801. *Personal Funds.*

§27.4802. *Expenditures of Personal Funds.*

§27.4803. *Protection of Funds.*

§27.4804. *Refunds.*

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100809 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

Subchapter UUUU. Support Documents

• 40 TAC §27.9801

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

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

The repeal 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.

§27.9801. Reimbursement Methodology for Intermediate Care Facilities for the Mentally Retarded.

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

Issued in Austin, Texas, on January 22, 1991.

TRD-9100810

Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

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Chapter 49. Child Protective Services

Subchapter C. Eligibility for Child Protective Services

The Texas Department of Human Services proposes amendments to §§49.311, 49.501, 49.503, 49.515, 49.517, and 49.602, concerning Child Protective Services. The purpose of the amendments is to clarify and improve child protective services policies for intake and investigation of reports of child abuse and neglect. The proposed amendments also implement provisions of the Texas Family Code, §34.54 (concerning young children engaged in delinquent conduct); expand the application of the term "household member;" create a flexible deadline for completing the child at risk field pilot project in Region 09; and articulate the department's policies for continuing to work with a foster care or adoptive home when the disposition of an investigation of abuse or neglect in the home is reason-to-believe.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improvement of services to families and children by clarifying and refining the department policies for intake and investigation of reports of child abuse and neglect. The amendments also improve services by expanding policies for continuing to work with a foster or adoptive home when the disposition of an investigation of child abuse or neglect in the home is reason-to-believe. 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.

Questions about the content of this proposal may be directed to Susan Watkins, (512) 450-3306 in Protective Services for Families and Children. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-012, 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 §49.311

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, and Chapter 41, which provides the department with the authority to enforce laws for the protection of children.

§49.311. Eligible Individuals.

(a) Except as specified in subsection (c) of this section, children and their families are eligible for services to prevent future abuse or neglect and to avoid having to remove children from their homes [abuse/neglect or removal], services to remove children in danger of [future] harm, and [or] services to reunify families if:

(1) the finding of the investigation is reason-to-believe [reason to believe or adjudicated]; and

(2) (No change.)

(b) (No change.)

(c) From February 1, 1990, until completion of the child at risk field (CARF) pilot project specified in §49.511(b) of this title (relating to Disposition of the Allegations of Abuse or Neglect) [through January 31, 1991], children and their families in DHS Region 09 are eligible for services if there is a risk of future abuse or neglect to a child in the family. Risk is the likelihood of abuse or neglect and is determined through the worker's assessment of the presence and interaction of positive and negative influences attending each of five forces operating within the family:

(1)-(5) (No change.)

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

Issued in Austin, Texas, on February 1, 1991.

TRD-9101297

Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: April 1, 1991

For further information, please call: (512) 450-3765

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Subchapter E. Intake and Investigation Services

• 40 TAC §§49.501, 49.503, 49.515, 49.517

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22,

which authorizes the department to administer public assistance programs, and Chapter 41, which authorizes the department to enforce laws for the protection of children.

§49.501. Terminology Used in Statutory Definitions of Child Abuse and Neglect and Person Responsible for a Child's Care, Custody, or Welfare. When the Texas Department of Human Services (DHS) receives and investigates reports of child abuse and neglect, the department applies [The CPS intake and investigation processes use] the statutory definitions of "abuse," "neglect," and "person responsible for a child's care, custody, or welfare" that appear in the Texas Family Code, §34.012. The following paragraphs clarify and define words and phrases that occur in those [the statutory] definitions. [The following clarifications and definitions of these words and phrases apply throughout CPS' receipt and investigation of reports of child abuse and neglect.]

(1)-(6) (No change.)

(7) Household. The Texas Family Code, §71.01(b)(4), defines a household as "a unit composed of persons living together in the same dwelling, whether or not they are related to each other." During the receipt and investigation of reports of child abuse and neglect, DHS may consider an unrelated person who resides elsewhere or whose place of residence cannot be determined to be a member of the household if the person:

(A) is at least 10 years old; and

(B) either:

(i) has free access to the household; or

(ii) when in the household dwelling, takes care of or assumes responsibility for children in the household.

(8)[(7)] "...if the child is present only to arouse or gratify. ..." A condition of the statutory definition of sexual abuse. Provided that or as long as the child is present to arouse or gratify.

(9)[(8)] Incest. Any sexually oriented practice with a child by a person who knows or should know that he or she and the child are related by consanguinity or affinity.

(10)[(9)] Managing or possessory conservator. A person responsible for a child as the result of a district court order pursuant to the Texas Family Code, Chapter 14.

(11)[(10)] "...necessary to sustain the life or health of the child" A condition of the statutory definition of physical neglect. It is met if the failure to provide food, clothing, or shelter results in

an observable and material impairment to the child's growth, development, or functioning, or in a substantial risk of observable and material impairment in the foreseeable future.

(12) [(11)] Observable and material impairment. Discernible and substantial damage or deterioration.

(13) [(12)] Pornographic. Containing an image that depicts a child under 18 at the time the image was made, who is involved in, performing, or simulating a sexually oriented act.

(14) [(13)] "...reasonable discipline...that does not expose the child to a substantial risk of harm...." [An exception to the statutory definition of physical abuse. It applies if the correction of the child's behavior does not result in or risk substantial harm from physical injury, and if the discipline is administered with due regard to preventing harm.] Correction of a child's behavior that does not result in or risk substantial harm from physical injury.

(15) [(14)] "...reasonable effort to prevent...." Actions that an ordinary and prudent person would take to stop an event from occurring.

(16) [(15)] Sexual assault. Any sexually oriented act or practice that results in harm or in substantial risk of harm to a child's growth, development, or psychological functioning.

(17) [(16)] Sodomy. Anal or oral copulation with another person or an animal.

(18) [(17)] Substantial harm. Real and significant physical injury or damage to a child that includes, but is not limited to, bruises, cuts, welts, skull or other bone fractures, brain damage, subdural hematoma, internal injuries, burns, scalds, wounds, poisoning, human bites, concussions, and dislocations and sprains.

(19) [(18)] Substantial risk. Real and significant possibility or likelihood.

§49.503. Response to Reports That Do Not Allege Abuse or Neglect. Child Protective Services (CPS) staff must assist the public in understanding what to report and what can be done about it. If a report clearly does not involve child abuse or neglect, CPS will provide information and refer the reporter to other services which may help the child and family. If the report is vague, but nonetheless appears to involve abuse or neglect, it will be investigated. However, reports about the following types of circumstances are not considered allegations of abuse or neglect unless accompanied by some other information which appears to involve abuse or neglect.

(1)-(6) (No change.)

(7) Young children engaged in delinquent conduct. Children between

the ages of seven and ten who are reported to CPS by law enforcement agencies for engaging in delinquent conduct as defined in the Texas Family Code, §51.03.

§49.515. Administrative Review of Investigation Findings.

(a) (No change.)

(b) If court proceedings related to the abuse or neglect or to a custody dispute are pending at the time or are started after a review is requested, CPS may postpone [postpones] the review until the court proceedings are completed.

(c)-(f) (No change.)

§49.517. Texas Department of Human Services's (DHS's) [DHS] Managing Conservatorship of Children in DHS Regulated Care.

(a) If the investigation finding is reason-to-believe in a case of reported abuse or neglect [finding of an investigation] involving children in DHS's managing conservatorship, [is adjudicated or reason-to-believe,] child protective services (CPS) staff must notify:

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

(b) If the investigation finding is reason-to-believe in a case of reported abuse or neglect involving a child in a foster care home or in an adoptive home before the adoption is consummated, DHS must assess the risk of further abuse or neglect and consider removing the child from the home. If there is a continuing risk of substantial harm to the child, DHS removes the child. If DHS does not remove the child, the department and the foster or adoptive family must develop and implement a plan for corrective action within 30 days after the investigation is completed. DHS must also review its records regarding the foster or adoptive home, including the plan for corrective action, and determine whether to continue placing children in the home. [If the finding of an investigation involving children in foster care or adoptive homes is adjudicated or reason-to-believe, DHS must consider removing the child from the home, must review the case, and must obtain approval for the home's continued verification and for placing any other children in the home.]

(c) If a law enforcement investigation of a report of abuse or neglect involving a child in a foster care or adoptive home results in criminal indictment of either of the foster or adoptive parents, DHS must close the home unless the regional director determines that there is not a continuing risk of substantial harm to children placed there.

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

Issued in Austin, Texas, on February 1, 1991.

TRD-9101298

Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: April 1, 1991

For further information, please call: (512) 450-3765

Subchapter F. Expunction Hearings

• 40 TAC §49.602

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 41, which authorizes the department to enforce laws for the protection of children.

§49.602. Release of Child Protective Services (CPS) Abuse or Neglect Data and Right to Appeal.

(a) (No change.)

(b) The following conditions must exist before DHS releases CPS abuse or neglect data:

(1) The CPS case disposition is "reason to believe," [or "adjudicated,"] and abuse or neglect findings have been shown to be justified by at least some credible evidence.

(2)-(4) (No change.)

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

Issued in Austin, Texas on February 1, 1991.

TRD-9101299

Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: April 1, 1991

For further information, please call: (512) 450-3765

Chapter 72. Memoranda of Understanding with Other State Agencies

Memorandum of Understanding for Family Planning Programs

• 40 TAC §72.401

The Texas Department of Human Services (DHS) proposes an amendment to §72.401, concerning the memorandum of understanding for family planning programs, in its Memoranda of Understanding with Other State Agencies chapter. The purpose of the amendment is to strengthen the statewide coordination of family planning programs and

promote an effective sexuality education policy for the State.

Burton F. Raiford, chief financial officer, 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 as will be an effective sexuality education policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Questions about the content of this proposal may be directed to Beth Weber at (512) 338-6466 in DHS's Family Planning/Genetic Services Section. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-029, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§72.401. Statewide Coordinated Family Planning Programs.

(a) (No change.)

(b) To accomplish these common goals, TDH and DHS mutually agree to coordinated or joint activities, including, but not limited to, the following areas:

(1) cooperatively develop and maintain joint quality of service standards;

(2) cooperatively develop and implement an evaluation (standards and monitoring) system, to measure compliance with standards;

(3) mutually ensure that appropriate corrective action is taken for non-compliance with standards;

(4) jointly prepare a common Annual Report of the Texas Statewide Coordinated Family Planning Programs concerning data collected on unduplicated clients served and dollars expended;

(5) jointly support training for providers and departmental staff, including needs assessment, planning, and delivery of training;

(6) jointly support provision of technical assistance to family planning agency providers and to TDH/DHS staff;

(7) publish a joint newsletter periodically (approximately quarterly) to inform providers and interested others of current developments in the family planning field;

(8) develop, pilot, and implement a coordinated allocation plan for the

equitable distribution of family planning funds to serve persons in need;

(9) coordinate the formulation and promulgation of family planning program policies and rules;

(10) coordinate fiscal compliance audits; and

(11) jointly develop strategies, along with other affected agencies to promote an effective sexuality education policy for the state.

(c)-(e) (No change.)

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

Issued in Austin, Texas, on February 4, 1991.

TRD-9101371 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: May 1, 1991

For further information, please call: (512) 450-3765

Part IX. Texas Department on Aging

Chapter 297. Homemaker I Service Standards

Statutes and Regulations

- 40 TAC §§297.1, 297.3, 297.5, 297.7, 297.9, 297.11, 297.13, 297.15, 297.17

The Texas Department on Aging proposes new §§297.1, 297.3, 297.5, 297.7, 297.9, 297.11, 297.13, 297.15, and 297.17 concerning Homemaker I service standards. These standards will prescribe the objective, target group, service activities, location, access, delivery characteristics, staffing and training requirements, prohibited service activities, and administrative requirements of service providers who provide Homemaker I services under the Older Americans Act Title III.

Charles Hubbard, fiscal officer, Texas Department on Aging, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Alex Guerra, director of programs, Texas Department on Aging, 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 as proposed will be establishment of standards for the conduct of Homemaker I services which will be the minimum requirements of the department for providing these services and promote quality and uniformity in delivery of these services statewide. 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 Heath, Chief of Specialties, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78704.

The new sections are proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

§297.1. Homemaker I Service Standards.

(a) Service Definition. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Homemaker I Service-A service provided by trained and supervised homemakers involving the performance of housekeeping/home management, meal preparation, and/or escort tasks, provided to older adults who need assistance with these activities in their place of residence.

(b) Unit of service. The unit of service is one hour of direct services provided to the client by a trained homemaker, and includes time spent completing documentation of services provided.

(1) Travel time is not a part of the unit of service unless directly related to the client's service plan (such as essential shopping or escorting the client to a doctor's appointment). Other travel time and related expenses for which the homemaker and supervisor are reimbursed should, however, be built into the unit rate (such as travel to and from clients' residences).

(2) Time spent for lunch or other breaks shall not be included.

(3) Time spent for the purposes of assessments, reassessments, training, supervision, or evaluation, does not constitute a direct service and is not to be reported as units of service. However, the cost for these required activities should be included in the negotiated unit rate.

(4) One full unit of homemaker service shall be provided during each visit before quarter units can be accumulated.

(c) Service objective. The service objective is to provide housekeeping/home management, meal preparation, and/or escort to older adults in need of such services, aimed at achieving or maintaining self-sufficiency.

(d) Target group. The target group for Homemaker I service is persons 60 years of age or older who are physically limited in their ability to perform regular activities of daily living.

§297.3. Service Activities. Homemaker I activities may include, but are not limited to, the following:

(1) housekeeping/home management

(A) shopping for household essentials;

(B) assisting client with economical shopping consistent with budget;

(C) housecleaning;

(D) laundering;

(E) ironing and mending clothes and linens;

(F) washing dishes and utensils;

(G) bagging trash and garbage inside the home and putting it outside;

(H) making beds and changing sheets;

(I) performing necessary reading and writing tasks, as requested; and

(J) assisting client in organizing household routines.

(2) meal preparation:

(A) assisting in planning menus, shopping for food, and storing food;

(B) preparing and serving meals; and

(C) demonstrating appropriate techniques for handling and preparing food.

(3) escort. Accompanying a client on trips to obtain health care services and other necessary items and services.

§297.5. Location of Service. Homemaker services will be provided in the client's place of residence, but not in a nursing home, convalescent home, or other setting where the provision of this service would duplicate services provided in that setting.

§297.7. Access to Service. Clients may be referred by self, physician, hospital, case manager, family member, friend, or other service provider.

§297.9. Delivery Characteristics. Homemaker I services will be delivered by service providers in the following manner.

(1) In-home assessment.

(A) An initial assessment shall be performed by the program supervi-

sor, to determine the needs of the client. The assessment shall at least briefly address the following:

(i) cognitive status;

(ii) emotional status;

(iii) physical status;

(iv) functional status/self care capacity;

(v) economic status;

(vi) physical environment; and,

(vii) social environment in which the client lives.

(B) Delivery of service shall be based upon specific needs as determined by the supervisor during the in-home assessment.

(2) Service plan.

(A) The service plan is developed at the time of service initiation, by the supervisor in conjunction with the client and/or family, and shall include:

(i) tasks to be performed;

(ii) frequency of visits and/or hours of service;

(iii) assignment of personnel;

(iv) estimated length of service.

(B) The service plan is revised as necessary, but it shall be reviewed and updated by staff members involved in serving the client at least every three months.

(3) Waiting lists. The provider agency must establish and follow a written procedure for placing and serving clients on waiting lists.

(4) Monitoring/supervisory visits. The supervisor must conduct a home visit for each client as needed, at least every three months, to monitor the needs of the client, to determine if the homemaker is performing tasks according to the service plan and to remedy areas of deficiency.

(5) Reassessment. Each client shall be reassessed as needed, at least every six months.

(A) Reassessments shall be conducted either when the supervisor's regular monitoring indicates that the client's needs have changed, or when a homemaker or other caregiver reports to the supervisor that the client's needs have changed.

(B) A reassessment need not duplicate the entire original assessment, but shall address changes in the following:

(i) cognitive status;

(ii) emotional status;

(iii) physical status;

(iv) functional status/self-care capacity;

(v) economic status;

(vi) physical environment; and

(vii) social environment in which the client lives.

(6) Reporting client information. The program supervisor should be notified as soon as possible, by the homemaker, of any important happenings or changes in the client's situation or behavior, including, but not limited to, the following:

(A) other persons moving in with the client;

(B) persons visiting if it interferes with the provision of service;

(C) shortages of food, heat, or clothing;

(D) client is hospitalized, placed in a nursing home, or moves;

(E) client falls, faints, or has an accident (burn, cut, etc.); and

(F) client's behavior or health appears to change.

(7) Emergency contact. A person to be contacted in the event of an emergency must be identified by each client and maintained in the provider agency's client record. The emergency contact person(s) and phone number(s) should be verified and updated at the time of reassessment.

§297.11. Staffing and Training Requirements.

(a) Supervisors. Supervisors must have successfully completed two years full-time study in social or behavioral sciences at an accredited college or university, and have supervisory experience. Substitution of a year of full-time employment in a social/human service agency for each year of college is allowed for individuals with a high school diploma or General Equivalency Diploma (GED). In addition, supervisors should have experience in housekeeping/home management and meal preparation activities.

(b) Homemakers. All homemakers shall meet the following requirements:

(1) be at least 18 years of age or older;

(2) have the ability to follow oral and written instructions and keep simple records;

(3) have previous experience providing care to aged, disabled, ill, or convalescing people; and

(4) have experience in or receive training in each service activity prior to actually performing the activity.

§297.13. Prohibited Service Activities. Homemaker service providers will not perform or participate in any of the following activities:

(1) brushing teeth and cleaning dentures;

(2) giving bed baths and assisting with other baths;

(3) brushing, combing, and shampooing hair;

(4) shaving;

(5) assisting with toileting;

(6) assisting with dressing and undressing;

(7) nail care;

(8) skin care;

(9) assisting with transferring to and from a bed, wheelchair, walker, or chair;

(10) assisting with ambulation and exercise;

(11) assisting with or administering medications;

(12) performing any other personal care or health care activity;

(13) direct communication with the client's physician by the homemaker;

(14) home repair;

(15) pet grooming;

(16) yard maintenance;

(17) heavy household cleaning (such as shampooing carpets or washing walls);

(18) moving heavy objects;

(19) performing services for members of the household, other than the client, if the additional tasks would require a substantial amount of time or interfere with serving the client. (The homemaker may occasionally provide services that will be of benefit to other members of the household, such as washing the spouse's linens with the client's and preparing enough food for a meal for the spouse also, but only if it can be done in the course of duties already being performed. Homemaker services are not maid services to be utilized by the entire household. The homemaker is there to meet the needs of the client according to the assigned service plan.)

(20) transporting the client in the homemaker's automobile, unless appropriate liability insurance is in force;

(21) performing any task that is not assigned by the supervisor;

(22) acceptance of gifts or tips;

(23) bringing persons to the client's residence that are not there in any homemaker service-related capacity;

(24) taking anything from the client's home;

(25) assuming control of the financial and/or personal affairs of the client or of his or her estate, including power of attorney, conservatorship, or guardianship;

(26) breach of client's privacy and confidentiality of information or records; and

(27) committing any act of abuse, neglect, or exploitation.

§297.15. Administrative Requirements. The provider agency shall meet, at minimum, the following administrative requirements.

(1) Legal Authority. The provider agency shall have the necessary legal authority to operate in conformity with federal, state, and local laws and regulations.

(2) Financial ability. The provider agency must have the financial ability to carry out its functions as proposed.

(3) Organizational structure. Organizational structure and operational policies of the agency must be clearly stated in writing. It must include the lines of authority and delegation of responsibility down to the client level.

(4) Administration. The administrator of the agency will administratively supervise the provision of all services. The administrator organizes and directs the agency's ongoing functions; employs qualified personnel and insures adequate staff education and evaluations; insures the accuracy of public information materials and activities; and implements an effective budgeting and accounting system. A person shall be authorized in writing by the administrator to act in his or her absence.

(5) Organizational records.

(A) The agency will maintain accurate administrative, fiscal, personnel, and client case records that will be accessible and available to authorized representatives of the area agency on aging, the Texas Department on Aging, the Administration on Aging, the Department of Health and Human Services, and others as required by law.

(B) All records shall be safeguarded against loss and unofficial use and

shall be retained for five years after the termination of the contract with the area agency on aging, and until any litigation, claim, or audit involving the records is resolved.

(C) The agency shall have written procedures governing the use and removal of records and the release of information.

