

Texas Register

Volume 15, Number 33, May 1, 1990

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Texas Register

The *Texas Register* (ISSN 0362-4781) is published semi-weekly 100 times a year except June 1, 1990, July 20, 1990, November 9 and 27, 1990, and December 28, 1990. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711.

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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Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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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Subscriptions—one year (96 regular issues), \$90; six months (48 regular issues and two index issues), \$70. Single copies of most issues are available at \$4 per copy.

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TAC Titles Affected

TAC Titles Affected—May

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

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

1 TAC §5.249—2513

1 TAC §5.401—2479

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

13 TAC §§1.42, 1.72, 1.77—2480

13 TAC §1.97—2481

TITLE 16. ECONOMIC REGULATION

Part VI. Texas Motor Vehicle Commission

16 TAC §§105.1-105.26—2481

16 TAC §§105.4, 105.10, 105.25—2485

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

19 TAC §25.33—2485

19 TAC §78.70—2486

19 TAC §§89.51-89.56—2488

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19 TAC §81.129—2513

19 TAC §101.7—2513

19 TAC §141.23—2514

19 TAC §149.21—2515

19 TAC §149.21, §149.44—2516

TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

22 TAC §501.1—2517

TITLE 28. INSURANCE

Part I. State Board of Insurance

28 TAC §3.129—2517

28 TAC §§3.3306, 3.3308, 3.3312—2495

28 TAC §7.58—2519

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

31 TAC §335.2—2506

31 TAC §335.43—2506

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §16.1510—2507

40 TAC §35.101, §35.102—2510

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Name: Jason Estes

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Secretary of State

Under provisions of the Texas Election Code (Article 1.03), the secretary of state is authorized to issue opinions based on the election laws. Under provisions of Texas Civil Statutes (Article 6252-9c, §14A), the secretary of state is authorized to issue advisory opinions in response to written requests based on a real or hypothetical situation that relates to Article 6252-9c.

Questions on particular submissions should be addressed to the Office of the Secretary of State, Elections Division, P.O. Box 12887, Austin, Texas 78711, 1 (800) 252-9602 or (512) 463-5650.

Uh>Opinion Issued April 20, 1990

Election Law Opinion GSB-2. Request from Bob Bullock, Comptroller of Public Accounts, Austin, concerning whether the City of Wylie legally held elections to increase its sales and use tax rate by 1/2% for the reduction of the property tax rate and to increase its sales and use tax rate by an additional 1/2% for dedication to local economic and industrial development.

Summary of Opinion. Wylie is disqualified from holding an election to adopt an additional 1/2% sales tax to reduce the property tax rate. An election held without authority is a nullity. Therefore, no tax may be levied or collected as a result of the election to adopt an additional 1/2% sales tax to reduce the property tax rate. However, Wylie is qualified to hold an election to adopt a 1/2% tax for dedication to local economic and industrial development.

TRD-9004236





Name: Bryan Hammond

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Emergency Sections

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

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

State Board of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.

These actions adopted on an emergency basis may become effective immediately on filing or on a later specified date.

The text of the material being adopted on an emergency basis will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance is renewing the effectiveness of the emergency adoption, for a 60-day period effective April 30, 1990. The text of the renewals were originally published in the January 9, 1990, issue of the *Texas Register* (15 TexReg 128).

Issued in Austin, Texas on April 24, 1990.

TRD-9004199, Nicholas Murphy
9004201 Chief Clerk
State Board of Insurance

Effective date: April 30, 1990

Expiration date: June 29, 1990

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



The State Board of Insurance is renewing the effectiveness of the emergency adoption, for a 60-day period effective April 30, 1990. The text of the renewals were originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6890).

Issued in Austin, Texas on April 24, 1990.

TRD-9004200, Nicholas Murphy
9004202 Chief Clerk
State Board of Insurance

Effective date: April 30, 1990

Expiration date: June 29, 1990

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



The State Board of Insurance is renewing the effectiveness of the emergency adoption, for a 60-day period effective April 30, 1990. The text of the renewals were originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6889).

Issued in Austin, Texas on April 24, 1990.

TRD-9004203 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: April 30, 1990

Expiration date: June 29, 1990

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



The State Board of Insurance is renewing the effectiveness of the emergency adoption, for a 60-day period effective April 30, 1990. The text of the renewals were originally published in the December 8, 1989, issue of the *Texas Register* (14 TexReg 6424).

Issued in Austin, Texas on April 24, 1990.

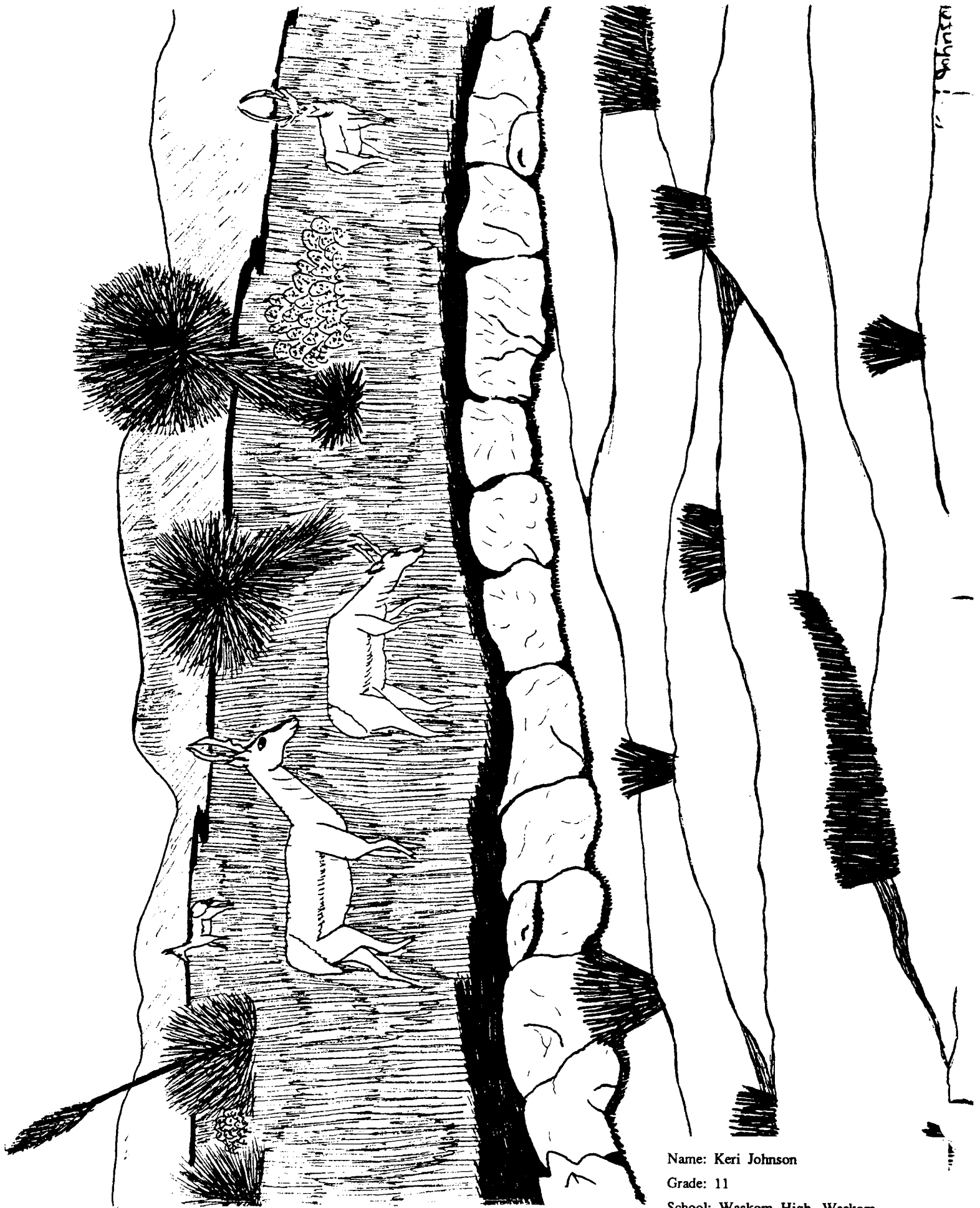
TRD-9004204 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: April 30, 1990

Expiration date: June 29, 1990

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





Name: Keri Johnson

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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.

ADMINISTRATIVE

Part I. Office of the Governor

Chapter 5. Budget and Planning Office

Subchapter D. Loan Program for Energy Retrofits

• 1 TAC §5.401

The Energy Management Center (EMC) of the Governor's Office of Budget and Planning proposes an amendment to §5.401, concerning the implementation of a revolving loan program entitled the "Texas LoanSTAR (Save Taxes And Resources) Program." The amendment is proposed to provide expanded program definitions and project eligibility consistent with the Texas Statewide Retrofit Demonstration Program guidelines published in the February 28, 1989, issue of the *Texas Register* (14 TexReg 1027).

Texas LoanSTAR is a revolving loan program that funds demonstrations of energy efficient retrofits in public sector institutions statewide. This program is designed to demonstrate commercially available energy efficient technologies and techniques. The program is funded with a portion of Texas' oil overcharge funds—a settlement for litigated oil company violations of federal price controls between 1973 and 1981.

Malcolm E. Verdict, EMC's state agencies department manager, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of administering the section.

Mr. Verdict 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 cannot be exactly ascertained. It will depend on the type of devices installed, the payback period, and the level of participation by public sector institutions. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Carol J. Stuewe, Energy Management Center, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711. Submissions should be marked "Comments—LoanSTAR Program." All comments should be postmarked no later than 30 days from publication of this amendment in the *Texas Register*.

The amendment is proposed under the Texas Government Code, Title 4, §447.001, which provides the Energy Management Center (EMC) of the Governor's Office of Budget and Planning with the authority to establish a revolving loan program for energy saving capital improvements in public sector institutions.

§5.401. Texas LoanSTAR (Save Taxes And Resources) Program for Public Sector [State Agencies and] Institutions.

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

(1) Application cycle—The period of time each year, as determined by the EMC, that the EMC shall accept and process applications from public sector institutions [state agencies] seeking loan funds for energy saving capital retrofits.

(2)-(4) (No change.)

(5) Loan agreement—The written contract between an applicant [a state agency] and the Governor's Office that details all terms and requirements under which the loan is issued, including the intended use of the loan proceeds.

(6) Project cost—All costs determined by the Governor's Office to be directly related to the identification, design, implementation, metering and monitoring of an energy conservation measure.

(7) Promissory note—A document issued by the Governor's Office and agreed to by the applicant [state agency] that describes the principal amount, repayment terms, and interest charges under which the revolving loan shall be made.

(8) (No change.)

(9) Retrofit measure—A commercially available energy efficient device, technique, or technology, designed to reduce energy consumption, peak demand, and/or utility costs at an existing [state-owned] facility owned by a public sector institution.

(10) Retrofit project—The identification, design, acquisition, installation, monitoring, and evaluation of one or more energy efficient measures which are [in a state facility,] designed to reduce energy consumption, peak demand, and/or utility cost.

(11) Public sector institution [State agency]—Any state department, commission, board, office, institution, facility, or other agency, including a university system or an institution of higher education as defined in the Texas Education Code, §61.003, as amended. Also, units of local government including a county, city, town, or an independent school district.

(12) [State] Building—A [state-owned] structure which consumes energy.

(13) [State] Facility—Any major energy using group of buildings in geographic proximity and/or a major energy using system owned and occupied or operated by one or more public sector institutions [state agencies].

(b) Eligibility. Projects proposed by loan candidates must fulfill the following program parameters and eligibility requirements.

(1) No more than 10% of all buildings owned by public sector institutions [state-owned buildings] may receive retrofits through this program.

(2) No more than 25% of public sector [the state] facilities receiving funds through this program shall be located in any one standard metropolitan area (SMA) of the state.

(3) The maximum loan amount for a single state institution is \$6 million with a 50/50 cost sharing requirement for any amount over \$4.8 million. The maximum loan amount for a single local government unit or independent school district is \$1.2 million. [No single agency shall receive more than 10% of the total available loan funds.]

(4)-(7) (No change.)

(8) Eligible retrofit projects are [shall fall under one of the following categories]:

(A) Indoor and outdoor lighting projects;

(B)-(H) (No change.)

(I) load management devices; [and]

(J) water and waste water systems; and

(K) [(J)] other cost-effective retrofit, demand, or rate-based measures approved by EMC.

(9) (No change.)

(c) Application/selection.

(1) Each applicant [An applying agency] shall submit a copy of its engineering audit report with a completed loan application to the EMC during an application cycle at such times as determined by the EMC.

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

(4) A public sector institution [state agency] receiving a loan from the Governor's Office will receive a loan agreement and promissory note that identifies the buildings to be modified, approved measures, rate of interest, loan amount, and loan terms and conditions.

(5) Institutions [Agencies] denied funding shall receive written notification that states the reasons for denial and possible actions for qualifying the rejected projects.

(d) Project funding and repayment.

(1) (No change.)

(2) An [A prepaid] interest fee, sufficient to cover the cost of administering and operating the program, will be charged at a rate to be determined by EMC.

(3) All interest fees will be computed on an annual percentage rate [a simple interest] basis.

(4) Loan proceeds may be used to pay for the entire cost of the retrofit project, including cost of the energy audit, engineering design, construction, equipment, acquisition and installation, maintenance, metering and monitoring.

(5) [The principle loan amount, as negotiated on the loan instrument, will be retained in full by the Governor's Office.] Loan funds shall be disbursed to the borrower upon receipt of supporting documentation as required by the Governor's Office.

(6) A state [The recipient] agency may use general revenue funds appropriated for utilities to make loan payments as stipulated in Texas Civil Statutes, Article 4413 (56), §22.

(7)-(9) (No change.)

(e) Loan recipient responsibilities (project monitoring and demonstration).

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

(3) Compliance with applicable local, state, and federal procurement guidelines and procedures are the responsibility of the loan recipient.

(f) Title to equipment.

(1) Title to all equipment acquired under this program will vest in the borrower [agency], in accordance with applicable state statutes.

(2) (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 April 12, 1990.

TRD-9003927

Sheila W. Beckett
Director
Governor's Office of
Budget and Planning

Earliest possible date of adoption: June 1, 1990

For further information, please call: (512) 463-1931

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 1. Library Development

• 13 TAC §§1.42, 1.72, 1.77

The Texas State Library and Archives Commission proposes amendments to §§1.42, 1.72, and 1.77, concerning boundaries of systems, public library service, and tax support of public libraries.

Edward Seidenberg, director of library development has determined that there will be fiscal implications as a result of enforcing or administering this section. The effect on state government for the first five-year period the sections will be in effect will be none. The effect on local government for the first five-year period the sections will be in effect will be an estimated increase in revenue of \$15,000, in 1990; \$30,625, in 1991; \$75,000, in 1992; \$93,750, in 1993; and \$100,000, in 1994.

Mr. Seidenberg 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 uniform multi-jurisdictional service areas, faster transmission of documents, and clarification of existing policies. There will be no effect on small businesses as a result of enforcing the section. The possible economic cost to persons who are required to comply with the sections will be none, because there is no compliance requirement. There will be a direct cost for the individuals who wish to use telefacsimile services from public libraries; this cost will vary, depending on the charges set by each library.

Comments on the proposal may be submitted to Edward Seidenberg, Director, Library Development Division, Texas State Library, Box 12927, Austin, Texas 78711.

The amendments are proposed under the Government Code, Chapter 441, §136, which

provides Texas State Library and Archives Commission with the authority to adopt rules for the administration of the Library Systems Act.

§1.42. Boundaries of Systems. External boundaries of a major resource system or regional library system shall be coterminous with the boundaries of councils of government, unless permission to vary is granted by the governor's office at the request of the state librarian. The state shall be organized into 10 regions as follows:

(1) (No change.)

(2) Texas Panhandle Library System (27 [26] counties): Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochilree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler.

(3)-(6) (No change.)

(7) North Texas Library System (20 [21] counties): Archer, Baylor, [Childress,] Clay, Cottle, Denton, Erath, Foard, Hardeman, Hood, Jack, Johnson, Montague, Palo Pinto, Parker, Somervell, Tarrant, Wichita, Wilbarger, Wise, Young.

(8)-(10) (No change.)

§1.72. Public Library Service. Library services include the dissemination of materials and/or information by the library staff to the general public during posted or otherwise published hours of library outlets. A public library shall provide library services without a use charge to all persons residing in the library's tax supporting political subdivision. The following exceptions to this rule are permitted at the discretion of the library's governing authority: reserving library materials; use of meeting rooms; replacement of lost borrower cards; fines for overdue, lost, or damaged materials in accordance with local library policies; postage; in-depth reference services on a contractual basis; photocopying; telefacsimile services; library parking; service to non-residents; sale of publications; rental and deposits on equipment; and charges for the use of materials and machine-readable data bases not owned by the library, major resource center, or regional library system for which the vendor or supplier has charged a borrowing fee.

§1.77. Public Library: Local Government [Tax] Support. At least half of the annual local operating expenditures required to meet the minimum level of per capita support for accreditation must be from local [tax] government sources. A public library that expends at least \$10 per capita is exempt from this membership criterion if it shows evidence of some library expenditures from local government [tax] sources

and is open to citizens under identical conditions without charge. Local government [tax] sources are defined as money appropriated by school districts or by city or county governments from their general revenue monies.

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 April 20, 1990.

TRD-9004116

Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: June 1, 1990

For further information, please call: (512) 463-5440

◆ ◆ ◆
• 13 TAC §1.97

The Texas State Library and Archives Commission proposes new §1.97, concerning an exception to the Uniform Grants and Contract Management Standards Act.

Edward Seidenberg, director of library development, has determined that there will be fiscal implications as a result of enforcing or administering this section. The effect on state government, for the first five-year period the section is in effect will be an estimated increase in revenue of \$44,950,000, in 1990-1994.

There will be no effect on local government for the first five-year period the section is in effect.

Mr. Seidenberg 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 greater assurance that the state will continue to qualify for federal funds. There will be no effect on small business as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Edward Seidenberg, Director of Library Development Division, Texas State Library, Box 12927, Austin, Texas 78711.

The new section is proposed under the Government Code, Chapter 441, §136 and Senate Bill 222, 71st Legislature, Article 1-194, which provides the Texas State Library and Archives Commission with the authority to adopt rules for the administration of the Library Systems Act and to adopt rules creating an exception to the Uniform Grants and Contract Management Act.

§1.97. Exception to Uniform Grants and Contract Management Standards.

(a) The State Library shall disburse system operation grant general revenue funds quarterly; 40% of the contract shall be disbursed at the beginning of the first quarter on receipt of the executed contract, and 20% at the beginning of each quarter thereafter. A major resource system or

regional public library system must submit a quarterly financial status report for each contract until all funds are expended. All funds unexpended at the end of the second quarter following the fiscal year in which they were granted must be refunded to the Library and Archives Commission with the quarterly financial status report.

(b) All provisions of the Uniform Grants and Contract Management Standards Act, §§5.141-5.151, except as noted in subsection (a) of this section will apply to system operation grant general revenue funds expended by a major resource system or regional library system after the fiscal year in which they were granted, including prior approval of certain expenditures, scope changes, and budget amendments.

(c) If a major resource center or nonprofit corporation ceases to be the contracting agent for the major resource system or regional public library system, all unexpended grant and earned funds must be transferred to the new contracting agent.

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 April 20, 1990.

TRD-9004117

Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: June 1, 1990

For further information, please call: (512) 463-5440

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**TITLE 16. ECONOMIC
REGULATION**
**Part VI. Texas Motor
Vehicle Commission**
Chapter 105. Advertising

• 16 TAC §§105.1-105.26

The Texas Motor Vehicle Commission proposes amendments to §§105.1-105.3, 105.5-105.9, 105.11-105.24, and new §§105.4, 105.10, 105.25, and 105.26, concerning a comprehensive revision of the commission's rules pertaining to the advertising of motor vehicles by new motor vehicle dealers, manufacturers, and distributors. New §105.4 adds a section of definitions necessary and pertinent to the advertising rules, including a definition of bait advertising, now contained in the current §105.4 which is being repealed. New §105.10 sets forth specific requirements for new vehicle price advertising by dealers, replacing the existing dealer price advertising section which is being repealed. New §105.25 contains specific disclosure requirements for advertisements of payments and other financing terms. New §105.26 is identical to the existing §105.25, which is being repealed to renumber the section. The amendments and new sections are proposed by the commission in response to a petition requesting the adoption of

amendments to the commission's advertising rules filed by the Texas Automobile Dealers Association pursuant to the Administrative Procedure and Texas Register Act, §11. The amendments and new sections are intended to provide clarification of the sections and greater certainty in the requirements of the sections for compliance purposes by licensees subject to the sections, as well as aiding the commission in enforcing the sections and prohibiting the false, deceptive, and misleading advertising of motor vehicles.

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

Mr. Harding also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased compliance by licensees with the agency's advertising rules resulting in more truthful and accurate advertising for the benefit of the public. There will be no effect on small businesses, other than the requirement of becoming familiar with the amended sections, as a result of enforcing the sections. 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 in writing to Russell Harding, Executive Director, Texas Motor Vehicle Commission, Post Office Box 2293, Austin, Texas 78768.

The amendments and new sections are proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the commission with authority to adopt rules necessary and convenient to effectuate the provisions of the Act.

§105.1. Objective. The [It is the] objective of this chapter is to implement the intent of the legislature as declared in the Texas Motor Vehicle Commission Code by regulating [providing for the regulation of] the advertising of Texas Motor Vehicle Commission licensees by requiring [by licensed new motor vehicle dealers, manufacturers, and distributors, in the interest of furthering] truthful and accurate advertising practices for the benefit of the citizens of this state.

§105.2. General Prohibition. A licensee [Licensees] shall not use false, deceptive, unfair, or misleading advertising[. As used in this section, the term "advertising" includes, but is not limited to, any form of public notice or statement however disseminated or utilized].

§105.3. Specific Rules. [The following are specific rules relating to the advertising of motor vehicles in the State of Texas by licensed new motor vehicle dealers, manufacturers, and distributors.] The violation of an advertising rule [any of such rules] shall be considered by the commission as a prima facie violation of

the Texas Motor Vehicle Commission Code, §5.01(2) or §5.02(4)]. In addition to a violation of a [the] specific advertising rule [rules set forth as follows], any other advertising or advertising practices found by the commission to be false, deceptive, or misleading shall be deemed violations of the Code, [§5.01(2) or §5.02(4), as applicable,] and shall also be considered violations of the general prohibition [set forth in §105.2 of this title (relating to General Prohibition)].

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

Advertisement—An oral, written, graphic, or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio or on television.

Bait advertisement—An alluring but insincere offer to sell a product of which the primary purpose is to obtain leads to persons interested in buying merchandise of the type advertised and to switch consumers from buying the advertised product in order to sell some other product at a higher price or on a basis more advantageous to the advertiser.

Buyers guide—A form as required by the Federal Trade Commission under 16 Code of Federal Regulations, Part 455. This form is to be completed and displayed on the side window of a vehicle that has been driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer.

Clear and conspicuous—The statement, representation, or term being disclosed is of such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning. This standard may be met by the following:

(A) in a print advertisement:

(i) a type size is used which is at least one-third the size of the largest type size used for the price in the advertisement; however, it need not be larger than 10-point type in advertisements that are 117 column inches or less, or 12-point type in advertisements that are larger than 117 column inches; and

(ii) the statement is disclosed in the body of the advertisement or adjacent to the price or in a box with a heading such as "Restrictions" or "Disclosures." If the statement is in the body copy of the advertisement, it may be in the same size type as the largest type used in the body copy.

(B) in a broadcast commercial:

(i) the statement is made orally and is clear and understandable in pace and volume; or

(ii) the statement is in visual form and viewers can easily read and understand it.

Dealership addendum—A form which is to be displayed on a window of a motor vehicle when the dealership installs special features, equipment, parts or accessories, or charges for services not already compensated by the manufacturer or distributor for work required to prepare a vehicle for delivery to a buyer. The dealership addendum form shall not be deceptively similar in appearance to the manufacturer's label, which is required to be affixed by every manufacturer to the windshield or side window of each new motor vehicle under the Automobile Information Disclosure Act. The addendum is to disclose:

(A) that it is supplemental;

(B) any added future, service, equipment, part, or accessory charged and added by the dealership and the retail price therefore;

(C) any additional charge to the selling price such as additional dealership markup; and

(D) the total dealer selling price.

Demonstrator—A new motor vehicle that is currently in the inventory of the automobile dealership and available for test drives by customers during the dealership's normal business hours. It does not include a vehicle purchased or leased by a dealer or dealership personnel and used as their personal vehicle.

Disclosure—Required information that is clear, conspicuous, and accurate.

Factory executive/official vehicle—A new motor vehicle that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries.

Licensee—Any person required to obtain a license from the Texas Motor Vehicle Commission.

Manufacturer's label—The label required by the Automobile Information Disclosure Act, 15 United States Code §§1231-1233, to be affixed by the manufacturer to the windshield or side window of each new automobile delivered to the dealer.

Rebate or cash back—A sum of money refunded to a purchaser or for the benefit of the purchaser after full payment has been rendered. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the

purchaser may opt for the money to be returned to himself or for his benefit subsequent to payment in full.

§105.5. Availability of Vehicles.

(a) A licensee may advertise a specific vehicle or line-make of vehicles for sale if:

(1) the specific vehicle or line is in the possession of the licensee at the time the advertisement is placed, or the vehicle may be obtained from the manufacturer or distributor or some other source, and this information is disclosed in the advertisement; and

(2) the advertisement sets forth the number of vehicles available if the dealer does not have a supply of the advertised vehicles available to satisfy a reasonable expectable public demand. If an advertisement pertains to only one specific vehicle, then the advertisement must disclose that vehicle's stock number. [Where a specific vehicle is advertised by a dealer as being for sale, that vehicle shall be in the possession of the dealer advertising same and shall be willingly shown and sold as advertised, illustrated, or described at the advertised price and terms, at the advertised address. A dealer must have on hand a reasonable expectable public demand of all vehicles advertised with the equipment advertised at the price advertised. If an advertisement pertains to one specific vehicle only, this fact must be clearly disclosed and a stock number identifying the vehicle must also be disclosed in the advertisement. In the event that a dealer does not have a reasonable expectable public demand of vehicles advertised, the advertisement must disclose a limitation of quantity. If, in order to make delivery of the advertised vehicle, the dealer must obtain the vehicle from the manufacturer or some other source, such fact shall be disclosed.]

(b) This section does [shall] not [be construed to] prohibit general advertising of vehicles by a manufacturer, dealer advertising association, or distributor and the inclusion [therein] of the names and addresses of the dealers [dealer] selling such vehicles in the particular area.

§105.6. Accuracy. All advertised statements, including those specifying year, make, engine size, model, type, equipment, price, trade-in allowance, terms, or other claims or conditions pertaining to the offer for sale of any vehicle, or to the vehicle itself, shall be accurate, [and] clear, and conspicuous.

§105.7. Untrue Claims. The following statements are prohibited [shall not be used in any advertising by any dealer]:

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

§105.8. Layout[; Type Size]. The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio/TV advertisements shall not convey or permit an erroneous or misleading impression as to which vehicle or vehicles are offered at featured prices. No advertised offer, expression, or display of price, terms, down payment, trade-in allowance, cash difference, savings, or other such material terms shall be misleading and any necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding. For purposes of these rules, qualifying terms and phrases will be considered to be clearly, conspicuously, and accurately set forth if they are:

(1) in bold print and in type of such size that is capable of being read without unreasonable extra effort;

(2) expressed in terms that are understandable to the buying public; and

(3) in close proximity to the qualified representation and not separated

or buried by asterisk in some other part of the advertisement].

§105.9. Manufacturer's Suggested Retail Price. The suggested retail price of a new motor vehicle when advertised by a manufacturer or distributor shall include all costs and charges for the vehicle advertised, except that destination and dealer preparation charges, and state and local taxes, title, deputy fees, documentary fees, and license fees may be excluded from such price, provided that the advertisement conspicuously states that such costs and charges are excluded. However, with respect to advertisements placed with local media in Texas by a manufacturer or distributor which include the names of the local dealers for the vehicles advertised, if the price of a vehicle is stated in the advertisement, such price must include all costs and charges for the vehicle advertised, including destination and dealer preparation charges and may exclude only state and local taxes, license, title fees, and documentary fees.

§105.10. Dealer Price Advertising.

<u>Mfg. Sugg. Retail Price</u>	<u>\$9,995.00</u>
less rebate	500.00
less dealer discount	500.00
<u>Sale Price</u>	<u>\$8,995.00</u>

§105.11. Identification.

