

# Texas Register

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Proposed Sections—sections proposed for adoption

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

Open Meetings—notices of open meetings

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1 indicates the title under which the agency appears in the *Texas Administrative Code*;

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§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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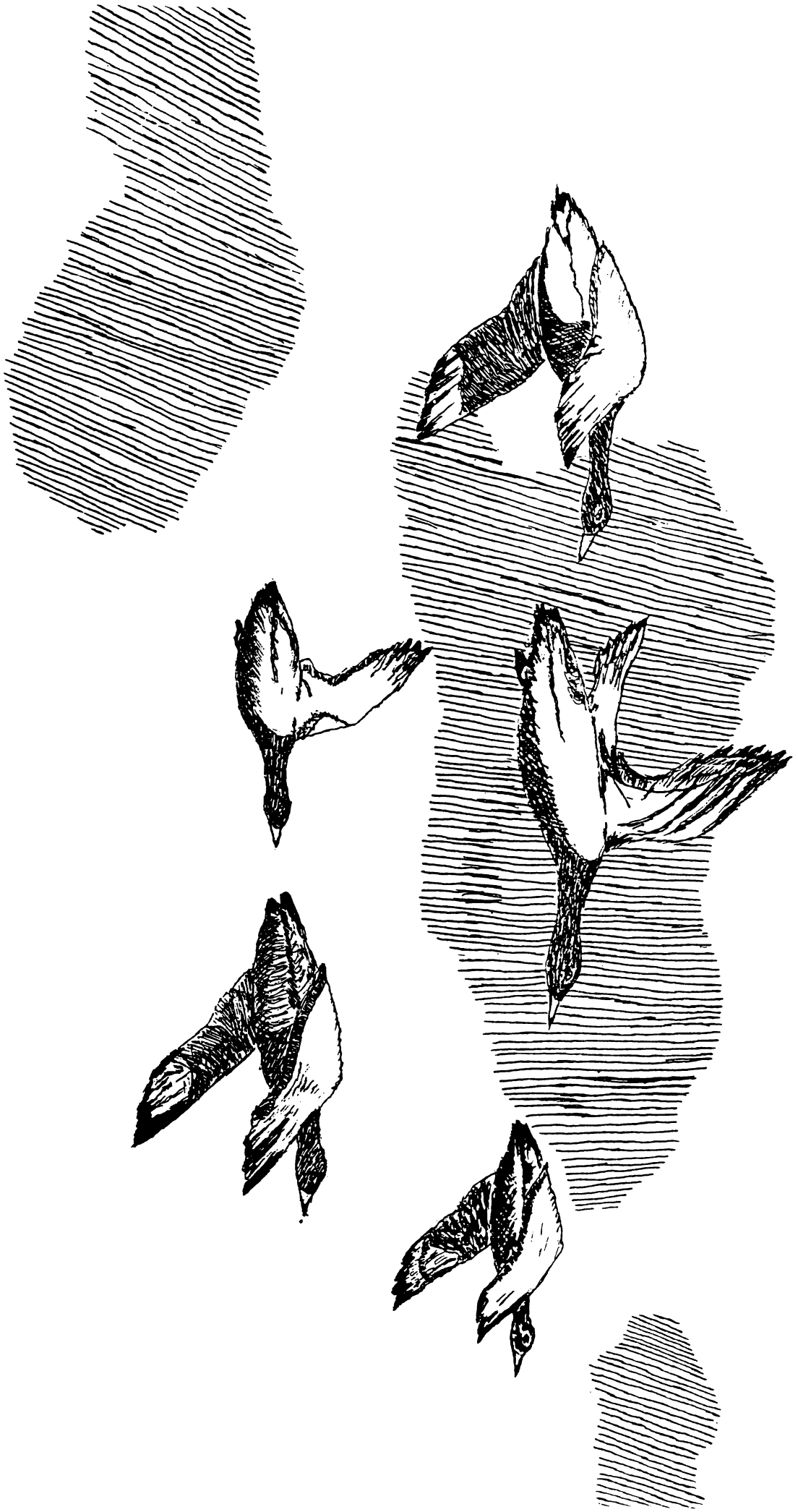
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James Huber

MIKE LUGNOD



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# Attorney General

**Description of Attorney General submissions.** Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies maybe held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

## Letter Opinions

**LO-90-10 (ID#-8955).** March 14, 1990, To: Mr. David Motley, County Attorney, County of Kerr, Kerrville. This LO considers whether a district clerk may serve as county law librarian.

**LO-90-11 (RQ-1930).** March 23, 1990, To: Ms. Susan Gay Dorsett, Chairperson, State Committee of Examiners for Speech-Language Pathology and Audiology, 1100 West 49th Street, Austin. This LO considers whether continued use of title "Certified Hearing Aid Audiologist" is legal.

**LO-90-12 (RQ-1909).** March 27, 1990, To: Mr. Ray L. Goad, Executive Director, Commission on Fire Protection Personnel Standards and Education, 510 South Congress, Suite 406, Austin. This LO considers whether certification by Commission on Fire Protection Personnel Standards and Education is necessary in certain circumstances.

**LO-90-13 (ID#-9149).** March 30, 1990, To: Honorable Ernestive V. Glossbrenner, Chairman, Texas House of Representatives, P.O. Box 2910, Austin. This LO considers interpretation of the Education Code, §21.041, regarding school attendance and class credit.

**LO-90-14 (RQ-1923).** April 6, 1990, To: Honorable John Owens, Henderson County Attorney, Henderson County Courthouse, Athens, Texas 75751. This LO considers whether a general law municipality may fund a longevity pay system for its employees.

**LO-90-15 (RQ-1890).** April 10, 1990, To: Honorable H. Tati Santiesteban, Chairman, Senate Natural Resources, 2616 Montana Avenue, El Paso, Texas 79903. This LO considers whether record services company holding medical records for state agency is subject to Open Records Act.

**LO-90-16 (RQ-1926).** April 12, 1990, To: Honorable Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, Texas 77002. This LO considers whether county may except certain building from fire code.

**LO-90-17 (RQ-1901).** April 19, 1990, To: Honorable Jim Hightower, Commissioner, Department of Agriculture, P.O. Box

12847, Austin. This LO considers whether certain bonds or policies are sufficient proof of financial responsibility for pesticide applicator license issued by Department of Agriculture.

**LO-90-18 (ID#-9243).** April 20, 1990, To: Honorable Clayton L. Hall, County Attorney, Red River County Courthouse, Clarksville, Texas 75426. This LO considers whether city council member may serve as member of water district board.

**LO-90-19 (RQ-1953).** April 26, 1990, To: Mr. Fred Toler, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 1606 Headway Circle, Suite 100, Austin. This LO considers interpretation of the Government Code, §415.032 and §415.062, regarding curriculum and achievement and proficiency certificates.

**LO-90-20 (RQ-1978).** April 26, 1990, To: Honorable H. Tati Santiesteban, Chairman, Senate Committee on Natural Resources, State Capitol, Room G-38C, Austin. This LO considers whether county has authority to create underground water conservation district.

**LO-90-21 (ID#-9470).** May 4, 1990, To: Honorable Jay J. Armes, City Council, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901-1196. This LO considers whether penalty and interest on delinquent taxes may be waived in certain circumstances.

**LO-90-22 (RQ-1882).** May 7, 1990, To: Ms. Donna Townes, Red River County Auditor, Red River County Courthouse, Clarksville, Texas 75426. This LO considers whether counties may sell culverts to private parties.

**LO-90-23 (ID#-9589).** May 11, 1990, To: Honorable Clayton L. Hall, County Attorney, Red River County Courthouse, Clarksville, Texas 75426. This LO considers effect of officeholder's assuming second office incompatible with first.

TRD-9005220.

## Open Records Decisions

**ORD-547 (RQ-1738).** Request from A. W. Pogue, Commissioner of Insurance, State

Board of Insurance, Austin, concerning whether a draft of an Early Warning System Manual prepared for the State Board of Insurance is protected from required public disclosure under Texas Civil Statutes, Article 6252-17a, §3(a)(6) or §3(a)(11).

**Summary of Decision.** Drafts of an agency procedure manual that are the subject of ongoing deliberations are protected from required public disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(11).

TRD-9005115

**ORD-548 (RQ-1776).** Request from Hilary B. Doran, Jr., Chairman, Texas Racing Commission, Austin, concerning status under the Open Records Act of information subject to the Texas Racing Act, Texas Civil Statutes, Article 179e, §2.15 and §5.04.

**Summary of Decision.** Criminal history record information obtained by the Texas Racing Commission from the Department of Public Safety pursuant to Texas Civil Statutes, Article 179e, §5.04, is confidential by law and not subject to public disclosure under the Open Records Act. Such information does not become public; nor is its confidential character altered simply because it is discussed in an administrative hearing as authorized by Texas Civil Statutes, Article 179e, §2.15.

TRD-9005116

**ORD-549 (RQ-1933).** Request from Robert Bernstein, M.D., F.A.C.P., Texas Department of Health, Austin, concerning confidentiality of information regarding a contract between the Texas Department of Health and AIDS Foundation.

**Summary of Decision.** Certain information received by the Texas Department of Health from citizen informants with respect to a foundation receiving grants under the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b-4, is excepted from required public disclosure by the informer's privilege aspect of the Open Records Act, §3(a)(1).

TRD-9005117

**ORD-550 (RQ-1955).** Request from William E. Roberts, Chief Appraiser, Tarrant Appraisal District, Fort Worth, concerning

# Attorney General

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TRD-9005117

**ORD-550 (RQ-1955).** Request from William E. Roberts, Chief Appraiser, Tarrant Appraisal District, Fort Worth, concerning

promulgate a rule which reduces the amount of reimbursement available to a hospital for services rendered to an injured worker.

(RQ-2003). Request from Sam L. Darden, County Attorney, Bandera County, concerning authority of a county attorney to use racing admission fees under Texas Civil Statutes, Article 179e, to enforce other state laws, and related questions.

(RQ-2004). Request from Mike Driscoll, County Attorney, Harris County, concerning authority of a county clerk to collect a fee upon filing of an application for emergency detention or court-ordered services in cases involving mental competency or chemical dependency, and related questions.

(RQ-2005). Request from Tim R. Taylor, County Attorney, Titus County, concerning whether a hospital district may employ a board member's brother-in-law.

(RQ-2006). Request from Fred G. Rodriguez, Criminal District Attorney, Bexar County, concerning whether a metropolitan planning organization and the Department of Highways and Public Transportation may agree to allow alternates to attend meetings of the steering committee.

(RQ-2007). Request from A. W. Pogue, Commissioner, State Board of Insurance, concerning definition of the term "resident" for purposes of the Texas Insurance Code, Article 21.28-D.

(RQ-2008). Request from Brad Wright, Chairman, Committee on Public Health and George Pierce, Chairman, Committee on Urban Affairs, concerning use of four-way

stop signs by local governmental bodies to control "cut-through" traffic in residential neighborhoods.

(RQ-2009). Request from Hugh Parmer, Chairman, Senate Intergovernmental Relations, concerning authority of a community college to impose a more restrictive nepotism policy than that required by state law.

(RQ-2010). Request from Fred G. Rodriguez, County Criminal District Attorney, Bexar County, concerning collection of delinquent taxes by a taxing unit under the Tax Code, §6.22(c).

(RQ-2011). Request from Bob Bullock, Comptroller of Public Accounts concerning status of an individual whose appointment was not acted upon in the legislative session in which it was submitted, but who was confirmed at a later session, and related questions.

(RQ-2012). Request from A. W. Pogue, Commissioner of Insurance, concerning whether records of an insurance company that is in receivership are excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-2013). Request from Gary W. Smith, City Attorney, City of Texarkana, concerning whether certain documents in a former police officer's personnel file may be withheld from release to the officer.

(RQ-2014). Request from Jim Hightower, Commissioner, Department of Agriculture, concerning status of the Texas-federal inspection service, and related questions.

(RQ-2015). Request from Marcus D. Taylor, Criminal District Attorney, Wood County, concerning whether the awarding

of a contract precludes a county from making spot purchases from another supplier.

(RQ-2016). Request from John Vance, District Attorney Civil Section, Dallas County, concerning acceptance of bail bonds by peace officers under the Texas Code of Criminal Procedure, Articles 17.01 and 17.02.

(RQ-2017). Request from John B. Holmes, Jr., District Attorney, Harris County, concerning authority of a local governmental body to pay for an item purchased under contract prior to the effective date of the Local Government Code, §140.003.

(RQ-2018). Request from Terry M. Brown, Criminal District Attorney, Polk County, concerning whether promotions of the son and daughter of a sheriff violate the nepotism statute, Texas Civil Statutes, Article 5996a.

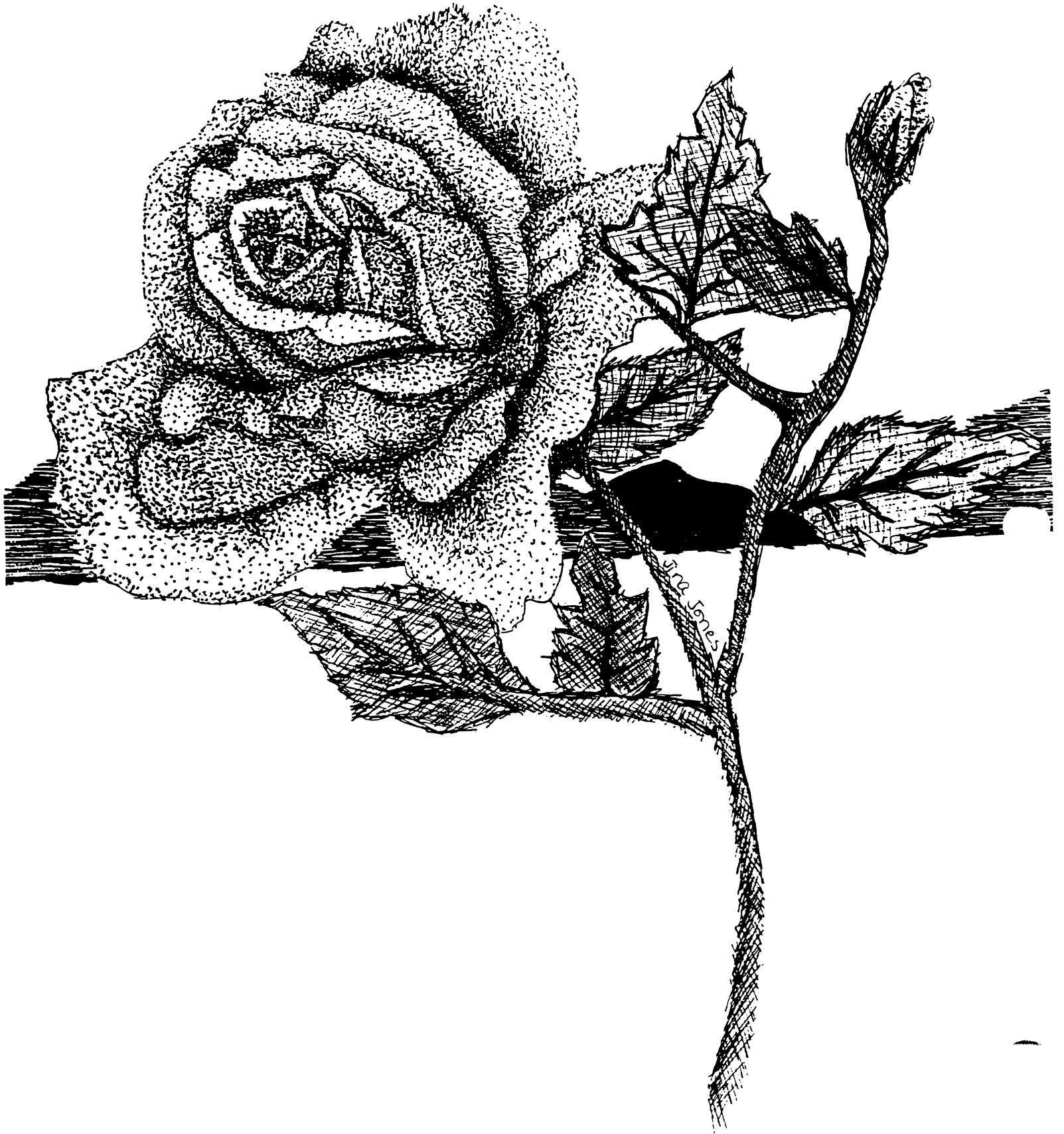
(RQ-2019). Request from Bonnie C. Ericson, County Attorney, Gaines County, concerning authority of a county treasurer to transfer money by wire where the investment has not been approved by the commissioners court.

(RQ-2020). Request from Robert H. Norris, AIA, Executive Director, Architectural Examiners Board, concerning whether landscape architects are included within the Professional Services Procurement Act, Texas Civil Statutes, Article 664-4.

(RQ-2021). Request from Kent A. Caperton, Chairman, Senate State Affairs, concerning authority of a school district to accept the services of Channel One without payment.

TRD-9005219







# Emergency Sections

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

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

## TITLE 22. EXAMINING BOARDS

### Part V. State Board of Dental Examiners

#### Chapter 103. Dental Hygiene

##### Conduct-Grading

###### • 22 TAC §103.31

The Texas State Board of Dental Examiners adopts on an emergency basis an amendment to §103.31, concerning conduct-grading. The original emergency was filed on May 15, 1990. This amendment was mistakenly left out of the original filing.

The board found that there was an imminent need to adopt this amendment. Failure to adopt this section would create an imminent peril to the welfare of the public. Person to be examined have been informed by the board that they will be tested over certain material. The adoption of this amendment will ensure that the applicants taking the examination are being tested on the appropriate criteria.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

*§103.31. Clinical Grading.* Each applicant will be graded on handling of patients, cleanliness, **infection barrier control procedures**, and conduct, as well as the quality of work done and must finish each procedure within a reasonable time to receive full credit. On the examination each applicant's work will be graded on the basis of satisfactory or unsatisfactory, satisfactory is acceptable and passing and unsatisfactory is unacceptable and failing. One or more failing or unsatisfactory grades in subjects, operations, or procedures disqualifies and fails the applicant on the examination.

Issued in Austin, Texas, on May 22, 1990.

TRD-9005221 Patrick D. Redman  
Staff Legal Counsel  
Texas State Board of  
Dental Examiners

Effective date: May 23, 1990

Expiration date: September 12, 1990

For further information, please call: (512) 834-6021

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 1. Board of Health

##### Personnel Policies and Procedures

###### • 25 TAC §1.171

The Texas Department of Health is renewing the emergency effectiveness of the emergency adoption of new §1.171 until August 25, 1990. The text of the new section was originally published in the March 6, 1990, issue of the *Texas Register* (15 TexReg 1219).

Issued in Austin, Texas on May 21, 1990.

TRD-9005068 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: June 26, 1990

Expiration date: August 25, 1990

For further information, please call: (512) 458-7301

#### Chapter 151. Nurse Aides

###### • 25 TAC §151.3, §151.5

The Texas Department of Health is renewing the emergency effectiveness of the emergency adoption of amendments to §151.3 and §151.5 until August 4, 1990. The text of the amendments was originally published in the February 13, 1990, issue of the *Texas Register* (15 TexReg 769).

Issued in Austin, Texas on May 21, 1990.

TRD-9005069 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: June 5, 1990

Expiration date: August 4, 1990.

For further information, please call: (512) 458-7539

## TITLE 28. INSURANCE

### Part I. State Board of Insurance

#### Chapter 5. Property and Casualty Insurance

##### Subchapter B. Insurance Code, Chapter 5, Subchapter B

##### Patient Safety and Risk Reduction Training for Health Care Professionals

###### • 28 TAC §5.1401, §5.1402

The State Board of Insurance adopts on an emergency basis new §5.1401 and §5.1402, concerning approval by the board of courses for minimum continuing education requirements for health care professionals on patient safety and risk reduction subjects. An imminent peril to the public welfare requires adoption of these sections on an emergency basis in order to maintain effective regulation of professional liability insurance by providing procedures under which insurers and health care professionals can operate in accordance with the Insurance Code, Article 5.15-4, under the recently enacted Omnibus Health Care Rescue Act. Article 5.15-4 entitles health care professionals to obtain from their insurers a premium discount for medical professional liability insurance coverage under certain conditions. One of the criteria for eligibility for this premium discount is that the health care professional must complete 15 hours of approved continuing education courses, during the term of the policy, on patient safety and risk reduction subjects related to the health care professional's practice. The courses must be approved, sponsored, endorsed, or accredited either by an insurer, by state or nationally recognized accrediting organizations, by continuing medical or nurse education programs, or by the State Board of Insurance. The new sections provides a procedure by which anyone may apply to obtain course approval from the State Board of Insurance and provide requirements for approval of courses.

The new sections are adopted on an emergency basis under the Insurance Code, Article 1.04 and Article 5.15-4, §4(2). Article 1.04 provides the State Board of Insurance with the authority to determine rules in accordance with the laws of this state. Article 5.15-4, §4(2), entitles health care professionals to obtain from their insurers a premium discount for medical professional liability insurance upon satisfaction of eligibility criteria, including completion of 15 hours of approved patient safety and risk reduction training courses.



# 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 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Community Affairs

#### Chapter 3. Energy Assistance Programs

- 10 TAC §§3.1, 3.3, 3.5, 3.7, 3.9, 3.11, 3.13, 3.15, 3.17, 3.19

The Texas Department of Community Affairs proposes new §§3.1, 3.3, 3.5, 3.7, 3.9, 3.11, 3.13, 3.15, 3.17, and 3.19 concerning the Enhanced Weatherization Assistance Program (EWAP). As proposed the new sections would establish the regulations for the administration of the Enhanced Weatherization Assistance Program authorized by the 71st Legislature.

Roger A. Coffield, general counsel, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Mr. Coffield also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the sections as proposed will be increased energy savings for low income persons whose homes are weatherized pursuant to the Enhanced Weatherization Assistance Program. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger A. Coffield, General Counsel, P.O. Box 13166, Austin, Texas 78711-3166.

The amendment is proposed under Texas Civil Statutes, Article 4413(201), which provides the Texas Department of Community Affairs with the authority to promulgate and adopt or repeal such rules and regulations as may be necessary to carry out its programs and responsibilities.

#### §3.1. Description of Program.

(a) Statutory authority. In 1989, the 71st Texas Legislature amended the Oil Overcharge Restitutionary Act (Texas Civil Statutes, Article 4413(56)) to establish the Enhanced Weatherization Assistance Program (EWAP). EWAP will supplement the state's low-income Weatherization Assistance Program established in

accordance with Part A of the Energy Conservation in Existing Buildings Act of 1976 (42 United States Code §6861 et seq.).

(b) Purpose. EWAP will provide funds to local grantees to provide weatherization-related activities to eligible clients. Funds may be used to pay weatherization and related costs which exceed the limitations of the regular weatherization assistance program. Up to \$1,500 may be expended per dwelling unit as follows:

(1) to provide additional weatherization assistance program measures on individual dwelling units;

(2) to complete energy-related structural repair work such as repair of roofs, walls, and floors, and other parts of a dwelling unit when the repairs are necessary to complete weatherization assistance program measures; and

(3) to tune-up, repair or replace home heating and cooling systems.

§3.3. Administration of EWAP. The Texas Department of Community Affairs (TDCA), as the supervising state agency for the regular Weatherization Assistance Program (WAP), will also administer the Enhanced Weatherization Assistance Program under a contract with the Governor's Energy Management Center.

#### §3.5. Allocation of Funds.

(a) Allocation formula. TDCA will allocate EWAP funds to the existing network of Weatherization Assistance Program grantees on the basis of a distribution formula consisting of four factors:

(1) number of substandard houses per county;

(2) poverty population per county;

(3) elderly poverty population per county; and

(4) heating/cooling degree days per county.

(b) Planning/award of funds. Potential grantees will be provided planning information concerning proposed EWAP allocations at least 45 days prior to the beginning of the EWAP program year (April 1-March 31). The grantees must

notify TDCA in writing of their intent to accept the funding for their area. Any funds not accepted during the pre-contract planning period or any funds which are deobligated as provided in subsection (c) of this section will be held in a temporary reserve for award to grantees with high production and expenditure rates.

(c) Deobligation of funds. During the program year TDCA may deobligate EWAP funds from grantees:

(1) with low production; or

(2) who are not in compliance with the provisions of this subchapter or the EWAP contract.

#### §3.7. Allowable Expenditures, Ratios, and Cost Limits.

(a) Allowable expenditures. Allowable EWAP expenditures include the following:

(1) the purchase and delivery of weatherization and repair materials, and replacement cooling systems as specified in §3.9 of this title;

(2) labor costs in accordance with the Department of Energy regulations at 10 Code of Federal Regulation §440.19;

(3) transportation of materials, tools, equipment, and work crews to a storage site and to the site of weatherization work;

(4) maintenance, operation, and insurance of vehicles used to transport materials;

(5) maintenance of tools and equipment;

(6) purchase or annual lease of tools and equipment;

(7) employment of on-site supervisory personnel;

(8) storage of weatherization or repair materials, tools, and equipment;

(9) liability insurance for enhanced weatherization projects for personal injury and for property damage;

(10) materials and labor for incidental repairs necessary to achieve Priorities 1 and 2 as set forth in the State Plan for Weatherization Assistance for Low Income Persons; and

(11) materials and labor for the tune-up, repair, modification, or replacement of heating and cooling systems if such will result in improved energy efficiency.

(b) Priorities. Priorities 1 and 2 as set forth in the annual State Plan for Weatherization Assistance for Low-Income Persons may be implemented with EWAP funds to provide additional weatherization assistance program measures and incidental repairs. EWAP grantees shall report the priorities addressed for each dwelling unit on a Pre-Assessment/Building Enhanced Weatherization Report.

(c) Materials ratio. A substantial portion of EWAP funds shall be used for the purchase of materials rather than labor or program support costs. An average of at least 40% of the EWAP funds provided to a grantee shall be spent on materials. A grantee may submit a written request for a waiver of this requirement; however, such request must include documentation as to why the variance in the ratio is the best option for addressing Priorities 1 and 2, and why the request is more cost effective than other alternatives.

(d) Cost limits. The incidental repairs identified in this subsection may not exceed the per dwelling unit cost limits set forth below:

(1) repair or replacement of roofs, \$1,250;

(2) repair or replacement of walls or floors, \$1,000. A grantee may submit a written request for a waiver of the above amounts; however, such request must contain written documentation of the work to be performed together with at least three price quotes for the work which shall itemize labor and materials costs. In addition, the grantee must submit documentation as to why the waiver is the best option for addressing Priorities 1 and 2.

### §3.9. Materials and Work Standards.

(a) Weatherization materials. Only weatherization materials which meet or exceed the standards prescribed in Appendix A to the Department of Energy regulations at 10 Code of Federal Regulation Part 440 shall be purchased with EWAP funds provided under this chapter.

(b) Replacement cooling units. Grantees may not install replacement cooling units of more than 10,000 Btu's/hour. All replacement cooling units shall be of a window-unit type. Replacement cooling units purchased with EWAP funds must have an energy efficiency ratio (EER) of at least 9. The EER is the cooling output (Btu per hour) divided by the watts of power used.

(c) Licensed professionals. Grantees shall certify that any electrical, plumbing, or air conditioning and refrigeration work shall be performed or supervised by

licensed professionals and shall be in compliance with any applicable codes. In areas where no codes have been adopted, grantees shall certify compliance with the standards set forth in the Council of American Building Officials (CABO) One and Two Family Dwelling Code, 1989 edition.

### §3.11. Eligibility for EWAP.

(a) Eligible dwelling units. A dwelling unit may be considered for EWAP assistance only if determined eligible for the regular WAP pursuant to the standards set forth in the United States Department of Energy regulations at 10 Code of Federal Regulation, §440.22. Grantees shall maintain documentation of eligibility in the client files.

(b) Multi-family buildings. An EWAP grantee may provide EWAP assistance to a building containing rental dwelling units provided that:

(1) the grantee has obtained the written permission from the owner or his agent;

(2) not less than 66% (50% for duplexes and four-unit buildings) of the dwelling units in the building:

(A) are eligible dwelling units; or

(B) will become eligible dwelling units within 180 days under a federal, state, or local government program for rehabilitating the building or making similar improvements to the building; and

(C) the grantee has established procedures to ensure that rents shall not be raised because of the increased value of dwelling units due solely to EWAP assistance, and no undue or excessive enhancement shall occur to the value of the dwelling units.

(c) Final inspection. No dwelling unit may be reported as completed until the EWAP grantee, or its authorized representative, has performed a final inspection and certified that applicable work has been completed in a satisfactory manner and in accordance with the priority determined by the audit procedures required by the Department of Energy regulations at 10 Code of Federal Regulation §440.21(b).

### §3.13. Records.

(a) Documentation required. EWAP grantees shall comply with the record keeping requirements set forth at 10 Code of Federal Regulation §440.24. In addition, for each dwelling unit assisted with EWAP funds, grantees shall maintain a file containing the following:

(1) application and eligibility documentation;

(2) assessment/Building Enhanced Weatherization Report, including a certification of final inspection;

(3) invoices of materials purchased or inventory removal sheets; and

(4) invoices of labor showing the name, skill specialty, and total amount of wages paid for each laborer and supervisor.

(b) Access to records. Grantees shall give TDCA and the Governor's Energy Management Center access to and the right to reproduce all records pertaining to EWAP. All such records shall be maintained for at least three years after final payment has been made and all other pending matters are closed. Grantees shall include the requirements of this subsection in all EWAP subcontracts.

(c) Open records requirement. All EWAP records maintained by a grantee, except those records made confidential by law, shall be available for inspection by the public during grantee's normal business hours to the extent required by the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a.

### §3.15. Reporting.

(a) Monthly expenditure report. EWAP grantees shall submit an EWAP Progress Expenditure Report/Monthly Funding Request (herein E-WAPPER/MFR) to the department on a monthly basis and a final E-WAPPER/MFR within 60 days after contract termination. Such report shall identify the number of EWAP units completed and in progress together with monthly and cumulative EWAP expenditures for materials, program support, and labor. The report shall provide data as to the number of units completed and in progress and the types of work performed.

(b) Request for funds. With each monthly E-WAPPER/MFR a grantee may request reimbursement of EWAP expenditures by submitting a State of Texas Purchase Voucher and a Weatherization Services Compensation and Payment Form. The Compensation and Payment Form shall include a listing of completed dwelling units, with job numbers, addresses, unit contact phone numbers, date the work was completed and inspected, name of the subcontractor or grantee supervisor overseeing completion of the work, and the amount of allowable materials, labor, and program support expended for each completed dwelling unit.

(c) Additional reports. TDCA or the Governor's Energy Management Center may require additional reports or information if necessary to comply with applicable federal and state program provisions and guidelines.

**§3.17. Client Appeals.** Client appeals of denial of enhanced weatherization assistance shall be governed by the same rules and regulations as the regular WAP. If an applicant is notified that he or she is not eligible to receive benefits under EWAP, the applicant shall be provided written information regarding the reason for denial together with information concerning the applicant's right to appeal.

**§3.19. Audit Requirements.** WAP grantees shall arrange for the performance of an annual financial and compliance audit of all funds received under its EWAP contract. The audit shall be made in accordance with the Single Audit Act of 1984, 31 United States Code, Chapter 75 and the Texas Uniform Grant and Contract Management Standards, 1 TAC §5.141 et seq.

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 May 16, 1990.

TRD-9005031      Roger A. Coffield  
                          General Counsel  
                          Texas Department of  
                          Community Affairs

Earliest possible date of adoption: June 29, 1990

For further information, please call: (512) 834-6010

◆        ◆        ◆  
**Part V. Texas Department  
of Commerce**  
**Chapter 178. Texas  
Community Development  
Program**

**Subchapter A. Allocation of  
Program Funds**

• **10 TAC §§178.10-178.12, 178.14,  
178.16, 178.17**

The Texas Department of Commerce (Commerce) proposes amendments to §§178. 10-178.12, 178.14, 178.16, and 178.17, concerning the allocation of community development block grant (CDBG) nonentitlement area funds under the Texas Community Development Program (TCDP). The proposed amendments establish the standards and procedures by which Commerce will allocate community development funds to eligible units of general local government in Texas beginning with the expenditure of federal fiscal year 1990 funds. The proposed amendments include application requirements and selection procedures and criteria.

Bruce W. Anderson, general counsel, 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.

Ruth Cedillo, TCDP manager, 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 equitable distribution of funds to eligible units of general local government. 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 sections as proposed.

Comments on the proposal may be submitted to Bruce W. Anderson, General Counsel, P.O. Box 12728, Austin, Texas, within 30 days after the date of this publication.

The amendments are proposed under the Texas Government Code Annotated, Chapter 481, Subchapter N, which provides the Texas Department of Commerce with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities according to department rules.

**§178.10. General Provisions.**

(a) (No change.)

(b) Overview. Community development block grant nonentitlement area funds are distributed by the Texas Community Development Program to eligible units of general local government in the following program areas:

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

(7) **housing development fund.**

(c)-(d) (No change.)

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a), (42 United States Code, §5301 et seq.) is ineligible for funding under the Texas Community Development Program. Specific ineligible activities include, but are not limited to, construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the housing development fund [in cases of replacement housing when individuals are displaced by Texas Community Development Program activities]; the financing of political activities; purchases of construction equipment; income payments, such as housing allowances; most operation and maintenance expenses; and pre-contract costs, such as application preparation fees paid prior to submittal of the application.

(f) (No change.)

(g) Appeals. An applicant for funding under the Texas Community Development Program may appeal the disposition of its application in accordance with this subsection.

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

(4) Appeals not submitted in accordance with this subsection will be dismissed and may not be refiled.

(h)-(j) (No change.)

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the department and must follow the procedures prescribed in the instructions to the survey instrument.

(1) (No change.)

(2) Surveys, including signed tabulation sheets, [and] all responses, and all non-responses, must be submitted to the department at least 14 days prior to the application deadline, for verification and spot-checking.

(3)-(5) (No change.)

(1) Unobligated and recaptured funds. Any additional funds resulting from the recapture of dollars from a prior year's allocation, recapture of program income, unobligated funds from a program area specified in subsection (b) of this section, or reallocated funds which the United States Department of Housing and Urban Development has recaptured from small cities grantees will [may] be redistributed to eligible communities on a priority basis with eligible emergency and urgent need projects as the highest priority. Any additional remaining funds may be redistributed to eligible communities at the discretion of the executive director of the department within such program areas.

(m) (No change.)

**§178.11. Regional Review Committees.**

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

(c) General requirements. In the performance of its responsibilities, each regional review committee shall comply with all federal and state laws and regulations relating to the administration of community development block grant nonentitlement area funds including, but not limited to, the requirements of this subchapter, the scoring procedures specified in the current Regional Review Committee Guidebook, and the procedures established by the regional review committee under the Texas Community Development Program.

(1) (No change.)

(2) Conflicts of interest. No member of a regional review committee shall participate in the deliberations concerning an application or vote on an application if the member is on the governing body of the applicant. A county judge or county commissioner may not score an application from an incorporated city within the county, unless specifically authorized by the regional review committee.

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

(d) (No change.)

**§178.12. Community Development Fund.**

(a) General provisions. This fund covers housing, public facilities, and public service project. Eligible units of general local government may apply for funding of a single purpose project such as housing assistance, sewer improvements, water improvements, drainage, roads, or community centers, or for a multi-purpose project which consists of any combination of such eligible activities.

(1) An applicant may not submit an application under this fund and also under the special impact fund, housing development fund, or urgent need fund during the same program year if the proposed activity under each application is the same or substantially similar.

(2) (No change.)

(b)-(d) (No change.)

(e) Selection criteria. The following is an outline of the selection criteria used by the department and the regional review committees for scoring applications under the community development fund. Seven hundred points are available.

(1) (No change.)

(2) Benefit to low- and moderate-income persons (total-30 points). An application in which at least 60% of the Texas Community Development Program funds requested benefit low- and moderate-income persons [persons who would directly benefit from the implementation of the proposed project are of low- to moderate-income] receives 30 points.

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

**§178.14. Planning/Capacity Building Fund.**

(a) General provisions. This fund is intended to provide an opportunity for units of general local government to prepare comprehensive community development plans, develop strategies, assess needs, and build or improve local capacity to undertake future community development projects or to prepare other needed planning elements. Eligible units of general local government are to be the direct recipients of planning contracts. Units of general local government may submit one application for planning funds annually if all previous planning/capacity building contracts with the department have been totally reimbursed by the department.

(1) A cash match equal to or greater than 20% of the total Texas Community Development Program funds requested is required of all applicants having a population of 5,000 or more and a cash match equal to or greater than 10% of the total Texas Community Development Program funds requested is required of all applicants having a population of less than 5,000. The population of an applicant is

based on the 1980 census unless an applicant submits a survey conducted in accordance with §178.10(k) of this title (relating to General Provisions). In lieu of providing the cash match specified in this paragraph, and as further described in the most recent application guide for this fund, an applicant may agree to pay out of its own resources for other eligible planning activities described on the matrix included in such application guide. [Payment for special activities is not eligible for this cash match alternative.]

(2) (No change.)

(b) (No change.)

(c) Selection procedures. Scoring and the recommended ranking of projects is done by staff and a project [program] review committee with input from the regional review committees. The Project [Program] Review Committee is composed of Texas Community Development Program managers and other members designated by the director of the Texas Community Development Program. The application and selection procedures consist of the following steps.

(1) (No change.)

(2) Upon receipt of an application, the department staff performs an initial review to determine whether the application is complete and whether the activities proposed are eligible for funding. In those instances where the department staff determines that the application is either incomplete or that the activities are ineligible for funding, the applicant may correct any deficiencies in the application as long as it is resubmitted prior to the application deadline. Results of this initial staff review are provided to the applicant [and the Program Review Committee].

(3) Each regional review committee may, at its option, review and comment on a planning/capacity building proposal from a jurisdiction within its state planning region. These comments will become part of the application file and are considered by the Project [Program] Review Committee, provided such comments are received by the department prior to scoring of the applications [within 35 days after the application deadline].

(4) The department staff and Project [Program] Review Committee generate [generates] scores on factors related to planning strategy and products. Each application is scored on how the proposed planning activities resolve the identified community development needs of the local government. This information, as well as any comments made by the regional review committee, will be [is] used by the Project [Program] Review Committee and department staff to generate scores on the planning strategy and products factors.

(5)-(9) (No change.)

(d) Selection criteria. The following is an outline of the selection criteria used by the department, the Project [Program] Review Committee, and the State Review Committee for selection of the projects under the planning/capacity building fund. Four hundred twenty-five points are available.

(1) (No change.)

(2) Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community (total-25 points). In the event less than 5.0% of the applicant's population base is composed of minority residents or the applicant has less than five full-time permanent employees, the applicant will be assigned the average score on this factor for all applicants, or the score calculated on its actual figures, whichever is higher. The terms used in this paragraph are defined in the current application guide.

(3) (No change.)

(4) Planning strategy and products [Proposed planning effort] (total-250 [170] points).

(A) Previous planning (50 [80] points).

(i) An applicant which has not previously received a planning/capacity building contract-50 [80].

(ii) (No change.)

(iii) An applicant which has participated in the program established under this section and can demonstrate implementation of some of the planning recommendations, regardless of the source of funding, or an applicant which has received previous planning/capacity building funding but can demonstrate that conditions have changed to warrant new planning for the same activities-20 [40].

(B) Proposed planning effort (200 [170] points). The factors considered by a committee composed of staff of the department in determining this score are as follows:

(i) the extent to which findings of any previous planning efforts have been implemented;

(ii)-(iv) (No change.)

**§178.16. Urgent Need Fund.**

(a) (No change.)

(b) Threshold requirements. In addition to the requirements set forth in §178.10(h) of this title (relating to General Provisions), each of the following requirements must be satisfied in order to be eligible for funding under this fund:

(1) (No change.)

(2) the condition addressed in the application must have directly resulted in a human fatality within the jurisdiction of the applicant, or must have directly resulted in [documented] illness or injury [by the Texas Department of Health] within the jurisdiction of the applicant as documented by the Texas Department of Health, or poses an imminent threat to human life or health as [contamination of a type or level which is generally known to cause death or illness to humans,] documented by the Texas Department of Health or Texas Water Commission; and

(3) (No change.)

#### §178.17. Special Impact Fund.

(a) General provisions. This fund covers single-purchase or multi-purpose water, sewer, streets, and drainage improvements projects which serve severely distressed unincorporated areas of counties. A county may not submit an application under this fund and also under the community development fund or housing development fund during the same program year. Joint applications will only be considered for funding if none of the participating counties submitted applications under the community development fund or housing development fund during the same program year.

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

(d) Selection criteria. The following is an outline of the selection criteria to be used by the department for scoring applications under the special impact fund. Four hundred seventy-five [five hundred] points are available.

(1) Community distress (total-50 [75] points). All community distress scores are based on the population of the applicant. An applicant that has 125% or more of the average of all applicants of the rate on any community distress factor, except per capita income, will receive the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants on a factor will receive a proportionate share of the maximum number of points available for that factor. An applicant that has 75% or less of the average of all applicants on the per capita income factor will receive the maximum number of points available for that factor:

(A) percentage of persons living in poverty-15 [25];

(B) per capita income-20 [25]; and

(C) unemployment rate-15 [25].

(2) Benefit to low- and moderate-income persons (total-25 points).

An application in which at least 60% of the Texas Community Development Program funds requested benefit low- and moderate-income persons receives 25 points. [This factor score is based only on those residents of the applicant that are determined to be direct beneficiaries of the applicant's proposed activities, as defined by the department in the most recent application guide for this fund].

(3)-(5) (No change.)

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

Issued in Austin, Texas, on May 23, 1990.