(6) Personnel policies. The agency shall have written personnel policies that contain at least the following:

(A) hours of employment or method of scheduling;

(B) eligibility for vacation, sick leave, and other fringe benefits;

(C) orientation of new employees;

(D) participation by personnel in employee development programs/in-service training, as appropriate;

(E) periodic evaluation of employee performance (at least annually);

(F) job description (statement of those functions and responsibilities which constitute job requirements) and job qualifications (specific education and training necessary to perform the job);

(G) grievance procedure/appeals process; and

(H) a policy to prohibit the spread of infectious and communicable disease from agency personnel to clients.

(7) Personnel records. A personnel record shall be maintained on each employee that includes, at minimum, the following:

(A) signed job description;

(B) application for employment;

(C) verification of references;

(D) performance evaluations and disciplinary actions or letters of commendation; and

(E) a record of orientation and in-service training received.

(8) Performance evaluation. Each homemaker's performance shall be

evaluated in writing at least annually. The evaluation shall be based in part on at least two on-site visits, unannounced to the homemaker beforehand. The written report of the evaluation shall document the visits, including the client's names, and the dates and times of the visits. In addition to information from the on-site visits, the written evaluation shall contain sufficient other data on the worker's performance to demonstrate that the evaluation was based on qualified observation. The written evaluation shall show what support and supervision has been provided to the homemaker and what support, supervision, or other intervention is planned as a result of the evaluation. The evaluation shall be signed and dated by the supervisor who prepared it and by the homemaker.

(9) Client roster. The provider agency shall maintain a current roster of clients.

(10) Client records. The provider agency shall have an individual client record for each client served; that is maintained according to professional standards, is confidential; and protected from damage, theft, and unauthorized inspection, and shall contain, at minimum, the following:

(A) appropriate identifying information;

(B) initial assessment and reassessment(s);

(C) client service plan;

(D) service delivery form/daily time record;

(E) record of supervisory visit(s);

(F) notation explaining any lapse in service;

(G) notation of hospital admission with admit and discharge dates;

(H) record of any client complaints and action taken;

(I) record of client's physician, preferred hospital, and persons to be contacted in an emergency;

(J) any other pertinent documentation regarding the client; and

(K) record of termination of services.

(11) Service delivery form/daily time record. The service delivery form/daily time record is the official documentation of

the services performed. Service documentation should be completed as the services are provided and incorporated into the client record at least monthly (all homemaker services provided during one month may be documented on one form), and must contain the following:

(A) client's name;

(B) date of service delivery;

(C) amount of time spent by the homemaker;

(D) services performed;

(E) homemaker's name and signature; and,

(F) client's signature verifying time spent and services performed. If the client is unable to sign, another responsible person present in the home during service delivery may sign, or it should be documented that the client cannot sign and that no one else is available.

(12) Financial records. Provider agency financial records will contain at least:

(A) daily report of client contributions;

(B) documentation of cash and in-kind match; and

(C) payroll records and time sheet documentation.

(13) General orientation. The provider agency shall have a written policy for providing orientation for all new employees. The policy should be updated as needed, to reflect the needs of the agency's employees as well as to incorporate any changes in the standards for homemaker I services. General orientation shall include, at minimum, the following topics:

(A) organization, purpose, and philosophy of the provider agency;

(B) relationship of the provider agency to the area agency on aging and the Texas Department on Aging;

(C) activities which shall and shall not be performed under the standards for Homemaker I services;

(D) documentation, record keeping, and report forms required by the provider agency and the area agency on aging;

(E) liability issues concerning the employee and the provider agency;

(F) appropriate observation and reporting;

(G) recognizing and reporting abuse, neglect, and exploitation;

(H) safety precautions and recognition of job hazards; and

(I) emergency medical resources available.

(14) Specific orientation. In addition to providing new employees with general orientation, the provider agency is responsible for determining the need for and providing, as appropriate, more specialized orientation necessary for new employees to carry out the specific responsibilities of their positions. Specific orientation should address the individual needs of the employee(s), and may include the following:

(A) interpersonal skills for interacting with clients and their families;

(B) the aging process;

(C) elderly client characteristics and needs;

(D) food and nutrition, special diets, and menu planning;

(E) first aid, safety, and emergency procedures;

(F) managing time, energy, money, and other resources;

(G) preventing the spread of disease;

(H) death and dying; and

(I) basic principles of supervision (for supervisors only).

(15) In-service training. The provider agency shall be responsible for determining the need for and requiring employees to participate in in-service training, as appropriate. The provider agency should provide the training necessary to meet the in-service requirements or assist the employee(s) to locate and attend other appropriate training. In-service training should meet the needs of the employee(s) and may cover such topics as are listed in subsection (n) of this section standards pertaining to specific orientation.

(16) Training documentation. The provider agency shall have written documentation of orientation and in-service training provided, which includes the following:

(A) master training log that documents all orientation and in-service training conducted by the provider agency, signature of employees who attended specific sessions, dates, topics, trainers name and qualifications, number of hours, location, and whether the training was classroom, on-the-job, or other method; and

(B) documentation of each employee's training in that employee's personnel record, which includes the dates and hours of orientation and in-service training, dates and hours of on-the-job training, and a certificate of attendance or other official documentation of training distributed by the provider of the training, if the training is provided by other than the homemaker agency (community college, vocational education program, Red Cross, etc.)

(17) Homemaker identification. The provider agency shall furnish adequate identification that shall be carried by the employee and presented to the client as necessary. A permanent ID card with the provider agency's name and the employee's name, title, and signature shall be considered adequate identification. At the time of employment, an ID card shall be issued which will meet the identification requirement. The ID card shall be returned to the provider agency upon termination of employment.

(18) Client confidentiality. Written procedures must be established and followed to ensure client confidentiality, and for obtaining the written consent of the client for release of confidential information.

(19) Complaint procedures. A written client complaint procedure will be established and distributed to all clients at the time of service initiation, that states that a complaint against the agency may be directed to the area agency on aging and/or the Texas Department on Aging.

(20) Contributions. The provider agency will inform each client in writing that they or family members acting on their behalf have the opportunity to contribute voluntarily to the cost of their services.

(A) The privacy of the client with respect to his or her contributions will be protected.

(B) Appropriate procedures will be established to safeguard and account for all contributions.

(C) A suggested contribution schedule may be adopted which takes into consideration the income ranges of the cli-

ents. However, no eligible person will be denied services because he or she will not or cannot contribute to the cost of services.

(D) Client contributions will be used only for the maintenance and/or expansion of homemaker services.

(E) Contributions will be reported monthly to the area agency on aging.

(21) Reporting abuse. The provider agency shall report all instances of potential abuse, neglect, and/or exploitation of a client to the Texas Department of Human Services abuse/protective services hotline, including all instances which may involve an employee of the provider agency.

(22) Provider agency monitoring and evaluation.

(A) The provider agency's performance will be monitored at least quarterly and evaluated at least annually by the area agency on aging.

(B) The provider agency's performance may be monitored periodically by the Texas Department on Aging.

(C) The provider agency will keep such records and submit to the area agency on aging timely, complete, and accurate reports at such times, in such form, and containing such information as may be necessary to enable determination of compliance with the Older Americans Act, federal regulations, and the Texas Department on Aging Homemaker I service standards, policies, and procedures.

(23) Accounting systems. Each provider agency is responsible for maintaining an adequate accounting system to accurately determine service costs. Cost analysis reports should be generated by the accounting system monthly to assist the agency manager in controlling costs and as a basis for negotiating rate changes.

(24) Performance based, unit rate contracting. Performance based, unit rate contracting will be utilized to contract for all homemaker services, and service units shall be invoiced monthly.

§297.17. Effective Date. The effective date of these service standards will be October 1, 1991.

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

Issued in Austin, Texas, on January 30, 1991.

TRD-9101353

Polly Sowell
Executive Director
Texas Department on
Aging

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 444-2727

Chapter 298. Homemaker II/Home Health Aide Service Standards

Statutes and Regulations

- 40 TAC §§298.1, 298.3, 298.5, 298.7, 298.9, 298.11, 298.13, 298.15, 298.17

The Texas Department on Aging proposes new §§298.1, 298.3, 298.5, 298.7, 298.9, 298.11, 298.13, 298.15, and 298.17, concerning Homemaker II service standards. The new sections will prescribe the objective, target group, service activities, location, access, delivery characteristics, staffing and training requirements, prohibited service activities, and administrative activities and requirements of service providers who provide Homemaker II services under the Older Americans Act, Title III.

Charles Hubbard, fiscal officer, Texas Department on Aging, 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 sections.

Alex Guerra, director of programs, Texas Department on Aging 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 as proposed will be establishment of standards for the conduct of Homemaker II services which will be the minimum requirements of the department for providing these services and promote quality and uniformity in delivery of these services statewide. 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 Heath, Chief of Specialties, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78701.

The new sections are proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

§298.1. Homemaker III/Home Health Aide Service Standards.

(a) Service definition. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Homemaker II service—A service provided by trained and supervised homemakers/home health aides involving the performance of personal care tasks and may also include housekeeping/home management, meal preparation, and/or escort, provided to older adults who need assis-

tance with these activities in their place of residence.

(b) Unit of service. The unit of service is one hour of direct services provided to the patient by a trained homemaker, and includes time spent completing documentation of services provided.

(1) Travel time is not a part of the unit of service unless directly related to the patient's care plan (such as essential shopping or escorting the patient to a doctor's appointment). Other travel time and related expenses for which the homemaker and supervisor are reimbursed should, however, be built into the unit rate (such as travel to and from patients' residences).

(2) Time spent for lunch or other breaks, shall not be included.

(3) Time spent for the purposes of assessments, reassessments, training, supervision, or evaluation, does not constitute a direct service and is not to be reported as units of service. However, the cost for these required activities should be included in the negotiated unit rate.

(4) One full unit of homemaker service shall be provided during each visit before quarter units can be accumulated.

(c) Service objective. The service objective is to provide personal care, housekeeping/home management, meal preparation, and/or escort to older adults in need of such services, aimed at achieving or maintaining self-sufficiency and physical/psychological independence, and preventing or reducing inappropriate institutional care by providing in-home care.

(d) Target group. The target group for Homemaker II service is persons 60 years of age or older who are physically limited in their ability to perform regular activities of daily living.

§298.3. Service Activities. Homemaker II activities may include, but are not limited to, the following.

(1) Personal care:

(A) brushing teeth and cleaning dentures;

(B) giving bed baths and assisting with other baths;

(C) brushing, combing, and shampooing hair;

(D) shaving with an electric or safety razor;

(E) assisting with toileting;

(F) assisting with dressing and undressing;

(G) cleaning and filing nails;

(H) assisting with transferring to and from a bed, wheelchair, walker, or chair;

(I) assisting with ambulation and exercise;

(J) assisting with ordinarily self-administered oral medications; and

(K) applying non-prescription topical lotions and ointments at the request of the patient.

(2) Housekeeping/home management:

(A) shopping for household essentials;

(B) assisting patient with economical shopping consistent with budget;

(C) housecleaning;

(D) laundering;

(E) ironing and mending clothes and linens;

(F) washing dishes and utensils;

(G) bagging trash and garbage inside the home and putting it outside;

(H) making beds and changing sheets;

(I) performing necessary reading and writing tasks, as requested; and

(J) assisting patient in organizing household routines.

(3) Meal preparation:

(A) assisting in planning menus, shopping for food, and storing food;

(B) preparing and serving meals; and

(C) demonstrating appropriate techniques for handling and preparing food.

(4) Escort: accompanying patient on trips to obtain health care services and other necessary items and services.

§298.5. Location of Service. Homemaker services will be provided in the patient's place of residence, but not in a nursing home, convalescent home or other setting where the provision of this service would duplicate services provided in that setting.

§298.7. Access to service. Patients may be referred by self, physician, hospital, case manager, family member, friend, or other service provider.

§298.9. Delivery Characteristics. Homemaker II services must be provided in compliance with all rules and regulations of the Texas Department of Health (TDH) governing the provision of personal care services provided in the home (as referred to in §298.15 of this title (relating to Administrative Requirements)). The following delivery characteristics are more specific than or in addition to those required by TDH, and must be adhered to by all service provider agencies.

(1) In-home assessment. The initial in-home assessment shall address the following:

(A) cognitive status;

(B) emotional status;

(C) physical status;

(D) functional status/self-care capacity;

(E) economic status;

(F) physical environment; and

(G) social environment in which the patient lives.

(2) Waiting lists. The provider agency must establish and follow a written procedure for placing and serving patients on waiting lists.

(3) Monitoring/supervisory visits. The RN supervisor must conduct a home visit for each patient as needed, at least every 60 days, to monitor the condition of the patient, to determine if the homemaker is performing tasks according to the patient care plan and to remedy areas of deficiency.

(4) Reassessment. Each patient shall be reassessed as needed, at least every six months.

(A) Reassessments shall be conducted either when the RN supervisor's regular monitoring indicates that the patient's condition has changed, or when a

homemaker or other caregiver reports to the supervisor that the patient's condition has changed.

(B) A reassessment need not duplicate the entire original assessment, but shall address changes in the following:

- (i) cognitive status;
- (ii) emotional status;
- (iii) physical status;
- (iv) functional status/self care capacity;
- (v) economic status;
- (vi) physical environment; and
- (vii) social environment in which the patient lives.

(5) Reporting patient information. The program supervisor should be notified as soon as possible, by the homemaker, of any important happenings or changes in the patient's situation or behavior, including, but not limited to, the following:

(A) other persons moving in with the patient;

(B) persons visiting if it interferes with the provision of service;

(C) shortages of food, heat, or clothing;

(D) patient is hospitalized, placed in a nursing home, or moves;

(E) patient falls, faints, or has an accident (burn, cut, etc.); and

(F) patient's behavior or health appears to change.

(6) Emergency contact. A person to be contacted in the event of an emergency must be identified by each patient and maintained in the provider agency's patient record. The emergency contact person(s) and phone number(s) should be verified and updated at the time of reassessment.

§298.11. Staffing and Training Requirements. Homemaker II provider agencies must comply with all staffing and training requirements of the Texas Department of Health governing the provision of personal care services in the home (as referenced in §298.21 of this title (relating to Administrative Requirements)).

§298.13. Prohibited Service Activities. Homemaker service providers will not perform or participate in any of the following activities:

(1) performing skilled health care of any kind (health-related activities that should be performed by an RN; LVN; speech, occupational, or physical therapist; or any other licensed health care professional);

(2) administering medications;

(3) applying sterile dressings involving prescription medications and aseptic techniques;

(4) applying prescription lotions or ointments;

(5) administering tube feedings;

(6) inserting or irrigating of catheters;

(7) direct communication with the patient's physician by the homemaker;

(8) providing care to broken skin;

(9) cutting fingernails or toenails;

(10) cutting hair;

(11) shaving with other than an electric or safety razor (diabetic clients must be shaved with an electric razor);

(12) home repair;

(13) pet grooming;

(14) yard maintenance;

(15) heavy household cleaning (such as shampooing carpets or washing walls);

(16) moving heavy objects;

(17) performing services for members of the household, other than the patient, if the additional tasks would require a substantial amount of time or interfere with serving the patient. (The homemaker may occasionally provide services that will be of benefit to other members of the household, such as washing the spouse's linens with the patient's and preparing enough food for a meal for the spouse also, but only if it can be done in the course of duties already being performed. Homemaker services are not maid services to be utilized by the entire household. The homemaker is there to meet the needs of the patient according to the assigned care plan.)

(18) transporting the patient in the homemaker's automobile, unless appropriate liability insurance is in force;

(19) performing any task that is not assigned by the supervisor;

(20) acceptance of gifts or tips;

(21) bringing persons to the patient's residence that are not there in any homemaker service-related capacity;

(22) taking anything from the patient's home;

(23) assuming control of the financial and/or personal affairs of the patient

or of his or her estate, including power of attorney, conservatorship, or guardianship;

(24) breach of patient's privacy and confidentiality of information or records; and

(25) committing any act of abuse, neglect, or exploitation.

§298.15. Administrative Requirements. The provider agency must be licensed by the Texas Department of Health (TDH) as a home health agency, and must conform to Texas Civil Statutes, Article 4447u, Home Health Services Act and 25 TAC Chapter 115 et seq, concerning home health care agencies rules and regulations. The following administrative requirements are more specific than or in addition to those required by TDH and must be adhered to by all service provider agencies.

(1) Legal authority. The provider agency shall have the necessary legal authority to operate in conformity with federal, state and local laws and regulations.

(2) Organizational records.

(A) The agency will maintain accurate administrative, fiscal, personnel, and patient case records that will be accessible and available to authorized representatives of the area agency on aging, the Texas Department on Aging, the Administration on Aging, the Department of Health and Human Services, and others as required by law.

(B) All records shall be safeguarded against loss and unofficial use and shall be retained for five years after the termination of the contract with the area agency on aging, and until any litigation, claim, or audit involving the records is resolved.

(3) Patient records. The provider agency shall have an individual patient record for each patient served; that is maintained according to professional standards; is confidential; and protected from damage, theft, and unauthorized inspection. In addition to those items required by TDH, each patient record shall contain the following:

(A) initial assessment and reassessment(s);

(B) service delivery form/daily time record;

(C) notation explaining any lapse in service;

(D) notation of hospital admission with admit and discharge dates;

(E) record of patient's physician, preferred hospital, and persons to be contacted in an emergency; and

(F) acknowledgement of receipt of complaint procedure.

(4) Service delivery form/daily time record. The service delivery form/daily time record (visit note) is the official documentation of the services performed. The notes must be written the day service is rendered and incorporated into the patient record no less often than weekly (all homemaker services provided during one week may be documented on one form), and must contain the following:

(A) patient's name;

(B) date of service delivery;

(C) amount of time spent by the homemaker;

(D) services performed;

(E) homemaker's name and signature; and

(F) patient's signature verifying time spent and services performed. If the patient is unable to sign, another responsible person present in the home during service delivery may sign, or it should be documented that the patient cannot sign and that no one else is available.

(5) Financial records. Provider agency financial records will contain at least:

(A) daily report of patient contributions;

(B) documentation of cash and in-kind match; and

(C) payroll records and time sheet documentation.

(6) Orientation. The provider agency shall have a written policy for providing orientation for all new employees. The policy should be updated as needed, to reflect the needs of the agency's employees as well as to incorporate any changes in the standards for Homemaker II services. Orientation shall include, at minimum, the following topics:

(A) organization, objectives, and philosophy of the provider agency;

(B) relationship of the provider agency to the area agency on aging and the Texas Department on Aging;

(C) activities which shall and shall not be performed under the standards for Homemaker II services;

(D) documentation, record keeping, and report forms required by the provider agency and the area agency on aging;

(E) liability issues concerning the employee and the provider agency;

(F) appropriate observation and reporting;

(G) recognizing and reporting abuse, neglect, and exploitation;

(H) safety precautions and recognition of job hazards; and

(I) emergency medical resources available.

(7) Orientation documentation. The provider agency shall have written documentation of orientation provided to all employees.

(8) Homemaker identification. The provider agency shall furnish adequate identification that shall be carried by the employee and presented to the patient as necessary. A permanent ID card with the provider agency's name and the employee's name, title, and signature shall be considered adequate identification. At the time of employment, an ID card shall be issued which will meet the identification requirement. The ID card shall be returned to the provider agency upon termination of employment.

(9) Patient confidentiality. Written procedures must be established and followed to ensure patient confidentiality, and for obtaining the written consent of the patient for release of confidential information.

(10) Complaint procedures. A written patient complaint procedure will be established and distributed to all patients at the time of service initiation, that states that a complaint against the agency may be directed to the Texas Department of Health, area agency on aging, and/or the Texas Department on Aging.

(11) Contributions. The provider agency will inform each patient in writing that they or family members acting on their behalf have the opportunity to contribute voluntarily to the cost of their services.

(A) The privacy of the patient with respect to his or her contributions will be protected.

(B) Appropriate procedures will be established to safeguard and account for all contributions.

(C) A suggested contribution schedule may be adopted which takes into consideration the income ranges of the patients. However, no eligible person will be denied services because he or she will not or cannot contribute to the cost of services.

(D) Patient contributions will be used only for the maintenance and/or expansion of homemaker services.

(E) Contributions will be reported monthly to the area agency on aging.

(12) Reporting abuse. The provider agency shall report all instances of potential abuse, neglect, and/or exploitation of a patient to the Texas Department of Human Services abuse/protective services hotline, including all instances which may involve an employee of the provider agency.

(13) Provider agency monitoring and evaluation.

(A) The provider agency's performance will be monitored at least quarterly and evaluated at least annually by the area agency on aging.

(B) The provider agency's performance may be monitored periodically by the Texas Department on Aging.

(C) The provider agency will keep such records and submit to the area agency on aging timely, complete, and accurate reports at such times, in such form, and containing such information as may be necessary to enable determination of compliance with the Older Americans Act, federal regulations, and the Texas Department on Aging homemaker service standards, policies, and procedures.