(a) When the [cash price or time] price of a [new] vehicle is advertised, the following must be disclosed [stated in any advertisement, the vehicle shall be clearly identified as to]:

(1) model year[.];

(2) make[.];[engine size, model, and commonly accepted]

(3) trade, brand, or style name[.]; and

(4) whether the vehicle is a used, demonstrator, or a factory executive/official vehicle[all optional equipment included in the advertised price shall be listed in the advertisement. No dealer shall advertise a new vehicle at a price which does not include equipment with which it is fitted or certain standard equipment with which it is ordinarily fitted, without disclosing such fact].

(b) Expressions such as "fully equipped," "factory equipped," "loaded," and other such terms [can be deceptive and misleading and] shall not be used in any advertisement that [which] contains the price of a vehicle unless the optional

equipment of the vehicle is listed in the advertisement.

(c) An [Any] illustration of a motor vehicle used in [any advertising media, including television,] an advertisement must be that of the motor vehicle advertised. If an illustration of the advertised vehicle is not available, then the dealer must clearly and conspicuously disclose the difference between the illustration and the vehicle being advertised.

§105.12. Advertising at Cost or Invoice.

(a) The term "dealer's cost" or other reference to the cost of the vehicle to the dealer shall not be used [in advertising since the actual net cost to the dealer for the vehicle is dependent upon a number of variables not known to the dealer at the time the advertisement is placed].

(b) The use of the term "invoice" or "invoice price" in advertising must be in reference to the manufacturer's or distributor's total invoice price on a vehicle without dealer added accessories and services and such advertisement shall clearly and conspicuously include one of the following disclosures [disclosure]:

(a) The price of a new motor vehicle, when advertised by a dealer, must be the full cash price for which the dealer will sell the vehicle. The only charges that may be excluded from the advertised price are:

(1) state and local taxes;

(2) license;

(3) title;

(4) deputy;

(5) and documentary fee.

(b) A qualification may not be used when advertising the price of a vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer" or "with down payment."

(c) If a price advertisement discloses a rebate, cash back, discount savings claim, or other incentive, the full cash price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive. The following is an acceptable format for advertising a price with rebates and other deductions:

(1) "The invoice may not represent actual dealer cost;" or

(2) "The factory invoice refers to the manufacturer's or distributor's total invoice price."

§105.13. Trade-In Allowances. No guaranteed [Since the amounts of trade-in allowances will vary depending on the condition, model, mileage, or age of a buyer's vehicle, no specific] trade-in amount or range of amounts shall be featured in advertising.

§105.14. Used Vehicles. A used vehicle [Used vehicles] shall not be advertised in any manner that [which] creates the impression that it is [they are] new.

§105.15. Demonstrators, Executives', and Officials' Vehicles. If a demonstrator or factory executive/official vehicle is [The word "demonstrator" shall be understood to refer to a vehicle which has never been sold or leased to a member of the public. This term shall include vehicles used by new vehicle dealers or their personnel for demonstrating performance ability but not vehicles purchased or leased by such dealers or

their personnel and used as their personal vehicles. Demonstrators may be] advertised, the advertisement must so disclose. A demonstrator or factory executive/official vehicle may be [for sale as such] sold only by a dealer franchised and licensed to sell that line-make of new motor vehicle [for the sale of such make of new vehicles. "Executives" and "officials" vehicles, when so advertised, shall have been used exclusively by executives of the dealer's franchising manufacturer or distributor, or by an executive of the franchised dealership. These vehicles, so advertised, shall not have been sold or leased to a member of the public prior to the appearance of the advertisement. "Demonstrators," "executives," and "officials" vehicles shall be clearly and prominently qualified as such in immediate conjunction with the year, make, and model offered].

§105.16. Auction. Terms such as "auction" or "auction special" and other terms of similar import shall be used only in connection with a vehicle [vehicles] offered or sold at a bona fide auction.

§105.17. Free Offers. No merchandise or enticement [equipment, accessory, or other merchandise] may [shall] be described as "free" if the vehicle can be purchased for a lesser price without the merchandise or enticement [such equipment, accessory, or merchandise,] or if the price of the vehicle has been increased to cover the cost or any part of the cost of [such equipment, accessory, or] the merchandise [.] or enticement. The advertisement [Advertising] shall [describe] clearly and conspicuously disclose the conditions under which the "free" offer may be obtained[, in direct, and conspicuous connection with the term "free," e.g., "Free with the purchase of _____."]].

§105.19. Authorized Dealer. The term "authorized dealer" or a similar term [terms] shall not be used [in any way so as to mislead as to the make or makes of vehicles for the sale of which the advertising dealer is franchised.] unless the advertising dealer holds both a franchise and a Texas Motor Vehicle Commission license to sell those vehicles he is holding himself out as authorized to sell.

§105.20. Manufacturer and Distributor Rebates. It is [shall be] unlawful for a [any] manufacturer or distributor[, either directly or indirectly,] to advertise[, publicize, or represent to the public by any means or in any medium,] any offer [to purchasers of vehicles sold by the manufacturer or distributor,] of a rebate, refund, discount, or other financial inducement or incentive, which is either payable to or for the benefit of the purchaser [of the vehicle] or which reduces the amount to be paid [by the purchaser] for the vehicle, whether the [such] amount is

the vehicle purchase price, the interest or finance charge expense, or any other cost accruing to the purchaser if [in connection with the purchase of the vehicle, where] any portion of such rebate, refund, discount, or other financial incentive or inducement is paid [by] or financed [by] or in any manner contributed to by the dealer selling the vehicle, unless the advertisement [such advertising or publicizing] discloses [clearly and conspicuously the following:

[(1) the maximum dealer portion or contribution of any rebate, refund, discount, or other financial inducement or incentive stated in numerical form (either dollar amount or percentage); and,] that the dealer's contribution may affect the final negotiated price of the vehicle.]; or

[(2) **With** [with] respect to interest or finance charge expense programs [only], the advertisement shall disclose that participating dealers contribute to the reduction of the financing rate and that the dealer's contribution may affect the final negotiated price of the vehicle.

§105.21. Rebate and Financing Rate Advertising by Dealers.

(a) It is [shall be] unlawful for a [any] dealer[, either directly or indirectly,] to advertise[, publicize, or represent to the public by any means or in any medium,] an [any] offer [to purchasers of vehicles sold by the dealer,] of a manufacturer's or distributor's rebate, refund, discount, or other financial inducement or incentive **if the dealer contributes to the manufacturer's or distributor's program** [of the type described in §105.20 of this title (relating to Manufacturer and Distributor Rebates,)] unless such advertising [or publicizing clearly and conspicuously] discloses [the following:

[(1) the maximum dealer portion or contribution of any rebate, refund, discount, or other financial inducement or incentive stated in numerical form (either dollar amount or percentage); and,] that the dealer's contribution may affect the final negotiated price of the vehicle.]; or

[(2) **With** [with] respect to interest or finance charge expense programs [only], [that] if a participating dealer contributes [dealers contribute] to the reduction of a [the] financing rate, **then a disclosure must state** [and] that the dealer's contribution may affect the final negotiated price of the vehicle.

(b) An [Any] advertisement containing an offer [by a dealer] of an interest or finance charge incentive that [to purchasers of vehicles sold by the dealer, which] is paid for or financed by the dealer rather than the manufacturer or distributor, shall [clearly and conspicuously] disclose that the dealer pays for or finances the interest or finance charge rate reduction, **the amount of the dealer's contribution in**

either a dollar or percentage amount, and that such arrangement may affect the final negotiated price of the vehicle.

(c) A dealer may not advertise, offer to pay, promise to pay, or tender cash to a buyer of a motor vehicle as in a rebate or cash back program, unless it is offered and paid in part by the motor vehicle manufacturer or distributor directly to the retail purchaser or assignee of the retail purchaser and unless the advertisement sets forth the disclosures required by the Texas Motor Vehicle Act. [The term "rebate" may be used by a dealer in advertising the sale of new motor vehicles only when the rebate is in fact a rebate offered by and paid entirely by the motor vehicle manufacturer or distributor direct to the retail purchaser of the vehicle or to the assignee of the retail purchaser.]

§105.22. Lease Advertisements. Vehicle lease advertisements shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle. Statements such as "alternative financing plan," "drive away for \$_____ per month," or other terms or phrases that do not use the term "lease," do not constitute adequate disclosure of a lease. Lease advertisements shall not contain the phrase "no down payment" or words of similar import if any outlay of money is required to be paid by the customer to lease the vehicle. Lease terms that are not available to the general public shall not be included in advertisements directed at the general [consuming] public, or all limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed.

§105.23. Manufacturer Sales; Wholesale Prices. A dealer [Dealers] shall not advertise the sale of a new vehicle in any manner that creates the impression that it is [vehicles in any manner that conveys to the public, either directly or by implication, that the vehicles advertised are] being offered for sale by the manufacturer or distributor of the vehicle [vehicles]. Advertisements by dealers shall not contain terms such as "factory sale," "wholesale prices," "factory approved," "factory sponsored," or any other similar terms which indicate sales other than from the dealer [retail sales].

§105.24. Savings Claims; Discounts.

(a) A [Specific] savings claim [claims] or discount offer is prohibited except to advertise a [offers shall not be used in advertising any motor vehicles other than] new or demonstrator vehicle, and the advertisement must [vehicles and then only to] show the difference between the dealer's [own current] selling price and the manufacturer's or distributor's total suggested list or retail price.

(b) If a dealer has added a factory available option and disclosed the option and price on a dealership addendum sticker prior to offering the vehicle for sale at retail, the dealer may advertise a savings claim on that vehicle as long as the difference is shown between the dealer's selling price and the total selling price as disclosed on the dealership addendum sticker. [A full explanation of the discount or savings claim shall be given, as for example, "save \$_____ from manufacturer's suggested list (or retail) price."]

(c) Statements such as "up to," "as much as," or "from," shall not be used in connection with savings or discount claims.

§105.25. Payment Disclosures. An advertisement that contains any one of the following messages, statements, or terms:

- (1) the amount of any payment, in either a percentage or dollar amount;
- (2) the amount of any payment, in either a percentage or dollar amount;
- (3) the number of payments;
- (4) the period of repayment; or
- (5) the amount of any finance charge must also include the following:

(A) the amount or percentage of the down payment;

(B) the terms of repayment; and

(C) the annual percentage rate (A.P.R.)

§105.26. Finding of Violation. No licensee shall be held to be in violation of the foregoing rules, including the general prohibition, except upon a finding thereof made by the commission after notice and hearing as provided in the Texas Motor Vehicle Commission Code.

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 April 23, 1990.

TRD-9004210 Russell Harding
Executive Director
Texas Motor Vehicle
Commission

Proposed date of adoption: July 1, 1990

For further information, please call: (512) 476-3587

sections may be examined in the offices of the Texas Motor Vehicle Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Motor Vehicle Commission proposes the repeal of §105.4, 105.10, and 105.25, concerning bait advertising, dealer price advertising, and the findings of violations of the commission's advertising rules.

The repeals are proposed in conjunction with a separate proposal which is a comprehensive revision of the commission's rules pertaining to the advertising of motor vehicles by new motor vehicle dealers, manufacturers, and distributors. The proposed revision includes a definition of bait advertising in a new §105.4, which is a section of definitions; clarification of the requirements for new vehicle price advertisements by dealers in a new §105.10; and a new §105.26, the text of which is identical to the existing §105.25.

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

Mr. Harding also has determined that for each year of the first five years the repeals are in effect there is no public benefit anticipated. There will be no effect on small businesses as a result of enforcing the repeals. 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 in writing to Russell Harding, Executive Director, Texas Motor Vehicle Commission, P.O. Box 2293, Austin, Texas 78768.

The repeals are proposed under Texas Civil Statutes, Article 4413(36), and the Texas Motor Vehicle Commission Code, §3.06, which provide the commission with authority to adopt rules necessary and convenient to effectuate the provisions of the Act.

§105.4. Bait Advertising.

§105.10. Dealer Price Advertising.

§105.25. Finding of Violation.

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 April 23, 1990.

TRD-9004211 Russell Harding
Executive Director
Texas Motor Vehicle
Commission

Proposed date of adoption: July 1, 1990

For further information, please call: (512) 476-3587

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 25. Administrative Council

Subchapter B. Administration of the Texas State College and University Employees Uniform Insurance Benefits Program

• 19 TAC §25.33

The Texas Higher Education Coordinating Board proposes an amendment to §25.33, concerning administration of the Texas State College and University Employees Uniform Insurance Benefits Program. The amendment will permit institutions to apply a hospital deductible not to exceed \$50 to outpatient services of the hospital.

Kathy Lewis, director, Higher Education Insurance 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.

Ms. Lewis 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 providing institutions with a more appropriate cost containment provision in their health insurance programs. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Kathy Lewis, Director, Higher Education Insurance Program, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The amendment is proposed under the Texas Insurance Code, Article 3.50-3, which provides the administrative council with the authority to adopt rules and regulations consistent with the provision of the Act to carry out its statutory responsibilities.

§25.33. Basic Coverage Standards.

(a) Each institution shall provide in its program of group insurance a basic plan for active employees and retired employees that includes at least the following minimum coverage standards.

(1)-(5) (No change.)

(6) Maximum out-of-pocket expenses.

(A) (No change.)

(B) In addition, the plan may include a hospital deductible [per hospital admission] not to exceed \$50[, with the provision that this hospital deductible be

• 16 TAC §§105.4, 105.10, 105.25

(Editor's note: The text of the following sections proposed for repeal will not be published. The

waived on out-patient surgery]. If a plan found in compliance by the administrative council includes cost containment provisions, any charges rendered ineligible by the operation of these provisions will not apply towards the maximum out-of-pocket expenses.

(7)-(8) (No change.)

(b) (No change.)

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

Issued in Austin, Texas on April 23, 1990.

TRD-9004173 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: June 1, 1990

For further information, please call: (512) 462-6420

Part II. Texas Education Agency

Chapter 78. Vocational Education

Subchapter E. Quality Work Force Planning

• 19 TAC §78.70

The Texas Education Agency proposes new §78.70, concerning quality work force planning. The proposed new section would foster the development of an integrated delivery system for vocational-technical education and training to ensure that the skills attained by graduates and completers of education and training programs match the skills needed by employers. Quality work force planning committees in each of 24 regions would develop partnerships of educators and employers to analyze job opportunities and related education and training needs to determine priorities for vocational technical education programs in each region. These committees would have the responsibility to identify education and training providers, consistent with their role and mission, for vocational-technical education programs in the region so that programs will be delivered in a cost-effective and systematic manner that avoids unnecessary duplication. The committees would not have program approval authority, but would instead provide a planning forum to encourage education and training providers and employers to address regional priorities. The new section is proposed pursuant to Senate Bill 417 passed by the 71st Texas Legislature.

Lynn Moak, deputy commissioner for research and development, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state government. Current costs for staffing nine regional committees range from \$75,000 to \$95,000 per committee staffing, supplies, and ancillary expenses. Increasing

the number of committees to 24 will incur additional expenses to the state ranging from \$1,035,000 to \$1,515,000 in additional expenses. Current pilot project costs for the nine committees are covered by a combination of federal vocational education and federal Job Training Partnership Act funds and supplemented by locally generated revenues. However, no change in federal funding status, and therefore federal funds, is assumed. Therefore, to implement the 24 committees, it is expected that the additional costs would need to be appropriated from state funds. This change will have no fiscal impact on local governments.

Mr. Moak and Criss Cloudt McCuller, director for planning coordination, also have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the development of a skilled and educated work force to enhance economic development in Texas and to compete in a global economy.

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

The new section is proposed under the Texas Education Code, §16.005, which provides the State Board of Education with the authority to make rules for administration of the Foundation School Program, and the Texas Education Code, §16.155, which makes vocational education a part of the Foundation School Program.

§78.70. Integrated Vocational-Technical Education and Training Delivery System for a Quality Work Force.

(a) Purpose. Texas must develop a skilled and educated work force to enhance economic development in this state and to compete in a global economy. An integrated delivery system for vocational technical education and training would ensure that the skills attained by graduates and completers of education and training programs match the skills needed by employers. The purpose of quality work force planning shall be to determine priorities for vocational-technical education programs in the state's 24 planning regions. Planning committees shall develop partnerships of employers and educators to analyze regional job opportunities and education and training needs.

(b) Regional boundaries. Effective September 1, 1990, 24 quality work force planning regions shall be established that have boundaries coterminous with the governor's state planning regions.

(c) Partnership. Public school districts, education service centers, public community/junior colleges and technical in-

stitutes, public senior colleges and universities, other public institutions of higher education, and the Job Training Partnership Act/private industry council system shall work together to form a partnership with business and industry to address the issue of developing a skilled and educated work force. Private colleges and universities, private providers of vocational education programs, and other interested public sector entities may be active participants.

(d) Quality work force planning committees. Effective September 1, 1990, a quality work force planning committee shall be initiated in each region. Each committee shall facilitate the development of an integrated delivery system for vocational-technical education and training. Each committee shall identify education and training providers, consistent with their role and mission, for vocational-technical education programs in the region so that programs will be delivered in a cost-effective and systematic manner that avoids unnecessary duplication. Each committee shall provide a planning forum to:

(1) address the needs of employers for a skilled and educated work force;

(2) address the needs of students, including members of special population groups, for occupationally specific vocational-technical education programs based upon current and projected labor market needs and related secondary occupationally non-specific vocational-technical education programs, services, and activities;

(3) promote partnerships that support vocational-technical education programs, services, and activities that result in:

(A) program articulation and 2+2+2 programs;

(B) resource sharing among education and training providers and with business and industry;

(C) coordination with dropout, adult education, and literacy programs; and

(4) improve communication within the region among:

(A) education and training providers and employers by sharing ideas to improve the quality of vocational-technical education programs; and

(B) education and training providers and economic development organizations to meet the region's future employment training needs.

nical assistance in coordinating committee functions and operations. Texas Higher Education Coordinating Board staff shall provide technical assistance in developing program articulation agreements and 2+2+2 programs. Texas Department of Commerce staff shall provide technical assistance in establishing regional labor market information systems.

(2) The three agencies shall evaluate the statewide implementation of quality work force planning. The committees shall provide information for that purpose.

(3) A tri-agency management team comprised of staff from each of the three agencies shall coordinate the implementation of statewide quality work force planning activities.

(4) The chief executive of each agency shall appoint three individuals participating in quality work force planning activities to advise the tri-agency management team on the implementation process.

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 April 11, 1990.

TRD-9004205

W. N. Kirby
Commissioner of Education

Proposed date of adoption: June 9, 1990

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

Chapter 89. Adaptations for Special Populations

Subchapter C. Educational Programs for Gifted and Talented Students

• 19 TAC §§89.51-89.56

The Texas Education Agency proposes amendments to §§89.51-89.56, concerning educational programs for gifted and talented students. The proposed amendments would strengthen the requirements of school districts to provide appropriate educational opportunities for gifted and talented students, require that such students at the kindergarten level be identified and served at the start of the second semester of the school year, and permit school districts until 1995 to develop a full differentiated curriculum for the gifted program. In addition, the proposed amendments would clarify that five days of staff development is required only for those teachers of the gifted who have not previously received training, and provide staff development for those teachers who have not previously received training in gifted education. Further, the proposed amendments would reduce the time requirements for kindergarten programs to no less than 75 minutes of differentiated instruction so that the total number of minutes would not have to exceed 150 minutes per

week in a full-day schedule. The amendments are proposed pursuant to Senate Bill 607 passed by the 70th Texas Legislature.

Lynn Moak, deputy commissioner for research and development, has determined that for the first five-year period the proposed 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. Moak and Criss Cloudt McCuller, director for planning coordination, also have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved delivery of educational services to gifted and talented students and compliance with state law. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost for persons who are required to comply with the sections.

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

The amendments are proposed under the Texas Education Code, §21.654, which provides the State Board of Education with the authority to adopt rules for the approval of programs for gifted and talented students.

§89.51. General Provisions

(a) Local school districts shall [make every effort to] ensure that gifted and talented students are provided with educational opportunities commensurate with their abilities. School districts may adapt both school organization and curricula for gifted and talented students in accordance with Chapter 75 of this title (relating to Curriculum) and Chapter 97, Subchapter D of this title (relating to Principles, Standards and Procedures for the Accreditation of School Districts).

(b) (No change.)

§89.52. Definition

(a) Gifted and talented students are those who excel consistently or who have the potential to excel in any one or combination of the following areas: general intellectual ability, specific subject matter aptitude, creative and productive thinking, leadership ability, ability in the visual and performing arts, and psychomotor ability. These students require educational experiences beyond those normally provided by the regular school program.

(b) (No change.)

§89.53. Student Participants

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

(c) **Students at the kindergarten level must be identified and served at the start of the second semester of the school year** [Districts that do not request state funds to support services for gifted and talented students are encouraged to use the identification process described in the Texas State Plan and Guidelines for the Education of the Gifted and Talented].

§89.55. Establishment and Approval of Programs.

(a) Districts funded for approved programs shall: [develop the programs in accordance with the guidelines included in the Texas State Plan and Guidelines for the Education of the Gifted and Talented.]

(1) **develop and obtain local board of trustee approval for an identification procedure that complies with §89.53(b) of this title (relating to Student Participants);**

(2) **provide a minimum of five days of staff development for teachers of the gifted who have not previously received training in the area of gifted education. In school year 1990, training may take place during the school year; beginning in school year 1991, teachers must be trained prior to their assignment in the gifted program;**

(3) **provide ongoing training for district staff in gifted education based on periodic needs assessments;**

(4) **develop a fully differentiated curriculum for the program that includes student objectives and a grades kindergarten through 12 scope and sequence reflecting differentiation of the regular school curriculum by 1995;**

(5) **provide a minimum of 150 minutes per week of differentiated instruction for those grades that have a full-day schedule. Half-day kindergarten programs may schedule no less than 75 minutes of differentiated instruction; and**

(6) **provide orientation and periodic updates for parents of students identified and served as gifted.**

(b) To be eligible for approval for [developmental or operational] funding, districts must submit program information [their plans for approval] on forms developed and provided by the commissioner of education.

[(c) To secure approval for developmental funding, districts shall submit information on activities that will be conducted to plan services for gifted and talented students. If the district has not yet established a state-approved program, a product of the planning shall be a long-range (three-to five-year) plan of action for providing comprehensive services for gifted and talented students in grades kindergarten through 12.

[(d) Districts that apply for developmental funding shall begin their planning at the kindergarten through elementary level if they have not yet established a state-approved program.]

(c)[(e)] To secure initial approval for [operational] funding, a district shall submit with its application a long-range (three- to five-year) plan of action for providing comprehensive services for gifted and talented students in grades kindergarten through 12. The plan must have the approval of the local board of trustees.

(d)[(f)] Districts [approved for operational funds] shall maintain their eligibility for continuation of [such] funding by submitting **planning** or evaluation reports to the Central Education Agency periodically as required by the commissioner of education.

(e)[(g)] Districts with limited numbers of gifted and talented students are encouraged to establish cooperatives. Combinations of districts that apply for state funding shall select a fiscal agent to manage the program. Education service centers may act as fiscal/management agents for the districts in their regions.

§89.56. Gifted and Talented Student Allotment.

(a) Funds for district programs shall be allocated to [eligible] districts in accordance with the Texas Education Code, §§21.651-21.655 and 16.159.

[(b) Districts may receive developmental as well as operational grants, but the grants shall not be for the same grade levels.

[(c) Districts that apply for developmental funds shall include no more than the grades kindergarten through six or the grades seven through 12 in the funding requests and shall count for funding only those students who have not yet been served by a state-approved operational program.

[(d) Districts that receive developmental funds must implement a program at the beginning of the following school year. Such program must be for the grade levels for which the district received developmental funding. Failure to do so means that the district shall return its developmental allotment to the Central Education Agency within 30 days.]

(b) [(e)] Districts that apply for [operational] funds shall count for funding only those students identified and served by a full-year program. [However, a district with an average daily attendance of 1,000 or less that has not yet submitted an application for approval for an operational program may apply for approval to offer a summer program. The commissioner of education has authority to review applications on an annual basis and approve

a limited number of summer programs. A district that currently operates a full-year program cannot reduce its services for gifted students to a summer program only.

[(f) To be eligible to receive either a developmental or operational allotment, districts shall submit the forms required for approval no later than a date to be specified annually by the commissioner.]

(c)[(g)] Not more than 15% of each district's allocation may be used for general administrative costs.

(d)[(h)] After funds have been allocated to districts, the commissioner of education, with the approval of the State Board of Education, shall determine which special programs are to receive any funds for training of personnel and program 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 April 11, 1990.

TRD-9004206

W. N. Kirby

Commissioner of Education

Proposed date of adoption: June 9, 1990

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

◆ ◆ ◆ Subchapter G. Special Education Clarification of Provisions in Federal Regulations and State Law

• 19 TAC §89.246

The Texas Education Agency proposes new §89.246, concerning a memorandum of understanding on transition planning for students enrolled in special education. Senate Bill 417 of the 71st Texas Legislature requires the agency, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission to adopt a memorandum of understanding effective September 1, 1990, which defines the role of each agency for the provision of services needed to prepare students enrolled in special education to progress successfully from public school to adult life. As authorized by the legislation, the Texas Commission for the Blind, the Texas Department of Human Services, and the Texas Employment Commission have also agreed to participate in the memorandum of understanding. The legislation also requires that school districts coordinate with other agencies as proposed in the memorandum of understanding to develop and annually review an individual transition plan for every student enrolled in special education who is at least 16 years of age. In school year 1990-1991, this provision would apply to approximately 81,000 special education students. In subsequent school years, the districts would be required to review annually each of the original plans and develop initial plans only for the students without transition plans who are 16 years of age.

Lynn Moak, deputy commissioner for research and development, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state and local governments as a result of enforcing or administering the section. The impact on the Texas Education Agency will accrue as a result of providing all individual transition planning support services to local school districts such as training, travel costs, diagnostic personnel, and coordination and supply of information requests. The yearly estimated operating cost for fiscal year 1991 is \$65,000. Approximately half of this will be in personnel costs with the remainder going toward supplies, travel, printing and mailing costs, and data processing costs. This memorandum of understanding will significantly impact local school districts. Statewide personnel costs are estimated at between \$7.02 million to \$7.07 million and administrative costs are estimated at \$1.06 million. The total estimated state impact on districts is \$8.07 million to \$8.13 million or, roughly, \$7,670 per school district per year.

Mr. Moak and Criss Cloudt McCuller, director for planning coordination, have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this amendment is that students receiving transition services will be more capable of sustaining employment, have an enhanced ability for independent living, and have a reduced need for public assistance. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost for persons who are required to comply with the section.

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

The new section is proposed under the Texas Education Code, §21.510, which directs the Central Education Agency and other state agencies to develop and adopt by rule, effective September 1, 1990, a memorandum of understanding which defines the role of each agency for the provision of services needed to prepare students enrolled in special education to progress successfully from public school to adult life.

§89.246. Memorandum of Understanding on Transition Planning for Students Enrolled in Special Education.

(a) Purpose.

(1) Pursuant to Senate Bill 417, 71st Texas Legislature, the purpose of this memorandum of understanding is to establish the respective responsibility of each agency for the provision of the services necessary to prepare students enrolled in special education for a successful transition to life outside the public school system. As authorized by the statute and subject to revision by mutual agreement of

the agencies named herein, the following state agencies are designated as participating agencies:

(A) Texas Commission for the Blind (TCB);

(B) Texas Department of Human Services (TDHS);

(C) Texas Department of Mental Health and Mental Retardation (TDMHMR);

(D) Texas Education Agency (TEA);

(E) Texas Employment Commission (TEC); and

(F) Texas Rehabilitation Commission (TRC).

(2) The memorandum of understanding sets forth the collaborative and individual responsibilities of the agencies for the development and annual review of an individual transition plan for each student enrolled in special education who is at least 16 years of age. The effective date of the memorandum of understanding is September 1, 1990.

(b) Preamble.

(1) This memorandum of understanding is a primary cornerstone of a dynamic process which will result in the future realization of a human service system in Texas which offers all citizens with disabilities choices and opportunities, in a comprehensive array of coordinated services, to achieve maximum independence and integration in the community. It is appropriate that such a momentous beginning focus upon one of the most important resources of this state's future the children and young adults with disabilities. The agencies acknowledge that this focus is imperative if students with disabilities and their families are to be equipped with the knowledge and skills necessary to empower them to make more effective use of personal and public resources in achieving independence.