TRD-9005217

William D. Taylor  
Executive Director  
Texas Department of  
Commerce

Earliest possible date of adoption: June 29, 1990

For further information, please call: (512) 320-9666

#### ◆ ◆ ◆ • 10 TAC §178.18

The Texas Department of Commerce (Commerce) proposes new §178.18, concerning the housing development fund established under the community development block grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP). The proposed section establishes the standards and procedures by which Commerce will allocate housing development funds to eligible units of general local government in Texas beginning with the expenditure of federal fiscal year 1990 funds. The proposed section includes application requirements, and selection procedures and criteria.

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

Ruth Cedillo, TCDP manager, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the equitable distribution of funds to eligible units of general local government. 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 Bruce W. Anderson, General Counsel, P.O. Box 12728, Austin, Texas within 30 days after the date of this publication.

The new section is proposed under the Texas Government Code Annotated, Chapter 481, Subchapter N, which provides the Texas Department of Commerce with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities according to department rules.

#### §178.18. Housing Development Fund.

(a) General provisions. This fund covers the following eligible housing assistance activities: complete housing rehabilitation according to city codes or HUD Section 8 Existing Housing Quality Standards; substantial rehabilitation where the rehabilitation is part of a neighborhood rehabilitation effort and if the cost is significantly less than new construction and less than the fair market value of the property after rehabilitation and if the house is not suitable for rehabilitation; last resort housing under 49 Code of Federal Regulations, Part 24 if comparable replacement housing is not available; limited new construction after failed rehabilitation; affordable new housing through eligible subrecipients in accordance with 24 Code of Federal Regulations, §570.204; project-related code enforcement; and demolition/clearance (limited to 10% of the Texas Community Development Program funds requested). Eligible units of general local government may not submit an application under this fund and also under the community development fund or special impact fund during the same program year. Joint applications will only be considered for funding if none of the participating units of general local government submitted applications under the community development fund or special impact fund during the same program year. The terms and conditions included in this paragraph are further defined in the current application guide for this fund.

(b) Funding cycle. This fund will be allocated on an annual basis to eligible units of general local government on a statewide competitive basis. Applications for funding must be received by the department by 5 p.m. on the date specified in the most recent application guide for this fund.

(c) Selection procedures.

(1) On or before the application deadline, each eligible unit of general local government may submit one application for funding under the housing development fund. Copies of the application must be provided to the applicant's regional review committee and the department.

(2) Upon receipt of an application, the department staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) The department and a committee composed of department staff then scores the applications to determine statewide rankings. Scores on the selection factors are derived from standardized data

from the Census Bureau, other federal or state sources, and from information provided by the applicant.

(4) Following a final technical review, the department staff makes funding recommendations to the State Review Committee.

(5) The funding recommendations of the State Review Committee are then provided to the executive director of the department.

(6) The executive director of the department reviews the final recommendations for project awards and announces the contract awards.

(7) Upon announcement of contract awards, the department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application are not decreased. The level of benefits may be negotiated only when the project is partially funded.

(d) Selection criteria. The following is an outline of the selection criteria to be used by the department for scoring applications under the housing development fund. One hundred fifty points are available.

(1) Community distress (total-15 points). All community distress scores are based on the population of the applicant. An applicant that has 125% or more of the average of all applicants of the rate on any community distress factor, except per capita income, will receive the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants on a factor will receive a proportionate share of the premium number of points available for that factor. An applicant that has 75% or less of the average of all applicants on the per capita income factor will receive the maximum number of points available for that factor:

(A) percentage of persons living in poverty-5;

(B) per capita income-5; and

(C) unemployment rate-5.

(2) Benefit to low- and moderate-income persons (total-15 points). An application in which at least 75% of the Texas Community Development Program funds requested benefit low and moderate income persons receives 15 points.

(3) Project design (total-120 points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within

the applying jurisdiction. The design of the Applicant's Housing Assistance Program is an important consideration under this factor. Information submitted in the application is used by a committee composed of staff of the department to generate scores on the project design factor.

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 May 23, 1990.

TRD-9005218

William D. Taylor  
Executive Director  
Texas Department of  
Commerce

Earliest possible date of adoption: June 29, 1990

For further information, please call: (512) 320-9666

◆ ◆ ◆  
**TITLE 25. HEALTH SERVICES**  
**Part I. Texas Department of Health**  
**Chapter 98. HIV and STD Control**

**Subchapter B. HIV Education Grant Program**  
**General Provisions**

The Texas Department of Health proposes new §§98.61-98.68, and §§98.81-98.89, concerning HIV Education Grant Program. The new sections implement the provisions of Texas Civil Statutes, Article 4419b-4, Article 2, (Chapter 1195, Acts of the 71st Legislature, 1989 (Senate Bill 959)), which requires the department to establish a grant program to deliver HIV education programs.

The sections concerning general provisions cover: introduction, definitions, forms, funds, nondiscrimination, general program requirements, development and evaluation of the program, and program review.

The sections concerning AIDS/HIV education-providers cover: who may apply to become a provider; provider application-selection-contract process; confidentiality; model workplace guidelines; payment for services; denial of application-modification, suspension, termination of provider approval-criteria; denial of an application to provide AIDS/HIV education programs-procedure; modification, suspension, or termination of provider status-procedure; exception from appeals procedure.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections of not to exceed \$8,000, for each year. These costs arise from the statutory requirement for regional public hearings before grants awards are made and costs

that will arise through the procedures for the resolution of conflicts among the department and the providers in the form of internal re-considerations for provider application denial and due process hearings for modification, suspension, or termination of provider status. There will be no effect on local government as a result of enforcing or administering the sections. There will be no impact upon local employment.

Mr. Seale 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 to provide education for populations engaging in behaviors conducive to HIV transmission, to initiate needed HIV programs where none exist, and to promote early intervention and treatment of persons with HIV infection. 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 sections as proposed.

Comments on the proposal may be submitted to the Texas Department of Health, HIV Division, Prevention Program, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 45 days after publication of the proposed sections in the *Texas Register*. A public hearing will be held at 9 a.m., Monday, July 2, 1990, in the Texas Department of Health auditorium, 1100 West 49th Street, Austin, Texas 78757.

• **25 TAC §§98.61-98.68**

The new sections are being proposed under the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b-4, Article 2, which provides the board with the authority to adopt rules covering a grant program for HIV education services; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

*§98.61. Introduction.* The purpose of this subchapter is to establish a system for the provision of education programs as authorized by the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b. This subchapter is adopted under the authority of the Act and the current General Appropriations Act.

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

Act-Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b-4 (Chapter 1195, Acts of the 71st Legislature, 1989 (Senate Bill Number 959)).

AIDS-Acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

Applicant-A non-profit community organization or other entity that applies to



the Texas Department of Health for approval to become a provider.

Board—The Texas Board of Health.  
Commissioner—The commissioner of health.

Communicable Disease Prevention and Control Act—Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81.

Department—The Texas Department of Health.

Education—A program to provide AIDS/HIV education, prevention, and/or risk reduction information to individuals or groups.

HIV—Human immunodeficiency virus, as defined by the Centers for Disease Control of the United States Public Health Service.

Person—An individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

Program—The HIV Education, Prevention, Risk Reduction Grant Program, created by the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b-4 (Chapter 1195, Acts of the 71st Legislature, 1989 (Senate Bill Number 959)).

Provider—A person that has been approved by the department and that has entered into a contract with the department to deliver education, prevention, and risk reduction programs.

Region—Public health region of the department.

Request for proposal (RFP)—A solicitation providing guidance and instructions issued by the department to potential providers interested in submitting an application to deliver an education program to carry out the purposes of the Act, Article 2.

*§98.63. Forms.* Forms which have been developed by the department for use in the program will be provided to applicants and providers as necessary.

*§98.64. Funds.* The board may seek, receive, and expend any funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer the Human Immunodeficiency Virus Services Act, except as provided by other law.

*§98.65. Non-Discrimination.* The Texas Department of Health operates in compliance with the Civil Rights Act of 1964, Public Law 88-352, Title VI, and Title 45, Code of Federal Regulations, Part 80, so that no person will be excluded from participation, or otherwise subjected to discrimination on the grounds of race, color, national origin, or handicapping conditions.

*§98.66. General Program Requirements.*

(a) As authorized by the Human Immunodeficiency Virus Services Act,

Texas Civil Statutes, Article 4419b-4 (Chapter 1195, Acts of the 71st Legislature, 1989 (Senate Bill Number 959)), the board, in this subchapter, has established the program in the department to provide for the delivery of education programs in local communities.

(b) The department through the grant process shall endeavor to provide for the delivery of education programs to:

(1) coordinate the use of federal, local, and private funds;

(2) encourage community-based service provision;

(3) address needs that are not met by other sources of funding;

(4) provide funding as extensively as possible across regions of the state in amounts that reflect regional needs;

(5) encourage cooperation among local providers;

(6) prevent unnecessary duplication of education programs within a community;

(7) complement existing education programs in a community;

(8) provide HIV education programs for populations engaging in behaviors conducive to HIV transmission;

(9) initiate needed HIV programs where none exist; and

(10) promote early intervention and treatment of persons with HIV infection.

*§98.67. Development and Evaluation of Program.*

(a) The board shall appoint a 15-member statewide AIDS/HIV Education, Prevention, and Risk Reduction Advisory Committee which is representative of:

(1) a community based youth outreach program;

(2) the Texas Youth Commission;

(3) the Windham school district, Windham;

(4) a community based drug treatment/outreach program;

(5) the Planned Parenthood Chapter;

(6) a local health department;

(7) a community based program to reach gay/bisexual men;

(8) the Texas Association of Retarded Citizens;

(9) a member of the religious community (clergy);

(10) a community based organization for hearing impaired;

(11) a PTA representative;

(12) a parent;

(13) a teacher/principal;

(14) a community based organization to reach Hispanics; and

(15) a community based organization to reach blacks.

(b) The advisory committee is created for the purpose of advising and assisting the board and the department in planning and administering the development of a comprehensive system of AIDS/HIV education. Committee responsibilities will include:

(1) evaluation of existing education programs and unmet needs;

(2) review of the goals and targets of the RFP application/renewal packets;

(3) evaluation of ongoing program efforts;

(4) definition of both short-range and long-range goals and objectives for the program; and

(5) development of review criteria and standards for the program.

(c) The department shall consider committee recommendations during the development of provider contracts, as required in §98.82 of this title (relating to Provider Application-Selection-Contract Process).

*§98.68. Program Review.*

(a) Program review activities will be accomplished through monitoring systems developed to ensure the delivery of appropriate AIDS/HIV education programs.

(b) For economies of scale, and with the consent of the commissioner, the program may contract for concurrent or retrospective program reviews.

(c) The department will establish a program review system to evaluate the delivery of education programs. The program review system will allow for technical assistance to the providers.

(d) The department will require providers to report to the department:

(1) the number and type of individuals reached by an education program;

(2) fiscal and financial management reports of expenditures;

(3) program accomplishments;

(4) copies of all materials the organization has printed or distributed related to HIV infection;

(5) a record of the votes of the local program materials review committee on each item; and

(6) a report on the networking and coordination of services with other providers.

(e) The department may require other program related data; however, the provider will be given 60 days advance notice prior to the end of the contract term.

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 May 22, 1990.

TRD-9005107

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

Proposed date of adoption: August 18, 1990

For further information, please call: (512) 458-7304

## AIDS/HIV Education—Providers

### • 25 TAC §§98.81-98. 89

The new sections are being proposed under the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b-4, Article 2, which provides the board with the authority to adopt rules covering a grant program for HIV education services; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

#### §98.81. *Who May Apply to Become a Provider.*

(a) To become a provider, a person must be a governmental, public, or private non-profit entity located within the State of Texas, including:

- (1) city or county health departments or districts;
- (2) community-based organizations; and
- (3) public or private hospitals.

(b) An individual may not become a provider.

#### §98.82. *Provider Application—Selection—Contract Process.*

(a) To administer the program effectively and to receive the maximum benefits from available funds, the department shall contract for education programs on a request for proposal (RFP).

(b) The department shall publish a public notice of the RFP in the *Texas Register* at least 30 days prior to the date on which the application is due. The department also will utilize local published notices or direct contact with potential applicants.

(c) After public notice has been given, the department will forward the application packet within 10 working days of receiving a request.

(d) Complete applications at a minimum must include:

(1) a description of the objectives established by the applicant for the conduct of the program during the contract period;

(2) documentation that the applicant has consulted with appropriate local health department or public health district officials, health authority, community groups, and individuals with expertise in HIV education and a knowledge of the needs of the population to be served or as specified in the RFP or renewal documents;

(3) a description of the methods the applicant will use to evaluate the activities conducted under the program to determine if the objectives are met; and

(4) any other information required by this subchapter or requested by the department in the application package.

(e) The department shall conduct public hearings in the region in which the applicant(s) is located before awarding an initial grant or grants totaling in excess of \$25,000 annually.

(1) At least 10 days before such a public hearing, the department shall give notice to each state representative and state senator who represents any part of the region in which any part of the contracted funds will be expended.

(2) Public hearings will not be required for the renewal of a contract.

(f) Complete applications for funding will initially be reviewed by program staff designated by the commissioner or the commissioner's designee and by review panels composed in such a manner that individual panel members:

(1) are involved with education programs but are not employees of the department; and

(2) are not members of, employed by, or otherwise associated with, a particular application under review by a particular panel.

(g) After the review described in subsection (f) of this section, the program will make the final selection of providers; special consideration will be given to non-profit community organizations whose primary purpose is serving persons under 18 years of age.

(h) Applicants approved by the program must execute contracts with the department. Applicants that are not selected will receive written notification to that effect from the department within 30 days after the awards have been approved and will be given the opportunity for an infor-

mal reconsideration conducted under the provisions of §98.87 of this title (relating to Denial of an Application to Provide AIDS/HIV Services).

(i) A provider must agree to deliver education programs to the number and type of individuals or groups during the contract period designated and accepted by the department.

(j) The program may expedite the renewal of contracts with providers so that education programs may be provided without gaps in service.

(k) Contracts executed between the department and providers under this section are governed by the requirements in the Uniform Grant and Contract Management Standards (UGCMS), 1 Texas Administrative Code §§5 141.5 167.

(l) A provider must give assurances in the contract that the provider will abide by the requirements of the Act, the UGCMS, and this subchapter.

#### §98.83. *Confidentiality.*

(a) Confidentiality of all records is essential. All information obtained in connection with the examination, care, or services provided to any client under a program, which is carried out through a contract under this subchapter, shall not, without the client's consent, be disclosed, except as may be necessary to provide services to the client, or as may be required by law. Information derived from any program may be disclosed:

(1) in statistical or other summary form; or

(2) for clinical purposes, but only if the identity of the individuals diagnosed or provided care under such program is not disclosed.

(b) To obtain and continue provider status, all applicants or providers must have a policy in place to protect client confidentiality and must assure the department that each individual participating in the provider's activities has been informed of the policy and the fact that civil and criminal penalties exist in the Communicable Disease Prevention and Control Act for a person who commits the offense of violating the confidentiality of persons, as protected under the provisions of the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b-4, Article 2.

(c) Failure of an applicant or a provider to have a confidentiality policy and procedure in place is grounds for denial of an application or termination of the provider's approval and contract cancellation

#### §98.84. *Model Workplace Guidelines.*

(a) To obtain and continue provider

status, all applicants or providers must have a policy in place that is consistent and at least as comprehensive as the model guidelines for HIV/AIDS policies and education programs adopted by the board in §97.19 of this title (relating to Model HIV/AIDS Workplace Guidelines). Copies of the board's guidelines may be obtained from the department's Public Health Promotion Division, 1100 West 49th Street, Austin, Texas 78756.

(b) Failure of an applicant or a provider to have workplace guidelines and procedures in place is grounds for denial of an application or termination of the provider's approval and cancellation of the contract.

#### §98.85. *Payment for Services.*

(a) Reimbursement by the department to providers for services delivered will be contingent upon a valid signed contract between the provider and the department.

(b) The department will reimburse the provider for services rendered in accordance with the contract between the provider and the department. The department will only be obligated to pay those funds as specified and expended in accordance with the contract.

(c) The department will require documentation of the delivery of services by the provider, as follows.

(1) A request for payment will be denied if the request is incomplete, submitted on an improper form, contains inaccurate information, or is not submitted within 90 days from the date services were delivered.

(2) A request for payment which has been denied must be resubmitted in correct form within 30 days from the notice of denial or within the initial 90-day filing deadline, whichever is later.

(3) Corrections must be made on the original request for payment form if possible, and a copy of the denial notice must accompany the resubmitted request for payment.

(4) If a new request is submitted, the original request must accompany the new request for payment form.

(d) Overpayments made to providers must be reimbursed to the department by lump sum payment or, at the department's discretion, deducted from current claims due to be paid to the provider.

(e) The opportunity for a due process hearing is available for the resolution of conflicts relating to payment issues between the department and a provider in accordance with §98.88 of this title (relating to Provider Appeals).

#### §98.86. *Denial of Application-Modification, Suspension, Termination of Provider Approval-Criteria.*

(a) The department may, for the reasons described in subsections (b) and (c) of this section, deny the application and modify, suspend, or terminate the approval of a provider after written notice of the proposed action and written notice of an opportunity for an informal reconsideration or an opportunity for a due process hearing, as specified in this section, has been given to the provider.

(b) An application may be denied if the applicant:

(1) has not submitted a complete application;

(2) is not an entity listed in §98.81 of this title (relating to Who May Apply for Provider Status);

(3) has not provided the assurances, policies, or procedures required by this subchapter relating to client confidentiality and workplace guidelines; or

(4) fails or refuses to execute a contract with the department.

(c) Provider status may be modified, suspended, or terminated if the provider:

(1) provides false or misleading information which is material to the approval by the department to become a provider or continue provider status;

(2) fails to perform in accordance with the requirements of the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b-4, Article 2, and the applicable provisions of the General Appropriations Act;

(3) fails to perform in accordance with this subchapter;

(4) fails to perform in accordance with the provisions of the contract; or

(5) fails to perform in accordance with the rules prescribed in the Uniform Contracts and Grants Management Standards, 1 Texas Administrative Code §§5.141-167.

(d) The department may suspend or cancel payment for services delivered if false or fraudulent requests for payments are submitted by a provider.

(e) A provider's contract may not be terminated during the pendency of due process hearing. Payments due to be paid to providers may be withheld during the pendency of a hearing, and payments shall resume if the final determination is in favor of the provider.

#### §98.87. *Denial of an Application to Provide AIDS/HIV Services-Procedure.*

(a) An applicant aggrieved by the program's decision to deny an application to become a provider may request an informal reconsideration from the department.

(b) An applicant must request an informal reconsideration in writing.

(c) The applicant's written request must be received by the department within 20 days from the receipt of the program's decision letter.

(d) The provider's failure to request reconsideration and to notify the department within the 20-day period will be deemed a waiver of the opportunity for an informal reconsideration and the proposed action will become final.

(e) An impartial panel of three members appointed by the commissioner will conduct the informal reconsideration. The members may not have participated in the program's decision to deny the application.

(f) The informal reconsideration will consist primarily of a review of the applicant's and department's documentation relevant to the department's decision, the board's relevant rules, the authorizing statute, and the current General Appropriations Act; however, the panel may permit the applicant requesting the reconsideration and/or the department's representative to appear before the panel or submit information in writing, if desired.

(g) The panel will affirm, reverse, or modify the program's decision. The panel's decision will be binding on the program and the applicant.

#### §98.88. *Modification, Suspension, or Termination of Provider Status-Procedure.*

(a) Before the department may modify, suspend, or terminate a provider's status, the department must offer the provider the opportunity for a due process hearing.

(b) The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §§12-20, do not apply to the modification, suspension, or termination of provider status under this subchapter. The department shall conduct due process hearings in accordance with the board's informal hearing procedures, §§1.51-1.55 of this title (relating to Informal hearing Procedures). Copies of the board's informal hearing procedures may be obtained from the department's Office of General Counsel, 1100 West 49th Street, Austin, Texas 78756.

§98.89. *Exceptions from Appeals Procedure.* The department is not required to offer an informal reconsideration or an informal hearing for the denial, modification, suspension, or termination of provider status, if the department's actions result from the exhaustion of funds appropriated

to the department for the administration of the Act, Article 2.

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 May 22, 1990.

TRD-9005108 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: August 18, 1990

For further information, please call: (512) 458-7304

◆ ◆ ◆  
**Chapter 145. Long-Term Care**  
**Subchapter L. Minimum**  
**Licensing Standards for**  
**Personal Care Homes**

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

The Texas Department of Health proposes the repeal of §§145.181-145.183, and new §§145.321-145.335, concerning minimum licensing standards for personal care facilities. The sections proposed for repeal cover general requirements, personal care homes—Type A and personal care homes—Type B. The proposed new sections cover purpose and scope; definitions; types of personal care facilities; general requirements; general enforcement; administrative management; staffing; operational policies, admission policies, and records; medications; accident, injury, or acute illness; personal belongings and finances; dietary service; resident rights; building construction; and plans, approvals, and construction procedures.

This proposal is in accordance with Senate Bill 487, §15, 71st Legislature, 1989, covering the Personal Care Facility Licensing Act, Texas Civil Statutes, Article 4442c-4, which directs the Texas Board of Health to adopt rules to provide minimum standards to protect the health and safety of personal care facility residents.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government will be an estimated increase of \$16,640 annually in state revenues resulting from the enforcement of the proposed annual licensure fee increases. There will be no fiscal implications for local government.

Mr. Seale 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 to assure that residents of personal care facilities are receiving general oversight of their physical and mental well-being and appropriate assistance

to manage or maintain a private and independent personal life and residence. The effect on businesses will be an increased cost in the base licensure fee of \$50 annually for small and large facilities. There will also be a \$1.00 increase in the annual per bed licensure fee for small and large facilities. The per bed cost increase for a large personal care facility compared to that of a small personal care facility will be in proportion to the increase in the number of beds licensed. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There will be no impact on local employment as a result of these new sections.

Comments on the proposal may be submitted to Richard L. Butler, Chief, Bureau of Long-Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3185. Comments will be accepted for 45 days after publication of the proposed sections in the *Texas Register*. Public hearings will be held at 9 a.m., Tuesday, June 26, 1990, in the Texas Department of Health auditorium, 1100 West 49th Street, Austin, (512) 458-7490; and at 9 a.m., Friday, June 29, 1990, at the Metropolitan Multi-Service Center, 1475 West Gray, Houston, Texas 77019, (713) 529-4712.

• 25 TAC §§145.181-145.183

The repeals are proposed under the Personal Care Facility Licensing Act, Texas Civil Statutes, Article 4442c-4, which provides for the Texas Board of Health to promulgate rules concerning minimum standards for personal care facilities; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§145.181. *General.*

§145.182. *Personal Care Homes—Type A.*

§145.183. *Personal Care Homes—Type B.*

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 May 22, 1990.

TRD-9005129 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: August 18, 1990

For further information, please call: (512) 458-7490

◆ ◆ ◆  
**Subchapter S. Minimum**  
**Licensing Standards for**  
**Personal Care Homes**

• 25 TAC §§145.321-145.335

The new sections are proposed under the Personal Care Facility Licensing Act, Texas

Civil Statutes, Article 4442c-4, which provides for the Texas Board of Health to promulgate rules concerning minimum standards for personal care facilities; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§145.321 *Purpose and Scope.*

(a) The minimum licensing standards for personal care facilities are promulgated under the authority of the Personal Care Facility Licensing Act, Texas Civil Statutes, Article 4442c-4.

(b) A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish or operate a personal care facility without a license issued under Article 4442c-4.

(c) The purpose of the standards in this subchapter is to promote the public health, safety, and physical and mental well-being of the residents and to; provide for the development, establishment, and enforcement of standards:

(1) for the care of individuals in facilities of the character defined and covered in this subchapter; and

(2) for the establishment, construction, maintenance, and operation of such facilities which will promote safe and adequate care of individuals in these facilities.

(d) *Philosophy.*

(1) Persons who contract for and receive personal services which are in excess of room, board, and laundry, and are housed in facilities or environment for the express purpose of receiving these services, need and deserve the protection of the law in assuring that they are provided safe and sanitary living conditions and basic care fitting their physical and mental needs.

(2) A personal care facility covered by this subchapter includes an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor, and in addition, provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or services which meet some need beyond the basic provision of food, shelter, and laundry.

(3) Facilities or establishments licensed under the standards in this subchapter are known as personal care facilities. Residents in these facilities depend on staff to provide them with various degrees of assistance in everyday living. In providing this assistance, a personal care facility shall function as follows.

(A) The personal care facility shall provide the basic and primary needs of the residents. All residents will need:

- (i) a safe, comfortable, and sanitary environment;
- (ii) a food service which provides wholesome and satisfying meals meeting general nutritional needs; and
- (iii) humane treatment.

(B) The personal care facility shall meet other basic and primary needs of the residents. Residents may require at least one or more of the following needs, while some residents may require all of the following needs:

- (i) assistance with meals, dressing, movement, bathing, or other personal needs or maintenance;
- (ii) the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or
- (iii) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his personal life, regardless of whether a guardian has been appointed for the person.

(C) Residents whose needs cannot be met by the personal care facility, or the necessary services secured by the resident, shall not be admitted or retained in the facility. When services beyond assistance are needed, the decision that such services can be provided or secured shall be the responsibility of facility management with written concurrence of the resident, resident's attending physician, and/or responsible party. This concurrence shall be placed in the facility file. Refer to §145.330(e) of this title (relating to Accident, Injury, or Acute Illness).

(D) The basic and primary needs of the residents shall be provided in the least restrictive environment and manner possible.

(4) Structured or organized medical, nursing, or other care as found in licensed hospitals, licensed nursing homes, licensed custodial care homes, and similar specialized facilities, cannot be furnished by the facility, but can be provided by professional personnel as could be delivered in a person's home, when contracted by the resident. Refer to §145.330(e) of this title (relating to Accident, Injury, or Acute Illness).

(5) Personal care has at least two basic elements:

(A) the delivery of services requires the presence of a facility staff member; and

(B) the services performed are of a protective or safeguard nature in efforts to maintain or restore basic health, safety, and well-being of the residents.

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

Act—The Personal Care Facility Licensing Act, Texas Civil Statutes, Article 4442c-4.

Attendants—All staff persons or representatives who are responsible for direct personal services to residents and can include, but are not limited to, aides, cooks, janitors, porters, maids, laundry workers, and managers if they are also functioning in direct personal services.

Dietitian—A dietitian is as follows.

(A) A registered dietitian is a dietitian who is currently registered by the Commission on Dietetic Registration.

(B) A licensed dietitian is a dietitian who is currently licensed by the Texas State Board of Examiners of Dietitians and who has 15 hours of dietetic continuing education annually.

(C) A qualified dietitian is a dietitian who is eligible for registration by the American Dietetic Association under its requirements, or who has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management; has one year of supervisory experience in the dietetic service of a health care facility; and participates annually in continuing dietetic education. These persons must have credentials evaluated and approved by the nutrition program specialist of the licensing agency, and 15 hours of dietetic continuing education annually.

Facility—An institution coming under the scope of Personal Care Facility Licensing Act, Texas Civil Statutes, Article 4442c-4, and furnishes room, board, and one or more services of a personal care or protective nature.

Governmental unit—The state or any county, municipality or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

Impractical resident—An impractical resident is:

(A) a resident with a physical disability of a nature that he/she is not capable of maneuvering in a wheelchair, walker, etc., unaided;

(B) a mentally disabled resident who will not take or cannot understand instructions from a staff member; or

(C) a resident that is taking medication before bedtime which will make it difficult for a staff member to arouse the person quickly.

Licensing agency—The Texas Department of Health.

Medication—Medication is:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of the above;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(C) any substance (other than food) intended to affect the structure or any function of the body;

(D) any substance intended for use as a component of any substance specified in this definition. It does not include devices or their components, parts, or accessories.

Medication administration—The direct application of a medication or drug to the body of a resident by an individual licensed to administer medication in the State of Texas.

Medication assistance or supervision—The assistance or supervision of the medication regimen by facility staff. Refer to §145.329(b) (1) of this title (relating to Medications).

Medication (self-administration)—The capability of resident's to administer their own medication/treatments without assistance from the facility staff.

NFPA 101—The 1988 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc, Batterymarch Park, Quincy, Massachusetts 02269.

Person—Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

Personal care—Acts of a protective nature. Personal care is understood to mean adult and responsible supervision of or assistance with routine living functions in instances of a resident's condition necessitating such supervision or assistance. Personal care includes a wide variety of services which would require or result in the presence of an intermediary for the protection and care of the resident. Refer to §145.321(d)(3)(A) and (B) of this title (relating to Purpose and Scope).

Physician—A practitioner licensed by the Texas State Board of Medical Examiners.

Plan of care—A written description of the medical care or the supervision and nonmedical care needed by a person during respite care.

Resident—Anyone accepted for care in the personal care facility.

Respite—The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the institution.

Safety—Action taken to protect from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

Sanitation—Action taken to protect from illness, the transmission of disease or loss of life due to unclean surroundings, the presence of disease-transmitting insects, or rodents, unhealthful conditions or practices in the preparation of food and beverage, or the care of personal laundry.

Standards—The minimum licensing standards in this subsection intended to protect the health and safety of the residents.

*§145.323. General Characteristics of Personal Care Residents and Types of Personal Care Facilities.*

(a) General characteristics of personal care residents include, but are not limited to, the following. A resident may:

- (1) not have a disease endangering other residents;
- (2) exhibit symptoms of emotional disturbance;
- (3) need occasional assistance with walking;
- (4) require assistance with bathing, dressing, and grooming;
- (5) require occasional assistance with routine skin care, such as application of lotions, treatment of minor cuts and burns;
- (6) need reminders to encourage toilet routine and prevent incontinence;
- (7) require the occasional or temporary services by professional personnel, if provided by contract with the individual resident;
- (8) need assistance with medications, supervision of self-medication, or administration of medication;
- (9) require encouragement to eat or monitoring for brief periods of time due to social or psychological reasons of temporary illness;
- (10) be hearing impaired or speech impaired but able to communicate with facility staff;
- (11) be incontinent without skin breakdown;

(12) require established therapeutic diets;

(13) require self-help devices;

(14) occasionally require restraints with physician's orders. Refer to §145.333(a)(2) of this title (relating to Resident Rights); and

(15) need assistance with eating.

(b) Types of personal care facilities are as follows.

(1) Type A. In a Type A facility a resident:

(A) is physically and mentally capable of evacuating the facility unassisted in the event of an emergency. This may include the mobile nonambulatory, e.g., persons in wheelchairs having the capacity to take care of themselves in an emergency;

(B) does not require usual and routine attendance during nighttime sleeping hours; and

(C) must be capable of following directions for taking appropriate action for self-preservation under emergency conditions.

(2) Type B. In a Type B facility a resident may:

(A) be physically and/or mentally incapacitated or handicapped, and would require staff assistance to evacuate;

(B) be incapable of following directions and taking appropriate action for self-preservation under emergency conditions;

(C) require routine supervision during nighttime sleeping hours. An attendant must be awake and on call for assistance;

(D) be chairfast or bedfast, may need assistance with transferring upon arising and retiring, but once into the chair or bed is able to move about independently;

(E) have needs such as indwelling catheter, routine colostomy care, etc., when care is provided by contract with professional personnel by the individual resident; or

(F) not be able to communicate needs to staff.

*§145.324. General Requirements.*

(a) Each license, good for one year, shall specify the name of the facility,

location of the facility, and the type and maximum allowable number of residents to be cared for at any one time. No greater number of residents shall be kept than is authorized by the license. The license is not transferable or assignable.

(b) Copies of these standards shall be made available, upon request, to facility personnel and to residents and/or resident's responsible parties. Personnel shall be instructed on the requirements of the law and the regulations pertaining to their respective duties.

(c) The term "hospital", "nursing home", and/or "custodial care home" may not be used as part of the name of a personal care facility; however, a personal care facility may be a distinct unit of a licensed hospital, licensed nursing home, or licensed custodial care home.

(d) Any personal care facility licensed on or before December 31, 1990, under the Health and Safety Code, Chapter 242 shall be granted a temporary permit to continue operation until the licensing agency has performed any inspection and investigation required by this article. The facility will be given 60 days to attain compliance with operational standards and six months for physical plant compliance. If additional time is needed for physical plant compliance, permission must be received from the licensing agency.

(e) Existing facilities, of eight beds or less, (facilities that have residents but are not licensed as a personal care facility) will be given 12 months, from the date of the initial architectural inspection, to meet the Life Safety Code and physical plant requirements of these standards.

(f) Alternative provisions or variations of these standards may be acceptable to the licensing agency for any facilities or institutions subject to licensure and which are operated by, and under the supervision of, or approved by governmental agencies primarily engaged in the training, rehabilitation, or education of residents, based on and commensurate with the needs of the residents and the scope and guidelines or standards of the program. Additionally, certain institutions or establishments may be determined to be exempt from licensure.

(g) These standards have been written primarily based on residents being present in the facility essentially at all times; however there may be facilities in which residents are away from the facility at certain periods of the day on a coordinated basis as appropriate or on approval of the facility management. In those instances variations or alternative provisions with respect to some of the details of the standards may be appropriate.

(h) The personal care facility shall be constructed and operated in accordance with all applicable local, state, or federal

requirements.

(i) The facility shall provide an activity and/or social program at least weekly for the residents.

(j) Upon request, the facility management shall make available to the licensing agency representatives copies of the relevant facility documents or records which in the opinion of the licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. Documents or records which may be made available and copied are admission sheets, medication profiles, observation notes, medication refusal notes, and menu records. The facility may charge the licensing agency at the rate not to exceed the rate charged by the department for copies. Collection shall be by billing the licensing agency. The procedure of copying will be the responsibility of the manager or designee. If copying requires the records be removed from the facility, a representative of the facility will be expected to accompany the records and assure their order and preservation. It will be the responsibility of the licensing agency to maintain the confidentiality of all records or documents photocopied for their use, in accordance with recognized standards of medical records practice, applicable state laws, and licensing agency policy.

(k) In the event any facility licensed under the Personal Care Facility Act, Texas Civil Statutes, Article 4442c-4, ceases operation temporarily or permanently, voluntarily or involuntarily, notice shall be provided the residents and residents' relatives or responsible parties of closure. If the closure is voluntary, notice to residents' relatives or responsible parties shall be in writing, giving at least seven days notice for relocation after receipt of notice. In involuntary closure actions, notices shall be provided as required within seven days of ownership's final decision to close. Written notice is waived for involuntary closure; however, the facility remains responsible for verbal notice immediately to residents, relatives, or responsible parties.

(l) Each licensed facility shall conspicuously and prominently post the facility license in one area of the facility that is readily and customarily available to the public. In the case of a licensed section that is part of a larger building or complex, the posting shall be in the licensed area where public notices are usually posted.

(m) Inspection reports, and related reports prepared by the licensing agency are available to the public through the established licensing agency's public disclosure procedures. The most current 12 months inspection reports shall be available at the business office or manager's office on premises during normal facility office hours.

(n) Abuse or neglect of residents or possible abuse or neglect of residents must

be reported in accordance with the following requirements.

(1) A person, including an owner or employee of a facility, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person shall report the abuse or neglect to the licensing agency or any local or state law enforcement agency.

(2) Each facility shall require each employee of the facility, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person, to report the abuse or neglect to the licensing agency.

(3) Nonaccusatory reports reflecting the reporting person's belief that a facility resident has been or will be abused or neglected or has died of abuse or neglect shall be made to the licensing agency or any local or state law enforcement agency. All reports must contain the name and address of the facility resident, the name and address of the person responsible for the care of the resident, if available, and any other relevant information. All reports received by any local or state law enforcement agency shall be referred to the licensing agency or to the agency designated by the court to be responsible for the protection of the facility resident.

(4) An oral report shall be made immediately on learning of the abuse or neglect and a written report shall be made within five days to the same agency. Anonymous reports, while not encouraged, will be received and acted on in the same manner as acknowledged reports. Anonymous reports about a specific individual, accusing the individual of abuse or neglect, need not be investigated.

(o) A facility that is licensed under these standards may provide respite care for a person according to a plan of care that is filed at the facility and agreed upon between the facility and the person arranging the respite care before the facility admits the person for the care.

(1) The plan of care must be signed by a licensed physician if the person for whom respite care is arranged needs medical care or treatment. If the person does not need medical care or treatment, the plan of care must be signed by the person arranging for the respite care.

(2) The facility may keep an agreed plan of care for not longer than six months from the date it is received and during that period admit a person for respite care as frequently as is needed and as accommodations are available.

(p) Facilities serving the elderly or disabled are required by the Human Resources Code, Chapter 106, to request criminal conviction records of prospective

employees effective September 1, 1989. The Department of Human Services will obtain criminal conviction records for facilities licensed by the Licensing Agency under Health and Safety Code, Chapter 242 or Texas Civil Statutes, Article 4442c-4.

(1) A facility may offer temporary employment pending the results of a criminal conviction check. The facility may offer permanent employment after 45 days if it has not received notification of a bar on employability. Facilities must provide to the Texas Department of Human Services the required information on a job applicant no later than 72 hours after the hour when the person accepts temporary employment.

(2) Facilities must provide to the Texas Department of Human Services the following information: complete name, maiden name, aliases, date of birth, race, sex, social security number, and date hired. The information must be submitted on designated Texas Department of Human Services forms. The Texas Department of Human Services may require applicants to provide their fingerprints.

#### *§145.325 General Enforcement.*

(a) The licensing agency or the licensing agency's representative may make any inspection or investigation that it considers necessary and may enter the premises of a personal care facility at reasonable times to make an inspection or investigation in accordance with board rules. The licensing agency is entitled to access books, records, and other documents maintained by or on behalf of a facility to the extent necessary to enforce the Personal Care Facility Act, Texas Civil Statutes, Article 4442c-4 and the rules adopted under this Act. A license holder or an applicant for a license is considered to have consented to entry and inspection of the facility by a representative of the licensing agency in accordance with this subchapter. The licensing agency is entitled to preserve all relevant evidence of conditions found during an inspection or investigation that the licensing agency reasonably believes threaten the health and safety of a resident, including photography and photocopying of relevant documents, such as a license holder's notes, etc. for use in any legal proceeding. When photographing a resident, the licensing agency shall respect the privacy of the resident to the greatest extent possible and may not make public the identity of the resident.

(b) Each year, the licensing agency shall conduct at least one unannounced inspection of each facility. The licensing agency shall invite at least one person as a citizen advocate from:

(1) the American Association of Retired Persons;

- (2) the Texas Senior Citizen Association;
- (3) the Texas Retired Federal Employees;
- (4) the Texas Department on Aging Certified Long-Term Care Ombudsman; or
- (5) another appropriate statewide organization.

§145.326. *Administrative Management.* The general requirements for application for a license shall be as follows.

(1) Application shall be made on a form or in a manner as determined by the licensing agency. The application is to be complete, signed by the owner in the presence of a notary public, and returned to the licensing agency with the following prerequisites.

(A) New facilities.

(i) The application shall include:

(I) a fee of \$100 plus \$3.00 for each bed space for which a license is sought. This fee shall be submitted in the form of a check or money order payable to the Texas Department of Health;

(II) approval from the local health authority having jurisdiction over the facility;

(III) approval from the fire marshal having jurisdiction over the facility;

(IV) documents whereby legal ownership may be verified (i.e., lease agreement, warranty deed, etc.). If the facility is corporately owned, it will be necessary to provide a copy of the certificate of incorporation and articles of incorporation. If owned by partnership, a copy of the partnership agreement. Also a current copy of the certificate of good standing, as issued by the State Comptroller of Public Accounts is required;

(V) a fee as required under §145.93 of this title (relating to Fees for Plan Reviews and Building Inspections) for plan reviews, construction inspections, and feasibility inspections. All required fees must be paid prior to issuance of a license; and

(VI) approval from the architectural section of the licensing agency, based upon a final inspection.

(ii) Upon receipt of the prescribed application, the licensing agency

will evaluate the request in a timely manner. A license will be granted only if the facility is found to be in compliance with applicable laws and standards. Compliance will be ascertained by on-site inspections by appropriate inspection teams, including architectural evaluations. Until the license is granted, a maximum of three residents may be admitted.

(B) Change of ownership.

(i) The application shall include:

(I) a fee of \$100 plus \$3.00 for each bed space for which a license is sought. This fee shall be submitted in the form of a check or money order payable to the Texas Department of Health;

(II) approval from the local health authority having jurisdiction over the facility;

(III) approval from the fire marshal having jurisdiction over the facility; and

(IV) documents whereby legal ownership may be verified (i.e., lease agreement, warranty deed, etc.). If the facility is corporately owned, it will be necessary to provide a copy of the certificate of incorporation and articles of incorporation. If owned by partnership, provide a copy of the partnership agreement. Also a current copy of the certificate of good standing, as issued by the State Comptroller of Public Accounts, is required.

(ii) Upon receipt of the prescribed application, the licensing agency will evaluate the request in a timely manner. A license will be granted only if the facility is found to be in compliance with applicable laws and standards. Compliance will be ascertained by on-site inspections by appropriate inspection teams, including architectural evaluations.

(C) Increase in bed capacity.

(i) The applications shall include:

(I) approval from the local health authority having jurisdiction over the facility;

(II) approval from the fire marshal having jurisdiction over the facility;

(III) a fee of \$3.00 for each bed space for which a license is sought. The fee shall be submitted in the

form of a check or money order payable to the Texas Department of Health; and

(IV) approval from the architectural section of the licensing agency, based upon drawing(s) reviewed prior to conversion of construction and final inspection.

(ii) Approval to occupy the increased beds may be granted by the licensing agency prior to the issuance of the license covering the increased bed capacity; however, the prerequisites of clause (i) of this subparagraph must first be met.

(iii) Upon receipt of the prescribed application, the licensing agency will evaluate the request in a timely manner. A license will be granted only if the facility is found to be in compliance with applicable laws and standards. Compliance will be ascertained by on-site inspections by appropriate inspection teams, including architectural evaluations.

(D) Renewal.