(14) Accounting systems. Each provider agency is responsible for maintaining an adequate accounting system to accurately determine service costs. Cost analysis reports should be generated by the accounting system monthly to assist the agency manager in controlling costs and as a basis for negotiating rate changes.

(15) Performance based, unit rate contracting. Performance based, unit rate contracting will be utilized to contract for all homemaker services, and service units shall be invoiced monthly.

§298.17. *Effective Date.* The effective date of these service standards will be October 1, 1991.

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

Issued in Austin, Texas, on January 30, 1991.

TRD-9101352

Polly Sowell
Executive Director
Texas Department on
Aging

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 444-2727

◆ ◆ ◆
**Part X. Texas
Employment
Commission**

**Chapter 301. Unemployment
Insurance**

• **40 TAC §301.9**

The Texas Employment commission proposes an amendment to §301.9, concerning requiring an employer who paid contributions in the preceding state fiscal year of \$500,000 or more, and who is reasonably anticipated to do the same in the current fiscal year, to transfer payment amounts of contributions of \$10,000 or more by electronic funds transfer on or before the date the contributions are due. Such transfers shall be subject to the provisions of the Texas Government Code, §404.095, and to rules adopted by the State Treasury pursuant to that section.

Betty Jo Bevil, deputy administrator, has determined that there will be fiscal implications

for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect is an estimated increase in revenue of \$8,300 for fiscal year (fy) 1991; \$36,700 for fy 1992; \$70,000 for fy 1993; \$107,000 for fy 1994; and \$150,000 for fy 1995. There will be no fiscal implications for local government as a result of enforcing or administering the section.

Ms. Bevil 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 as proposed will be rapid deposit of employer taxes to the unemployment compensation trust fund. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Carolyn Calhoon, Office of Special Counsel, TEC Building, 101 East 15th, Room 660, Austin, Texas 78778, (512) 463-2291.

The amendment is proposed under Texas Civil Statutes, Article 5221b, which provide the Texas Employment Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this Act.

§301.9. [Time for] Payment of Contributions and Reimbursements.

(a)-(d) (No change.)

(e) An employer who paid contributions in the preceding state fiscal year of \$500,000 or more, and who is reasonably anticipated to do the same in the

current fiscal year, is required to transfer payment amounts of contributions of \$10,000 or more by electronic funds transfer on or before the date the contributions are due. Such transfers shall be subject of the provisions of the Texas Government Code, §404.095, and to rules adopted by the state treasurer pursuant to that section.

(f) For good cause shown, the commission may extend the due date for the payment of contributions or reimbursements required under this rule, provided however, that such extension may not exceed 45 days and shall not be effective unless such extension is authorized in writing by the commission or its duly authorized representative. In the event the commission for good cause shown extends the due date for payment of contributions or reimbursements such payments shall be made to the commission on or before the 30th day following such due date.

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

Issued in Austin, Texas on January 31, 1991.

TRD-9101287

Carolyn Calhoon
Administrative Technician
IV
Texas Employment
Commission

Earliest possible date of adoption: March 11, 1991

For further information, please call: (512) 463-2291



Name: Stephanie Hardy

Grade: 4

School: Northrich Elementary, Richardson ISD

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 28. INSURANCE

Part I. State Board of Insurance

Chapter 1. General Administration

Subchapter A. Rules of Practice and Procedure

• 28 TAC §1.100

The State Board of Insurance has withdrawn from consideration for permanent adoption a proposed new §1.100 which appeared in the November 13, 1990, issue of the *Texas Register* (15 TexReg 6462). The effective date of this withdrawal is February 1, 1991.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101341 Nicholas Murphy
 Chief Clerk
 State Board of Insurance

Effective date: February 1, 1991

For further information, please call: (512) 463-6327



Chapter 21. Trade Practices

Subchapter J. Right to Select Practitioner under Accident and Health Policies

• 28 TAC §§21.901-21.905

The State Board of Insurance has withdrawn from consideration for permanent adoption proposed new §§21.901-21.905 which appeared in the September 7, 1990, issue of the *Texas Register* (15 TexReg 5094). The effective date of this withdrawal is February 1, 1991.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101342 Nicholas Murphy
 Chief Clerk
 State Board of Insurance

Effective date: February 1, 1991

For further information, please call: (512) 463-6327





Name: Crystal Anderson
Grade: 4
School: Northrich Elementary, Richardson ISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part II. Animal Health Commission

Chapter 51. Interstate Shows and Fairs

• 4 TAC §51.1

The Texas Animal Health Commission adopts amendments to §51.1, without changes to the proposed text as published in the September 21, 1990, issue of the *Texas Register* (15 TexReg 5452).

It was necessary to amend the definition of a certificate of veterinary inspection to specify the length of time the certificate is valid.

The certificate of veterinary inspection is valid for 45 days for equine moving to races, equine shows, organized trail rides, rodeos, or any other horse sporting event. The certificate is valid for 30 days for all other species of animals for movement to a premise, for sale, or for show and sale.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the Commission with authority to adopt rules and sets forth the duties of this Commission to protect livestock in the state from disease.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101367

John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: February 25, 1991

Proposal publication date: September 21, 1990

For further information, please call: (512) 479-6697

• 4 TAC §51.2

The Texas Animal Health Commission adopts an amendment to §51.2, with changes to the proposed text as published in the September 21, 1990, issue of the *Texas Register* (15 TexReg 5452).

It was necessary to amend the rule to provide less restriction on intrastate movement of Texas equine and livestock when moving to shows and other events that do not allow out-

of-state equine and livestock to enter. One change was made to the wording in the first paragraph of the rule by rearranging the text for clarification purposes.

Texas origin horses entering interstate shows (shows that allow out-of-state entries) must be accompanied by a negative EIA test conducted within the previous 12 months, and a certificate of veterinary inspection. Texas-origin horses entered in races are required to have a test within six months prior to entry in addition to the certificate. All other livestock and poultry originating in Texas and entering interstate shows are required to meet the requirements for entry into the state. Texas livestock entered in all other shows, fairs, and exhibitions are exempt from a certificate and testing requirements except that poultry must meet current requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the Commission with the authority to adopt rules and sets forth the duties of this Commission to protect livestock in the state from disease.

§51.2. General Requirements.

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

(d) Entering shows, fairs, and exhibitions.

(1) (No change.)

(2) In-state origin. Equine must have had a negative EIA test within the past 12 months and have a certificate of veterinary inspection if entering an interstate show, fair, or exhibition. All other events other than race tracks will require only a negative EIA test within 12 months as shown on a VS Form 10-11. Horses entering a race track must have a negative EIA test within the past six months and a certificate of veterinary inspection. All other livestock and poultry shall meet the same requirements as for those entering from out-of-state and be accompanied by a Certificate of Veterinary inspection when entering shows, fairs and exhibitions that admit livestock and poultry from out-of-state (interstate shows). Livestock entered in all other shows, fairs, and exhibitions are exempt from the certificate of veterinary inspection and testing requirements except poultry shall originate from flocks or hatcheries free of pullorum disease and fowl typhoid or have a negative pullorum-typhoid test within 30 days before the exhibition. Poultry entering from out-of-state are not re-

quired to have a certificate of veterinary inspection if:

(A) they are entered in a show, fair or exhibition of less than 10 days duration with immediate return to the state of origin;

(B) accompanied by a VS 9-2 or NPIP 3B blood testing report or a current state testing report form;

(C) originate from a state that is classified as U.S. Pullorum-Typhoid clean; and

(D) the state of origin has no flock under federal quarantine for any infectious disease of poultry.

(e) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101366

John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: February 25, 1991

Proposal publication date: September 21, 1990

For further information, please call: (512) 479-6697

TITLE 13. CULTURAL RESOURCES

Part VII. State Preservation Board

Chapter 111. Rules and Regulations of the Board

• 13 TAC §111.19

The State Preservation Board adopts new §111.19, without changes to the proposed text as published in the November 16, 1990, issue of the *Texas Register* (15 TexReg 86).

As required by the Texas Government Code, Chapter 443.010 concerning donation, the board shall develop plans and programs to solicit, and may solicit gifts, money, and items of value from private persons, foundations, or organizations. Property provided by those en-

titles and money donated to the board become the property of the state and are under the control of the board. The board shall use gifts of money made to the board for the purpose specified by the grantor, if any.

The new section will allow recognition of donors in an appropriate manner, clearly defining the area under the responsibility of the board.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Government Code, Chapter 443, which provides the State Preservation Board with the authority to develop plans and programs to solicit, and may solicit gifts, money, and items of value from private persons.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101306 Cynthia Alexander
Director of Administration
and Finance
State Preservation Board

Effective date: November 16, 1990

Proposal publication date: February 22, 1991

For further information, please call: (512) 463-5495

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• 13 TAC §111.23

The State Preservation Board adopts new §111.23, without changes to the proposed text as published in the November 16, 1990, issue of the *Texas Register* (15 TexReg 86).

As required by the Texas Government Code, Chapter 443.010 concerning donation, the board shall develop plans, and programs to solicit, and may solicit, gifts, money, and items of value from private persons, foundations, or organizations. Property provided by those entities and money donated to the board become the property of the state and are under the control of the board. The board shall use gifts of money made to the board for the purpose specified by the grantor, if any.

The new section will provide guidelines and establish standards of procedure for the solicitation and acceptance of contributions of funds and securities to the State Preservation Board that will protect and ensure the integrity of the Texas Capitol and the preservation project while providing funding for the restoration of the Capitol's interiors and grounds.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Government Code, Chapter 443, which provide the State Preservation Board with the authority to develop plans and programs to solicit and may solicit gifts, money, and items of value from private persons.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101307 Cynthia Alexander
Director of Administration
and Finance
State Preservation Board

Effective date: February 22, 1991

Proposal publication date: November 16, 1990

For further information, please call: (512) 463-5495

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• 13 TAC §111.24

The State Preservation Board adopts new §111.24, without changes to the proposed text as published in the November 16, 1990, issue of the *Texas Register* (15 TexReg 86).

The new section will allow the State Preservation Board to perform its duties as required by the Texas Government Code, Chapter 443.007, to preserve, maintain, and restore the capitol, the General Land Office Building, their contents and their grounds.

These rules will establish standards of procedures for review of change requests for State Preservation Board projects.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Government Code, Chapter 443, which provides the State Preservation Board with the authority to adopt rules concerning the buildings, their contents, and their grounds.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101308 Cynthia Alexander
Director of Administration
and Finance
State Preservation Board

Effective date: February 22, 1991

Proposal publication date: November 16, 1990

For further information, please call: (512) 463-5495

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• 13 TAC §111.25

The State Preservation Board adopts new §111.25, without changes to the proposed text as published in the November 16, 1990, issue of the *Texas Register* (15 TexReg 86).

The new section will allow the State Preservation Board to perform its duties as required by the Texas Government Code, Chapter 443.007, to preserve, maintain, and restore the capitol, the General Land Office Building, their contents and their grounds.

The new section will establish guidelines and standards of procedures for memorials and monuments on the capitol complex.

No comments were received regarding adoption of the new sections.

The new section is adopted under the Texas Government Code, Chapter 443, which provides the State Preservation Board with the authority to adopt rules concerning the build-

ings, their contents, and their grounds.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101309 Cynthia Alexander
Director of Administration
and Finance
State Preservation Board

Effective date: February 22, 1991

Proposal publication date: November 16, 1990

For further information, please call: (512) 463-5495

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TITLE 22. EXAMINING
BOARDS

Part VI. Texas State
Board of Registration
for Professional
Engineers

Chapter 131. Practice and
Procedure

Education

• 22 TAC §131.92

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.92, without changes to the proposed text as published in the November 13, 1990, issue of the *Texas Register* (15 TexReg 6449).

The amendment was necessary to recognize the courses and programs leading to a degree in engineering which have been accredited by the Accreditation Board for Engineering and Technology's counterpart organizations in Australia, Canada, Ireland, New Zealand, and the United Kingdom as being substantially equivalent to the United States' Accreditation Board for Engineering and Technology as evidence of acceptable educational preparation of graduates for the practice of engineering at a professional level.

The amendment will allow applicants having foreign degrees which are accredited by the Accreditation Board for Engineering and Technology's counterpart organizations in Australia, Canada, Ireland, New Zealand, and the United Kingdom to apply for registration in accordance with the provisions of the Texas Engineering Practice Act, §12(a).

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 February 1, 1991.

Effective date: February 22, 1991

Proposal publication date: November 13, 1990

For further information, please call: (512) 440-7723

Registration

• 22 TAC §131.133

The Texas State Board of Registration for Professional Engineers adopts and amends to §131.133, without changes to the proposed text as published in the November 13, 1990, issue of the *Texas Register* (15 TexReg 6450).

The amendment was necessary to delete the ceramic branch of engineering under which the Board will accept applications for registration because the National Council of Examiners for Engineering and Surveying no longer offers the Principles and Practice Examination in ceramic engineering. The ceramic branch will be included in the list of previously recognized disciplines.

The amendment provides the correct listing of engineering branches that are consistent with examinations offered to test competency.

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 February 1, 1991.

Effective date: February 22, 1991

Proposal publication date: November 13, 1990

For further information, please call: (512) 440-7723

Part XV. Texas State Board of Pharmacy

Chapter 295. Pharmacists

• 22 TAC §295.1, §295.5

The Texas State Board of Pharmacy adopts amendments to §295.1 and §295.5, with changes to the proposed text as published in the November 23, 1990, issue of the *Texas Register* (15 TexReg 6729).

The amendments to these sections specify that pharmacists must be licensed with the

board under the name in which they are practicing.

The amendments outline the procedures for pharmacists to change their names with the board.

No comments were received on the proposed rules. The language was amended to allow a time period (until June 1, 1992) for pharmacists to change their names without paying the specified fee. In addition, the requirement for a "notarized copy of the official document" was amended to require "a copy of the official document...."

The amendments are adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1), §24 and §16, which provide the Texas State Board of Pharmacy with the authority to issue duplicate copies of either the license to practice pharmacy or the renewal certificate and to adopt rules necessary to enforce the Act.

§295.1. Change of Address and/or Name.

(a) Change of address. A pharmacist shall notify the board in writing within 10 days of a change of address, giving the old and new address and license number.

(b) Change of name.

(1) A pharmacist shall notify the board in writing within 10 days of a change of name by:

(A) sending a copy of the official document reflecting the name change (e.g., marriage certificate, divorce decree, etc.)

(B) returning the current renewal certificate which reflects the previous name; and

(C) effective June 1, 1992, paying a fee of \$20.

(2) Pharmacists who change their name may retain the original license to practice pharmacy (wall certificate). However, if the pharmacist wants an amended certificate issued which reflects the pharmacist's name change, the pharmacist must:

(A) return the original certificate; and

(B) pay a fee of \$35.

(3) An amended license and/or certificate reflecting the new name of the pharmacist will be issued by the board.

§295.5. Pharmacist License or Renewal Fees.

(a)-(c) No change

(d) Effective June 1, 1992, the fee for issuance of an amended pharmacist's license renewal certificate shall be \$20.

(e) The fee for issuance of an

amended license to practice pharmacy (wall certificate) only, or renewal certificate and wall certificate shall be \$35.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 30, 1991.

Effective date: February 20, 1990

Proposal publication date: November 23, 1990

For further information, please call: (512) 832-0661

Part XXXI. Texas State Board of Examiners of Dietitians

Chapter 711. Dietitians

• 22 TAC §§711.1-711.15

The Texas State Board of Examiners of Dietitians (Board) adopts amendments to §§711.1-711.15, without changes to the proposed text as published in the November 20, 1990, issue of the *Texas Register* (15 TexReg 6650). The amendments were republished with editorial corrections in the December 7, 1990, issue of the *Texas Register* (15 TexReg 6995). The amendments will not be republished in this issue of the *Texas Register*.

The amendments include: combining the application and initial license fee to expedite processing applications and issuing initial licenses to eligible applicants; increasing the supervision requirements for provisional licensed dietitians; expanding the code of ethics; changing the organization of the rules to assist licensees in understanding and following the rules and regulations; and changing the procedures to process complaints.

The amendments will assure that the licensing and regulation of dietitians continues to identify competent practitioners.

The following comments were received concerning the proposed sections.

Concerning §711.9(a)(5), a commenter stated she would have to charge a minimum of a half-day consultant fee plus mileage to provide the face-to-face weekly supervision. The board responded that the rules do not require the supervising licensed dietitian to travel to the facility where the provisional licensed dietitian (PLD) is employed. The board feels payment for the supervision could impair the supervisor's professional judgment. Consulting dietitians paid by the facility to provide dietetic services to meet facility's requirements should use the time in the facility to provide nutrition services to the clients. Supervision of the PLD should be in addition to the hours required for facility consultation. The board made no changes as a result of the comment.

Concerning §711.5, several commenters suggested work experience should be substituted for the preplanned professional experience program or internship required for licensure. The board responded that the Licensed Dietitian Act, Texas Civil Statutes, Article 4512h, §9(c)(2), requires applicants for licensure to complete an internship or preplanned professional experience program approved by the board. A preplanned professional experience program is a formalized education program designed to provide didactic and supervised experience in dietetic practice. Employment in the field does not ensure that the required competencies are met. The board made no changes as a result of the comments.

Concerning §711.5 and §711.9, two commenters objected to the supervision requirements due to their length of employment in the dietetics field. Both indicated they had completed the required professional experience program. The board responded that successful completion of the licensure examination would remove the necessity for supervision. The board made no changes as a result of the comments.

Concerning §711.9(a)(4)(D), a commenter objected to the requirement of the supervisee stating the supervised status to patients, clients, and other interested parties because they should know she is supervised since she has a provisional license. The board responded that it added this requirement to inform the public of the PLDs supervision requirement. The public does not understand the initials used by many health care professionals and they need to know who supervises the PLD and how to contact the supervisor. The PLD may include the required supervision information on business cards and/or contracts provided to clients. The board made no changes as a result of the comment.

Concerning §711.9(b), a commenter objected to the requirement for unemployed PLDs to have a supervising licensed dietitian. The board responded that the Licensed Dietitian Act, §13(b), states provisional licensed dietitians shall be supervised. It does not provide an exception for unemployed individuals. The board made no changes as a result of the comment.

No comments were received from any groups or associations. All comments were from individuals who were generally in favor of the rules; however they expressed concerns and offered suggestions.

The amendments are adopted under the Licensed Dietitians Act, Texas Civil Statutes, Article 4512h, §6, which provide the Texas State Board of Examiners of Dietitians with the authority to adopt rules to implement the Act. The board has accepted such a surrender, that surrender is deemed to be the result of a formal disciplinary action.

(4) A license which has been surrendered and accepted may not be reinstated; however, that person may apply for a new license in accordance with the Act and this chapter.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 31, 1991.

TRD-9101261

Gracie Specks, RD/LD
Chairman
Texas State Board of
Examiners of Dietitians

Effective date: February 21, 1991

Proposal publication date: November 20, 1990

For further information, please call: (512) 459-2955

TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 152. Representation of Parties Before the Agency, Attorney's Fees

• 28 TAC §§152.1-152.5

The Texas Workers' Compensation Commission adopts new §§152.1-152.5. Section 152.1 and §152.3 are adopted with changes to the proposed text as published in the November 20, 1990, issue of the *Texas Register* (15 TexReg 6662). Sections 152.2, 152.4, and 152.5 are adopted without changes and will not be republished.

The new sections are adopted in order to implement the requirements of the Texas Workers' Compensation Act, Texas Civil Statutes, Article 8308, specifically to establish guidelines and procedures relating to approval of attorney fees for the representation of parties before the commission, in accordance with the Act, §4.09 and §4.091.

New §152.1 sets out general provisions relating to approval of attorney fees. The section provides that, in order to earn a fee, an attorney representing any party must hold an active Texas license and not be under suspension for any reason. The section provides that the commission must fix and approve the amount of the fee and prohibits an attorney from receiving an amount greater than the fee approved by the commission. The section requires that the fee be fixed and approved by the commission based on the attorney's time and expenses, and allows for the fee to be made in a lump sum payment upon a request by the attorney or the carrier to be approved by the commission, to be discounted for present payment. The commuted fee is to be recouped by the carrier out of the future income benefits paid to the represented claimant. A fee for representing a claimant for death benefits cannot be commuted where the only dispute involves identification of the proper beneficiaries. The section makes clear that an attorney's right to claim a fee is not defeated by a client's discharging the attorney. The section also provides that an attorney who successfully contests a commission determination of eligibility for supplemental income benefits shall be eligible to receive a reasonable and necessary attorney's fee from an insurance carrier under certain conditions.