(2) This memorandum assures compliance with the law within the limits of existing resources and services. It is also the express desire of the agencies that the memorandum be recognized at the local, regional, and state level as:

(A) documentation of the agencies' commitment to effecting long-term systems change which will require extensive interagency collaboration and sharing of resources;

(B) a document which authorizes and promotes maximum, rather

than minimum, collaborative participation by local agencies in the provision of effective transition services for students enrolled in special education; and

(C) an acknowledgement of the need for parents, consumers, and advocates to support the implementation of the memorandum and to assist the participating agencies in acquiring the resources needed to transition students successfully to life outside the public school system.

(3) This memorandum of understanding provides direction for an evolving process of interagency coordination, communication, and cooperative fiscal planning, influenced significantly by the varied array of available local resources. Formal agreements among the local agencies are therefore strongly encouraged to facilitate the most effective use of the available resources.

(c) Process.

(1) Transition.

(A) For the purpose of this memorandum of understanding, transition is defined as movement from school to adult life. Transition for students enrolled in special education should be a process that is systematically planned, implemented, and continued until the student as an adult has made the transition to life outside the public school. As stated in the Report to the 71st Legislature from the Transition Services Task Force, February 1989, "Transition services are defined as those services, both of short and extended duration, that enable persons with disabilities to live in the community, participate in work and other meaningful activities, have access to appropriate medical mental health and non-medical support services, and engage in satisfying social interactions."

(B) The memorandum incorporates the United States Department of Education's identified bridges in transition which include three levels of adult support services required for individuals with varying degrees of disability:

(i) students who have developed sufficient skills which allow them to make transition to work and independent living without additional support;

(ii) students who have developed some skills which will allow them to make the transition to work and independent living if they receive support from an adult service agency for a limited time; and

(iii) students who have developed skills, but cannot make the transition to work and community living without ongoing support from adult service agencies.

(2) Transition planning. Transition planning shall be initiated by the

school district. Transition planning should always include the student and parent/guardian and to the extent appropriate, general education, special education, and vocational education personnel and representatives of participating agencies. Transition planning must begin at least at age 16 for each student enrolled in special education and will encompass:

(A) individual planning based upon current information regarding the individual's knowledge, skills, abilities, and preferences. These should include:

(i) identification of desired outcomes relating to education, employment, independent living, recreation/leisure, and other appropriate considerations;

(ii) identification of the support services, both agency specific and community service providers, available to the general public, needed to enable the individual to attain the desired outcomes; and

(iii) identification of when and how support services will be provided, based upon current and planned resources.

(B) use of information derived from individual transition plans to assess local and regional transition service needs;

(C) use of local and regional needs assessment information to identify statewide transition service needs.

(3) Components of the individual transition plan. The individual transition plan will focus on those considerations which will have the most impact on the successful independence in the community for the student with disabilities. An individual transition plan for each student 16 years of age or above who is enrolled in special education will address the following.

(A) Anticipated outcomes in the following four areas: employment; education; independent living; and recreation, social and leisure. General considerations shall include income/resources, medical services, and transportation. The following components will be considered in the development of each individual transition plan:

(i) employment options. These will include, but not be limited to, the following:

(I) competitive employment—without support;

(II) competitive employment—with time limited support;

(III) competitive employment with long-term support;

(IV) sheltered community employment (individual placement, enclave, or mobile work crew); and

(V) sheltered workshop;

(ii) education options. These will include, but not be limited to, the following:

(I) additional vocational assessment;

(II) academic instruction (district);

(III) vocational instruction (district);

(IV) independent living skills instruction (district);

(V) adult and continuing education;

(VI) post-secondary;

(VII) proprietary schools; and

(VIII) technical education.

(iii) independent living options. These will include, but not be limited to:

(I) supportive services;

(II) adult responsibilities; and

(III) housing.

(iv) recreation, social, and leisure options. These will include, but not be limited to:

(I) independent recreation and leisure;

(II) family supported recreation and leisure;

(III) specialized recreation;

(IV) community supported and recreation programs;

(V) local clubs; and

(VI) day programs;

(B) Person(s)/agencies should be identified as possible resources for supporting students for all outcomes as follows: school (to be fully addressed in the individual education plan); participating agencies (to be fully addressed by each agency in the Individualized Written Rehabilitation Program (IWRP), individual program plan (IPP), individual treatment plan, or other service plan); community service providers who are available to the general public; and student/parent guardian responsibilities.

(i) Student information to be provided for each individual transition plan will include, but not be limited to:

(I) name;

(II) date of birth;

(III) social security number;*

(IV) disabilities;

(V) projected date of graduation;

(VI) name of the parent/guardian; and

(VII) district/campus.

(ii) Adult service agencies who may be identified for provision of support services will include, but not be limited to:

(I) community service providers (available to the general public);

(II) Texas Commission for the Blind (TCB);

(III) Texas Commission for the Deaf (TCD);

(IV) Texas Department of Human Services (TDHS);

(V) Texas Employment Commission (TEC);

(VI) Texas Department of Mental Health Mental Retardation (TDMHMR); and

(VII) Texas Rehabilitation Commission (TRC).

(C) Anticipated support services required to sustain outcomes during public school and after the student leaves public school should be addressed.

(D) Timelines, beginning and ending dates, should be identified for each anticipated outcome.

(E) Reviews and updates shall be made for each individual transition plan on an annual basis.

(4) Relationship of the individual transition plan to the admission, review, and dismissal committee process and the individual education plan.

(A) For the purposes of this memorandum, the admission, review, and dismissal (ARD) committee will review and determine the components of the individual transition plan which are the responsibility of the school district for incorporation into the individual educational plan. The individual transition plan will be used by the ARD committee in determining appropriate learner outcomes to prepare the student for post-school life. The individual transition plan will be included in the information which the ARD committee is required to consider in preparation and annual review of the individual educational plan pursuant to §89.221 of this title (relating to the Admission, Review, and Dismissal (ARD) Committee).

(B) The individual transition plan will be reviewed and updated annually based upon the progress the student has made instructionally the goals and objectives contained in the individual educational plan. The student and parent will be invited to participate in the annual review of the individual transition plan. The school district will invite the appropriate adult service agencies to participate in the review and update of the individual transition plan at least every three years or whenever conditions warrant, including but not limited to, the need to modify the outcomes based on changes in student achievement or the availability of a new adult support service. Adult service agencies may voluntarily attend each annual review meeting.

(C) To minimize the need for separate meetings, the district may schedule the development and annual review of the individual transition plan in conjunction with the admission, review, and dismissal committee's development and review of the individual education plan.

(5) Participation. It is the intent of the participating agencies to provide staff attendance at individual transition planning meetings when appropriate. For purposes of initial implementation of this memorandum however, participation by participating agencies may be limited based on local resources and may include one or more of the following:

(A) local interagency planning groups and agreements for transition implementation;

(B) information packets on local services (or audiovisual presentations(s));

(C) workshop/parent meetings to disseminate information.

(D) face-to-face meetings regarding students being jointly served at the time of individual transition plan development;

(E) parent-to-parent training sessions regarding adult services;

(F) information provided at varying times to accommodate families who cannot attend scheduled meetings;

(G) staff attendance at the individual transition planning meetings and subsequent reviews; and

(H) acceptance of referrals for consideration of services.

(d) Data collection and planning.

(1) By September 1, 1990, each school district will make available to all local adult service agencies a copy of the Superintendent's Annual Report, Part 3, for the 1989-1990 school year. The report will identify the number of handicapped students ages 16-21 years enrolled in special education by age, handicapping condition, and instructional arrangement. For the 1990-1991 and subsequent school years, each school district will provide this information by semester as it is reported through the Public Education Information Management System (PEIMS). School districts are encouraged to share additional data as available with local adult service providers such as the number of students enrolled in special education who are expected to exit the public school that year and the reason for exiting.

(2) By September 1, 1990, the Texas Education Agency will provide all state level adult service agencies with information for the 1989-1990 school year including the number of students ages 16-21 years enrolled in special education by

education service center region, age, handicapping condition, and instructional arrangement. For the 1990-1991 and subsequent school years, the Texas Educational Agency will provide this information by semester as it is reported through the Public Education Information Management System.

(3) For the purpose of coordinating the transition of students, all agencies will provide available data requested by other agencies in a timely manner while maintaining confidentiality of personally identifiable information.

(4) Adult service agencies will be available to receive for local community planning, the school district's data regarding the number of students in special education by age, disability, and campus that the district expects to refer.

(5) For the 1992-1993 biennium, based on the data available currently, the agencies will develop individual legislative appropriations requests to accommodate the projected need.

(e) Participation.

(1) Cooperative planning.

(A) Local representatives of participating agencies and/or their contracted provider will be available to meet with local school district staff to develop a process for implementing transition planning which may be documented within a local interagency agreement. Inclusion of community organizations which provide services to the general public is encouraged

(B) Each participating agency will identify and review the services needed to facilitate transition for students with disabilities. Appropriations requests for participating agencies should be developed at a level which would allow the provision of the additional services if funds are provided.

(2) Information sharing.

(A) The school district will make available to all local adult service agencies written information describing the educational programs, services, and options relevant to transition planning which are available in general education, vocational education, and special education for handicapped students.

(B) Each local agency shall provide school districts within their local service areas with written information regarding:

(i) identification of services;

(ii) eligibility information for services;

(iii) availability of services locally;

(iv) cost of services as applicable;

(v) how the service may be accessed;

(vi) contact person;

(vii) phone number;

(viii) address; and

(ix) complaints

procedures.

(C) School districts or parents may make referrals to adult service agencies.

(D) The agencies will coordinate and share diagnostics with other agencies with the purpose of avoiding duplication, preventing a barrier to services, and enhancing transitional planning within boundary of existing law.

(E) The Texas Commission for the Blind will provide periodic training for parents, blind and visually impaired students, and regular classroom teachers in the area of planning for successful transition. This will include periodic workshops for all the above-named groups as well as summer work programs in selected areas for eligible blind and visually impaired students.

(3) Attendance at individual transition plan meeting.

(A) Texas Commission for the Blind.

(i) A TCB representative will participate in the individual transition plan planning meeting for all TCB eligible students when given 30 days advanced notice by the school district and/or parent regarding that meeting. Courtesy participation for those students not yet determined to be eligible for TCB services may occur based on the local representative's discretion. Students attending the Texas School for the Blind and Visually Impaired will be served by the TCB representative.

(ii) Appropriate elements of the individual transition plan will be included in TCB's plan of services for eligible students consistent with TCB's manual of services.

(iii) Students who have not been referred to TCB may be referred at the individual transition plan planning meeting or before that meeting. All students will receive information regarding TGB services.

(iv) The TCB representative will provide follow-up for eligible students upon graduation to complete vocational rehabilitation (VR) services.

(v) The local TCB staff will be available to present information about services to educational/administrative staff, parents, and blind and visually impaired children upon request.

(B) Texas Rehabilitation Commission.

(i) The Texas Rehabilitation Commission will participate in transition planning within the resources available by providing information to school districts regarding TRC services. The information will be provided through the local TRC offices in the form of brochures or printed material; audio/visual material; or individual or group meetings with a TRC counselor. TRC field staff will determine the level of participation.

(ii) When it is anticipated that participation will involve individual meetings which include a TRC counselor, the counselor should be given at least 30 days advance notice of the individual transition plan meeting by school district personnel.

(iii) Where available, specialized TRG transition counselors will participate in individual transition plan development and/or review meetings for students when requested by school district personnel as resources allow. The transition counselor may participate in individual transition planning for students who at the time of the individual transition plan meeting are 16 years of age or older and who may not have been determined eligible for TRC services.

(iv) In locations not served by a specialized transition counselor, due to limited staff, travel funds, and resources, vocational rehabilitation counselors may participate in the development of an individual transition plan for students who have been determined eligible for TRC services. It will be necessary for school districts to make a referral to TRC in sufficient time to allow for movement from any necessary waiting lists to an application for services status. TRC counselors will obtain necessary diagnostic evaluations and determine eligibility for services prior to attending the individual transition plan meeting.

(v) The Federal Rehabilitation Act requires that if a state vocational rehabilitation (VR) agency is unable to provide services to all eligible individuals who apply for such services, the VR agency must show the order to be followed in selecting individuals to whom vocational rehabilitation services will be provided. In the event it becomes necessary for the Texas Rehabilitation Commission to implement an order of selection due to an increasing demand for TRC services, specifications of priority will determine which individuals will receive commission services.

(vi) Appropriate elements of the individual transition plan will be coordinated with the Individualized Written Rehabilitation Program (IWRP) or other commission plan of services for eligible students.

(C) Texas Department of Mental Health and Mental Retardation. The following are minimum guidelines for local participation agreed upon at a state level; however, increased involvement is encouraged as local resources allow.

(i) For all students who are members of the priority population as defined by the TDMHMR board, who are being served directly or by contract by the MHA/MRA, and for whom an individual program plan or individual treatment plan has been developed, a representative of the MHA/MRA will attend the transition planning or review meeting given 30 days prior notice.

(ii) For students not in services within the priority population, the local MHA/MRA will provide written information to the district and parents regarding what services are available for adults, the eligibility criteria for services, the availability of services locally, cost of services, and how the services may be accessed. For individuals in this group, the local MHA/MRA will screen all referrals. Staff attendance at the transition planning meeting will occur as local resources allow.

(iii) A representative from the school district will be invited to the interdisciplinary team meeting in the development of the individual program plan or individual treatment plan for students in the priority population receiving services from the MHA/MRA.

(D) Texas Education Agency. Public education will participate in transition planning within the resources available. For the local districts, participation in transition planning will include, but not be limited to, the following:

(i) provision of staff time of at least one special education person and one additional person representing general, special, or vocational education instruction to participate in the development of the individual transition plan;

(ii) provision of resources required for scheduling, contacting and convening individual transition plan meetings; and

(iii) contacting and meeting with local representatives from participating agencies to determine the type and extent of participation each agency will have in transition planning.

(E) Texas Department of Human Services. The Texas Department of

Human Services (TDHS) recognizes the need to work together with the Texas Education Agency (TEA) in assuring that an individual transition plan is developed for each student with disabilities who is in the managing conservatorship of TDHS. A TDHS worker, guardian, or delegate will participate, as requested and as resources allow, in the development of individual transition plans for children who are in the managing conservatorship of TDHS.

(F) Texas Employment Commission.

(i) The Texas Employment Commission functions as an employment service for assisting job-ready applicants in securing employment opportunities. Recognizing its potential role as a support agency for assisting in the transition of special education students, the Texas Employment Commission will extend these same services to job-ready students with disabilities for assistance in their job search. Service will vary on the local level as resources allow the Texas Employment Commission to serve job-ready students with disabilities as described herein.

(ii) The nature of the assistance to be offered to students with disabilities is such that the Texas Employment Commission's attendance is not required at individual transition plan meetings.

(f) Services provided by the school district in support of transition.

(1) The following are the services and activities supporting transition which will be provided as appropriate on an individual basis by the local district:

(A) identifying students enrolled in special education who have need for special instructional transition services listed in the individual education plan;

(B) counseling with parents about their expectations and transition service needs of their children;

(C) providing instruction focused on skills required for transition;

(D) notifying participants of convening the individual transition plan meeting for students enrolled in special education who are at least 16 years old;

(E) monitoring progress, notifying participants, and conducting annual reviews of the individual transition plan;

(F) developing community-based instructional alternatives focusing on independent living and employment;

(G) providing training for parents in reinforcing transition skills at home; and

(H) referring students and parents to participating agencies for service consideration.

(2) Only the failure to implement those components of a student's individual transition plan which are included in the individual education plan and designated by the admission, review, and dismissal committee to be the responsibility of the school district shall be subject to the due process hearing procedures or to the agency's complaint procedures as described in the publication Special Education Parent and Student Rights.

(g) Training and technical assistance.

(1) Cross-agency training at all levels on the elements of the memorandum of understanding will be provided by state level interagency teams prior to the effective date of the memorandum. Training for initial implementation of the memorandum will be coordinated through the regional education service centers. Additional, joint training will be developed jointly by the agencies to be used for further inservice, orientation for new employees, and update or clarification. All designated state, regional, and local level agencies will be requested to participate in the training to the extent appropriate.

(2) Ongoing technical assistance will be provided by all agencies on request. When a request will have regional or state-wide impact, presentations will be provided by a team composed of members of agencies participating in this memorandum of understanding.

(3) Agencies may provide local inservice training to school personnel regarding their services, eligibility criteria, and opportunities for employment in the community.

(h) Problem resolution.

(1) The failure of a district to develop and annually review an individual transition plan for a student shall be subject only to the Texas Education Agency's complaint procedures as described in the publication Special Education Parent and Student Rights.

(2) Student or parent complaints concerning the actions of an adult service agency in regard to transition planning and services shall be addressed according to that agency's established procedures. Each adult service agency shall provide written information for each student and parent advising them of those procedures.

(i) Ongoing communication.

(1) School district and adult service agency personnel shall cooperate as professional colleagues and peers in the development and provision of transition services and individual transition planning for students enrolled in special education who exit or are preparing to exit public education.

(2) Every effort will be made to resolve problems that may arise between local agency professional staff at the lowest possible administrative level. The local agencies may cooperatively develop and mutually agree upon formal procedures for resolving problems.

(3) Questions and concerns of professional staff from any of the local agencies regarding any aspect of the memorandum of understanding should be addressed to the appropriate state agency office. State agency staff will share and coordinate responses to questions and concerns received from local agency staff.

(j) Annual review. All parties acknowledge that this memorandum of understanding is a dynamic document intended to provide a direction for an evolving process of interagency coordination, communication, and joint fiscal planning. The agencies will conduct joint meetings at least annually for their central office staffs to evaluate the interagency efforts of the preceding year, current year, and plan for the following year. The Texas Education Agency will be responsible for coordinating the planning to address the need for revisions in the memorandum, staff training needs at the local/regional levels, and resolutions of identified problems/issues that will contribute to the accomplishment of effective transition services to special education students.

(k) Future directions. As discussed within the preamble, all of the agencies involved in preparing this memorandum acknowledge that, due to budget and resource constraints, many changes will be necessary

to ensure successful transition for persons with disabilities. Recommendations on future directions regarding the memorandum of understanding are as follows.

(1) The state agencies will develop coordinated legislative requests for transition services.

(2) The Texas Education Agency will develop a plan for a data collection system for future interagency transition planning and coordinated legislative requests.

(3) A system will be developed for evaluating the effectiveness of interagency individual transition planning based on student outcomes achieved after leaving the public school system.

(4) The state agencies will support and assist the development and implementation of a comprehensive plan for integrated employment and independent living for all Texans with disabilities.

(5) The participating agencies will encourage the use of integrated services available to the general public.

(6) Coordinated grant requests will be developed for transition projects.

(7) The Texas Commission for the Blind will seek funding to expand the availability of technical aids and appliances for use in the home to support academic programs, as well as develop summer work experience programs for possible availability statewide.

(8) The Texas Education Agency will seek expansion of instructional environments for students 18 to 22 years of age enrolled in special education to include more age-appropriate adult settings

(9) The participating agencies will develop and expand community integrated and support services to students exiting from public schools.

(l) Terms of the memorandum of understanding. This memorandum of understanding shall be adopted by rule by each participating agency and shall be effective September 1, 1990. The memorandum may be considered for expansion, modification, or amending at any time upon the mutual agreement of the executive officers of the named agencies. The undersigned agree to pursue collaboratively additional resources to fulfill the provisions of the memorandum.

Texas Commission for the Blind
Executive Director

Texas Education Agency
Commissioner

Texas Department of Human Services
Commissioner

Texas Employment Commission
Administrator

Texas Department of Health and
Mental Retardation
Commissioner

Texas Rehabilitation Commission
Commissioner

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 April 11, 1990.

TRD-9004207 W. N. Kirby
Commissioner of Education

Proposed date of adoption: June 9, 1990

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

◆ ◆ ◆
TITLE 28. INSURANCE

**Part I. State Board of
Insurance**

**Chapter 3. Life, Accident, and
Health Insurance**

**Subchapter T. Minimum
Standards for Medicare Sup-
plement Policies**

• **28 TAC §§3.3306, 3.3308, 3.3312**

The State Board of Insurance proposes amendments to §§3.3306, 3.3308, and 3.3312, concerning Medicare supplement insurance policies. Similar amendments to §§3.3306, 3.3308, and 3.3312 were adopted on an emergency basis and became effective on January 4, 1990. Notice of the emergency adoption appeared in the January 12, 1990, issue of the *Texas Register* (15 TexReg 177). The amendments result in changes to the minimum benefit standards stated in §3.3306, to the required disclosure provisions recited in §3.3308, and to the transitional requirements for the conversion of Medicare supplement insurance benefits stated in §3.3312. The amendments to the sections are necessary to assure the orderly implementation and conversion of Medicare supplement insurance benefits and premiums, and effective disclosure thereof, by licensed insurers, by companies subject to the Insurance Code, Chapter 20, and by health maintenance organizations, due to changes to the Federal Medicare Program occasioned by the repeal of the Medicare Catastrophic Coverage Act of 1988 by the Medicare Catastrophic Coverage Repeal Act of 1989 (MCCRA), House Resolution 3607, as technically corrected by House Concurrent Resolution 241. The amendment to §3.3306

revises the minimum benefit standard requirements in accordance with MCCRA pertaining to coverages for expenses which must be included in Medicare supplement policies or certificates in order to qualify the product as a certified Medicare supplement insurance policy under federal law. The amendment to §3.3308 deletes the requirement for annual notice to policyholders about changes in Medicare and Medicare insurance for certain years subsequent to passage, which requirement was obviated by passage of the MCCRA. The amendment to §3.3312 provides for revisions to the transition rule to conform to the Federal Medicare Program revisions occasioned by the MCCRA and requires the adjustment of minimum benefits for Medicare supplement policies by restoring benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 and the effective and timely disclosure thereof. The amendment to the section also provides for a required notice to be issued to former policyholders to reinstate coverage substantially equivalent to coverage in effect before the date of termination of the policy and provides for appropriate premium adjustments necessitated by the enactment of the MCCRA.

Kay Simonton, deputy insurance commissioner for the life group, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, and there will be no effect on local employment or local economy.

Ms. Simonton also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the orderly implementation and conversion of Medicare supplement insurance benefits and premiums, and effective disclosure thereof, by licensed insurers, by companies subject to the Insurance Code, Chapter 20, and by health maintenance organizations, due to changes to the Federal Medicare Program. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections because any cost of compliance is the result of changes in federal law rather than these sections.

Comments on the proposal may be submitted to Kay Simonton, Deputy Insurance

Commissioner, Life Group, Mail Code 830-0, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendments are proposed under the Insurance Code, Article 3.74, and Texas Civil Statutes, Article 6252-13a, 4 and 5. The Insurance Code, Article 3.74, 2(c) and (f), provides that the State Board of Insurance shall issue reasonable rules to establish specific standards for provisions of Medicare supplement policies including requirements that are at least equal to those required by federal law, rules, regulations, and standards. Article 3.74, 10, provides that the State Board of Insurance may adopt rules in accordance with federal law regulating Medicare supplement policies and any other reasonable rules that are necessary and proper to carry out Article 3.74, concerning Medicare supplement insurance and policies. Texas Civil Statutes, Article 6252-13a, §4, authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures. Section 5 prescribes the procedure for adoption of rules by a state administrative agency.

§3.3306. Minimum Benefit Standards. No insurance policy, subscriber contract, or evidence of coverage may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy unless the policy, contract, or evidence of coverage meets the standards in paragraphs (1) and (2) of this section. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) General standards. The following standards apply to Medicare supplement policies and are in addition to all other requirements of this subchapter, the Insurance Code, Article 3.74, and any other applicable law.

(A) A Medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a pre-existing condition. The policy may not define a pre-existing condition more restrictively than a condition for which medical advice was given or treatment was recommended by or

received from a physician within six months before the effective date of coverage. A Medicare supplement policy issued by an insurer which replaces an existing Medicare supplement policy within the first 24 months of the date of issue of the existing policy shall provide that any time periods already satisfied or partially satisfied for pre-existing conditions under the replaced policy shall be considered satisfied or partially satisfied under the new policy, except that if new or additional benefits are included in the succeeding insurer's policy, such policy may include appropriate waiting periods as a condition of payment for such new or additional benefits.

(B) - (E) (No change.)

(2) **Minimum benefit standards.** A maximum of three separate Medicare supplement policies may be offered by any insurer or other entity designated in the Insurance Code, Article 3.74, §1(a), which offers Medicare supplement insurance or benefits for sale in this state, one of which must be a basic Medicare supplement policy that meets the minimum standards of Medicare supplement insurance policies adopted by the board. For a group master policy issued in connection with any certificates providing group Medicare supplement insurance benefits to a resident of this state, a maximum of three alternative sets of benefits may be provided in connection with such policy. Every insurance policy advertised, solicited, or issued for delivery as a Medicare supplement policy, however, must meet all the following minimum standards of coverage in subparagraphs (A)-(G) of this paragraph:

(A) (No change.)

(B) coverage for Part A Medicare eligible expenses for hospitalization to the extent not covered by

Medicare from the 61st day through the 90th day in any Medicare benefit period [the daily copayment amount of Medicare Part A eligible expenses incurred for skilled nursing facility care for the first eight days per calendar year];

(C) (No change.)

(D) coverage for Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days; [including:

[(i) until January 1, 1990, coverage for 20% of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of \$200 of such expenses and to a maximum benefit of at least \$5,000 per calendar year; and

[(ii) effective January 1, 1990, coverage for the copayment amount (20%) of Medicare eligible expenses excluding outpatient prescription drugs under Medicare Part B regardless of hospital confinement up to the maximum out-of-pocket amount for Medicare Part B after the Medicare deductible amount;]

(E) upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days [effective January 1, 1990, coverage under Medicare Part B for the Medicare reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations];

(F) coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible (\$75) [effective January 1, 1990, coverage for the copayment amount (20%) of Medicare eligible expenses for covered home intravenous (IV) therapy drugs (as determined by the secretary of health and human services) subject to the Medicare outpatient prescription drug deductible amount, if applicable]; and

(G) effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare Part B deductible amount [for the copayment amount (20%) of Medicare eligible expenses for outpatient drugs used in immunosuppressive therapy, subject to the Medicare outpatient prescription drug deductible, if applicable].

(3)-(4) (No change.)

§3.3308. *Required Disclosure Provisions.*

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

(c) Form for outline of coverage. In providing outlines of coverage to applicants pursuant to the requirements of subsection (b)(1) of this section, insurers shall use a form which complies with the requirements of this subsection. The outline of coverage must contain each of the following paragraphs (1)-(10) [(11)] of this subsection, in the order and form set out in this subsection. The outline of coverage must begin with the heading which follows this sentence.

(Company Name)

Outline of Medicare

Supplement Coverage

(1)-(3) (No change.)

(4) A brief summary of the major benefit gaps in Medicare Parts A and B

with a parallel description of supplemental benefits, including dollar amounts (and indexed coinsurance [copayments] or deductibles, as appropriate), provided by the

Medicare supplement coverage in the following order:

<u>SERVICE</u>	<u>BENEFIT</u>	<u>MEDICARE PAYS</u>	<u>THIS POLICY PAYS¹</u>	<u>YOU PAY¹</u>
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Part A of Medicare

<u>HOSPITALIZATION</u> <u>semiprivate room and</u> <u>board, general nursing</u> <u>and miscellaneous hos-</u> <u>pital services and sup-</u> <u>plies</u>	<u>First 60 days</u>	<u>All but...²</u>		
	<u>61st to 90th</u> <u>day</u>	<u>All but...²</u> <u>a day</u>		
<u>Includes meals, special</u> <u>care units, drugs, lab</u> <u>tests, diagnostic xrays,</u> <u>medical supplies, opera-</u> <u>ting and recovery room</u> <u>anesthesia and rehabili-</u> <u>tation services</u>	<u>91st to 150th</u> <u>day</u>	<u>All but...²</u> <u>a day</u>		
	<u>Beyond 150 days</u>	<u>Nothing</u>		

BLOOD

All costs, except
non-replacement
costs for the 1st
three pints of
whole blood

Part B of Medicare

MEDICAL EXPENSE

Physician's
services, in-
patient, med-
ical services
and supplies
at hospital,
physical and
speech therapy
and ambulance

80% of reasonable
charge, after
deductible amount²

PRESCRIPTION
DRUGS

Inpatient
Prescription
Drugs. 80% of
allowable charges
for immunosuppressive
drugs during the
first year following
a covered transplant,
after deductible amount²
per calendar year

BLOOD

80% of costs, except
nonreplacement fees
(blood deductible)
for the first three
pints of blood in
each benefit period
after deductible amount²
per calendar year

NOTES:

1. The term "nothing" or the figure "\$0" shall not be used in this column. Language such as "Balance of Charges," "Balance Due, if any," or "Non-Covered Charges" is acceptable. If applicable, the insurer will make clear and conspicuous disclosure that changes in the numerical amounts, percentages, or other language contained in these columns may result from changes in Medicare.