(i) The application shall include:

(I) a fee of \$100 plus \$3.00 for each bed space for which a license is sought. The fee shall be submitted in the form of a check or money order payable to the Texas Department of Health;

(II) approval from the local health authority having jurisdiction over the facility; and

(III) approval from the local fire marshal having jurisdiction over the facility.

(ii) Upon receipt of the prescribed application, the licensing agency will evaluate the request in a timely manner. A license will be granted only if the facility is found to be in compliance with applicable laws and standards. Compliance will be ascertained by on-site inspections by appropriate inspection teams, including architectural evaluations.

(2) The intentional submission of false information by any applicant for an original or renewed state license shall constitute grounds for denial or revocation of license.

(3) The use of subterfuge or other evasive means, such as filing for license through a second party when an individual is disqualified for licensing, shall constitute grounds for denial or revocation of license.

§145.327. *Staffing.*

- (a) Manager.



(1) Each facility shall designate, in writing, a manager to have authority over the operation.

(2) The manager shall have proof of graduation from an accredited high school or certification of equivalency of graduation.

(3) The manager of a Type B large facility shall show evidence of six hours of annual continuing education that includes one of the following areas:

(A) basic principles of supervision;

(B) interpersonal skills for dealing with residents and families;

(C) resident characteristics and needs;

(D) community resources; or

(E) accounting and budgeting.

(4) The manager shall be on duty 40 hours per week.

(5) An individual competent and authorized to act in the absence of the manager shall be designated in writing. In a small facility if a resident is designated, he/she shall be competent and shall only work a maximum of three hours per day in the absence of the manager.

(b) Attendants.

(1) There shall be an attendant in the facility at all times when residents are in the facility. Additionally, there shall be other attendant personnel as needed to maintain order, safety, and cleanliness; to assist with medication regimens; to prepare and service meals; assist with laundry; and to assure that each resident receives the kind and amount of supervision and care required to meet his basic needs.

(2) In facilities with 41 or more residents, at least two attendants shall be up, dressed, awake, and on duty at all hours. In facilities with 40 or less residents, one attendant, during nighttime sleeping hours, need only be in the facility and immediately available. When daily schedule of residents results in all residents being away from the facility, an attendant in the facility is not required at those times.

*§145.328. Operational Policies, Admission Policies, and Records.*

(a) Operational policies.

(1) Each facility shall prepare and make available for distribution detailed written operational policies. Copies shall be furnished to staff personnel and to residents and/or residents' responsible parties at time of admission.

(2) The statement of policies shall cover such details as residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(b) Admission policies.

(1) Each resident shall have a health examination by a physician performed 30 days prior to admission or 14 days after admission.

(2) The personal care facility shall secure at the time of admission of a resident the following identifying information: full name of resident; social security number; usual residence (where resident lived before admission); sex; color or race; marital status; date of birth; place of birth; usual occupation (during most of working life); family and physician for emergency notification; pharmacy preference, and medicare/medicaid number, if available.

(3) There shall be a written admission agreement between facility and resident. The agreement shall specify such details as services to be provided and charges therefor, and shall be based on the operational policies.

(4) Records pertaining to residents shall be treated as confidential and properly safeguarded, and shall be made available only to authorized persons and agencies.

*§145.329. Medications.*

(a) Administration.

(1) Residents who choose not to or can not self-administer their medications, must have their medications administered by a person who:

(A) holds a current license under state law which authorizes the licensee to administer medication; or

(B) holds a current medication aide permit and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(2) All resident's prescribed medication shall be dispensed through a pharmacy or by the resident's treating physician or dentist.

(3) Physician sample medications may be given to a resident by the facility provided the medication has specific dosage instructions for the individual resident.

(4) Each resident's medications shall be listed on an individual resident's medication profile record.

(A) The recorded information obtained from the prescription label shall include, but is not limited to, the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(B) Residents furloughed from or leaving the personal care facility shall have their medications sent with them in the pharmacy or physician dispensed container, unless other provisions have been made for the resident to obtain his/her prescribed medication while away from the personal care facility. Written documentation shall be made of the medication sent with the resident and shall include the date, the amount of medication, and the name and strength and/or prescription number of the medication.

(b) Supervision. Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering to include and limited to:

(1) reminders to take their medications at the prescribed time;

(2) opening containers or packages and replacing lids;

(3) pouring prescribed dosage according to medication profile record;

(4) returning medications to the proper locked areas; and

(5) obtaining medications from a pharmacy.

(c) Self-administration.

(1) Residents who self-administer their own medications and keep them locked in their room, shall be counseled at least once a month by facility staff to ascertain if the residents continue to be capable of self-administering their medications/treatments and if security of medications can continue to be maintained. A written record of counseling shall be kept by the facility.

(2) Residents who choose to keep their medications locked in the central medication storage area, may be permitted entrance or access to the area for the purpose of self-administering their own medication/treatment regimen. A facility staff member shall remain in or at the storage area the entire time any resident is present and appropriate documentation made of medication taken or doses missed with the reason why.

(d) General.

(1) Facility staff will immediately report to the resident's physician and responsible party any unusual reactions to medications or treatments.

(2) A written record shall be kept when the resident does not receive or take his/her medications/treatments as prescribed. The documentation shall include the date and time the dose should have been taken, and the name and strength and/or prescription number of medication missed, however the recording of missed doses of medication does not apply when the resident is away from the personal care facility.

(e) Storage.

(1) The facility shall provide a locked area for all medications. Examples of areas, but not limited to, are:

- (A) central storage area;
- (B) medication cart; and
- (C) resident room.

(2) Each resident's medication shall be stored separately from other resident's medications within the storage area.

(3) A refrigerator shall have a designated and locked storage area for medications requiring refrigeration.

(4) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medication area.

(f) Disposal.

(1) Medications no longer being used by the resident for the following reasons are to be kept separate from current medications and are to be disposed of by a registered pharmacist licensed in the State of Texas:

(A) medications discontinued by order of the physician;

(B) medications which remain after a resident is deceased; or

(C) medications which have passed the expiration date.

(2) Needles and hypodermic syringes with needles attached shall be disposed as required by §§1.131-1.137 of this title (relating to the Definition, Treatment, and Disposal of Special Waste from Health Care Related Facilities).

(3) Medications kept in a central storage area are released to discharged residents when a receipt has been signed by the resident or responsible party.

*§145.330. Accident, Injury, or Acute Illness.*

(a) In the event of accident, injury, or acute physical or mental illness requiring medical, dental or nursing care, the personal

care facility will make arrangements for emergency care and/or transfer to an appropriate place for treatment (i.e., physician's office, clinic, hospital, etc).

(b) In the event of accident, injury, or acute physical or mental illness requiring medical, dental or nursing care or in the event of apparent death, the personal care facility shall immediately notify the resident's physician and next of kin, responsible party, or agency who placed the resident in the facility.

(c) Every accident, injury, or acute physical or mental illness requiring medical or nursing care shall be described and documented on a separate report. The report shall contain a statement of final disposition and be maintained on file.

(d) The facility shall stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(e) Residents who need the services of professional nursing or medical personnel due to a temporary incapacitating illness or injury may have those services delivered by persons qualified to deliver the necessary service. The delivery of professional nursing or medical services shall not exceed 90 consecutive days.

*§145.331. Personal Belongings and Finances.*

(a) Each individual shall have the right to keep and maintain any personal belongings in his possession except items which might be harmful to himself or others. The facility has no responsibility for such possessions.

(b) Each individual shall have the right of keeping and maintaining his own finances. The personal care facility shall keep a simple financial record on all charges billed to the resident for care and these records shall be available to the licensing agency, while in the facility. If the resident entrusts the handling of any personal finances to the personal care facility, a simple financial record shall be maintained to document accountability for receipts and expenditures, and these records must be available to the licensing agency.

*§145.332. Dietary Service.*

(a) A person designated by the facility is responsible for the total food service of the facility.

(b) At least three meals or their equivalent shall be served daily, at regular times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. All exceptions shall be specifically approved by the licensing agency.

(c) Menus shall be planned one week in advance. Menus shall be prepared to provide a balanced and nutritious diet,

such as that recommended by the National Food and Nutrition Board. Food shall be varied. Records of menus as served shall be filed and maintained for 30 days after the date of serving.

(d) Therapeutic diets which can customarily be observed by a person in a family setting, are permissible to be served by the personal care facility. Any individual in need of a therapeutic diet that requires professional calculation, shall have the diet calculated by a qualified dietitian.

(e) Supplies of staple foods for a minimum of a four-day period and perishable foods for a minimum of a one-day period shall be maintained on the premises.

(f) Food shall be obtained from sources that comply with all laws relating to food and food labeling. If food is removed from its original container, it shall be kept sealed, and labeled. If perishable, it shall also be dated.

(g) Plastic containers with tight fitting lids are acceptable for storage of staple foods in the pantry.

(h) Potentially hazardous food, such as meat and milk products, shall be stored at 45 degrees Fahrenheit or below. Hot food shall be kept at 140 degrees Fahrenheit or above during preparation and serving.

(i) Freezers shall be kept at a temperature of 0 degrees Fahrenheit or below and refrigerators shall be 45 degrees Fahrenheit or below. Thermometers shall be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(j) Food shall be prepared and served with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed, and sanitized to prevent cross-contamination.

(k) Raw foods shall be washed with potable water before preparation.

(l) Food service employees, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall not work in the food service area in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(m) Effective hair restraints shall be worn to prevent the contamination of food.

(n) Tobacco products shall not be used by employees during food preparation and service.

(o) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practice

during all working periods in food service.

(p) Dishwashing chemicals used in the kitchen may be stored in plastic containers if they are the original in which the manufacturer packaged the chemicals.

(q) Sanitary dishwashing procedures and techniques shall be followed.

(r) Facilities housing 17 or more residents shall comply with §§229.161-229.173 of this title (relating to Food Service Sanitation) and local health ordinances or requirements shall be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

#### §145.333. Resident Rights.

(a) In addition to other rights a resident has as a citizen, a resident has the rights provided by this section.

(1) A resident may not be physically or mentally abused or exploited.

(2) A resident may not be physically or chemically restrained unless the restraint:

(A) is necessary in an emergency to protect the resident or others from injury after the individual harms or threatens to harm himself or another; or

(B) is authorized in writing by a physician for a limited and specified period of time.

(3) A mentally retarded resident may participate in a behavior modification program involving use of restraints or adverse stimuli only with the informed consent of a guardian.

(4) A resident shall be treated with respect, consideration, and recognition of the individual's dignity and individuality. A resident shall receive personal care and private treatment.

(5) A resident may not be denied appropriate care on the basis of the individual's race, religion, color, national origin, sex, age, handicap, marital status, or source of payment.

(6) A resident may not be prohibited from communicating in the individual's native language with other individuals or employees for the purpose of acquiring or providing any type of treatment, care, or services.

(7) A resident is encouraged and assisted in exercise of an individual's rights. A resident may voice grievance or recommend changes in policy or service without restraint, interference, coercion, discrimination, or reprisal. The person providing services shall develop procedures for submitting complaints and

recommendations by residents and for assuring a response by the person providing services.

(8) A resident may associate, communicate, and meet privately with other individuals unless to do so would infringe on the rights of other individuals. A resident's mail may not be opened by the facility unless authorized in writing by a physician.

(9) A resident may participate in activities of social, religious, or community groups unless a physician determines that participation would harm the individual. The physician must record the determination in the resident's record.

(10) A resident may manage his personal financial affairs. If the resident authorizes in writing the person providing services to assist in managing the finances, the person providing services shall deposit the resident's funds in a separate trust fund and provide the resident with a written receipt; however, if federal regulations prescribe a different procedure, federal regulations prevail.

(11) A resident's records are confidential and may not be released without the resident's written permission. A resident may inspect his/her personal records maintained by the person providing services.

(12) A person providing services shall answer a resident's questions concerning the resident's health, treatment, and condition unless a physician determines that the knowledge would harm the resident. The physician must record the determination in the resident's record.

(13) A resident may choose a personal physician.

(14) A resident may participate in planning the resident's total care and medical treatment.

(15) A resident shall be given the opportunity to refuse treatment after the possible consequences of refusing treatment are fully explained.

(16) If an area is available, a person providing services shall, on request, provide the resident with a private area to receive visitors. If the resident is married and the spouse is receiving similar services, the couple may share a room.

(17) A resident's visitors may not be restricted unless a physician determines that a restriction is medically necessary.

(18) A resident may retain personal clothing and possessions as space permits. The number of personal possessions may be limited for health and safety reasons which are documented in the resident's medical record. The number of personal possessions may be limited for the health and safety of other residents.

(19) A resident may not be required to perform services for the person providing services.

(20) A person providing services shall inform a resident in writing of available services and the applicable charges if the services are not covered by medicare, medicaid, or other form of health insurance.

(21) A person providing services may not transfer or discharge a resident unless:

(A) the resident's medical needs require transfer;

(B) the resident's health and safety or the health and safety of another resident requires transfer or discharge; or

(C) the resident fails to pay for services, except as prohibited by federal law.

(22) Except in an emergency situation, if a person providing services intends to transfer or discharge a resident, the person providing services shall notify the resident, the responsible party of the resident, and attending physician not later than five days before the date on which the individual will be transferred or discharged.

(b) The facility shall provide each resident with a written list of the resident's rights and responsibilities before providing services or as soon after providing services as possible, and shall post the list in a conspicuous location. The facility providing the services must inform a resident of changes or revision in the list.

#### §145.334. Building Construction.

(a) Classification of facilities.

(1) A small facility is a building(s) consisting of one or more floors providing sleeping accommodations for 16 or fewer residents exclusive of "live-in" houseparents, family, or staff.

(2) A large facility is a building(s) consisting of one or more floors providing sleeping accommodations for 17 residents or more exclusive of "live-in" staff.

(b) Applicability of requirements for construction and life safety.

(1) All buildings or structures, new or existing, used as a licensed personal care facility shall be in accordance with these standards. Any exceptions are specifically mentioned.

(2) Existing facilities (i.e., facilities with residents at time of initial inspection) shall be given time by the licensing agency in which to comply with the physical plant requirements as specified in §145.324(d) of this title (relating to General Requirements).

(3) For existing buildings and structures which are converted to personal care occupancy, no residents will be admitted until all standards are met and approval for occupancy is granted by the licensing officer of the licensing agency.

(4) A licensed nursing facility, licensed custodial care facility or licensed hospital, meeting National Fire Protection Association 101 (NFPA 101), Chapter 12 or 13, may be considered as a personal care occupancy without additional fire safety features as may be specified herein.

(5) Buildings and structures shall conform to the 1988 edition, of NFPA 101, as published by the National Fire Protection Association, Incorporated, Batterymarch Park, Quincy, Massachusetts 02269, as follows.

(A) Type A small facilities shall conform to Chapter 21.

(B) Type A large facilities shall conform to Chapter 21.

(C) Type B small ("Impractical") shall conform to Chapter 21.

(D) Type B large ("Impractical") shall conform to Chapters 21 and 12 (limited care, as defined by the NFPA 101, requirements may be used).

(E) Other chapters, sections, subsections, or paragraphs of the NFPA 101 such as Chapters 1 through 7 and Chapter 31, shall apply as referenced or intended for their relation to Chapters 21, 12, and 18.

(F) Buildings which contain living units with independent cooking and bathroom facilities shall conform with NFPA 101, Chapters 21 and 18, New Apartment Buildings, Option #2, "Buildings provided with a complete automatic fire detection and notification system," as a minimum.

(6) New construction shall be subject to local codes. (The description of the occupancy may vary with local codes.) In the absence of local codes or their enforcement for new construction, the licensing agency will require conformance to the fundamentals of the following codes:

(A) the Uniform Building Code, 1988 edition by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, 'R' Occupancy, Divisions 1 and 3 for Type A facilities, and 'I' Occupancy for Large Type B facilities;

(B) the Uniform Plumbing Code, 1988 edition, as published by the

International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032;

(C) the National Electrical Code as specified under NFPA 101;

(D) handicap provisions as published by the State Purchasing and General Services Commission, Elimination of Architectural Barriers, effective June 21, 1989;

(E) illumination systems shall be designed and installed in accordance with the Lighting Handbook of the Illuminatory Engineering Society (IES) of North America, except as may be modified herein.

(7) An existing building either occupied as a personal care facility at the time of initial inspection by the licensing agency or converted to occupancy as a personal care facility shall meet all local requirements pertaining to that building for that occupancy. The licensing agency shall require the facility sponsor or licensee to submit evidence that local requirements are satisfied. When local laws, codes, or ordinances are more stringent than these standards for personal care, the more stringent requirements shall govern.

(8) Buildings shall be structurally sound with regard to actual or expected dead, live, and wind loads according to applicable building codes.

(c) Basic NFPA 101 requirements.

(1) General. The concept of the NFPA 101 requirements for fire safety with regard to the residents, is based on evacuation capability. These standards are written with the premise that the residents will be capable of self-evacuation without continuous staff assistance. Residents that are not normally capable of self-evacuation nor are capable of negotiating stair unassisted, shall not be housed above or below the floor of exit discharge unless the facility meets the construction requirements of NFPA 101, Chapter 12, "Health Care Occupancies" for large facilities and the "impractical" requirements for small facilities as found in NFPA 101, Chapter 21. Examples of residents that may not be capable of self-evacuation are as follows:

(A) a person with a physical disability of a nature that he is not capable of maneuvering in a wheelchair, walker, etc., unaided; or

(B) a mentally disabled person who will not take or cannot understand instructions from a staff member, or;

(C) a person that is taking medication before bedtime which will make

it difficult for a staff member to arouse the person quickly.

(2) Evacuation procedures. Residents that are housed in buildings that are licensed as small or large Type A facilities, shall be able to demonstrate to the authority having jurisdiction (AHJ) that they can travel from their living unit to a centralized space, such as lobby, living or dining room on the level of discharge within a 13 minute period without continuous staff assistance. Elevators cannot be used as an evacuation route.

(3) Operational features.

(A) All fires causing damage to the facility and/or equipment shall be reported to the licensing agency within 72 hours. Any fire causing injury or death to a resident shall be reported immediately. A telephone report shall be followed by a written report on a form which will be supplied by the licensing agency.

(B) Fire exit drills shall be conducted at least four times a year on each shift. The drills may be announced in advance to the residents. The drills shall involve the participation of the staff in accordance with the emergency plan. Residents shall be informed of evacuation procedures and locations of exits. All fire drills shall be documented indicating brief description of drill, any problems encountered, date, time, and staff who participated.

(C) Smoking regulations shall be established and smoking areas shall be designated for residents and staff. Ashtrays of noncombustible material and safe design shall be provided in smoking areas.

(D) The facility shall post an emergency evacuation floor plan. An exception is that small, one story, facilities are not required to post such plans.

(E) The administration shall have in effect and available to all supervisory personnel, written copies of a plan for the protection of all persons in the event of fire and for their remaining in place, for their evacuation to areas of refuge and from the building when necessary. The plan shall include special staff actions including fire protection procedures needed to ensure the safety of any resident and shall be amended or revised when needed. All employees shall be periodically instructed and kept informed with respect to their duties and responsibilities under the plan. A copy of the plan shall be readily available at all times within the facility.

(4) Construction.

(A) There shall be separation from other occupancies. A common wall

between a personal care facility and another occupancy shall be not less than a two-hour fire-rated partition. (Definition of such a partition is in accordance with National Fire Protection Association Standards.) A licensed nursing facility, licensed custodial care facility, or licensed hospital is not considered another occupancy for this purpose. An exception is where an unlicensed occupancy occurs in the same building or structure and is so intermingled that separate safeguards are impracticable, means of egress facilities, construction, protection, and other safeguards shall comply with the NFPA 101 requirements of the licensed occupancy.

(B) Interior wall and ceiling surfaces shall have as the finished surface or as substrate or sheathing a fire resistance of not less than that provided by 3/8" gypsum board (20 minute fire rating), unless approved otherwise by the licensing agency. An exception is Type B large facilities designed for residents that normally cannot self-evacuate shall meet the construction requirements of NFPA 101, Chapter 12, §12-1.6.

(C) Flame spread rate requirements shall be as specified in NFPA 101. Flame spread is the rate of fire travel along the surface of a material. (This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated.) Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200). See NFPA 101, §6-5, Interior Finishes.

(D) Doors between resident rooms and corridors or public spaces shall be not less than 1-3/4" thick solid core wood construction or 20-minute fire-rated, self-closing or automatic-closing, and latch in their frames. Exceptions are as follows.

(i) Small Type A facilities can have smoke resisting doors with automatic closures provided the interior finish is Class 'B' or better and there are two remote exit routes.

(ii) Small Type A facilities that have 20-minute fire-rated doors (or 1-3/4" solid core wood), Class 'B' or better interior finish, and two remote exit routes are not required to be self-closing or automatic-closing.

(iii) In Small and Large Type A facilities protected throughout by an approved automatic sprinkler system, doors to resident bedrooms are not required to be self-closing or automatic-closing, except a three story or larger building which does not meet construction requirements of NFPA 101, Chapter 12.

(E) Upper floors shall have at least two separate approved stairs. Each

stair shall be arranged and located so that it is not necessary to go through another room (such as bedroom or bath) to reach the stair. All stairs shall be provided with handrails and with normal lighting. Refer to NFPA 101 for Class 'A' stair details. An exception is that for existing 16 beds or less: At least one main stair shall be Class 'B'. Such stairs may be constructed of wood.

(F) All hazardous areas, as defined in the NFPA 101, Chapter 21 or 12, shall be one-hour fire separated or provided with sprinkler protection or both if considered severe. Gasoline, volatile materials, oil base paint, or similar products shall not be stored in the building housing residents.

(G) Exit signs, with emergency power, shall be provided in all large facilities and installed in accordance with NFPA 101, Section 5-10.

(H) Emergency lighting shall be provided in all buildings with 25 or more bedrooms; in apartment buildings with 12 or more living units or which are three or more stories in height; and in all large facilities that are designed for Type B. The System shall be installed in accordance with NFPA 101, Section 5-9.

(5) Fire alarm and sprinkler systems.

(A) Fire alarm and smoke detection system. An underwriters laboratory (U.L.) listed manual fire alarm initiating system, with an interconnected automatic smoke detection and alarm initiation system, shall be provided in accordance with the NFPA 101, Section 7-6. The operation of any alarm initiating device will sound an audible/visual alarm(s) at the site.

(i) Smoke detectors shall be installed in resident bedrooms, corridors, hallways, living rooms, dining rooms, and public or common areas. Service areas, such as kitchens, laundries, and attached garages used for car parking may have heat detectors in lieu of smoke detectors. Exceptions are as follows.

(I) Large facilities with apartment units may use listed smoke detectors with an alarm device and separate heat detector contacts in the living area. The smoke detectors must provide an audible signal within the apartment, and annunciate at the main staff station or location. The heat detector contacts shall be connected into the fire alarm system and provide a general alarm when activated.

(II) A facility constructed to meet NFPA 101, Chapter 12 need only meet section 12-3.4.5.1. for smoke detector locations.

(ii) The fire alarm control panel shall be visible to staff at or near the staff area that is attended 24 hours a day.

(iii) The primary power source for the complete fire alarm system must be commercial electric and permanently wired for power on a dedicated circuit in accordance with the National Electrical Code.

(iv) Emergency power source shall be from approved storage batteries or on-site engine-driven generator set.

(v) The facility shall have a written contract with a fire alarm company or person licensed by the State of Texas to maintain the fire alarm system semi-annually.

(vi) In large facilities, the fire alarm panel shall indicate as a separate zone, each floor and/or smoke compartment. Each zone shall have an alarm and trouble indication.

(vii) In large Type B facilities the fire alarm shall automatically notify the fire department in accordance with NFPA 101, Section 7-6.4.

(B) Sprinkler systems. When installed or required, sprinkler systems shall meet the following criteria.

(i) Facilities housing 16 or fewer residents may have a system that meets NFPA 13D requirements.

(ii) Large Type B facilities must have a complete NFPA 13 system.

(iii) Large Type A facilities may have an NFPA 13R system (up to and including three stories).

(6) Site and location.

(A) The facility shall be serviced by a paid or volunteer fire fighting unit as approved by the licensing agency. Water supply for fire fighting purposes shall be as required and approved by the fire fighting unit.

(B) Any site or building conditions that are a fire hazard, health hazard, or physical hazard shall have corrections made as determined by the licensing agency.

(C) The facility shall provide or arrange for nearby parking spaces for private vehicles of residents and visitors. A minimum of one space shall be provided for each four beds or fraction thereof, or per local code, whichever is less stringent.

(D) Ramps, walks, and steps shall be of slip-resistive texture and uniform, without irregularities. Ramps shall not exceed 1:12 slope, and shall meet hand-

icap standards for width. Guardrails, fences, or handrails shall be provided where grades make an abrupt change in level.

(E) All outside areas, grounds, adjacent buildings, etc., on the site shall be maintained in good condition and kept free of rubbish, garbage, untended growth, etc., that may constitute a fire or health hazard. Site grades shall provide for water drainage away from the structure to prevent ponding or standing water at or near the building.

(7) Sanitation and housekeeping.

(A) Waste water and sewage shall be discharged into a state-approved municipal sewerage system; any exception shall be as approved by the licensing agency.

(B) The water supply shall be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure, and shall be obtained from a water supply system, the location, construction, and operation of which are approved by the licensing agency.

(C) Waste, trash, and garbage shall be disposed of from the premises at regular intervals in accordance with state and local practices. Excessive accumulations are not permitted. The facility shall comply with §§1.131-1.137 of this title (relating to Definition, Treatment, and Disposal of Special Waste from Health Care Related Facilities).

(D) Operable windows shall be insect screened.

(E) An on-going pest control program shall be provided by facility staff or by contract with a licensed pest control company. The least toxic and least flammable effective chemicals shall be used.

(F) All bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled and unsanitary operations shall be ventilated with operable windows or powered exhaust to the exterior for odor control.

(G) In kitchens and laundries, there shall be procedures utilized by facility staff to avoid cross-contamination between clean and soiled utensils and linens.

(H) The facility shall be kept free of accumulations of dirt, rubbish, dust, and hazards. Floors shall be maintained in good condition and cleaned regularly; walls

and ceilings shall be structurally maintained, repaired, and repainted or cleaned as needed. Storage areas and cellars shall be kept in an organized manner. No storage will be permitted in the attic spaces.

(I) The facility shall be capable of being ventilated through the use of windows, mechanical ventilation, or a combination of both.

(J) If the facility provides linens to the residents, the quantity of available linen shall meet the sanitary and cleanliness needs of the residents. Clean linens shall be stored in a clean area.

(8) General safety features.

(A) The building shall be kept in good repair; electrical, heating, and cooling systems shall be maintained in a safe manner. Use of electrical appliances, devices, and lamps shall be such as not to overload circuits or cause excessive lengths of extension cords.

(B) Floor, ceiling, and wall finish materials shall be complete and in place to provide a sanitary and structurally safe environment.

(C) Electrical and mechanical systems shall be safe and in working order. The licensing agency may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal, city/county building official having jurisdiction, licensed electrician, or a registered professional engineer.

(D) All draperies and other window coverings in public or common areas, and in bedrooms and/or living units in which smoking is permitted shall be flame resistant.

(E) All new floor carpet installed in public or common spaces after the initial inspection by the licensing agency shall be Class I or II based on the "Critical Radiant Flux" ratings. Proper documentation must be provided.

(F) Open flame heating devices are prohibited. All fuel burning heating devices shall be vented. Working fireplaces are acceptable if of safe design and construction and if screened or otherwise enclosed.

(G) There shall be at least one telephone in the facility available to both staff and residents for use in case of an emergency. Emergency telephone numbers, including at least fire, police, ambulance, EMS, and poison control center, shall be

posted conspicuously at or near the telephone.

(H) An initial pressure test of facility gas lines from the meter shall be provided. Additional pressure tests will be required when the facility has major renovations or additions where the gas service is interrupted. All gas heating systems shall be checked for proper operation and safety prior to the heating season. Any unsatisfactory conditions shall be corrected promptly.

(I) Exterior and interior stairs shall have handrails that are firmly secured to prevent falls.

(J) Cooling and heating shall be provided for occupant comfort. Conditioning systems shall be capable of maintaining the comfort ranges of 68 degrees Fahrenheit to 82 degrees Fahrenheit in resident-use areas.

(K) The Illumination Engineering Society of North America recommendations shall be followed to achieve proper illumination characteristics and lighting levels throughout the facility. Minimum illumination shall be 10-foot candles in resident rooms during the day and 20-foot candles in corridors, staff stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways, and elevators during the day. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for medication preparation or storage areas, kitchens, and staff station desks shall be 50-foot candles during the day. Illumination requirements for these areas apply to the task performed and should be measured on the tasks.

(L) All buildings three floors or higher and in facilities that provide services, treatment, or social activities on floors above or below the level of discharge and which house mobility impaired residents shall have a passenger elevator. The lowest level of discharge will be the first floor for determining floor level.

(9) Portable fire extinguishers.

(A) At least one portable U.L. or factory mutual (F.M.)-approved five-pound Class B:C dry chemical fire extinguisher, rechargeable type, is required in each laundry, kitchen, and walk-in mechanical room. ABC type extinguishers shall not be used in kitchens. An exception is that in small facilities, ABC type extinguishers will be acceptable for these spaces.

(B) Portable U.L. or F.M.-approved 2-1/2 gallon stored-pressure

water type fire extinguishers (Class A) must be provided in areas serving resident bedrooms. One such unit shall be located within 75 feet of any resident bedroom door. Acidic base (ABC) and dry chemical types are not acceptable.

(C) Extinguishers must be readily accessible. Units must be installed on hangers or brackets, mounted in special cabinets, or set on appropriate shelves. Operating instructions shall face outward. Mounting heights shall not exceed five feet above the floor for extinguishers weighing 40 pounds or more.

(D) Regular monthly inspections or "quick checks" must be made by facility representatives to assure that extinguishers are in the proper location, condition, and working order. Annual maintenance or "thorough checks" must be accomplished in accordance with National Fire Protection Association Standard Number 10A (NFPA 10A) by competent personnel licensed or certified to perform servicing by the Texas State Fire Marshal. Unserviceable extinguishers must be replaced.

(E) With reference to subparagraph (C) of this paragraph, alternative locations and arrangements for fire extinguishers may be as approved by the licensing agency for small facilities, facilities consisting of separated small building units, or unusual building arrangements.

(10) Waste and storage containers.

(A) Metal wastebaskets of substantial gauge or any U.L. or F.M. approved containers must be provided in all areas where smoking is permitted. An exception is that Type B "Large" facilities require noncombustible waste baskets or waste containers in all areas.

(B) Garbage, waste, or trash containers provided for kitchens, janitor closets, laundries, mechanical or boiler rooms, general storage, and similar places must be made of metal or any U.L. or F.M. approved material, having a close fitting cover, and having at least a half-inch air space between the floor and bottom of container. Disposable plastic liners may be used in these containers for sanitation.

(11) Accessibility provisions (handicap requirements).

(A) The physical plant shall be designed for persons with physical disabilities and/or mobility impairments and must comply with applicable federal, state, and local requirements. Basic accessibility provisions (handicap requirements) are as follows.

(i) A minimum of 5.0% of the resident living units shall have accessibility provisions (handicap accessible).

(ii) The facility shall provide and mark at least one parking space.

(iii) The facility shall provide wheelchair access into the building by use of ramps and curb breaks. Ramps shall slope no more than 1:12 (one unit of rise to 12 units of run).

(iv) Room identification signs or letters where needed shall be installed four feet six inches to five feet above finished floor and located on the corridor walls adjacent to the latch side of the door jamb. Letters or numbers on signs shall be raised at least 1/32 inch minimum. Characters shall be at least 5/8 inch in height and no higher than two inches.

(v) Grab bars at toilet and bathing units shall be 1-1/4 inch to 1-1/2 inch in diameter.

(vi) Toilet facilities shall be of sufficient size to accommodate wheelchairs for residents.

(vii) Water closet seat height in toilet facilities shall be 17 to 19 inches from the floor.

(viii) Mirrors and dispensers shall be no higher than 40 inches above the floor.

(ix) Drinking fountains or coolers shall meet American National Standard Institute (ANSI) A117.1. (i.e., up front spout and controls no more than 36 inches from floor maximum).

(x) Public telephones, if provided, shall meet ANSI A117.1. Mounting height shall not exceed 48 inches to coin slot.

(xi) Public use toilet facilities shall be available in large facilities. An exception is that small facilities are exempt from these requirements for persons with physical disabilities and/or mobility impairments unless the facility houses such residents.

(12) Resident accommodations.

(A) Resident bedrooms.

(i) Bedroom usable floor space for Type A facilities shall not be less than 80 square feet for a one-bed room and not less than 60 square feet per bed for a multiple bed room. A bedroom shall be not less than eight feet in the smallest dimension, unless specifically approved otherwise by the licensing agency.

(ii) Bedroom usable square footage for Type B facilities shall be not less than 100 square feet per bed for a single-bed room and not less than 80 square feet per bed for a multiple bed room.

(iii) In facilities that have living units consisting of separate living/dining spaces and bedrooms, 10% of the required bedroom square footage may be included as part of the living/dining space.

(iv) No more than four beds shall be in a bedroom, and not more than 50% of the beds shall be in bedrooms of three or more.

(v) Each bedroom shall have at least one operable window with outside exposure. The window sill shall be no higher than 44" from the floor and shall be at or above grade level. The window will be operable from the inside, without the use of tools or special devices, and provide an operable section with a clear opening of not less than 5.7 square feet (minimum width of 20" x 41.2" high and minimum height of 24" x 34.2" wide). Windows required for evacuation will not be blocked by bars, shrubs, or any obstacle that would impede evacuation. Exceptions are as follows:

(I) In large Type B facilities, the window sill height from the floor shall be no more than 36".

(II) In large Type B facilities, the bedroom window size shall not be less than 8.0% of the bedroom size.

(vi) In the event the resident does not provide his or her own furnishings, the facility must provide for each resident a bed with mattress, chair, table or dresser, and enclosed closet space for clothing and personal belongings. Drawer space shall be provided. Furnishings provided by the facility must be maintained in good repair.

(vii) All resident rooms shall open upon an exit, corridor, living area, or public area and shall be arranged for convenient resident access to dining and recreation areas.

(viii) A staff or attendant area shall be provided on each floor or in each separate building. The area shall consist of a desk or writing surface and telephone. An exception is that Type A facilities, two story or less in height, with separate buildings grouped together, and connected by covered walks, need not have staff or attendant areas on each floor or in each building, provided that the areas are not more than 200 feet walking distance from the furthest resident living unit. The areas must have a communication system and fire alarm annunciation indicating the units served.

(ix) Facilities which consist of two or more floors or separate buildings shall have a communication system from each resident living unit to a central staff location. This communication system may be a direct telephone, nurse call, or intercom.

(B) Resident toilet and bathing facilities.

(i) All bedrooms shall be served by separate private, connecting, or general toilet rooms for each sex (if facility houses both sexes). General toilet room or bathing room shall be accessible from a corridor or public space. A lavatory shall be readily accessible to each water closet. At least one water closet, lavatory, and bathing unit shall be provided on each sleeping floor accessible to residents of that floor.

(ii) One water closet and one lavatory for each six occupants or fraction thereof are required. One tub or shower

for each 10 occupants or fraction thereof is required.

(iii) Privacy partitions and/or curtains shall be provided at water closets and bathing units in rooms for multi-resident use.

(iv) Tubs and showers shall have non-slip bottoms or floor surfaces, either built-in or applied to the surface.

(v) Resident-use hot water for lavatories and bathing units will be maintained between 100 degrees Fahrenheit and 125 degrees Fahrenheit.

(vi) Towels, soap, and toilet tissue shall be available at all times for individual resident use.

(C) Resident living areas.

(i) Social-diversional spaces such as living rooms, day rooms, lounges, sun rooms, etc., shall be provided and have appropriate furniture. A minimum of 120 square feet shall be provided in at least one space regardless of number of residents. This space must have exterior windows providing a view of the outside.

(ii) The total space requirement for social-diversional areas shall be provided on a sliding scale as follows:

<u>No. of Beds</u>	<u>Area Per Bed</u> <u>Minimum</u>
04-16	15 sq. feet (min. 120 sq. ft.)
17-39	13 sq. feet
40-59	12 sq. feet
60+	10 sq. feet

(iii) Where a required way of exit (or a service way) is through such living or dining area, a pathway equal to the corridor width will normally be deducted for calculation purposes and discounted from that area. Such exit pathways must be kept clear of obstructions.

(D) Resident dining areas.

(i) A common dining area, distinct from the social-diversional area, shall be provided and have appropriate furnishings. A minimum of 120 square feet shall be provided in at least one space, regardless of number of residents. This

space must have exterior windows providing a view of the outside.

(ii) Access to the common dining area from the resident living units or bedrooms shall be covered.

(iii) The total space requirement for a common dining area shall be provided on a sliding scale as follows:

<u>No. of Beds</u>	<u>Area Per Bed</u> <u>Minimum</u>
04-16	15 sq. feet (min. 120 sq. ft.)
17-39	13 sq. feet
40-59	12 sq. feet
60+	10 sq. feet

(iv) In small residential facilities, the total living-dining area(s) can be a single or interconnecting space with a minimum of 240 square feet of area.

(E) Storage areas. The facility shall provide sufficient separate storage spaces or areas for the following:

(i) administration for records and office supplies;

(ii) locked areas for medications and medical supplies. Poisons shall be stored in a locked area and separate from all medications and preparation;

(iii) equipment supplied by the facility for resident needs such as wheelchairs, walkers, beds, mattresses, etc.;

(iv) cleaning supplies (janitorial needs);

(v) food storage;

(vi) clean linens and towels if furnished by the facility;

(vii) lawn and maintenance equipment, if needed;

(viii) janitor(s) closet with deep sink and hot and cold water (large facilities only); and

(ix) soiled linen storage or holding room(s), if the facility furnishes linen.

(F) Kitchen.

(i) The facility shall have a kitchen or dietary area to meet the general food service needs of the residents. It shall include provisions for the storage, refrigeration,

preparation, and serving of food; for dish and utensil cleaning; and for refuse storage and removal.

(ii) Kitchens (main/dietary) for large facilities shall be as follows.

(I) Kitchens will be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals to residents.

(-a-) Consideration shall be given to planning for the type of meals served, the overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food.

(-b-) Plans shall include a detailed kitchen layout designed



by a registered or licensed dietitian or architect having knowledge in the design of food service operations.

(II) Kitchens shall be designed so that room temperature, at peak load (summertime), shall not exceed a temperature of 85 degrees Fahrenheit measured over the room at the five foot level. The amount of supply air shall take into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(III) Facilities for washing and sanitizing dishes and cooking utensils shall be provided. The kitchen shall contain a multi-compartment pot sink large enough to immerse pots and pans, and a mechanical dishwasher for washing and sanitizing dishes. Separation of soiled and clean dish areas shall be maintained, including air flow.

(IV) A vegetable preparation sink shall be provided. It shall be separate from the pot sinks.

(V) A supply of hot and cold water shall be provided. Hot water for sanitizing purposes shall be 180 degrees Fahrenheit or the manufacturer's suggested temperature for chemical sanitizers.

(VI) The kitchen shall be provided with a hand-washing lavatory in the food preparation area with hot and cold water, soap, towel dispenser, and waste receptacle. The dish room area shall have ready access to a handwashing lavatory.

(VII) Staff rest room facilities with lavatory shall be directly accessible to kitchen staff without traversing resident use areas. The rest room shall not open directly into the kitchen (i.e., provide a vestibule).

(VIII) Janitorial facilities shall be provided exclusively for the kitchen and shall be located in the kitchen area.

(IX) Non-absorbent smooth finishes or surfaces shall be used on kitchen floors, walls, and ceilings. Such surfaces shall be capable of being routinely cleaned and sanitized to maintain a healthful environment. Counter and cabinet surfaces, inside and outside, shall also have smooth, cleanable, non-porous finishes.

(X) Doors between kitchen and dining or serving areas shall have 1/4 inch fixed wire glass view panel mounted in a steel frame.

(XI) A garbage can or cart washing area with drain and hot water shall be provided either on the interior or exterior of the facility.

(XII) Floor drains shall be provided in the kitchen and dishwashing areas.

(XIII) A commercial range shall be provided and equipped with a commercial range hood and exhaust designed and installed in accordance with NFPA 96.

(IVX) Grease traps shall be provided as required.

(iii) Food storage areas for large facilities shall be as follows.

(I) Food storage areas shall provide for storage of a four-day minimum supply of non-perishable foods at all times.

(II) Shelves shall be adjustable wire type. Walls and floors must have a non-absorbent finish to provide a cleanable surface. No foods shall be stored on the floor; dollies, racks, pallets, or wheeled containers may be used to elevate foods not stored on shelving.

(III) Dry foods storage shall have an effective venting system to provide for positive air circulation.

(IV) The maximum room temperature for food storage shall not exceed 85 degrees Fahrenheit at any time. The measurement shall be taken at the highest food storage level, but not less than five feet from the floor.

(V) Food storage areas may be located apart from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(iv) Auxiliary serving kitchens (not contiguous to food preparation/serving area) shall be as follows.

(I) Where service areas other than the kitchen are used to dispense foods, these shall be designated as food service areas and shall have equipment for maintaining required food temperatures while serving.

(II) Separate food service areas shall have handwashing facilities as part of the food service area.

(III) Finishes of all surfaces, except ceilings, shall be the same as those required for dietary kitchens or comparable areas.

(G) Laundry/linen services.

(i) A large personal care facility which co-mingles and processes laundry on-site in a central location shall comply with the following.

(I) The laundry shall be separated and provided with sprinkler protection if located in the main building. (Separation shall consist of a one-hour fire rated partition carried to the underside of the floor or roof deck above.) Access doors shall be from the exterior or interior non-resident use areas, such as a small vestibule or service corridor.