New §152.2 requires an attorney who represents a client to notify the commission, because a claimant's attorney's recovery may not exceed a maximum of 25% of claimant's

recovery, the section lists the benefits that may not be included as part of the claimant's recovery for purposes of computing the fee. The section prohibits representation of multiple legal beneficiaries in a death benefit claim if there would be a conflict as described in the section. The section also makes clear that the total amount that may be approved shall not exceed 25% except for cases relating to disputed supplemental income benefits described in the Act, §4.28.

New §152.3 relates to the approval of an attorney's fee by the commission, and sets out the procedure for claiming the fee, specifies that the attorney must submit written evidence of time and expenses, and lists the information to be included in the attorney's affidavit that is required to be submitted to the commission. The section requires the commission to review each request for attorney's fees and to fix and approve a fee based on the evidence submitted, and sets out the factors to be considered in setting the fee. The section also requires the commission to apportion the fee among attorneys if more than one represents a client, and prohibits the aggregate fee from exceeding 25% of the claimant's recovery. The section requires the carrier to pay the attorney's fee no later than 14 days after receipt of approval by the commission, and sets out the procedure for contesting the fee fixed and approved by the commission.

New §152.4 sets out the guidelines for maximum hours for specific services to be considered by the commission along with other factors for setting the attorney's fees. The section also allows an attorney to request a higher fee than that established by the guidelines if justified by the complexity of the specific case.

New §152.5 details the allowable expenses an attorney may claim as part of an attorney's fee. The section requires an attorney to submit an itemized list of expenses to the commission. The section also sets out examples of the kinds of expenses that are not allowed as part of the claim for attorney's fees.

Concerning proposed §152.1, one commenter stated that there are "constitutional problems" in setting out by rules applicable only to claimants' attorneys, the number of hours that would ordinarily be approved, without promulgating similar rules for attorneys representing other parties involved. The commission disagrees, as the Act, §4.09, authorizes specific guidelines only for claimants' attorneys. The rational basis for the statutory distinction in the treatment of claimants' attorneys and defense attorneys is that a claimant's attorney's fee comes out of the claimant's benefits, while the defense attorney's fee does not.

Another commenter stated that the rule should allow for the pre-approval of retainer agreements between carriers and law firms. The commission disagrees, because the rule as proposed does not preclude retainer agreements for attorney's hourly rate for either carriers or claimants; however, the statute indicates that the fee must be approved on a case by case basis by the commission based on the outcome of the case. The commenter also suggested adding the following language as a final sentence in subsection (c): "Except as provided under the Act, §4.28, the attorney's fee shall be paid from

the claimant's recovery." The commission disagrees with the suggested language, as the rule applies to attorneys for carriers and claimants, and a defense attorney may not recover a fee from the claimant's recovery. This commenter also stated that the rule no longer allows carriers to enter into special agreements with law firms to handle a large volume of cases or only certain aspects of cases for a flat fee. The commission disagrees that this is necessarily the effect of the statute; however, the law makes clear that there is a directory to the commission to approve attorney fees which are reasonable and necessary on an individual case basis. This commenter also stated that carriers' in-house attorneys who are paid salaries should be specifically excluded from this rule. The commission disagrees that it is necessary to change the rule, because an attorney for a carrier who receives a salary, rather than a "fee", is not subject to the Act, §4.091, and there is therefore nothing for the commission to approve. Because approval of salaries is not covered by the rule or statute, no specific exclusion has to be made.

Another commenter stated that subsection (f) is broader in scope than the statute, because the Act, §4.28(1)(2), refers to disputes arising over commission determinations. According to the commenter, there is a vast difference between a "disputed claim" and a "dispute of a commission determination". The commenter further stated that the rule as proposed could subject a carrier to attorney's fees for any dispute arising over SIBs, including those raised by the employee. The commenter suggested that the language of the statute be adopted in place of the phrase "disputed claim" in the first sentence of subsection (f). The commission concurs, and deletes the phrase "prosecutes a disputed claim" and inserts in its place the phrase "contests a commission determination of eligibility", as consistent with the statute.

Comments against the rule as proposed were received from Texas Trial Lawyers' Association, Alliance of American Insurers, and American Insurance Association. No comments specifically in favor of the section as proposed were received.

Concerning §152.2, one commenter stated regarding subsection (b)(2), that an objective test needs to be formulated for determining what an insurance company is offering to a claimant early on, before the attorney does the work. The insurance company should have to send a letter to the commission and the claimant disclosing any offer, to provide proof that it was really "initiated" and it really was "offered". The commenter cites as a basis for these suggestions a hypothetical situation in which a claimant's attorney works diligently for recovery, e. g. in a death case between disputed widows, only to have a carrier capitulate just before trial, and admit liability, thus depriving the attorney of attorney's fees. The commission disagrees, because the section clearly states that the offered benefits that are not included in the attorney's fee computation are those that are undisputed, which would mean that, applying the section as adopted, a carrier could not undercut the attorney in the manner suggested by the commenter. A carrier that claims an offer had been made all along will have to prove that fact; the Act, §5.21, and the hearings process set out in the Act, Arti-

cle 6, prevent such last minute defenses and contentions.

Comment against the rule as proposed was received from the Texas Trial Lawyers' Association. No comment specifically in favor of the rule as proposed was received.

Concerning proposed §152.3, one commenter made the same comment about this section as he made about proposed §152.1, contending that disparate treatment of claimant's attorneys and attorneys for other parties was perhaps unconstitutional. The commission disagrees with this comment; the Act, §4.09 authorizes specific guidelines concerning attorneys' fees only for claimant's attorneys. The rational basis for the statutory distinction between attorneys for the parties is that a claimant's attorney's fee comes out of the benefits while the defense attorney's fee does not.

Another commenter stated that the proposed rule should exempt carrier's in-house counsel, provide for negotiated flat fees for law firms representing carriers, and allow carriers to obtain pre-approval of retainer agreements with law firms. The commission disagrees because, as stated in reference to proposed §152.1, this section does not preclude retainer agreements for attorney hourly rates for either carriers or claimants; however, the fee must be approved on a case by case basis by the commission, on a "reasonable and necessary" basis for carrier's attorneys. One of the goals of the Act is to reduce the cost of the system; controlling all attorneys' fees will reduce system costs. An attorney that receives a salary, rather than a fee, need not submit anything for approval; however, if in-house counsel receives a "fee", in addition to regular salary, for a case, such fee is subject to approval by the commission.

The commenter also recommended adding in subsection (e) the phrase "receipt of" before the phrase "approval by commission" to clarify precisely when the carrier's 14 day deadline begins to run. The commission agrees, and adds the suggested language to clearly establish time for payment by the carrier.

Another commenter suggested that subsection (a)(5) should require the attorney to provide a federal tax identification number. This suggestion is based on an IRS private letter ruling (8833029) indicating that settlement payments to an attorney must be reported to the IRS. Providing the tax identification number would facilitate reporting payments to IRS by the carrier. The commission agrees, and adds the phrase "federal tax identification number" to subsection (a)(5).

Comments against the section as proposed were received from Texas Trial Lawyers' Association, American Insurance Association and Hammerman and Galner, Inc. No comments specifically in favor of the rule as proposed were received.

Concerning proposed §152.4, one commenter stated that there was no factual data on which to base a determination of how many hours it takes to perform specific tasks. As an alternative to this rule, this commenter suggested that attorneys be required to submit their affidavits and list their times. Only after 3-10 years of receiving such affidavits, according to this commenter, could sufficient data be collected that could permit a rule such as this to be written. According to this

commenter, data published by the State Bar indicates a range of hourly rates from \$120 to \$95, depending on location and degree of expertise. The commenter states that because of this rule some attorneys will try not to represent accurately the hours they spend on a case or will try to use an hourly charge that is not appropriate for their skills or for their contribution to the case; much attorney time will be required to gain a general understanding of the Act and its procedures. The commission disagrees, because the rule itself provides a way to claim higher fees or a greater number of hours than set out in the guideline. At the commission meeting at which this set of rules was proposed, the results of a survey of experienced workers' compensation attorneys showed that the guideline hours in several categories were similar to the number of hours expended by practitioners. The Act, §4.09 requires the commission to base guidelines on criteria set forth in the Act, §4.09(c), and not on the data cited by the commenter.

Comment against the rule as proposed was received from Texas Trial Lawyers' Association. No comment specifically favoring the rule as proposed was received.

Concerning proposed §152.5, one commenter noted, about subsection (c)(3), that carriers do not always send all records requested, even though the records are essential. Thus, the commenter inquired what recourse exists when the carrier declines to send these reports and records. This commenter stated that the rule should require that the carrier reimburse the attorney for reports that must be purchased. The commission disagrees, because medical report rules require those reports to be sent by a provider to the employee. In a dispute resolution process, a carrier must tender pertinent medical information; only duplicate copies may have to be purchased by an attorney.

Comment against the rule as proposed was received from the Texas Trial Lawyers' Association. No comment specifically in favor of the rule as proposed was received.

The new sections are adopted under Texas Civil Statutes, Article 8308, §2.09(a), which provides the Texas Workers' Compensation Commission with the authority to adopt rules as necessary for the implementation and enforcement of this Act. Section 152.4 is also adopted under Article 8308, §4.09(e), which authorizes the commission to provide by rule guidelines for maximum attorneys' fees for specific services based on criteria set forth in that statute.

§152.1. Attorney Fees: General Provisions.

(a) To be eligible to earn a fee, an attorney representing any party shall hold an active license to practice law in Texas and not be currently under suspension for any reason.

(b) An attorney shall receive a fee for representation of any party before the commission only after the commission approves the amount of the fee. An attorney shall not receive an amount greater than the fee approved by the commission, notwithstanding any agreements between the parties, including retainer fee agreements.

(c) The fee fixed and approved by the commission shall be based on the attorney's time and expenses, subject to the guidelines and standards set forth in the Texas Workers' Compensation Act (the Act) and established in this chapter of the rules.

(d) An attorney's fee for representing a claimant may be commuted to a lump sum upon request by the attorney or the carrier, and may be approved by the commission. The lump sum payment shall be discounted for present payment at the rate provided under the Act, §1.04. A commuted fee shall be recouped by the carrier out of the future income benefits paid to the represented claimant. The fee for representing a claimant for death benefits cannot be commuted where the only dispute involves identification of the proper beneficiaries.

(e) A client who discharges an attorney does not, by this action, defeat the attorney's right to claim a fee.

(f) An attorney for an employee who successfully contests a commission determination of eligibility for supplemental income benefits shall be eligible to receive a reasonable and necessary attorney's fee, including expenses, from the insurance carrier, in accordance with the Act, §4.28(1)(2). All provisions of this chapter, except §152.4 of this title (relating to Guidelines for Maximum Hours for Specific Services Performed by a Claimant's Attorney), apply, except that such fee shall not be limited to a maximum of 25% of the employee's recovery.

§152.3. Approval of Fee by the Commission.

(a) To claim a fee, an attorney representing any party shall submit written evidence of the attorney's time and expenses. The written evidence shall be in the form of an affidavit that contains evidence of an hourly rate for attorneys, paralegals, and law clerks; time expended by attorneys, paralegals, and law clerks, an itemized list of allowable expenses, and the attorney's date of licensure, experience, and special qualifications or training. The affidavit shall be on a form, approved by the commission, that contains the following additional identifying information:

- (1) the claimant's name, address, and social security number;
- (2) the date of injury;
- (3) the employer's name and address;
- (4) the carrier's name and commission assigned identification number;
- (5) the attorney's name, address, telephone number, federal tax identification number, and state bar identification number; and

(6) a statement indicating whether the attorney represents a claimant or carrier.

(b) The commission shall review each request for an attorney fee and fix and approve a fee based on the evidence submitted, but may ask for additional documentary evidence to fairly evaluate the fee claim. The commission shall consider the guidelines for maximum charges for services provided in §152.4 of this title (relating to Guidelines for Maximum Hours for Specific Services Performed by a Claimant's Attorney), the factors set forth in the Texas Workers' Compensation Act (the Act), §4.09(c), for claimant's attorneys, and, for a defense attorney representing a carrier, analogous factors as well as the nature and length of the professional relationship to the client. In considering whether a defense counsel's fee is reasonable and necessary, the commission shall also consider the guidelines set out in §152.4 of this title (relating to Guidelines for Maximum Hours for Specific Services Performed by a Claimant's Attorney). In considering whether a defense counsel's fee is reasonable and necessary, the commission shall also consider the guidelines set out in §152.4 of this title (relating to Guidelines for Maximum Hours for Specific Services Performed by a Claimant's Attorney). The commission shall further consider whether the attorney has raised all issues timely and efficiently, given the facts known to the attorney, in order to avoid multiple proceedings on the same claim.

(c) An order of the commission that fixes and approves a fee of a claimant's attorney that is the maximum fee allowed under the Act, §4.09 shall state this fact.

(d) The commission shall apportion the fee between attorneys when more than one attorney claims a fee for representing the same party. The commission shall consider each claim based upon the factors and guidelines outlined in the Act and these rules. The aggregate fee for attorneys representing a claimant shall not exceed 25% of the claimant's recovery.

(e) The carrier shall pay, pursuant to the order of the commission, an attorney's fee no later than 14 days after receipt of approval by the commission. For purposes of this section, the date of payment is the date that the initial check for the attorney's fee is mailed, unless the order is contested by any party.

(f) An attorney, claimant, or carrier who contests the fee fixed and approved by the commission shall request a contested case hearing (or, if the order was made by a hearings officer, review by the appeals panel) by certified mail, return receipt requested, no later than seven days after the date of the commission's order. The contesting party shall send a copy of the request, by certified mail, return receipt requested, to the carrier and, by regular mail to the other

parties, including the claimant. Notice of a contest shall relieve the carrier of the obligation to pay, according to the commission's order, until such time that the commission enters a subsequent order.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101351

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: February 22, 1991

Proposal publication date: November 20, 1990

For further information, please call: (512) 440-3972

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 35. Pharmacy Services

Subchapter B. Administration

• 40 TAC §35.201

The Texas Department of Human Services adopts an amendment to §35.201, concerning the coverage of prenatal vitamins, in its Pharmacy Services chapter. The amendment is adopted to comply with the Omnibus Budget Reconciliation Act of 1990. Effective January 1, 1991, the department will provide coverage of prenatal vitamins by Medicaid pharmacy programs.

The amendment is justified because it complies with federal requirements.

The amendment will function by providing prenatal vitamins to Medicaid mothers.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs. To comply with federal law, the amendment is adopted effective January 1, 1991.

§35.201. Covered Drugs.

(a) (No change.)

(b) Except for vitamins K and D3, prenatal vitamins, fluoride preparations, and products containing iron in its various salts, the department does not reimburse for vitamins and legend and nonlegend multiple ingredient antianemia products.

(c) (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 February 4, 1991.

TRD-9101372

Nancy Murphy
Agency Liaison, Policy and
Document Support

Effective date: January 1, 1991

For further information, please call: (512)
450-3765

Part IX. Texas Department on Aging

Chapter 251. Memoranda of Understanding with Other State Agencies

Memorandum of Agreement Concerning the Texas De- partment on Aging Options for Independent Living Pro- gram with the Texas De- partment of Human Services (TAC §72.2001).

• 40 TAC §251.11

The Texas Department on Aging adopts new §251.11 without changes to the proposed text as published in the November 2, 1990, issue of the *Texas Register* (15 TexReg 6286).

The purpose of the agreement is to help elderly persons remain at home despite limited self-care capacities, through provision of short-term support services for the purposes of restoring functional capacities after illness or hospitalization, and educating and preparing elderly persons and their caregivers to provide self-care.

The section will help to ensure that clients receive services to which they are entitled and that services be provided efficiently and without duplication by TDHS and TDoA.

One commenter recommended additional wording which was designed to prevent costly duplication of service and protect and promote safety of the elderly served. After review by the staff, it was determined that the originally proposed wording was sufficient to meet these requirements.

One group or association in favor of adopting the section as proposed was ElderWatch, Denison.

The new section is adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 30, 1991.

TRD-9101354 Polly Sowell
Executive Director
Texas Department on
Aging

Effective date: February 22, 1991

Proposal publication date: November 2, 1990

For further information, please call: (512)
444-2727

Memorandum of Understanding with State Agencies Statutes and Regulations

• 40 TAC §251.12

The Texas Department of Aging adopts new §251.12, without changes to the proposed text as published in the November 13, 1990, issue of the *Texas Register* (15 TexReg 6383).

The Texas Department on Aging proposed this memorandum of understanding between the Texas Commission for the Deaf and the department in accordance with House Bill 550 passed by the 70th Legislature to assure coordination of the delivery of services to deaf persons over age 60 and to reduce duplication of services provided by the two agencies.

This section will result in the promotion of better coordination of services to the elderly furnished by the department and the Texas Commission for the Deaf.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on January 30, 1991.

TRD-9101356 Polly Sowell
Executive Director
Texas Department on
Aging

Effective date: February 22, 1991

Proposal publication date: November 13, 1990

For further information, please call: (512)
444-2727

Chapter 294. Eldercare Policies of the Texas Department on Aging

Statutes and Regulations

• 40 TAC §294.1

The Texas Department on Aging adopts new §294.1, with changes to the proposed text as published in the November 13, 1990, issue of the *Texas Register* (15 TexReg 6488).

The new section is in compliance with the Administration on Aging Program Instruction which requires the department to establish an eldercare policy to guide area agencies on aging in their involvement with private sector eldercare services.

The new section will guide area agencies on aging in their involvement with private sector

eldercare services.

One commenter suggested some minor revisions to subsection (f)(1) and (2) to clarify the intent of these paragraphs. Paragraph (5) was deleted to eliminate wording which appeared to be redundant based on the context of previous paragraphs. As a result, paragraph (6) became paragraph (5) in the final version. In addition, subsection (g)(3) was expanded to be more specific regarding monitoring of corporate funding.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

§294.1. Eldercare Policies of the Texas Department on Aging.

(a) General.

(1) All arrangements between area agencies and the corporate sector must conform with both the letter and the spirit of the Older Americans Act.

(2) Compatibility between the statutory mission of the area agency on aging and any eldercare activities in which the area agency on aging may engage must be assured.

(3) The mission of area agencies on aging as set forth in Part VI, Department of Health and Human Services 45 Code of Federal Regulation 1321.53, is that the area agency on aging shall be a leader relative to all aging issues on behalf of all older persons in the planning and service area. This means that the area agency shall proactively carry out, under the leadership and direction of the state agency, a wide range of functions related to advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring, and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older persons in leading independent, meaningful, and dignified lives in their own homes and communities as long as possible.

(b) Definitions. Eldercare, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise. Eldercare—A service provided by a corporation on behalf of its employees who have caregiver responsibilities for elderly relatives. This service often includes a form of enhanced information and referral but may extend to other types of services and/or programs, as determined by the corporation. Typically, eldercare benefits are provided through a contract under which the corporation, or a intermediary, makes third party payments to an area agency on aging (or other agency or organization) to provide directly or to arrange for

the provision of specified services and/or programs to a defined group of corporate employees on behalf of their older relatives.

(c) Scope of services. The criteria listed following is included to assure compatibility between the statutory mission of the area agency on aging and any eldercare activities in which the area agency on aging may engage.

(1) Area agencies must provide priority services consistent with the Older Americans Act.

(2) Area agencies must conform with all requirements of the Older Americans Act, as well as other federal, state, and local laws which may govern public purpose agencies which receive public funds.

(3) Area agencies must avoid any activity which may have the appearance of subordinating their public purpose mission to either organizational self interest or to the private interests or particular individuals or organizations.

(4) Area agencies must target services to low-income minorities in proportion to the population in the service area.

(5) Eldercare activities should be part of the comprehensive and coordinated service delivery systems being developed by the Area Agencies on Aging.

(d) Contracting requirements and limitations. An area agency on aging may not enter into an eldercare agreement or any other contract that demands exclusivity, inappropriate withholding of information, or any other provision which may limit the ability of the area agency on aging to judge or act in the public interest or which would restrict the ability of the state agency on aging to exercise appropriate oversight of the area agency on aging. The following will not be allowed.

(1) An exclusivity requirement in the contract with a corporation is not acceptable. Area agency must have the freedom to act objectively and responsibly on behalf of all older persons in its planning and service area.

(2) A corporate eldercare contract may not include provisions prohibiting the area agency on aging from providing similar services or benefits on behalf of or to persons designated by a corporation or group in the service area.

(3) Receiving corporate funds without assuring that there is adequate staff to meet the public mission of the area agency on aging.

(4) Corporate contract requirements that are in conflict with the area agency on aging's public purpose mission.

(e) Confidentiality requirements. Acceptable norms concerning confidentiality of information in any corporate eldercare contract must be addressed. Client data under private contracts must be desig-

nated as proprietary and, therefore, confidential.