2. The outline of Medicare supplement coverage will be considered to be in compliance with these rules if it includes the Medicare deductible or coinsurance amounts which are in effect at the time the outline of coverage for Medicare supplement insurance is delivered to the applicant.

[DESCRIPTION

THIS POLICY
PAYS

YOU PAY*

[SERVICE

[PART A

[INPATIENT HOSPITAL SERVICES:

Semi-Private Room & Board

Miscellaneous Hospital Services
& Supplies, such as Drugs,
X-Rays, Lab Tests & Operating Room

[SKILLED NURSING FACILITY CARE

[BLOOD

[PARTS A & B

Home Health Services

[PART B

[MEDICAL EXPENSE:

Services of a Physician/
Outpatient Services

Medical supplies other than
Prescribed Drugs

[BLOOD

[MAMMOGRAPHY SCREENING

[OUT-OF-POCKET MAXIMUM

[PRESCRIPTION DRUGS

[MISCELLANEOUS

Home IV-Drug Therapy

Immunosuppressive Drugs

Respite Care Benefits

[IN ADDITION TO THIS OUTLINE OF COVERAGE, (INSURANCE COMPANY NAME) WILL SEND AN ANNUAL NOTICE TO YOU 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.

*Drafting Note: The term, "nothing" or the figure "\$0" shall not be used in this column. Language such as "Balance of Charges," "Balance Due, if any," or "Non-covered Charges" is acceptable.]

Part A
 MEDICARE BENEFITS IN

Service	1988	1989	1990	1991
Part A				
Inpatient Hospital Services	All but \$540 for first 60 days/benefit period	All but (\$560) deductible for an unlimited number of days/calendar year	All but Part A deductible for an unlimited number of days/calendar year	All but Part A deductible for an unlimited number of days/calendar year
Semi-Private Room & Board	All but \$135 a day for 61st-90th days/benefit period			
Miscellaneous Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room	All but \$270 a day for 91st-150th days (if the individual chooses to use 60 nonrenewable lifetime reserve days)			
	Nothing beyond 150 days			
Skilled Nursing Facility Care	100% of costs for 1st 20 days (after a 3-day prior hospital confinement) All but \$67.50 a day for 1st-100th days Nothing beyond 100 days	80% of Medicare reasonable costs for 1st 8 days per calendar year w/out prior hospitalization requirement 100% of costs thereafter up to 150 days/calendar year	80% for 1st 8 days/calendar year 100% for 9th-150th day/calendar year	80% for 1st 8 days/calendar year 100% for 9th-150th day/calendar year
Blood	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period	Pays all costs except payment of deductible (equal to costs for first 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B	All but blood deductible (equal to costs for first 3 pints)	All but blood deductible (equal to costs for first 3 pints)

[(5) (the following charts shall accompany the outline of coverage:)]

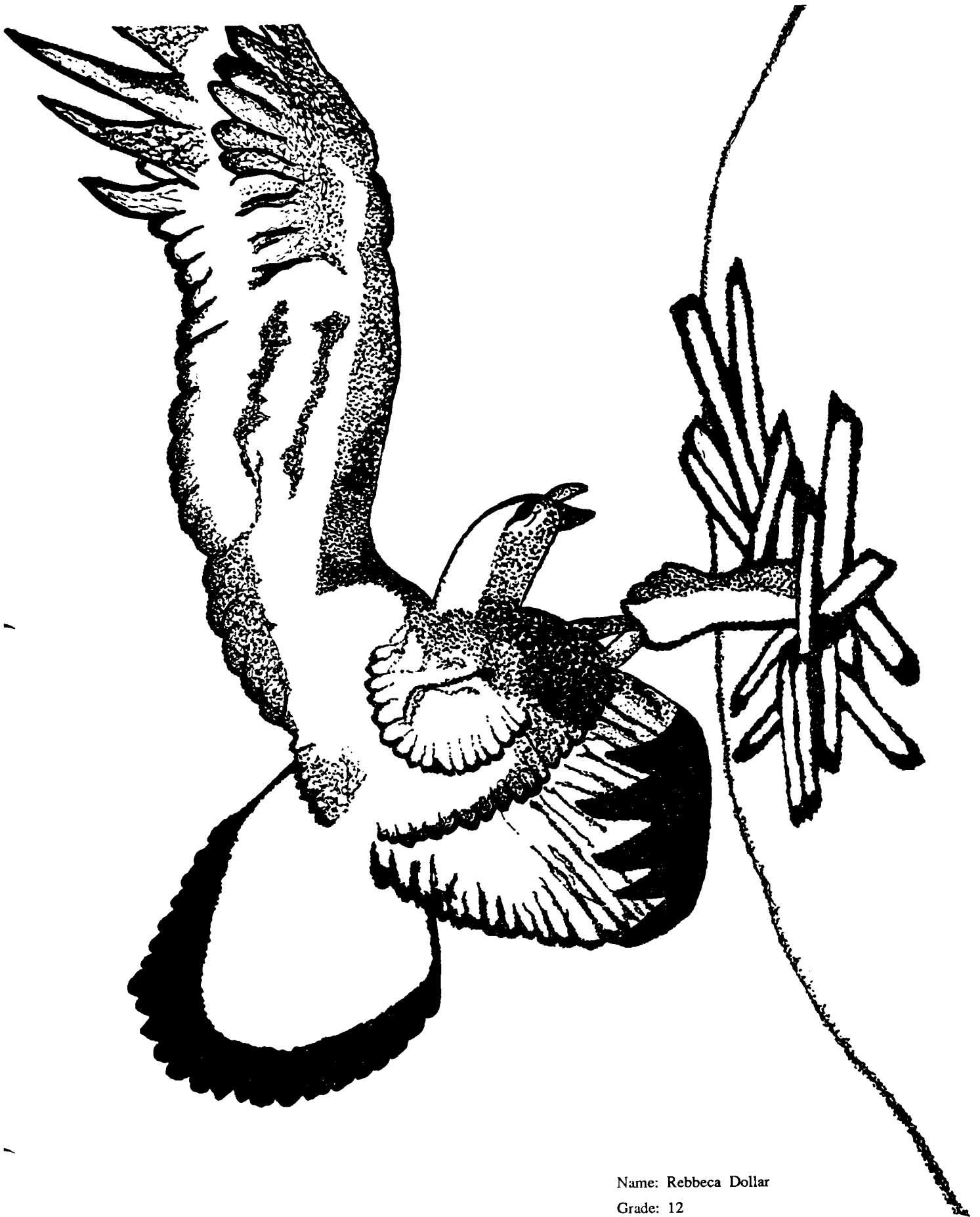
[Part B
MEDICARE BENEFITS IN

Service	1988	1989	1990	1991
[Parts A & B				
[Home Health Services	Intermittent skilled nursing care and other services in the home (daily skilled nursing care for up to 21 days or longer in some cases)--100% of covered services and 80% of durable medical equipment under both Parts A & B	Same as '88	Intermittent skilled nursing care for up to 7 days a week for up to 38 days allowing for continuation of services under unusual circumstances: other services--100% of covered services and 80% of durable medical equipment under both Parts A & B	Same as '90
[PART B				
[Medical Expense: Services of a Physician/Outpatient Services	80% of reasonable charges after an annual \$75 deductible	80% after annual \$75 deductible	80% of reasonable charges after \$75 annual deductible until out-of-pocket maximum is reached. 100% of reasonable charges are covered for remainder of calendar year	Same as '90
[Medical Supplies Other than Prescribed Drugs				
[Blood	80% of costs except nonreplacement fees (blood deductible) for 1st 3 pints in each benefit period after \$75 deductible	Pays 80% of all costs except payment of deductible (equal to costs for first 3 pints) each calendar year	Same as '89	Same as '89
[Mammography Screening			80% of approved charge for elderly and disabled Medicare beneficiaries--exams available every other year for women 65 and over	Same as '90
[Out-of-Pocket Maximum			\$1,370 consisting of Part B \$75 deductible. Part B blood deductible and 20% co-insurance	\$1,370--will be adjusted annually by Secretary of Health and Human Services
[Outpatient Prescription Drugs			There is a \$550 total deductible applicable to home IV drug and immunosuppressive drug therapies as noted below	Covered after \$600 deductible subject to 50% co-insurance

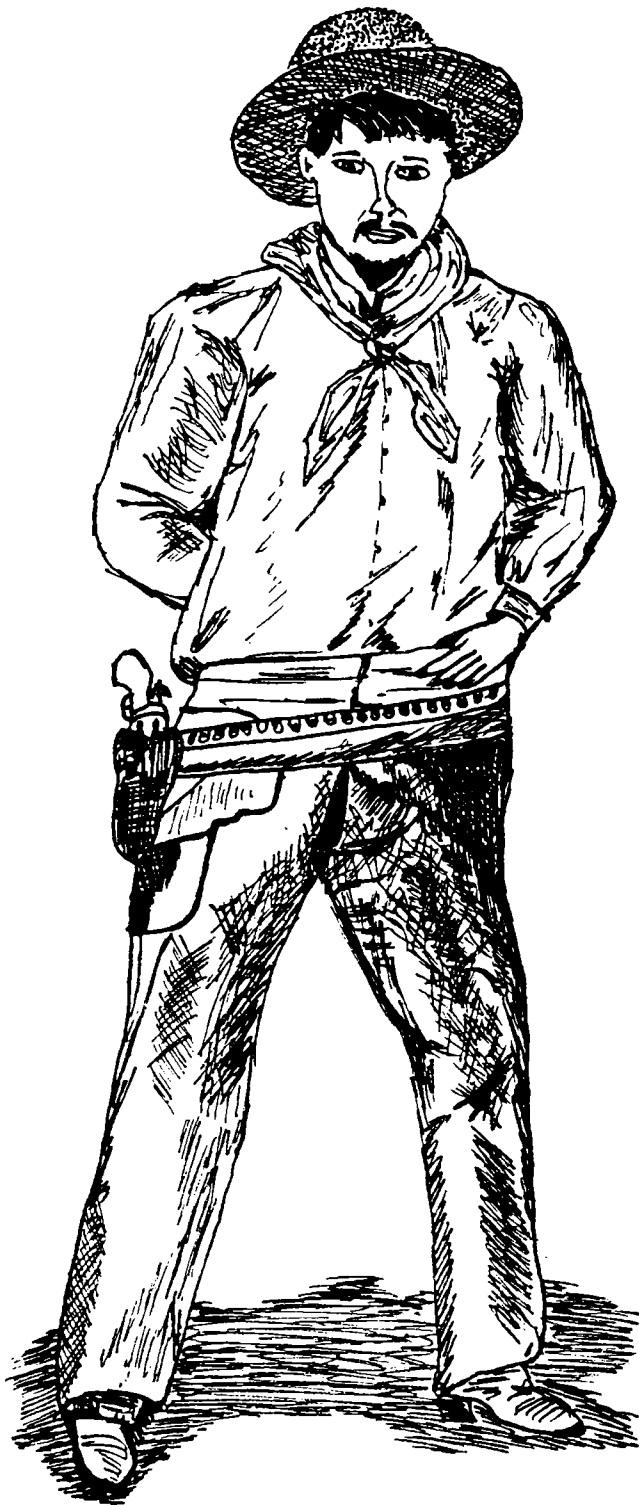
Part B (cont'd)

MEDICARE BENEFITS IN

<u>Service</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
<u>PART B</u>				
<u>Home IV-- Drug Therapy</u>			80% of therapy drugs subject to \$550 deductible (deductible waived if home therapy is a continuation of therapy initiated in a hospital)	80% of IV therapy drugs subject to standard drug deductible waived if home therapy is a continuation of therapy drugs initiated in a hospital
<u>Immunosuppressive Drug Therapy</u>	80% of costs during 1st year following a covered organ transplant (no special drug deductible: only the regular Part B deductible)	Same as '88	Same as '88 for 1st year following covered transplant: 50% of costs during 2nd and following years (subject to \$550 deductible)	Same as '90 (subject to \$600 deductible)
<u>Respite Care Benefit</u>			In-home care for chronically dependent individual covered for up to 80 hours after either the out-of-pocket limit or the outpatient drug deductible has been met	Same as '90



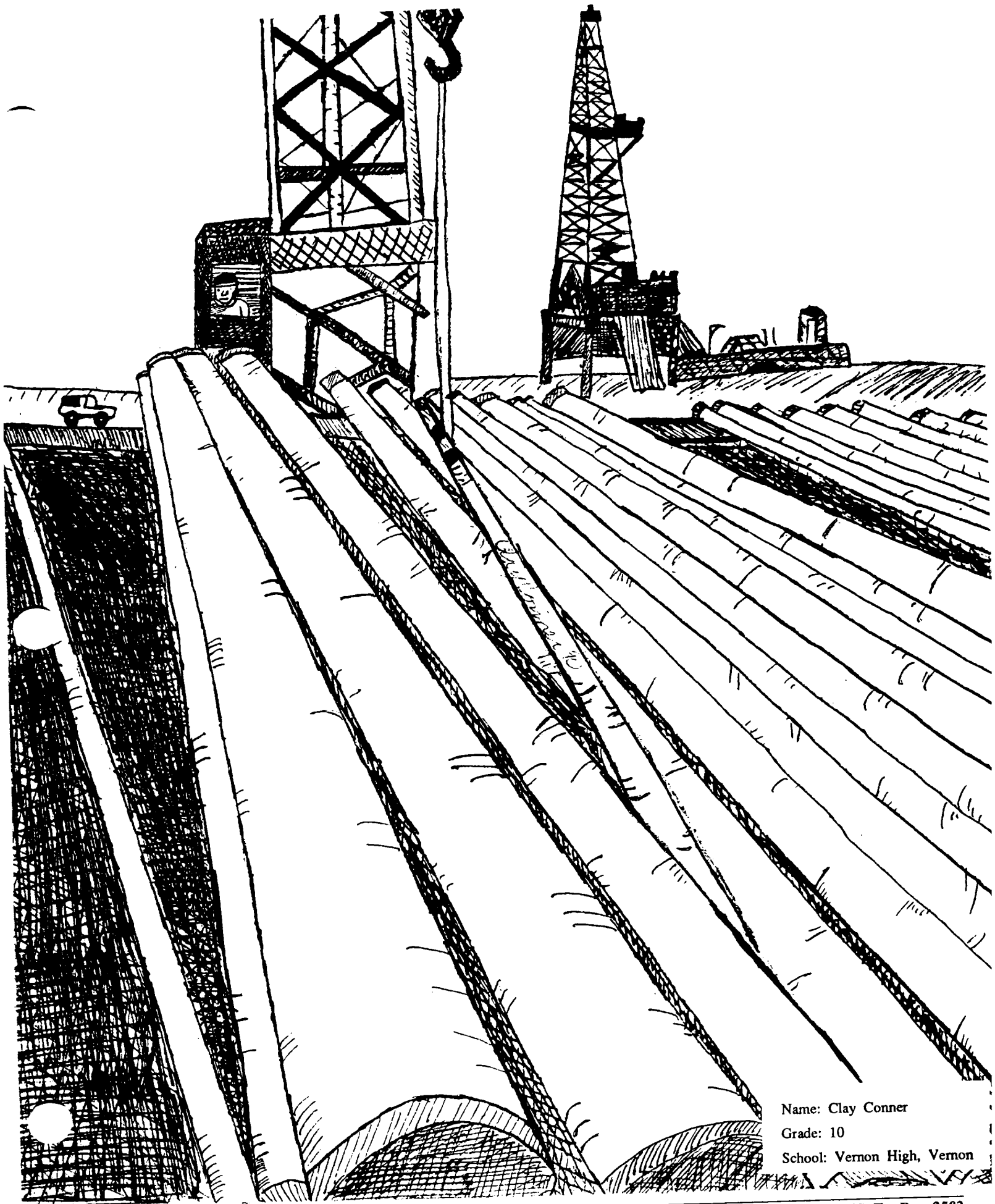
Name: Rebbeca Dollar
Grade: 12
School: Waskom High, Waskom



Name: Joseph Hunt

Grade: 10

School: Waskom High, Waskom



Name: Clay Conner
Grade: 10
School: Vernon High, Vernon

(5)[(6)] (Statement that the policy does or does not cover the following:)

(A)-(I) (No change.)

(6)[(7)] (A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits described in paragraph (4) of this subsection, including conspicuous statements:)

(A)-(B) (No change.)

(7)[(8)] (A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.)

(8)[(9)] (The total premium payable shall be stated. In the event the mode stated is not an exact multiple of the annual premium, then the annual premium shall also be stated. Initial policy fees shall be stated separately. If premiums are "stepped," they shall either be disclosed for each step or the initial premium may be disclosed accompanied by a statement as follows: "Renewal premiums for this policy will increase periodically depending upon (your age)(the policy year)." Unless a policy is issued with guaranteed premium rates, this paragraph must contain the statement "premiums are subject to change." This paragraph shall also include a statement of the policy grace period.)

(9)[(10)] (A statement that the person to whom the policy is issued is permitted to return the policy within 30 days (or more as stated in the policy) of its delivery to that person and to have the premium paid refunded.)

(10) [(11)] **DUPLICATE MEDICARE SUPPLEMENT COVERAGE IS COSTLY AND UNNECESSARY. A SINGLE MEDICARE SUPPLEMENT POLICY IS USUALLY BETTER THAN SEVERAL MEDICARE SUPPLEMENT POLICIES WITH OVERLAPPING OR DUPLICATE COVERAGE.** (Drafting Note: The term "certificate" should be substituted for the word "policy" throughout the outline of coverage where appropriate.)

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

[(f) Notice requirements.

[(1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every insurer, health care service plan, or other entity providing Medicare supplement insurance or benefits to a resident of this state shall notify its policyholders, contract holders, and certificate holders of modifications it has made to Medicare supplement insurance policies or contracts. Such notice shall be in a format

prescribed by the board. Accordingly, the board adopts and incorporates herein by reference the following forms: "Notice on Changes in Medicare and Your Medicare Supplement Insurance-1989," "Notice on Changes in Medicare and Your Medicare Supplement Insurance-1990," and "Notice on Changes in Medicare and Your Medicare Supplement Insurance-1991." These forms are published by the State Board of Insurance and copies of these forms may be obtained from the Life Group, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. In addition, such notice shall:

[(A) include a description of revisions to the Medicare Program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or contract; and

[(B) inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

[(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

[(3) Such notice shall not contain or be accompanied by any solicitation.]

§3.3312. Transitional Requirements for the Conversion of Medicare Supplement Insurance Benefits and Premiums to Conform to Medicare Program Revisions.

(a) Purpose. The purpose of this section is to assure the orderly implementation and conversion of Medicare supplement insurance benefits and premiums due to changes in the Federal Medicare Program; to provide for the reasonable standardization of the coverage, terms, and benefits of Medicare supplement policies or contracts; to facilitate public understanding of such policies or contracts; to eliminate provisions contained in such policies or contracts which may be misleading or confusing in connection with the purchase of such policies or contracts; to eliminate policy or contract provisions which may duplicate Medicare benefits; to provide for adjustment of required minimum benefits for Medicare supplement policies; to provide notice to former policyholders of the offer to reinstitute coverage; to provide full disclosure of policy or contract benefits and benefit changes; and to provide for appropriate premium adjustments [refunds of premiums associated with benefits duplicating Medicare program benefits].

(b)-(c) (No change.)

(d) Benefit conversion requirements.

(1) (No change.)

(2) Restoration of benefits. Benefits eliminated by operation of the Medicare Catastrophic Act of 1988 transition provisions shall be restored.

(3) Minimum benefit standards. For Medicare supplement policies subject to the minimum standards adopted pursuant to the Medicare Catastrophic Coverage Act of 1988, the minimum benefits shall be those specifically stated in §3.3306(2) of this title (relating to Minimum Benefit Standards).

(4) [(2)] General requirements [information].

(A) No later than January 31, 1990 [30 days prior to the annual effective date of Medicare benefit changes mandated by the Medicare Catastrophic Act of 1988], every insurer, nonprofit hospital service corporation, or health maintenance organization providing Medicare supplement insurance or benefits to a resident of this state shall notify its policyholders, contract holders, certificate holders, or subscribers of modifications it has made to Medicare supplement insurance policies or contracts. Such notice shall be in a format prescribed by the board. Accordingly, the board adopts and incorporates herein by reference the following form [forms]: ["Notice on Changes in Medicare and Your Medicare Supplement Insurance-1989;"] "Notice of [on] Changes in Medicare and Your Medicare Supplement Coverage-1990.[:]" [and "Notice on Changes in Medicare and Your Medicare Supplement Coverage-1991."] This form is [These forms are] published by the State Board of Insurance and copies of it [these forms] may be obtained from the Life Group 830-0, [of the] State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

(i)-(iii) (No change.)

(B) No modifications to an existing Medicare supplement contract or policy shall be made at the time of, or in connection with, the notice requirements of this regulation except to the extent necessary to accomplish the purposes articulated in subsection (b) of this section [eliminate duplication of Medicare benefits and any modifications necessary under the policy or contract to provide indexed benefit adjustment].

(C) As soon as practical, but no longer than 45 days after the effective date of the Medicare benefit changes, every insurer, health care service plan, or other entity providing Medicare supplement insurance or contracts in this state shall file with the State Board of Insurance, in

accordance with the applicable filing procedures of this state:

(i) (No change.)

(ii) any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement insurance modifications necessary to eliminate benefit duplications with Medicare and to provide the benefits required by §3.3306 of this title (relating to Minimum Benefit Standards) (any such riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or contract).

(D) Upon satisfying the filing and approval requirements of this state, every insurer, nonprofit hospital service corporation, or health maintenance organization providing Medicare supplement insurance in this state shall provide each covered person with any rider, endorsement, or policy form necessary to eliminate any benefit duplications under the policy or contract with benefits provided by Medicare.

(i) Filings required by this section made pursuant to provisions of the Insurance Code, Article 3.42 (d)(1), shall be accompanied by the certification of the filing entity, by either an attorney licensed to practice law in this state, an actuary familiar with the requirements of the Insurance Code and applicable rules and regulations adopted pursuant thereto, or the chief executive officer, that:

(I) the certification is on behalf of the insurer or entity;

(II) the insurer or entity is bound thereby;

(III) the matters contained in the filing are within the personal knowledge of the person signing the certification;

(IV) the form complies, to the certifying party's best knowledge, information, or belief, in all respects with the provisions of the Insurance Code and the adopted rules and regulations which are applicable to the form; and

(V) the filing complies, to the certifying party's best knowledge, information, or belief, with all the requirements of this section.

(ii) Any filings required by this section and made pursuant to provisions of the Insurance Code, Article 3.42 (d)(1), shall be reviewed in accordance with applicable time periods provided for in the Insurance Code, Article 3.42.

(iii) Upon completion of review of the filings received pursuant to the procedures stated in this subparagraph, the board shall order all such modifications as are necessary to bring any filing into compliance with this section. With respect to any portion of the filing found by the board not to comply with any requirement of this section, the filing insurer or entity shall:

(I) modify such portion of the filing as ordered by the board to comply with the requirements of this section;

(II) make any such modification ordered by the board effective as of the effective implementation date of the filing to which the initial certification provided for in this subparagraph applies; and

(III) promptly notify affected insureds of such modification or modifications as are necessary.

(E) (No change.)

(F) Every insurer, nonprofit hospital service corporation, or health maintenance organization providing Medicare supplement insurance or benefits to a resident of this state shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated by the insurer, nonprofit hospital service corporation, or health maintenance organization for such Medicare supplement insurance policies or contracts. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described in this section should be made with respect to a policy at any time other than upon its renewal date. [Premium adjustments shall be in the form of refunds or premium credits and shall be made no later than upon renewal if a credit is given, or within 60 days of the renewal date if a refund is provided to the premium payer.]

(e) Requirements for new policies and certificates.

(1) (No change.)

(2) General requirements.

(A) Within 90 days of the effective date of this regulation [After January 1, 1989], every insurer, nonprofit hospital service corporation, or health maintenance organization required to file its policies or contracts with this state shall file new Medicare supplement insurance

policies or contracts which eliminate any duplication of Medicare supplement benefits with benefits provided by Medicare and which provide a clear description of the policy or contract benefit.

(B)-(C) (No change.)

(f) Filing requirements for advertising. Every insurer, nonprofit hospital service corporation, or health maintenance organization providing Medicare supplement insurance or benefits in this state shall comply with the requirements of the Insurance Code, Article 3.74, §9, as well as those set forth in §3.3313 of this title (relating to Filing Requirements for Advertising) [provide to the commissioner for review a copy of any advertisement no later than 15 days after its first use in this state, whether through written, radio, or television media. Such advertisement shall comply with all applicable laws of this state and shall be submitted after the new policy has been approved, as required under subsection (e)(2)(A) of this section, and shall be submitted in accordance with §21.120 of this title (relating to Filing for Review)].

(g) (No change.)

(h) Offer of reinstatement of coverage. Except as provided for in paragraph (3) of this subsection, in the case of an individual who had in effect, as of December 31, 1988, a Medicare supplement policy with an insurer as a policyholder or in the case of a group policy as a certificate holder, and the individual terminated coverage under such policy before the date of the enactment of the repeal of the Medicare Catastrophic Coverage Act of 1988, the insurer must comply with paragraphs (1) and (2) of this subsection.

(1) The insurer shall provide written notice no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder at the most recent available address of the offer described in paragraph (2) of this subsection;

(2) The insurer shall offer the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstatement of coverage (with coverage effective as of January 1, 1990), under terms which:

(A) do not provide for any waiting period with respect to treatment of pre-existing conditions;

(B) provide for coverage which is substantially equivalent to that coverage which was in effect immediately before the date of such termination; and

(C) provide for classification of premiums on terms which are at

least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

(3) An insurer is not required to make the offer pursuant to paragraph (2) of this subsection in the case of an individual who is a policyholder or certificate holder in another Medicare supplement policy as of January 1, 1990, if the individual is not subject to a waiting period with respect to treatment of a pre-existing condition under such other policy.

(i)[(h)] Severability. If any provision of this section or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

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 April 24, 1990.

TRD-9004191 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: June 1, 1990

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

TITLE 31. NATURAL RESOURCES AND CON- SERVATION

Part IX. Texas Water Commission

Chapter 335. Industrial Solid and Municipal Hazardous Waste

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste Management in General

The Texas Water Commission proposes amendments to §335.2 and §335.43, concerning industrial solid and municipal hazardous waste permits. New §335.2(i) and §335.4(e) are proposed to explicitly provide the Texas Water Commission with the authority to implement the HSWA program upon receipt of authorization from the Environmental Protection Agency. The purpose of §335.2(i) and §335.4(e) is to make clear that the Texas Water Commission has the authority to enforce HSWA provisions in hazardous waste permits which had been issued pursuant to the permitting process of the United States Environmental Protection Agency. Generally, those provisions in HSWA permits which were designated as issued pursuant to federal requirements were

also reflective of state authority to impose such conditions at the time the subject permits were issued.

Roger G. Bourdeau, chief fiscal officer, 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 section.

Mr. Bourdeau also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased environmental protection and more clarity of regulatory authority. There will be no effect on small businesses as a result of enforcing the sections. 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 Carlos Celestino, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78761-8087. Comments will be accepted 30 days after publication of this amendment in the *Texas Register*.

• 31 TAC §335.2

The amendment is proposed under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and is in response to §5(a) of House Bill 5.

§335.2. Permit Required.

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

(l) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for the Texas Water Commission's (commission) Hazardous Waste Program, the commission shall be authorized to enforce the HSWA provisions that the Environmental Protection Agency (EPA) imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

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 April 25, 1990.

TRD-9004234 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: June 1, 1990

For further information, please call: (512) 463-8069

Subchapter B. Hazardous Waste Management General Provisions

• 31 TAC §335.43

The amendment is proposed under the Texas Water Code §5.103, which provides the

Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and is in response to §5(a) of House Bill 5.

§335.43. Permit Required.

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

(e) Upon receipt of federal Hazardous and Solid Waste Act (HSWA) authorization for the Texas Water Commission's (commission) Hazardous Waste Program, the commission shall be authorized to enforce the HSWA provisions that the Environmental Protection Agency (EPA) imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

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 April 25, 1990.