(II) The laundry shall be provided with the following physical features:

(-a-) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior which shall operate at all times there is soiled linen being held in this area. (This may be combined with the washer section);

(-b-) a general laundry work area which is separated by partitioning two areas - a washer section and a dryer section;

(-c-) a storage area for laundry supplies;

(-d-) a folding area;

(-e-) adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire wall separation; and

(-f-) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(ii) If linen is processed off the site, the following shall be provided on the premises:

(I) a soiled linen holding room (provided with adequate forced exhaust ducted to the exterior); and

(II) a clean linen receiving, holding, inspection, sorting or folding, and storage room(s).

(iii) Resident-use laundry, if provided, shall utilize residential type washers and dryers. If more than three washers and three dryers are located in one space, the area shall be one-hour fire separated or provided with sprinkler protection.

**§145.335. Plans, Approvals, and Construction Procedures.**

(a) Submittal of preliminary plans.

(1) When construction is contemplated for new buildings, additions, conversion of buildings, not licensed by the licensing agency, or remodeling of existing licensed facilities, one copy of the preliminary proposed plans shall be submitted to the licensing agency (architectural section) for review prior to the preparation of working drawings. For additions, an overall plan similar to subsection (b)(4) of this section shall be included.

(2) Fees for plan review will be required in accordance with §145.93 of this title (relating to Fees for Plan Reviews and Building Inspections).

(3) The project will be considered abandoned and the plans will be destroyed if final plans are not submitted to the licensing agency within 24 months from the submittal date of the preliminary plans for review and approval. Resubmittal of plans and additional plan review fees will be required if, after the abandonment period, the project will be constructed.

(4) The plans shall be drawn to scale, shall indicate the usage of all spaces, sizes of areas and rooms, and the type and location of fixed equipment. New construction or additions shall include a site plan showing all pertinent conditions including grades and all structures on the site.

(5) A general description of the surrounding area and vicinity (commercial, residential, rural, shopping, available transportation, etc.) shall be furnished for new locations.

(b) Submittal of final plans.

(1) Before construction is begun, one copy of working drawings and specifications (contract documents) in sufficient detail to interpret compliance with these standards and assure proper construction shall be submitted to the licensing agency for review within 60 days of receipt of such documents and required plan review fee. These documents shall be prepared according to accepted architectural practice and shall include general construction, special conditions, schedules and any other pertinent information that the licensing agency may require. In addition, two extra copies of the floor plan (only) shall be submitted with the complete set of plans.

(2) The project will be considered abandoned and the plans destroyed if the project is not under construction and continuing construction progress shown within 12 months from the date of the final review of the plans. Resubmittal of plans and full plan review will again be required if, after the abandonment period, the project will be constructed.

Fees will be as required in accordance with §145.93 of this title (relating to Fees for Plan Reviews and Building Inspections).

(3) Final copies of plans shall have (in the reproduction process by which plans are reproduced) a title block showing name of facility, person, or organization preparing the sheet, sheet numbers, facility address, and drawing date. Certain parts of final plans, designs, and specifications shall bear the seal of a registered professional engineer approved by the State Board of Registration for Professional Engineers to operate in Texas. These certain parts include sheets and sections covering structural, electrical, mechanical, and sanitary engineering. Contract documents for additions, remodeling, and construction of an entirely new facility shall be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings shall bear the seal of the architect.

(4) A final plan for a major addition to a facility shall include a basic layout to scale of the entire building onto which the addition connects. North direction shall be shown. Usually the entire basic layout can be to scale such as 1/16 inch per foot or 1/32 inch per foot for very large buildings.

(5) Plans and specifications for conversions or remodeling shall be complete for all parts and features involved.

(6) It is the sponsor's responsibility to employ qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that conformance with standards cannot be reasonably assured or determined, a revised set of documents for review may be requested. For additions and remodeling to existing licensed facilities, construction shall not be started until the final contract documents are reviewed and approved in writing by the licensing agency within 60 days of receipt of final drawings and required plan review fee.

(7) The review of plans and specifications by the licensing agency is based on general utility, the minimum licensing standards, and conformance with the Life Safety Code, and is not to be construed as all-inclusive approval of the structural, electrical, or mechanical components.

(c) Contract documents.

(1) Site plan documents shall include grade contours; streets (with names); North arrow; fire hydrants; fire lanes; utilities, public or private; fences; and unusual site conditions, such as ditches, low water levels, other buildings on-site, and indications of buildings five feet or less beyond site property lines.

(2) Foundation plan documents shall include general foundation design and details.

(3) Floor plan documents shall include room names, numbers, and usages; doors (numbered) including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; kitchen basic layout; and identification of all smoke barrier walls (outside wall to outside wall) or fire walls;

(4) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building shall be drawn or reduced to fit on an 8-1/2" x 11" sheet, submit two reduced plans for file record.

(5) Schedules shall include door materials, widths, types; window materials, sizes, types; room finishes; and special hardware.

(6) Elevations and roof plan shall include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, gas piping, etc.; and interior elevations where needed for special conditions.

(7) Details shall include wall sections as needed (especially for special conditions); cabinet and built-in work, basic design only; cross sections through buildings as needed; and miscellaneous details and enlargements as needed.

(8) Building structure documents shall include structural framing layout and details (primarily for column, beam, joist, and structural frame building); roof framing layout (when cannot be adequately shown on cross section); and cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design and calculated design loads.

(9) Electrical documents shall include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system (exit signs and emergency egress lighting); emergency electrical provisions (such as generators and panels); staff communication system; fire alarm and similar systems (such as control panel, devices and alarms); and sizes and details sufficient to assure safe and properly operating systems.

(10) Plumbing documents shall include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, and other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(11) HVAC documents shall include sufficient details of HVAC systems and components to assure a safe and properly operating installation including but not limited to heating, ventilating, and air-conditioning layout, ducts, protection of

duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(12) Sprinkler system documents shall include plans and details of NFPA designed systems; plans and details of partial systems provided only for hazardous areas; and electrical devices interconnected to the alarm system.

(13) Other layout, plans, or details as may be necessary for a clear understanding of the design and scope of the project, including plans covering private water or sewer systems shall be reviewed by local health or wastewater authority having jurisdiction. If no local authority, then the plans will be reviewed by the licensing agency.

(14) Specifications shall include installation techniques; quality standards and/or manufacturers; references to specific codes and standards; design criteria; special equipment; hardware; painting; and any others as needed to amplify drawings and notes.

(d) Construction and initial survey of completed construction.

(1) Construction phase.

(A) The licensing agency shall be notified in writing of construction start.

(B) All construction shall be done in accordance with the completed plans and specifications as submitted for review and as modified in accordance with review requirements. Any deviations therefrom must have prior approval of the licensing agency. Revised drawings may be required if the change is significant.

(C) A preliminary stage construction inspection is required unless otherwise instructed by the licensing agency. A minimum of three weeks notification prior to applying interior wall and ceiling surfaces (except for smoke barrier wall surfaces which shall be completed) must be given so that the inspector may schedule the preliminary visit.

(2) Initial survey of completed construction.

(A) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection (initial survey) of the facility is required to be performed by the licensing agency (Architectural Section) prior to admitting residents. A minimum of three weeks advance notice is needed. The completed construction shall have the written approval of the local authorities having jurisdiction, including the fire marshal, health department, and building inspector.

(B) After the completed construction has been surveyed by a representative of the architectural section of the licensing agency and found acceptable, this information will be conveyed to the licensing officer of the licensing agency as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building, grades, drives, and parking must be essentially 100% complete at the time of this initial visit for occupancy approval and licensing, including basic furnishings and operational needs.

(C) The following documents must be available to the licensing agency's NFPA 101 inspecting surveyor at the time of the survey of the completed building:

(i) written approval of local authorities as called for in subparagraph (A) of this paragraph;

(ii) written certification of the fire alarm system by the installing agency (Form FML-009) of the Office of the Texas State Fire Marshal;

(iii) documentation of materials used in the building which are required to have a specific limited fire or flame spread rating including special wall finishes or floor coverings, flame retardant curtains (including cubicle curtains), rated ceilings, etc. This must include a signed letter from the installer, in the case of carpeting, etc., verifying that the carpeting installed is named in the laboratory test document;

(iv) approval of the completed sprinkler system installation by the State Board of Insurance or the designing engineer. A copy of the material list and test certification shall be available;

(v) service contracts for maintenance and testing of alarm systems, sprinkler systems, etc.;

(vi) a copy of gas test results of the facility's gas lines from the meter;

(vii) a written statement from an architect/engineer stating that, to the best of his/her knowledge, the building was constructed in accordance with the approved drawings; and

(viii) any other such documentation as needed and called for.

(3) Non-approval of new construction.

(A) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, he may recommend to the

licensing agency that the facility not yet be licensed and approved for occupancy. Such basic items may include the following:

(i) substantial changes made during construction which were not submitted to the licensing agency for review and which may require revised "as-built" drawings to cover the changes. This may include architectural, structural, mechanical, and electrical items (reference subsection (b)(3) of this section);

(ii) construction which does not meet minimum code or licensure standards for basic requirements such as corridors being less than required width, ceilings installed at less than the minimum 7' 6" height, resident bedroom dimensions less than required, and other such features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(iii) no written approval by local authorities;

(iv) fire protection systems not completely installed or not functioning properly, including, but not limited to, fire alarm systems, emergency power and lighting, and sprinkler systems;

(v) required exits not all usable according to NFPA 101 requirements;

(vi) telephone not installed or not properly working;

(vii) sufficient basic furnishings, essential appliances, and equipment are not installed or not functioning; and

(viii) any other basic operational or safety feature which the surveyor, as the authority having jurisdiction, encounters which in his judgment would preclude safe and normal occupancy by residents on that day.

(B) If the surveyor encounters only less basic (and less important) deficiencies, licensure may be recommended based on an approved written plan of correction from the facility's administrator.

(C) Copies of reduced size floor plans (on an 8-1/2 inch by 11 inch sheet) shall be submitted in duplicate to the licensing agency for record/file use and for the facility's use for evacuation plan, fire alarm zone identification, etc. The plan shall contain basic legible information such as scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

(e) Feasibility inspections. A feasibility inspection may be requested on any existing structure that is proposed to be converted to personal care use. This inspection shall be requested through the

licensing agency. A fee will be charged as required by §145.93 of this title (relating to Fees for Plan Reviews and Building Inspections).

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 May 22, 1990.

TRD-9005130 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: August 18, 1990

For further information, please call: (512) 458-7490

## Chapter 229. Food and Drugs

### Synthetic Narcotic Drugs in the Treatment of Drug De- pendent Persons

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

The Texas Department of Health proposes the repeal of existing §§229. 141-229.149, concerning synthetic narcotic drugs in the treatment of drug dependent persons; and proposed new §§229.141-229.152, concerning minimum standards for approved narcotic drug treatment programs. The new sections cover general provisions; definitions; organization; State of Texas laws and rules and federal regulations; application, fees, permits; failure to comply; denial of application-suspension or revocation of a narcotic drug permit; compliance by existing NTPs; inspections and monitoring; central registry; approved hospital narcotic drug detoxification treatment; and federal regulations.

The new sections will replace the existing sections. The new sections establish approval criteria for a person who makes an application for a permit to operate a drug treatment program using an approved narcotic drug as maintenance or detoxification for opiate addiction.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the proposed repeals are in effect there will be fiscal implications for state government as a result of enforcing or administering the repeals. The effect on state government will be an estimated additional cost of \$44,000 for fiscal year 1990, and \$107,000 each year for fiscal years 1991-1994; however, there will be an estimated increase in revenue of \$103,800 per year for fiscal years 1990-1994. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Seale also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the recovery

of at least 50% of the costs incurred by the department in the permitting, inspection, implementation, and enforcement of the law in the regulations of narcotic drug treatment programs. The anticipated economic cost to small businesses which are narcotic drug treatment programs, and which are required to comply with the proposed sections will be the cost of the fee requirements as set by these proposed sections. There will be an initial fee of \$700 plus a fee of \$20 for each patient; and a renewal fee of \$200 for each patient for each year thereafter. The possible annual cost to hospitals providing detoxification treatment only will be \$200 per hospital. The anticipated economic cost to persons who are required to comply with the sections as proposed will be \$180-\$200 per month.

There will be no effect on local employment.

Comments on the proposal may be submitted to Dennis E. Baker, Director, Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7248. Comments will be accepted for a period of 30 days following publication in the *Texas Register*. In addition, public hearings on the proposed sections will be held Tuesday, June 12, 1990, at 9:30 a. m., conference room, Texas Department of Health, Public Health Region 5, 2561 Matlock Road, Arlington, (817) 792-7282; and Wednesday, June 13, 1990, at 9 a.m., auditorium, Texas Department of Health, 1100 West 49th Street, Austin, (512) 458-7236.

#### • 25 TAC §§229.141-229.149

The repeals sections are proposed under Health and Safety Code, Chapter 466, which provides the Texas Board of Health with the authority to adopt rules deemed necessary to insure the proper use of narcotic drugs in the treatment of drug-dependent persons and to adopt fees for the issuance of permits, inspection, implementation, and enforcement of the code; and Health and Safety Code, §12. 001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§229.141. *Federal Regulations.*

§229.142. *Permits.*

§229.143. *Methadone Permits.*

§229.144. *Synthetic Narcotic Drug Permits.*

§229.145. *Conditions Governing Permit Holders.*

§229.146. *Records on Synthetic Narcotic Drugs.*

§229.147. *Hearing on Permits.*

§229.148. *Surrendering Permit to Health Resources.*

§229.149. *Texas Public Health Regional System.*

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

Issued in Austin, Texas, on May 22, 1990.

TRD-9005105 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: August 18, 1990

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

#### • 25 TAC §§229.141-229.152

The new sections are proposed under Health and Safety Code, Chapter 466, which provides the Texas Board of Health with the authority to adopt rules deemed necessary to insure the proper use of narcotic drugs in the treatment of drug-dependent persons and to adopt fees for the issuance of permits, inspection, implementation, and enforcement of the code; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§229.141. *General Provisions.* The purpose of the sections in this chapter is to provide assurance that facilities holding an approved narcotic drug permit are regulated under a set of minimum standards for the establishment and operation of a narcotic treatment program (NTP) pursuant to Texas Health and Safety Code, Chapter 466, as amended by House Bill 2706, 71st Legislature, 1989. Each facility shall be approved and monitored by the Texas Department of Health, Division of Food and drugs, 1100 West 49th Street, Austin, Texas 78756.

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

Approved narcotic drug—A drug approved by the United States Food and drug Administration for maintenance and/or detoxification of a person physiologically addicted to opiate class of drugs.

Approved narcotic drug permit—A permit issued by the Texas Department of Health to an applicant to operate an NTP which provides an approved narcotic drug for maintenance and/or detoxification and rehabilitative services to opioid addicted individuals.

Approved to treat—The maximum number of patients the applicant or permit holder has determined the NTP will treat at any point in time under the approved permit.

Board's formal hearing procedures—The hearing procedures of the Texas Department of Health in §§1.21-1.34

of this title (relating to Formal Hearing Procedures) for conducting hearings on denial of application, suspension, or revocation of permit.

**Central registry**—A process in which an NTP shall share patient identifying information about individuals who are applying for or undergoing detoxification or maintenance treatment on an approved narcotic drug to a central record system at the Texas Department of Health, Division of Food and Drugs, Austin.

**Department**—The Texas Department of Health.

**Hospital**—A health care facility, licensed by the department as a general hospital or a special hospital under Health and Safety Code, Chapter 241; or a health care facility licensed by the Texas Department of Mental Health and Mental Retardation as a private mental hospital under Texas Civil Statutes, Article 5547-88-5547-100; or a hospital directly operated under the authority of other statutes of the state.

**Medication unit**—A facility established as part of, but geographically dispersed (i.e., separate) from a narcotic treatment program from which licensed private practitioners and community pharmacists are permitted to administer and dispense a narcotic drug, and are authorized to collect samples for drug testing or analysis for narcotic drugs.

**Narcotic drug**—A drug as defined in Texas Controlled Substances Act, Health and Safety Code, §481.002 (29)(A), (B), and (C).

**Narcotic treatment program (NTP)**—An organization who has been issued an approved narcotic drug permit by the department and the permit has not been suspended, revoked, or surrendered to the department.

**Permit holder**—An individual, incorporated entity, or government entity who has provided assets to establish a NTP and who accepts the responsibility for management, contractual arrangements, fiscal matters, availability of health and rehabilitative services, and compliance with federal, state, and local laws in the operation of an NTP.

**Person**—A corporation, organization, government or governmental subdivision, agency, business trust, partnership, association, or any other legal entity.

**Program director**—An individual who provides overall administrative management to the NTP under guidelines established by the permit holder and the medical director.

**Program physician**—A licensed physician who will provide medical treatment and counsel to the patients of an NTP under the supervision of the medical director.

**Standing orders**—Written instructions prepared by a licensed physician pursuant to the rules of the Texas State Board of Medical Examiners relating to standing delegation orders, as described in 22 TAC §193.1-193.6.

#### §229.143. Organization.

(a) Organization types. A narcotic treatment program (NTP) may be organized as an independent single program or may be a part of a centralized organization. Each location site must receive independent approval and, upon approval, be issued an approved narcotic drug permit. If an applicant is a partnership or a corporation, all individuals having a majority or management interest in such corporation or partnership must be identified.

(b) Persons responsible. Where two or more NTPs share a central administration (e.g., a city or state-wide organization), the person responsible for the organization is required to be listed as the permit holder for each separate participating program. An individual shall indicate participation in the central organization at the time of the application. The permit holder may fulfill all recordkeeping and reporting requirements for these programs, but each program must continue to receive separate approval. If a physician assumes medical responsibility for more than one NTP, a statement describing how medical services will be provided to each NTP shall be submitted to the department.

#### §229.144. State of Texas Laws and Rules and Federal Regulations.

(a) A permit holder shall assure that the narcotic treatment program (NTP) is in compliance with all State of Texas laws and rules regulating chemical dependency treatment facilities including, but not limited to, the following laws: Health and Safety Code, Chapter 464; the Medical Practice Act, Texas Civil Statutes, Article 4495b; the Nurse Practice Act, Texas Civil Statutes, Article 4573-4528; the Vocational Nurse Act, Texas Civil Statutes, Article 4528c; the Pharmacy Act, Texas Civil Statutes, Article 4542a-1; and the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

(b) The permit holder shall assure that the NTP is in compliance with the Code of Federal Regulations, Title 21, Part 291, entitled "Drugs Used for Treatment of Narcotic Addicts."

#### §229.145. Application, Fees, Permits.

##### (a) Application.

(1) A complete narcotic drug treatment application provided by the department and a copy of federal Form FDA 2632 filed with the Food and Drug Administration (FDA), and a copy of federal Form DEA 363 filed with the Drug Enforcement Administration (DEA) must be submitted to the department to apply for an approved narcotic drug permit to operate a narcotic treatment program (NTP).

(2) A complete application filed in accordance with this subsection for an NTP will be reviewed and evaluated by the department, in accordance with §229.281 of this title (relating to Processing Permit Application Relating to Food and Drug Operation). An application shall not be considered complete until an application for an NTP has been submitted to the DEA and to the FDA. If the application is denied, the applicant shall have an opportunity for a hearing pursuant to §229.147 of this title (relating to Denial of Application—Suspension or Revocation of Narcotic Drug Permit).

(3) A person acquiring an NTP currently operating under department approval must submit a new application in accordance with this subsection and an initial fee as required in paragraph (1) of this subsection. An approved narcotic drug permit will be issued, upon approval, to a new owner or new location and the permit issued to the previous owner or location shall be revoked without hearing and surrendered to the department.

##### (b) Fees and fee assessments.

(1) A nonrefundable initial fee of \$700 must be submitted along with the complete application for the purpose of evaluation, inspection, and processing of the request to operate an NTP in accordance with subsection (a) of this section. An application will not be considered unless the application is accompanied by the initial fee. A nonrefundable initial fee of \$100 shall be submitted for each medication unit requested in the initial application.

(2) Upon issuance of the permit, the permit holder shall submit a fee of \$20 for each patient which the NTP is approved to treat. A fee certificate will be issued for a 12-month period from date of issuance of the permit.

(3) A nonrefundable annual renewal fee of \$20 for each patient which the NTP is approved to treat, shall be submitted by the permit holder to the department, by filing a renewal form provided by the department prior to the expiration of the current fee certificate. A fee certificate will be issued for a 12-month period.

(A) A fee of \$20 per patient shall be submitted in the event the permit holder requests approval to increase the number of patients approved to treat during the current fee-paid year. In the calculation of the fee, temporary transfer patients shall not be considered as approved to treat patients by the program providing temporary treatment.

(B) An increase in the number of patients must be justified by demonstrating that the facility and staff are adequate to treat the increased number of patients.

(4) A nonrefundable annual renewal fee of \$100 shall be paid for each medication unit the permit holder may operate.

(c) Permit.

(1) All NTP(s), persons, or organizations are required by the Health and Safety Code, Chapter 466, to obtain an approved narcotic drug permit in order to provide treatment to patients with a primary diagnosis of an opiate addiction.

(2) An approved narcotic drug permit shall be issued by the department subsequent to federal and state approval of an application as required in subsection (a) of this section, and payment of a fee as required in subsection (b)(1) of this section which will provide authorization to operate a NTP.

(3) Failure to pay the appropriate fee as required in subsection (b) of this section is grounds for suspension, revocation, or denial of a permit as provided in §229.147 of this title (relating to Denial of Application, Suspension, or Revocation of a Narcotic Drug Permit).

(4) A permit issued by the department for the operation of a NTP applies both to the permit holder and to the place where the program is to be operated. A permit issued by the department is not transferable from one facility to another facility and must be surrendered to the department if the person holding the permit sells or otherwise conveys the facility to another person. If the permit holder sells or otherwise conveys the facility to another person or changes the location of the facility, a new application must be submitted as required in subsection (a) of this section and the fees paid as required in subsection (b) of this section.

(5) A permit holder requesting to move a NTP to another location must submit a new application for a new permit as required in subsection (a) of this section, and pay the initial fee in accordance with subsection (b)(1) of this section.

(6) An approved narcotic drug permit issued by the department shall remain in effect until suspended or revoked by the department or surrendered by the permit holder.

(7) The approved narcotic drug permit and the current certificate must be posted in a conspicuous location within the premises of the NTP.

*§229.146. Failure to Comply.*

(a) A permit holder who has failed to comply with the Health and Safety Code (code) and the sections in this chapter shall be given notice of failure to comply and allowed a period of 30 days to comply. Failure to provide the department with a plan of correction or failure to accomplish

the plan of correction by the designated completion date shall be cause, in accordance with §1.21-1.34 of this title (relating to Formal Hearing Procedures), for the department to seek revocation of the permit and/or the assessment of an administrative penalty, criminal penalty, and/or civil penalties as provided in the code.

(b) The department may take action under the code, Chapter 466, §3.01 (emergency orders), as amended by House Bill 2706, 71st Legislature, 1989, when a violation of the code or other state law is so severe as to affect public health or the health and safety of the narcotic treatment plan's NTP's patients and staff and an immediate and acceptable plan of correction cannot be obtained.

*§229.147. Denial of Application; Suspension or Revocation of a Narcotic Drug Permit.*

(a) If the department determines that the applicant or permit holder has failed to achieve or demonstrate compliance after due notice in accordance with §229.146 of this title (relating to Failure to Comply), the applicant or permit holder shall be given written notice of an opportunity for a hearing in accordance with §1.21-1.34 of this title (relating to Formal Hearing Procedures), prior to denying the application, or suspending or revoking the permit. If the applicant or permit holder requests a hearing, he or she shall so notify, in writing, the Texas Department of Health, Division of Food and Drugs, 1100 West 49th Street, Austin, Texas 78756, within 10 days of receipt of the notice of an opportunity for a hearing. If the applicant or permit holder does not request a hearing within the specified time, then the notice of an opportunity for a hearing shall be construed to be a notice of denial of the application, or suspension or revocation of the permit as stated in the notice.

(b) The department may take action under emergency orders of the Health and Safety Code, Chapter 466, as amended by House Bill 2706, 71st Legislature, 1989, to immediately suspend an approved narcotic drug permit when approval is withdrawn from the permit holder by the Food and Drug Administration or a registration is revoked by the Drug Enforcement Administration. The suspension shall be effective until the permit is surrendered, revoked, or reinstated in accordance with the provisions of §§1.21-1.34 of this title (relating to Formal Hearing Procedures).

*§229.148. Compliance by Existing Narcotic Treatment Programs.*

(a) On the effective date of the sections in this chapter each narcotic treatment program (NTP) with an existing narcotic drug permit in good standing shall

be subject to the sections in this chapter. A NTP which may be in noncompliance on the effective date of the sections in this chapter will be allowed 90 days to achieve compliance if the NTP is in compliance with the Code of Federal Regulations, Title 21, Part 291.

(b) Each existing permit holder shall be required to submit a report of current status form provided by the department. The report form shall be completed and returned with the fee as required in §229.145(b)(1) of this title (relating to Application, Fees, Permits), to the department within 30 days of receipt of the report form by the permit holder. After evaluation of the report of current status form, a new approved narcotic drug permit will be issued to the permit holder and the existing permit holder and the existing permit must be surrendered to the department.

(c) Upon issuance of the new permit, the permit holder shall submit the fee as required in §229.145(b)(2) of this title (relating to Application, Fees, Permits), for each patient which the NTP is approved to treat. A fee certificate will be issued for a 12-month period from date of issuance of the permit.

(d) Each existing permit holder shall submit the fee as required in §229.145(g)(3) of this title (relating to Application, Fees, Permits), for each patient by filing a renewal form provided by the department prior to the expiration date of the current certificate. The calculation for the fee shall be based on an average daily patient census for the previous six months as a minimum. The permit holder may elect to be approved to treat a larger number of patients than originally approved to treat. A fee certificate will be issued for a 12-month period.

(e) A patient who has entered treatment in a NTP prior to the effective date of the sections in this chapter and who is currently enrolled and in good standing with the program standards must consent to abide by the sections in this chapter within 30 days after notification from the NTP program director. The NTP program director shall notify all patients enrolled in the NTP within 10 days from the effective date to comply with the sections in this chapter. A patient who refuses to comply with the sections in this chapter after notification shall be terminated from the NTP.

(f) Each NTP shall submit to the department for the central registry a list of all maintenance and detoxification patients enrolled, no later than six months after the effective date of these sections. Each patient will be identified as required in §229.150(e)(2) of this title (relating to Central Registry).

*§229.149. Inspections and Monitoring.* In order to determine compliance with the sections in this chapter and related statutes

the department may enter and inspect at any reasonable time, without prior notification, the location of an applicant or a permit holder. The monitoring may include interviews with patients, associated personnel, and inspection of relevant records needed to determine compliance with all state and federal rules and statutes governing the operation of an NTP. Inspection and monitoring are subject to the provisions of the Code of Federal Regulations, Title 42, Part 2.

*§229.150. Central Registry.*

(a) The permit holder shall participate in the central registry for the purpose of sharing patient identifying information as requested by the department to prevent multiple enrollment of patients in narcotic treatment programs (NTPs).

(b) A narcotic drug shall not be provided to a patient who is known to be currently enrolled in another NTP except when the patient is a temporary transfer patient.

(c) The patient shall always report to the same NTP unless prior approval is requested by the parent NTP's program physician or program director for the patient to receive treatment as a temporary transfer patient at another NTP.

(d) A central registry shall be established by the department, which shall maintain a record of patient's identification and the NTP to which each patient is enrolled. Information shall be maintained in accordance with confidentiality requirements in Code of Federal Regulations, Title 42, Part 2, and Title 21, Part 291.505, paragraph (g).

(e) Each NTP shall report to the central registry specific information.

(1) Each person admitted as a new patient, readmitted to the same clinic, admitted from another NTP as a permanent transfer patient, transferred to another narcotic maintenance or detoxification program, temporarily transferred to another program, or discharged (terminated) from maintenance or detoxification treatment shall be identified and reported to the central registry located at the Texas Department of Health, Division of Food and Drugs, by telephone on the day the action occurs and written documentation must be submitted within a 24-hour period.

(2) Each NTP verbal and written report to the central registry shall identify and provide the following information for each patient:

(A) approved narcotic permit number;

(B) date action was taken (MO-DA-YR);

(C) action taken identified as:

- (i) new patient (NP);
- (ii) transfer in-patient (TIP);
- (iii) transfer out-patient (TOP);
- (iv) terminated patient (TP);
- (v) re-admitted patient (RP); or
- (vi) temporary transfer patient (TTP); and

(D) patient identification as follows.

(i) The patient must be identified with a valid document incorporating a photograph such as a valid drivers license or state issued identification card and/or other identification records such as a social security card and appropriate medical records.

(ii) An identification number shall be constructed using the following code numbers for the patients:

(I) color of eyes: Brown (1), Blue (2), Green (3), and Hazel (4);

(II) date of birth stated in number digits with two digits for the month, day, and year (example: January 9, 1953-010953);

(III) gender: male (1), and female (2); and

(IV) race: White (1), Black (2), Hispanic (3), Asian (4), American Indian (5), and Other (6).

(iii) An example of a patient identification number in accordance with clause (ii) of this subparagraph for a patient with blue eyes, date of birth-January 9, 1953, male, and white is 201095311.

*§229.151. Approved Hospital Narcotic Drug Detoxification Treatment.*

(a) Application.

(1) The hospital administrator must submit a complete hospital narcotic drug detoxification treatment application provided by the department, a copy of federal Form FDA 2636 filed with the Food and Drug Administration (FDA), and a copy of federal Form DEA 363 filed with the Drug Enforcement Agency (DEA), to apply for an approved narcotic drug permit for in-patient narcotic drug detoxification.

(2) The hospital administrator shall submit to the FDA and the department

the name of the individual (e.g., pharmacist) responsible for receiving and securing supplies of narcotic drugs for the treatment of narcotic addicts. The individual responsible for supplies of narcotic drugs are those who are authorized to do so by federal or state law.

(3) The hospital administrator shall submit to the FDA and the department a general description of the hospital including the number of beds, specialized treatment facilities for drug dependence, and nature of patient care undertaken.

(4) The hospital pharmacist shall submit to the FDA and the department the quantity of narcotic drugs anticipated to be used per year for narcotic addiction detoxification treatment.

(5) A member of the hospital medical staff shall be named by the administrator or chief of medical staff as the responsible physician for the narcotic drug detoxification treatment.

(6) A hospital pharmacy registered by the Texas State Board of Pharmacy must be registered as a narcotic treatment program (NTP) for detoxification by the DEA.

(7) A complete application filed in accordance with subsection (a) of this section for a NTP will be reviewed and evaluated by the department in accordance with §229.281 of this title (Processing Permit Applications Related to Food and Drug Operations). Denial of application, shall be in accordance with §229.147 of this title (relating to Denial of Application-Suspension or Revocation of a Narcotic Drug Permit).

(b) Fees.

(1) A nonrefundable initial fee of \$200 must be submitted with the application for an inspection, evaluation, and processing of the application. An application will not be considered unless the application is accompanied by the initial fee.

(2) The nonrefundable annual renewal fee of \$200 shall be submitted by the permit holder to the department, by filing a renewal form provided by the department prior to the expiration of the current fee certificate. A fee certificate will be issued for a 12-month period. The department will not issue a permit if the current permit has been suspended, revoked, or surrendered by the permit holder.

(c) Permit.

(1) A hospital providing treatment to patients with a primary diagnosis of opiate addiction must apply for and be issued an approved narcotic drug permit by the department which shall remain in effect until suspended or revoked by the department or surrendered by the permit holder.

(2) An approved narcotic drug permit authorizing the hospital to operate a narcotic drug detoxification treatment program shall be issued subsequent to federal and state approval of the application as required in subsection (a) of this section, and payment of the fee as required in subsection (b) of this section.

(3) Failure to pay the fee as required in subsection (b) of this section is grounds for denial of the application, and suspension or revocation of the permit as provided in §229.147 of this title (relating to Denial of Application—Suspension or Revocation of a Narcotic Drug Permit).

(4) A hospital must be licensed as a chemical treatment facility under Health and Safety Code, Chapter 464, or have received from the Texas Commission on Alcohol and Drug Abuse an exemption from licensure standards.

(5) A permit issued by the department for the operation of an approved narcotic drug detoxification treatment program in a hospital applies both to the hospital owner and to the place where the hospital is to be located. A permit issued by the department is not transferable from one facility to another facility and must be surrendered to the department if the person holding the permit sells or otherwise conveys the facility to another person.

(6) If the permit holder sells or otherwise conveys the facility to another person or changes the location of the facility, a new application must be submitted as required in subsection (a) of this section and the permit holder must pay the fees as required in subsection (b) of this section. When an approved narcotic drug permit is issued to a new permit holder or new location, the permit issued to the previous permit holder and/or location shall be revoked without hearing and surrendered to the department.

(7) The approved narcotic drug permit and the current fee certificate must be posted in a conspicuous location within the premises of the NTP.

(d) Compliance by existing hospital NTPs. On the effective date of the sections in this chapter, compliance for hospitals with an existing narcotic drug permit in good standing shall be subject to the sections in this chapter.

(1) An NTP which may be in noncompliance on the effective date of the sections in this chapter will be allowed 90 days to achieve compliance if the NTP is in compliance with Code of Federal Regulations, Title 21, Part 291, except as otherwise provided in this subsection.

(2) Each existing permit holder shall be required to submit a report of current status form provided by the department. The report form shall be completed and returned with the fee as required in subsection (b)(1) of this section, to the

department within 30 days of receipt of the report from by the permit holder. After evaluation of the report of current status form, a new approved narcotic drug permit will be issued to the permit holder and the existing permit must be surrendered to the department.

(3) Each existing NTP shall submit the annual renewal fee as required in subsection (b)(2) of this section.

(4) Section 229.148(e) and (f) of this title (relating to Compliance by Existing NTPs) shall not apply to hospitals.

§229.152. *Federal Regulations.* The Texas Department of Health adopts by reference federal regulations on "Drugs Used For Treatment of Narcotic Addicts" found in Title 21, Code of Federal Regulations, Part 291. A copy of these regulations are indexed and filed by the Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

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

Issued in Austin, Texas, on May 22, 1990.

TRD-9005106 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: August 18, 1990

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

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**Part V. Center for Rural Health Initiatives.**

**Chapter 500. Executive Committee for the Center for Rural Health Initiatives.**

**Subchapter A. Policies and Procedures**

**• 25 TAC §§500.1-500.10**

The Center for Rural Health Initiatives proposes new §§500.1-500.10, concerning the policies and procedures of the Executive Committee for the Center for Rural Health Initiatives. The sections cover preamble; executive committee membership and organization; advisory committee responsibilities; executive director's qualifications and duties; executive committee policies; executive committee meetings; actions requiring executive committee approval; and other actions. The new sections are being proposed in order to implement the legislative mandate in House Bill 18, §2, 71st Legislature, 1989, concerning the duties of the Center for Rural Health Initiatives.

Marion Zetzman, Dr. P.H., chairperson, Executive Committee for the Center for Rural Health Initiatives, has determined that for the first five years 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. There will be no effect on local employment.

Dr. Zetzman also has determined that for each year of the first five-year period the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections will be to give the general public notice of the policies and procedures of the committee. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Bryan Sperry, Executive Director, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The new sections are proposed under Senate Bill 18, §2, 71st Legislature, 1989 (Texas Civil Statutes, Article 4414b, §5), which provides the Executive Committee of the Center for Rural Health Initiatives with the authority to establish policies and to adopt rules to implement Article 4414b-1.

§500.1. *Preamble.* The Center for Rural Health Initiatives has been established by the legislature in Texas Civil Statutes, Article 4414b-1, to enhance and preserve the access and viability of rural health care delivery systems and services in Texas through rural health initiatives. The center consists of the executive committee, the executive director, and the advisory committee. The executive committee, as the governing body of the center, has formulated these operating policies and procedures for the orderly and efficient functioning of the executive committee in carrying out its responsibilities under the law. In the development of policies and procedures for the enforcement of rural health laws (federal, state and local), the executive committee shall at all times remain cognizant of the rights of the individual and organized groups by responsible action without favoritism or prejudice.

§500.2. *Membership.*

(a) The Executive Committee for the Center for Rural Health Initiatives (executive committee) shall consist of nine members and shall be the governing body of the Center for Rural Health Initiatives (center).

(1) The governor will appoint three members which include:

(A) one physician licensed to practice in Texas;

(B) one pharmacist licensed to practice in Texas; and



(C) one business or community leader.

(2) The lieutenant governor will appoint three members which include:

(A) one registered nurse licensed to practice in Texas;

(B) one allied health professional who is licensed, registered, or certified to practice in Texas; and

(C) one rural health policy expert.

(3) The speaker of the House of Representatives will appoint three members which include:

(A) one physician licensed to practice in Texas;

(B) one hospital administrator; and

(C) one health economist.

(4) The appointments to the executive committee shall be individuals who reside, work, or practice in rural areas of the state or who demonstrate knowledge and expertise in rural issues.

(5) The appointments to the executive committee shall provide for a balanced representation of the geographical regions of the state.

(6) The members of the executive committee shall serve staggered six-year terms, with the terms of three members expiring August 31, of each odd-numbered year.

(b) The Advisory Committee for the Center for Rural Health Initiatives (advisory committee) shall consist of state agency and special or ad hoc members. The state agency membership includes:

(1) the commissioner of health or a representative of the Texas Department of Health designated by the commissioner;

(2) the commissioner of human services or a representative of the Texas Department of Human Services designated by the commissioner;

(3) the commissioner of agriculture or a representative of the Texas Department of Agriculture designated by the commissioner;

(4) the executive director of the Texas Department of Commerce or a representative of the department designated by the executive director; and

(5) the commissioner of higher education or a representative of the Texas Higher Education Coordinating Board designated by the commissioner.

(c) The executive committee may appoint additional organizations or agencies as necessary to serve on the advisory committee in a special or ad hoc capacity.

### §500.3. Organization.

(a) The Executive Committee for the Center for Rural Health Initiatives (executive committee) shall annually elect one member to serve as presiding officer (chairman), one member to serve as vice-chairman, and one member to serve as secretary.

(b) The presiding officer shall preside at all meetings and perform all duties prescribed by law or rules of the executive committee. The vice-chairman shall preside in the absence of the chairman and perform all other duties as required.

(c) Any actions taken by the executive committee shall be approved by a majority vote.

### §500.4. Committees.

(a) The Executive Committee for the Center for Rural Health Initiatives (executive committee) is the governing body of the Texas Center for Rural Health Initiatives (center). The executive committee shall meet as a committee of the whole. The presiding officer may appoint standing and special ad hoc committees from the executive committee to expedite its work. The executive committee may request advisory committee members to designate employees to serve as liaison officers.

(b) The Advisory Committee for the Center for Rural Health Initiatives (advisory committee) shall participate in the executive committee meetings; however, advisory committee members do not have voting privileges. The advisory committee members shall provide staff support to the center and staff and other support services to the executive committee to expedite the work of the executive committee.

(c) The costs of participation on an advisory committee for a member representing a particular agency or organization shall be borne by that member agency.

(d) Advisory committee members shall advise the executive committee:

(1) of rural health missions in their agencies;

(2) of rules, regulations, policies, procedures, programs, and services relative to rural health in their agencies;

(3) of appropriate rules for rural health;

(4) on priorities of emphasis;

(5) on amount of money needed;

(6) on priorities among criteria for consideration of application approval;

(7) on the dissemination of information on programs and service;

(8) on minority status; and

(9) on geographical emphasis.

### §500.5. Executive Director.

(a) The Executive Committee for the Center for Rural Health Initiatives (executive committee) may establish qualifications and hire an executive director. The executive director, serving at the will of the executive committee, will enhance and preserve the viability of rural health care delivery service in Texas.

(b) The executive director shall:

(1) be a graduate from an accredited college or university with a master's degree in health administration, business administration, public administration, or related field;

(2) have knowledge of national, state, local, and rural health care administration, health policy issues, and health care delivery services;

(3) have the ability to work collaboratively with advocacy, community industry, academia, and agency groups; and

(4) have knowledge of grants and the public budgeting process.

(c) The executive director, as the chief executive officer of the Texas Center for Rural Health Initiatives (center), shall:

(1) perform the duties assigned and assume responsibility for functions delegated by the executive committee for the continued access to rural health care services in Texas;

(2) perform the administrative duties of the office;

(3) hire staff (within the guidelines established by the executive committee);

(4) supervise personnel;

(5) implement programs;

(6) develop administrative procedures;

(7) maintain professional standards; and

(8) represent the center as its chief executive.

(d) The executive director shall take appropriate administrative action to direct or to delegate to staff responsibilities and authority to carry out center duties. The authority must assure the existence of an appropriate organization; adequate personnel; suitable administrative, clerical, and laboratory facilities; and sufficient financial support to function effectively. The executive director shall take the actions necessary to comply with and enforce the federal or state laws applicable to the center and its mission to enhance and preserve the health of the citizens of the state.

#### *§500.6. Executive Committee Policies.*

##### (a) Policy goals.

(1) The Executive Committee for the Center for Rural Health Initiatives (executive committee) shall conduct all business of the Center for Rural Health Initiatives (center) through the executive director. Standing and special ad hoc committees of the executive committee are working extensions of the executive committee. In keeping with the spirit of this policy, individual members when contacting center staff shall refrain from giving directives or establishing policy. All center staff personnel are to be advised of this policy. When making statements to the general public concerning matters under the jurisdiction of the executive committee, individual members shall not state or imply that the individual member's opinion necessarily represents the opinion or policy of the executive committee.

(2) The center shall use every means available to develop preventive and early detection measures which shall assist the health care providers in the reduction and control of disease and injury. Imbalances in the rural health care system are to be identified, evaluated, and corrections initiated. Segments of the population in need of health care must be located and methods developed to alleviate these needs. All center staff will respond to changes brought on by technical advances, social and cultural differences, and population movement, all of which creates problems with various and unique health implications.