(f) Department on Aging responsibilities. Specific methods which the department will employ to assure that each area agency on aging that engages in eldercare will continue fully and effectively to comply with its responsibilities to target its efforts on older persons with the greatest economic or social need, with particular attention to low-income minority older persons.

(1) Corporate contract will be monitored by the state office as part of the annual program review process to assure compliance with this subsection relating to Department on Aging responsibilities and the public mission of the Older Americans Act.

(2) The area plan, or its amendment, is required to describe the targeting initiative and the area agencies on aging's approach to, plans for, and/or current involvement with corporate eldercare.

(3) The area agency must assure that Older Americans Act funds and associated matching funds will not be used under any circumstances to offset the cost of services provided under the eldercare contract.

(4) The area plan must assure that the area agency or other service providers under an area plan will not have an exclusion clause in the contract which would preclude any other business firm from obtaining the same type of eldercare services or similar services from the area agency or service provider.

(5) The Texas Department on Aging will monitor and assess the area agency on aging's compliance with all the provisions of this policy.

(g) Fiscal requirements. State policy requires that appropriate fiscal controls are established and implemented to govern the separate accountability of Older Americans Act funds, or other public funds awarded to the area agency on aging (AAA), as distinct from funds received from a private corporation under an eldercare contract.

(1) Public funds may not be used to supplement third party payments made by a corporation under an eldercare contract.

(2) Each AAA that enters into an eldercare contract is required to assure, at a minimum, that the private third party payment fully covers the cost of the services, including administration and overhead, provided under the contract.

(3) Corporate funding will be monitored by the state office on aging auditors as part of the regular area agency on aging monitoring to assure appropriate fiscal controls.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 30, 1991.

TRD-9101355

Polly Sowell
Executive Director
Texas Department on
Aging

Effective date: February 22, 1991

Proposal publication date: November 13, 1990

For further information, please call: (512) 444-2727

TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

Chapter 17. Division of Motor Vehicles

Motor Vehicle Registration

• 43 TAC §17.51

The State Department of Highways and Public Transportation adopts new §17.51, without changes to the proposed text as published in the November 6, 1990, issue of the *Texas Register* (15 TexReg 6392).

The new section allows the registration of vehicles by Texas residents and non-residents on an allocation or mileage apportionment basis and grants exemptions from the payment of registration fees by non-residents on a reciprocal basis by providing procedures for entering multilateral and bilateral vehicle registration reciprocity agreements.

The new section outlines the purpose, definitions, multilateral agreements, and bilateral agreements, which provides regulations governing the lawful operation of vehicles subject to registration reciprocity agreements and, in particular, the international registration plan, and also provides for the collection and disbursement of applicable vehicle registration fees.

No comments were received regarding adoption of new section.

The new section is adopted under Texas Civil Statutes, Articles 6666 and 6675a-16, which provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the State Department of Highways and Public Transportation, and for the orderly administration of statutory provisions relating to vehicle registration reciprocity agreements.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 31, 1991.

TRD-9101258

Diane L. Northam
Legal Administrative
Assistant

State Department of
Highways and Public
Transportation

Effective date: February 21, 1991

Proposal publication date: November 6, 1990

For further information, please call: (512)
463-8630





Name: Alberto Hernandez

Grade: 4

School: Northrich Elementary, Richardson ISD

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Department of Agriculture

Tuesday, February 12, 1991, 10 a.m. The Texas Rice Producers Board of the Texas Department of Agriculture will meet at the Harris County Extension Center, Number Two Abercrombie Drive, Houston. According to the complete agenda, the board will approve minutes; review and discuss financial report; elect officers; and discuss business.

Contact: Curtis Leonhardt, 6699 Rookin, Houston, Texas 77074, (713) 270-6699.

Filed: February 4, 1991, 3:07 p.m.

TRD-9101440

Thursday, February 14, 1991, 10 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, Expressway 83, Two Blocks West of Morningside Road, San Juan. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Administrative Code, §7.22, Title IV, by David J. Wilson, holder of commercial pesticide applicator license.

Contact: Cordelia L. Martinez, P.O. Box 12847, Austin, Texas 78711, (512) 465-1609.

Filed: January 31, 1991, 2:06 p.m.

TRD-9101270

Texas Animal Health Commission

Friday, February 1, 1991, 9 a.m. The Texas Animal Health Commission met at 210 Barton Springs Road, First Floor Conference Room, Austin. According to the emergency revised agenda summary, the commission met in executive session to discuss appointment of administrative personnel. This meeting is authorized by Texas Revised Civil Statutes Annotated Article 252-17, §2 (g). The emergency status was necessary as an unforeseeable situation requiring immediate consideration of appointment and action by the governmental body.

Contact: Kathryn A. Reed, 210 Barton Springs Road, Austin, Texas 78711, (512) 479-6697.

Filed: January 31, 1991, 1:12 p.m.

TRD-9101263

Bond Review Board

Tuesday, February 12, 1991, 10 a.m. The Staff Planning Committee of the Bond Review Board will meet at the State Capitol, Sergeant's Committee Room, Austin. According to the complete agenda, the meeting will be called to order; minutes approved; consideration of proposed issues; discuss other business; and adjourn.

Contact: Tom K. Pollard, 506 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1741.

Filed: February 4, 1991, 4:48 p.m.

TRD-9101454

Texas Department of Commerce

Tuesday, February 12, 1991, 8:30 a.m. The Board of Directors of the Texas Department of Commerce will meet at the First City Centre, 816 Congress Avenue, 11th Floor Board Room, Austin. According to the agenda summary, the board will call the meeting to order; discuss creation of Texas Economic Development Corporation; recess into executive session; 10:30 a.m. call meeting back to order; introduce board members; adopt December 11, 1990 minutes; establish executive committee for Certified Development Corporation; approve audit plan; application for two enterprise zone project designations (City of Midland and Gainesville); approve rules for Product Commercialization Fund; report on economic development for strategic planning training; U.S.-Mexico Free Trade Agreement report; presentation of Governor's Economic Development Plan for Texas; recognition of Small Business Awareness Day; and adjourn.

Contact: Jerry Bailey, 816 Congress Avenue, Room 1100, Austin, Texas 78701, (512) 320-9611.

Filed: February 1, 1991, 4:56 p.m.

TRD-9101363

Tuesday, February 12, 1991, 12:50 p.m. The Texas Economic Development Corporation of the Texas Department of Commerce will meet at 816 Congress Avenue, 11th Floor Board Room, Austin. According to the complete agenda, the corporation will call the meeting to order; discuss creation of a statewide certified development corporation by signing articles of incorporation and by-laws; and adjourn.

Contact: Bruce W. Anderson, 816 Congress Avenue, Austin, Texas 78701, (512) 320-9666.

Filed: February 1, 1991, 4:56 p.m.

TRD-9101362

Texas Department of Criminal Justice

Monday-Friday, February 11-15, 1991, 10 a.m. The Board of Pardons and Paroles of the Texas Department of Criminal Justice will meet at 2503 Lake Road, Suite 2, Huntsville. According to the agenda summary, a panel (composed of 3 board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Juanita Lismas, 8610 Shoal Creek Boulevard, Austin, Texas 78711, 459-2736.

Filed: February 1, 1991, 4:43 p.m.

TRD-9101361

Daughters of the Republic of Texas

Thursday-Friday, February 7-8, 1991, 7 p.m. and 9 a.m. respectively. The Board of Management of the Daughters of the

Republic of Texas will meet at the Driscoll Hotel, Austin. According to the agenda summary, the board will hear the report of the Alamo Committee; French Legation Committee; Library Committee; Museum consultant; Save our Artifacts and Furniture Committee; meet in executive session pursuant to 6252-17; 6252-17, 2(f); 6252-17, 2 (g), and 6252-17, 2(j); motions arising from executive meeting; and recess for lunch from 12-2 p.m.

Contact: June Franklin Naylor, 901 North Cedar Street, Palestine, Texas 75801, (214) 723-2170.

Filed: January 31, 1991, 11:26 a.m.

TRD-9101259

Texas State Board of Examiners of Dietitians

Friday, February 15, 1991, 10 a.m. The Program Approval Committee of the Texas State Board of Examiners of Dietitians will meet at 4200 North Lamar, First Floor Conference Room, Austin. According to the complete agenda, the committee will consider and possibly act on applications for individual preplanned professional experience program.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2945.

Filed: February 1, 1991, 4:21 p.m.

TRD-9101360

Advisory Commission on State Emergency Communications

Wednesday, February 13, 1991, 10 a.m. The Executive Committee of the Advisory Commission on State Emergency Communications will meet at 1101 Capital of Texas Highway South, B-100, Austin. According to the complete agenda, the committee will call the meeting to order; review and consider approval of Middle Rio Grande Development Council Plan Amendment; discussion on 9-1-1 implementation schedules and central office modification issues; discussion on plan amendment process and policy; report on Telecommunications Service Priority (TSP); legislative update; hear staff reports; consider any new business; hear public comment; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512)327-1911.

Filed: February 1, 1991, 10:13 a.m.

TRD-9101295

Thursday, February 14, 1991, 9:30 a.m. The Addressing Resource Committee of the Advisory Commission on State Emergency

Communications will meet at the Texas Department of Health Building, 1100 West 49th Street, Room M-652, Austin. According to the complete agenda, the committee will call the meeting to order; make introductions; consider draft addressing standard recommendation; consider draft funding guidelines; consider draft mapping and software guidelines; hear public comments; discuss new business; and adjourn.

Contact: Darla Parker, 1101 Capital of Texas Highway South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

Filed: February 4, 1991, 3:31 p.m.

TRD-9101441

Texas State Board of Registration for Professional Engineers

Tuesday, February 5, 1991, 3 p.m. The Ad Hoc Committee of the Texas State Board of Registration for Professional Engineers held an emergency meeting at 1917 IH-35 South, Board Room, Austin. According to the complete agenda, the meeting was convened by Chairman Beal; roll call; recognized and welcomed visitors; discussed the agenda for the Advisory Council on Professional Development; and adjourned. The emergency status was necessary as the meeting was needed to comply with dates set by another organization.

Contact: Charles E. Nemir, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: January 31, 1991, 10:21 a.m.

TRD-9101254

Governor's Office of Budget and Planning

Wednesday, February 13, 1991, 1:30 p.m. The Student Intervention Subcommittee of the Governor's Office of Budget and Planning will meet at the Sam Houston Building, 201 East 14th Street, Room 710, Austin. According to the complete agenda, the subcommittee will review and discuss analysis and revision of student intervention application.

Contact: Susan Albers, P.O. Box 12428, Austin, Texas 78711, (512) 463-1788.

Filed: February 4, 1991, 11:35 a.m.

TRD-9101399

Texas Department of Health

Sunday, February 3, 1991, 10:30 a.m. The Board of Health of the Texas Department of Health met at the Radisson Plaza Hotel, Austin Room, 700 San Jacinto Street, Austin. According to the emergency revised

agenda summary, the board considered in executive session duties and responsibilities of Commissioner of Health, as a result of Commissioner's announcement of retirement. The emergency status was necessary as unforeseeable situation of commissioner's announcement of retirement on January 29, 1991.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: February 1, 1991, 4:20 p.m.

TRD-9101359

Texas Health and Human Services Coordinating Council

Tuesday, February 12, 1991, 1:30 p.m. The Commission on Children, Youth, and Family Services Prevention and Intervention Workgroup of the Texas Health and Human Services Coordinating Council will meet at the THHSCC, Suite 216, 9101 Burnet Road, Austin. According to the complete agenda, the commission will review packet material; group assignments; presentation role play; discuss old business; new business; and adjourn.

Contact: Rick Reynolds, 9101 Burnet Road, Suite 216, Austin, Texas 78758, (512) 873-2400.

Filed: February 1, 1991, 10:33 a.m.

TRD-9101303

Thursday, February 14, 1991, 1 p.m. The Commission on Children, Youth, and Family Services Community Resources Workgroup of the Texas Health and Human Services Coordinating Council will meet at the Texas Juvenile Probation Commission, Board Room, 2015 South IH-35, Austin. According to the complete agenda, the commission will call the meeting to order; approve November 29, 1990 meeting minutes; finalize plans for CRCG training packet production; CRCG training update; determine scope, content and production responsibilities of printed material; determine scope, content and production responsibilities of video taped material; review telephone survey; review start-up procedures; notation of state agencies in disseminated material; review roles of state agencies in facilitation of local participation; discuss old business; new business; and adjourn.

Contact: Louis Worley, 9101 Burnet Road, Suite 216, Austin, Texas 78758, (512) 873-2400.

Filed: January 31, 1991, 11:59 a.m.

TRD-9101262

Texas Department of Human Services

Tuesday, February 12, 1991, 1:30 p.m. The Post-Adoption Services Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st Street, Second Floor, East Tower, Classroom Seven, Austin. According to the complete agenda, the committee will welcome guests; make introductions; approve minutes; hear providers' report; parent education/training discussion; third party resources discussion; residential treatment discussion; cost reimbursement and unit rate contracts; information sharing; plan next meeting; and adjourn.

Contact: Susan Klickman, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3302.

Filed: January 31, 1991, 10:49 a.m.

TRD-9101256

Tuesday, February 12, 1991, 1:30 p.m. The Client Self-Support Services Advisory Council of the Texas Department of Human Services will meet at 701 West 51st Street, Second Floor, West Tower, Classroom Two, Austin. According to the complete agenda, the council will call the meeting to order; approve minutes; hear report on the policy academy for families and children at risk; action items; medicaid expansion for children born on or after October 1, 1983; referrals for medical support on medical assistance only cases; exempting job training partnership act work experience payments from income for AFDC; information item; federal poverty income level update; status report on newborn coverage; status report on child care services for homeless families; status report on CCMS implementation; open discussion by members; and adjournment.

Contact: Cindy Marler, P.O. Box 149030, Austin, Texas 78714-9030.

Filed: February 1, 1991, 11:09 a.m.

TRD-9101320

Tuesday, February 26, 1991, 9 a.m. The Vendor Drug Advisory Subcommittee of the Texas Department of Human Services will meet at 701 West 51st Street, First Floor, East Tower, Public Hearing Room, Austin. According to the complete agenda, the subcommittee will introduce new members; approve minutes; opening discussion; update on H2 Antagonists and related drugs; drug utilization review development; status of current rebate agreements; OBRA 90 legislation requirements and timeframes and impact; budgetary outlook 91-92; Texas drug code index conversion to total microfiche; scheduling of next meeting; and adjournment.

Contact: Carolyn Howell, P.O. Box 49030, Austin, Texas 78714-9030, (512)

450-053.

Filed: February 4, 1991, 12:48 p.m.

TRD-9101401

State Board of Insurance

Tuesday, February 12, 1991, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against M. E. Watson, Jr., Quanah, who holds a Group I, Legal Reserve Life Insurance Agent's license. Docket Number 11089.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 4, 1991, 10:16 a.m.

TRD-9101378

Wednesday, February 13, 1991, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Adger Eugene Curry, Dallas, for a Group I, Combination or Industrial Life Insurance Agent's license. Docket Number 11090.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 4, 1991, 10:15 a.m.

TRD-9101377

Friday, February 15, 1991, 10 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against James Milton Cox doing business as Cox Insurance Agency, Breckenridge and Bullard, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Local Recording Agent's license. Docket Number 11107.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 4, 1991, 10:15 a.m.

TRD-9101376

Texas Board of Irrigators

Wednesday, February 13, 1991, 9 a.m. The Texas Board of Irrigators will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 513-F, Austin. According to the agenda summary, the

board will hear and consider six outstanding complaints; consider one outstanding complaint; review State Auditor's FY89 audit; consider approval of minutes; certification of licensed irrigator and installer exam results; designate site and dates for next exam; and chairman to report to the board.

Contact: Joyce Watson, P.O. Box 12337, Austin, Texas 78711, (512) 463-7990.

Filed: February 4, 1991, 10:34 a.m.

TRD-9101379

Texas Juvenile Probation Commission

Friday, February 8, 1991, 9 a.m. The Board of the Texas Juvenile Probation Commission will meet at 2015 South IH-35, Austin. According to the complete emergency revised agenda, the board will approve minutes of November 8, 1990; hear Evaluation Committee report; changes in the FY 1991 administration budget and state aid, challenge grant, and community corrections allocations occasioned by Senate Bill 111, 72nd Texas Legislature, regular session 1991; amendment to 37 TAC, §341.15 concerning complaints against juvenile boards; intensive supervision/diversionary placement report; Hidalgo County Juvenile Court Conference Committee report; Texas Children's Mental Health Plan; legislative budget board performance report; director's report; legislative report; and hear public comments. Members of the public are invited to attend this meeting and speak on any issue under the jurisdiction of the commission. The emergency status is necessary as the board could not reasonably foresee the requirements of Senate Bill 111. It must make immediate changes in the administration budget and allocations.

Contact: Bernard Licarione, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: February 4, 1991, 8:22 a.m.

TRD-9101364

Texas State Library and Archives Commission

Tuesday, February 12, 1991, 9 a.m. The Library Systems Act Advisory Board and Library Services and Construction Act Advisory Council of the Texas State Library and Archives Commission will meet at the Lorenzo de Zavala State Library and Archives Building, Room 205, 1201 Brazos Street, Austin. According to the complete agenda, the council will make introductions and welcome guests; identification of priority issues to be addressed in the planning process; discussion of the draft SFY 1992-1995 LSCA Long Range Plan; and review of planning process timeline.

Contact: Edward Seidenberg, P.O. Box 12927, Austin, Texas 78711, (512) 463-5459.

Filed: February 4, 1991, 2:34 p.m.

TRD-9101415

Tuesday, February 12, 1991, 4:30 p.m. The Library Systems Act Advisory Board of the Texas State Library and Archives Commission will meet at the Lorenzo de Zavala State Library and Archives Building, Room 205, 1201 Brazos Street, Austin. According to the complete agenda, the board will hold election of chair; and discuss needed rule changes.

Contact: Edward Seidenberg, P.O. Box 12927, Austin, Texas 78711, (512) 463-5459.

Filed: February 4, 1991, 2:34 p.m.

TRD-9101416

Thursday, February 14, 1991, 10 a.m. The Texas State Library and Archives Commission will meet at the Lorenzo de Zavala State Library and Archives Building, Room 314, 1201 Brazos Street, Austin. According to the complete agenda, the commission will approve minutes of the July 26, 1990 meeting; approve rules for library services for blind and physically handicapped individuals; approve rules for the Texas Reading Machine Program; consider archives inventory project; and committee reports.

Contact: Raymond Hitt, P.O. Box 12927, Austin, Texas 78711, (512) 463-5440.

Filed: February 4, 1991, 3:47 p.m.

TRD-9101443

◆ ◆ ◆ Midwestern State University

Thursday, February 7, 1991, 3:30 p.m. The Board of Regents Executive Committee of Midwestern University met at the Hardin Administration Building, MSU, Wichita Falls. According to the complete agenda, the committee heard YOU program report; recommendations concerning sale of property on Midwestern Parkway to city for widening street, Daniel Building parking lot, Mercantile Building renovation allocation and acceptance of bids, contract with U.S. Wireless Company, and Phase III Clark Student Center renovation. Information and action was taken concerning the legislative appropriation reduction.

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 4, 1991, 2:01 p.m.

TRD-9101403

Thursday, February 7, 1991, 4 p.m. The Board of Regents Finance Committee of Midwestern State University met at the Hardin Administration Building, MSU,

Wichita Falls. According to the complete agenda, the committee made recommendations for hazardous waste disposal; allocation for summer school 1991 budget and international student fee; ratification of school relations budget; soccer travel expenses; and items \$15,000 and under.

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 4, 1991, 2:01 p.m.

TRD-9101404

Thursday, February 7, 1991, 4:30 p.m. The Board of Regents Personnel and Curriculum Committee of Midwestern University met at the Hardin Administration Building, MSU, Wichita Falls. According to the complete agenda, the committee reviewed and discussed position changes in FY 1990-1991 budget; enrollment and small class reports for 1991 spring semester; last day enrollment report for fall 1990 semesters; ratification of developmental leave for art faculty and new position in nursing; recommendation of two position changes (part-time to full-time); addition of computer science and economics faculty positions in 1991-1992; reclassification/reorganization of the telephone services, and policy manual revisions (part-time faculty and HIV/AIDS policies).

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 4, 1991, 2:01 p.m.

TRD-9101405

Thursday, February 7, 1991, 5 p.m. The Board of Regents Student Affairs Committee of Midwestern University met at the Hardin Administration Building, MSU, Wichita Falls. According to the complete agenda, the committee discussed information concerning housing occupancy and residence hall computer rooms; recommendations concerning addendum to food service contract; 1991-1992 room and board rates; Wai-Kun printing agreement and ambulance service agreement.