TRD-9004233 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: June 1, 1990

For further information, please call: (512) 463-8069

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 16. Intermediate Care Facilities/Skilled Nursing Facilities (ICF/SNF)

Compliance With State and Local Laws

The Texas Department of Human Services (DHS) proposes the repeal of and proposes new §16.1510, concerning remedies for violations of nursing facility provider agreements under Title XIX of the Social Security Act. The purpose for the repeal and new section is to comply with the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) which expands definitions, adds liquidated damages for patient-related deficiencies, provides more clearly defined administrative citations, and adds a reconsideration process to the appeals procedure.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed repeal and new section will be in effect there will be fiscal implications as a result of enforcing or administering the repeal and new section. The effect on state government for the first five-year period the repeal and new section will be in effect is an estimated reduction in cost of \$128,955 for

fiscal year 1990; \$485,219 for fiscal year 1991; \$497,801 for fiscal year 1992; \$498,052 for fiscal year 1993; and \$523,153 for fiscal year 1994. Also, the effect on state government for the first five-year period the repeal and new section will be in effect is an estimated increase in revenue of \$283,432 for fiscal year 1990; \$1,133,730 for fiscal year 1991; \$1,133,730 for fiscal year 1992; \$1,133,730 for fiscal year 1993; and \$1,133,730 for fiscal year 1994. There is no anticipated effect on local governments as a result of enforcing or administering the repeal and new section.

Mr. Raiford also has determined that for each year of the first five years the repeal and new section are in effect the public benefit anticipated as a result of enforcing the repeal and new section will be improved health and safety conditions for nursing facility residents. There will be no effect on small businesses as an result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the proposed repeal and new section.

Questions about the content of this proposal may be directed to Barbara Stegall at (512) 450-3111 in DHS's Long Term Care Unit. Comments on the proposal may be submitted to Cathy Rossberg, Agency Liaison, Policy Communication Services-237, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §16.1510

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.

§16.1510. Sanction Provisions for Violations of Title XIX Nursing Facility Contractual Agreements.

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

Issued in Austin, Texas, on April 24, 1990.

TRD-9004177
Cathy Rossberg
Agency Liaison, Policy
Communications
Services
Texas Department of
Human Services

Proposed date of adoption: July 1, 1990

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

◆ ◆ ◆
• 40 TAC §16.1510

The new section 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.

§16.1510. Remedies for Violations of Title XIX Nursing Facility Provider Agreements.

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

(1) Appointment of temporary management—May be state personnel or private individuals with education and the requisite experience in nursing home administration and be licensed by the Texas Board of Licensure for Nursing Homes Administrators.

(2) Deficiency—A finding (or findings) of sufficient severity and/or scope that addresses cited requirements, identifies the facility's responsibility, and requires corrective action.

(3) Finding—A determination by the Texas Department of Health Long Term Care Unit (TDH/LTCU) surveyor that a problem is preventable, is known or unknown to the facility, is not being corrected by proper action, or cannot be justified.

(4) Immediate and serious threat—A high probability that serious harm or injury to patients could occur at any time, or already has occurred and may well occur again if patients are not protected effectively from the harm, or the threat is not removed. Any situation in which a facility's noncompliance with one or more conditions or standards for participation poses an immediate and serious threat to recipients' health and safety, making immediate corrective action necessary.

(5) New Medicaid admission—The admission of a recipient 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 the following:

(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 as described in §16.3806 of this title (relating to Visit Away from the Facility), are readmitted to beds reserved for them.

(6) Scope—The frequency, incidence, or extent of the occurrence of a finding in the facility.

(7) Severity—The seriousness of a finding.

(8) Threat to health and safety—A situation or condition which represents a significant, unfavorable risk or danger to the health and/or safety of patients.

(b) The Texas Department of Human Services (DHS) takes the following

action(s) when a Title XIX provider agreement facility fails to meet the requirements specified in these standards, as cited in writing by the State Survey Agency, Texas Department of Health (TDH).

(1) When state survey agency notifies DHS in writing that cited deficiencies, based on severity and scope, pose an immediate and serious threat to recipients' health and safety and that the state survey agency is terminating or proposing to terminate the facility's certification as a result:

(A) DHS does not offer a compliance period. All termination procedures are completed by the state survey agency within 23 calendar days of the exit conference.

(B) If a facility makes a creditable allegation that the threat or deficiency has been corrected, an onsite verification by the state survey agency prior to termination will be made, if possible, and the procedure may be reconsidered.

(C) DHS imposes liquidated damages of \$5.00 per day, per certified Medicaid bed, for every day the facility is out of compliance, beginning with the date of the on-site visit exit conference by the TDH/LTCU. The liquidated damages will cease the same date on which the facility is decertified or the day the state survey agency determines the deficiency has been corrected. If the state survey agency is able to make a determination of the date upon which the facility actually corrected the deficiency, based upon written documentation, the liquidated damages period will be considered to have ceased on the day preceding the date of correction. The facility will be assessed liquidated damages for a minimum of 15 calendar days, even if the deficiencies are corrected sooner, or the facility is decertified before 15 days have elapsed.

(i) A facility may request an informal reconsideration and/or an appeals hearing. An informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, Post Office Box 149030, Austin, Texas 78714-9030. Appeal procedures involving state statutes, liquidated damages, and Title XIX nursing facility contracts are held as specified in §16.1503(f) of this title (relating to Participation Requirements).

(ii) Decertification hearings are held by the state survey agency. If a facility requests an appeals hearing, no monetary liquidated damages are assessed until the outcome of the hearing.

(iii) Payment of assessed liquidated damages is due in full within 10 days of receipt of a certified letter from DHS of the amount of the liquidated damages that are assessed based on the outcome of the hearing. Interest on the assessed liquidated damages is calculated at the rate of interest in effect during the interest period for judgements of the courts of Texas as provided in Texas Civil Statutes, Article 5069-1.05, §2, and begins on the date of the written request by the facility for an appeals hearing and ends on the date the liquidated damages are paid.

(iv) No liquidated damages or interest are charged the facility if the appeals hearing results in the administrative law judge or judicial proceeding overturning the initial decision.

(v) DHS applies all funds collected as a result of liquidated damages to the protection of the health and property of recipients of nursing facilities that DHS or Health Care Financing Administration (HCFA) finds deficient. Funds may be used for the cost of relocating recipients to other facilities, for maintenance or operation of a facility pending correction of deficiencies or closure, and for reimbursement of recipients for lost personal funds.

(D) The state survey agency, at the state survey agency's discretion, may remove the immediate and serious threat to health and safety by appointment of a temporary manager, as described in subsection (a)(4) of this section.

(E) DHS denies payment for all new Medicaid admissions. DHS gives notice to the nursing facility and the public that their facility is no longer in compliance with the standards. Public notice of noncompliance will be published in the *Texas Register*. Once the nursing facility is again in compliance, DHS will publish notice in the *Texas Register*.

(F) DHS cancels the facility's provider agreement if the state survey agency terminates the facility's certification. DHS makes no payment for services provided by the facility after the effective date of the termination of a facility's certification. In certain instances, DHS may continue payments for no more than 30 days from the date DHS cancels or fails to renew the provider agreement. DHS may continue payments if the state survey agency notifies DHS in writing that:

(i) Reasonable efforts to transfer the recipients to another facility or to alternate care are being made, and

(ii) Additional time is needed to effect an orderly transfer of the recipients.

(G) These rules are not intended to restrict DHS from imposing as

necessary appropriate remedies for program violations listed in §79.2105 of this title (relating to Grounds for Fraud Referral and Administrative Sanctions).

(2) When the state survey agency notifies DHS in writing that cited deficiencies, based on severity and scope, do not pose an immediate and serious threat but are health and/or safety hazards that threaten health and/or safety, DHS takes the following actions.

(A) The first time the state survey agency notifies DHS of cited deficiencies, based on severity and scope, DHS imposes liquidated damages of \$2.50 per day, per certified Medicaid bed, for every day the facility is out of compliance, beginning with the date of the on-site visit exit conference by the TDH/LTCU, and ending with the date the facility is notified by the state survey agency that all deficiencies are corrected. If the state survey agency is able to make a determination of the date upon which the facility actually corrected the deficiency, based upon written documentation, the liquidated damages period will be considered to have ceased on the date proceeding the date of correction. The facility will be assessed liquidated damages for a minimum of 15 calendar days, even if the deficiencies are corrected sooner, or the facility is decertified before 15 days have elapsed. DHS also imposes, or authorizes the imposition by the state survey agency of, any or all of the following additional actions when recommended by the state survey agency in writing:

(i) denial of payment for all new Medicaid admissions. DHS gives notice to the nursing facility and the public that the facility is no longer in compliance with the standard.

(ii) public notice of noncompliance published in the *Texas Register*. Once the nursing facility is again in compliance, DHS will publish a notice in the *Texas Register*.

(iii) appointment of a temporary manager, as described in subsection (a)(4) of this section, to remove health and/or safety hazards.

(B) The second time the state survey agency notifies DHS of cited deficiencies, based on severity and scope, within 18 months of the first notification, DHS will impose liquidated damages of \$5.00 per day, per certified Medicaid bed for every day the facility is out of compliance, beginning with the date of the on-site visit exit conference by the TDH/LTCU and ending with the date the facility is notified by the state survey agency that all deficiencies are corrected. The facility will be assessed liquidated damages for a minimum of 15 calendar days, even if the deficiencies are corrected

sooner, or the facility is decertified before 15 days have elapsed. DHS also imposes or authorizes the imposition by the state survey agency of any or all of the following actions when recommended by the state survey agency in writing:

(i) denial of payment for all new Medicaid admissions. DHS gives notice to the nursing facility and the public that the facility is no longer in compliance with the standard.

(ii) public notice of noncompliance published in the *Texas Register*. Once the nursing facility is again in compliance, the DHS will publish notice in the *Texas Register*.

(iii) appointment of a temporary manager, as described in §16.1510(a)(4) of this section, to remove health and/or safety hazards.

(C) The third time the state survey agency notifies DHS of cited deficiencies, based on scope and severity, within 18 months of the first notification, DHS will terminate the provider agreement.

(D) A facility may request an informal reconsideration and/or an appeals hearing. An informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, Post Office Box 149030, Austin, Texas 78714-9030. Appeal procedures involving state statutes, liquidated damages, and Title XIX nursing facility contracts are held as specified in §16.1503(f) of this title (relating to Participation Requirements). Decertification hearings are held by the state survey agency.

(i) If a facility requests an appeals hearing, no monetary liquidated damages are assessed until the outcome of the hearing. Interest on the assessed liquidated damages is calculated at the rate of interest in effect during the interest period for judgements of the courts of Texas as provided in Article 5069-1.05, Section 2, Vernon's Texas Revised Civil Statutes, and begins on the date of the written request by the facility for an appeals hearing and ends on the date the liquidated damages are paid.

(ii) No liquidated damages or interest are charged the facility if the appeals hearing results in the administrative law judge or judicial proceeding overturning the initial decision. DHS applies all funds collected as a result of liquidated damages to the protection of the health and property of recipients of nursing facilities that DHS or Health Care Financing Administration (HCFA) finds deficient. Funds may be used for the cost of relocating recipients to other facilities, maintenance or operation of a facility pending correction of deficiencies or closure, and for reimbursement of recipients for lost personal funds.

(E) If the facility appeals an adverse action by DHS and the adverse action is sustained by an administrative law judge or judicial proceeding, the effective date of the provider agreement cancellation is the date specified in the notice of contract cancellation. Unless otherwise provided in this section, DHS makes no payment for services provided by the facility after the effective date of the facility's provider agreement termination. In certain instances, DHS may continue payments for no more than 30 days from the date DHS terminates or fails to renew the provider contract. DHS may continue payments if the state survey agency notifies DHS in writing that:

(i) reasonable efforts to transfer the recipients to another facility or to alternate care are being made, and

(ii) additional time is needed to effect an orderly transfer of the recipients.

(F) If the state survey agency determines, on three consecutive standard surveys, that a nursing facility is providing substandard quality of care, DHS may request the state survey agency to carry out on-site monitoring of the facility, on a regular basis, as needed, until the facility has demonstrated that it is in compliance with the standards for participation and that it will remain in compliance.

(G) These rules are not intended to restrict DHS from imposing as necessary appropriate remedies for program violations listed in §79.2105 of this title (regarding Grounds for Fraud Referral and Administrative Sanctions).

(c) When a facility's provider agreement is cancelled by DHS under the provisions of this section and after a mandatory 30-day period of no vendor payment to the facility, DHS may enter into a probationary provider agreement with the facility, as specified in §16.1504(a)(4) of this title (relating to Contract Requirements). DHS may enter into this provider agreement after the state survey agency conducts an onsite, follow-up visit and notifies DHS that the deficiencies that caused the cancellation of the contract are no longer in effect.

(d) After the probationary provider agreement period, DHS may enter into a nonprobationary provider agreement as specified in §16.1504(a)(4)(1), (2), (3), or (5) of this title (relating to Contract Requirements). DHS may enter into this provider agreement only after the state survey agency conducts an on-site, follow-up visit and notifies DHS that the deficiencies that caused the cancellation of the provider agreement are no longer in effect and the facility is otherwise complying with Medicaid policy.

(e) DHS takes the following action(s) when a Title XIX provider agreement facility fails to meet the requirements specified in these standards, other applicable agency rules, or contractual provisions cited in writing by DHS or the state survey agency that are not specified in subsection (b) of this section (such as trust funds, cost reports, and occupancy reports).

(1) DHS administrative citations.

(A) DHS may grant the facility a compliance period of no more than 30 days to correct deficiencies cited by DHS. If DHS determines that cited deficiencies are not corrected, but determines that the facility has made substantial progress toward correcting the cited deficiencies, DHS may extend the compliance period for a maximum of 15 days. One compliance extension may be granted.

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

(C) If cited deficiencies are not corrected within 60 days from the date the facility is placed on vendor hold, DHS cancels the facility's provider agreement for breach of contract. A facility may request an informal reconsideration and/or an appeal hearing. An informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, Post Office Box 149030, Austin, Texas 78714-9030. Appeal procedures involving state statutes, liquidated damages, and Title XIX nursing facility provider agreements are held as specified in §16.1503(f) of this title (relating to Participation Requirements). If the facility appeals an adverse action by DHS and the adverse action is sustained by an administrative law judge or judicial proceeding, the effective date of the provider agreement cancellation is the date specified in the notice of provider agreement cancellation. Unless otherwise provided for in this section, DHS makes no payment for services provided by the facility after the effective date of the facility's contract termination. In certain instances, DHS may continue payments for no more than 30 days from the date DHS terminates or fails to renew the provider agreement. DHS may continue payments if the state survey agency notifies DHS in writing or DHS determines that:

(i) reasonable efforts to transfer the recipients to another facility or to alternate care are being made, and

(ii) additional time is needed to effect an orderly transfer of the recipients.

(f) A facility must not charge Title XIX recipient-patients, their families, or their responsible parties to recoup any vendor payments not received because of the imposition of remedies against the facility. The facility may collect only the applied income established in the recipient's payment plan.

(g) When the Health Care Financing Administration (HCFA) notifies DHS that HCFA is denying payment for new admissions to a Medicare-participating skilled nursing facility that also participates in Medicaid, DHS denies Medicaid payments for new admissions for the same period for which Medicare payments are denied, as stipulated in 42 Code of Federal Regulations, Part 489.

(h) Exclusions. At the time a nursing facility seeks admission into the Medicaid program by a request to contract, the Texas Department of Human Services will determine the need for individual reinstatement. The determination is based on:

(1) accessibility of other health care to the recipient population in the immediate and surrounding locale. For purposes of this part, immediate and surrounding locale is defined as within the same city, same county, or adjoining counties; and

(2) previous conduct of the individual provider, corporation, owners, officers, directors, or employees during participation in the Medicare or Medicaid program in Texas or in any other states, and any conduct or action for which a sanction as described in these sections could have been taken.

(i) State Survey Agency Review/Appeals Procedures.

(1) The state survey agency provides certified nursing facilities the opportunity to request an informal administrative review for the purpose of determining the validity of the findings of the surveyor. The nursing facility submits additional information or a written request for a conference with the regional survey team/program administrator within five workdays after the facility's exit conference. Additional information will not be accepted, nor will a conference be scheduled after the fifth workday. The surveyor/team in conjunction with the regional program administrator:

(A) reviews additional written information and makes an objective decision;

(B) schedules any meetings requested by providers;

(C) notifies providers in writing of survey team/program administrator's decision; and

(D) removes invalid deficiencies; changes certification action if indicated; and adds, changes, or deletes liquidated damages, if indicated.

(2) The Texas Department of Health's (TDH) chief, Bureau of Long Term Care, and division directors will receive the decision of the surveyor/team. If the provider is not in agreement with the findings of the surveyor/team, the provider may request a further review. Based on this request, the TDH chief, Bureau of Long Term Care, and the division directors:

(A) review additional information and/or hold a conference with the provider to determine whether deficiencies and/or punitive action recommendations should be changed;

(B) change or sustain the deficiencies, certification action, or liquidated damage; and

(C) notify the provider, in writing, within 10 workdays of receipt of additional written information or conference, of their decision.

(3) Determinations of certification and decertification may be appealed if the provider is not in agreement with the decisions of the informal administrative review. The state survey agency will notify the providers of their right to a formal appeal under §§145.141-145.147 of Title 25 of the Texas Administrative Code (relating to Procedures Covering Certification and Termination of Certification of Long Term Care Facilities which Participate in the Title XIX Medical Assistance 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.

Issued in Austin, Texas, on April 24, 1990.

TRD-9004178 Cathy Rossberg
Agency liaison
Texas Department of
Human Services

Proposed date of adoption: July 1, 1990

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

Chapter 35. Pharmacy Services

Subchapter A. Participation

• 40 TAC §§35.101, §35.102

The Texas Department of Human Services proposes amendments to §§35.101-35.102, concerning pharmacy services. The purpose of the amendment to §35.101 is to change contracting requirements to ensure that eligible recipients obtain services under the Medicare Catastrophic Coverage Act, P.L. 100-360. The purpose of amendments to §35.102 is to clarify department procedures for handling specialized contracting situations.

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

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be that services are more accessible and contracting procedures are improved. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Pat Gladden at (512) 338-6967 in the department Vendor Drug Program. Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Communication Services-217, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

§35.101. Requirements for Participation.

(a) Any pharmacy or pharmacist [,] who has a current license or registration with the Texas State Board of Pharmacy or is licensed under the laws of his respective state and is free from any pharmacy board

restriction [,] may apply to become a provider in this program. Prescribing practitioners [,] who are authorized and licensed to practice the healing arts, as defined and limited by federal and state laws, and choose to provide their own pharmaceuticals [,] may also apply to become providers.

(b) Except as stated in §35.107 of this chapter (relating to Termination of Participation), the department maintains open enrollment for in-state pharmacies licensed as Class A or C by the Texas State Board of Pharmacy. Out-of-state pharmacies or pharmacies holding any other class of pharmacy license may be subject to special application procedures. These procedures are used to determine how Medicaid recipients benefit from contracts with specialized pharmacies. Contracts are not granted to applicants unless additional benefits to the recipient are established.

§35.102. Applications for Participation.

(a) Applications for participation must be [are] made to Vendor Drug Program Provider Enrollment, Texas Department of Human Services, P.O. Box 149030, Mail Code 546-E [2960], Austin, Texas 78714-9030 [78769].

(b) (No change.)

(c) The department may enter into special negotiated reimbursement arrangements with other state or local entities for purposes of maximizing Federal Financial Participation in state or locally funded programs. If a state or local entity is unwilling to participate in this kind of an arrangement, a contract may be denied.

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

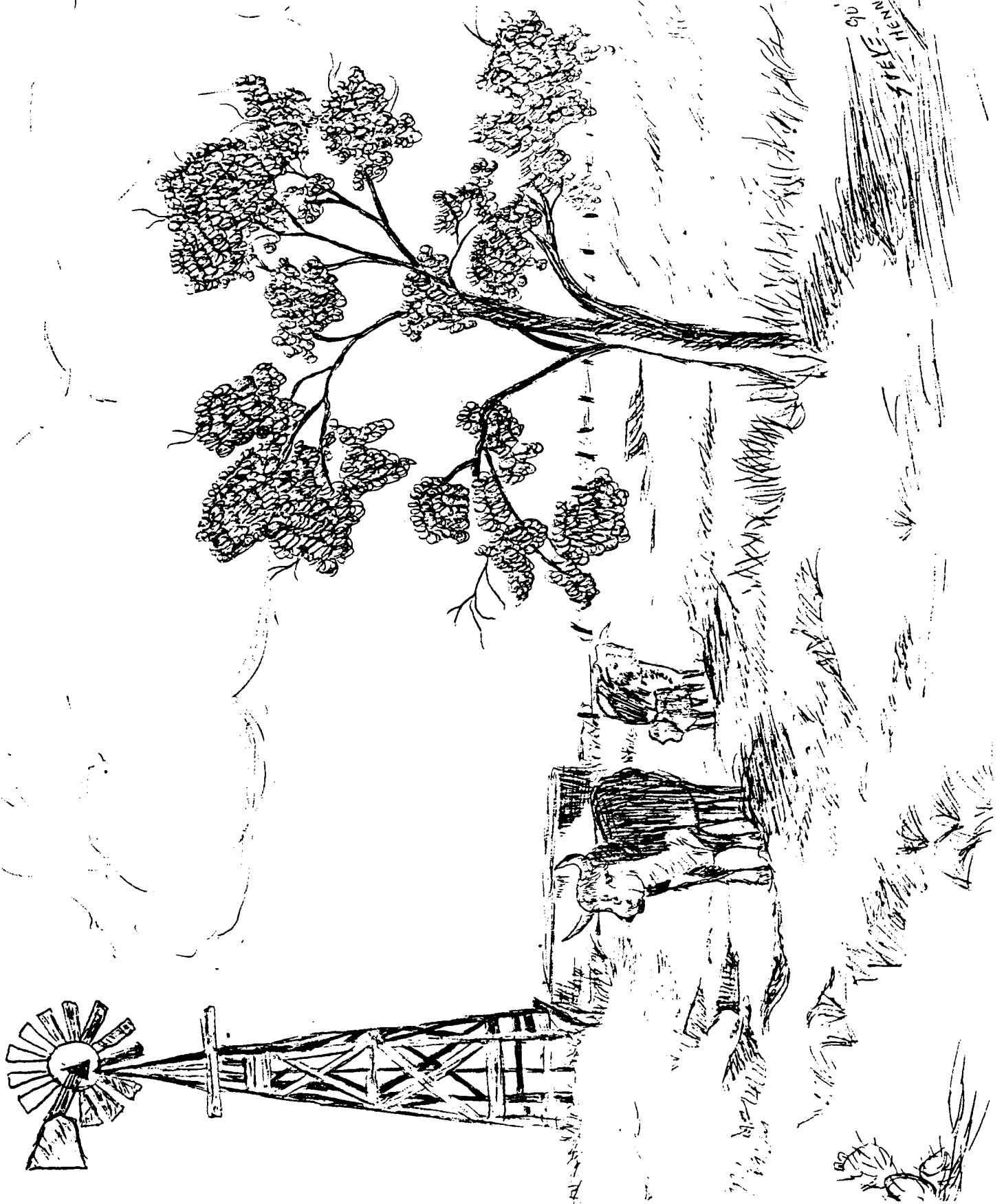
Issued in Austin, Texas, on April 24, 1990.

TRD-9004176 Cathy Rossberg
Agency liaison
Policy Communication
Services

Proposed date of adoption: July 1, 1990

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

STEVE
HENNESSEE
90



Name: Steve Hennessee
Grade: 11
School: Vernon High, Vernon



Name: Katrina Howie

Grade: 11

School: Vernon High, Vernon

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter M. Motor Bus Companies

• 16 TAC §5.249

The Railroad Commission of Texas adopts an amendment to §5.249, with changes to the proposed text as published in the February 20, 1990, issue of the *Texas Register* (15 TexReg 919). The amendment was proposed pursuant to a petition filed by the city of The Colony. Paragraph (1)(F) is changed to delete the words "City of" when referring to The Colony.

The amendment extends the area which is defined as suburbs of Dallas to include the city of The Colony. By adding The Colony to the area defined as a suburb of Dallas, motor bus transportation wholly within that area is exempt from commission regulation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Motor Bus Act, Texas Civil Statutes, Article 911a, which excludes from the commission's jurisdiction operations of buses wholly within a city and its suburbs.

§5.249. Operations Wholly Within Certain Cities and Their Suburbs.

(a) For the purpose of interpreting the phrase "wholly within the limits of any incorporated town or city, and the suburbs thereof, whether separately incorporated or otherwise," in §5.248(a)(1)(A) of this title (relating to Motor Bus Certificates, Rates, and Regulations):

(1) the following are suburbs of Dallas:

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

(D) all incorporated areas lying within Tarrant County;

(E) Plano; and

(F) The Colony;

(2)-(4) (No change.)

(b) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on April 23, 1990.

TRD-9004187 Kent Hance
Chairman
Railroad Commission of
Texas

Effective date: May 15, 1990

Proposal publication date: February 20, 1990

For further information, please call: (512) 463-7096

TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 81. Instructional Resources

Subchapter D. State Textbook Program

State Adoption, Acquisition, and Custody of Textbooks

• 19 TAC §81.129

The Texas Education Agency adopts an amendment §81.129, without changes to the proposed text as published in the February 2, 1990, issue of the *Texas Register* (15 TexReg 531). The amendment concerns the consideration and adoption of textbooks by the State Board of Education. The amendment adds a new subsection (i) which provides that if a textbook publisher requested permission to withdraw a textbook because of changes and corrections and/or because of price reductions required as a condition of adoption, and approval of the request will result in only one textbook remaining in the category, the remaining textbook may be adopted at the discretion of the board. Any publisher who files a request to withdraw a textbook after the deadline specified in the schedule for the adoption process is required to submit a written statement that the withdrawal is voluntary and not made under duress.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §21.01, which provides that textbook adoptions shall be carried out in accordance with the Texas Education Code,

Chapter 12; and §12.24, which authorizes the State Board of Education to make rules for the adoption of textbooks for use in public schools.

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 April 11, 1990.

TRD-9004167 W. N. Kirby
Commissioner of Education

Effective date: May 15, 1990

Proposal publication date: February 2, 1990

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

Chapter 101. Assessment Student Assessment of Basic Skills

• 19 TAC §101.7

The Texas Education Agency adopts the repeal of §101.7, without changes to the proposed text as published in the February 6, 1990, issue of the *Texas Register* (15 TexReg 645). The section concerned the reporting of test results. This section was adopted as §101.5, under the same name in 1986, but was not appropriately repealed at that time. This section is repealed at this time to provide for a new §101.7, concerning local school district achievement testing, and to ensure that obsolete language is removed from State Board of Education rules according to provisions of the *Texas Register*.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §21.551, which directs the agency to adopt criterion referenced tests to assess specified basic skills at grades three, five, seven, nine, and the exit level.

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 April 11, 1990.

TRD-9004169 W. N. Kirby
Commissioner of Education

Effective date: May 15, 1990

Proposal publication date: February 6, 1990

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

Assessment of Minimum Skills

• 19 TAC §101.7

The Texas Education Agency adopts new §101.7, with changes to the proposed text as published in the February 6, 1990, issue of the *Texas Register* (15 TexReg 645). The new section concerns local school district achievement testing. The new section requires the agency to issue guidelines for administering the tests to ensure their security, provide that a form of the test not be administered in more than three years, and require that testing companies produce updated norms every two years for each assessment instrument. In addition, school districts are required to report test results to the agency through the Public Education Information Management System (PEIMS). However, results of individual student performance shall be confidential. The new section is adopted pursuant to House Bill 983 of the 71st Texas Legislature.

Several changes were made to subsections (c), (d), and (f) for clarification purposes. In addition, a statement regarding confidentiality was deleted from subsection (e) because such provisions are already included in a state law, and language was added to subsection (g) to remind educators of the ramifications of violating test security provisions. The words "the exact same test or test form or" has been added to subsection (c). The words "in a particular school" have been deleted and the word "school" has been added in the first sentence in subsection (d). The word "school" has also been added in the second sentence in subsection (d). The second sentence in subsection (e), "Results of individual student performance shall be confidential" has been deleted from the adopted section. The sentence is not needed since the confidentiality of the student results is covered by statute. New language added to subsection (f) clarifies the age of the updated norms. An additional sentence has been added to subsection (g) to remind educators that violation of the security provisions could result in action taken against their teacher or administrator credentials.