(3) The center, through working or contracting with state and federal agencies, universities, private interest groups, communities, foundations, and offices of rural health, shall provide the local health providers the support to maximize use of existing resources without duplicating existing effort.

(4) Health planning of all types shall be cost effective and goal oriented. It shall promote and develop community involvement and community support in maintaining, rebuilding, or diversifying rural health services. It shall encourage the development of regional emergency service and transportation networks. Comprehensive and interagency coordinated assistance will be provided to rural planning agencies, communities, health care providers, and individual consumers of health care services to allow them to develop and maintain health care plans for their areas.

(5) The education of the public in all matters pertaining to rural health must provide an organized, intensive, comprehensive approach which will support, strengthen, and extend educational work carried on by all health programs.

(6) The continuing education of personnel is vital to meet constant social

changes, scientific advances, and retain energetic workers looking for advancement and job satisfaction. The center shall assist in the recruitment, retention, and continuing education of rural health professionals. It will encourage the use of advanced communication technology to provide access to specialty care, clinical consultation, and research on rural health issues. The center shall develop relief service programs for rural physicians and allied health personnel to facilitate ready access to continuing medical education.

(b) General policies. The executive committee, in discharging its legal responsibilities as the governing body of the center, shall establish policy in the form of statements recorded in the official minutes of the executive committee which shall be directive and provide the executive director the authority to administer the services, programs, and activities of the center. Although policies and rules adopted by the executive committee can only be eliminated, changed, or amended by the executive committee, legislation may specifically determine policies of the executive committee.

(c) Adoption and amendment of executive committee policies. Specific policies may be adopted or amended under the following conditions. Each member of the executive committee shall be furnished a copy of the proposed new policy or a proposed amendment in the preliminary and official agendas for the meeting at which it is to be considered. An affirmative vote by a majority of the executive committee shall be required for the adoption of the new policy or policy amendment. New or amended policies shall be effective on the date of adoption unless otherwise specified.

#### *§500.7. Executive Committee Meetings.*

(a) Regular meetings of the Executive Committee for the Center for Rural Health Initiatives (executive committee). The executive committee shall meet in Austin, or at other places fixed by the executive committee, at least quarterly on dates to be fixed by the executive committee or at the call of the presiding officer. Regular or called meetings shall include Advisory Committee for the Center for Rural Health Initiatives (advisory committee) members at the will of the executive committee.

(b) Special meetings of the executive committee. Special meetings of the executive committee may be held at times and places as ordered by the executive committee during a formal session or, special meetings may be called by the presiding officer to be held at a time and place as he/she shall designate in a notice of meeting. The notice of special meeting shall state the date, time, and place of the meeting and shall be forwarded to the members not less than 72 hours in advance of the time of meeting. Special meetings shall include

advisory committee members at the will of the executive committee.

(c) Open meeting and executive sessions. Regular, special, and committee meetings of the executive committee shall be open to the public; however, as provided by the Texas Open Meetings Act, Texas Civil Statute, Article 6252-17, the executive committee may meet in executive sessions on items:

(1) involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear complaints or charges against such officer or employee, unless such officer or employee requests a public hearing;

(2) with respect to the purchase, exchange, lease, or value of real property and negotiated contracts for prospective gifts or donations to the state or the governing body, when such discussion would have a detrimental effect on the negotiating position of the executive committee as between the executive committee and a third person, firm, or corporation;

(3) regarding the deployment, or specific occasions for implementation of security personnel or devices; or

(4) in private consultations between a governing body and its attorney, instances in which the executive committee seeks the attorney's advice with respect to pending or contemplated litigation, settlement offers, and matters where the duty of the executive committee's counsel to his client, pursuant to the Code of Professional Responsibility of the State Bar of Texas, clearly conflicts with applicable statutory provisions.

(d) Executive sessions. Executive sessions of the executive committee shall be meetings with only executive committee members and invited persons present. Executive sessions shall be held only to consider such items as provided by law. Each meeting that is closed to the public shall keep a tape recording and a certified agenda of the proceedings. Actions of the executive session resulting from deliberation in executive committee session will be announced in open meeting.

(e) Notice of meetings. A written notice of the date and place of each regular meeting of the executive committee shall be furnished to the secretary of state at least seven days prior to the meeting to be posted in the capital building. In cases of emergency or urgent public necessity, notice shall be given as authorized by the emergency notice provisions of the open meetings law.

(f) Agendas. The executive director shall prepare and submit to each member of the executive committee and the advisory committee prior to each meeting a preliminary copy of the agenda, outlining items that he/she believes should be considered

by the executive committee, those required by law, and others as members have requested. Materials supplementing the agenda may be included. Official agendas shall be distributed on the day of the executive committee meeting.

(g) Quorum. Five members of the executive committee shall constitute a quorum.

(h) Official transaction of business. The executive committee may transact official business only when in session with a quorum present and shall not be bound in any way by any statement or action on the part of any individual member except when a statement or action is in pursuance of specific instructions of the executive committee.

(i) Rules of order. The executive committee shall observe Robert's Rules of Order, Revised, except as otherwise provided by executive committee policies of this chapter or by a statute.

(j) Minutes. The official minutes of the executive committee shall be kept in the office of the executive director of the Center for Rural Health Initiatives (center) to be available to a citizen desiring to examine them.

(k) Official minutes. Official minutes are those which the recording secretary prepares, the executive committee approves at a regular or special meeting, and are affixed with the original signatures of the presiding officer and the secretary of the executive committee. Drafts of the minutes shall be forwarded to each member for review and comments or corrections prior to approval of the executive committee.

#### §500.8. Press and Public Relations.

(a) Prior to each Executive Committee for the Center for Rural Health Initiatives (executive committee) meeting, copies of the preliminary agenda shall be sent to the capitol press corp, governor's office, lieutenant governor's office, office of the speaker of the house of representatives, secretary of state, and legislative budget board.

(b) Members of the press are invited to all meetings of the executive committee. Press representatives in attendance will be supplied with copies of the official agenda for the meeting and other materials relating to the specific agenda items.

(c) The executive committee shall open relations with the press by answering appropriate questions and by providing official statements through press releases and answers to follow-up inquires.

(d) Members of the executive committee shall avoid implying that an individual's opinion represents the opinion or policy of the executive committee.

#### §500.9. Actions Requiring Executive Committee Approval.

(a) Administrative procedures. An administrative procedure is the method by which a policy of the Executive Committee for the Center for Rural Health Initiatives (executive committee) is administratively implemented.

(b) Approval and revision of administrative procedures.

(1) Administrative procedures are determined and implemented by the executive director in accordance with the policies of the executive committee. However, on occasion, legislation specifically prescribes requirements which are incorporated as administrative procedures. The executive committee shall approve administrative procedures when required by law, required by executive committee policy, or requested by the executive director.

(2) When executive committee action is required, the executive director shall present the proposed administrative procedure(s) change in the official agenda of the executive committee.

(c) Special ad hoc committee members. Members of special ad hoc committees shall be approved by the executive committee upon recommendation of the executive director. Any standards, rules, or regulations developed or streamlined to assist in developing rural health service through advisory committee or Center for Rural Health Initiatives (center) activity shall be approved by the executive committee prior to adoption and implementation.

(d) Expenditures of over \$25,000. Any expenditure in excess of \$25,000 for purchases of major items of equipment shall be approved by the executive committee.

(e) Budget request. The center's consolidated budget, including contracts, grants, gifts, and donations necessary to carry out the duties under Article 4414b-1, will be approved by the executive committee prior to submission to the Texas Department of Health and the legislature.

§500.10. Other Actions. The Executive Committee for the Center for Rural Health Initiatives is responsible for approving any other actions by the executive director or the Center for Rural Health Initiatives where the approval of the executive committee is required by Article 4414b-1, requested by the executive director, or desired by the executive committee.

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 May 23, 1990.

TRD-9005216

Marion R. Zetzman, Dr.  
P.H.  
Chairperson, Center for  
Rural Health Initiatives  
Texas Department of  
Health

Earliest possible date of adoption: June 29, 1990

For further information, please call: (512) 458-7770

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part IX. Texas Water Commission

#### Chapter 334. Underground and Aboveground Storage Tanks

##### Subchapter I. Underground Storage Tank Contractor Registration and Installer Licensing

###### • 31 TAC §§334.401-334.413

The Texas Water Commission (TWC) proposes new §§334.401-334.413, concerning underground storage tank contractor registration. The new sections are located within Subchapter I. Previously the sections in Subchapter I were numbered §§334.201-334.213. Emergency §§334.201-334.213 were published in the February 2, 1990, issue of the *Texas Register* (15 TexReg 526). These emergency sections are being withdrawn in this issue of the *Texas Register*. The commission proposes new §§334.401-334.413 in order to provide consistency and uniformity with previously adopted TWC rules relating to underground storage tanks. The Texas Water Commission is required under House Bill 183, 71st Legislature, 1989, to establish a program to register underground storage tank (UST) contractors; to establish standards for the certification, renewal, denial, revocation, suspension, and reinstatement of a certificate of registration for an UST contractor; to develop procedures which provide hearings and types of hearings to UST contractors contesting denial, revocation, or suspension of a certificate of registration; and to promote a system of fee assessments to support the state's cost of administration of such a program. House Bill 183, 71st Legislature, 1989, also provides that no underground storage tank may be installed, repaired, or removed except by a registered underground storage tank contractor who has a licensed installer or an on-site supervisor at the site at all times during the critical junctures of the UST installation, repair, or removal. The sections proposed at this time, are to be contained in Title 31 Texas Administrative Code Chapter 334, Subchapter I.

Section 334.401, concerns certificate of registration for UST contractor. This section concerns the April 1, 1990, deadline for registration as a UST contractor, the registration of a partnership or joint venture name, and the display requirements for the issued certificate of registration number on all bids, proposals,

offers, and installation drawings.

Section 334.402 concerns application for certificate of registration. This section concerns the application requirements for a certificate of registration. The executive director shall provide all application forms in order to determine whether the requirements have been met for the issuance of a certificate of registration. The Texas Water Commission has been designated as the insurance certificate holder in order to be informed of any change in status of the applicant's documentation of financial assurance. Documentation of quality of performance can be demonstrated in any one of three methods. First, documentation of quality of performance may be demonstrated by sworn statements from at least three persons not related by blood or marriage that have engaged the applicant to perform UST installations, repairs, or removals, underground utility construction, or other engineering construction within the previous 12 months. These sworn statements must attest to the applicant's business integrity, levels of performance, and description of the type of construction performed by the applicant. Second, the applicant may submit a written explanation indicating good cause as determined by the executive director, as to the unavailability of the three sworn statements. The written explanation must contain a detailed description of at least three case histories of UST construction activities performed by the applicant within the previous 12 months. This section is intended to apply to applicants such as school districts, municipalities, counties, other governmental entities, and owners of USTs that perform UST installations, repairs, or removals using their own resources and/or labor. This section is not intended to apply to those applicants who perform the installation, repair, or removal of USTs under private contract with governmental entities or members of the general public. Third, the applicant may submit other documentation of performance which is determined by the executive director to be sufficient for the issuance of the certificate of registration. The application must be accompanied by a notarized sworn statement from the applicant attesting to the accuracy of the submitted information.

Section 334.403 concerns issuance of certificate of registration. This section concerns the procedures for processing and issuance of a certificate of registration. The \$50 application fee and the \$100 issuance fee have been combined into one initial payment of \$150 in order to reduce administrative duplication and avoid delay in the processing and issuance of the certificate of registration. The \$100 certificate issuance fee is refundable to the applicant upon withdrawal by the applicant or denial by the executive director. In addition, this section establishes a time frame in which the executive director must evaluate an application, the applicant must respond to the executive director's written comments, and the executive director must either issue or deny the application for a certificate of registration. Failure of the applicant to respond to the executive director's written comments within 30 days shall result in the return of the \$100 issuance fee and denial without prejudice of the certificate of registration. An applicant who has received a denial without prejudice

may reapply for a certificate of registration. A certificate of registration issued to a contractor is non-transferable and is subject to annual renewal.

Section 334.404 concerns renewal of certificate of registration. This section concerns the renewal process for a certificate of registration. All certificates of registration are valid for one year from the original date of issuance or last date of renewal.

Notification of impending registration expiration shall be issued by the commission to the contractor at least 60 days prior to expiration of the contractor's certificate. Renewal application forms are to be provided by the executive director. An applicant for renewal of a certificate of registration must submit a properly completed renewal application at least 30 days prior to the expiration of the certificate in order to avoid a lapse in registration. A properly completed renewal application submitted 30 days prior to the expiration date of the certificate of registration entitles the current certificate of registration to remain valid and in effect until the executive director notifies the applicant of renewal or denial of the renewal application. The proper renewal fee and documentation of financial assurance must be submitted with the renewal application. A certificate of registration which is not renewed earlier than one year after the expiration date of the certificate subjects the contractor to the application requirements enumerated in 31 TAC §344.403, concerning application for certificate of registration. The executive director shall issue a certificate of registration upon proper completion of the renewal process by the applicant.

Section 334.405 concerns denial of certificate of registration. This section concerns those factors which will cause a certificate of registration to be denied by the executive director. These factors include an improperly completed registration application, failure of the applicant to pay the appropriate fee, submission of fraudulent or deceptive information within the registration application, or for other cause (or causes) which the executive director determines to constitute an adequate ground (or grounds) for denial.

Section 334.406 concerns fee assessments for certificate of registration. This section contains the fee schedule for contractor certificate of registration. A renewal application is subject to the \$25 late renewal fee whenever it is received by the executive director after the expiration date of the certificate.

Section 334.407 concerns other requirements for certificate of registration. This section concerns additional requirements that all contractors must comply with upon issuance of a certificate of registration. These requirements include written notification to the executive director of a contractor's change in status during the validated registration year; maintenance of financial responsibility throughout the period the contractor holds the certificate of registration; and compliance with all applicable technical standards of 31 TAC Chapter 334, Subchapter C, concerning technical standards, Chapter 313, concerning Edwards Aquifer, and all other federal, state, and local regulations and laws.

Section 334.408 concerns exception to registration requirements. This section concerns those persons or companies which are completely exempt from regulation under 31 TAC §334.3(a), concerning statutory exemptions, or completely excluded from regulation under §334.4(a), concerning commission exclusions. Persons or companies that conduct installations, repairs, or removals of UST systems which are exempt from this chapter but are regulated under Chapter 313, concerning Edwards Aquifer, are required to comply with the contractor registration requirements of this subchapter.

Section 334.409 concerns revocation, suspension, or reinstatement of certificate of registration. This section concerns the procedures for the revocation, suspension, or reinstatement of a contractor's certificate of registration. Upon a determination that good cause exists to suspend or revoke the certificate of registration, the executive director shall request that the commission schedule a hearing before the hearing examiner or the commission. The certificate holder shall receive proper notice by the commission prior to the hearing. Violations of any of the provisions of this chapter, falsification of any information or documents submitted to the executive director, or other good cause as determined by the executive director, may constitute suspension or revocation of the certificate of registration. The suspension period of a certificate of registration may be for one-year depending on the seriousness of the offense (or offenses). A second suspension automatically revokes a certificate of registration. The commission may indefinitely suspend the certificate at the request of the certificate holder or for other good cause shown. A certificate of registration shall be revoked for a period of one year. After the expiration of the one-year revocation, the holder of the revoked certificate of registration may reapply for reinstatement pursuant to the requirements of 31 TAC §334.402, concerning application for certificate of registration. However, since the one-year revocation may negatively affect an applicant's ability to provide documentation of quality of performance within the previous 12 months, such documentation is not required to be submitted by an applicant seeking reinstatement through the requirements of §334.402, concerning application for certificate of registration. When a certificate of registration is revoked a second time, the revocation shall be permanent.

Section 334.410 concerns notice of hearing. This section concerns the notice of hearing relating to the revocation, suspension, or reinstatement of the certificate of registration. The notice of hearing shall be issued not less than 20 days prior to the hearing and shall be transmitted by certified mail, return receipt requested. Persons to be notified include the applicant, or certificate holder; the complainant, and any person(s) affected by the outcome of the hearing as determined by the executive director.

Section 334.411 concerns type of hearing. This section concerns the type of hearing relating to the suspension or revocation or reinstatement of a certificate of registration. This hearing is subject to the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

Section 334.412 concerns Subchapter I definitions. This section concerns relevant terms. The definitions of engineering construction an underground utilities have been included to clarify the experience necessary to obtain registration as an underground storage tank contractor.

Section 334.413 concerns license for installers and on-site supervisors. This section defers the rules concerning the licensing of installers and on-site supervisors. A license shall not be required for installers and on-site supervisors until such time as rules defining the requirements necessary for the issuance of such license are adopted by the commission.

Roger G. Bourdeau, chief fiscal officer, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. The direct effect on state government will be an increase in cost of \$85,750 in fiscal year 1990 and \$57,200 in each of the fiscal years 1991-1994. Revenues are estimated to increase by \$120,000 in fiscal year 1990 and \$75,000 in each fiscal year 1991-1994. There are not direct impacts to local governments, except in cases where a local government would apply under provisions of this subchapter for a certificate of registration as a contractor to perform work on its own behalf. In this instance, the cost of a certificate would be \$150 the first year and \$75 annually thereafter. The effect on small businesses would be essentially the same as that for local government or any other applicant for certification.

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 improvements in: the regulation of underground storage tanks; the effective use of private funds to remove, repair, or install underground storage tanks in accordance with technical regulatory standards; protection of the state's water resources; and enforcement of the provisions of the Water Code and the regulations of the Texas Water Commission.

The anticipated economic cost to persons who are required to comply with the sections as proposed will be the same as for any registrant: \$150 for the first year and \$75 annually each year thereafter.

The new sections are proposed under House Bill 183, 71st Legislature, 1989, which provides the Texas Water Commission with the authority to establish a program to license underground storage tank installers and on-site supervisors, and register underground storage tank contractors; and \$5.103 and \$5.105 of the Texas Water Code, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

*§334.401. Certificate of Registration for UST Contractor.*

(a) After April 1, 1990, no person shall engage in the installation, repair, or

removal of an underground storage tank without possessing a valid certificate of registration.

(b) A partnership or joint venture need not register in its own name if each partner or the joint venture is properly registered.

(c) The certificate of registration number issued pursuant to §334.403 of this title (relating to Issuance of Certificate of Registration) must be prominently displayed on all bids, proposals, offers, and installation drawings.

*§334.402. Application for Certificate of Registration.* Any person as defined in §334.412 of this title (relating to Definitions) who engages in the installation, repair, or removal of an underground storage tank shall meet the following application requirements in order to obtain a certificate of registration.

(1) A person shall apply for a certificate of registration on a form approved by the executive director.

(2) The application for certificate of registration shall include:

(A) the applicant's business name, business mailing address and telephone number, and permanent physical address;

(B) the business representative's name and title;

(C) the address, telephone number, and business representative for any branch office within the State of Texas which will be operating under the requested certificate of registration;

(D) documentation of financial assurance, including:

(i) evidence of commercial liability insurance designating the Texas Water Commission as the certificate holder in an amount of not less than \$1 million and of a type approved by the executive director; and a financial statement prepared in conformity with accounting principles as defined by the American Institute of Public Accountants, indicating an applicant's current net worth of not less than \$25,000; or

(ii) other evidence of financial assurance which is determined by the executive director to be sufficient for the purposes of this section;

(E) documentation of quality of performance including one of the following:

(i) sworn statements, on forms approved by the executive director,

from at least three persons (references), not related by blood or marriage, who have engaged the applicant within the previous 12 months to perform: underground storage tank (UST) installations, repairs, or removals; underground utility construction; or other engineering construction. These statements shall attest to the applicant's business integrity and levels of performance. Such statements shall also include a description of the type of construction which was performed by the applicant;

(ii) a written explanation indicating good cause as determined by the executive director for not providing the sworn statement required in subparagraph (E)(i) of this paragraph. The explanation shall include a detailed description of at least three case histories of typical UST construction activities performed by the applicant during the previous 12 months; or

(iii) other documentation of quality of performance which is determined by the executive director to be sufficient for the purposes of this section;

(F) a sworn statement from the applicant attesting to the accuracy of the information provided on the application, which has been notarized.

*§334.403. Issuance of Certificate of Registration.*

(a) An application for a certificate of registration shall be accepted for processing upon commission receipt of a properly completed application as required by §334.402 of this title (relating to Application for Certificate of Registration), and fees of \$150 (\$50 application fee and \$100 certificate issuance fee) required under §334.406 of this title (relating to Fee Assessments for Certificate Registration). The \$100 issuance fee shall be refunded if the application is withdrawn or denied.

(b) Within 30 days of receipt of an application, the executive director shall evaluate the application for completeness and, if necessary, provide written comments to the applicant noting any additional information which is required for processing. The executive director will forward the written comments by certified mail, return receipt requested. The applicant will have 30 days from date of delivery of the executive director's written comments to submit the requested information, after which time the \$100 issuance fee will be returned and the certificate of registration denied without prejudice.

(c) Within 30 days of receipt of a properly completed application, the executive director shall either issue a certificate of registration or deny the application.

(d) A certificate of registration issued under this subchapter is not transferable, and shall be renewed annually as prescribed in §334.404 of this title (relating

to Renewal of Certificate of Registration).

**§334.404. Renewal of Certificate of Registration.**

(a) All certificates of registration shall expire one year from the original date of issuance or from the last date of renewal.

(b) The commission shall notify each registered contractor in writing of the impending registration expiration at least 60 days prior to the expiration of the certificate of registration.

(c) The executive director shall provide application forms for renewal of a certificate of registration.

(d) A properly completed application for renewal shall be submitted to the executive director at least 30 days prior to the expiration date of the certificate of registration. The current certificate of registration shall be valid until the executive director notifies the applicant of renewal or denial of the submitted renewal application, provided a properly completed application for renewal was submitted at least 30 days prior to the expiration date of the certificate of registration.

(e) The application must be accompanied by the renewal fee prescribed by §334.406 of this title (relating to Fee Assessments for Certificate of Registration), and documentation of financial assurance as prescribed by §334.402(b)(4) of this title (relating to Application for Certificate of Registration).

(f) The contractor shall reapply for the issuance of a certificate of registration as prescribed by §334.402 of this title (relating to Application for Certificate of Registration) if the certificate is not renewed earlier than one year after the expiration date of the certificate.

(g) Upon proper completion of the certificate renewal process, the executive director shall issue a certificate indicating the expiration date.

**§334.405. Denial of Certificate of Registration.** The executive director may deny a certificate of registration or request for renewal of certificate for the following grounds:

(1) when an applicant fails to submit the required documentation as required by §334.402 of this title (relating to Application for Certificate of Registration);

(2) when an applicant fails to pay the appropriate fee as required under §334.406 of this title (relating to Fee Assessments for Certificate of Registration);

(3) when an applicant submits an application with fraudulent or deceptive information; or

(4) for other cause(s) which in the opinion of the executive director constitute adequate ground(s) for denial.

**§334.406. Fee Assessments for Certificate of Registration.** The fees for certificate of registration are as follows.

(1) The following fee schedule shall apply for the registration of underground storage tank:

(A) application fee.....\$50;

(B) issuance fee.....\$100;

(C) annual renewal fee..\$75;

(D) duplicate certificate of registration.....\$10;

(E) application to change certificate of registration .....\$70;

(F) late renewal fee.....\$25;

(2) A certificate renewal application shall be considered late when received by the executive director after the expiration date of the certificate, and shall be subject to the late renewal fee.

**§334.407. Other Requirements for Certificate of Registration.**

(a) All registered contractors shall notify the executive director in writing within 30 days of any change which occurs during the validated registration year. Such changes shall include, but are not limited to:

(1) change of business name, address, or telephone number;

(2) change of physical address;

(3) change in status of insurance;

(4) change of business representative;

(5) permanent cessation of underground storage tank (UST) business or UST activities;

(6) a filing for reorganization or protection under federal bankruptcy laws;

(7) change of branch office, address, or telephone number.

(b) A registered UST contractor is required to maintain such financial responsibility required by §334.402 of this title (relating to Application for Certificate of Registration) throughout the period that such contractor holds a valid certificate of registration from the commission.

(c) A UST contractor subject to the provisions of this subchapter employed or otherwise engaged by a UST owner or operator (or by any other person represent-

ing to be the UST owner or operator) to conduct the installation, repair, or removal of UST, shall comply with all applicable technical standards of Subchapter C of this chapter (relating to Technical Standards) and Chapter 313 of this title (relating to the Edwards Aquifer).

(d) Compliance with the provisions of this subchapter by a registered contractor shall not relieve such contractor from the responsibility of compliance with all applicable regulations legally promulgated by the United States Environmental Protection Agency, United States Occupational Safety and Health Administration, United States Department of Transportation, Texas Air Control Board, Texas Department of Health, State Board of Insurance (including state fire marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Water Commission, and other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

**§334.408. Exception to Registration Requirements.** The certificate of registration shall not be required for persons or companies who conduct installations, removals, or repairs of underground storage tank systems when such systems are completely exempt from regulation under §334.3(a) of this title (relating to Statutory Exemptions), or completely excluded from regulation under §334.4(a) of this title (relating to Commission Exclusions). Persons or companies who conduct installations, removals, or repairs of underground storage tank systems regulated under Chapter 313 of this title (relating to Edwards Aquifer) are not exempt from the contractor registration requirements of this subchapter.

**§334.409. Revocation, Suspension, or Reinstatement of Certificate of Registration and License.**

(a) If the executive director determines good cause exists to suspend or revoke the certificate of registration of a contractor, the executive director shall request that the commission schedule a hearing before the hearing examiner or the commission. Such hearing shall be held only after proper notice has been provided to the certificate holder. The commission may suspend or revoke the certificate if the commission finds that the holder of the certificate was responsible for violating the provisions of this chapter, for falsifying any information or documents submitted to the executive director, or for other good cause.

(b) A certificate may be suspended for a period of up to one year, depending upon the seriousness of the offense(s). A certificate is revoked automatically upon a second suspension. At the request of the

certificate holder, or for other good cause shown, the certificate may be suspended indefinitely by the commission.

(c) A certificate shall be revoked for a period of one year after which the holder of the certificate may reapply for reinstatement pursuant to the requirements of §334.402 of this title (relating to Application for Certificate of Registration). If a certificate is revoked a second time, the revocation shall be permanent. The holder of a certificate which has been revoked for a period of one year shall not have to meet the application requirement of §334.402(b)(5) of this title (relating to Application for Certificate of Registration).

#### §334.410. Notice of Hearings.

(a) Notice for any hearing required by §334.409 of this title (relating to Revocation, Suspension, or Reinstatement of Certificate) shall be issued not less than 20 days prior to the hearing.

(b) Transmittal of the notice shall be by certified mail, return receipt requested.

(c) Persons to be notified include, but are not limited to, the following:

- (1) the applicant or certificate holder;
- (2) the complainant (if any); and
- (3) any other person who may be affected by the outcome of the hearing, as determined by the executive director.

§334.411. *Type of Hearing.* Any hearing related to the suspension or revocation of a certificate of registration is subject to the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

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

**Business representative**—A person (e.g., proprietor, senior partner, president, or designated representative of a company) who shall be responsible for compliance with this subchapter.

**Certificate of registration**—The document issued to an underground storage tank contractor authorizing same to engage in the underground storage tank business in the State of Texas.

**Commission**—The Texas Water Commission.

**Critical junctures**—In the case of an installation, repair, or removal of an underground storage tank system, all of the following steps:

(A) preparation of the tank bedding immediately prior to receiving the tank;

(B) setting of the tank and the piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(C) connection of piping systems to the tank;

(D) all pressure testing of the underground storage tank, including associated piping, performed during the installation;

(E) completion of backfill and filling of the excavation;

(F) any time during the repair in which the piping system is connected or reconnected to the tank;

(G) any time during the repair in which the tank or its associated piping is tested; and

(H) any time during the removal of the tank.

**Engineering construction**—That construction designed by civil and mechanical engineers, as opposed to building construction which is designed by architectural engineers.

**Executive director**—The executive director of the Texas Water Commission.

**Installation**—The installation of underground storage tanks and ancillary equipment.

**Installer**—A person who participates in or supervises the installation, repair, or removal of underground storage tanks.

**License**—The document issued to an installer or on-site supervisor authorizing same to engage in the underground storage tank business in the State of Texas.

**On-site supervisor**—

(A) A professional engineer registered to practice in the State of Texas who has met the licensing requirements of this subchapter; or

(B) An individual with at least two years of active experience in the vocation of installation, removal, or repair of underground storage tanks, underground utilities, or other engineering construction in the State of Texas, and who meets the licensing requirements of this subchapter.

**Operator**—Any person in control of, or having responsibility for, the daily operation of an underground storage tank system.

**Owner**—Any person who currently holds legal possession or ownership of a total or partial interest in the underground storage tank system. For the purposes of this chapter, where the actual ownership of

an UST system is either uncertain, unknown, or in dispute, the fee simple owner of the surface estate where the UST is located shall be considered the UST system owner, unless the owner of the surface estate can demonstrate by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally acceptable means that the UST system is owned by others. The term "owner" does not include a person who holds an interest in an UST system solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the UST system.

**Person**—An individual, trust, firm, joint-stock company, corporation, government corporation, partnership, association, state, municipality, commission, political subdivision of a state, interstate body, a consortium, joint venture, commercial entity, or the United States Government.

**Removal**—The process of removing and disposing of an underground storage tank that is no longer in service, or the process of abandoning an underground storage tank in place after purging the tank of vapors and filling the vessel of the tank with a solid inert material.

**Repair**—The modification or correction of an underground storage tank and ancillary equipment. The term does not include:

(A) relining an underground storage tank through the application of epoxy resins or similar materials;

(B) the performance of a tightness test to ascertain the integrity of the tank, except when a tightness test is a prescribed element of a critical juncture of an installation, repair, or removal;

(C) the maintenance and inspection of cathodic protection devices by a corrosion expert or corrosion technician;

(D) emergency actions to halt or prevent leaks or ruptures; or

(E) minor maintenance on ancillary aboveground equipment.

**Underground storage tank (or UST)**—Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10% or more beneath the surface of the ground.

**Underground storage tank business (or UST business)**—A business whose particular field of endeavor relates to the installation, removal, or repair of underground storage tanks.

**Underground storage tank contractor**

(or UST contractor)—A person or business entity that offers to undertake, represents itself as being able to undertake, or does undertake the installation, repair, or removal of an underground storage tank.

Underground utilities—Refers to the installation of public underground water, sanitary sewer, or storm sewer construction. This does not include private underground pipe systems (water or sewer piping), power or communication cables, or natural gas lines.

**§334.413. License for Installers and On-Site Supervisors.** A license shall not be required for installers and on-site supervisors as defined in §334.412 of this title (relating to Definitions) until such time as rules are adopted by the commission which define the requirements necessary for the issuance of such license.

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

Issued in Austin, Texas on May 23, 1990.

TRD-9005213 Jim Haley  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: June 29, 1990

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

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part I. Texas Department of Public Safety

#### Chapter 15. Drivers License Rules

##### Examination Requirements

###### • 37 TAC §15.54, §15.56

The Texas Department of Public Safety proposes amendments to §15.54 and §15.56, concerning drivers license examination requirements. The amendment to §15.54 adds and deletes language in paragraph (2)(A)(iii) regarding out-of-state registration plates for service member's spouse and dependent children while the service person is serving overseas. Texas registration or valid dealer plates must be current and both plates displayed if required by statute in paragraph (2)(F). Language is added and deleted in paragraph (3)(B) and (C) regarding items to be inspected in Class C vehicles and Class A and B vehicles under 80 inches wide and Class A or B vehicles that are over 80 inches wide. Language is added to paragraph (3)(D)(i) to clarify alternately flashing red warning lamps on school buses. Paragraph (3)(F) is new language applicable to inspection items on trailers and semitrailers and subparagraphs (F) and (G) are designated as (G) and (H) with language added and deleted applicable to motor-driven

cycles, motorcycles, and mopeds. The amendment to §15.56 adds and deletes language in paragraph (2)(C) regarding stalling of a vehicle. Paragraph (5)(F) is added as a rejection standard for refusing to wear a seat belt when required or has no physician's statement for waiver. Paragraph (6) is added as a rejection standard for inability to perform certain items.

Melvin C. Peebles, assistant chief of fiscal affairs, 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.

Dudley M. Thomas, chief of traffic law enforcement, 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 to ensure the public is aware of the vehicle inspection items to be inspected prior to a road test for a driver's license and the rejection standards of a road test to promote vehicle safety and to improve driver skills. There will be no effect on small businesses as a result of enforcing the sections. The anticipated economic cost to persons who are required to comply with the sections as proposed is not available, since the department is unable to estimate the cost for having a vehicle in compliance with the requirements for a road test due to the many variables which would vary in cost.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendments are proposed under Texas Civil Statutes, Article 6687b, §1A, and Texas Government Code, §411.004(3), which provide the Texas Department of Public Safety with authority to adopt rules that it determines necessary to effectively administer this Act.

**§15.54. Vehicle Inspection.** The department inspects vehicles prior to road testing to determine if such vehicle meets the requirements of law and is safe to operate on a public street or highway.

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

(A) Out-of-state registration plates. Military personnel stationed within Texas may display on their vehicles current license plates from their state of legal residence or current plates from the state of their last duty station.

(i)-(ii) (No change.)

(iii) The same privileges and restrictions as outlined in this paragraph apply to the service member's spouse and dependent children while the service person [serviceman's wife while her husband] is serving overseas as a member of the United States armed forces.

(iv)-(v) (No change.)

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

(F) Current registration. Texas registration must be current registration or [must have] valid dealer plates. If two plates are required by statute, both plates must be properly displayed.

(3) Vehicle inspection.

(A) (No change.)

(B) Vehicle inspection for road tests in Class C vehicles and Class A and B vehicles under 80 inches wide. The following will be inspected. [Equipment inspected on all motor vehicles except motor-driven cycles, motorcycles, and motor-assisted bicycles. Equipment inspected on all motor vehicles except motor-driven cycles, motorcycles, and motor-assisted bicycles is as follows:]

(i) two headlights;

(ii) two tail lamps-one for 1959 model or earlier passenger car or truck;

(iii) two rear red reflectors;

(iv) two stop lamps-one for 1959 model or earlier passenger car;

(v)-(vii) (No change.)

(viii) turn signal lamps-1960 or later models;[

(ix) windshield wiper;

(x) seat belts-required for front seat in passenger cars and light trucks to 1,500 pounds GVW where the vehicle was originally equipped with seat belt anchors;

(xi) one way glass or glass coating material;

(xii) vehicle inspection certificates;

(xiii) registration;

(xiv) registration receipts if used for Commercial Driver License (CDL) test.

(C) Vehicle inspection for road tests in Class A or B vehicles 80 inches or over in width. The following will be inspected. [Additional equipment. Additional equipment inspected on buses and trucks 80 inches or more in overall width is as follows:]

(i)-(v) (No change.)

(vi) fire extinguisher-required on buses, taxis, and vehicles which carry hazardous materials; [one quart chemical fire extinguisher for buses and taxis.]

(vii) registration receipts if used for CDL test;



(viii) emergency flares, fuses, or reflectors;

(ix) four-way emergency flashers.

(D) School bus inspection. In addition to equipment inspected in subparagraphs (B) and (C) of this paragraph, school bus inspection includes the following:

(i) red warning lamps (two front and two rear alternately flashing);

(ii)-(iii) (No change.)

(E) (No change.)

(F) Trailers and semitrailers. Trailers and semitrailers 80 or more inches in width shall be inspected for the following:

(i) registration receipts if used for CDL test;

(ii) clearance lamps;

(iii) side marker lamps;

(iv) four-way emergency flashers;

(v) mud flaps-required when there are four or more tires on the rearmost axle.

(G)[(F)] Motor-driven cycles and motorcycles. Equipment inspected on motor-driven cycles and motorcycles includes the following:

(i) -(v) (No change.)

(vi) [one] head lamp-multiple beam for motorcycle and single or multiple beam for motor-driven cycle;

(vii) exhaust system; [.]

(viii) vehicle inspection certificate;

(ix) registration.

(H)[(G)] Mopeds. Equipment inspected on mopeds includes the following:

(i)-(iv) (No change.)

§15.56. Road Test. The department administers a road test to determine an applicant's ability to exercise ordinary and reasonable control of a motor vehicle; such applicant must meet a predetermined score. Rejection standards for road test are as follows:

(1) (No change.)

(2) Dangerous action:

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

(C) driver stalls vehicle [car] in middle of busy intersection so as to obstruct traffic;

(D)-(F) (No change.)

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

(5) Lack of cooperation or refusal to perform:

(A)-(E) (No change.)

(F) refuses to wear seat belt when required and has no physician's statement for waiver.

(6) Inability to perform:

(A) Identify controls on a Class M vehicle;

(B) pre-trip inspection of brake operation in Class A and B vehicles.

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 May 18, 1990.

TRD-9005104

Joe E. Milner  
Director  
Texas Department of  
Public Safety

Earliest possible date of adoption: June 29, 1990

For further information, please call: (512) 465-2000

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

The following proposals submitted by the Texas Department of Human Services will be serialized beginning in the June 5, 1990, issue of the *Texas Register*. The proposed date of adoption is October 1, 1990.

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

##### Purpose

- 40 TAC §16.901 (repeal),
- Compliance with Federal Laws
- 40 TAC §§16.1301-16.1305 (repeals),

##### Compliance with State and Local Laws

- 40 TAC §§16.1501,

16.1504-16.1509, 16.1511-16.1513, 16.1514 (repeals), and 16.1514 (new)

#### Governing Body and Management

- 40 TAC §§16.1901, 16.1903, 16.1904, 16.1906, 16.1907, 16.1910-16.1912, 16.1914-16.1919 (repeals)

#### Physician Services

- 40 TAC §§16.2901-16.2908 (repeals)

#### Nursing Services

- 40 TAC §§16.3001-16.3009, 16.3011-16.3017 (repeals)

#### Food and Nutrition Services

- 40 TAC §§16.3101-16.3107 (repeals)

#### Pharmacy Services

- 40 TAC §§16.3201-16.3212 (repeals)

#### Laboratory and Radiology Services

- 40 TAC §§16.3301-16.3304 (repeals)

#### Social Services

- 40 TAC §§16.3401-16.3404 (repeals)

#### Rehabilitation Services/Goal-directed Therapy

- 40 TAC §§16.3501-16.3507 (repeals)

#### Services and Supplies Included in the Vendor Payment

- 40 TAC §§16.3801-16.3805, 16.3807 (repeals)

#### Medical Records

- 40 TAC §16.3901, §16.3902 (repeals)

#### Medical Direction

- 40 TAC §§16.4101-16.4103 (repeals)

#### Physical Environment

- 40 TAC §§16.4901-16.4913 (repeals):

#### Safety

- 40 TAC §16.5101, §16.5102 (repeals)

#### Recipient-patient Activities

- 40 TAC §§16.5901-16.5903 (repeals)

#### Recipient Rights

- 40 TAC §§16.6101-16.6111,

16.6113-16.6120 (repeals)  
 Medical Review and Re-evaluation

- 40 TAC §§16.7101, 16.7102, 16.7104 (repeals)

Support Documents

- 40 TAC §16.9802 (repeal)

Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter A. Basis and Scope

- 40 TAC §19.1 (new)

Subchapter B. Definitions

- 40 TAC §19.101 (new)

Subchapter C. Resident Rights

- 40 TAC §§19.201-19.219 (new)

Subchapter D. Admission, Transfer, and Discharge Rights

- 40 TAC §§19.301-19.305 (new)

Subchapter E. Resident Behavior and Facility Practice

- 40 TAC §19.401 (new)

Subchapter F. Quality of Life

- 40 TAC §§19.501-19.505 (new)

Subchapter G. Resident Assessment

- 40 TAC §§19.601-19.604 (new)

Subchapter H. Quality of Care

- 40 TAC §19.701 (new)

Subchapter I. Nursing Services

- 40 TAC §§19.801-19.813 (new)

Subchapter J. Dietary Service

- 40 TAC §§19.901-19.912 (new)

Subchapter K. Physician Services

- 40 TAC §§19.1001-19.1010 (new)

Subchapter L. Specialized Rehabilitative Services

- 40 TAC §§19.1101-19.1106 (new)

Subchapter M. Dental Services

- 40 TAC §19.1201 (new)

Subchapter N. Pharmacy Services

- 40 TAC §§19.1301-19.1310 (new)

Subchapter O. Infection Control

- 40 TAC §19.1401, §19.1402 (new)

Subchapter P. Physical Plant and Environment

- 40 TAC §§19.1501-19.1521

Subchapter Q. Medical Review and Re-evaluation

- 40 TAC §§19.1601-19.1612

Subchapter R. Vendor Payment

- 40 TAC §§19.1701-19.1708 (new)

Subchapter S. Reimbursement Methodology for Nursing Facilities

- 40 TAC §§19.1801-19.1809 (new)

Subchapter T. Administration

- 40 TAC §§19.1901-19.1933 (new)

Subchapter U. State and Local Regulations

- 40 TAC §§19.2001-19.2013 (new)

Subchapter V. Federal Regulations

- 40 TAC §§19.2101-19.2107 (new)

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part I. Texas Department of Human Services**

**Chapter 23. Nursing Facility Administration**

**Subchapter B. Ownership Transfer**

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

The Texas Department of Human Services (DHS) proposes the repeal of §§23. 101, 23.103, 23.201-23.203, 23.205, 23.207, 23.209, 23.210, 23.801-23.803, 23. 1002, 23.1003, 23.1005, 23.1102, 23.1104, 23.1107, 23.1109, 23.1201, 23.1301, 23. 1302, 23.1311, 23.1314, 23.1401, 23.1404, 23.1501, 23.1503-23.1507, 23.1509, 23. 1510, 23.1601, 23.1608, 23.1610, 23.1611, 23.1614-23.1616, 23.1618, 23.1619, 23. 1802, 23.1908, 23.1909, 23.2004, 23.9808, and 23.9809, concerning nursing facility administration. The repeals, which constitute all of Chapter 23, are necessary because DHS is proposing new sections in Chapter 16; concerning long term care nursing facility requirements for licensure and Medicaid certification, to be effective October 1, 1990.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period

the proposed 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. Raiford also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be deletion of obsolete rules necessary to enable DHS to propose new sections governing nursing home licensure. 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 repeals as proposed.