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 4, 1991, 2:02 p.m.

TRD-9101406

Thursday, February 7, 1991, 5:30 p.m. The Board of Regents University Development Committee of Midwestern University met at the Hardin Administration Building, MSU, Wichita Falls. According to the complete agenda, the committee discussed summary of gifts, grants and pledges, September 1, 1990-January 1, 1991 and minor adjustments to 1989-1990 summary.

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308,

(817) 692-6551.

Filed: February 4, 1991, 2:02 p.m.

TRD-9101407

Thursday, February 7, 1991, 5:40 p.m. The Board of Regents Athletics Committee of Midwestern University met at the Hardin Administration Building, MSU, Wichita Falls. According to the complete agenda, the committee made recommendations concerning reinstatement of junior varsity football program and athletics update report.

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 4, 1991, 2:02 p.m.

TRD-9101408

Friday, February 8, 1991, 9 a.m. The Board of Regents of Midwestern University will meet at the Hardin Administration Building, MSU, Wichita Falls. According to the complete agenda, the board will approve minutes and accept financial reports; recommendation from Nominating Committee for MSU President 1991-1992; accept recommendations and reports from executive, finance, personnel and curriculum, student affairs, University Development and Athletics Committees; and hear reports presented by 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, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 4, 1991, 2:03 p.m.

TRD-9101409

◆ ◆ ◆ Public Utility Commission of Texas

Friday, February 15, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 9876-application of Hill Country Telephone Cooperative, Inc. to revise Section 5 of the general exchange tariff to revise its construction charges.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 1, 1991, 3:14 p.m.

TRD-9101336

Friday, February 22, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 9746-Notice of agreement

to combine Lone Wolf Electric Cooperative, Inc. and Cap Rock Electric Cooperative, Inc.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 31, 1991, 3:35 p.m.

TRD-9101282

Monday, February 25, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 9850-application of Houston Lighting and Power Company for authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 1, 1991, 3:15 p.m.

TRD-9101337

Tuesday, February 26, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 9923-reconciliation of certain gas purchases by Central Power and Light Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 4, 1991, 3:46 p.m.

TRD-9101442

Texas Racing Commission

Monday, February 11, 1991, 10:30 a.m. The Texas Racing Commission will meet at the Comptroller's Downtown Office Building, Third Floor, 111 West 6th Street, Austin. According to the agenda summary, the commission will call the meeting to order; take roll call; approve minutes of January 7, 1991, and December 18, 1990-Greyhound Racing Section. The commission will consider and vote on the following: final adoption, proposal and emergency adoption of rules for horse and greyhound racing; request by Valley Greyhound Park for a make-up performance; matters relating to Bandera Downs, Inc.; proposal for decision in Number 90-03-0005; request by Trinity Meadows Raceway, Inc., for exemption to Section 309.145; decision-making process in Number 90-R1-0030, the application for the Class 1 racetrack license in Harris County; report from executive secretary on budget request and other legislative matters; discuss old business; new business; meeting dates for 1991; and adjourn.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78711, (512) 794-8461.

Filed: February 1, 1991, 3:23 p.m.

TRD-9101340

Railroad Commission of Texas

Monday, February 11, 1991, 9 a.m. The Railroad Commission of Texas will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 12-126, Austin. Agendas follow.

The commission will consider and act on the Administrative Services Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: February 1, 1991, 11:04 a.m.

TRD-9101311

The commission will consider and act on the Office of the Executive Director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. Consider reorganization or various commission divisions; consolidation of positions; commission chairmanship; and appointment, reassignment and/or termination of various positions, including division directors. Consideration of reorganization of the well plugging program. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel, and pending litigation.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: February 1, 1991, 11:05 a.m.

TRD-9101312

The commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

Filed: February 1, 1991, 11:05 a.m.

TRD-9101313

The commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6710.

Filed: February 1, 1991, 11:05 a.m.

TRD-9101314

The commission will consider and act on the Investigation Division Director's report on division administration, investigations, budget, and personnel matters.

Contact: Mary Anne Wiley, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: February 1, 1991, 11:05 a.m.

TRD-9101315

The commission will consider and act on the Personnel Division Director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-7187.

Filed: February 1, 1991, 11:06 a.m.

TRD-9101316

The commission will consider category determinations under Sections 102(c)(1) (B), 102 (c)(1)(C), 103, 107 and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: February 1, 1991, 11:07 a.m.

TRD-9101317

The commission will consider various matters within the jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various action, including but not limited to scheduling an item in its entirety or for particular action at a future time or date. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session to receive legal advice regarding pending and/or contemplated litigation.

Contact: Cue Boykin, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: February 1, 1991, 11:08 a.m.

TRD-9101318

Texas Real Estate Commission

Monday, February 11, 1991, 9:30 a.m. The Texas Real Estate Commission will meet at the TREC Headquarters Office, 1101 Camino La Costa, Conference Room,

Second Floor, Austin. According to the agenda summary, the commission will elect officers; approve minutes of January 11, 1991 meeting; hear staff reports for month of December; presentations or comments from visitors; discussion and possible action to adopt Sick Leave Pool Policy; discussion of Sunset advisory Commission legislation; discussion of budgetary matters; report of MCE Committee; discussion and possible action to approve MCE providers, courses, or instructors; or to approve accredited schools or courses; report of Investment Committee; possible action to approve investment policy; consideration of complaint information concerning Blossom Stem, Gloria Jean King, Lawrence Max Bower, and Janet Gonzales; discussion and possible action to approve proposed title notice disclosure form; meet in executive session to discuss pending litigation pursuant to §2(e) and §2(g), Article 6252-17, Texas Civil Statutes; authorization for payment of claims against the Real Estate Recovery Fund without contest or possible action on any matter discussed in executive session; motions for rehearing and/or probation; consideration of decision proposed by Texas Real Estate Appraiser Certification Committee; and entry of orders in contested cases.

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: January 31, 1991, 3:22 p.m.

TRD-9101280

Monday, February 11, 1991, 1 p.m. The Mandatory Continuing Education Committee of the Texas Real Estate Commission will meet at the TREC Headquarters Office, 1101 Camino La Costa, Conference Room, Second Floor, Austin. According to the complete agenda, the committee will discuss and possibly act to recommend changes in MCE rules or programs; and adjourn.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900, Ext. 6070.

Filed: January 31, 1991, 3:21 p.m.

TRD-9101279

Texas Rehabilitation Commission

Thursday, February 14, 1991, 10 a.m. The Texas Planning Council for Developmental Disabilities Executive Committee of the Texas Rehabilitation Commission will meet at 4900 North Lamar Boulevard, Conference Room 4240, Austin. According to the complete agenda, the meeting will be called to order and introductions made; approval of minutes from January 3-4, 1991 meeting; review of stipends applications; budget adjustments; executive director's report; NADDCC Fall 1992 conference; discus-

sion of advocacy strategies; and adjournment.

Contact: Roger A. Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: February 1, 1991, 2:02 p.m.

TRD-9101329

Thursday-Friday, February 14-15, 1991, 1 p.m. and 9 a.m. respectively. The Texas Planning Council for Developmental Disabilities Quarterly Council of the Texas Rehabilitation Commission will meet at the Texas Rehabilitation Commission, Public Hearing Room, 4900 North Lamar Boulevard, Austin. According to the complete agenda, the council will call the meeting to order and make introductions; approval of minutes from November 15-16, 1991 meeting; hear public comments; advocacy and public information activities: 72nd Texas legislature update; state and federal policy issues; other discussion items; planning and evaluation committee report; approval of draft state plan for FY 1992-1994; respite funding activity recommendations; employment funding activity recommendations; training and technical assistance activities; continuation of evaluation project; recommendations for new funding activities: information and referral network; integrated child care project; study of institutional costs and study; committee to review facility consolidation; review of UAP discussion; executive committee report: FY 1991 budget adjustments; hear chairman's report; executive director's report; and on Friday: called to order and introductions; hear public comments; continuation of unfinished business from February 14, 1991; and adjournment.

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4052.

Filed: February 1, 1991, 2:02 p.m.

TRD-9101330

Texas Treasury Safekeeping Trust Company

Tuesday, February 12, 1991, 2 p.m. The TexPool Advisory Board of the Texas Treasury Safekeeping Trust Company will meet at the LBJ Building, 111 East 17th Street, Room 114, Austin. According to the complete agenda, the board will call the meeting to order; approve minutes of December 4, 1990; introduce the Honorable Kay Bailey Hutchison, State Treasurer and new staff; remarks by the Honorable Kay Bailey Hutchison; operations report; financial report of TexPool; investment report; consideration of new TexPool Board Organization; consideration of a program to direct a portion of the TexPool portfolio to participant's depository; discuss new business; and instructions from board.

Contact: Wood Rogers, 2028 East Ben White Boulevard, Austin, Texas 78741, (512) 440-4745.

Filed: February 4, 1991, 12:43 p.m.

TRD-9101400

On-Site Wastewater Treatment Research Council

Friday, February 15, 1991, 12:45 p.m. The On-Site Wastewater Treatment Research Council will meet at the Center for Environmental Research, Hornsby Bend Wastewater and Treatment Facility, 2210 South FM 973, Austin. According to the complete agenda, the council will approve minutes of previous meeting; consider and possibly act on reports from chairman, members, and executive secretary; receive public comments; and adjourn.

Contact: Yusuf E. Farran, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7293.

Filed: January 31, 1991, 10:47 a.m.

TRD-9101255

Texas Water Commission

Thursday, February 7, 1991, 10 a.m. The Texas Water Commission held an emergency meeting at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 123, Austin. According to the agenda summary, the commission considered the Executive Director's report on agency administration, policy, budget procedures, and personnel matters. The emergency status was necessary due to unforeseen circumstances.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: February 1, 1991, 3:43 p.m.

TRD-9101348

Wednesday, February 13, 1991, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 31, 1991, 4:09 p.m.

TRD-9101285

Wednesday, February 13, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 31, 1991, 4:10 p.m.

TRD-9101286

Thursday, February 14, 1991, 8 a.m. The Waste Reduction Advisory Committee of the Texas Water Commission will meet at the Texas Law Center, Room 202 and 203, 1414 Colorado Street, Austin. According to the complete agenda, the commission will continue discussion of previously identified issues; make introductions; TWC staff presentations; continued discussion of the issues; and adjourn.

Contact: Priscilla Seymour, Ph.D, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-7761.

Filed: February 4, 1991, 9:37 a.m.

TRD-9101374

Thursday, February 14, 1991, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1146, Austin. According to the complete agenda, the examiners will hold a public hearing on an Enforcement Action against Altoga Water Supply Corporation, Docket Number 8563-E.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 31, 1991, 4:09 p.m.

TRD-9101284

Thursday, February 28, 1991, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1149A, Austin. According to the agenda summary, the commission will conduct a hearing on the complaint of the City of Round Rock against Williamson County Mud Number Two, Docket Number 8600-M.

Contact: Deborah Parker, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: February 1, 1991, 3:45 p.m.

TRD-9101350

Thursday, February 28, 1991, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1149A, Austin. According to the agenda summary, the commission will conduct a hearing on the complaint of the The Meadows of Chandler Creek Municipal Utility District against the City of Round Rock, Docket Number 8599-M.

Contact: Deborah Parker, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: February 1, 1991, 3:45 p.m.

TRD-9101349

◆ ◆ ◆ Texas Workers' Compensation Commission

Thursday, February 7, 1991, 9 a.m. The Texas Workers' Compensation Commission met at the Southfield Building, Room 910, 4000 South IH-35, Austin. According to the agenda summary, the meeting was called to order; approval of minutes for the public meeting of January 31-February 1, 1991 may have been approved; discussion and consideration of rules for proposal; discussion and consideration of previously proposed rules; progress report on TWCC implementation of Senate Bill 1; discussion of future public meetings; and final adjournment.

Contact: George E. Chapman, 4000 South IH-35, Austin, Texas 78704, (512) 448-7962.

Filed: February 4, 1991, 8:56 a.m.

TRD-9101368

◆ ◆ ◆ Regional Meetings

Meetings Filed January 31, 1991

The Dallas Area Rapid Transit Planning and Development Committee met at 601 Pacific Avenue, Board Room, Dallas, February 5, 1991, at 3 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9101290.

The Dallas Central Appraisal District Board of Directors met at 2949 North Stemmons Freeway, Dallas, February 6, 1991, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247-6195, (214) 631-0520. TRD-9101264.

The High Plains Underground Water Conservation District Number One Board of Directors will meet at 2930 Avenue Q, Lubbock, February 12, 1991, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-

9101278.

The San Antonio River Authority Board of Directors held an emergency meeting at the SARA General Offices, 100 East Guenther Street, San Antonio, January 31, 1991, at 2 p.m. The emergency status was necessary as an ordinance was passed on January 23, 1991 declaring the election of Roger Gary as a Director from Bexar County District Three to take office February 1, 1991. The Bexar County District Three Director's term expires January 31, 1991. A recount of the votes has changed the outcome of the election to indicate the election of Cecil W. Bain. It is necessary to hold an emergency meeting prior to February 1, 1991 to canvass the recount of votes cast in the election held on January 19, 1991 to elect one director from District Three, Bexar County, and to amend Ordinance Number 0-941 to reflect the results of the recount. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (512) 227-1373. TRD-9101260.

The Scurry County Appraisal District Board of Directors met at 2612 College Avenue, Snyder, February 5, 1991, at 8 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9101268.

The Tyler County Appraisal District Board of Directors met at 806 West Bluff Street, Woodville, February 5, 1991, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9101288.

◆ ◆ ◆ Meetings Filed February 1, 1991

The Austin-Travis County Mental Health and Mental Retardation Center Board of Trustees, Personnel Committee met at 1430 Collier Street, Board Room, Austin, February 5, 1991, at 6 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9101334.

The Bastrop Central Appraisal District Appraisal Review Board met at the Bastrop Central Appraisal District, 1200 Cedar Street, Bastrop, February 5, 1991, at 7 p.m. Information may be obtained from Mark Boehnke, P.O. Drawer 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9101294.

The Comal Appraisal District Board of Directors will meet at 430 West Mill Street, New Braunfels, February 5, 1991, at 10 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597. TRD-9101331

The Dallas Area Rapid Transit Audit Committee met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, February 5, 1991, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9101319.

The East Texas Council of Governments Executive Committee met at the ETCOG Office, Kilgore, February 7, 1991, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9101321.

The Ellis County Appraisal District Board of Directors met at 406 Sycamore Street, Waxahachie, February 5, 1991, at 7 p.m. Information may be obtained from Kathy A. Spencer, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9101339.

The Gregg Appraisal District Appraisal Review Board will meet at 2010 Gilmer Road, Longview, February 8, 1991, at 9 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (903) 759-0015. TRD-9101333.

The Kendall County Appraisal District Board of Directors met at 207 East San Antonio Street, Boerne, February 6, 1991, at 5 p.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9101332.

The Region IX Education Service Center Board of Directors will meet at the Region IX Education Service Center, 301 Loop 11, Wichita Falls, February 13, 1991, at 12:30 p.m. Information may be obtained from Dr. Jim O. Rogers, 301 Loop 11, Wichita Falls, Texas 76305, (817) 322-6928. TRD-9101292.

Meetings Filed February 4, 1991

The Brazos Valley Development Council Executive Committee will meet at the Council Offices, 3006 East 29th Street, Bryan, February 14, 1991, at 1:30 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805, (409) 776-2277. TRD-9101413.

The Brown County Appraisal District Board of Directors will meet at 403 Fisk Avenue, Brownwood, February 11, 1991, at 7 p.m. Information may be obtained from Bob Young, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9101410.

The Middle Rio Grande Development Council Texas Review and Comment System will meet at 300 East Main Street, Civic Center, Reading Room, Uvalde, February 7, 1991, at 10 a.m. (Rescheduled from January 31, 1991). Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9101402.

The Middle Rio Grande Development Council Texas Review and Comment System will meet at the Civic Center Reading Room, 300 East Main Street, Uvalde, February 7, 1991, at 10 a.m. Information may be obtained from Dora T. Flores, P. O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9101444.

The Sabine Valley Center Finance Committee will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, February 11, 1991, at 6 p.m. Information may be obtained from Mack O. Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9101369.

The Sabine Valley Center Board of Trustees will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, February 11, 1991, at 7 p.m. Information may be obtained from Mack O. Blackwell, P.O. Box 6800, Longview Texas 75608, (903) 758-2471. TRD-9101370.

The Upshur County Appraisal District Board of Directors will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, February 11, 1991, at 1 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644, (903) 843-3041. TRD-9101414.

Meetings Filed February 4, 1991

The Colorado River Municipal Water District Board of Directors held an emergency meeting at the Raddison Hotel, East Eighth Street, Austin, February 6, 1991, at 8:30 a.m. The emergency status was necessary due to unexpected financial market conditions. Information may be obtained from O. H. Ivic, P.O. Box 869, Big Spring, Texas 79721, (915) 267-6341. TRD-9101464.

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 Contested Case Hearing Number 278

An Examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing to consider whether or not a permit should be issued to Texas Electric Cooperatives, Inc. (the Applicant) to construct a sweat furnace to be State Highway 71 in Bastrop County.

Deadline For Requesting To Be a Party. At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the Applicant and the TACB Staff. Any person who may be affected by the emissions from the proposed facility who want to be made a party must send a specific written request for party status to Hearings Examiner Bridget C. Bohac and make sure that this request is actually received at the TACB Central Office, 6330 Highway 290 East, Austin, Texas 78723 by 5 p.m. on February 15, 1991. The Examiner cannot grant party status after that deadline, unless there is good cause for the request arriving late. Hearing requests, comments, or other correspondence sent to the TACB before publication of this notice will not be considered as a request for party status. The Examiner will decide on party status at the prehearing conference.

Prehearing Conference. The Examiner has scheduled a prehearing conference at 1:30 p.m. on February 26, 1991, at the TACB Central Office, Room 332, 6330 Highway 290 East, Austin. At this conference, the Examiner will consider any motions of the parties, but may grant contested motions for continuance only upon proof of good cause. The Examiner will also establish a specific date prior to the hearing on the merits for the exchange of written and documentary evidence.

Time and Place of Hearing. The Examiner has set the hearing on the merits to begin at 1:30 p.m. on March 19, 1991, at the TACB Central Office, Room 332, 6330 Highway 290 East, Austin.

What The Applicant Must Prove. This hearing is a contested case hearing under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §13. It is generally conducted like a trial in district court. The Applicant must demonstrate, by a preponderance of the evidence, that the proposed facility will meet the requirements of the Texas Clean Air Act, Chapter 382, Texas Civil Statutes (the Act), §382.051, and TACB Rule 116.3. These requirements include compliance with all applicable TACB and federal regulations, including the requirement that the proposed facility will use the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating emissions.

Public Attendance and Testimony. Members of the general public may attend the prehearing conference and the hearing. Those who plan to attend are encouraged to telephone the TACB Central Office in Austin, at (512)

451-5711, extension 230, a day or two prior to the prehearing conference and the hearing dates in order to confirm the settings, since continuances are sometimes granted. Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the TACB Legal Division at (512) 451-5711, extension 230, to find out the names and addresses of all persons who may be contacted about the possibility of presenting testimony.

Information About the Application and TACB Rules. Information about the application and copies of the TACB's Rules and Regulations are available at the TACB Regional Office located at 500 Lake Air Drive, Suite 1, Waco, Texas 76710, the TACB Central Office located at 6330 Highway 290 East, Austin, Texas 78723, and at the office of the Bastrop City Secretary, 909 Main Street, Bastrop, Texas 78602.

Legal Authority. This hearing is called and will be conducted under the authority of the Act, §§382.029, 382.030, 382.031, and 382.051, and TACB Procedural Rules 103.11(3), 103.31, and 103.41.

Issued in Austin, Texas, on January 30, 1991.

TRD-9101304 Steve Spaw, P.E.
Executive Director
Texas Air Control Board

Filed: February 1, 1991

For further information, please call: (512) 451-5711, ext. 433

◆ ◆ ◆ Notice of Hearing

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act, §382.017(a); 40 Code of Federal Regulations 51.102 of the United States Environmental Protection Agency (EPA) regulations concerning state implementation plans; the Administrative Procedure and Texas Register Act, §5, Texas Civil Statutes, Article 6252-13a; and §103.11(4) of the procedural rules of the Texas Air Control Board (TACB), the TACB will conduct public hearings to receive testimony on proposed changes to Regulation V, concerning control of air pollution from volatile organic compounds (VOC).