No comments were received regarding adoption of the new section.

This new section is adopted under the Texas Education Code, §21.560, which provides the State Board of Education with the authority to adopt rules for the administration of group-administered achievement tests and for the maintenance of the security of the contents of all assessment instruments.

§101.7. Local District Achievement Testing.

(a) The following definitions are provided for purpose of this section.

(1) The term "company or organization," includes publishers of assessment instruments, regional educational service centers, and other entities providing scoring services.

(2) The term "assessment instrument," means a group-administered achievement test on a list of tests issued by the commissioner of education. This rule applies only to the assessment instruments included on the list. School districts must

use one of the tests on the list to comply with reporting requirements contained in Section III of the annual performance report.

(3) The term "same form of an assessment instrument," means the exact same test or test form or two or more tests or test forms that yield equivalent or parallel scores and share 50% or more of substantially the same items on each form. This term does not include ancillary materials which may accompany assessment instruments.

(b) Beginning with the 1990-1991 school year, a school district may not use the same form of an assessment instrument in more than three school years. Only those school years in which a form is administered after the effective date of these rules must be included in the three-year count.

(c) Districts shall report results of local achievement testing to the agency through the Public Education Information Management System in a manner to be specified by the commissioner of education. Companies and organizations which grade assessment instruments will provide results to school districts in a format suitable for compliance with this reporting requirement.

(d) Beginning with the 1990-1991 school year, updated norms will be produced by the publisher every two school years for each assessment instrument covered by this section. The date of publication of the norms will determine when the next update is required. The date of publication may not exceed one year from the date of data collection. After establishing national standardization norms for a particular form, user norms may be employed for the biennial updates. Publishers producing updated user norms must use sampling and psychometric procedures approved by the commissioner of education. Publishers must provide the updated norms to scoring centers in the state that are approved by the publisher to score its assessment instruments. These norms must be provided to the scoring centers as soon as they are available to minimize delays in reporting. National standardization norms are not eligible for use in Texas more than six years after date of publication.

(e) To maintain the security of the contents of all assessment instruments, school districts shall follow procedures for test administration established by the commissioner of education. Violators of security provisions will be subject to penalties as stated in §101.4(b) of this title (relating to Security and Confidentiality).

(f) School districts may not purchase assessment instruments or services from companies or organizations not in compliance with this section.

(g) The effective date of these rules

is September 1, 1990.

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 April 11, 1990.

TRD-9004170 W. N. Kirby
Commissioner of Education

Effective date: May 15, 1990

Proposal publication date: February 6, 1990

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

Chapter 141. Teacher Certification

Subchapter B. Certificate Issuance Procedures

• 19 TAC §141.23

The Texas Education Agency adopts new §141.23, with changes to the proposed text as published in the February 2, 1990, issue of the *Texas Register* (15 TexReg 532). The new section concerns the issuance of certificates based on examination.

The new section enables previously certified teachers to add certificates for a different level or subject and allows secondary teachers to acquire additional teaching fields through the successful completion of the appropriate certification examination. In addition teachers who possess a valid classroom teaching certificate and a bachelor's degree may qualify for an additional certification in a subject or at a level not covered by the teacher's existing certificate by passing the appropriate Examination for the Certification of Educators in Texas (ExCET) and then successfully completing a one-year internship. The new rule also sets guidelines for the internship. This new rule is adopted pursuant to House Bill 2185 of the 71st Texas Legislature. Subsection (f) was changed to delete level two status on the career ladder as an intern requirement. Language was substituted that retains experience and successful performance as requirements for the internship. The deletion of advanced career ladder status as a requirement eliminates the possibility of denying participation to a teacher in a particular district due to the imposition of stricter performance requirements for level two entry when funds are insufficient in that district to advance all teachers meeting minimum state requirements.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Agency, §13.0321, which authorizes the State Board of Education to adopt rules allowing certified teachers to qualify for additional certification based on examination.

§141.23. Issuance of Certificates Based on Examination.

(a) General provisions. A teacher who possesses a valid classroom teaching

certificate and a bachelor's degree may qualify for an additional teaching field(s) or certification to teach at another level by passing the appropriate Examination(s) for the Certification of Educators in Texas (EXCET) that are offered for that subject. The rule shall not be used to qualify an individual for:

- (1) initial certification;
- (2) vocational certification based on skill and experience;
- (3) professional service certification; or
- (4) certification for which no EXCET requirement has been developed.

(b) Adding additional secondary teaching fields. A teacher who already possesses a secondary certificate and is seeking additional certification at the secondary level will be required to successfully pass the appropriate EXCET(s) that are offered for that secondary teaching subject listed in the Texas Education Code, §21.101(a).

(c) Additional certification for a different level or subject area. A teacher who possesses a valid classroom teaching certificate and a bachelor's degree may qualify for additional certification in a subject or at a level not covered by the teacher's existing certificate by:

(1) passing the appropriate EXCET(s) in the subject for which the teacher is seeking additional certification; and

(2) then completing a successful one-year internship under the supervision of an experienced certified teacher and who is teaching at that level or in that subject area.

(d) District requirements for approving individuals seeking additional certification. School districts who choose to staff positions with teachers who are qualifying for additional certification but who are not certified for that specific assignment must maintain documentation that they meet the following:

(1) full accreditation status of the participating school district;

(2) commitment to individual(s) seeking additional certification through adequate funding, a sufficient number of qualified supervising teachers, and other resources to deliver the internship;

(3) provision of time for the supervising teacher and the intern to observe each other and to conduct follow-up conferences;

(4) that all eligible candidates serving as teacher of record were assigned to an internship no later than October 1 of the school year in which the internship is to be completed; and

(5) that districts annually report the assignment of all interns in this program

who are serving as the teacher of record in the district through the Public Education Information Management System (PEIMS).

(e) The supervising teacher.

(1) The supervising teacher shall be teaching in the subject or grade level in which the intern is seeking additional certification, and shall be experienced and certified in the subject or at that level.

(2) The supervising teacher shall have adequate time to assess the intern through formative instruments and to determine appropriate activities for the intern based on the needs of the intern as determined by the assessment and by input from the intern.

(f) The internship.

(1) The teacher shall have a minimum of two years of classroom teaching experience and shall have been appraised as at least "exceeding expectations" in the most recent year served in order to be considered eligible for the internship.

(2) The intern shall be provided time within the instructional day to observe the supervising teacher and other experienced teachers in the subject or at the level for which certification is sought.

(3) The intern, regardless of career ladder assignment level, must receive two appraisals.

(4) Internship shall begin no later than October 1 and extend through the last day of instruction.

(g) Recommendation for additional certification. To be eligible for certification in a subject area or at a level for which an internship is required, the intern must receive, in addition to the appraisals of the intern by two appraisers, a recommendation from the supervising teacher that signifies successful completion of the internship.

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 April 11, 1990.

TRD-90004165 W. N. Kirby
Commissioner of Education

Effective date: May 15, 1990

Proposal publication date: February 2, 1990

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

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**Chapter 149. Education
Personnel Development**

**Subchapter B. Inservice
Education**

• 19 TAC §149.21

The Texas Education Agency adopts an

amendment to §141.21, with changes to the proposed text as published in the February 2, 1990, issue of the *Texas Register* (15 TexReg 533). The amendment concerns general requirements for inservice education. The amendments add HIV infection, suicide prevention, and emotional disturbance to the topics that may be included in school districts' inservice education programs. The section is amended pursuant to Senate Bill 959, House Concurrent Resolutions 29 and 266, and Senate Concurrent Resolution 48 of the 71st Texas Legislature.

Brief wording changes were made to subsection (d)(1), (2), and (4) to encourage the emphasis of campus goals in the planning of inservice programs, make generic rather than name-specific the reference to the state's student assessment program, and clarify the board's desire to emphasize the importance of listed topics without mandating specific time or structural guidelines, respectively.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Agency, §16.052, which requires that school districts provide not less than eight days of inservice training and preparation for teachers for each school year; and §11.207, which authorizes the State Board of Education to make rules regarding areas of instruction to be included in school districts' inservice training.

*§149.21. General Requirements for
Inservice Education.*

(a)-(c) (No change.)

(d) In addition to the requirements in subsection (c) of this section, the district's inservice education program may include one or more of the following:

(1) district and campus goals and objectives;

(2) curriculum objectives selected on the basis of student achievement data including, but not limited to, standardized achievement tests and the state student assessment program;

(3) professional needs of beginning teachers and teachers new to the district; and

(4) topics designated by the State Board of Education for annual district priority consideration such as special education, abuse or neglect in students, dyslexia, discipline management, teacher appraisal orientation, HIV infection, suicide prevention, and emotional disturbance.

(e)-(g) (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 April 11, 1990.

TRD-9004168 W. N. Kirby
Commissioner of Education

Effective date: May 15, 1990

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Subchapter C. Appraisal of
Certified Personnel

• 19 TAC §149.43, §149.44

The Texas Education Agency adopts amendments to §149.43 and §149.44. Section 149.43 is adopted with changes to the proposed text as published in the February 2, 1990, issue of the *Texas Register* (15 TexReg 533). Section 149.44 is adopted without changes and will not be republished. The sections concern teacher appraisal procedures, instruments, scoring, and forms. The amendments require a third appraiser when requested by a teacher if the difference between the sum of the domain subtotals for Domains I-IV for each of the two appraisers is 15 or more points. This necessitates an observation by a third appraiser for an anticipated 2.0% of the teachers in the state. The third appraisers' observation would be averaged with the other two appraisers observations. In view of the third appraiser requirement, the amendments also provide for minimal time at the end of the school year for an observation by a third appraiser if needed. Formal observations must be completed 15 working days prior to the last day of instruction to allow time for an observation by the third appraiser. The amendments also remove obsolete language relating to unscheduled observations. The amendments are adopted pursuant to Senate Bill 417 of the 71st Texas Legislature.

One change to §149.43 involves subsection (c)(3) in which the phrase "two or more scoring categories" was replaced by the phrase "15 or more points." Because the number of points varies among the four scoring categories, this change provides for greater consistency when trying to determine the need for a third appraiser. The other change to §149.43 was made in subsection (c)(4)(E) where the phrase "but not later than the first 20 working days of" was replaced by the word "in" to provide greater flexibility for local school districts.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §13.302, which provides the State Board of Education with the authority to adopt an appraisal process and criteria on which to appraise the performance of teachers for career ladder purposes.

§149.43. Teacher Appraisal Procedures.

(a) Appraisal qualifications.

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

(3) Appraisers other than the teacher's supervisor, including appraisers serving as a third appraiser, must be approved by the local board of trustees, have a valid teaching certificate, and have at least two years of pre-kindergarten, kindergarten, elementary, or secondary

classroom teaching experience.

(4)-(5) (No change.)

(b) (No change.)

(c) Appraisals, observations, and conferences.

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

(3) Beginning with the 1990-1991 school year, school districts which use the minimum of two appraisers during an appraisal period shall provide for an observation by a third appraiser if requested by a teacher due to a variance of 15 or more points between the sum of the domain subtotals for Domains I-IV awarded by the teacher's supervisor and the sum of the domain subtotals for Domains I-IV awarded by the other appraiser. Each district shall adopt procedures for uniform implementation of this procedure within the district.

(4) Each local school district shall establish a calendar for appraisal during the required days of instruction for students during one school year. The appraisal calendar:

(A) shall designate the time frame for each of the three required appraisal periods;

(B) may uniformly extend the appraisal period for teachers who are eligible for a single appraisal throughout the days of instruction for students, at the district's discretion;

(C) shall exclude the first two weeks of instruction;

(D) shall prohibit observations on the last instructional day before any official school holiday or any other day deemed inappropriate by the local board of trustees;

(E) shall provide for scheduling of all requested observations by a third appraiser identified during Appraisal Period I as soon as practical in Appraisal Period II;

(F) shall provide that all formal observations be completed 15 working days prior to the last instructional day for students, with the exception of an observation by a third appraiser or other extenuating circumstances; and

(G) shall be disseminated to all staff prior to the beginning of formal observations.

(5) For formal observations, teachers shall be observed teaching classes in field(s) and teaching assignments for which they are certified whenever possible.

(6) For the 1989-1990 school year, 50% of the formal observations must be scheduled by day and time of day, and 50% of the formal observations must be scheduled within a reasonable period of time designated by the local district and uniformly applied for all teachers. If a formal observation by a third appraiser from another campus is required, that observation must be scheduled by day and time of day. For the 1990-1991 school year and upon the development and approval of instruments, processes, or procedures to be used for purposes of appraising levels three and four of the career ladder, all formal observations using the Texas Teacher Appraisal System shall be scheduled.

(7) Before the first observation of the teacher in any appraisal period, the requirement for consecutive minutes for formal observations may be waived by mutual consent at the request of that teacher or the appraiser. Under such waiver, each observation may be comprised of two to three instructional segments of not less than 15 minutes each. Such waiver should be considered only when the nature of the teaching assignment requires shorter instructional segments.

(8) Appraisers may not conduct formal observations simultaneously.

(9) After a formal observation each appraiser must complete a written record. The written record is not to be completed during the observation. A copy of the written record shall be given to the teacher within seven working days of the formal observation. If there are extenuating circumstances, the seven working day requirement may be extended to a maximum of 15 working days.

(10) During an appraisal period, the teacher's supervisor may continually evaluate and document performance specifically related to the performance criteria and the indicators subsumed under the criteria in §149.42 of this title (relating to Teacher Performance Criteria). If such documentation would influence the teacher's appraisal, the documentation must be shared in writing with the teacher within seven working days of the occurrence or, in unusual circumstances, the teacher supervisor's knowledge of the occurrence. This additional documentation shall be combined with, but shall not replace, the formal observation to determine credit for the criteria or indicators. Appraisers other than the teacher's supervisor shall have access to Domain V documentation only in the event that the teacher's total score for the year on Domain V determined by the teacher's supervisor is less than meets expectations as specified in §149.44(b)(2) of this title (relating to Teacher Appraisal Instrument, Scoring Procedures, and Forms).

(11) Following each formal observation, an appraiser must conduct a

post-observation conference with the teacher if the teacher's performance is judged less than meets expectations in one or more domains. Regardless of the teacher's performance, each teacher supervisor must conduct a post-observation conference after each formal observation. Appraisers other than the teacher's supervisor are encouraged to conduct post-observation conferences after all formal observations. Required post-observation conferences must be held within 10 working days of the formal observation. If there are extenuating circumstances, the 10 working day requirement may be extended to a maximum of 15 working days. At the conclusion of the first appraisal period, a conference will be held at the request of either the teacher or the appraiser.

(d)-(g) (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 April 11, 1990.

TRD-9004166 W. N. Kirby
Commissioner of Education

Effective date: May 15, 1990

Proposal publication date: February 2, 1990

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

TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

General Provisions

• 22 TAC §501.1

The Texas State Board of Public Accountancy adopts the repeal of §501.1, without changes to the proposed text as published in the February 9, 1990, issue of the *Texas Register* (15 TexReg 683).

The result of enforcing the repeal will be to propose a new section that will clarify the purpose of the rules and properly cite the current Public Accountancy Act.

The repeal of this section will allow for the adoption of a new section that clarifies the purpose of the rules and properly cites the current Act.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules deemed necessary to effectuate the purpose of the Public Accountancy Act of 1979, as amended, including the rules of professional conduct to insure that competitive practices of

licensees serve the best interest of the public.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on April 19, 1990.

TRD-9004154 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: May 14, 1990

Proposal publication date: February 9, 1990

For further information, please call: (512) 450-7066

The Texas State Board of Public Accountancy adopts new §501.1, without changes to the proposed text as published in the February 9, 1990, issue of the *Texas Register* (15 TexReg 684).

The result of enforcing the section will be to clarify the purpose of the rules and properly cite the current Public Accountancy Act.

The new section clarifies the purpose of the rules and properly cites the current Public Accountancy Act.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provides the Texas State Board of Public Accountancy with the authority to promulgate rules deemed necessary to effectuate the purpose of the Public Accountancy Act of 1979, as amended, including the rules of professional conduct to insure that competitive practices of licensees serve the best interest of the public.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on April 20, 1990.

TRD-9004155 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: May 14, 1990

Proposal publication date: February 9, 1990

For further information, please call: (512) 450-7066

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 3. Life, Accident, and Health Insurance and Annuities

Subchapter B. Individual Life Insurance Policy Form Checklist and Affirmative Requirements

• 28 TAC §3.129

The State Board of Insurance adopts an amendment to §3.129, with changes to the proposed text as published in the March 16, 1990, issue of the *Texas Register* (15 TexReg 1501).

Section 3.129 concerns acceleration of life insurance benefits. The amendment is necessary to elucidate the board's interpretation of existing law. This adoption includes several changes to the proposed text for the reasons explained in the following sentences. The adoption includes a change to subsection (d)(1) to clarify that, where a separately identifiable premium is collected or charge is made for the accelerated benefit, such premium or charge must be specified. The adoption changes subsection (d)(2)(A) to clarify that the calculation base for the benefit is the present value of future benefits, plus or minus the present value of applicable adjustments. Subsection (d)(2)(B) has been changed to clarify that it applies only to benefits for which no additional premium, fee or charge is payable in advance. Subsection (i) has been changed to emphasize that the Insurance Code, Chapter 21, is controlling with respect to unfair discrimination and that acceleration-of-life-insurance benefits provisions are subject to Chapter 21. The adoption changes subsection (j)(3) to clarify that the required notice and disclosure, in instances of periodic payments pursuant to exercise of an option to receive an accelerated benefit, need not be more frequent than every 12 months. The adoption changes subsection (k)(3) to make it clear that agents making solicitations shall disclose that, because possible tax effects result from payment of such a benefit to policyholders, a personal income tax advisor should be consulted to obtain information about such effects, without placing the agent in the position of being required to provide such information at the time of solicitation.

The amendment to subsection (a)(1) specifies that the amount of death benefit payable upon the death of the insured is the portion of such death benefit which remains after the reduction of such benefit occasioned by the payment of any acceleration-of-life-insurance benefit. The amendment to subsection (c) specifies that all conditions which must be demonstrated precedent to payment of such accelerated benefits must be defined in the contract. The amendment to subsection (d) provides for the means by which an acceleration-of-life-insurance benefit is to be calculated in instances where no additional premium or charge is payable in advance of receipt of the benefit by the policyholder. The amendment to subsection (i) provides that acceleration of benefits provisions shall not unfairly discriminate among insureds either in the instance of similar or dissimilar qualifying events for payment of such benefits. The amendment to subsection (j) and subsection (k) provides for enhanced notice and disclosure within the provisions of the agreement providing for the benefit, as well as within the context of solicitations used in marketing such products.

Comments generally favorable to the proposed section were received from the American Council of Life Insurers, Golden Rule Life Insurance Company, Principal Mutual Life Insurance Company, and the Texas

Life Insurance Association; however, the commenters did suggest some modifications of the section as proposed.

One commenter suggested a change to subsection (d)(1) to eliminate any question about conditions under which a separate premium, fee, or charge for the accelerated benefit must be identified. The board responds that the phrase "as appropriate" in subsection (d)(1) as proposed is intended to serve the purpose to which the comment is directed. In an effort to reduce uncertainty to the greatest possible extent, however, the board deletes the reference to "as appropriate," and incorporates instead the language "if applicable to the policy" after the reference to separately identifiable premium, charge, or fee. One commenter suggested that the words "face amount" in subsection (d)(2)(A) be replaced with the words "death benefit" in regard to the basis upon which the accelerated benefit is to be calculated. The board responds that the most appropriate substitution for the words "face amount of" is "future benefits provided for under" in order to most properly describe the basis of calculation for the benefits addressed by the amendment to the regulation. One commenter suggested that the portion of the basis for calculating the benefit which refers to "present value of future dividends" should be accompanied by the additional wording "if applicable." The board agrees, and the adoption incorporates such language. One commenter suggested that the language in subsection (d)(2)(B) be clarified to indicate that the reference is clearly only to acceleration of benefits in instances where no additional premium or charge is payable in advance. The board responds by inserting the words "referred to in paragraph (2) of this subsection" after the first occurrence of the word "benefit" in subsection (d)(2)(B). One commenter suggested that clarification of intent of subsection (i)(2) and (3) is needed. The board, after review and consideration, is persuaded that subsection (i) (2) and (3) should remain as proposed, for two reasons. First, the board has added clarifying language to subsection (i) to emphasize that the Insurance Code, Chapter 21, and the legislative enactments contained therein, are controlling with respect to unfair discrimination, and that the paragraphs in question are subject to and consistent with the provisions of Chapter 21. Second, the paragraphs in question are directed to the prohibition of that discrimination which might result with respect to the adequacy of evidence required to be submitted to establish that a qualifying event has occurred and therefore a benefit is payable. So long as the requirements of subsections (b) and (c) otherwise are met, nothing in the paragraphs precludes a carrier from choosing which conditions it will provide a benefit for, and which it will exclude, so long as each condition for which a benefit is to be provided is clearly indicated in the agreement providing for the benefit, and so long as the requirements for standards sufficient to establish eligibility for the benefit likewise clearly are indicated. One commenter emphasized the need for clarification of intent with respect to required disclosure in subsection (j)(3) in instances where, instead of a lump sum payment, periodic payments are made to satisfy the acceleration-of-life-insurance benefit. The board responds by adding language providing that, in the event

of periodic payments, statements shall be provided no less frequently than every 12 months with respect to disclosure of the effect of the payment on the policy. One commenter suggested the required disclosure with respect to taxability of benefits at time of solicitation should be revised to insure that the agent make the required recommendation to a proposed insured to seek advice from a tax counselor or practitioner, but not be placed in the position of acting as a tax advisor by providing that information. The board agrees and changes subsection (k)(3) to make it clear that the agent is not to directly provide tax advice at the point of solicitation. One commenter proposed a new subsection (d)(3) to permit an accelerated benefit in the form of an advance of future benefits in an amount not to exceed 75% of the face amount of the policy, without any payment in advance of a premium, fee, or other charge but, instead, accruing an interest charge against the remainder of the future benefit based on the amount of the advance. The board responds that, as it understands the proposal, the current statutory constraints with regard to the maximum amount permitted for a loan against a life insurance policy preclude it from approving such a proposal for adoption. The board adds that, even if statutory concerns were not present, the proposal is of such a substantive nature as to require publication for comment and would not, in any circumstance, be capable of final adoption at this time.

The amendment is adopted pursuant to the Insurance Code, Articles 1.04; 3.28, §3(g); 3.44a; 3.45; and 3.70-8. The Insurance Code, Article 1.04, authorizes the State Board of Insurance to determine rules in accordance with the laws of this state. The Insurance Code, Article 3.28, §3(g) provides that the State Board of Insurance may approve reserving tables for special benefits. The Insurance Code, Article 3.44a, provides standards for nonforfeiture values. The Insurance Code, Article 3.45, prohibits certain provisions in life insurance policies. The Insurance Code, Article 3.70-8, provides an exception from the application of the provisions of the Insurance Code regarding accident and health insurance for life insurance contracts which contain only such provisions relating to accident and sickness insurance as to give a special benefit in the event the insured shall become totally and permanently disabled, as defined in the contract.

§3.129. *Acceleration of Life Insurance Benefits.*

(a) An acceleration-of-life-insurance-benefits provision or rider provides a special benefit under an individual life insurance policy which pre-pays all or a portion of the death benefit, based on disabling or life threatening conditions.

(1) Any portion of the death benefit remaining, after reduction of the death benefit due to payment of any acceleration-of-life-insurance benefit referred to in this subsection, shall be paid upon the death of the insured.

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

(4) The acceleration benefits and the balance of the death benefit of the policy shall constitute full settlement on maturity of the face amount of the policy.

(b) (No change.)

(c) The acceleration-of-life-insurance-benefits provision or rider may require a medical diagnosis of conditions and/or documentation of care or confinement as defined in the contract to establish eligibility for acceleration of death benefits. The specific standards sufficient to meet such requirement shall be defined in the contract, and any acceleration-of-life-insurance benefit shall be conditioned only upon such requirement or requirements as defined. The policy or rider may contain a provision terminating the acceleration benefit if the policy is continued under a nonforfeiture option.

(d) An acceleration-of-life-insurance-benefits provision or rider shall:

(1) define or otherwise specify any separately identifiable additional premium, charge, and/or fee, if applicable to the policy or rider, for any acceleration-of-life-insurance benefit and upon payment of such benefit reduce the death benefit of the policy in an amount equal to the acceleration-of-life-insurance benefit paid; or

(2) specify or define any charge or fee which may reduce the amount of the acceleration-of-life-insurance benefit in instances where no additional premium or charge is payable in advance by the policyholder and, upon payment of such benefit, reduce the death benefit of the policy by no more than an amount equal to the acceleration-of-life benefit paid plus any applicable actuarial discount appropriate to the policy and/or rider design, plus any charge and/or fee deducted to provide the benefit.

(A) The acceleration-of-life-insurance benefit referred to in paragraph (2) of this subsection shall be calculated based upon the present value of the future benefits provided under the policy, less the present value of future premiums, plus the present value of future dividends, if applicable, and shall be based on an actuarial discount appropriate to the policy and/or rider design. Such present values shall then be applied pro rata to the portion of the policy and/or rider used to provide the accelerated benefit.

(B) Any charge or fee deducted in determining the acceleration-of-life-insurance benefit referred to in paragraph (2) of this subsection shall be reasonable and shall not inordinately reduce the special benefit payable. A detailed explanation supporting the charge or fee shall be included with the submission of any policy or rider providing a special benefit

with no additional advance premium.

(e) If the cash values are reduced by the acceleration-of-life-insurance benefit, the reduction shall not be unjust and shall not exceed an amount equal to the pro rata portion of the cash value associated with the death benefit used in providing the accelerated benefit. Reductions may be immediate or may be deferred to termination of benefits as a lien with a specified interest rate of zero under the Insurance Code, Article 3.44, §6. Future cash values shall not be less than minimums required by the Insurance Code, Article 3.44a, for the reduced future guaranteed death benefits. These minimum cash values are equal to the present value of the reduced future guaranteed benefits less the present value of future adjusted premiums, decreased by the amount of any indebtedness including liens under the policy. Such mortality and interest used in calculating the minimum cash values will be as provided in the Insurance Code, Article 3.44a, for life insurance policies disregarding any accelerated benefits.

(f)-(h) (No change.)

(i) Acceleration-of-benefits provisions, whether within the contract or by rider, are subject to the Insurance Code, Chapter 21, and shall not be permitted to result in any of the following:

(1) reclassification of the insured as a result of payment of the benefit specified in an acceleration-of-life-insurance-benefits rider or provision to a class of risk less favorable than the class of risk to which the insured originally belonged;

(2) unfair discrimination among insureds with differing qualifying events; or

(3) unfair discrimination among insureds with similar qualifying events.

(j) Every policy containing an acceleration-of-life insurance-benefit provision and every rider providing an acceleration-of-life-insurance benefit shall be subject to the notice and disclosure requirements in paragraphs (1)-(3) of this subsection.

(1) The face of every such policy and every such rider shall contain a prominent notice printed, over printed or stamped, as appropriate, substantially as follows: "Death benefits, cash values, and loan values will be reduced if an accelerated benefit is paid." This statement shall appropriately modified for policies and/or riders which have no cash or loan values.

(2) The title of any acceleration-of-life-insurance benefit shall be descriptive of the coverage provided and shall include the term "accelerated benefit" or words of similar import.

(3) After the payment of an acceleration-of-life-insurance benefit, if made in a lump sum, or no less frequently

than every 12 months if periodic payments are being made, a statement shall be sent to the policyowner, specifying the effect of the accelerated benefit payment on the death benefit, face amount, specified amount, accumulation values, cash values, loan amounts, future charges, and future premiums. A provision to this effect shall be included in the acceleration-of-life-insurance benefit provision of the policy and/or the rider.

(k) Any solicitation used in the marketing of a contract which includes a special benefit relative to total and permanent disability for which an acceleration-of-life-insurance benefit may become payable shall clearly and concisely disclose the following:

(1) the conditions, care, or confinement which initiate any acceleration of payment of the death benefit;

(2) the effect of any acceleration-of-the-life-insurance-benefit provisions on the death benefit and/or other values available under the life insurance policy; and

(3) the possibility that payment of such a benefit is accompanied by federal income tax effects to the policyholder, and that a personal tax advisor should be consulted to obtain information about those federal income tax effects.

(l) (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 April 24, 1990.