Comments on the proposal may be submitted to Cathy Rossberg, Agency Liaison, Policy Communication Services 202, 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 §23.101, §23.103

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

*§23.101. Split in Pay Agreements.*

*§23.103. Removal of Financial Records from Facility.*

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 May 23, 1990.

TRD-9005149      Cathy Rossberg  
 Agency liaison, Policy  
 Communication  
 Services  
 Texas Department of  
 Human Services

Proposed date of adoption: October 1, 1990

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

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**Subchapter C. Payments to Nursing Homes**

- 40 TAC §§23.201-23.203, 23.205, 23.207, 23.209, 23.210

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

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

*§23.201. Payment for Discharged Patient.*

*§23.202. Effective Date of Vendor Coverage.*

§23.203. Medicare Payments.

§23.205. Surety Bonds.

§23.207. Request for Waivers.

§23.209. Vendor Payment Information.

§23.210. Physical Location of Patient.

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 May 23, 1990.

TRD-9005150 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: October 1, 1990

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

◆ ◆ ◆  
Subchapter I. Support Services

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

◆ ◆ ◆  
• 40 TAC §§23.801-23.803

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

§23.801. Consultant Services.

§23.802. Adjustment or Repair of Prosthetic Devices.

§23.803. Services Provided by Order of Physician.

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 May 23, 1990.

TRD-9005151 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

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

Subchapter K. Recipient Rights

◆ ◆ ◆  
• 40 TAC §§23.1002, 23.1003,  
23.1005

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

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

§23.1002. Locks on Bedroom Doors.

§23.1003. Recipient Right to Privacy.

§23.1005. Patient Trust Fund Money.

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 May 23, 1990.

TRD-9005152 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

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

◆ ◆ ◆  
Subchapter L. General Policies

◆ ◆ ◆  
• 40 TAC §§23.1102, 23.1104,  
23.1107, 23.1109

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

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

§23.1102. Separate Consultations within a Facility.

§23.1104. Use of Electric Blanket.

§23.1107. Nursing Home Complaints.

§23.1109. Physicians Charging a Fee to Complete Forms.

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 May 23, 1990.

TRD-9005153

Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

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

◆ ◆ ◆  
Subchapter M. Housekeeping  
and Maintenance

◆ ◆ ◆  
• 40 TAC §23.1201

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

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

§23.1201. Deodorant Use for Air Freshening Purposes.

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

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TRD-9005154 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

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

◆ ◆ ◆  
Subchapter N. Nursing  
Facilities

◆ ◆ ◆  
• 40 TAC §§23.1301, 23.1302,  
23.1311, 23.1314

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

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

§23.1301. Student Nurses.

§23.1302. Billing for Flu Shots.

§23.1311. Use of Student Nurses.

§23.1314. Nursing Staff Ratio.

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 May 23, 1990.

TRD-9005155 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

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

◆ ◆ ◆  
**Subchapter O. Medications**

• **40 TAC §23.1401, §23.1404**

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

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

§23.1401. "Double Blind" Studies.

§23.1404. Crushing of Medications.

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 May 23, 1990.

TRD-9005156 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

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

◆ ◆ ◆  
**Subchapter P. Medical Records**

• **40 TAC §§23.1501,  
23.1503-23.1507, 23.1509, 23.1510**

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

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

§23.1501. Compact Charting.

§23.1503. Recording Information in Ink.

§23.1504. Nurse Recording of Physician Orders.

§23.1505. Making Corrections in Medical Records.

§23.1506. Thinning of Active Records.

§23.1507. Readmissions and New Admissions.

§23.1509. Physician's Rubber Stamp Signatures.

§23.1510. PRN Medications.

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 May 23, 1990.

TRD-9005157 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: October 1, 1990

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

◆ ◆ ◆  
**Subchapter Q. Dietary**

• **40 TAC §§23.1601, 23.1608,  
23.1610, 23.1611, 23.1614-23.  
1616, 23.1618, 23.1619**

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

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

§23.1601. Deficiency in Dietetic Service.

§23.1608. Work in Food Service and Other Areas.

§23.1610. Tray Cards.

§23.1611. Nursing Aide Assistance.

§23.1614. Diet and Menu Patterns.

§23.1615. Evaluation of Diets.

§23.1616. Blended Diets and Tube Feedings.

§23.1618. Use of 2.0% Milk.

§23.1619. Repouring Milk from Dispensers.

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 May 23, 1990.

TRD-9005158 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: October 1, 1990

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

◆ ◆ ◆  
**Subchapter S. Professional  
Consultants**

• **40 TAC §23.1802**

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

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

§23.1802. Signature.

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 May 23, 1990.

TRD-9005159 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

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

◆ ◆ ◆  
**Subchapter T. Services and  
Supplies Included in the  
Vendor Payment**

• **40 TAC §23.1908, §23.1909**

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

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

**§23.1908. Special Nurses.**

**§23.1909. Sitters.**

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 May 23, 1990.

TRD-9005160 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: October 1, 1990

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

**§23.9808. Change in Corporate Status for Nursing Homes.**

**§23.9809. Form 16.**

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 May 23, 1990.

TRD-9005162 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: October 1, 1990

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

Services section. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-314, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*. A copy of the proposal is being sent to each DHS field office where it will be available for public review. The department will hold a public hearing on the proposal on Friday, June 15, 1990, at 9 a.m. in the John H. Winters Building Public Hearing Room, First Floor, East Tower, 701 West 51st Street, Austin. An additional purpose of the hearing is to consider comments on the proposed maximum fees established by DHS. Copies of the proposed maximum fees may be obtained from Joe Branton, Purchased Health Services-611-S, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

◆ ◆ ◆  
**Subchapter U. Audit  
Procedures**

◆ ◆ ◆  
**• 40 TAC §23.2004**

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

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

**§23.2004. Charges for Special Nurses.**

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 May 23, 1990.

TRD-9005161 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: October 1, 1990

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

◆ ◆ ◆  
**Subchapter G. Hospital  
Services**

◆ ◆ ◆  
**• 40 TAC §29.601**

The Texas Department of Human Services (DHS) proposes to amend §29.601, concerning payment for hospital services, in its Purchased Health Services chapter. As a cost containment measure, reimbursement for room charges, including supplies, in the outpatient hospital setting will be limited to the least of the hospital's actual charge, the hospital's customary charge, the allowable cost determined by the department or its designee, or the maximum fee established by DHS. This reimbursement methodology will apply to each hospital's room charges, including supplies, for the outpatient clinic and the emergency room when treating a non-emergency medical condition.

Burton F. Raiford, deputy commissioner for support operations, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state and local government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section is in effect is an estimated reduction in cost of \$3,311,875-\$4,967,767 in fiscal year (FY) 1991; \$3,534,731-\$5,302,097 in FY 1992; \$3,765,550-\$5,648,324 in FY 1993; \$4,011,440-\$6,017,160 in FY 1994; and \$4,273,387-\$6,410,081 in FY 1995. The effect on local government for the first five-year period the section is in effect is an estimated loss in revenue of \$4,139,806 in fiscal year (FY) 1991; \$4,418,414 in FY 1992; \$4,706,937 in FY 1993; \$5,014,300 in FY 1994; and \$5,341,734 in FY 1995.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to help the department remain within appropriated funding. 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.

Questions about the content of this proposal may be directed to Joe Branton at (512) 338-6505 in DHS's Purchased Health

**§29.601. Payment for Hospital Services.**

(a) The Department of Human Services or its designated agent reimburses hospitals that are approved for participation in the Texas Medical Assistance Program for covered Title XIX hospital services provided to eligible Medicaid recipients. The Texas Title XIX state plan for medical assistance provides for reimbursement of covered hospital services [to be determined] as specified in paragraphs (1) -(3) of this subsection.

(1) (No change.)

(2) The amount payable for outpatient hospital services is determined under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, except as may be otherwise specified by the department. Reimbursement for outpatient hospital surgery is limited to the least [lesser] of the amount reimbursed to ambulatory surgical centers (ASCs) for similar services, the hospital's actual charge, the hospital's customary charge, or the allowable cost determined by the department or its designee. Reimbursement for room charges, including supplies, in the outpatient hospital clinic and the emergency room when treating a non-emergency medical condition is limited to the least of the hospital's actual charge, the hospital's customary charge, the allowable cost determined by the department or its designee, or the maximum fee established by this department. A non-emergency medical condition is a condition that does not meet the definition of an emergency medical condition as specified in §43.25 of this title (relating to Definitions).

(3) (No change.)

(b)-(d) (No change.)

◆ ◆ ◆  
**Subchapter UUUU. Support  
Documents**

◆ ◆ ◆  
**• 40 TAC §23.9808, §23.9809**

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

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

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 May 22, 1990.

TRD-9005135 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: September 1, 1990

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

## Chapter 29. Purchased Health Services

### Subchapter L. General Administration

#### • 40 TAC §29.1126

The Texas Department of Human Services (DHS) proposes an amendment to §29.1126, concerning in-home total parenteral hyperalimentation services, in its Purchased Health Services chapter. The purpose of the amendment is to remove the requirement for customary and routine lab work required to monitor the recipient's status as part of the covered services. In-home total parenteral hyperalimentation providers will no longer be required to provide this component as part of the package of services. This change was required by the Health Care Financing Administration (HCFA) state plan amendment process. Lab work will be provided by a certified laboratory and billed by them.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section is in effect is an estimated additional cost of \$121 in fiscal year (FY) 1990; \$1,450 in FY 1991; \$1,507 in FY 1992; \$1,531 in FY 1993; and \$1,634 in FY 1994. There are no fiscal implications for local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be eliminating the lab requirements from the in-home total parenteral hyperalimentation provider package of services, and having the lab services billed by the certified laboratory providing the actual service. 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.

Questions about the content of this proposal may be directed to Kay Sterling at (512) 338-6511 in DHS's Purchased Health Services. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-304, 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 amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

#### §29.1126. In-home Total Parenteral Hyperalimentation Services.

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

(c) Covered services include, but are not necessarily limited to:

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

[(5) customary and routine lab work required to monitor the recipient's status;]

(5) [(6) enteral supplies and equipment, if medically necessary, in conjunction with total parenteral hyperalimentation.

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

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

Issued in Austin, Texas, on May 22, 1990.

TRD-9005134 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: August 1, 1990

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

## Subchapter Y. Federally Qualified Health Center Services

#### • 40 TAC §§29.2401-29.2404

The Texas Department of Human Services (DHS) proposes new §§29.2401-29.2404, concerning new Subchapter Y, Federally Qualified Health Center Services (FQGC), in its Purchased Health Services chapter. The proposal specifies that the Texas Medical Assistance Program will provide for coverage of FQHCs as described in the Social Security Act, §1905(1) and other ambulatory services offered by FQHCs and that are covered as Title XIX services by the Texas Medicaid state plan.

The Omnibus Budget Reconciliation Act of 1989 directed DHS through its Medicaid services program, to implement payment to FQHCs for services provided on or after April 1, 1990. FQHCs are facilities or programs more commonly known as community health centers, migrant health centers, and health care for the homeless. FQHC services are the same as the services provided by rural health clinics (RHC's) to include services provided by physicians, physician assistants, nurse practitioners, clinical psychologists, and clinical social workers.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed new sections are in effect there will be fiscal implications for state

government as a result of enforcing or administering the new sections. The effect on state government for the first five-year period the new sections are in effect is an estimated additional cost of \$88,848 in fiscal year (FY) 1990; \$1,068,115 in FY 1991; \$1,115,397 in FY 1992; \$1,138,734 in FY 1993; and \$1,220,535 in FY 1994. There are no fiscal implications for local government as a result of enforcing or administering the new sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a larger range of FQHC services available to the Medicaid-eligible population. 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 new sections.

Questions about the content of this proposal may be directed to Kay Sterling at (512) 338-6511 in DHS's Purchased Health Services. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-303, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*. DHS will hold a public hearing to accept comments on the proposal. The hearing will be held at 9 a.m. on June 21, 1990, in the public hearing room, 701 West 51st Street, Austin.

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

#### §29.2401. Benefits and Limitations.

(a) Effective for services on or after April 1, 1990, and subject to the specifications, conditions, limitations, and requirements established by the Texas Department of Human Services (DHS), Federally Qualified Health Center (FQHC) services are available to eligible Medicaid recipients.

(b) Except as otherwise specified in subsection (d)(7) of this section, covered services are limited to

(1) ambulatory services as described in the Social Security Act, §1861(aa)(1)(A)-(C), and which are provided at the FQHC; and

(2) other ambulatory services which are provided at the FQHC, and which are covered by the Texas Medical Assistance Program when provided by other enrolled providers.

(c) Covered services provided by an FQHC must be reasonable and medically necessary as determined by DHS or its designee.

(d) When furnished to an outpatient of the FQHC, medically necessary services include:

(1) physician services;

- (2) physician assistant services;
- (3) nurse practitioner services;
- (4) clinical psychologist services;
- (5) clinical social worker services;

(6) services and supplies incident to such services as would otherwise be covered if furnished by a physician or as an incident to a physician's services;

(7) visiting nurse services to a homebound individual, in the case of those FQHCs that are located in an area that has a shortage of home health agencies as determined by DHS or its designee; and

(8) any other ambulatory service offered by an FQHC and that is otherwise included in the Title XIX Medicaid state plan.

**§29.2402. Provider Participation Requirements.** To participate in the Texas Medical Assistance Program, a federally qualified health center (FQHC) must:

(1) be receiving a grant under the Public Health Service Act, §§329, 330, or 340 or be designated by the secretary of the Department of Health and Human Services as meeting the requirements to be receiving such a grant;

(2) comply with all federal, state, and local laws and regulations applicable to the services provided;

(3) be enrolled and approved for participation in the Texas Medical Assistance program;

(4) sign a written provider agreement with the Texas Department of Human Services (DHS) or its designee;

(5) comply with the terms of the provider agreement and all requirements of the Texas Medical Assistance Program including regulations, rules, handbooks, standards, and guidelines published by DHS or its designee; and

(6) bill for covered services in the manner and format prescribed by DHS or its designee.

**§29.2403. Reimbursement.**

(a) The Texas Department of Human Services (DHS) or its designee reimburses each federally qualified health center (FQHC) for covered services on the basis of 100% of the center's reasonable cost.

(b) Reimbursement for covered services is on an interim rate basis subject to reconciliation at the end of the FQHC's cost reporting period. DHS or its designee will adjust an FQHC's interim rate during the FQHC's fiscal year if the FQHC submits data that validates an adjustment of at least 10%.

(c) Except as specified in subsection (g) of this section, DHS or its designee uses the principles described in 42 Code of Federal Regulations (CFR) Part 413 to determine each FQHC's reasonable costs.

(d) FQHCs must submit cost reports/surveys and other data as required by DHS or its designee to verify the FQHC's reasonable costs. DHS or its designee prescribes the format of the cost report/survey. The FQHC must submit the cost report/survey within 90 days of the end of the FQHC's fiscal year or within 45 days of a change in ownership.

(e) DHS or its designee conducts audits of cost reports/surveys provided by FQHCs to determine each FQHC's reasonable costs. DHS or its designee may also conduct on-site audits.

(f) DHS or its designee completes the cost settlement reconciliation process within six months of receipt of a properly completed cost report/survey and notifies the FQHC of the results.

(g) Unallowable costs. Unallowable costs are expenses which are incurred by an FQHC, and which are not directly or indirectly related to the provision of covered services according to applicable laws, rules, and standards. An FQHC may expend funds on unallowable cost items, but those costs must not be included in the cost report/survey, and they are not used in calculating a rate determination. Unallowable costs include, but are not necessarily limited to, the following:

(1) compensation in the form of salaries, benefits, or any form of compensation given to individuals who are not directly or indirectly related to the provision of covered services;

(2) personal expenses not directly related to the provision of covered services;

(3) management fees or indirect costs that are not derived from the actual cost of materials, supplies, or services necessary for the delivery of covered services, unless the operational need and cost effectiveness can be demonstrated;

(4) advertising expenses other than those for advertising in the telephone directory yellow pages, for employee or contract labor recruitment, and for meeting any statutory or regulatory requirement;

(5) business expenses not directly related to the provision of covered services. For example, expenses associated with the sale or purchase of a business or expenses associated with the sale or purchase of investments;

(6) political contributions;

(7) depreciation and amortization of unallowable costs, including amounts in excess of those resulting from

the straight line depreciation method; capitalized lease expenses, less any maintenance expenses, in excess of the actual lease payment; and goodwill or any excess above the actual value of the physical assets at the time of purchase. Regarding the purchase of a business, the depreciable basis will be the lesser of the historical but not depreciated cost to the previous owner, or the purchase price of the assets. Any depreciation in excess of this amount is unallowable;

(8) trade discounts and allowances of all types, including returns, allowances, and refunds, received on purchases of goods or services. These are reductions of costs to which they relate and thus, by reference, are unallowable;

(9) donated facilities, materials, supplies, and services including the values assigned to the services of unpaid workers and volunteers whether directly or indirectly related to covered services. However, the value of donated physician services will be included in total costs in the determination of the overhead limitation as described in paragraph (22) of this subsection;

(10) dues to all types of political and social organizations, and to professional associations whose functions and purpose are not reasonably related to the development and operation of patient care facilities and programs, or the rendering of patient care services;

(11) entertainment expenses except those incurred for entertainment provided to the staff of the FQHC as an employee benefit. An example of entertainment expenses is lunch during the provision of continuing medical education on-site;

(12) board of directors fees including travel costs and provided meals for these directors;

(13) fines and penalties for violations of regulations, statutes, and ordinances of all types;

(14) fund raising and promotional expenses except as noted in paragraph (4) of this subsection;

(15) interest expenses on loans pertaining to unallowable items, such as investments. Also the interest expense on that portion of interest paid which is reduced or offset by interest income;

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

(17) any accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount;

(18) mileage expense exceeding the current reimbursement rate set by the Texas Legislature for state employee travel;

(19) cost for goods or services which are purchased from a related party and which exceed the original cost to the

related party;

(20) out-of-state travel expenses not related to the provision of covered services, except out-of-state travel expenses for training courses which increase the quality of medical care and/or the operating efficiency of the FQHC;

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

(22) overhead costs beyond the limitations established by DHS or its designee;

**§29.2404. Reviews/Appeals.** If a federally qualified health center (FQHC) is dissatisfied with a tentative or final settlement, the FQHC may submit a request for review to the Texas Department of Human Services (DHS) or its designee within 60 days of notification of the tentative or final settlement. Unless otherwise specified by DHS or its designee, DHS or its designee follows the procedures in 42 Code of Federal Regulations, §§405.1801-405.1890. DHS or its designee will conduct the review as soon as possible and notify the FQHC of the results. If the FQHC is dissatisfied with the results of the review, the FQHC may request a formal hearing under the procedures contained in Subchapter Q of this title (relating to Contract Appeals), except that, in the event of conflict, the procedures in this section apply.

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 May 22, 1990.

TRD-9005133 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: August 1, 1990

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

## Chapter 45. Medical Assistance Programs

### Subchapter B. Cost-related Principles of Nursing Facility Vendor Rates

The Texas Department of Human Services (DHS) proposes the repeal of §§45.101-45.122, 45.301-45.307, 45.401, 45.501-45.504, 45.601-45.614, 45.9801, and 45.9802, concerning medical assistance programs. The repeals, which constitute all of Chapter 45, are necessary because DHS is proposing new sections in Chapter 16, concerning long term care nursing facility requirements for licensure and Medicaid certification, to be effective October 1, 1990.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed 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. Raiford also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the deletion of obsolete sections. 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 repeals as proposed.

Comments on the proposal may be submitted to Cathy Rossberg, Agency Liaison, Policy Communication Services-202, 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 §§45.101-45.122

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

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

§45.101. Introduction.

§45.102. Cost Reimbursement.

§45.103. Apportionment of Allowable Cost.

§45.104. Methods of Apportionment under Title XIX.

§45.105. Payments to Providers.

§45.106. Financial Data and Reports.

§45.107. Depreciation—Allowance for Depreciation Based on Asset Cost.

§45.108. Depreciation.

§45.109. Interest Expense.

§45.110. Bad Debts, Charity, and Courtesy Allowances.

§45.111. Cost of Certain Educational Activities.

§45.112. Grants, Gifts, and Income From Endowments.

§45.113. Value of Services of Non-paid Workers.

§45.114. Allowances, and Refund of Expenses.

§45.115. Compensation of Owners.

§45.116. Cost to Related Organizations.

§45.117. Return on Equity Capital of Contracted Providers.

§45.118. Separate Vendor Payments.

§45.119. Costs Related to Patient Care.

§45.120. Determination of Cost of Services Provided to Recipients.

§45.121. Adequate Cost Data and Cost Findings.

§45.122. Payment to Contracted Nursing Facilities.

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

Issued in Austin, Texas, on May 23, 1990.

TRD-9005163 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: October 1, 1990

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

## Subchapter D. Medicaid Procedures

### • 40 TAC §§45.301-45.307

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

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

§45.301. Lifetime reserve days.

§45.302. Services Free of Charge to Public.

§45.303. Payments Made Only to the Provider of Services.

§45.304. Medical Care Identification Card.



§45.305. *Rejected Claims.*

§45.306. *Recipients with No Current Card.*

§45.307. *Recipient Freedom of Choice.*

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 May 23, 1990.

TRD-9005164 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: October 1, 1990

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



**Subchapter E. Benefits Under Title XIX**

**• 40 TAC §45.401**

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

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

§45.401. *Foster Care Children Excluded from Coverage.*

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 May 23, 1990.

TRD-9005165 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: October 1, 1990

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



**Subchapter F. General Policies**

**• 40 TAC §§45.501-45.504**

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

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

§45.501. *Assignment.*

§45.502. *Collection from Third party Resources.*

§45.503. *The Recipient's Right of Recovery and Waiver of Department's Right of Recovery.*

§45.504. *Notice of Subrogation.*

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 May 23, 1990.

TRD-9005166 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: October 1, 1990

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



**Subchapter G. Responsibilities of the Medical-Social Services Staff**

**• 40 TAC §§45.601-45.614**

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

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

§45.601. *Medical Social Worker Responsibilities.*

§45.602. *Pre-Admission Referrals for Nursing Facility Care.*

§45.603. *Admission Referrals for Nursing Facility Care.*

§45.604. *Providing Social Services for Nursing Facility Patient-Recipients.*

§45.605. *Providing Protective Services for Nursing Facility Patient-Recipients.*

§45.606. *Special Circumstances.*

§45.607. *Responsibilities of Medical Social Services Staff Regarding Mental Hospitals, Tuberculosis Hospitals, and Schools for the Mentally Retarded.*

§45.608. *Procedures for Removing Patients from Title XIX Approved Mental Hospitals.*

§45.609. *Procedures for Evaluating Alternate Care Resources for Patients in Tuberculosis Hospitals.*

§45.610. *Evaluation with Staff of Schools for the Mentally Retarded.*

§45.611. *Procedures for Level of Care Determination in Schools for the Mentally Retarded.*

§45.612. *Procedures for Discharge Planning and Alternate Care from Mental Hospitals.*

§45.613. *Responsibilities in Periodic Medical Reviews.*

§45.614. *Records and Files.*

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 May 23, 1990.

TRD-9005167 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: October 1, 1990

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



**Subchapter UUUU. Support Documents**

**• 40 TAC §45.9801, §45.9802**

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

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

§45.9801. *Contract Provisions.*

§45.9802. *Medicare Termination Date.*

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

Issued in Austin, Texas, on May 23, 1990.

TRD-9005168 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: October 1, 1990  
For further information, please call: (512)  
450-3765

Earliest possible date of adoption: June 29,  
1990

For further information, please call: (512)  
459-2600

◆ ◆ ◆  
**Part IV. Texas  
Commission for the  
Blind**

**Chapter 159. Administrative  
Rules and Procedures**

◆ ◆ ◆  
**• 40 TAC §159.21**

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

The Texas Commission for the Blind proposes the repeal of §159.21, concerning the procedures that are available to applicants and clients to resolve complaints. A new section is being concurrently proposed that conforms to new federal requirements included in amendments to the Rehabilitation Act of 1973.

Michael T. Phillips, deputy director of administration and finance has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Pat D. Westbrook, executive director, also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the removal of procedures for appeals, reviews, and hearings that are out of date and do not conform to the amendments to the Rehabilitation Act of 1973. A new section is being proposed concurrently which conforms to the amendments. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Pat D. Westbrook, Executive Director, Texas Commission for the Blind, P.O. Box 12866, Austin, Texas 78711.

The repeal is proposed under the Rehabilitation Act of 1973 as amended, the Human Resources Code, Title 5, Chapter 91, which provides the Texas Commission for the Blind with the authority to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs and for resolving complaints filed with the agency.

**§159.21. Appeals Process, Reviews, and Hearings.**

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

Issued in Austin, Texas, on May 16, 1990.

TRD-9005028

Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

◆ ◆ ◆  
The Texas Commission for the Blind proposes new §159.21, concerning the procedures that are available to applicants and clients to resolve complaints. The new section details the appeals process, including the steps that are followed in conducting reviews and hearings for the vocational rehabilitation program and children's program.

Michael T. Phillips, deputy director of administration and finance 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.

Pat D. Westbrook, executive director, 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 clear direction on how applicants or clients may seek remedy of any dissatisfaction with respect to denial of services, a change in planned services, termination of services, inaction on the part of the agency, failure of the agency to act with reasonable promptness, or any other agency, failure of the agency to act with reasonable promptness, or any other agency action which affects the client's rehabilitation plan. 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 repeal as proposed.

Comments on the proposal may be submitted to Pat D. Westbrook, Executive Director, Texas Commission for the Blind, P.O. Box 12866, Austin, Texas 78711.

The new section is proposed under the Rehabilitation Act of 1973 as amended, the Human Resources Code, Title 5, Chapter 91, which provides the Texas Commission for the Blind with the authority to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs and for resolving complaints filed with the agency.

**§159.21. Appeals Process, Reviews, and Hearings.**

(a) General policies.

(1) The Texas Commission for the Blind aims, within policy and fiscal constraints, for satisfaction in the provision of services. In situations where an issue is not resolved after discussion between the applicant or client and the counselor, procedures are available which provide an applicant or client the opportunity to remedy any dissatisfaction with respect to:

(A) denial of services;

(B) a change in planned services;

(C) termination of services;

(D) inaction on the part of the agency;

(E) failure of the agency to act with reasonable promptness; or

(F) any other agency action which affects the client's rehabilitation program.

(2) In order to avoid an interruption in services, complaints will be handled expeditiously and at the lowest level possible. Counselors and caseworkers will thoroughly investigate complaints and will explore all options and alternatives available within agency policy to foster applicant and client satisfaction.

(3) Applicants are provided with written information about their right to appeal at the time they complete a survey interview, and a detailed written description of the appeal procedure is provided upon a determination of ineligibility for services. After qualifying for services, clients are provided with periodic reminders of their right to appeal decisions made during their association with the commission.

(4) Copies of the detailed procedures for resolution of complaints through the appeals process are available at any commission office.

(5) Applicants and clients may choose either to represent themselves or to appoint a representative, including an attorney, during the appeals procedure; however, the commission cannot provide reimbursement for representation fees.

(b) Vocational rehabilitation program. There are two types of reviews available to applicants for and clients of the vocational rehabilitation program who are dissatisfied with any of the commission actions delineated in subsection (a)(1)(A)-(F) of this section: an informal review and a formal review. Either or both of these reviews may be requested.

(1) Informal review. An informal review is used to clarify issues and resolve disputes at the lowest possible level. The informal review involves the counselor, the regional supervisor, and, if necessary, an informal administrative hearing. The informal review is not intended to delay or in any way deny access to a formal review.

(A) Counselor review. To initiate an informal review, the appellant must advise the counselor in writing within 30 calendar days of the decision about which there is a complaint and the reason for dissatisfaction. Upon receipt of the letter of appeal, the counselor will respond in writing to the appellant within 10 work

days. The letter will contain the dissatisfaction or disputed issue(s); the counselor's decision; the reason(s) for the decision; a statement that the appellant has the right to appeal the decision through a conference with the counselor and counselor's regional supervisor or through a case review by the counselor's regional supervisor; the regional supervisor's name, address, and telephone number; and the requirement that the appellant must mail or otherwise communicate to the regional supervisor within ten work days of receipt of the counselor's letter that the next step in the informal review procedure is being requested.

(B) Supervisory review. If the appellant has requested a conference with the counselor and the counselor's regional supervisor, the regional supervisor will notify the appellant in writing of the date, time, and place for the conference within five work days after receiving the notice of appeal. Within 10 work days of the conference, or within thirty calendar days if a case review was requested, the regional supervisor will notify the appellant of the decision via certified return receipt letter. The letter will contain the dissatisfaction or disputed issue(s); the regional supervisor's decision; the reason(s) for the decision, the name, address, and telephone number of the assistant director of the vocational rehabilitation program; and the requirement that the appellant has 10 work days after receipt of the letter to continue the informal review.

(C) Informal administrative hearing. Within 10 work days after receiving the notice of appeal, the assistant director of vocational rehabilitation will notify the appellant of the date, time, and place for the informal administrative hearing. The hearing will be conducted by an administrative staff member who has no direct personal knowledge of the details involved in the disputed issue and who has not participated in the decision being appealed. Within 30 calendar days after completion of the hearing, the appellant will be notified in writing. The letter will contain the dissatisfaction or disputed issue(s); the decision; the reason(s) for the decision; and the name and address of the director of the vocational rehabilitation program.

(2) Formal review.

(A) The applicant or client may, at any time, request a formal hearing before an impartial hearing officer. The purposes of the formal hearing are to provide the applicant or client an opportunity to explain the request for services and to enable the applicant or client and the commission to ascertain relevant factual data upon which a just recommendation will be made by the impartial hearing officer.

(B) To initiate the procedures for a formal review, the applicant or client must file a petition for a formal hearing with the director of the vocational rehabilitation program in the commission's central office within 90 days of the decision about which there is a complaint. The petition must specify the action or inaction by the commission with which the applicant or client is dissatisfied; the course of action the petitioner would like the commission to take; and why the commission should take such action. Petition forms are available in any commission office.

(C) The director of the vocational rehabilitation program designates an impartial hearing officer. The hearing officer will be someone with experience in and knowledge of the delivery of vocational rehabilitation who has not been involved in any decision regarding services to the petitioner and who has no personal or financial interest that would conflict with his or her objectivity.

(D) The hearing officer, who does not have authority to change the policies of the commission or other organizations or the authority to conduct class action hearings, will direct the commission and petitioner to exchange a list of witnesses and summary of testimony five work days before the hearing and to send all correspondence between the hearing officer and either party to all parties involved; will notify all parties of the date, time and location of the hearing at least ten work days prior to the hearing; and will conduct the hearing within forty-five calendar days of the director of the vocational rehabilitation program's receipt of the petition. An extension of time may be granted for good cause shown at the request of either or both parties.

(E) Before the hearing, the hearing officer may, on his own motion or the motion of the petitioner or commission, direct that a prehearing conference be held. Matters that may be considered at the prehearing include the formulation and simplification of issues; admissions of fact; stipulation concerning the use of matters of public record to avoid the unnecessary introduction of proof; the procedure at the hearing; specification of the number of witnesses; matters to be officially noted; the mutual exchange of prepared testimony and exhibits, the date discovery is to be closed; the date, time, and place of the hearing; the issuance of subpoenas for witnesses and documents; the issuance of commissions for the taking of depositions; and any other matters which may aid in the simplification of the proceedings and the disposition of the matters in controversy.

(F) The hearing will be conducted at a date, time, and location con-

venient to the petitioner, usually during business hours at the commission's central office in Austin. Reader or interpreter services will be provided by the commission if the appellant notifies the commission no later than three work days prior to the hearing that one is needed.

(G) The hearing officer will preside over the hearing; apply rules to obtain the most credible evidence available; allow cross examination of any matter pertinent to the proceeding; exclude irrelevant or unduly repetitious evidence; make available all documents or other evidence for review by either side; allow the petitioner to present his case first, followed by the commission's submission of its case (unless other arrangements are made); allow either side to present rebuttal evidence; utilize a court reporter to prepare a verbatim record; rule on all matters at the hearing; and determine issues in accordance with relevant and material evidence presented at the hearing.

(H) Each party may make an opening statement and present relevant and material evidence; may present witnesses to testify under oath and be available for cross examination; may present proposed findings of fact and conclusions of law after presentation of evidence is closed within a time set by the hearing officer; and is entitled to the name and addresses of all witnesses.

(I) After the hearing, the certified court reporter will prepare one original transcript of the hearing and the commission will send the transcript to the hearing officer.

(J) The hearing officer will review the record of the hearing and prepare a written report. The report will contain a recommendation based on the provisions of the approved state plan, the Rehabilitation Act of 1973, as amended, and appropriate state laws. The recommendation will be supported by findings of facts and conclusions of law. A copy of the report will be provided to the executive director of the commission within 30 calendar days of the hearing completion date.

(K) The petitioner will be provided with a copy of the hearing officer's report by certified mail by the commission. Upon request by the petitioner, a copy of the transcript of the hearing will be provided. The petitioner will be billed for reproduction costs of the transcript according to established policies of the commission.

(L) The complete record of the case will be transferred to the executive director of the commission for file retention.

(M) Within 20 days of the hearing officer's recommendation, the executive director will either notify the petitioner that the recommendation of the hearing officer is final or that the executive director has decided to review the recommendation. Within thirty calendar days of the notice of intent to review the recommendation, the executive director will make a final decision and provide a written report to the petitioner.

(c) Blind and visually handicapped children's program.

(1) The appeals procedures established within the children's program are in compliance with the Texas Human Resources Code, §91.018.

(2) All applicants and recipients of services shall be advised early in the casework process of their right to appeal, the procedures for requesting a review of an agency decision, and the names and addresses of individuals with whom appeals may be filed.

(3) Every attempt will be made to resolve the issue on an informal basis at the local level. In the event this is not successful, the procedures enumerated in subparagraphs (A)-(D) of this paragraph will be followed. The word appellant encompasses applicants, referrals, children receiving services, their parent(s) or guardian(s), and any other person authorized to represent the child during the appeals procedure.

(A) Caseworker review. The appellant who is dissatisfied with any of the commission actions delineated in subsection (a)(1)(A)-(F) of this section must notify the caseworker of the matter in contention within 30 calendar days. The caseworker, after seeking additional opinions on the matter from other qualified sources such as the medical consultant or specialists in the agency's central office, will make a decision in the matter within 10 work days after receipt of the appeal and will immediately notify the appellant of the decision in writing. The letter will contain the caseworker's decision and, if necessary, the name and address of the caseworker's immediate supervisor.

(B) Supervisory review. Upon continued dissatisfaction, the appellant may appeal to the caseworker's immediate supervisor. The appeal must be made in writing within 10 work days from receipt of the caseworker's decision. The supervisor will review the case and either uphold or overrule the caseworker's determination. A written copy of the decision will be sent to the petitioner within 30 days of the supervisor's receipt of the appeal. The letter will also contain the name and address of the director of special services, if necessary.

(C) Administrative review. Upon continued dissatisfaction, the appellant may request an administrative review. The request must be made in writing within 10 work days of receipt of the supervisor's decision to the director of special services. The administrative review will be conducted at a time and place convenient to the appellant (usually during business hours at the local commission office) by a supervisory staff member who has no direct personal knowledge of the details involved in the matter and who has not participated in the decision being appealed. Reader services or interpreter services will be provided by the commission if three work days notice is given. The appellant has the right to present evidence and provide witnesses in support of the case, question agency staff members, and receive a written report of the findings from the person conducting the administrative review within 30 calendar days following the proceeding. The report will contain, if necessary, the name and address of the executive director and the procedures for proceeding to the last step in the appeals procedure.

(D) Fair hearing. To request a fair hearing, the appellant must write the executive director within ten work days from the date they received notification of the results of the administrative review. The fair hearing will be conducted by the agency's executive director or by a designated hearing officer at a time and place convenient to the appellant (usually during business hours at the agency's central office in Austin). Reader services or interpreter services will be provided by the commission if three work days notice is given. The appellant or representative has the right to present evidence, to provide witnesses, to cross-examine witnesses, and to receive a tape recording of the fair hearing. The executive director will notify the appellant in writing of the final decision in the matter within 30 calendar days following adjournment of the hearing.

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 May 16, 1990.

TRD-9005027 Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

Earliest possible date of adoption: June 29, 1990

For further information, please call: (512) 459-2600

## Chapter 161. Scope of Services and General Clientele

### • 40 TAC §161.5

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

The Texas Commission for the Blind proposes the repeal of §161.5, concerning confidentiality of records. The agency is concurrently proposing a new §161.5 which contains the special provisions made for release of information for research purposes.

Michael T. Phillips, deputy director of administration and finance has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Pat D. Westbrook, executive director, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a clearer set of rules governing the release of client information. A new section on confidentiality is being concurrently proposed. 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 repeal as proposed.

Comments on the proposal may be submitted to Pat D. Westbrook, Executive Director, Texas Commission for the Blind, P.O. Box 12866, Austin, Texas 78711.

The repeal is proposed under the Rehabilitation Act of 1973 as amended, the Human Resources Code, Title 5, Chapter 91, which provides the Texas Commission for the Blind with the authority to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs and for the protection of information from unauthorized use.

#### §161.5. Confidentiality of Records.

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 May 16, 1990.

TRD-9005030 Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

Earliest possible date of adoption: June 29, 1990

For further information, please call: (512) 459-2600

◆ ◆ ◆  
The Texas Commission for the Blind proposes new §161.5, concerning confidentiality of records. The new section contains the circumstances under which information will be disclosed or released to individuals, agencies and organizations. The new section

also contains the special provisions made for release of information for research purposes.

Michael T. Phillips, deputy director of administration and finance 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.

Pat D. Westbrook, executive director, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that client information is protected from release to unauthorized persons or for unauthorized purposes. 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 Pat D. Westbrook, Executive Director, Texas Commission for the Blind, P.O. Box 12866, Austin, Texas 78711.

The new section is proposed under the Rehabilitation Act of 1973 as amended, the Human Resources Code, Title 5, Chapter 91, which provides the Texas Commission for the Blind with the authority to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs and for the protection of information from unauthorized use.

*§161.5. Confidentiality of Records.*

(a) All personal information regarding applicants for services and recipients of services that is furnished to and gathered by the commission in the course of the administration of commission programs will be held confidential in accordance with state and federal laws. Agency rules and guidelines are in compliance with 34 Code of Federal Regulations, §361.49, Texas Human Resources Code, Title 5, §91.059,

and 40 Texas Administrative Code, §161.5, regarding confidential information, and state laws concerning the abuse or neglect of children, elderly persons, and disabled persons.

(b) Client information is the property of the commission, including lists of names and addresses, records of agency evaluations, reports of medical examinations and treatment, and financial information.

(c) Applicants for services, recipients of services, providers of services, and interested persons will be informed as to the confidentiality of client information and the conditions for release of such information.

(d) Information will not be disclosed directly or indirectly, other than in the administration of the commission's programs, unless the informed consent of the client, or parent or guardian of the client, where appropriate, is obtained in writing.

(e) Release of information to any individual, agency, or organization will be conditioned upon satisfactory assurance by such individual, agency, or organization that the information will be used only for the purpose for which it is provided and that it will not be released to any other individual, agency, or organization.

(f) Upon written request, information will be released to the client or, when appropriate, the client's parent, guardian, or other legal representative. Special provisions are made for release of medical and psychological information.

(1) If, in the opinion of the commission, release of medical or psychological information would clearly not be harmful to the client, such information may be released directly to the client.

(2) If, in the opinion of the commission, release of medical or psychological information may be harmful to the client, such information may be released only to a parent, guardian, or other legal representative of the client, or to the client only by a physician or by a psychologist licensed and certified in Texas.

(g) Special provisions are made for release of information to organizations and individuals engaged in research.

(1) The purpose of the research must be directly connected with the administration of commission programs.

(2) Satisfactory assurance must be given that the information will be used only for the purpose for which it is provided.

(3) The information must not be released to persons not connected with the research.

(4) The final product of the research must not reveal any information that may serve to identify any client without written consent of such client and an authorized representative of the commission.