The proposed changes are primarily intended to satisfy a general requirement in the 1990 amendments to the federal Clean Air Act for reasonably available control technology corrections to existing rules, and a specific requirement by the EPA to correct certain regulation deficiencies and inconsistencies as part of a nationwide program termed "leveling the playing field." A number of minor unrelated corrections and clarifications are also proposed.

The revisions proposed in response to federal mandates involve modifications to existing control requirements, increases in components inspection frequency, and corrections to testing requirements. The requirements also include additional recordkeeping provisions, the elimination or lowering of specified exemption limits, changes in the counties affected by certain provisions, and establishing

compliance dates for the new requirements.

The proposed changes affect the following undesignated heads within Regulation V: Definitions; Storage of VOC; Vent Gas Control; Water Separation; Loading and Unloading of VOC; Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities; VOC Leaks from Gasoline Tank-Trucks; Process Unit Turnaround and Vacuum-Producing Systems; Petroleum Refinery Fugitives; Synthetic Organic Chemical Manufacturing Industry Fugitives; Natural Gas/Gasoline Processing Fugitives; Degreasing; Surface Coating; Graphic Arts; Cutback Asphalt; and Pharmaceuticals.

Oral and written comments on the proposals are invited at the public hearings which will be held at the following times and places: March 4, 1991, 7 p.m., John Gray Institute, 8550 Florida Avenue, Beaumont; March 4, 1991, 7 p.m. City Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso; March 5, 1991, 11 a.m., City of Houston Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston; and March 5, 1991, 2 p.m., Arlington Public Library, 101 East Abram, Arlington.

The hearings are structured for the receipt of oral or written comments. Interrogation or cross-examination is not permitted, however, a TACB staff member will be available to answer questions informally.

Written comments not presented at the hearings may be submitted to the TACB central office in Austin prior to and including March 6, 1991. Material received 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 proposed revisions are available at the central office of the TACB located at 6330 U.S. Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. For further information, call Cyril Durrenberger at (512) 451-5711.

Issued in Austin, Texas, on January 30, 1991.

TRD-9101257 Lane Hartscock
Director, Planning and Development
Program
Texas Air Control Board

Filed: January 31, 1991

For further information, please call: (512) 451-5711, ext. 433

Request for Proposal

Measurement of Various Carbon Related Constituents of Particulate Matter on Selected Filters.

Notice of Invitation for Proposals. The Texas Air Control Board (TACB) is soliciting proposals from interested parties to measure the organic carbon, elemental carbon, and inorganic carbonate concentrations in particulate matter on selected samples collected in Dallas and other areas of Texas. In addition, contractor shall report the fraction of carbon in each temperature step, thereby providing fingerprint profiles. The original Request for Proposal for this work was published at 15 TexReg 6335, but no proposals was received by the closing date. The TACB will receive proposals until 5 p.m., March 1, 1991. Proposals need not be a formal commitment on the part of the proposer's organization to perform the work; they should contain a statement of suggested approach and a statement of qualifications of the principal persons who would be performing the work if it is undertaken. This project is anticipated to be funded up to \$5,000 for the analysis of filters obtained from sampling in Dallas, Fort Worth, and El Paso, undertaken in 1989, 1990, and 1991, with an option

for up to an additional \$10,000 for the analysis of additional filters to be obtained from additional sampling projects. All analyses and the final report for the first phase must be completed and delivered to the TACB by August 31, 1991. All analyses and the final report for the option must be completed and delivered to the TACB by August 31, 1991. Data from the analysis will be used to assist in determining the chemical composition of fine particles in the air and the relationship between particulate matter and visibility and to characterize particulate matter in Dallas, El Paso, and other areas in Texas. The purpose of these studies is to begin to determine the nature and origin of the fine particles that cause the visibility reductions in certain urban areas of Texas and to characterize the constituents of particulate matter that may be contributing to poor visibility and to potentially adverse effects on human health by deposition in the respiratory tract and the lungs.

Description of Services. The purpose of this contract is to determine the concentrations of organic carbon, elemental carbon, and coarse carbonate in selected particulate matter samples and the light absorption of these samples. In addition, the fraction of carbon in each temperature step shall be measured and reported. These samples are anticipated to be deposited on 37 mm quartz filters by a dichotomous sampler. The filters are certified to 800 degrees C and will have been pre-fired to reduce organic contamination of the blanks. Most particulate samples are expected to be taken from the fine fraction (0 to 2.5 microns aerodynamic diameter). The typical sampling period will be about 12 hours at a flow rate of about 15 liters per minute. It is estimated that about 600 samples will be analyzed, approximately 200 for the Dallas study of 1989-1990 and an option for up to 400 for additional studies in Texas.

Any of several analytical procedures will be considered. The proposal should include a description of the analytical procedure and estimates of detection and precision limits on quartz filters. Any special requirements that the filter media must meet (such as for binder impurities or certified temperature) must also be specified. The organic carbon, elemental carbon, and the sample's light absorption must be measured. A proposal to measure only one of these constituents or total carbon only will be considered unacceptable. Carbonate measurement on the coarse (2.5 to 10 micron aerodynamic diameter) samples is desired but not required.

If thermal procedures are proposed, the corrections to be used to estimate charring of organics should be discussed in the proposal. Measuring and reporting the fraction of carbon in each temperature step is required. If optical procedures are proposed, the corrections to be used for colors in the metal compounds should be discussed.

The cost of collecting the samples is not included in this contract. The samples will be sent to the laboratory in batches of 50 or more filters. Final reports for each batch shall include estimates of the organic carbon, elemental carbon, and coarse carbonate (desired but not required) concentrations, detection limits, light absorbance, and related quality assurance data. In addition, the fraction of carbon in each temperature step shall be reported. All results shall be provided to the TACB in two forms: on floppy disk in Lotus 123 spreadsheet format (MS-DOS); and as a hard copy printout.

Procedure for Awarding Contract. The TACB will select and award such contract and engage such services on the basis of demonstrated competence, qualifications, and availability of resources to perform the required work. The TACB agrees to receive proposals only under the condi-

tion that they shall become public after 5 p.m., March 1, 1991, and that they are submitted free of charge to the TACB and free from any obligation on the part of the TACB. Moreover, the proposal will not violate any rights of confidentiality or other proposal will not violate any rights of confidentiality or other property rights. The TACB may choose to enter into one or no contract as a result of this Request for Proposal.

Contact Person. Proposals or requests for additional information should be directed to Tom Porter, Ph.D., Research Division, Texas Air Control Board, 6330 highway 290 East, Austin, Texas 78723, (512) 451-5711 extension 225, STS 824-7442.

Issued in Austin, Texas, on January 31, 1991.

TRD-9101323 Steve Spaw, P.E.
Executive Director
Texas Air Control Board

Filed: February 1, 1991

For further information, please call: (512) 451-5711

Texas Commission on Alcohol and Drug Abuse

Internal Audit Service Request

Pursuant to Texas Civil Statutes, Article 664-4, the Texas Commission on Alcohol and Drug Abuse invites proposals to provide internal auditing services as described below.

Description of Work. The selected accounting firm will perform internal auditing meeting the requirements of the Texas Internal Auditing Act. The internal auditor shall report directly to the Texas Commission on Alcohol and Drug Abuse's commissioners, prepare audit reports for review by the Texas Commission on Alcohol and Drug Abuse's executive director and commissioners and be free of any operational or management responsibilities. **Person to be Contacted.** Detailed specifications are contained in an invitation to bid available February 8, 1991, from the Fiscal and Support Services office, Second Floor, 1705 Guadalupe, Austin, between the hours of 8 a. m. and 5 p.m., Monday-Friday. For additional information, contact John B. Hopkins, Director of Fiscal and Support Services, (512) 867-8715.

Closing Date. Responses will be accepted only if actually received in writing in the Fiscal and Support Services office no later than 5 p.m., February 28, 1991. Bids should be submitted with an original and three copies. The Texas Commission on Alcohol and Drug Abuse reserves the right to reject any or all bids.

Procedures for Selection. The Texas Commission on Alcohol and Drug Abuse will consider the approach to providing the required service, knowledge of governmental agencies and experience in providing internal auditing services, reasonableness of fee and man-hour estimate, proven sensitivity to equal employment opportunity through the firm's policies and procedures relative to affirmative action and other factors such as financial stability of firm. The Texas Commission on Alcohol and Drug Abuse has the sole discretion and reserves the right to cancel the invitation to bid if it is considered in the best interest of the agency to do so.

Issued in Austin, Texas, on February 4, 1991.

TRD-9101385 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: February 4, 1991

For further information, please call: (512) 867-8720

Texas Department of Aviation Consultant Contract Award

The following consultant proposal request for providing professional engineering services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The consultant proposal request for professional engineering services was published in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5194).

The consultant proposal will be for professional engineering services for the design and construction administration phases for the following TDA projects: 91/21-2-1, Gainesville Municipal Airport.

The engineering firm for these services is: Carter & Burgess, Inc., 1100 Macon Street, P.O. Box 2973, Fort Worth, Texas 76113.

The total value of the contract is \$70,900 and the contract period starts on January 25, 1991, until the completion of the project.

Issued in Austin, Texas, on January 30, 1991.

TRD-9101268 Lydia Scarborough
Director, Support and Services
Texas Department of Aviation

Filed: January 31, 1991

For further information, please call: (512) 476-9262

The following consultant proposal request for providing professional engineering services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The consultant proposal request for professional engineering services was published in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5197).

The consultant proposal will be for professional engineering services for the design and construction administration phases for the following TDA projects: 92/11-4-1, Ruak County Airport.

The engineering firm for these services is: C.T. Brannon Corporation, P.O. Box 7487, Fort Worth, Texas 75711.

The total value of the contract is \$21,300 and the contract period starts on January 30, 1991, until the completion of the project.

Issued in Austin, Texas, on January 31, 1991.

TRD-9101265 Lydia Scarborough
Director, Support and Services
Texas Department of Aviation

Filed: January 31, 1991

For further information, please call: (512) 476-9262

Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Correction of Error

The Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons submitted a

list of suitable products for publication in the January 15, 1991, issue of the *Texas Register* (16 TexReg 249).

The committee's submission contained an incorrect address for the Texas State Purchasing and General Services Commission. The correct address should read as follows. "Texas State Purchasing and General Services Commission, Central Services State Office Building, 1711 San Jacinto, Third Floor, Austin, Texas 78701 (Attention: Ron Amett)."

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Capital Area Planning Council Notice of Consultant Contract Award

This notice of award of consulting services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The request for proposals was published in the October 16, 1990, issue of the *Texas Register* (15 TexReg 6082).

Consultant is to conduct a regional solid waste management plan for State Planning Region 12, including Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Llano, Lee, Travis, and Williamson Counties for the Capital Area Planning Council (CAPCO).

Name and business address of private consultant: Jones and Neuse, Inc., 2720 Bee Caves Road, Austin, Texas 78746; value of contract: \$125,000; beginning date of contract: December 13, 1990; end date of contract: March 13, 1992; due date of documents: regional solid waste management plan—March 13, 1992.

Issued in Austin, Texas, on January 31, 1991.

TRD-9101269 Richard G. Bean
Executive Director
Capital Area Planning Council

Filed: January 31, 1990

For further information, please call: (512) 443-7653

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Comptroller of Public Accounts Correction of Error

The Comptroller of Public Accounts submitted Emergency 34 TAC §3.9 for publication in the February 1, 1991, issue of the *Texas Register*. Due to typographical errors by the Register, the following items were incorrect.

In paragraph (a)(1) the last word in the first sentence should be "reports" not "report".

In subsection (c), "payor" is misspelled. The word "and" following "... electronic funds transfer..." should be omitted. Also, text was omitted. The subsection should read as follows.

"(c) Applicability of the State Treasurer's Administrative Rules. The administrative rules of the State Treasurer's Office on electronic funds transfer dealing with definitions of terms, eligibility determinations, payor information, means of electronic funds transfer, transfer of funds to the Treasury, alternate procedures, credit payment, proof of payment and errors in transmission (34 T.A.C. §§15.2 and 15.4-14) shall be applicable to all such payments to the Comptroller."

In subsection (d) the phrase "to whom" should replace "to who" as follows.

"(d) Notification of affected persons. The Comptroller shall notify the persons to whom this section applies no

less than 60 days before the first payment is to be made pursuant to it."

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Texas Education Agency Notice of Contract Award

Description. This notice is filed pursuant to Texas Civil Statutes, Article 6252-11c. After publication of a request for a contractor continuance in the November 16, 1990, issue of the *Texas Register* (15 TexReg 6619), the Texas Education Agency on January 22, 1991, executed a contract with National Evaluation Systems, Inc., 30 Gatehouse Road, Amherst, Massachusetts 01002, to develop test frameworks, objectives, specifications, and items for two test areas for the Examination for the Certification of Educators in Texas (ExCET). The contract also provides for job analysis surveys and the convening of committees of Texas educators to review the objectives and specifications. For three other test areas, the contract provides for statistical data analysis and the convening of committees of Texas educators to review the passing standards.

Cost and Dates. The total amount of the contract is \$144,000. The beginning date of the contract is September 1, 1990, and the ending date is August 31, 1991.

Due Date of Documents. New test items and other materials, committee review of test items and objectives, and committee recommendations of passing standards are due from the contractor on or before August 31, 1991.

Issued in Austin, Texas, on January 29, 1991.

TRD-9101357 W. N. Kirby
Commissioner of Education

Filed: February 1, 1991

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

◆ ◆ ◆

Request for Application

Description. The Texas Education Agency requests applications for projects (RFA#701-91-031) designed to improve the quality of services provided by professionals to meet the educational and training needs of students with handicaps. The RFA seeks applications in four areas: educational programming for students with emotional disorders; meeting the multicultural needs of bilingual students in special education; educational programming for students with severe auditory and/or visual handicaps; and instructional modifications for students with learning disabilities. The general goals are as follows: to develop a training package that will enhance the ability of regular and special education personnel to meet the educational needs of students with handicaps in the least restrictive environment; to provide inservice training to area or campus teams which will subsequently provide the training at the local level; to develop a method to disseminate the training material and information on a multiregional basis; and to provide follow-up training or consultation to participating teams.

Eligible Applicants. Any education service center, university, and/or state agency may submit an application to the Document Control Center at the Texas Education Agency. The application must employ a coordination of services and effort between education service centers, universities, agencies, and/or school districts to provide this training.

Dates of Projects. The starting date for all projects will be April 8, 1991. All projects will end October 31, 1991.

Project Amount. The total funding for nine regional projects is \$223,250. Budget proposals submitted will be individually approved; however, applications for single training projects should not exceed approximately \$24,875.

Selection Criteria. Contracts for projects will be awarded based on the following criteria: Budget-20 points; Program-60 points; Evaluation Plan-20 points.

Requesting the Application. A copy of the complete Request for Application may be obtained by writing or calling the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9304.

Further Information. For clarifying information about this request, please contact Dr. Rebecca Martinez, Special Education Programs, Texas Education Agency, at (512) 463-9414.

Deadline for Receipt of Application. The deadline for submitting an application is 5 p.m., Friday, March 15, 1991.

Issued in Austin, Texas, on January 30, 1991.

TRD-9101358 W. N. Kirby
Commissioner of Education

Filed: February 1, 1991

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

Request for Public Comment

To meet requirements of Public Law 100-297, the Texas Education Agency is providing public notice and requesting comment regarding the State Chapter 2 Advisory Committee recommendations on the use of Chapter 2 federal funds for 1991-1992.

Texas will receive approximately \$32,668,649 from Chapter 2 of the Elementary and Secondary Education Act (ESEA) for 1991-1992. Of the total amount received, the law requires 80% (approximately \$26,134,920) to be distributed to public schools on a formula basis and 20% (\$6,533,729) to be used to fund special projects, technical assistance, and administration.

The proposed formula to be used to allocate the 80% portion of funds to local school districts (as constrained by ESEA, Chapter 2 law, Public Law 100-297, §1512) is: Step 1-Determine public and private school enrollment by local education agency (LEA) and for the state; Step 2-Determine high cost students (those on free and reduced lunch) by LEA and for the state. Compare the number and percentage for each category of high cost students (as defined by Public Law 100-297, §1572(b)(2)(A) by LEA to the statewide average number and percentage of high cost students in the computations; Step 3-Calculate the per capita amount for the state by dividing the sum of Step 1 plus Step 2 into 80% of the state grant award for Chapter 2; Step 4-Multiply the per capita amount computed in Step 3 times the sum of Step 1 plus Step 2 for each LEA. Based upon the most recent data available, the per capita amount for fiscal year 1992 (school year 1991-1992) is approximately \$5.80.

The special projects recommended by the Chapter 2 Advisory Committee on December 6 and 7, 1991, are: Texas School Improvement Initiative (TSII) (\$188,000); Year Round Elementary School Instructional Infusion Model

(\$200,000); Cooperative Superintendency Program (\$282,427); Education Service Center Funding for Targeted Campuses Using Effective Schools Correlates and Practices, Parent and Community Involvement (\$1,600,000); Effective Schools Programs Research and Evaluation (\$90,000); Telecommunications and the Writing Process (\$150,000); Family Involvement Toward Education for At-Risk Children and Parents (\$200,000); Using Technology for Access to Problem Solving (\$975,000); Elementary Science Priority Staff Development Model (\$400,000); Problem Solving Skills for Disadvantaged At-Risk Gifted Minority Students (\$114,052); Assessing Comprehensive Academic Achievement for Students and Dialectal and Cultural Differences (\$50,000); Developing Effective Education Decision Making: Collaboration and Technology in Community Schools (\$250,000); Innovative Instructional Program for Academically Talented Teachers of Tomorrow and ExCET Skills Training for Teachers of Today (\$50,000); Texas Education Agency Training and Professional Development in Targeted Assistance Programs (\$180,000); Alternative Summer Tutorial Program for At-Risk Students (approximately \$210,433); State Administration-A maximum of \$1,633,432 (approximate) may be reserved by the agency for administrative expenditures related to planning, supervising, monitoring, evaluation and operating Chapter 2 programs; to provide technical assistance in implementing targeted assistance programs; and for activities to carry out effective schools programs. Two proposed projects not recommended for funding by the Advisory Committee are: Public Education Information Management System (PEIMS) (\$90,000); and Effective Middle School Program Evaluation (\$175,000).

The State Board of Education will consider funding for projects recommended by the Advisory Committee at the March 1991 board meeting. Any public comments received will be submitted to the board at that time.

Comments regarding the use of Chapter 2 funds for 1991-1992 should be addressed to Earin Martin, Chapter 2 State Coordinator, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, and must be received by February 11, 1991. Questions regarding this matter should be directed to Ms. Martin at (512) 463-9269.

Issued in Austin, Texas, on January 29, 1991.

TRD-9101243 W. N. Kirby
Commissioner of Education

Filed: January 30, 1991

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

Texas Department of Health Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR) 13.8, the Bureau of Radiation Control, Texas Department of Health, filed complaints against the following registrants: William G. Patterson, D.D.S., Corpus Christi, R12436; Brookhaven Medical/Dental Center, Brookshire, R12039; Holbert C. Lang, Jr., D.D.S., Alta Loma, R11986; Randolph Sturup, D.D.S., M.S., Houston, R10803; Jesse C. Lopez, D.D.S., Inc., Houston R09930; K. R. Russell, D.D.S., Jacksboro, R12683.

The Agency intends to revoke the certificates of registration, order the registrants to cease and desist use of radiation machine(s), and order the registrants to divest themselves of such equipment, presenting evidence satis-

factory to the Bureau of Radiation Control than they have complied with the order and the provisions of Chapter 401, Health and Safety Code, as amended by Chapters 172, 840, 913, and 930, Acts of the 71st Legislature, Regular Session, 1989. If the fee is paid within 30 days of the date of each complaint, no order will issue.

This notice affords the opportunity for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received 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, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a.m. to 5 p. m. (except holidays).

Issued in Austin, Texas, on January 29, 1991.

TRD-9101222 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: January 30, 1991

For further information, please call: (512) 835-7000



Solid Waste Management Request for Proposals

Notice of invitation for grant application(s). The Texas Department of Health (department) invites individuals to offer their services to develop and implement training materials and lesson plans for Texas teachers who are educating school children on the subject of the responsible management of solid waste. It is the intent of the department to issue only one grant as a result of this invitation.

Eligible projects. Projects eligible for funding under this invitation for proposals include only those that specifically provide training materials and lesson plans at all age and grade levels. However, the first year of the project may target only certain grade levels for implementation, as defined in the more complete "Description of Services," which may be obtained from the department's Bureau of Solid Waste Management (Bureau).

Issues. Solid waste issues to be covered in the training materials and lesson plans include waste minimization options, municipal solid waste generation and disposal processes, and recycling of products and materials (both in terms of market development for commodities and consumer decisions to buy products made from recycled material). Emphasis should be placed on the integrated processes necessary to complete the waste management cycle, and why that cycle is important in protecting the environment.