TRD-9004220

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: May 16, 1990

Proposal publication date: March 16, 1990

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

Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.58

The State Board of Insurance adopts new §7.58, without changes to the proposed text as published in the January 23, 1990, issue of the *Texas Register* (15 TexReg 317). Certain of the forms adopted by reference in the section were changed as described in this notification.

Section 7.58 concerns forms and instructions for the preparation and filing of tax returns for insurers and other entities required to file tax returns with the State Board of Insurance for the 1989 calendar year or required to file

quarterly premium tax returns with the board during the 1990 calendar year. The new section is necessary to provide insurers and other entities with forms and instructions for filing tax returns. Timely and accurate payment of the taxes is necessary for support of regulatory functions of the State Board of Insurance. In response to comments, this adoption changes Form FT-1, the 1989 Annual Tax Report of Insured Applicable to Independently Procured Insurance, adopted by reference in subsection (31). This change deletes the requirement of an affidavit and substitutes therefore a declaration based on knowledge and belief. Other changes to Form FT-1 were made for clarification as follows: the space for an identification number at the beginning of the form has been revised to show that the number to be filled in is the comptroller's taxpayer identification number or federal identification number of the filer; in Section A, Question 1 has been changed to reflect the change in signature from the affidavit to the declaration now on the form; and in Section C the date on the line immediately before line six has been changed from December 31, 1989, to August 31, 1989.

The form adopted by reference in subsection (32), Instructions for Filing the 1989 Annual Tax Report of Insured Applicable to Independently Procured Insured, has been changed to more clearly identify who is required to file the form. The Annual Purchasing Group Premium Tax Report and Instructions for Filing the Annual Purchasing Group Premium Tax Report (Form PG-2), adopted by reference in subsection (34), has been changed by adding language to clarify the tax rate applicable to insurance purchased by purchasing groups.

The new section adopts forms and instructions which facilitate compliance with statutory requirements for reporting and payment of taxes to the State Board of Insurance. The annual gross premium tax return is required by statute to be filed either on or before March 1, 1990, or the date the annual statement for the carrier is required to be filed with the board. Quarterly tax returns are required to be filed four times per year: the first quarter is due and payable March 1, 1990 (or the date the annual statement for such carrier is required to be filed with the State Board of Insurance); the second quarter is due and payable May 15, 1990; the third quarter is due and payable August 15, 1990; and the fourth quarter is due and payable November 15, 1990. The forms and instructions include requirements for information respecting gross premium taxes, maintenance taxes, other taxes, and certain incidental fees, and provide a form to be used in determining and reporting the amount owed. Adoption of this section includes 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 Division. Persons desiring copies of the forms and instructions can obtain copies from the Tax Collection Section of the Administrative Services Division of the State Board of Insurance, Three Republic Plaza, Room 284, 333 Guadalupe, Austin.

House and Galloway, P.C., Public Accountants; Karl Singer and Associates; Transport Life Insurance Company; and a C.P.A. commented against the forms adopted by

reference in the proposed section.

One commenter argued that the agency cannot collect maintenance tax from third party administrators for years 1987-1989 because the prior law (Insurance Code, Article 21.07-5) was repealed without a saving clause specific to this tax. The board's response is that the legislation which simultaneously enacted the new third party administrator law (Insurance Code, Article 21.07-6) and repealed the old law was meant to create a continuous scheme of regulation for entities which had applied for a license under the old law, except as regards those taxes and fees which were specifically not required to be paid. One commenter suggested that, in the proposed third party administrator maintenance tax form, the definition of administrative or service fees does not correspond to the language of the Insurance Code, Article 21.07-6. This commenter also argued that insurers and health maintenance organizations are not required to pay maintenance tax because they are not covered by certificates of authority under the Insurance Code, Article 21.07-6. The agency disagrees with both of these comments. Any additional language on the form in the definition of administrative or service fees was meant to clarify the definition as contained in the statute. With regard to insurers and health maintenance organizations, Article 21.07-6, §24, provides that the maintenance tax applies to those entities. Additionally, the language in Article

21.07-6, §21, which assesses maintenance tax against all administrators that are covered by a certificate of authority, refers to any certificate of authority issued pursuant to the Insurance Code or the Texas Health Maintenance Organization Act, not merely a certificate of authority issued under Article 21.07-6. Several commenters complained about Form FT-1, the 1989 Annual Tax Report of Insured Applicable to Independently Procured Insurance. They complained of the affidavit which required that the respondent's signature be notarized. The board agrees with these comments and has revised the form to delete the affidavit and substitute a declaration and signature line.

The new section is adopted under the Insurance Code, Articles 1.04, 1.10, §9, 1.14-1, 1.14-2, 1.35B, 4.07, 4.10, 4.11, 4.11A, 4.11B, 4.11C, 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 9.59, 21.07-5, 21.07-6, 21.54, and 23.08; the Texas Health Maintenance Organization Act, §22 and §33; and Texas Civil Statutes, Article 6252-13a, §4, and Article 8306, §28. The Insurance Code, Article 1.04, places original jurisdiction for the adoption of rules in the State Board of Insurance. Article 1.10, §9, requires the board to furnish, to companies required to report to the board, statement blanks for the statements required. Article 4.07 specifies the charges for certain fees. The Insurance Code, Articles 4.10, 4.11, 9.59, and 21.54; Texas Civil Statutes, Article 8306, §28; and the Texas Health Maintenance Organization

Act, §33, require the payment of taxes on gross premiums by entities regulated by the board or on gross amounts of similar revenue by health maintenance organizations. The Insurance Code, Article 4.11A, requires the payment of taxes on the gross amount of administrative or service fees received by an insurance carrier. The Insurance Code Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-5, 21.07-6, and 23.08, requires the payment of maintenance taxes by certain entities regulated by the board. The Insurance Code, Articles 4.10, 4.11, and 4.11A, gives the board rulemaking authority. The Texas Health Maintenance Organization Act, §22, gives the board rulemaking authority. Texas Civil Statutes, Article 6252-13a, §4, require and authorize the board to adopt rules of practice setting forth the nature and requirements of all procedures available.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on April 23, 1990.

TRD-9004127 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: May 14, 1990

Proposal publication date: January 23, 1990

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

State Board of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance in open meeting adopted to Rule X(h) of the Rules and Regulations Governing Pool and Servicing Companies of Assigned Risks as related to amortization of assessments in the same format as was adopted on an emergency basis by Board Order Number 55478 effective January 1, 1990.

The amended rule allows amortization of the assessments for calendar years 1989, 1990, and 1991. The amended rule adopted on a permanent basis is effective 12:01 a.m. June 1, 1990.

The board adopted the amended rule under the authority and jurisdiction of the Insurance Code, Articles 5.55-5.68-1, 5.76, 5.77, 5.78,

and 5.96.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on April 24, 1990.

TRD-9004195 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: June 1, 1990

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

The State Board of Insurance in open meeting permanently adopted the amendment to Article VI of the By-Laws of the Texas Workers' Compensation Assigned Risk Pool as related to audits of the assigned risk pool in the same format as was adopted on an emergency basis by Board Order Number 55476 effective January 1, 1990.

The amended rule calls for an annual audit of all of the assigned risk pool's accounts by a certified public accounting firm as approved by the State Board of Insurance. The amended rule also calls for a management audit of all assigned risk pool operations to be conducted periodically as specified by the

State Board of Insurance by an independent auditing firm. The scope of these audits shall be approved by the State Board of Insurance. The amended rule adopted on a permanent basis is effective 12:01 a.m. June 1, 1990.

The board adopted the amended rule under the authority and jurisdiction of the Insurance Code, Articles 5.55-5.68-1, 5.76, and 5.96.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on April 24, 1990.

TRD-9004196 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: June 1, 1990

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

The State Board of Insurance in open meeting permanently adopted an amendment to Rule X(a) of the Rules and Regulation Governing Pool and Servicing Companies of Assigned Risk Pool as related to servicing company allowance in the same format as was adopted on an emergency basis by

Board Order Number 55475 effective April 1, 1990.

The amended rule calls for a 10% reduction in the servicing company allowance. The amended rule also requires that at least two points of the servicing company share of premium be used to provide accident prevention services. The amended rule adopted on a permanent basis is effective 12:01 a.m. June 1, 1990.

The board adopted the amended rule under the authority and jurisdiction of the Insurance Code, Articles 5.55-5.68-1, 5.76, and 5.96.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on April 24, 1990.

TRD-9004197 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: June 1, 1990

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

The State Board of Insurance in open meeting permanently adopted a mandatory tabular surcharge plan, an amendment to Rule V of the Rules and Regulations Governing Pool and Servicing Companies of Assigned Risks, and an assigned risk pool mandatory rate level differential factor in the same format as was adopted on an emergency basis by Board Order Number 55607 effective January 1, 1990, and amended by Board Order Number 55716 effective January 1, 1990.

The mandatory tabular surcharge plan with a maximum surcharge of 1.00 is to be applied to all risks written through the Texas Workers' Compensation assigned risk pool having an experience modification in excess of 1.00 and not subject to the Assigned Risk Rating Program. The amendment to Rule V of the Rules and Regulations Governing Pool and Servicing Companies of Assigned Risks provides for the mandatory tabular surcharge plan and assigned risk pool mandatory rate level differential factor of 15% is to be applied to the manual premium prior to the application of the experience modification, the mandatory tabular surcharge plan, and the Assigned Risk Rating Program. The mandatory rate level differential factor shall not apply to policies that meet the eligibility requirements for policies to be issued through the small premium policy plan. The manda-

tory rate level differential factor is shown in the miscellaneous values of the rate pages. The mandatory tabular surcharge plan, amendment to Rule V of the Rules and Regulations Governing Pool and Servicing Companies of Assigned Risks and assigned risk pool mandatory rate level differential factor adopted on a permanent basis are effective 12:01 a.m., June 1, 1990.

The board adopted the preceding under the authority and jurisdiction of the Insurance Code, Articles 5.55-5.68-1, 5.76, 5.77, 5.78, and 5.96.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on April 24, 1990.

TRD-9004194 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: June 1, 1990

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

The State Board of Insurance in open meeting permanently adopted the amendment to Rule III of the Rules and Regulations Governing Pool and Servicing Companies of Assigned Risks as related to verification of rejections of coverage, definition of rejected risk when applying for coverage in the Texas Workers' Compensation assigned risk pool, and verification of payrolls of employers-policyholders in the same format as was adopted on an emergency basis by Board Order Number 55471 effective January 1, 1990, and amended by Board Order Number 55610 effective January 1, 1990.

The amended rule restores Rule III of the Rules and Regulations Governing Pool and Servicing Companies of Assigned Risks relating to verification of coverage to the language in effect prior to the changes adopted under Board Order Number 55471. The amended rule revises the definition of a rejected risk when applying for coverage to the Texas Workers' Compensation assigned risk pool to indicate that a risk that receives a reasonable retrospective rating offer for coverage in the voluntary market will not be considered a rejected risk. The amended rule also requires that verification of an employer's payroll must be included with the application when applying for coverage in the Texas Workers' Compensation assigned risk pool. The amended rule adopted on a

permanent basis is effective 12:01 a.m. June 1, 1990.

The board adopted the amended rule under the authority and jurisdiction of the Insurance Code, Articles 5.55-5.68-1, 5.76, and 5.96.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on April 24, 1990.

TRD-9004198 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: June 1, 1990

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

The State Board of Insurance in open meeting permanently adopted an amendment to Part Six-Conditions of the Texas Ammendatory Endorsement in the same format as was adopted on an emergency basis by Board Order Number 55608 effective January 1, 1990.

The amended Texas amendatory endorsement allows an insurance company to cancel a workers' compensation policy if the insured fails to comply with safety recommendations made by the insurance company as a result of an inspection. The amended endorsement adopted on a permanent basis is effective 12:01 a.m. June 1, 1990.

The board adopted the amended endorsement under the authority of the Insurance Code, Articles 5.55-5.68-1, 5.76, 5.77, 5.78, and 5.96.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on April 24, 1990.

TRD-9004193 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: June 1, 1990

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



Name: Darlene Wade

Grade: 12

School: Waskom High, Waskom

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

Friday, May 11, 1990, 10 a.m. The Texas Department of Agriculture will meet at the district office, Expressway 83, two blocks West of Morningside Road, San Juan. According to the complete agenda, the department will review alleged violation of Texas Agriculture Code, §103.001 et seq. by Teddy Bertuca and Jack Radde doing business as Teddy Bertuca Company, Inc. as petitioned by Honey-Do Farms.

Contact: Bruce Fant, P.O. Box 12847, Austin, Texas, (512) 463-7589.

Filed: April 24, 1990, 3:40 p.m.

TRD-9004218

Battleship Texas Advisory Board

Thursday, May 10, 1990, 3 p.m. The Battleship Texas Advisory Board will meet at 600 Travis, Offices of Liddell, Sapp, Zivley, Hill and LaBoon, 32nd Floor Conference Room, Houston. According to the agenda summary, the board will discuss various items with respect to the Battleship Texas restoration project and planning the return ceremonies.

Contact: Robert D. Miller, 3200 Texas Commerce Tower, Houston, Texas 77002, (713) 226-1186.

Filed: April 25, 1990, 9:25 a.m.

TRD-9004223

Texas Bond Review Board

Thursday, April 26, 1990, 10 a.m. The Texas Bond Review Called Board meeting was held at the Sergeant's Committee Room, State Capitol, Austin. According to the revised emergency agenda summary, the board discussed the University of Houston System, consolidated revenue refunding bonds, Series 1990A. The emergency status was necessary because of issue decision deferred during the April 19, 1990 board

meeting and was added to the agenda for April 26, 1990 called board meeting.

Contact: Tom K. Pollard, 201 E. 14th, Room 506, Sam Houston Building, Austin, Texas, 78711, (512) 463-1741.

Filed: April 24, 1990, 3:47 p.m.

TRD-9004192

Texas Commission for the Deaf

Friday, May 4, 1990, 7 p.m. The Board for Evaluation of Interpreters (BEI) of the Texas Commission for the Deaf will meet at Valley Baptist Medical Center, South Tower Classroom, Harlingen. According to the complete agenda, the board will receive public comments and hold a work session on rules proposal, BEI handbook, TCD/BEI budget and legislative appropriations request (LAR).

Contact: Larry D. Evans, 510 South Congress, Suite 300, Austin, Texas 78704, (512) 469-9891.

Filed: April 25, 1990, 2:05 p.m.

TRD-9004243

Saturday, May 5, 1990, 9 a.m. The Board for Evaluation of Interpreters (BEI) of the Texas Commission for the Deaf will meet at Valley Baptist Medical Center, South Tower Classroom, Harlingen. According to the complete agenda, the board will approve previous meeting minutes and discuss new rules proposal, BEI handbook revisions, and the financial report and the BEI calendar and evaluator scheduling. An executive session will review certificate recommendations, evaluations and revocations and personnel matters. Final open session will be a presentation of board recommendations from executive session, staff report, and chairperson's report.

Contact: Larry D. Evans, 510 South Congress, Suite 300, Austin, Texas 78704, (512) 469-9891.

Filed: April 25, 1990, 2:06 p.m.

TRD-9004242

Texas State Board of Dental Examiners

Thursday-Saturday, May 3-5, 1990, 8:30 a.m. The Texas State Board of Dental Examiners will meet at the San Antonio Convention Center, 200 East Market, San Antonio. According to the agenda summary, the board will hear committee reports; discussion of amendment to rules concerning dental laboratories; approval of executive director's financial statement; request for 10 year study of morbidity and mortality in dental office; appearances before board—Dr. Pat Yeary and Dr. Glen Lincoln; discussion of examination criteria; discussion of need to adopt rules to implement compliance with National practitioner data bank; request for approval of mobile dental operator discussion of need to adopt amendments to rules concerning mobile laboratories; discussion of requests for permission to take board exams, for amendments to board orders; and for retaking certain portions of board exams; approval of terms on Hygiene Advisory Committee; report on CRTS Examiners workshop; consideration of proposed amendments to rules 109.211, 107.64, 107.65, 107.66, 107.67, 107.68, 109.175, 115.2; report to board on pending litigation; discussion of specialty licensing; approval of settlement conference orders; consideration of emergency rules concerning examination of applicants; and appearance by Dr. John Susman as a condition of probation.

Contact: Crockett Camp, 8317 Cross Park, Suite 400, Austin, Texas 78754, (512) 834-6021.

Filed: April 25, 1990, 2:36 p.m.

TRD-9004246

East Texas State University

Thursday, May 3, 1990, 1 p.m. The Academic Affairs Committee Board of Regents of the East Texas State University will meet at the University, McDowell Administration Building, Commerce. According to the complete agenda, the

board will voluntary modification of employment policy, commerce faculty promotions, and Texarkana faculty promotions.

Contact: Charles Turner, East Texas State University, Commerce, Texas 75428, (214) 886-5030.

Filed: April 25, 1990, 3:42 p.m.

TRD-9004252

Thursday, May 3, 1990, 1:30 p.m. The Campus Planning, Finance and Auditing Committee Board of Regents of the East Texas State University will meet at the University, McDowell Administration Building, Commerce. According to the complete agenda, the board adjustments in the University-Commerce fiscal year 1990 operating budget; adjustments in the University-Texarkana fiscal year 1990 operating budget; adoption of the fiscal year 1991 operating budget for University-Commerce; adoption of the fiscal year 1991 for University-Texarkana; adoption of the fiscal year 1991 housing rates; approval of renovation projects; selection of an architect; selection of roofing consultant; authorize VP for business and administration to approve retirement fund options proposed by teachers insurance and annuity association; and investment policy.

Contact: Charles Turner, East Texas State University, Commerce, Texas 75428, (214) 886-5030.

Filed: April 25, 1990, 3:42 p.m.

TRD-9004251

Thursday, May 3, 1990, 2:30 p.m. The Executive Committee Board of Regents of the East Texas State University will meet at the University, McDowell Administration Building, Commerce. According to the complete agenda, the board will report on the status of the affirmative action program; contract for vending machine service for University-Texarkana; and executive session to consult with University attorney and discuss personnel matters.

Contact: Charles Turner, East Texas State University, Commerce, Texas 75428, (214) 886-5030.

Filed: April 25, 1990, 3:42 p.m.

TRD-9004250

Friday, May 4, 1990, 9 a.m. The Board of Regents of the East Texas State University will meet at the University, McDowell Administration Building, Commerce. According to the agenda summary, the board will approve its agenda and minutes of the March 2, 1990 meeting; receive a report from the president; receive reports and consider motions from the Academic Affairs Committee; Campus Planning; Finance and Auditing Committee and Executive Committee. The board will also meet in executive session to consult with the university attorney concerning pending litigation and to discuss personnel matters.

Contact: Charles Turner, East Texas State

University, Commerce, Texas 75428, (214) 886-5030.

Filed: April 25, 1990, 3:42 p.m.

TRD-9004249

Texas Education Agency

Friday, April 27, 1990, 8:30 a.m. The Advisory Committee for the Development of Performance Indicators of the Texas Education Agency held an emergency meeting at Room 1-104, 1701 North Congress Avenue, William B. Travis Building, Austin. According to the agenda summary, the committee will overview the day's activities; discussion related to the May 11th State Board of Education meeting; subcommittee report; review of the SBOE approved action plan; discussion related to accreditation criteria; discussion related to performance indicators; and discussion of the status report to the SBOE. The emergency status was because the agency found it of urgent public necessity for this meeting to be held to discuss the joint efforts between the Governor's Excellence Committee and the State Board of Education Advisory Committee on Performance Indicators and the implications that have developed from this cooperative effort prior to the State Board of Education's May 11, 1990 meeting.

Contact: Dr. Ruben D. Olivarez, 1701 North Congress Avenue, Austin, Texas 78711, (512) 463-9642

Filed: April 24, 1990, 3:22 p.m.

TRD-9004215

Friday, April 27, 1990, 9:30 a.m. The Advisory Subcommittee for the Development of Accreditation Criteria of the Texas Education Agency held an emergency meeting at Room 1-104, 1701 North Congress Avenue, William B. Travis Building, Austin. According to the agenda summary, the committee will review proposed accreditation document; approval of accreditation document; and preparation of report to full committee. The emergency status was because the agency found it of urgent public necessity for this meeting to be held to discuss the joint efforts between the Governor's Excellence Committee and the State Board of Education Advisory Committee on Performance Indicators and the implications that have developed from this cooperative effort prior to the State Board of Education's May 11, 1990 meeting.

Contact: Dr. Ruben D. Olivarez, 1701 North Congress Avenue, Austin, Texas 78711, (512) 463-9642

Filed: April 24, 1990, 3:22 p.m.

TRD-9004217

Friday, April 27, 1990, 9:30 a.m. The Advisory Subcommittee for the Development of Performance Indicator Sys-

tem of the Texas Education Agency held an emergency meeting at Room 1-104, 1701 North Congress Avenue, William B. Travis Building, Austin. According to the agenda summary, the committee will review revised list of performance indicators; discussion of grouping strategies; approval of the components of a performance indicator system; and preparation of report to full committee. The emergency status was necessary because the agency found it of urgent public necessity for this meeting to be held to discuss the joint efforts between the Governor's Excellence Committee and the State Board of Education Advisory Committee on Performance Indicators and the implications that have developed from this cooperative effort prior to the State Board of Education's May 11, 1990 meeting.

Contact: Dr. Ruben D. Olivarez, 1701 North Congress Avenue, Austin, Texas 78711, (512) 463-9642

Filed: April 24, 1990, 3:22 p.m.

TRD-9004216

Texas Department of Health

Thursday, May 3, 1990, 1 p.m. The Home Health Services Advisory Council of the Texas Department of Health will meet at 1100 West 49th Street, Room T-604, Austin. According to the agenda summary, the council will approve minutes of previous meeting; consider and possibly act on draft of licensing rules on curriculum, testing and registry for aides working in Class A and B home health agencies and nursing homes; home health medication aide curriculum; legal opinion on home health medication aides administering medications to maternal and pediatric patients; and hear announcements and other remarks not requiring council action.

Contact: Nance Kerrigan, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245.

Filed: April 25, 1990, 4:14 p.m.

TRD-9004254

Friday, May 4, 1990, 10 a.m. The AIDS Services Advisory Committee of the Texas Department of Health will meet at 1100 West 49th Street, Room G-107, Austin. According to the agenda summary, the committee will approve minutes of previous meeting; consider contract renewal; new request for proposal application process; evaluation procedures; election of permanent chair and vice chair; and next meeting date.

Contact: Thomas Sanders, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7209.

Filed: April 25, 1990, 4:13 p.m.

TRD-9004255

State Board of Insurance

Wednesday, April 25, 1990, 11:15 a.m. The State Board of Insurance held an emergency meeting in Room 414, 1110 San Jacinto, Austin. According to the complete agenda, the board will appoint members to the advisory committee to draft rules pursuant to Senate Bill 911. The emergency status was because of the need to meet an imminent peril to the public health and welfare by providing standards for adequate coverage of chemical dependency in accordance with Senate Bill 911.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701, (512) 463-6328.

Filed: April 25, 1990, 8:53 a.m.

TRD-9004221

Thursday, April 26, 1990, 11:30 a.m. The State Board of Insurance held an emergency meeting in Room 414, 1110 San Jacinto, Austin. According to the complete agenda, the board will considered the adoption on an emergency basis of an amendment as 28 TAC §29.208, concerning computation of Class B assessments for the Texas Life, Accident, Health and Hospital Service Guaranty Association. The emergency status was necessary to meet an imminent peril to the public health and safety by facilitating the ability to make funds available to pay claims against insolvent and impaired insurers.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701, (512) 463-6328.

Filed: April 26, 1990, 9:17 a.m.

TRD-9004261

Monday, May 7, 1990, 9 a.m. The State Board of Insurance will hold a emergency meeting in Room 460, 1110 San Jacinto, Austin. According to the complete agenda, the board will hold a public hearing on Workers Compensation insurance manual rules concerning the Workers' Compensation assigned risk pool by-laws and rules and regulations governing pool and servicing companies of assigned risks.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701, (512) 463-6328.

Filed: April 25, 1990, 2:55 p.m.

TRD-9004248

Wednesday, May 9, 1990, 9 a.m. The State Board of Insurance will hold a emergency meeting in Room 460, 1110 San Jacinto, Austin. According to the complete agenda, the board will hold a public hearing to consider Texas commercial multi-peril experience for the purpose of possible adjustments to the Texas commercial multi-peril package modification factors and Texas commercial package policy rates.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701, (512) 463-6328.

Filed: April 25, 1990, 2:54 p.m.

TRD-9004247

Lamar University System

Monday, April 30, 1990, 9 a.m. The Board of Regents of the Lamar University System met at the John Gray Institute, Map Room, 855 Florida, Beaumont. According to the agenda summary, the academic affairs committee; building and grounds committee; personnel committee; finance and audit committee; athletic committee; executive session held under provisions of Texas Civil Statutes, Article 6252-17, §2, paragraph 3; legal; personnel and Board of Regents meeting.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: April 25, 1990, 1:56 p.m.

TRD-9004245

Texas State Library and Archives Commission

Thursday, May 10, 1990 10:30 a.m. The Local Government Records Committee of the Texas State Library and Archives Commission will meet at the Lorenzo de Zavala State Archives and Library Building, 1201 Brazos, Room 314, Austin. According to the complete agenda, the commission will approve microfilm standards for local governments.

Contact: Marilyn vonKohl, P.O. Box 12927, Austin, Texas 78711, (512) 463-5478.

Filed: April 25, 1990, 9:08 a.m.

TRD-9004231

Texas Department of Licensing and Regulation

Monday, May 7, 1990, 1:30 p.m. The Talent Agencies Business and Occupational Programs of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, 10th Floor, Conference Room, Austin. According to the complete agenda, proceedings that consider the assessment of an administrative penalty for violation of Texas Civil Statutes, Article 5221a-9, §2(a) and Article 9100 for worldwide talent television.

Contact: Imelda Martinez Escobar, 920 Colorado, Austin, Texas, (512) 463-7332.

Filed: April 25, 1990, 4:55 p.m.

TRD-9004258

Wednesday, May 9, 1990, 8:30 a.m. The

Talent Agencies Business and Occupational Programs of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, 8th Floor, Conference Room, Austin. According to the complete agenda, the proceedings that consider the assessment of an administrative penalty for violation of Texas Civil Statutes, Article 5521a-9, §2(a) and Article 9100.

Contact: Imelda Martinez Escobar, 920 Colorado, Austin, Texas, (512) 463-7332.

Filed: April 25, 1990, 4:55 p.m.

TRD-9004257

Texas Department of Mental Health and Mental Retardation

Tuesday, May 8, 1990, 8:30 a.m. The Interagency Council on ICF/MR Facilities of the Texas Department of Mental Health and Mental Retardation will meet at the Texas Department of Mental Health and Mental Retardation Auditorium, Austin. According to the complete agenda, the council in accordance with Senate Bill 1426, §3, will convene to reassess bed allocations for the amendments approved by the council to the fiscal year 1990 annual plan for new bed development in the ICF/MR program prior to the council requesting adoption of the amendments into rule by the department. If interpreters for the deaf are required, notify TDMHMR (512) 323-3261, Carole Smith, 72 hours prior to the meeting

Contact: Carole Smith, P.O. Box 12668, Austin, Texas 78711, (512) 323-3261.

Filed: April 24, 1990, 12:58 p.m.

TRD-9004182

Texas Council on Offenders with Mental Impairments

Friday, May 4, 1990, 8:30 a.m. The Executive Committee of the Texas Council on Offenders with Mental Impairments will meet at the Texas Juvenile Probation Commission, 2015 South IH-35, Austin. According to the agenda summary, the committee review the legislative report; hear an executive director's report; discuss a substance abuse symposium proposal; hear committee reports and discuss old and new business.

Contact: Kim Pederson, 720 Brazos, Suite 1112, Austin, Texas 78711, (512) 463-9988.

Filed: April 24, 1990, 1:52 p.m.

TRD-9004188

Friday, May 4, 1990, 10 a.m. The Texas Council on Offenders with Mental Impairments will meet at the Texas Juvenile Pro-

bation Commission, 2015 South IH-35, Austin. According to the agenda summary, the council will approve the minutes; review the legislative report; hear committee reports; discuss old and new business and hear an executive director's report.

Contact: Kim Pederson, 720 Brazos, Suite 1112, Austin, Texas 78711, (512) 463-9988.

Filed: April 24, 1990, 1:52 p.m.

TRD-9004189

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Board of Nurse Examiners

Monday, May 14, 1990, 3 p.m. The Operations Committee of the Board of Nurse Examiners will meet at 9101 Burnet Road, Suite 104, Austin. According to the agenda summary, the committee will receive the minutes of the March 20, 1990 meeting, financial statements for March and April 1990; consider the 1992-1993 legislative appropriations and board member/executive secretary evaluation process.