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

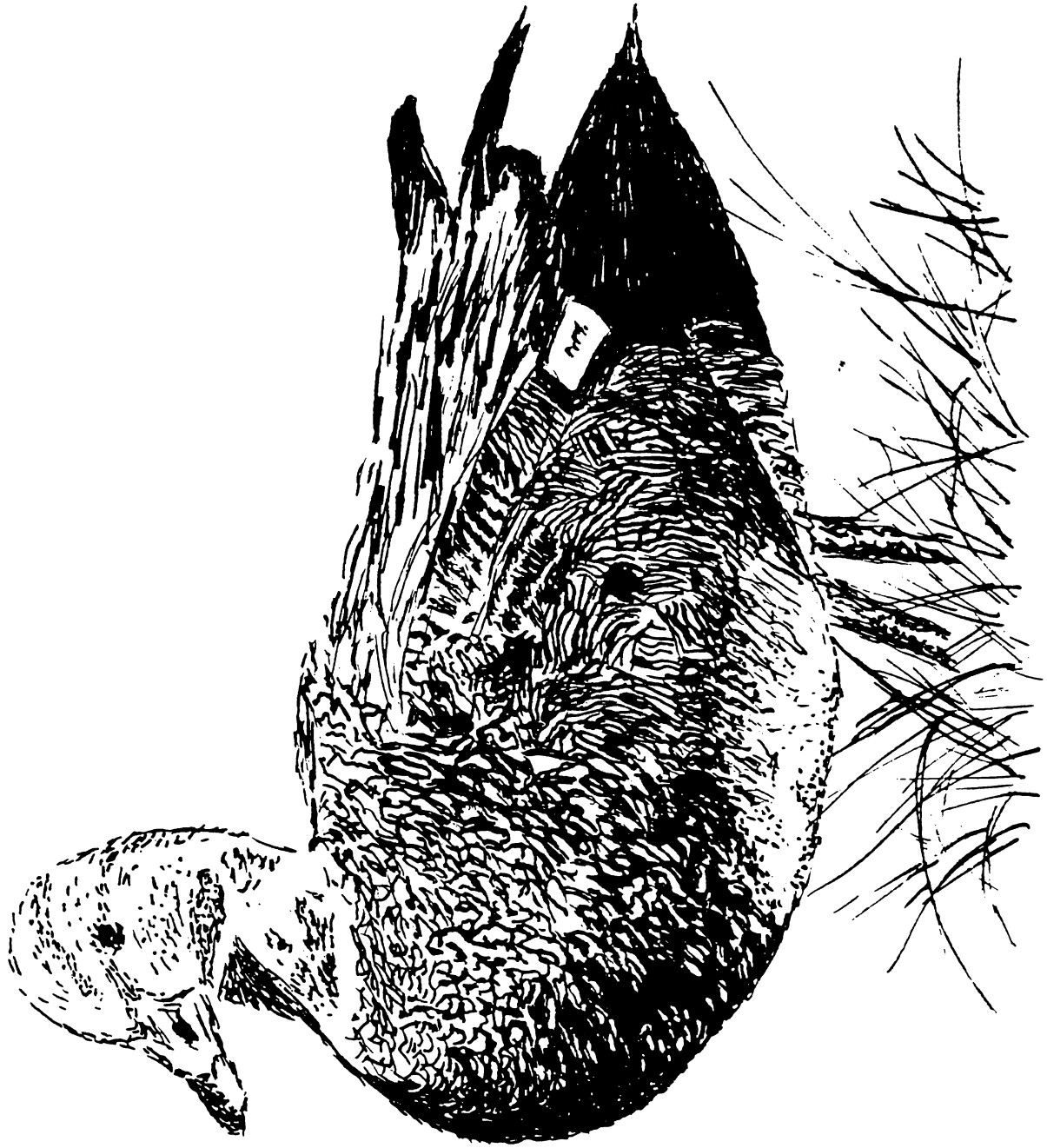
Issued in Austin, Texas, on May 16, 1990.

TRD-9005029 Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

Earliest possible date of adoption: June 29, 1990

For further information, please call: (512) 459-2600





WY

Andy Mehrino

# Withdrawn Sections

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An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

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## TITLE 31. NATURAL RESOURCES AND CON- SERVATION

### Part IX. Texas Water Commission

#### Chapter 334. Underground and Aboveground Storage Tanks

##### Subchapter I. Underground Storage Tank Contractor Certification and Installer Licensing

###### • 31 TAC §§334.201-334.213

The Texas Water Commission has withdrawn the emergency effectiveness of new to §§334.201-334.213, concerning the Underground and Aboveground Storage Tanks. The text of the emergency new appeared in the February 2, 1990, issue of the *Texas Register* (15 TexReg 526). The effective date of this withdrawal is May 23, 1990.

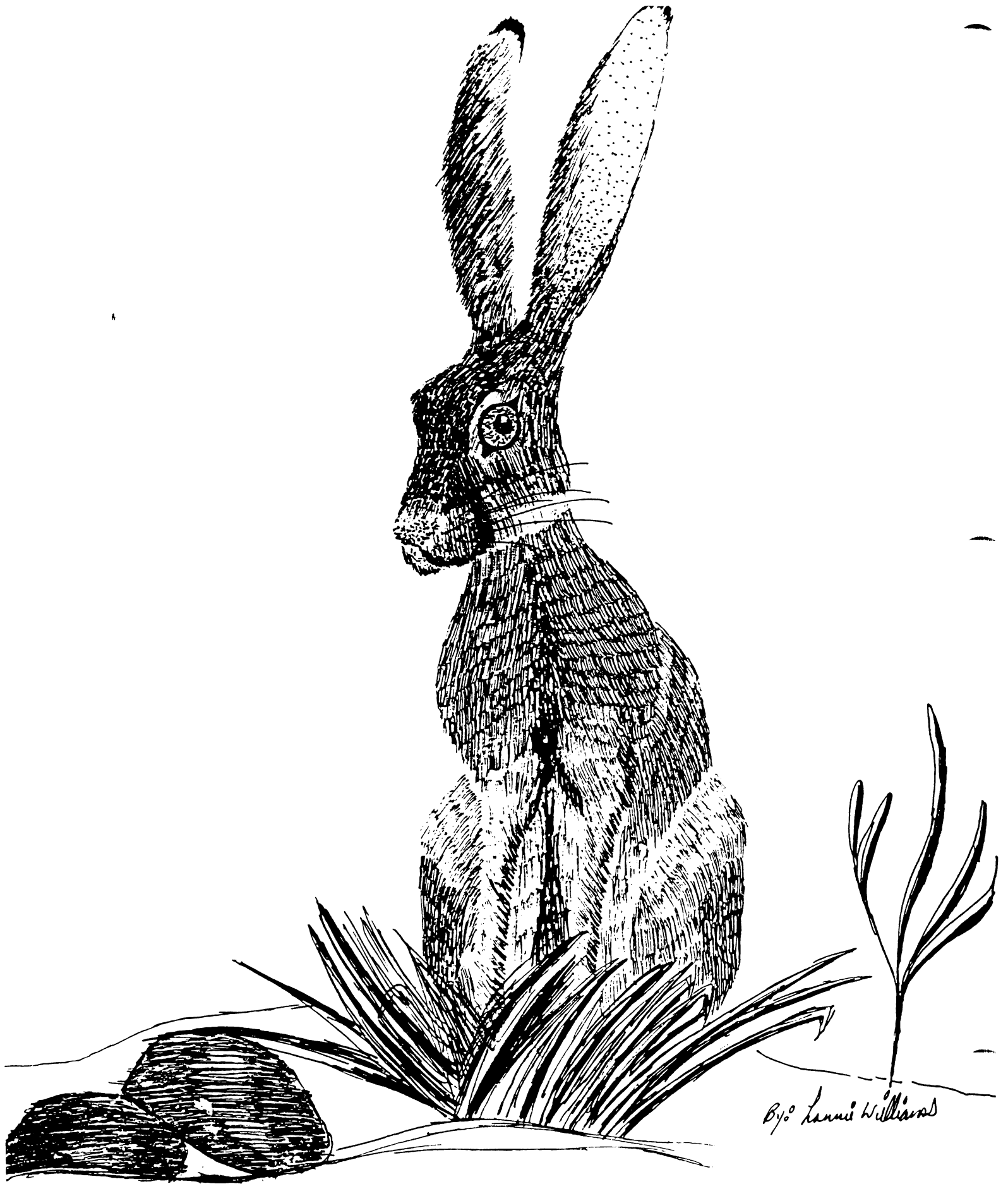
Issued in Austin, Texas, on May 23, 1990.

TRD-9005223      Jim Haley  
                         Director, Legal Division  
                         Texas Water Commission

Effective date: May 23, 1990

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





By° Lemmi Williams



# Adopted Sections

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

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

## TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture Chapter 17. Marketing Division

### Livestock Export Facilities

#### • 4 TAC §17.31

The Texas Department of Agriculture adopts an amendment to §17.31, without changes to the proposed text as published in the April 20, 1990, issue of the *Texas Register* (15 TexReg 2202).

The amendment is necessary in order to comply with requirements of the Mexican government for handling of slaughter sheep and goats, and to bring the amount of fees collected closer to a level that will equal actual costs to the Texas Department of Agriculture for operating the livestock export facilities, in accordance with the intent of the 71st Legislature, 1989.

The amendment increases the per head fees for breeding cattle, calves, horses, mules and hogs held more than 24 hours; decrease the per head fee for slaughter sheep and goats; add new categories for slaughter hogs and slaughter cattle and eliminate the unloading and documentation verification charge.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, §146.021, which provides the Texas Department of Agriculture with the authority to receive and hold for processing animals transported in international trade, and establish and collect reasonable fees for such holding and other expenses; and the Appropriations Act, Senate Bill 1, 71st 1989, which provides the Texas Department of Agriculture with the authority to set fees to cover costs of operation of the facilities.

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 May 21, 1990.

TRD-9005032

Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of  
Agriculture

Effective date: June 11, 1990

Proposal publication date: April 20, 1990

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



## TITLE 16. ECONOMIC REGULATION Part I. Railroad Commission of Texas

### Chapter 3. Oil and Gas Division

#### Conservation Rules and Regulations

##### • 16 TAC §3.105

The Railroad Commission of Texas adopts new §3.105, with changes to the proposed text as published in the March 27, 1990, issue of the *Texas Register* (15 TexReg 1680).

The new section should encourage increased natural gas production, increase the number of high-cost gas wells drilled, and increase the number of jobs.

The result of adopting the new section will be to define terms and set the standard for qualification, approval, and certification for severance tax exemption for gas produced from high-cost gas wells pursuant to the Texas Tax Code, Title 2, Chapter 201, §201.057. The changes are in subsections (c) and (e). In subsection (c) the reference to the Tax Code has been changed from §201.507 to §201.057. In subsection (e) the following was deleted: "or in the case of paragraph (d)(4), by the first purchaser,..." The following subsections are adopted without changes: (a), (b), (d), and (f).

The Railroad Commission received informal comments prior to the publication of §3.105 in the *Texas Register* from the following: Association of Texas Intrastate Natural Gas Pipelines; Pitts Oil Company; Texas Independent Producers & Royalty Owners Association; and Texas Mid-Continent Oil & Gas Association.

The Railroad Commission received a formal comment from Texas Mid-Continent Oil & Gas Association which recommended that subsection (e) be revised to insure that any qualified applicant's application can be approved administratively instead of limiting administrative approval to the first purchaser or the operator.

The commission disagrees with this comment. Senate Bill 963, subsection (c) states that the operator may apply to the commission for certification. The senate bill does not allow first purchasers to file applications for certification with the commission. Therefore, the reference to the first purchaser in §3.105(e) which states "or in the case of paragraph (d)(4), by the first purchaser,..." has been deleted. The deleted

reference had been inadvertently added to the section.

All of the commenters expressed general support for the proposal, although they suggested changes to various provisions.

The new section is adopted under the Texas Civil Statutes, the Natural Resources Code, §§81.052, 85.046, and 85.202, and the Tax Code, §201.057, which provides the Railroad Commission of Texas with the authority to adopt rules for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the Railroad Commission; to prevent the waste of oil in producing operations; to effectuate the provisions and purposes of the Natural Resources Code, Chapter 85; and to certify that gas from a particular gas well qualifies as high-cost natural gas.

#### §3.105. Certification for Severance Tax Exemption for Gas Produced from High-Cost Gas Wells.

(a) Purpose. To provide a procedure by which an operator can obtain Railroad Commission certification that natural gas from a particular gas well qualifies as high-cost natural gas under the Tax Code, Chapter 201, Subchapter B, §201.057, and that such gas is therefore exempt from the severance tax imposed by the Tax Code, Chapter 201.

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

(1) Commission—The Railroad Commission of Texas.

(2) Completion—The act of making a well capable of producing gas from a particular commission-designated or new field.

(3) Completion date—The date on which a well is first made capable of producing oil or gas from a particular commission-designated or new field, as shown on the completion report filed by the operator with the commission.

(4) Comptroller—The Comptroller of Public Accounts of the State of Texas.

(5) Director—The director of the Oil and Gas Division or the director's delegate. Any authority given to the director in this section is also retained by the commission. Any action taken by the director pursuant to this section is subject to

review by the commission.

(6) High-cost gas—Natural gas which the commission finds to be:

(A) produced from any gas well the surface drilling of which began after February 19, 1977, if such production is from a completion which is located at a depth of more than 15,000 feet;

(B) produced from geopressured brine;

(C) occluded natural gas produced from coal seams;

(D) produced from Devonian shale; or

(E) produced under such other conditions as the commission determines to present extraordinary risks or costs (including tight sands and production enhancement)

(7) Operator—The person responsible for the actual physical operation of a gas well.

(8) Spud date—The date of commencement of drilling, as shown on commission records.

(c) Applicability. This section applies to high-cost gas produced from a gas well that is spudded or completed between May 24, 1989, and September 1, 1996. The plug back or deepening of an existing well bore qualifies as a completion under this section if it is the initial completion in a commission-designated or new field that has not been previously produced from that well bore. Eligible high-cost gas will be exempt from the tax imposed by the Tax Code, Chapter 201, during the period beginning September 1, 1991, and ending August 31, 2001. If the operator determines that a gas well previously certified as producing high-cost gas no longer produces high cost gas or if the operator takes any action or discovers any information that affects the eligibility of gas for an exemption under the Tax Code, §201.057, the operator must notify the commission in writing within 30 days after such an event occurs. If the commission determines that a gas well previously certified as producing high-cost gas no longer produces high-cost gas or if the commission takes any action or discovers any information that affects the eligibility of gas for an exemption under the Tax Code, §201.057, the commission will notify the comptroller, all first purchasers (if known), and the operator in writing immediately.

(d) Application requirements.

(1) To qualify for the severance tax exemption the operator must submit to the NGPA Section of the Railroad

Commission:

(A) all information required by §3.102 and §3.103 (a) and (d) of this title (relating to Application Procedures and Documents Supporting Applications) with notice to other persons as required by those sections;

(B) all necessary forms and any other relevant information required to administer this section; and

(C) a verification that all first purchasers of the natural gas have been notified in writing of any such application.

(2) The operator may, but is not required to, apply concurrently for a determination that gas produced from the gas well is high-cost natural gas for purposes of the Natural Gas Policy Act of 1978.

(3) In order to be eligible for commission certification entitling an operator to the severance tax exemption, the operator must:

(A) show that the well produces or will produce high-cost gas; and

(B) show that the high-cost gas is or will be produced from a gas well which was spudded or completed between May 24, 1989, and September 1, 1996.

(4) If the application is for a "tight sands" determination for a well that is not within a designated tight formation area, the operator must first apply for a new tight formation area designation pursuant to §3.102(f) of this title (relating to Application Procedures) and inform the commission whether the area designation is for severance tax exemption purposes only or for purposes of both the exemption and compliance with federal regulations. In either case, approval of a new tight sands area designation by the commission will be sufficient to support a "tight sands" severance tax exemption application for a particular well within the designated area.

(e) Opportunity for hearing. The director may administratively approve the application if the forms and information submitted by the operator establish that the gas qualifies as high-cost gas eligible for the severance tax exemption. If the director denies administrative approval, the applicant shall have the right to a hearing as provided in §3.102(f) and §3.104 of this title (relating to Application Procedures and Commission Action on Applications).

(f) Reporting. To qualify for the exemption provided by the Tax Code, §201.057, the person responsible for paying the tax must apply to the comptroller. The application must contain the certification of the commission that the well produces or

will produce high-cost gas. An application accompanied by the commission's certification may be filed with the comptroller between January 1, 1990, and December 31, 1998, for exemption from the natural gas severance tax provided in the Tax Code, Chapter 201.

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 May 21, 1990.

TRD-9005084

Kent Hance  
Chairman  
Railroad Commission of  
Texas

Effective date: June 12, 1990

Proposal publication date: March 27, 1990

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

## Subchapter F. Bills of Lading and Waybills

### • 16 TAC §5.103

The Railroad Commission of Texas adopts new §5.103, without changes to the proposed text as published in the April 10, 1990, issue of the *Texas Register* (15 TexReg 1990). The new section concerns contract carriers that provide pickup and delivery service.

The new section as adopted will allow a carrier to use a manifest in lieu of bills of lading and waybills in operations rated out of RCT Tariff Number 48 Series. The new section will alleviate the cumbersome and time-consuming process that is required to issue separate bills of lading and waybills when a contract carrier is tendered multiple shipments for delivery in a pedal-type run for one account.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorize the Commission to regulate motor carriers in all matters.

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 May 21, 1990.

TRD-9005083

Kent Hance  
Chairman  
Railroad Commission of  
Texas

Effective date: June 12, 1990

Proposal publication date: April 10, 1990

For further information, please call: (512) 463-7094

## Subchapter AA. Rail Safety

### • 16 TAC §5.625

The Railroad Commission of Texas adopts

new §5.625, without changes to the proposed text as published in the February 13, 1990, issue of the *Texas Register* (15 TexReg 753).

The new section is adopted in order to enhance the preparedness of emergency response agencies for incidents involving hazardous material shipments by rail. The new section will also allow the commission to allocate agency hazardous materials inspection resources in an efficient manner.

The new section, as adopted, implements Senate Bill 1101 enacted by the 71st legislature which requires railroad companies transporting hazardous materials within the state to make reports regarding those shipments to the commission.

Two comments were received to the proposed section. The United Transportation Union commented in favor of the section stating that it is in support of the adoption of the proposed section. The comment in opposition stated four bases for opposition to the new section. First, the comment in opposition stated that it is inconsistent with federal law for a state to require carriers to file copies of hazardous materials incident reports with state agencies in order to continue to transport hazardous materials within the state. Second, the comment states that the subsection (a)(5) peak density report would be of little value. Third, the comment also states that the subsection (c)(5)(A) classification of residue rail cars is of no value. Fourth, the comment points out that the commission can obtain hazardous materials traffic data through the waybill sample information made available to the state by the ICC.

The commission disagrees with the comment in opposition to the proposed section. The proposed section does not require carriers to file copies of hazardous materials incident reports as a condition to a carrier's continued transportation of hazardous materials within the state. Such a condition is currently beyond the authority of the commission to adopt. The peak density report is of significant value because it provides local emergency planners with information regarding the time of year in which to focus limited response and training resources on hazardous materials which are transported seasonally. Peak density reporting also allows the commission to more accurately allocate its own inspection resources. The identification of residue rail cars is necessary because, depending on the contents, a residue rail car may pose as great a hazard as a loaded rail car. The commission agrees with the fourth area of disagreement. However, carriers may use the ICC waybill sample as a source of information for the commission reporting requirement as long as the format for reporting such information is consistent with the new section.

The new section is adopted under Texas Civil Statutes, Article 6419c, which authorizes the commission to require hazardous materials reporting of railroad companies.

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

Issued in Austin, Texas, on May 21, 1990.

TRD-9005082

Kent Hance  
Chairman  
Railroad Commission of  
Texas

Effective date: June 12, 1990

Proposal publication date: February 13, 1990

For further information, please call: (512) 463-7094

◆ ◆ ◆  
**Part IV. Texas Department  
of Licensing and  
Regulation**  
**Chapter 62. Career Counseling**

◆ ◆ ◆  
◆ **16 TAC §§62.71-62.73**

The Texas Department of Licensing and Regulation adopts new §§62.71-62.73, without changes to the proposed text as published in the April 20, 1990, issue of the *Texas Register* (15 TexReg 2232).

The new sections allow for the new language and renumbering system of the generic system used by the department.

The new sections provide a clear and concise understanding of the responsibilities of the certificate holder, prohibited acts, consumer complaints, and advertising for anyone acting as a career counseling service.

No comments were received regarding adoption of the new section.

The new sections are adopted under Texas Civil Statutes, Article 5221a-8 which provide the Commissioner with the authority to adopt rules to regulate and enforce the career counseling program.

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 May 21, 1990.

TRD-9005081

Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: June 12, 1990

Proposal publication date: April 20, 1990

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

◆ ◆ ◆  
**TITLE 22. EXAMINING  
BOARDS**

◆ ◆ ◆  
**Part IX. State Board of  
Medical Examiners**  
**Chapter 175. Schedule of Fees  
and Penalties**

◆ ◆ ◆  
◆ **22 TAC §175.1**

The Texas State Board of Medical Examiners adopts an amendment to §175.1, without

changes to the proposed text as published in the April 13, 1990, issue of the *Texas Register* (15 TexReg 2118).

The amendment clarifies the schedule of fees to reflect removal of the legislatively-imposed temporary fee which has since been discontinued.

The amendment will reflect the current and correct fees.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on May 22, 1990.

TRD-9005089

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

Effective date: June 12, 1990

Proposal publication date: April 13, 1990

For further information, please call: (512) 452-1078

◆ ◆ ◆  
**Part X. Texas Funeral  
Service Commission**  
**Chapter 201. Licensing and  
Enforcement-Practice and  
Procedure**

◆ ◆ ◆  
◆ **22 TAC §201.8**

The Texas Funeral Service Commission adopts an amendment to §201.8, without changes to the proposed text as published in the April 20, 1990, issue of the *Texas Register* (15 TexReg 2234).

The amendment is needed to ensure that petitions for adoption of rules will be reviewed and acted upon in a timely manner.

The amendment clearly outlines what is expected of petitioner when requesting the change and informs the petitioner of the procedures to be followed by the commission.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

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

Issued in Austin, Texas, on May 21, 1990.

Effective date: June 12, 1990

Proposal publication date: April 20, 1990

For further information, please call: (512)  
834-9992◆ ◆ ◆  
**TITLE 25. HEALTH  
SERVICES****Part I. Texas Department  
of Health****Chapter 97. Communicable  
Diseases****Control of Communicable  
Diseases**• **25 TAC §97.19**

The Texas Department of Health adopts new §97.19, without changes to the proposed text as published in the December 15, 1989, issue of the *Texas Register* (14 TexReg 6515). However, the department's publication titled "Model Health Education Program/Resource Guide for HIV/AIDS Education of School-Age Children" which new §97.19 adopts by reference is adopted with changes to its text as it was proposed.

New §97.19 implements the provisions of Senate Bill 959, 71st Legislature, 1989, which requires the department to develop the guide. The guide covers a model health education program suitable for school-age children and is aimed at preventing the spread of the human immunodeficiency virus (HIV), which is the cause of acquired immunodeficiency syndrome (AIDS). The department will make this guide available for purchase upon request to all school districts and communities to help them develop and implement model programs specific to the values and needs of their areas. As mandated by Senate Bill 959, the major provisions of the program cover an introduction, legislative provisions, the role of schools, abstinence, self-esteem, adolescent pregnancy, sexually transmitted diseases, drug use, sexual abuse, special populations, and resources.

The purpose of the guide is to increase awareness and the promotion and adoption of personal preventive behaviors if the independent school districts and private schools initiate and/or continue HIV education with school-age children. In addition, the accurate HIV education of school-age children and the adults who interact with them will promote positive attitudes for dealing with conflicts resulting from misinformation.

A number of comments were received on the proposed section by mail, verbally, and during one public hearing held January 23, 1990. The following is a summary of the comments and the department's actions.

Eleven commenters supported the guide's use of unbiased, non-judgmental, factual materials and information.

Six commenters stated support for HIV prevention education as part of a comprehen-

sive health education program.

Two commenters objected to the inclusion of wording concerning comprehensive health education in the Resource Guide. The department retained the language. Both the Department of Health and the Texas Education Agency have a long history of promoting comprehensive health education as a model for the most effective means to provide students with the knowledge and skills that will help them make informed choices about their personal health habits and behaviors. Additionally, Senate Bill 959 (Article 6, §25) specifically directs the department to "develop a model public health education program suitable for school-age children."

The department believes that the existing language in the guide concerning comprehensive health education complies with the intent of Senate Concurrent Resolution 61 (SCR 61) referred to by one of the commenters. SCR 61 states, "Resolved by the 71st Legislature, that the State Board of Education continue and increase its efforts to promulgate and make available to school districts a comprehensive age-appropriate health education curriculum that focuses on behavior that is conducive to the development of responsibility for personal wellness, safety, and disease prevention..."

Two commenters suggested the guide include portions of two comprehensive health education curricula cited in the guide. The volume of the guide precludes the inclusion of samples of materials as extensive as curricula, however, the department realizes the value of examples of materials and has included a substantial number. Educators are directed to sources for obtaining more specific information on previewing or obtaining materials in the guide.

Nine commenters identified abstinence and self-esteem as important concepts and encouraged expansion of supportive materials. The guide now includes separate sections for each topic with additional resources.

Three commenters recommended improvements in the format of the guide, making it easier to use. The department has responded by packaging the guide in a three-ring binder with tabbed dividers and pockets to hold pamphlets.

Two commenters quoted language from Senate Bill 959 which states that materials should emphasize "in a factual manner and from a public health perspective that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under §21.06 of the Penal Code." In response, the department has expanded the legislative provisions section to cite verbatim additional explanatory Texas statutes concerning criminal behaviors in this regard. Also, statements have been added to describe the health, social, and legal consequences of male-to-male sexual contact while taking into consideration comments from 11 people that materials in the guide be non-judgmental and factual.

One commenter recommended including resources for learning disabled and handicapped populations, non-English speaking populations, and out-of-school-youth. The department has added a section with resources for special populations such as

these.

Two commenters suggested the inclusion of additional materials in the guide. The department requested copies of materials suggested, as well as numerous others that addressed the new sections covering abstinence, self-esteem, and special populations. Resources provided to the department were evaluated and, if appropriate, were included in the guide.

Another commenter supported the resource guide and recommended taking full advantage of community-based organizations that provide AIDS/HIV education and training. The department has expanded its lists of local resources which address adolescent pregnancy, drug use, and services for special populations.

One commenter encouraged the department to keep the cost for the document at a minimum. The department has assigned a fee of \$10, minimal for a document of this size, to help offset some of the costs of packaging and mailing.

One commenter recommended that the department actively promote the guide for widespread use (mentioning school boards, health departments, churches). The department will distribute free of charge three copies to each of the 20 regional education service centers and one copy to each of the HIV coordinators in the eight public health regions.

One commenter cautioned about promoting any particular religious perspective. In response, the department has included a statement in the introduction that inclusion of materials in the guide does not constitute endorsement or recommendation by the department. Inclusion does signify that materials are technically accurate and reflect the most current health information available, and meet the criteria of Senate Bill 959. References for three denominations (Catholic, Episcopal, and Methodist) which have published HIV prevention curricula and reference materials are included in the abstinence section of the guide for use by religiously oriented schools, or other interested parties, in the state.

Additionally, the Texas Education Agency, which has contributed material in the guide concerning the role of schools in HIV prevention education, recommended some editorial changes for clarification. These were adopted with the exception of one sentence which was not deleted in order to retain clarity of philosophy.

Other agencies which commented on the proposed section were the Texas Catholic Conference, the Health and Human Services Department of the City of Houston, and the Texas Center for Comprehensive School Health of the University of Texas at Austin. All wrote in support of the guide. Their recommendations are included in the previously mentioned comments.

The new section is adopted under the Human Immunodeficiency Virus Services Act, Senate Bill 959, §1.07, which provides the Texas Board of Health with the authority to adopt rules to implement the Act, and §25, which provides the department with the authority to develop a model public health education program suitable for school-age children; and

Health and Safety Code, §12.001, which provides the board with the authority to adopt rules to perform every duty imposed by law on the board, the department, and the commissioner of health.

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 May 22, 1990.

TRD-9005131 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: June 12, 1990

Proposal publication date: December 15, 1989

For further information, please call: (512) 458-7405

## Chapter 229. Food and Drug Production, Processing, and Distribution of Bottled Drinking Water

### • 25 TAC §229.81, §229.88

The Texas Department of Health adopts an amendment to §229.81 and new §229.88, without changes to the proposed text as published in the March 6, 1990, issue of the *Texas Register* (15 TexReg 1227).

The amendment adds a definition for an approved source for a plant's product water or operational water; and clarifies the definition of an artesian well to agree with the more standard geological definition acceptable to both industry and the general public. The new section describes and clarifies the requirements for approved sources to insure that bottled and vended water come from approved sources.

No comments were received adoption of the amendment and new section.

The amendment and new section are adopted under the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, §431.241, which provides the Texas Board of Health with the authority to adopt rules covering bottled and vended water; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

This agency hereby certifies that the 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 May 21, 1990.

TRD-9005062 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: June 11, 1990

Proposal publication date: March 6, 1990

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

## Chapter 325. Solid Waste Management

### Subchapter O. Guidelines for Regional and Local Solid Waste Management Plans

#### • 25 TAC §§325.562, 325.564, 325.567

The Texas Department of Health adopts amendments to §325.562, §325.564, and §325.567. Section 325.567 is adopted with changes to the proposed text as published in the March 2, 1990, issue of the *Texas Register* (15 TexReg 1142). The other sections are adopted without changes and will not be republished.

In 1983, the 68th Texas Legislature enacted the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act. It authorized a state fund to make matching grants available to regional planning agencies and local governments for development of solid waste management plans. It also mandated that the Texas Department of Health develop and adopt rules which the regional planning agencies and local governments must follow in developing approvable plans, and which the department must follow in reviewing and approving plans. The applicable sections were adopted in 1985.

Senate Bill 1519, 71st Texas Legislature, 1989, and Senate Bill 59, 71st Texas Legislature, First Called Session, 1989, authorized funding of matching grants to regional planning agencies and local governments for development of solid waste management plans. The sections amended are the sections originally adopted in 1985 and are updated in response to changing conditions, before the first grants are made.

The sections prescribe a process for the Texas Department of Health to make state matching grant funds available for development of regional and local solid waste management plans. The sections also guide the department in evaluating whether regional or local solid waste management plans can be approved, and in evaluating applications for state planning assistance by public agencies and regional planning agencies.

The amendments will require that after August 31, 1991, all grant periods will coincide with the department's fiscal year; allow the department to consider whether a grant applicant has already completed development of an approved plan or committed resources to the planning process as a positive factor in evaluating the priority given for awarding a grant; specify the entities eligible to apply for planning assistance grants; and increase both the maximum and minimum amount of a single grant award, for regional planning, above that presently authorized.

A public hearing was conducted in Austin, on March 16, 1990, and the public comment period was completed April 1, 1990. All comments were in favor of the sections and

the changes proposed. However, there were several recommendations for changes to certain wording to make the meaning clearer and prevent misunderstanding.

There were also comments related to such subjects as the standards for defining items such as equipment and supplies, the terms and conditions for utilizing subcontractors, and items which will be eligible for consideration as in-kind match. All these subjects are covered in the standard grant guidance for the department—not in the sections under consideration. Therefore, the department will not respond to those comments here.

In response to a comment that the proposed wording in §325.567(c)(1)(E) was not consistent with wording in the law (regarding matching fund amounts for regional plans), the language was changed. Instead of the applicant providing "... at least 50% match..." the new wording says, "State funds must be matched at least equally by funds provided by the recipient." A similar change was made to §325.567(d)(1)(E), regarding matching funds for local plan development.

Several comments were received concerning the method for describing the formula for funding and the amount of the maximum and minimum state match. For example, the proposed section indicated that the maximum state match for regional planning was increased, but the minimum state match or "base" amount was proposed to stay the same. Some commenters wanted the base grant amount to be increased from \$15,000 to \$30,000. The department has agreed and changed the section accordingly, in §325.567(c)(2)(A). Because the geographical area covered by a local plan could be very small, the minimum or base state grant amount for a local plan has not been increased.

In response to comments regarding §325.567(c)(2)(A) and §325.567(d)(2)(A), the department has deleted the reference to the percent of an application amount the state will fund and replaced it with a statement which gives a minimum dollar amount which the state will fund. This corresponds with the similar statement in the proposed section related to the maximum dollar amounts the state will fund, in §325.567(c)(2)(C) and §325.567(d)(2)(C).

In §325.567(c)(1)(F), the word "regional" has been inserted to distinguish between the regional planning process and the local planning process.

In §325.567(c)(2)(B) and §325.567(d)(2)(B), the words "state funds" have been substituted for the words "funding amounts," to make it clear that the funds being described are completely state funds.

Regarding §325.567(c)(2)(C), there was a comment that the sentence may be interpreted to mean that the maximum annual state funding level stated applies to the regional planning agency and all local planning agencies within that geographical region totaled together. The sentence has been changed to make it clear that the state funding limit applies only to the annual limit for development for a regional plan, and not for the development of regional and local plans which may be developed within a planning region during a single year.

The groups and associations which submitted comments during the public hearing or in writing include the following: Houston-Galveston Area Council, Houston; Texas Association of Regional Councils, Austin; North Central Texas Council of Governments, Arlington; South East Texas Regional Planning Commission, Nederland; West Central Texas Council of Governments, Abilene; Governmental Refuse Collection and Disposal Association, Austin; Heart of Texas Council of Governments, Waco; and Central Texas Council of Governments, Belton. None spoke against the sections as proposed. Comments were related to making language clearer, to avoid misunderstanding.

The amendments are adopted under the Solid Waste Disposal Act, Health and Safety Code, §361.024, which authorizes the Texas Board of Health to adopt rules to manage municipal solid waste; the Municipal Solid Waste Management, Resource Recovery, and Conservation Act, Health and Safety Code, §363.061(a) and §363.021, which require the department to adopt rules related to development of regional and local solid waste management plans and evaluation of requests for financial assistance for development of plans; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

*§325.567. Financial Assistance for Regional and Local Plans.*

(a) Authority. The municipal solid waste management planning fund is established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act, Health and Safety Code, §§363.091-363.093 (Texas Civil Statutes, Article 4477-7c, §8), as a special fund in the state treasury to be used to provide financial assistance to local governments and planning regions for the development of regional and local solid waste management plans.

(b) Administration of the planning fund.

(1)-(5) (No change)

(6) The order of priority to be given to applicants in receiving financial assistance shall be determined by:

(A)-(C) (No change)

(D) the degree the proposed plan work program will result in improvements that meet the requirements of other applicable state, regional, and local solid waste management plans or activities;

(E) a positive consideration for applicants who have completed approved plans while utilizing their own resources; and

(F) a positive consideration for applicants who have committed a substantial amount of their own resources for development of an approvable plan at the time a request is made for state financial assistance.

(7) (No change)

(c) Regional planning financial assistance.

(1) Applications and contracts.

(A) Requests for state financial assistance for regional plans shall be made on forms furnished by the department and shall include a work program and budget for a defined period in which the tasks described in the work program are to be completed.

(B) If the planning process and state financial assistance is not expected to be completed by September 1, 1991, then the applicant shall define separately those portions of a work program and budget that will be completed or obligated in the period before and after September 1, 1991.

(C) If the department determines that planning assistance funds will be awarded, then the department and the applicant shall sign a separate contract for the period prior to September 1, 1991, and each state fiscal year or part of a year covered by the approved work program and budget, after September 1, 1991.

(D) Beginning September 1, 1991, all state planning assistance contracts shall not exceed one year in term, and shall terminate on or before the earliest August 31 date following the beginning date of the contract.

(E) State funds must be matched at least equally by funds provided by the recipient. In-kind matches are permitted at the discretion of the department, however, the types and amounts of in-kind match shall be indicated in the budget.

(F) The only applicant eligible to apply for regional planning assistance shall be the regional planning agency designated as responsible for the planning region for which a plan is considered.

(G) At its discretion, the department may utilize a panel or committee to assist in evaluating applications for funding assistance.

(2) Funding amounts.

(A) The minimum funding provided by the state, for development of any regional solid waste management plan,

in a single state fiscal year shall be \$30,000.

(B) Except as provided in subparagraph (C) of this paragraph, additional state funds may be authorized based on:

(i) population (\$.05 per capita);

(ii) number of counties affected (\$500 each); and

(iii) number of incorporated cities affected (\$200 each).

(C) The maximum annual funding provided by the state, for development of any regional solid waste management plan, in a single state fiscal year shall not exceed \$250,000.

(d) Local planning financial assistance.

(1) Applications and contracts.

(A) Requests for state financial assistance for local plans shall be made on forms furnished by the department and shall include a work program and budget for a defined period in which the tasks described in the work program are to be completed.

(B) If the planning process and state financial assistance is not expected to be completed by September 1, 1991, then the applicant shall define separately those portions of a work program and budget that will be completed or obligated in the period before and after September 1, 1991.

(C) If the department determines that planning assistance funds will be awarded, then the department and the applicant shall sign a separate contract for the period prior to September 1, 1991, and each state fiscal year or part of a year covered by the approved work program and budget, after September 1, 1991.

(D) Beginning September 1, 1991, all state planning assistance contracts shall not exceed one year in term, and shall terminate on or before the earliest August 31 date following the beginning date of the contract.

(E) State funds must be matched at least equally by funds provided by the recipient. In-kind matches are permitted at the discretion of the department, however, the types and amounts of in-kind match shall be indicated in the budget.

(F) The only applicants authorized to apply for local planning financial assistance are local governments or

public agencies, and designated regional planning agencies. Where the local plan is to cover a geographical area larger than the area of one city, then the application and any resulting contract shall be made by one of the cities, counties, or public agencies which has all or part of its jurisdiction within the area to be considered in the plan, and which is authorized to act as agent by all public agencies with jurisdictions included in the area considered; or, the designated regional planning agency which has jurisdiction over the geographical area to be considered in the plan.

(G) At its discretion, the department may utilize a panel or committee to assist in evaluating applications for funding assistance requests.

(2) Funding amounts.

(A) The minimum funding provided by the state, for development of any local solid waste management plan, in a single state fiscal year shall be \$2,500.

(B) Except as provided in subparagraph (C) of this paragraph, additional state funds may be authorized based on \$.10 per capita.

(C) The maximum annual funding provided by the state for development of any local solid waste management plan in a single state fiscal year shall not exceed \$100,000.

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 May 21, 1990.

TRD-9005063 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Human Services

Effective date: June 11, 1990

Proposal publication date: March 2, 1990

For further information, please call: (512) 458-7271

## TITLE 28. INSURANCE

### Part I. State Board of Insurance

#### Chapter 1. General Administration

##### Subchapter E. Notice of Policyholder Complaint Procedure

###### • 28 TAC §1.601

The State Board of Insurance adopts an amendment to §1.601, without changes to the proposed text as published in the April 3,

1990, issue of the *Texas Register* (15 TexReg 1886).

Section 1.601 concerns complaint notices that must appear in new and renewal insurance policies. The amendment is necessary to provide current notification information in the text of the complaint notice.

The amendment changes the address that must be included in the complaint notices and includes a fax number of the Market Conduct Division of the State Board of Insurance. Use of the new language is not required until September 30, 1990, which will allow use of stockpiled forms.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Article 1.04 and Article 1.35. Article 1.04 authorizes the State Board of Insurance to determine rules in accordance with the laws of this state. Article 1.35 requires the State Board of Insurance to promulgate proper wording for the written notice required by the article.

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

Issued in Austin, Texas, on May 22, 1990.

TRD-9005078 Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: June 12, 1990

Proposal publication date: April 3, 1990

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

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part IX. Texas Department on Aging

#### Chapter 292. Implementation of the Options for Independent Living Program

##### Statutes and Regulations

- 40 TAC §§292.1, 292.3, 292.5, 292.7, 292.9, 292.11, 292.13, 292.15

The Texas Department on Aging adopts amendments to §§292.1, 292.3, 292.5, 292.7, 292.9, 292.11, 292.13, and 292.15. Sections 292.3, 292.5, 292.9, 292.11, and 292.13 are adopted with changes to the proposed text as published in the December 22, 1989, issue of the *Texas Register* (14 TexReg 6712). Sections 292.1, 292.7, and 292.15 are adopted without changes and will not be republished.

The sections are established in response to Senate Bill 482 and Senate Bill 222, to help elderly persons remain at home despite limited self-care capacities, through provision of short-term support services, and has been approved by the Texas Board on Aging on

March 15, 1990.

The sections establish the policies and procedures which will be followed in establishing programs for individual elderly persons after illness or hospitalization and for elderly and their caregivers who need assistance in developing programs for self-care.

The sections were originally published as emergency rules, but were withdrawn as such, and remained for 30-day comment. All comments were addressed by the Texas Board on Aging. Comments were received from the Texas Association of Home Health Agencies, the Houston-Galveston Area Council, the Houston/Harris County Area Agency on Aging, the North Central Texas Council of Governments, and SPAN, Inc. All comments were thoroughly reviewed by department staff and were then considered by the Options for Independent Living Advisory Committee before recommended revisions were presented to the Texas Board on Aging for final adoption at the March 15, 1990, meeting of the board.

The comments generally indicated support for the Options for Independent Living Program. Numerous suggestions were offered for revision or editorial improvement in specific aspects of the program.

Several commenters expressed concern over the short-term nature of the program (§292.1), and suggested that the service limitations stipulated in §292.11(e) be removed. Because of the requirements of Senate Bill 482 enacted by the 71st Legislature, which established the program, emphasis must continue to be placed on meeting shorter-term needs of persons being discharged from hospitals or otherwise recovering from health crises. However, §292.11(3) was revised to exclude case management service from the three-month service limit.

One commenter suggested that the sections should specify that the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" apply to this program. These requirements are already required for this department's programs, but the suggested provision has been incorporated by reference in §292.3. In §292.5(b), one commenter suggested that the term "broker" be deleted, believing that the definition was other than that intended. We have retained the term and inserted the commonly-understood definition "arranger of services" in the definitions section (§292.13).

The same commenter suggested a wording change in §292.5(d): "... develop an appropriate, cost-effective service package." We concur.

One commenter objected to priority being given to persons who live in rural areas (§292.7(a)). However, this priority is stated in Senate Bill 482. One commenter suggested that the term "rural" was not adequately defined, and suggested that the department define a rural area as one with a population of less than 10,000 persons. We agree that it should be clearly defined, but in order to be consistent with other departmental policies, the department has adopted the definition "Any county outside an identified metropolitan statistical area (MSA)." The definition has

been included in §292.12. A commenter also suggested that §292.7(a) should reference use of a uniform assessment instrument to determine eligibility for service, and that the assessment instrument should be developed with the Options for Independent Living Advisory Committee. Development of a standardized assessment instrument is viewed as a department administrative responsibility. Section 292.11(a)(2), concerning case management, has been revised to note that the assessment instrument shall be done in accordance with TDoA's client assessment procedures.