Content. The content of the training materials and lesson plans must not conflict with Texas law and regulations regarding municipal solid waste management and must include the goals and objectives of the Bureau, which are outlined in the "Description of Services." Following receipt of the "Description of Services," interested individuals should contact the Bureau to schedule a pre-application conference to discuss the focus of this training material in more detail.

Person to be contacted. To obtain a complete copy of the description of services and required application forms,

contact Sue Bumpous, Public Information and Education Specialist, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7271.

Closing date. Proposals to perform the training material and lesson plan development and implementation services will be accepted only if in writing and actually received in the Texas Department of Health, Bureau of Solid Waste Management, 1100 West 49th Street, Austin, Texas 78756-3199, no later than Monday, April 1, 1991, at 5 p.m. The department reserves the right to reject any or all proposals.

Criteria for awarding contract. It is the intent of the department to award only one contract in response to this notice. The criteria to be used to evaluate applications for funding under this request for proposal include: the degree to which the proposal is responsive to the purpose and funding criteria identified in the "Description of Services;" the educational and technical merits of the proposal; the reasonableness of the project cost; the number of teachers and children who will benefit from the project; the anticipated impact on both current and future solid waste management practices and attitudes; program flexibility; and required start-up time.

Budget limitations. The department is prepared to award a single grant under this request for proposals in an amount no greater than \$150,000 for state fiscal year 1991 and no greater than \$200,000 for each subsequent state fiscal year. The award for each subsequent fiscal year will be contingent upon annual applications and contract renewal.

Issued in Austin, Texas, on January 24, 1991.

TRD-9101322 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: February 1, 1991

For further information, please call: (512) 458-7271



Heart of Texas Council of Governments

Plan Announcement-Job Training

The Heart of Texas Council of Governments (HOTCOG) announces the availability of its Title IIB Plan summary for public review. This plan summary is for the Summer Youth Employment and Training Program under the Job Training Partnership Act.

The Heart of Texas Council of Governments is an administrative unit for the Heart of Texas Service Delivery Area. This service area includes Bosque, Falls, Freestone, Hill, Limestone, and McLennan counties which compose the Heart of Texas Planning Region.

Activities to be funded include Work Experience, Classroom Training and Work Experience mix, and Enrichment and Life Skills.

Copies of the IIB Plan summary will be available for review at the HOTCOG offices, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822 and at the county judges' offices in the HOTCOG SDA beginning February 1, 1991.

Written comments on the plan summary may be addressed to: Heart of Texas Council of Governments, 300 Franklin Avenue, Waco, Texas 76701, Attention: Marvin Horton.

Issued in Waco, Texas, on January 31, 1991.

TRD-9101224

John C. Minnix
Deputy Executive Director and Chief
Financial Officer
Heart of Texas Council of Governments

Filed: January 30, 1991

For further information, please call: (817) 756-7822

Texas High-Speed Rail Authority Notice of Proceeding

In accordance with the provisions of the Texas High-speed Rail Act (Texas Civil Statutes, Article 6674v.2) and §85.502 of administrative rules issued thereunder (Chapter 85, Part IV, Title 43, Texas Administrative Code), the Texas High-speed Rail Authority (Authority) hereby issues notice of a hearing to consider Docket Number 91-606-001, Applications for a High-speed Rail Franchise. The hearing will begin at 9 a.m., Monday, March 18, 1990, and be conducted at the 15th Floor Conference Room 823 Congress Avenue, Austin.

This hearing is being held under the authority of the Texas High-Speed Rail Act, §3, and that section grants the Authority with statewide jurisdiction to exercise the powers granted in that Act. This hearing is held to exercise the powers outlined in the Act, §23 and §24, in accordance with the rules and procedures set forth in Chapters 83 and 85 of the administrative rules of the Authority (relating to Franchise Award and Application Procedures, and Rules of Practice and Procedure-Franchise Award, respectively).

The hearing will be held to receive evidence and argument on each applicant's qualifications to construct, maintain, operate, and finance a high-speed rail facility and on public convenience and necessity of an award of a franchise to construct, maintain, operate, and finance a high-speed rail facility. The docket consists of two separate applications for the award of a franchise in response to the request for proposals to construct, maintain, operate and finance a high-speed rail facility issued by the Authority on September 18, 1990. Each application contains information on the applicant's qualifications to construct, maintain, operate, and finance a high-speed rail facility and on public convenience and necessity. The applications propose high-speed rail passenger service to the following geographical areas.

1. Texas FasTrac has proposed providing service to seven Texas cities with stations at the following locations: Houston Central Business District, Houston Suburban (NW), Bryan/College Station, Waco, Dallas Central Business District, Dallas/Fort Worth International Airport, Fort Worth, Austin, and San Antonio.

2. Texas TGV has proposed providing services to five Texas cities with stations at the following locations: Houston Central Business District, Houston Suburban (NW), Dallas Central Business District (Union Station), and Dallas/Fort Worth International Airport, Austin, and San Antonio.

The applications are available for public inspection at the Authority's offices at 823 Congress Avenue, Suite 1502, during normal business hours. Copies of the applications or portions thereof may be obtained directly from Advanced Printing and Copying, 522 Congress Avenue, Lower Level, Austin, Texas 78701, (512) 477-8812.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101293

J. Allan Rutter
Director of Administration

Texas High-Speed Rail Authority

Filed: February 1, 1991

For further information, please call: (512) 478-5484

Texas Department of Human Services Notice of Award

The Texas Department of Human Services (DHS) published a request for proposal in October 2, 1990, issue of the *Texas Register* (15 TexReg 5814) for delivery of case management services under the Community Living Assistance and Support Services Waiver Program.

Name of Contractors. Contracts were awarded to the following providers: Association for Retarded Citizens-Austin, Inc., 2818 San Gabriel, Austin, Texas 78705—to serve 30 people; Austin Resource Center for Independent Living, Inc., 5555 North Lamar Boulevard, Suite J-125, Austin, Texas 78751—to serve 30 people; Easter Seal Society of Tarrant County, Inc., 617 Seventh Avenue, Fort Worth, Texas 76104-2799—to serve 60 people; and United Cerebral Palsy of Tarrant County, Inc., 1555 Merrimac Circle, Suite 102, Fort Worth, Texas 76107—to serve 60 people.

Terms of the Contracts. These contracts are effective February 1, 1991, through August 31, 1992, or upon certification by DHS as a community living assistance and support services provider, whichever is earlier. The staff of these agencies are not employed by DHS or another state agency.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101300

Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: February 1, 1991

For further information, please call: (512) 450-3765

The Texas Department of Human Services (DHS) published a request for proposal in October 2, 1990, issue of the *Texas Register* (15 TexReg 5814) for delivery of habilitation; respite; nursing; physical therapy; psychological services; occupational therapy; speech pathology services; adaptive aids; and minor home modifications under the community living assistance and support services waiver program.

Name of Contractors. Contracts were awarded to the United Cerebral Palsy Association of the Capitol Area, Inc., 1715 East 6th Street, Austin, Texas 78702—to serve 60 people; Family Service, Inc., 1424 Hemphill, Fort Worth, Texas 76104—to serve 60 people; and Well Mill P.C., 6040 Camp Bowie, Suite 31, Fort Worth, Texas, 76116—to serve 60 people.

Terms of the Contracts. These contracts are effective February 1, 1991, through August 31, 1992, or upon certification by DHS as a community living assistance and support services provider, whichever is earlier. The staff of these agencies are not employed by DHS or another state agency.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101301

Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: February 1, 1991

For further information, please call: (512) 450-3765



Notice of Consultant Contract Award

In accordance with Texas Civil Statutes, Article 625-11c, the Texas Department of Human Services (DHS) announces this notice of consultant contract award. The invitation for consultant proposals was published in the October 12, 1990, issue of the *Texas Register* (15 TexReg 6040).

Description of Services. The contract will support the ongoing pilot of the Child At Risk Field (CARF) risk assessment system in Texas, Modify existing DHS systems and/or to CARF necessary for effective statewide implementation of a risk-based service delivery system and begin preparations for statewide implementation of the system.

Name of Consultant. The contract was awarded to ACTION for Child Protection, Inc., 4724 Park Road, Suite C, Charlotte, North Carolina 28209.

Term and Amount of Contract. The contract period is November 19, 1990, through August 31, 1991. Payments under this contract will not exceed \$75,000. All reports are due no later than August 31, 1991.

Issued in Austin, Texas, on February 1, 1991.

TRD-9101302 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: February 1, 1991

For further information, please call: (512) 450-3765



Notice of Public Hearing

The Texas Department of Human Services will conduct a public hearing to receive comments on the department's proposed reimbursement rates for the intermediate care facilities for the mentally retarded (ICFs-MR) state schools; nursing facility pediatric care reimbursement class; rehabilitative services; and the school health and related services programs. The hearing is held in compliance with the provisions of HRC §32.028, which require a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will be held on February 27, 1991, at 9 a.m. in the department's public hearing room of the John H. Winters Center (701 West 51st Street, Austin, First Floor, East Tower). Interested parties may request to have mailed to them or may pick up a briefing package on or after February 12, 1991, concerning the proposed reimbursement rates by contacting Kathy E. Hall, MC E-601, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3702.

Issued in Austin, Texas, on February 4, 1991.

TRD-9101373 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: February 4, 1991

For further information, please call: (512) 450-3765



Texas Department of Public Safety Consultant Contract Award

The Texas Department of Public Safety (DPS), in accordance with provisions of Texas Civil Statutes, Article 6252-11c, announces the awarding of a consultant contract to support the detailed implementation and acceptance testing processes for the automated fingerprint identification system (AFIS), for both central repository and latent applications within the DPS and a network of fingerprint access terminals in other law enforcement agencies throughout the state.

The solicitation for proposals was published in the November 16, 1990, issue of the *Texas Register* (15 TexReg 6623).

The consultant shall: support the DPS during detail system design; review and comment upon technical documents including, but not limited to, the detailed system design, transition plan, system acceptance test plan, training plan, maintenance plan; support design definition of functional and physical subsystems, interfaces, record structures, and other system design details; support the interim acceptance testing of the system at each implementation phase; review and comment on acceptance tests procedures outlined in the general system acceptance test plan; participate in the set-up and execution of the phased tests in Austin; support the final system acceptance and availability testing, including participation in the definition of the tests through review of the test documents; monitor the tests and prepare a written evaluation of the test results, especially as they relate to the system requirements defined in all contract documents; at the state's option, prepare a concept study document which identifies issues to be resolved in interfacing the state AFIS with non-NEC AFIS sites at Houston Police Department and Austin Police Department.

The consultant contract was awarded to Roland R. Sutfin, Information Systems Engineering, 9250 Wagner Creek Road, Talent, Oregon 97540.

The consultant contract begins on January 29, 1991, and will end November 29, 1993. The total value of the contract is \$126,876. Should the state elect to require the optional task to be provided, the contract value will be increased by \$11,600.

Issued in Austin, Texas, on January 30, 1991.

TRD-9101305 Joe E. Miner
Director
Texas Department of Public Safety

Filed: February 1, 1991

For further information, please call: (512) 465-2000



Public Utility Commission of Texas Notice of Application

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on January 8, 1991, to waive Public Utility Commission Substantive Rule 23.55(e)(1) and (2), which require an operator service provider to identify itself to the caller upon answering calls and to identify itself to the billed party if the billed party is different from the caller. A summary of the application follows.

Docket Title and Number. Joint Petition For Waiver of Substantive Rule 23.55(e)(1) and (2), Docket Number 9964 before the Public Utility Commission of Texas.

etb>The Application. In Docket Number 9964, United Telephone Company of Texas, Inc., Alenco Communications, Inc., Texas Alltel, and Central Texas Telephone Cooperative, Inc. filed a joint petition seeking waiver of Public Utility Commission Substantive Rule 23.55(e)(1) and (2).

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf before February 26, 1991.

Issued in Austin, Texas, on January 30, 1991.

TRD-9101281 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 31, 1991

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

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Notice is given to the public of the filing with the Public Utility Commission of Texas an application for approval of an optional feature addition for an existing PLEXAR-Custom digital service for IBM Corporation, 11400 Burnet Road, Austin.

Docket Title and Number. Application of Southwestern Bell Telephone Company for an optional feature addition for an existing PLEXAR-Custom digital service for IBM in Austin. Docket Number 9873.

The Application. Southwestern Bell Telephone Company is requesting approval of the optional feature addition for existing PLEXAR-Custom digital service of IBM. The geographic service market for this specific service is the Austin area.

Persons who wish to comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757,

or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on January 30, 1991.

TRD-9101231 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 30, 1991

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

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**Notice of Proceeding For Approval of
Extended Metropolitan Exchange
Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint application on December 14, 1990, seeking approval of extended metropolitan exchange service pursuant to §23.49 of the Public Utility Commission of Texas Substantive rules. The following is a summary of the nature of the joint application.

Project Title and Number. Joint filing of Guadalupe Valley Telephone Cooperative, Inc. and Southwestern Bell Telephone Company, for approval of extended metropolitan exchange service between the Bulverde and Balcones Exchanges and the San Antonio Metropolitan Exchange, Project Number 9928 before the Public Utility Commission of Texas.

The Joint Application. Approval is sought by Guadalupe Valley Telephone cooperative, Inc. (GVTC), Southwestern Bell Telephone Company (SWB), the City of Fair Oaks Ranch, commissioners of Bexar, Comal, Kendall Counties, and subscriber representatives of Comal and Bexar Counties, for optional two-way EMS between GVTC's Bulverde and Balcones exchanges and SWB's San Antonio metropolitan exchange. Specifically, customers residing in the Bulverde and Balcones exchanges electing to subscribe to the service will pay a flat-rate charge, which will include the provision of basic local exchange services as illustrated:

<u>Class of Service</u>	<u>Bulverde Exchange</u>	<u>Balcones Exchange</u>
Residence, 1-party	\$ 39.76	\$ 40.26
Business, 1-party	84.83	85.33
Business, Key System Trunk	99.22	99.72
Business, PBX Trunk	128.25	128.75

Additionally, GVTC will waive its standard nonrecurring service connection charge to all current local exchange access customers placing orders for optional EMS. This connection charge will be waived for a period of 90 days commencing with the day EMS service becomes available. The charges set forth previously will be the only charges associated with the EMS service.

Persons who wish to intervene or otherwise participate in these proceedings should mail a request to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf.

Issued in Austin, Texas, on January 30, 1991.

Filed: January 30, 1991

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

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State Purchasing and General Services Commission

Request for Proposals

Notice is hereby given to all interested parties that pursuant to Texas Civil Statutes, Article 601b, Article 14, and 1 TAC §125.49, the State Purchasing and General Services Commission is soliciting proposals for the acquisition of a comprehensive automated vehicle fleet management software system to be utilized as the statewide vehicle reporting system.

The request for proposals may be obtained on or after February 8, 1991, from the Travel and Transportation Division of the State Purchasing and General Services Commission, Central Services Building, Room 101, 1711 San Jacinto, Austin, Texas 78711, Attention: Cassie G. Carlson, Director, (512) 463-3557.

The closing date and time for receipt of proposals is 5 p.m., March 8, 1991. The commission will hold a preproposal conference at 2 p.m. on February 19, 1991, in Room 117 of the Sam Houston Building, 201 East 14th Street, Austin, for the purpose of reviewing the content of this request for proposals.

Proposals submitted will be evaluated and an award will be made pursuant to the provisions of 1 TAC §125.49(b).

Issued in Austin, Texas, on February 1, 1991.

TRD-9101296

Judith Monaco Porras
Assistant General Counsel
State Purchasing and General Services
Commission

Filed: February 1, 1991

For further information, please call: (512) 463-3446

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Texas Water Commission

Correction of Error

The Texas Water Commission submitted proposed new 31 TAC §§601.1-601.5 for publication in the January 22, 1991, issue of the *Texas Register* (16 TexReg 363).

Due to publication error by the *Texas Register*, text was inadvertently omitted.

In §601.3, part of the definition for "Groundwater Contamination" is omitted.

Subparagraph (B) and clause (ii) were incomplete and should read as follows.

"(B) greater than 10,000 mg/l if it is:

- (i) currently extracted for beneficial use such as domestic, industrial, or agricultural purposes; or
- (ii) hydrologically connected with, and with the potential for contaminant movement to a surface water body or another zone of groundwater which has a concentration of less than or equal to 10,000 mg/l of dissolved solids."

In §601.5, paragraph (2) is incomplete and should read as follows.

"(1) describe the current status of groundwater monitoring programs conducted by or required by each agency at regulated facilities or in connection with regulated facilities;

(2) contain a description of each case of groundwater contamination documented during the previous calendar year and of each case of groundwater contamination documented during previous years for which enforcement action was incomplete at the time of issuance of the preceding report; and"

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Public Notice

The Texas Water Commission hereby gives notice of the availability of the Draft "1990 Update to the Nonpoint Source Water Pollution Management Report for the State of Texas." This Updated Management Report is prepared under the Clean Water Act, §319. This document is available for public review and comment for the next 30 days.

This update to the Nonpoint Source Water Pollution Management Report describes existing and proposed nonpoint source management programs, milestones, best management practices and funding sources for non-agricultural surface waters. The update also describes the Texas Water Commission's methodology for prioritizing nonpoint source affected waters and targeting specific watershed and demonstration projects.

The primary purpose of the nonpoint source management program is to provide an overview of Texas' nonpoint source programs and put in place a framework for the efficient allocation of resources and efforts to address nonpoint source pollution.

The public is encouraged to present relevant evidence or opinions concerning the draft Management Report Update. In order to meet federal statutory deadlines, the commission would appreciate receiving a copy of all written comments by March 15, 1991. Requests for copies of the update and any comments you may have should be addressed to Mr. Chris Kadas, Water Quality Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8452. There is no charge for the draft copy.

The dates selected for availability of this document are intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 30 days prior to March 15 is due to the necessity of scheduling the review period during this time.

Issued in Austin, Texas, on February 4, 1991.

TRD-9101375

Jim Haley
Director, Legal Division
Texas Water Commission

Filed: February 4, 1991

For further information, please call: (512) 463-8452

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Texas Workers' Compensation

Correction of Error

The Texas Workers' Compensation Commission submitted adopted new 28 TAC §§134.800-134.802, for publication in the February 5, 1991, issue of the *Texas Register*.

Due to an agency submission error, the sixth paragraph of the preamble should be corrected to read as follows.

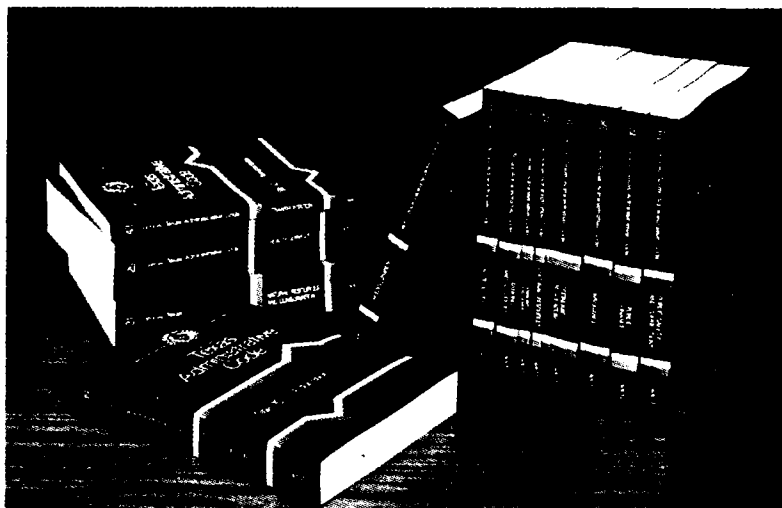
"Concerning proposed §§134.800-134.802, in general one commenter suggested that the rules be modified on the basis that they fail to address whether each bill must be submitted to the carrier if the claim is medical only, or is of a dollar amount that is within the employer's retention range as developed by agreement between the carrier and the employer.

The commission disagrees with changing the rule. If an employer is directly paying medical bills and no claim is made to the carrier, then this rule does not apply. An employer may seek reimbursement later from the carrier for advanced medical benefits under §4.06 of the Act.

However, any work-related injuries that have carrier involvement, even medical only, require that the bills be submitted in accordance with the rules of the TWCC. The commenter also suggested that rules be modified on the basis that they failed to provide whether the physician's initial report must be filed with the carrier and/or with the commission for each medical only/no lost time treatment. The commission disagrees with the suggestion, noting that initial medical reports are required to be submitted in accordance with adopted §133.101 (relating to Initial Medical Report), whether or not there is lost time."

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