Contact: Louise Waddill, R.N., Ph.D., P.O. Box 140466, Austin, Texas 78714, (512) 835-8650.

Filed: April 25, 1990, 9:09 a.m.

TRD-9004229

Tuesday, May 15, 1990, 8 a.m. The Operations Committee of the Board of Nurse Examiners will meet at the Ramada Airport Hotel, 5660 N. IH-35, Conference Center, Austin. According to the complete summary, the committee will meet with the Steering Committee of TPAPIN (Texas Peer Assistance Program for Impaired Nurses).

Contact: Louise Waddill, R.N., Ph.D., P.O. Box 140466, Austin, Texas 78714, (512) 835-4880.

Filed: April 25, 1990, 9:09 a.m.

TRD-9004228

Tuesday, May 15, 1990, 9 a.m. or upon adjournment of Operations Committee. The Practice Committee of the Board of Nurse Examiners will meet at the Ramada Airport Hotel, 5660 N. IH-35, Conference Center, Austin. According to the agenda summary, the committee will receive the minutes of the March 20, 1990 meeting; reports from the Continuing Education Advisory Committee; Prescriptive Drug Order Advisory Committee and ANP Advisory Committee. The practice committee will also consider the pass rate of graduates of foreign nursing schools on the NCLEX-RN; receive information on the speaking tour of Texas; and reconsider the publication of guidelines for administration of epidural analgesia.

Contact: Louise Waddill, R.N., Ph.D., P.O. Box 140466, Austin, Texas 78714, (512) 835-4880.

Filed: April 25, 1990, 9:09 a.m.

TRD-9004227

Tuesday, May 15, 1990, 10 a.m. or upon adjournment of Practice Committee. The Education Committee of the Board of Nurse Examiners will meet at the Ramada Airport Hotel, 5660 N. IH-35, Conference Center, Austin. According to the agenda summary, the committee will consider the minutes of the March 20, 1990 meeting; receive survey visit reports and annual report summaries; consider a request from Texas Woman's University Pediatric Nurse Practitioner Program to establish a new program; hold a public hearing on May 15, 1990 at 10:45 a.m. to receive testimony regarding Howard County Junior College's request for an extended campus at Synder; and consider three applications for initial accreditation of nursing programs.

Contact: Louise Waddill, R.N., Ph.D., P.O. Box 140466, Austin, Texas 78714, (512) 835-4880.

Filed: April 25, 1990, 9:09 a.m.

TRD-9004226

Tuesday-Thursday, May 15-17, 1990, 11 a.m. or upon adjournment of Education Committee on Tuesday and 8 a.m. on Wednesday and Thursday. The Education Committee of the Board of Nurse Examiners will meet at the Ramada Airport Hotel, 5660 N. IH-35, Conference Center, Austin. According to the agenda summary, the committee will consider the minutes of the March 20-22, 1990 meeting; receive input from interested parties during the public forum on May 15, 1990 at 1:30 p.m.; consider possible action on disciplinary hearings and other actions as recommended by the executive secretary in relation to hearings and consider five reinstatement requests. The board will receive reports from various committees; consider adoption of rules regarding prescriptive drug authority for registered nurses approved by the board following a public hearing on May 15, 1990 at 3 p.m.; consider a request from a handicapped candidate; meeting dates for 1991; proposed revision of peer assistance program rules and receive reports from the Area III meeting and TNA convention.

Contact: Louise Waddill, R.N., Ph.D., P.O. Box 140466, Austin, Texas 78714, (512) 835-4880.

Filed: April 25, 1990, 9:09 a.m.

TRD-9004225

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Texas Optometry Board

Thursday, May 3, 1990, 8:30 a.m. The Texas Optometry Board will meet at the Guest Quarters Hotel, 303 W. 15th Street, Austin. According to the agenda summary, the board will have a special meeting to consider reports of secretary/treasurer; legal

counsel; executive director; committee chairpersons; unfinished and new business to consider forthcoming International Association of Boards of Optometry Annual Meeting to be held in June; report on past IAB meeting held in Dallas in March, adoption of proposed rule (amendment/ 275.2 regarding continuing education grand rounds, correspondence regarding military optometrists qualifying for licensure by endorsement, license renewal forms; executive session to be held in compliance with §2(e), Article 6252-17, VACS, to discuss contemplated/pending litigation, contractual matters, matters referred or to be referred to attorney general. On May 2, beginning at 2:30 p.m., informal conferences will be held by the Investigation-Enforcement Committee and all committees will meet at 8 p.m. same location.

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938.

Filed: April 24, 1990, 2:44 p.m.

TRD-9004190

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Public Utility Commission of Texas

Thursday, August 30, 1990, 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, a hearing on the merits on Docket Number 9453, application of Brazos Electric Power Cooperative, Inc. original petition for waiver of qualifying facility purchase and sale requirements.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 24, 1990, 3 p.m.

TRD-9004213

Wednesday, May 2, 1990, 9 a.m. The Administrative Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the committee will discuss budget and fiscal matters; special legislative appropriations request; consideration of Rider 9 related purchases; consideration relating to renovation of PUC offices and Rider 5 expenses; responsibilities delegated to the executive director; utility information system (UIS) scoping study and resumption of implementation of local area network expenditures and contract for development of an RFP proposal of UIS detail design; Department of the Interior rulemaking regarding federal coal royalty assessment; REA proposed rulemaking on electric cooperative regulation; issues relating to hiring; an expert witness to audit gas contracts in Docket Number 9300 including retention of an expert witness; discussion of regional

public comment meetings in Docket Number 9300; adjournment of executive session to consider litigation and personnel matters; reconvene for discussions and decisions on matters considered in executive session and final adjournment.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 24, 1990, 2:59 p.m.

TRD-9004214

Wednesday, May 2, 1990, 9:15 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 agenda summary, the commission will hold an open meeting to consider the following dockets 9079, 9300, 9128, 9135, 9369, 4405, 9177, 6992, 9061, 9073, 9921, 9025, 9036, 9101, 9015, 9132, and 9133. The commissioners will also consider AT&T Communications of the Southwest Inc.'s petition for rulemaking regarding PUC Substantive Rule §23.25 (P9436) and permanent adoption of §23.55 (P8111) operator services.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 24, 1990, 3 p.m.

TRD-9004212

Railroad Commission of Texas

Wednesday, May 2, 1990, 1:30 p.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider docket number 20-93,165, rulemaking consideration of amendments to oil and gas statewide rules 27, 28, 30, 31 and 34 resulting from the report of the 1988 gas rules Blue Ribbon Advisory Committee.

Contact: Peggy Gray, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6766.

Filed: April 24, 1990, 11:05 a.m.

TRD-9004186

Thursday, May 3, 1990, 1:30 p.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider docket number 20-93,165, rulemaking consideration of amendments to oil and gas statewide rules 27, 28, 30, 31, and 34 resulting from the report of the 1988 gas rules Blue Ribbon Advisory Committee.

Contact: Peggy Gray, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6766.

Filed: April 24, 1990, 11:05 a.m.

TRD-9004185

Friday, May 4, 1990, 1:30 p.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider docket number 20-93,165, rulemaking consideration of amendments to oil and gas statewide rules 27, 28, 30, 31 and 34 resulting from the report of the 1988 gas rules Blue Ribbon Advisory Committee.

Contact: Peggy Gray, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6766.

Filed: April 24, 1990, 11:05 a.m.

TRD-9004184

Texas Rehabilitation Commission

Thursday-Friday, May 3-4, 1990, 9:30 a.m. and 8:30 a.m. respectively. The Texas Planning Council for Developmental Disabilities Advocacy and Public Information Committee of the Texas Rehabilitation Commission will meet at TRC-4900 North Lamar Boulevard, Room 4240, Austin. According to the complete agenda, the commission will approve the summary report of February 15-16, 1990; discussion of council case management policy; federal policy legislation; state policy legislation; executive director's report and continue with discussion of previous day meeting agenda items as necessary.

Contact: Roger A. Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: April 25, 1990, 9:08 a.m.

TRD-9004232

Teacher Retirement System of Texas

Tuesday, May 8, 1990, noon. The Medical Board of Teacher Retirement System of Texas will meet at 1000 Red River, Austin. According to the complete agenda, the files of members who are currently applying for disability retirement and the files of disability retirees who are due a re-examination report.

Contact: Don Cadenhead, 1000 Red River, Austin, Texas, (512) 397-6400.

Filed: April 25, 1990, 4:29 p.m.

TRD-9004256

Texas Water Commission

Wednesday, April 25, 1990, 3 p.m. The Texas Water Commission held a meeting at 1700 North Congress, Room 118, Austin. According to the emergency revised agenda summary, the commission considered various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. 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: April 25, 1990, 11:45 a.m.

TRD-9004237

Wednesday, May 2, 1990, 3 p.m. The Texas Water Commission will meet at 1700 North Congress, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. 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: April 24, 1990, 10:56 a.m.

TRD-9004183

Wednesday, May 7, 1990, 2 p.m. The Texas Water Commission will meet at 1700 North Congress, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. 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: April 25, 1990, 3:33 p.m.

TRD-9004253

Texas Workers' Compensation Commission

Tuesday, April 24, 1990, 1:30 p.m. The Texas Workers' Compensation Commission

held an emergency meeting at 200 East Riverside Drive, 1st Floor, Room 107, Bevington A. Reed Building, Austin. According to the complete agenda, the commission will held a public meeting to discuss and consider the appointment of the executive director of the Texas Workers' Compensation Commission. The emergency status was necessary because of commitment to the Senate Nominations Committee by Texas Workers' Compensation Commission appointees pending confirmation by the full Senate.

Contact: George E. Chapman, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: April 24, 1990, 11 a.m.

TRD-9004181

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Regional Meetings

Meetings Filed April 24, 1990

The Hunt County Tax Appraisal District Appraisal Review Board met at 4801 King Street, Greenville, April 27, 1990, at 3:30 p.m. Information may be obtained from Joe P. Davis or Shirley Smith, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Hunt County Tax Appraisal District Board of Directors met at 4801 King Street,

Greenville, April 30, 1990, at 11:30 a.m. Information may be obtained from Joe P. Davis or Shirley Smith, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Lubbock Regional Mental Health Mental Retardation Center Board of Trustees met at 3801 Avenue J, Board Room, Lubbock, April 30, 1990, at noon. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806)766-0202.

The Pecan Valley Mental Health Mental Retardation Region Board of Trustees will meet at 104 Charles Street, Granbury, May 2, 1990, at 8 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806.

The Wise County Appraisal District Board of Directors will meet at 206 South State, Board Room, Decatur, May 8, 1990, at 9 a.m. Information may be obtained from Brenda Jones, P.O. Box 509, Decatur, Texas 76234, (817) 627-3081.

TRD-9004174

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Meetings Filed April 25, 1990

The Blanco County Central Appraisal District Agricultural Advisory Committee

met at the Blanco Courthouse Annex, Johnson City, April 27, 1990, at 9 a.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

The Brazos Valley Development Council Solid Waste Management Planning Steering Committee will meet at 3006 East 29th Street, Council Offices, Bryan, May 3, 1990, at 9 a.m. Information may be obtained from Glenn J. Cook, P. O. Drawer 4128, Bryan, Texas 77805, (409) 776-2277.

The Dawson County Central Appraisal District Board of Directors will meet at 920 North Dallas Avenue, Lamesa, May 2, 1990, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060.

The Education Service Center Region XI Board of Directors will meet at 3001 North Freeway, Fort Worth, May 8, 1990, at noon. Information may be obtained from R.P. Campbell, Jr., 3001 N. Freeway, Fort Worth, Texas 76106, (817) 625-5311.

The Nueces River Authority Board of Directors will meet at the Wyndham Hotel, Corpus Christi, May 2, 1990, at 11 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, (512) 278-6810.

TRD-9004219
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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Community Affairs

Public Notice

The Texas Department of Community Affairs (TDCA) announces the availability of \$15 million nationally from the United States Department of Housing and Urban Development (HUD) for operating the Supportive Housing Demonstration Program—Permanent Housing for the Handicapped Homeless Persons. The program makes assistance available for projects providing housing and supportive services in the form of permanent housing to assist handicapped homeless persons to live more independent lives. TDCA solicits indications of interest from private, non-profit organizations and public housing agencies in submitting an application to operate such a program in the State of Texas.

Project sponsors must operate projects in accordance with HUD regulations and with Title IV, Subtitle C of the Steward B. McKinney Homeless Assistance Act, Public Law 100-77 as amended by Public Law 100-628. The project sponsor(s) must match the assistance provided by HUD with an equal amount of funds from non-federal sources.

To obtain more information, interested parties should review the Final Rule published by HUD at 54 Federal Regulation 47,024 (November 8, 1989) and the Notice of Fund Availability at 55 Federal Regulation 12,312 (April 2, 1990). Additional information and an application package may be obtained from the Texas Department of Community Affairs, 8317 Cross Park Drive, Austin, Texas

78754-5124, (512) 834-6058. The deadline for return of the completed application is June 4, 1990.

The Fort Worth Regional Office of the United States Department of Housing and Urban Development (HUD) and Texas Department of Community Affairs (TDCA) will offer a training workshop on Thursday, May 3, 1990, to discuss the application process for the Permanent Housing for Handicapped Homeless Persons Program. The workshop will be held from 10 a.m. to 3 p.m. in the sixth floor training room of the Renaissance Plaza (formerly the T and P Building) located at 1600 Throckmorton, Fort Worth. To express an interest in attending the workshop or to obtain additional information, call TDCA, (512) 834-6058, or Mary Teemley, United States Department of HUD, Fort Worth, (817) 885-5871.

Issued in Austin, Texas on April 23, 1990.

TRD-9004131

Roger A. Coffield
General Counsel

Texas Department of Community Affairs

Filed: April 23, 1990

For further information, please call: (512) 834-6010

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer ⁽³⁾/Agricultural/ Commercial ⁽⁴⁾ thru \$250,000</u>	<u>Commercial⁽⁴⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	04/30/90-05/06/90	18.00%	18.00%
Monthly Rate - Art. 1.04 (c) ⁽¹⁾	03/01/90-03/31/90	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	04/01/90-06/30/90	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 ⁽³⁾	04/01/90-06/30/90	18.00%	N.A.
Lender Credit Card Quarterly Rate - Art. 15.02(d) ⁽³⁾	04/01/90-06/30/90	15.13%	N.A.
Standard Annual Rate - Art. 1.04(a)(2) ⁽²⁾	04/01/90-06/30/90	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 ⁽³⁾	04/01/90-06/30/90	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail and Lender Credit Card Balances with Annual Implementation Dates from:	04/01/90-06/30/90	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	05/01/90-05/31/90	10.00%	10.00%

⁽¹⁾For variable rate commercial transactions only. ⁽²⁾Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S. ⁽³⁾Credit for personal, family or household use. ⁽⁴⁾Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on April 23, 1990.

TRD-9004222 Al Endsley
Consumer Credit Commissioner

Filed: April 25, 1990

For further information, please call: (512) 479-1280



Texas Department of Human Services Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services publishes this notice of contract award. The proposal request appeared in the December 8, 1989, issue of the *Texas Register* (14 TexReg 6445).

Description: The services requested consist of services to chronic runaway and street youths. Nonresidential and residential services are to be made available to eligible youth and their families as appropriate. The contract was awarded to the City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901-1196.

Amount and Terms of Contract: The total amount of the award is \$127, 710 in Fiscal Year 1990 and \$200,000 in Fiscal Year 1991.

Issued in Austin, Texas on April 24, 1990.

TRD-9004179 Cathy Rossberg
Agency liaison, Policy Communication
Services
Texas Department of Human Services

Filed: April 24, 1990

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



Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (DHS) is inviting proposals for consultant services.

Description of Services: In the past, Texas used purchase of service contracts and provider agreements between DHS and child care providers to purchase subsidized child day care services for eligible, low-income families and child protective services clients. With the enactment of the

Family Support Act of 1988 and the Omnibus Hunger Act, as well as special appropriations by the state legislature for child care for foster children, the number of families eligible to receive subsidized child care and the number of funding sources available for child care are increasing. To meet the expanding program needs, the child care management service (CCMS) concept was developed. Under the CCMS concept, DHS plans to contract with local entities in approximately 24 to 30 geographic subdivisions of the state to manage client service processes and billing and reporting activities. An automated system is needed to enable CCMS to carry out these responsibilities, and this request for proposal, (RFP) is to procure the application software for the automated system. The consultant will develop and deliver the application software and technical assistance necessary for an automated system supporting the CCMS' client service processes, billing, and reporting activities, on network and non-network IBM-compatible microcomputers with transmission of data to DHS's mainframe system. The general CCMS client service process which must be supported by the automated system and the application software for it are client access to the CCMS through referral by DHS's or designated contractors' case managers, or by self-referral; documenting client eligibility and generating related review notices; determining if there are adequate funds to pay for a client's care, and identifying and setting aside funding; linking the client with an available and accessible CCMS child care vendor (resource and referral); and placing a client on a waiting list if funding or a space is not available, and selecting the highest classified client for placement when funding or a space becomes available. The CCMS billing and reporting activities which must be supported by the automated system are electronic transmission of registration data for clients who have secured care for upload into DHS's Social Service Management System (SSMS), an automated mainframe database used to support DHS' claims payment system; processing of billings received from vendors for child care and electronic transmission of claims data to DHS; production of standard reports on clients served, units of service provided and amounts of claims, and support for production of ad-hoc reports. Deliverables include project planning and management; detailed technical design documentation; system and acceptance test planning; executable program modules; system documentation; training on software application use; technical assistance on installation and implementation; post-implementation review and documentation; and an ongoing software maintenance agreement. The consultant is expected to provide their own equipment and space during development of the application software.

Term of Contract: It is anticipated that the contract will begin July 2, 1990 and end February 28, 1991. The system must be fully operational and users must be trained by January 2, 1991.

Estimated Contract Funds: DHS estimates that it will have \$150,000 for this project for state fiscal years 1990 and 1991.

Contact Person: Proposal packets will be available on or after May 4, 1990. To request a proposal packet, contact Ms. Amelia Bunch, Advance Planning Document Service, MC 452-W, Texas Department of Human Services; P.O. Box 149030; Austin, Texas 78714-9030; (512) 450-4387.

Questions: Offerors must submit all questions, if any, concerning the RFP in writing to Ms. Penny Tisdale, Director of Advance Planning Document Service, MC 452-W, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. Except for the written inquiries to Ms. Tisdale, communication about the RFP to

any DHS personnel before the proposal due date will be grounds for disqualification of the offeror.

Offerors Conference: An offerors conference will be held at 9 a.m. on Friday, May 18, 1990, Room 1W in the DHS Winters Complex, 701 West 51st Street, Austin, Texas 78769.

Closing Date: Proposals must be received by 4 p.m., May 31, 1990.

Evaluation and Selection: Selection of the contractor will be based on expertise and experience of the offeror and key personnel, proposed approach, demonstrated ability to meet project deadlines within project budget, and cost. All responsive proposals received will be subject to evaluation by a committee of personnel qualified to select the proposal which must clearly meet the requirements of the proposal.

Issued in Austin, Texas on April 25, 1990.

TRD-9004230 Cathy Rossberg
Agency liaison, Policy Communication
Services
Texas Department of Human Services

Filed: April 24, 1990

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

Request for Proposals

The Texas Department of Human Services (DHS) is requesting proposals for evaluation and treatment services in Wharton and Matagorda Counties of Region 11.

Description: Specific activities to be performed are psychological developmental testing, psychological/psychiatric evaluation, therapy, substance abuse intervention, and court testimony.

Contract Limitations: The contract period will be from September 1, 1990-August 31, 1991. The total amount of the contract(s) awarded will be contingent on the region's allocation of contract funds.

Evaluation and Selection: Procedures to be used to evaluate offerors will include accessibility of service to clients, client flow/time frames, unique and innovative aspects of program, provider contribution, staff qualifications, examples of work, and cost. Final selection will be made by the regional director for protective services to families and children and will be based on the submitted qualifications and staff recommendations. The department will award contracts based on the evaluation of the previously listed criteria.

Contact Person: For additional information, contact Finley L. Morton, Contract Coordinator, Children's Protective Services, Texas Department of Human Services MC 175-1, P.O. Box 16071, Houston, Texas 77222-6017, (713) 696-7386.

Closing Date: The closing date for receiving proposals is June 8, 1990.

Issued in Austin, Texas on April 24, 1990.

TRD-9004180 Cathy Rossberg
Agency liaison, Policy Communication
Services
Texas Department of Human Services

Filed: April 24, 1990

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

Texas State Library and Archives Commission

Consultant Contract Reports

Senate Bill 737 of the 65th Texas Legislature (Texas Civil Statutes, Article 6252-11c) requires state agencies and regional councils of governments to file with the Office of the Secretary of State invitations to bid and details on bidding on private consultant contracts expected to exceed \$10,000. Within 10 days of the award of the contract, the agency is required to file with the secretary of state a description of the study to be conducted, the name of the consultant, the amount of the contract, and the due dates of the reports. Additionally, the Act directs the contracting agencies to file copies of the resulting reports with the Texas State Library. The library is required to compile a list of the reports received and submit the list quarterly for publication in the *Texas Register*.

Following is a list of reports received for the 1st quarter of 1990. The reports may be examined in Room 300, Texas State Library, 1201 Brazos Street, Austin.

Agency: Commission for the Deaf
Consultant: Corpus Christi Area Council for the Deaf
Title: Performance and fiscal reports of services rendered.
Consultant: Deaf Action Center
Title: Performance and fiscal reports of services rendered.
Consultant: Deaf Council of Greater Houston
Title: Performance and fiscal reports of services rendered.
Consultant: El Paso Center of the Deaf, Inc.
Title: Performance and fiscal reports of services rendered.
Consultant: Panhandle Council for the Deaf
Title: Performance and fiscal reports of services rendered.
Consultant: San Antonio Council for the Advancement of Services to the Deaf
Title: Performance and fiscal reports of services rendered.
Consultant: Texoma Council for the Deaf
Title: Performance and fiscal reports of services rendered.
Consultant: Travis County Council for the Deaf
Title: Performance and fiscal reports of services rendered.

Agency: Purchasing and General Services Commission
Consultant: CPC Corporate Planners and Coordinators, Inc.
Title: Strategic real estate services for State of Texas Purchasing and General Services Commission. Five volumes.

Issued in Austin, Texas on April 19, 1990.

TRD-9004175 Raymond Hitt
 Assistant Director
 Texas State Library and Archives
 Commission

Filed: April 24, 1990

For further information, please call: (512) 463-5440

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 an application on April 12, 1990, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Tex-La Electric Cooperative, Inc. for a certificate of convenience and necessity for proposed transmission line within Shelby and San Augustine Counties, Docket Number 9497 before the Public Utility Commission of Texas.

The Application: In Docket Number 9497, Tex-La Elec-

tric Cooperative, Inc. requests approval of its application to construct approximately 17.4 miles of 138kV transmission line within Shelby and St. Augustine Counties.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on April 23, 1990.

TRD-9004208 Mary Ross McDonald
 Secretary of the Commission
 Public Utility Commission of Texas

Filed: April 24, 1990

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

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 16, 1990, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of GTE Southwest Inc. to amend certificate of convenience and necessity within Val Verde County to include a small portion of Southwest Texas Telephone Company's Vinegaroon Exchange in GE's Del Rio Exchange, Docket Number 9505 before the Public Utility Commission of Texas.

The Application: In Docket Number 9505, GTE Southwest, Inc. requests approval of its application to revise service area boundaries within Val Verde County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on April 23, 1990.

TRD-9004209 Mary Ross McDonald
 Secretary of the Commission
 Public Utility Commission of Texas

Filed: April 24, 1990

For further information, please call: 458-0100

Texas Railroad Commission Austin and Northwestern Bid Package

The Railroad Commission of Texas, Transportation/Gas Utilities Division, is soliciting bids for the rehabilitation of approximately 44.5 miles of track belonging to the City of Austin, and operated by the Austin Railroad Company, Inc., doing business as Austin and Northwestern Railroad Company. The affected track is located between McNeil and Fairland in Travis, Williamson, and Burnet Counties. Sealed bids will be received until 2 p.m. on June 6, 1990, at which time the bids will be publicly opened and read in Room #10-104 of the Texas Railroad Commission of Texas located at the address below.

Construction shall include installation of new cross ties; installation of new switch ties; installation of new rail crossings; replacement of rail; placement of ballast; surfacing and alignment of track; and installation of rail anchors.

Copies of the specifications, drawings, and other contract documents are on file in Austin at the address shown below. All interested parties are required to attend a pre-bid conference followed by an inspection of selected project sites at 9 a.m. on May 15, 1990, at Lichliter/Jameson and Associates located at 811 Barton Springs Road, Suite 400, Austin, Texas 78704, (512) 474-5500. Bid documents must be obtained from: Railroad Commission of Texas, Transportation/Gas Utilities Division, 1701 North Congress Avenue, Room 7-161, P. O. Drawer 12967, Austin, Texas 78711-2967.

Issued in Austin, Texas, on April 23, 1990.

TRD-9004235 Cril Payne
Assistant Director, General Law, Legal
Division
Railroad Commission of Texas

Filed: April 25, 1990

For further information, please call: (512) 463-7121

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**Texas Planning Council for
Developmental Disabilities and Texas
Rehabilitation Commission**

Request for Proposals

The Texas Planning Council for Developmental Disabilities invites proposals from qualified video production companies/agencies to create an eight- to 10-minute, high quality, professional video program on supported employment in Texas. Production funds will be awarded on the council's behalf by the Texas Rehabilitation Commission.

Supported employment enables individuals with severe developmental disabilities to work in regular jobs in the community independently, competitively and productively alongside their non-disabled peers. An employment specialist/job coach assists each individual in locating a paid position which is matched to the applicant's abilities and preferences, trains the individual for the position, and

provides ongoing supports as needed to help the individual maintain employment.

Project Details. The selected company/agency will be responsible for all creative and production functions necessary to produce the eight- to 10-minute video program, from developing the concept and scriptwriting to production of a master tape and dubs. Portions of the production may be subcontracted, with DD Program approval. Shooting will be on-location with possible sites in Austin, San Antonio, Dallas, and Laredo. The video must include open captioning for individuals who are deaf or hearing impaired.

The projected start-up date for production is September 1, 1990. The video is to be completed by December 15, 1990. The DD Program reserves final approval rights for all aspects of production. The DD Program retains all rights for the completed videotape and all materials created in making it.

Evaluation and Selection. Proposals will be reviewed by a committee and evaluated on the basis of the content of the proposal (narrative, methodology, budget, qualifications of the applicant, sample video, and criteria included in the RFP).

Application Process. For the application kit that contains the full request for proposals, application forms, instructions and information, please submit a written request to: David P. Henderson, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4084, Texas Rehabilitation Commission.

Application Deadline. Proposals and video samples will be accepted at the Texas Planning Council Office, 4900 North Lamar Boulevard, Office #4141, 4th Floor, Austin until 5 p.m. on June 14, 1990.

Issued in Austin, Texas on May 1, 1990.

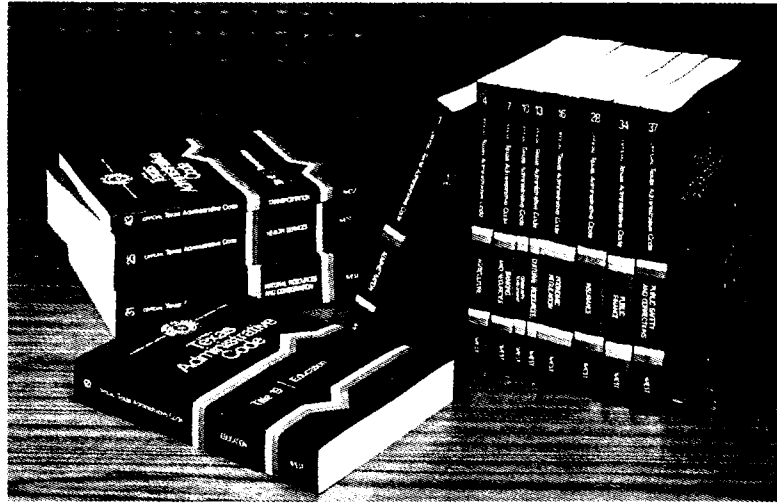
TRD-9004224 Charles W. Schiesser
Assistant Commissioner
Texas Rehabilitation Commission

Filed: April 25, 1990

For further information, please call: (512) 483-4051

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