A commenter had numerous concerns about §292.7, concerning persons to be served, priority for service, and coordination with the Texas Department of Human Services (TDHS). This commenter suggested that the options funds should be allocated to TDHS for the provision of primary home care, family care, respite care, and that area agencies on aging (AAAs) be required to contract with agencies already contracting with TDHS. While AAAs may choose to contract with those agencies, we believe it would be in the best interests of the clients or the program to allow for competitive bidding.

The same commenter expressed concern over unnecessary duplication of services...between the Options project and TDHS. This commenter expressed the opinion that Senate Bill 482 excludes from eligibility for the options program any person who is eligible for Medicaid. The commenter did not agree with the exceptions stated in §292.7(b), because TDHS primary home care does not have a waiting list; because TDHS has emergency provisions in place for initiating service; and because the options program should not be used for "staff relief."

The commenter also refers to an appropriations rider that prohibits the options program from serving the same clients as TDHS. However, the rider states: "It is the intent of the Legislature that, in establishing the Options for Independent Living program, the Texas Department on Aging will complete a Memorandum of Agreement with the Texas Department of Human Services which specifies that there will be no duplication of services to elderly clients served by the "Options" program and elderly clients served by the Texas Department of Human Services."

After consultation with the author of Senate Bill 482, with the Options Advisory Committee, and consideration by the board, we have concluded that the legislative intent was not to exclude certain persons from the options program, but rather to make sure that duplicative services are not provided. Therefore, the department is in process of establishing an agreement with TDHS to specify the limited and temporary occasions when options services may be provided to persons who are or ultimately may be found eligible for the services of TDHS. The agreement will clarify that TDoA's homemaker service will be provided to a client who is not receiving TDHS primary home care or family care.

The same commenter felt that §292.9(b), concerning application of other resources to the project, and contributions by service providers, would result in potential for abuse in referral patterns corresponding to certain contributors. The program does not receive adequate funds either from the federal or

state level. Only through active mobilization of other resources can a viable program be developed. AAAs have a primary responsibility for program and resource development, and are expected to continue their efforts in this regard.

In §292.9(c)(1), the commenter also suggested adding the word "voluntary" before "contribution." We concur.

In §292.9(d), concerning determination of income level, the commenter suggested a more thorough investigation to determine income eligibility than the self-declaration procedure. Means testing is not required by either federal or state law. Additionally, to do so would be a costly process requiring additional staff in a program that already has very limited resources. With regard to §292.9(e), concerning "collection and accounting for client co-payments, one commenter suggested that the wording should be revised to clarify that the reference is to client co-payments for services that are provided with options program funds. Another commenter also suggested deletion of the word "expansion" from the last sentence, regarding use of the funds from client co-payments. We concur and have made both suggested revisions.

With regard to §292.11(a), the same commenter objected to AAA's performing case management service without going through a competitive bidding process. However, current TDoA rules (Chapter 289), in place for several years, specify the procedures to be followed when an AAA requests approval to provide case management directly rather than subcontracting with another agency for its provision. If the AAA is requesting approval to provide case management services under §289.13, concerning services directly relating to the administrative function, this section does not require the AAA to issue and respond to a request for proposals. Several commenters expressed various opinions about the "package of support services that must be available for arrangement by the Case Manager. . ." (see §292.11(b)), and felt that certain services should be deleted, others added, and/or that these services should not be required in order for a project to receive funding. While we understand the concern, particularly as regards rural, service-poor areas of the state, Senate Bill 482 clearly specifies that these services must be available. These particular services have been identified as especially important for providing support, assistance, and help in recovery and stabilization for an older person leaving a hospital or coming out of a health crisis. These sections, as well as the request for proposals seeking applicants for funding, seek to clarify that the department encourages the development and use of non-traditional or informal support systems, and does not require that all of the specified services be funded.

One commenter suggested that these specific services should not be required to be put in place by options projects until the department has adopted standards for the services. While we concur that it would be ideal for standards to be in place for all services which the department funds, we believe that the service definitions that are in place provide sufficient guidance to allow service providers to understand the

department's and/or the area agency on aging's expectations.

One commenter objected to the requirement of §292.11(d)(1) that an agreed upon number of units of service (already funded by Title III and or the Texas Omnibus Hunger Program), be made available for referral by the case manager. However, we feel that this stipulation is central to the philosophy of the program, to the effectiveness of the case management service, and to the overall coordination of a service system.

In §292.11(d)(2), the commenter expressed concern about AAA's contracting with related parties for service. The language in this section concerning disclosure of any conflict of interest was intended to alleviate this concern, and consequently we have not changed this section.

The commenter suggested that the term "qualified caseworker" in §292.13 be defined. It is defined in the case management standards, Chapter 293.

The amendments are adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

*§292.3. Application of This Chapter.* This chapter incorporates by reference the provisions of the Human Resources Code, Chapter 101, Subchapter C, enacted by the 71st Legislature through passage of Senate Bill 482 and the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." The provisions of this chapter apply to any project administered by an area agency on aging (AAA) and/or an agency with which an AAA subcontracts, which is established as a result of receipt of a grant from the Texas Department on Aging (TDoA) and is designated by TDoA as an Options for Independent Living (options) project.

*§292.5. Responsibilities and Objectives of Options Projects.* In order to carry out the legislative mandate, each options project will be expected to take a lead role in the following:

- (1) building collaboration among community service providers;
- (2) acting as a broker/organizer of community-based care services;
- (3) serving as a care coordinator/case manager for the older person;
- (4) developing an appropriate cost-effective service package for the older person;
- (5) linking community-based care services with acute and primary health care services;
- (6) improving access to service by individuals and families;
- (7) implementing cooperative efforts with government support, commu-



nity support, and client contributions; and

(8) employing efficient business practices to expand in-home and community-based services to the near-poor and middle-income segments of the elderly population.

*§292.9. Administration and Financing of the Program.* TDoA will administer the program through grants to the area agencies on aging, with the advice of the Options for Independent Living Advisory Committee, whose members are appointed by TDoA. Section 292.15 of this title (relating to Options for Independent Living Advisory Committee), establishes rules governing the activities of the Advisory Committee.

(1) Grants. Because of the limited appropriation received by the department for the program, statewide implementation will not be possible in fiscal years 1990-1991. The department will issue a request for proposal (RFP) to the 28 area agencies on aging, to determine the areas for program expansion on a competitive bid basis. The deadline and requirements for response to the RFP will be announced by TDoA. The funds to be granted by TDoA for the program will include the state general revenue appropriated by the legislature for the program, and may include Title III administrative funds to the extent that federal funding levels allow.

(2) Other resources. The RFP will require other resources to be applied to the project. The funds made available under the Options Program will be pooled with the Older Americans Act funds available for in-home, supportive, and nutrition services, which may be designated as some or all of the required other resources, if the services are coordinated through a case manager, as specified in §292.11 of this title (relating to Service Requirements). To support the costs of the program, to assure community commitment to the program, and to allow community involvement in the coordination efforts of the case management service, each project will be expected to solicit contributions from businesses, private industry, hospitals, foundations, and/or local civic groups.

(3) Client co-payments. Individuals receiving service will be expected to help defray the costs of the program, and to participate in the payment for services rendered according to the following guidelines.

(A) An elderly person whose annual family income is below the income/resource requirements for eligibility for the medical assistance program under the Human Resource Code, Chapter 32, will be requested to make a voluntary contribution to the cost of services.

(B) An elderly person whose annual income exceeds the income/resource requirements for eligibility for the medical assistance program, but is less than 250% of the federal poverty level based on the federal Office of Management and Budget poverty index, shall pay 50% of the cost of the support services.

(C) An elderly person whose income exceeds 250% of the federal poverty level shall pay the full cost of support services provided to the person.

(4) Determination of client income level. The case manager will be responsible for determining the income level of the elderly person by requesting that the person declare the amount of his or her monthly income.

(A) The case manager may take into consideration any recurring, out-of-pocket health care expenses incurred by the client, and subtract those from the client's monthly income to determine income level for purposes of client contributions or co-payments. Out-of-pocket health care expenses include physician, hospital, prescription, or other medical bills for which the client is responsible, which are not reimbursed by any third-party resource.

(B) The confidentiality of this and all other client information shall be assured by the agency providing case management, as specified in Chapter 293 of this title (referring to Case Management Standards).

(5) Collection and accounting for client co-payments. The agency which provides the case management service is responsible for the collection of and accounting for client co-payments for services provided with Options program funds. Periodic reports will be submitted to the AAA and to TDoA at the times and in the format specified by the AAA and TDoA. Client co-payments are to be utilized for support of the program, in accordance with a budget approved by the AAA and/or TDoA.

*§292.11. Service Requirements.*

(a) Case management. Each designated options project will be required to establish a case management unit, which will provide case management services in accordance with the standards specified in Chapter 293 of this title (relating to Case Management Standards). TDoA will designate the AAA as a case management unit for a service area. The AAA may act as the case management unit, after obtaining approval from TDoA in accordance with the requirements specified in Chapter 289 of this title (relating to Direct Services), or the AAA may subcontract with another agency to act as the case management unit.

(1) The case manager must be an employee of a case management unit.

(2) The case manager shall conduct an individual assessment of the elderly person's needs and shall, in consultation with the elderly person and his or her family, create a plan of care that specifies the type, amount, frequency, and duration of support services the elderly person needs. This assessment shall be in accordance with TDoA's client assessment procedures.

(3) The plan of care must coordinate the available public and private services and resources that are most appropriate to meet the elderly person's needs.

(b) Other services. Each project will be required to assure the availability of a package of support services, most of which will be provided in the client's home. The case manager is responsible for arranging for the provision of the combination of services most appropriate to the individual elderly person's needs, based upon the assessment. The package of support services that must be available for arrangement by the case manager includes the following:

- (1) homemaker II;
- (2) residential repair;
- (3) benefits counseling;
- (4) respite care;
- (5) emergency response system;
- (6) education and training for caregivers;
- (7) home-delivered meals;
- (8) transportation; and
- (9) other available public and private services appropriate to the elderly person's needs.

(c) Relevant department standards. All services must be provided in accordance with relevant department standards pertaining to the service, upon adoption.

(d) Relationship of case management to other services. The case manager is responsible for arranging for, making referrals to, and following up on the provision of needed combinations of the above services mentioned in subsection (b)(1)-(9) of this section, based upon the individual client assessment. Options for independent living grant funds may be utilized for provision of any of the services mentioned in subsection (b)(1)-(9) of this section, and the area agency on aging must assure that the services will be available for referral by the case manager.

(1) In those instances in which the Older Americans Act funds and/or Texas Omnibus Hunger Program funds already support any of the services mentioned in subsection (b)(1)-(9) of this section, in an options project service area,

then the area agency on aging and the service provider must assure that an agreed-upon number of service units will be available for referral by the options case manager.

(2) The area agency on aging must assure that any conflicts of interest between the function of case management and the provision of direct client services be disclosed. The intent is to separate the function of case management from the provision of direct client services as soon as funds are available.

(e) Service limitations. Because of the severe funding limitations, and since the services are intended to be short-term to allow stabilization and convalescence following a health care crisis, the average length of service for each client should not exceed three months, excluding case management.

(1) Depending on the level of client co-payment and the amount of other funds available to and pooled for the local options project, the total length of service per client may exceed the three-month limit.

(2) The cost of the residential repair service should not exceed \$700 per home.

(3) Institutional/facility-based respite care is limited to three 24-hour periods per year.

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

**Benefits counseling—Legal assistance service** which provides help in unraveling problems a person may have in claiming the various kinds of benefits to which he or she may be entitled. Activities may include assistance in completion of Medicare or other insurance claims forms, and assistance with problems with social security, VA pensions, or other retirement/pension payments.

**Broker—Arranger of services.**

**Case Management—A service** provided by a qualified caseworker, on an ongoing basis, which includes individual assessment, individual service plan development, arranging of necessary care and services, follow-up, ongoing

monitoring of client's status and the services delivered, and periodic revision of the overall service plan.

**Education and training—Providing the experience and/or knowledge** for clients to acquire skills, in a formal or informal, individual or group, setting. In the Options Program, this service is directed to older persons and their caregivers to help them improve their abilities in responding to their health care needs and limitations in overall functioning capacity.

**Emergency response system (ERS)—Services provided to the home-bound, frail elderly using an automatic monitoring system to link them to emergency medical services** when their life or safety are in jeopardy. These ERS services include the installation of the individual monitoring unit, training associated with the use of the system, periodic checking to assure that the unit is functioning properly, equipment maintenance calls, response to an emergency call by a medical professional, paraprofessional, or volunteer, and follow-up with the client.

**Home delivered meals—Hot, cold, frozen, dried, canned, or supplemental food (with a satisfactory storage life) which provides a minimum of one-third of the daily recommended dietary allowances (RDAs) as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council, and which is delivered to an eligible person in his/her place of residence.**

**Homemaker II—Services provided by trained and supervised homemakers involving the provision of limited personal care services in addition to housekeeping/home management, meal preparation, and/or escort tasks, provided to older adults who need assistance with these activities, in their place of residence.** Personal care duties of a homemaker in a Homemaker II program may include: brushing teeth, cleaning dentures, assisting with baths, giving bed baths, brushing and combing hair, shampooing, shaving with electric or safety razor, assisting with toileting, assisting with dressing and undressing, cleaning and filing nails with an emery board, assisting with transferring, assisting with ambulation and exercise, assisting with medications that are ordinarily self-administered, and applying non-

prescription lotions and ointments.

**Residential repair—Services consisting of repairs or modifications of client-occupied dwellings which are essential for the health and safety of the occupants.** This also includes providing limited housing counseling and moving expenses where repairs or modifications will not attain reasonable standards of health and safety.

**Respite care—**

(A) **In-home respite care—An array of services provided to dependent older persons who need supervision.** Services are provided in the client's home environment on a short-term, temporary basis while the primary care giver is unavailable or needs relief. In addition to supervision, services may include meal preparation, housekeeping, assistance with personal care, and/or social and recreational activities.

(B) **Institutional/facility-based respite care—An array of services provided in a congregate or residential setting (hospital, nursing home, adult day care center) to dependent older persons who need supervision.** Services are offered on a short-term, temporary basis while the primary care giver is unavailable or needs relief. In addition to supervision, services may include, when appropriate, meals, social/recreational activities, personal care, monitoring of health status, medical procedures, and/or transportation.

**Rural—Any county outside an identified metropolitan statistical area (MSA).**

**Transportation—Taking an older person from one location to another.** This does not include any other activity.

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 May 21, 1990.

TRD-9005033

Jebron Hopper  
Acting Executive Director  
Texas Department on  
Aging

Effective date: June 11, 1990

Proposal publication date: December 22, 1989

For further information, please call: (512) 444-2727



# Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

**Emergency meetings and agendas.** Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

## Texas Department on Aging

**Thursday, May 31, 1990, 10 a.m.** The State Citizens Advisory Council (CAC) of the Texas Department on Aging will meet at 1949 South IH-35, Third Floor Conference Room, Austin. According to the agenda summary, the approval of the minutes to the meeting of the council on February 22, 1990; receive public testimony; Pepper Commission's report; area agency no aging; What is its Responsibility?; TDoAs 1992-1993 legislative appropriations request; three minute oral area agency on aging reports; The Role and Responsibilities of an Advisory Council Member; program reports to include: Business Advisory Council activities and resolution; recommendations on redistribution of state match funds from Waco Retired Senior Volunteer Program projects; area agency on aging reports continued and general announcements.

**Contact:** Ann Ammons, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

**Filed:** May 22, 1990, 3:25 p.m.

TRD-9005132

## State Aircraft Pooling Board

**Wednesday, June 6, 1990, 2:30 p.m.** The State Aircraft Pooling Board will meet at 4900 Old Manor Road, Conference Room, Austin. According to the complete agenda, the board will approve minutes of previous meeting; Parks and Wildlife aircraft request; report on aerial photography; organizational manual; request for legislative appropriations and discuss any other board operational matters.

**Contact:** Gladys Alexander, 4900 Old Manor Road, Austin, Texas 78723, (512) 477-8900.

**Filed:** May 23, 1990, 9:29 a.m.

TRD-9005215

## Texas Commission for the Blind, Texas Rehabilitation Commission

**Monday, June 4, 1990, 9 a.m.** The State Independent Living Council of the Texas Commission for the Blind, Texas Rehabilitation Commission will meet at 4900 North Lamar Boulevard, Texas Rehabilitation Commission Central Office, Public Hearing Room, Austin. According to the agenda summary, the commission will hear the report from the chair; public comments on independent living issues; reports from committees; reports from Texas Commission for the Blind and Texas Rehabilitation Commission; updating plan and subcommittee meetings; and reports from subcommittee.

**Contact:** Robert Packard, TCB, (512) 459-2588, or Mel Fajkus, TRC, (512) 483-4133, Austin.

**Filed:** May 22, 1990, 2:13 p.m.

TRD-9005092

## Texas Department of Commerce

**Thursday, May 31, 1990, 8:30 a.m.** The State Job Training Coordinating Council of the Texas Department of Commerce will meet at the Bahia Mar, 6300 Padre Boulevard, South Padre Island. According to the revised agenda, the addition to the agenda action item, consideration of the draft rules for regional planning by the council.

**Contact:** Leslie Froeschle, P.O. Box 12728, Austin, Texas 78711, (512) 320-9464.

**Filed:** May 22, 1990, 11:06 a.m.

TRD-9005080

## Texas State Board of Dental Examiners

**Thursday, May 31, 1990, 8:30 a.m.** The Texas State Board of Dental Examiners will meet at 6516 John Freeman Avenue, UT

Dental School, Texas Medical Center, Houston. According to the complete agenda, the board will have general business and approval of settlement conference orders.

**Contact:** Crockett Camp, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754, (512) 834-6021.

**Filed:** May 23, 1990, 10:35 a.m.

TRD-9005222

## Texas Education Agency

**Thursday, May 31, 1990, 8 a.m.** The Information Processing Technologies Test, Field Test Review, Bias Review Committee of the Texas Education Agency will meet at the Guest Quarters Suite Hotel, 305 West 15th Street, Austin. According to the complete agenda, the committee will have orientation and following this session, all other portions of the meeting at which actual test questions and items will be reviewed will be closed in accordance with Texas Attorney General Opinions H-484 (1974) and H-780 (1976) and item review.

**Contact:** Pamela Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

**Filed:** May 22, 1990, 3:42 p.m.

TRD-9005142

**Friday, June 1, 1990, 8 a.m.** The Information Processing Technologies Test, Field Test Review, Content Advisory Committee of the Texas Education Agency will meet at the Guest Quarters Suite Hotel, 305 West 15th Street, Austin. According to the complete agenda, the committee will hear opening remarks and following this session, all other portions of the meeting at which actual test questions and items will be reviewed will be closed in accordance with Texas Attorney General Opinions H-484 (1974) and H-780 (1976) and item and data review.

**Contact:** Pamela Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

**Filed:** May 22, 1990, 3:42 p.m.

TRD-9005143

**Monday, June 4, 1990, 8:30 a.m.** The Texas Oral Proficiency Test, Bias Review Committee of the Texas Education Agency will meet at the Guest Quarters Suite Hotel, 305 West 15th Street, Austin. According to the complete agenda, the committee will hear opening remarks and following this session, all other portions of the meeting at which actual test questions and items will be reviewed will be closed in accordance with Texas Attorney General Opinions H-484 (1974) and H-780 (1976) and item review.

**Contact:** Pamela Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

**Filed:** May 22, 1990, 3:42 p.m.

TRD-9005144

**Tuesday-Wednesday, June 5-6, 1990, 8:30 a.m.** The Texas Oral Proficiency Test, Content Advisory Committee for Spanish of the Texas Education Agency will meet at the Guest Quarters Suite Hotel, 305 West 15th Street, Austin. According to the complete agenda, the committee will hear opening remarks and following this session, all other portions of the meeting at which actual test questions and items will be reviewed will be closed in accordance with Texas Attorney General Opinions H-484 (1974) and H-780 (1976) and item review.

**Contact:** Pamela Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

**Filed:** May 22, 1990, 3:42 p.m.

TRD-9005145

**Thursday, June 7, 1990, 9:15 a.m.** The State Board of Education Committee of the Whole of the Texas Education Agency will meet at Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will hold a public hearing on Proclamation 68 of the State Board of Education; testimony shall be limited to resident of Texas and from non-residents who are official representatives of publishing companies. Written requests to appear at the hearing should be directed to Ira Nell Turman, Director, Textbook Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The deadline for written requests to appear at the hearing is 5 p.m. on May 31, 1990.

**Contact:** Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

**Filed:** May 24, 1990, 9:36 a.m.

TRD-9005263

**Thursday, June 7, 1990, 10 a.m., or upon completion of the Public Hearing on Textbook Proclamation 68.** The State Board of Education Committee of the Whole of the Texas Education Agency will meet at Room 1-104, William B. Travis

Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will hold a public hearing on restructuring of the science curriculum for grades 7-10. Teachers and policy makers from across the state are invited to present their views on restructuring science education. Anyone wishing to testify should register by calling Bonnie Garrington at (512) 463-9661, no later than 5 p.m. on Monday, June 4. Testifiers will be schedules on a first come, first served basis; however, the schedule may need to be adjusted to assure that the board receives a variety of viewpoints. Testifiers are asked to limit their testimony to approximately three minutes and should bring 20 copies of their written testimony with them for distribution at the hearing. All interested parties are welcome to attend.

**Contact:** Bonnie Garrington, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9661.

**Filed:** May 23, 1990, 4:16 p.m.

TRD-9005237

**Thursday-Friday, June 7-8, 1990, 8:30 a.m.** The Texas Oral Proficiency Test Content Advisory Committee for French of the Texas Education Agency will meet at the Guest Quarters Suite Hotel, 305 West 15th Street, Austin. According to the complete agenda, the committee will hear opening remarks and following this session, all other portions of the meeting at which actual test questions and items will be reviewed will be closed in accordance with Texas Attorney General Opinions H-484 (1974) and H-780 (1976) and item review.

**Contact:** Pamela Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

**Filed:** May 22, 1990, 3:42 p.m.

TRD-9005146

### ◆ ◆ ◆ Interagency Council for Genetic Services

**Friday, June 8, 1990, 8:30 a.m.** The Texas Genetics Network of the Interagency Council for Genetic Services will meet at 1100 West 49th Street, Room T-607, Austin. According to the agenda summary, the council will hear public comments; adopt minutes of previous meeting; hear contract presentation; consider reports (executive committee; education; quality assurance; genetic services; data collection); Council of Regional Networks (CORN) minimum data set; grant renewal; legislative mandates; and the next meeting date.

**Contact:** William E. Moore, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700.

**Filed:** May 23, 1990, 2:21 p.m.

TRD-9005229

**Friday, June 8, 1990, 1 p.m.** The Interagency Council for Genetic Services will meet at 1100 West 49th Street, Room T-607, Austin. According to the agenda summary, the council will hear public comments; adopt minutes of previous meeting; consider Texas Department of Human Services genetic service rules; reports (contract expenditures; new members for education subcommittee; other items); budget; legislative mandates; election of officers; and the next meeting date.

**Contact:** William E. Moore, 1100 West 49th Street, Austin, Texas 78756, (512)00458-7700.

**Filed:** May 23, 1990, 2:21 p.m.

TRD-9005229

### ◆ ◆ ◆ House of Representatives

**Friday, June 1, 1990, 1 p.m.** The House Committee on Redistricting of the House of Representatives will meet at University of Houston Hilton, Houston. According to the complete agenda, the house will take public testimony of Congressional Legislative and State Board of Education redistricting topics for the 1991 redistricting effort.

**Contact:** Brian Jammer, P.O. Box 2910, Austin, Texas 78711, (512) 463-9948.

**Filed:** May 23, 1990, 4:22 p.m.

TRD-9005236

### ◆ ◆ ◆ State Board of Insurance

**Thursday, May 24, 1990, 10 a.m.** The State Board of Insurance met at 1110 San Jacinto, Room 460, Austin. According to the complete emergency revised agenda, the board appointed members to the advisory committee to draft rules pursuant to Senate Bill 911 and other matters relating to the work of the committee. The emergency status was necessary 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:** May 23, 1990, 2:30 p.m.

TRD-9005230

**Thursday, May 31, 1990, 1:30 p.m.** The Commissioners Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto, Room 353, Austin. According to the complete agenda, a public hearing on docket number 10808 to consider the total reinsurance of Red River Valley Life Insurance Company's policies or Certificates of Insurance into American Surety Life Insurance Company.

**Contact:** Earl Corbitt, 1110 San Jacinto, Austin, Texas 78701, (512) 463-6526.

Filed: May 23, 1990, 4:06 p.m.

TRD-9005239

**Thursday, May 31, 1990, 1:30 p.m.** The Commissioners Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto, Room 414, Austin. According to the complete agenda, a public hearing on docket number 10847 to consider the application of AMS Life Insurance Company to acquire control of National Motor Club Life and Accident Insurance Company, Dallas.

Contact: J.C. Thomas, 1110 San Jacinto, Austin, Texas 78701, (512) 463-6526.

Filed: May 23, 1990, 4:06 p.m.

TRD-9005238

### Legislative Oversight Committee

**Tuesday, May 29, 1990, 2 p.m.** The Workers' Compensation Committee of the Legislative Oversight Committee will meet at the Lt. Governor's Committee Room, Capitol Building, Austin. According to the complete agenda, the committee will conduct business concerning legislative intent for Senate Bill 1, the Texas Workers' Compensation Act; invited testimony and other business.

Contact: June L. Karp, P.O. Box 12068, Austin, Texas 78711, (512) 463-0010.

Filed: May 22, 1990, 3:06 p.m.

TRD-9005147

### Texas Guaranteed Student Loan Corporation

**Thursday, May 31, 1990, 9 a.m.** The Board of Directors of the Texas Guaranteed Student Loan Corporation will meet at 12015 Park 35 Circle, Colonnade Building, Suite 300, Austin. According to the agenda, the board will approve minutes; old business: executive director's report; deputy executive director's report; new business: policy recommendations; schedule of future board meetings; committee structure of board and executive session.

Contact: Peggy Irby, P.O. Box 15996, Austin, Texas 78761, (512) 835-1900.

Filed: May 23, 1990, 3:54 p.m.

TRD-9005235

### Texas National Guard Armory Board

**Friday, June 1, 1990, 10 a.m.** The Texas National Guard Armory Board will meet at 2200 West 35th, Conference Room, Building 64, Camp Mabry, Austin. According to the agenda summary, the

board will approve minutes of previous meeting; administrative matters; construction/renovation/maintenance update; property/leases and establish date of next meeting.

Contact: Sandra Hille, P.O. Box 5426, Austin, Texas 78763, (512) 451-6394/451-6143.

Filed: May 23, 1990, 10:47 a.m.

TRD-9005227

### Public Utility Commission of Texas

**Wednesday, May 30, 1990, 9 a.m.** The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the commissioners will consider the following dockets: 8425, 8431 and 9427.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 22, 1990, 2:33 p.m.

TRD-9005126

**Wednesday, May 30, 1990, 9 a.m.** The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commissioners will consider for permanent adoption of §23.61 (P9468)—Telephone Utilities.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 22, 1990, 2:31 p.m.

TRD-9005128

**Wednesday, May 30, 1990, 1 p.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 administrative will discuss reports; discuss and action on budget and fiscal matters; special legislative appropriations request; consideration of revised plan for data processing equipment and/or software and discussion of the commission motion of 5-2-90 "concerning Rider 9 projects and pending special legislative appropriations request"; consideration of comments regarding REA proposed rulemaking on electric cooperative regulation; consideration of reply comments to Metropolitan Fiber Systems (MFS) petition for FCC rulemaking; progress report on dual-party relay service; adjournment for executive session to consider pending litigation and personnel matters, reconvene for discussions considered in executive session; and set time and place for next meeting.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas

78757, (512) 458-0100.

Filed: May 22, 1990, 2:32 p.m.

TRD-9005127

**Monday, June 4, 1990, 9 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 prehearing conference will be held on docket number 9560—application of Southwestern Bell Telephone Company for an addition to an existing Plexar (sm) custom digital service for Tarrant County in Fort Worth, Texas

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 22, 1990, 2:33 p.m.

TRD-9005125

**Monday, June 4, 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 prehearing conference will be held on docket number 8387—petition of R.A. Hirsch against Southwestern Bell Telephone Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 22, 1990, 2:33 p.m.

TRD-9005124

**Monday, June 4, 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 prehearing conference will be held on docket number 9561—application of Central Power and Light Company for authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 22, 1990, 2:34 p.m.

TRD-9005123

**Friday, June 22, 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 prehearing conference will be held on docket number 8783—complaint of Hilltop Lakes Resort City against Navasota Valley Electric Cooperative, Inc. concerning line extension charges.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 23, 1990, 3:02 p.m.

TRD-9005231

Friday, June 29, 1990, 9 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 prehearing conference will be held on docket number 9427-application of Lower Colorado River Authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 22, 1990, 2:34 p.m.

TRD-9005122

◆ ◆ ◆  
**Texas High-Speed Rail Authority**

Wednesday, May 30, 1990, 2 p.m. The Texas High-Speed Rail Authority will meet at 823 Congress Avenue, 15th Floor, Club Room, Austin. According to the agenda summary, the authority will hear public testimony on Chapters 81 and 83, Part 43 TAC, as proposed in the April 20, 1990, issue of the *Texas Register*.

Contact: Allan Rutter, 823 Congress Avenue, Suite 1502, Austin, Texas 78701, (512) 478-5484.

Filed: May 22, 1990, 4:40 p.m.

TRD-9005141

◆ ◆ ◆  
**Teacher Retirement System of Texas**

Friday, June 8, 1990, 8:30 a.m. The Board of Trustees of the Teacher Retirement System of Texas will meet at 1000 Red River, Board Room, Austin. According to the agenda summary, the board will consider petition of Dr. Hugh S. Forrest, petition number 89-04; approval of minutes; review of investments for quarter ending May 31, 1990; consideration of IAC recommendations; consideration of resolution concerning investment-related escrow accounts; consideration of appointments to investment advisory committee; appointment to medical board; report from insurance advisory committee; report from audit committee; report of phase III of the building expansion construction project; update of state and federal legislation; consideration of amendment of 1989-1990 TRS operating budget; report of member benefits division; report of Texas Public School Retired Employees Group Insurance program; report of general counsel concerning litigation; executive session to discuss personnel and report from investment planning committee.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701, (512) 397-6400.

Filed: May 24, 1990, 9:14 a.m.

TRD-9005261

**Texas Water Commission**

Wednesday, May 30, 1990, 3 p.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Room 118, Stephen F. Austin Building, Austin. According to the agenda summary, the commission will consider items previously posted for open meeting and at such meeting verbally postpone or continue 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: May 22, 1990, 10:10 a.m.

TRD-9005088

Tuesday, June 5, 1990, 10 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Room 1028A, Stephen F. Austin Building, Austin. According to the agenda summary, the commission will have a hearing on the complaint of Sharyland Water Supply Corporation against the United Irrigation District; docket number 8293-M.

Contact: Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: May 23, 1990, 3:17 p.m.

TRD-9005234

Wednesday, June 6, 1990, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Room 118, Stephen F. Austin Building, Austin. According to the agenda summary, the commission will consider items previously posted for open meeting and at such meeting verbally postpone or continue 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: May 22, 1990, 10:10 a.m.

TRD-9005087

Wednesday, June 6, 1990, 3 p.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Room 118, Stephen F. Austin Building, Austin. According to the agenda summary, the commission will consider items previously posted for open meeting and at such meet-

ing verbally postpone or continue 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: May 22, 1990, 10:11 a.m.

TRD-9005086

Wednesday, June 27, 1990, 3 p.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Room 118, Stephen F. Austin Building, Austin. According to the agenda summary, the commission will have a hearing on application by Hunterwood Municipal Utility District for the adoption of standby fees.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: May 23, 1990, 3:17 p.m.

TRD-9005233

Wednesday, August 8, 1990, 3 p.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Room 118, Stephen F. Austin Building, Austin. According to the complete agenda, the commission will review notice of application by City of Yorktown, application number 5294, for an 11.121 water use permit to divert water from an existing exempt reservoir created by a dam on Yorktown Creek, tributary of Fifteenmile Creek, tributary of Coletto Creek, tributary of Guadalupe River, Guadalupe River Basin, for recreational purposes within the city limits of Yorktown, DeWitt County, Texas.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 371-6389.

Filed: May 23, 1990, 3:17 p.m.

TRD-9005232

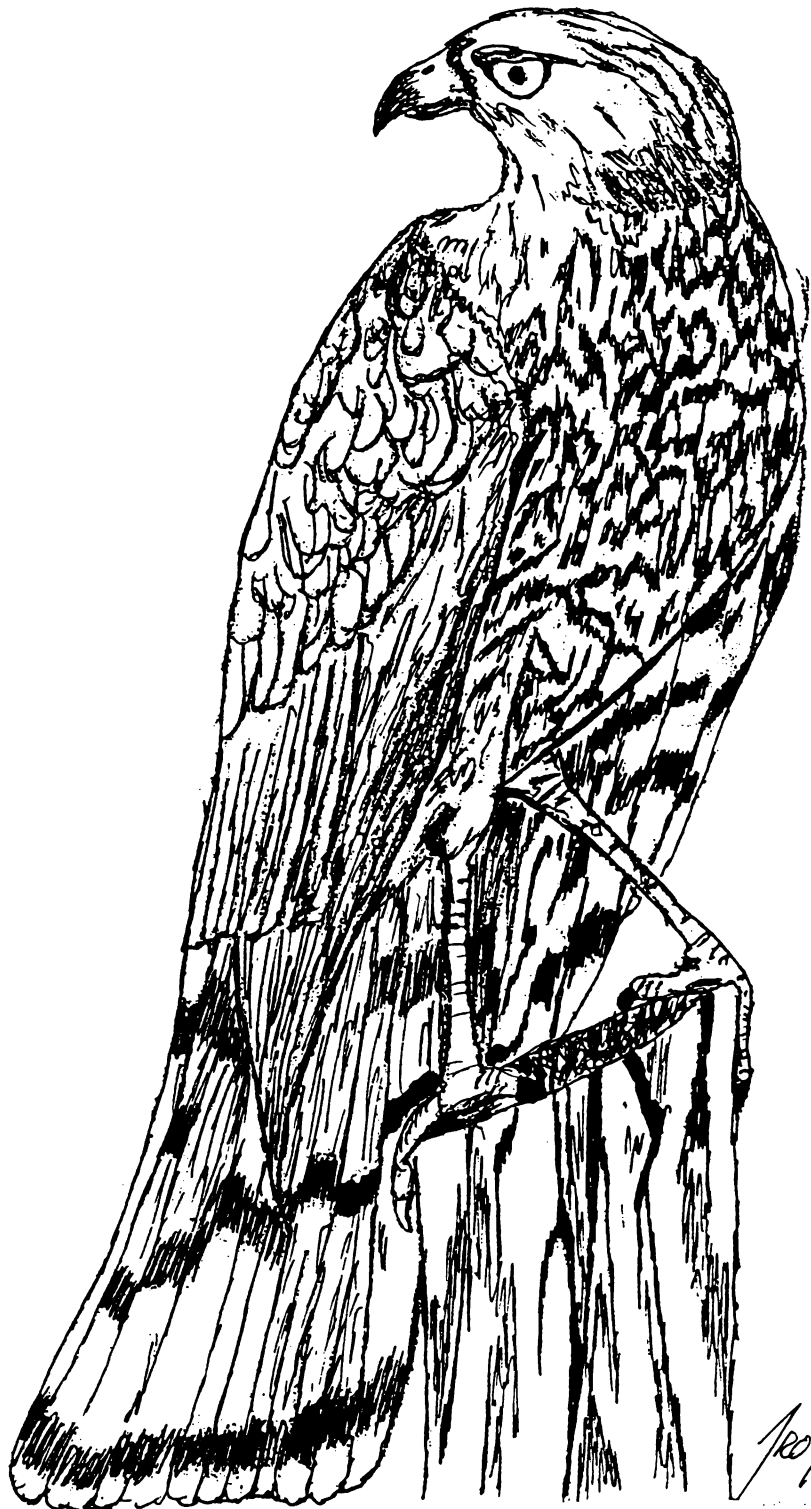
Wednesday, August 8, 1990, 3 p.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Room 118, Stephen F. Austin Building, Austin. According to the complete agenda, the commission will consider the application by Jay D. and Deborah Mills, application number 5295, for a water permit to divert and use 100 acre-feet of water per annum from a dam and reservoir (No.1) on Crockett Creek, tributary of Indian Camp Creek, tributary of Richardson Creek, tributary of the Paluxy River, tributary of the Brazos River, Brazos River Basin and 100 acre-feet of water per annum from a dam and reservoir (No. 2) on Richardson Creek in Erath County, northeast of Stephenville.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 371-6386.

Filed: May 22, 1990, 3:24 p.m.

TRD-9005148





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# In Addition

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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.

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## Texas Department of Agriculture Request for Proposals

The Texas Department of Agriculture (TDA) requests proposals for projects using integrated pest management. TDA will award a maximum of \$42,500, and will consider dividing the funding among several applicants if appropriate. Projects must involve managing or preventing pest problems by using safe, effective strategies that are nonchemical or minimize the use of pesticides. Projects that have the longest lasting beneficial impact for the most people will be favored.

Each proposal should include a one page project summary and rationale for funding; a review of previous work related to the project; a detailed project description including a work plan, time frame, and budget; anticipated impact of the project; and a historical background of the principal investigators or association. Proposals will be judged based upon the preceding requirements. Upon completion of the project, a detailed project report will be due within four weeks.

All awards are subject to an audit by TDA. Funding can only be granted to reimburse expenses detailed in the proposals, and only after documentation verifying those expenses is submitted to TDA.

Proposals should be submitted to David Davis, Director, Pest Management Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Mr. Davis may be contacted for additional information at (512) 463-7540. Proposals must be submitted no later than 5 p.m. June 29, 1990.

Issued in Austin, Texas, on May 22, 1990.

TRD-9005138 Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of Agriculture

Filed: May 22, 1990

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



## Texas Air Control Board Notice of Contested Case Hearing Number 270

An examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing to consider whether or not Emergency Order Number 90-02 issued by the executive director of the TACB on May 14, 1990, pursuant to TACB Rule 116.13 should be affirmed, modified, or set aside. Emergency Order Number 90-02 authorized the construction of a high density polyethylene plant at the Pasadena, Texas Petrochemical Complex of Phillips 66 Company.

**Time and Place of Hearing.** The examiner has set the hearing to begin at 1:30 p.m., on June 27, 1990, at the TACB Central Office, Room 332, 6330 Highway 290

East, Austin, Texas 78723.

**What the Applicant Must Prove.** This hearing is a contested case hearing under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §13. It is generally conducted like a trial in district court. Phillips 66 Company must demonstrate, by a preponderance of the evidence, that the proposed construction with associated emissions will meet the requirements of the Texas Clean Air Act, Chapter 382, Texas Civil Statutes (the Act) §382.063, and TACB Rule 116.13.

**Deadline For Requesting To Be a Party.** At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the applicant and the TACB Staff. Any person who may be affected by emissions from the proposed construction who wants to be made a party must send a specific written request for party status to Hearings Examiner Cindy Hurd and make sure that this request is actually received at the TACB Central Office, 6330 Highway 290 East, Austin, Texas 78723 by 5 p.m. on June 1, 1990. The examiner cannot grant party status after that deadline, unless there is good cause for the request arriving late. Hearing requests, comments, or other correspondence sent to the TACB before publication of this notice will not be considered as a request for party status.

**Prehearing Conference.** The examiner has scheduled a prehearing conference at 1:30 p.m., on June 12, 1990, at the TACB Central Office, Room 332, 6330 Highway 290 East, Austin, Texas, 78723. At this conference, the examiner will consider any motions of the parties, but may grant contested motions for continuance only upon proof of good cause. The examiner will also establish a specific date prior to the hearing on the merits for the exchange of written and documentary evidence.

**Public Attendance and Testimony.** Members of the general public may attend the hearing. Those who plan to attend are encouraged to telephone the TACB Central Office in Austin, Texas at (512) 451-5711, extension 230, a day or two prior to the hearing date in order to confirm the setting, since continuances are sometimes granted.

Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the TACB Legal Division at (512) 451-5711, extension 230, to find out the names and addresses of all admitted parties who may be contacted about the possibility of presenting testimony.

**Information About the Order and TACB Rules.** Information about the order and copies of the TACB's Rules and Regulations are available at the TACB Regional Office located at 5555 West Loop, Suite 300, Bellaire, Texas 77401, at the TACB Central Office located at 6330 Highway 290 East, Austin, Texas 78723, and at the Office of the Pasadena City Secretary, 1211 East Southmore, Pasadena, Texas 77502.

**Legal Authority.** This hearing is called and will be conducted under the authority of the Act, §§382.029,

382.030, 382.031, and 382.063 and TACB Procedural Rules 103.11(5), 103.31, 103.41, and TACB Rule 116.13(c).

Issued in Austin, Texas, on May 18, 1990.

TRD-9005034 Steve Spaw, P.E.  
Executive Director  
Texas Air Control Board

Filed: May 21, 1990

For further information, please call: (512) 451-5711 ext. 354

◆ ◆ ◆  
**Ark-Tex Council of Governments**  
Request for Proposal

The Ark-Tex Council of Governments (ATCOG) is in the process of requesting proposals for assessment of participants enrolled in Titles IIA, IIB, and III (EDWAAA) of the Job Training Partnership Act (JTPA).

Those interested in submitting a proposal must have the capability to administer and interpret tests to assess basic skills, aptitudes, attitudes, interests, and personal characteristics and provide results of the JTPA staff. The projects must be implemented in the Northeast Texas Region encompassing Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus Counties.

The proposals selected will be expected to meet the requirements set forth in the Request For Proposals (RFP). Evaluation will focus on how proposals address the goals and outcome of the program. Evaluation criteria include type of service and methodology of implementation, cost of service and training of individuals served, past performance of services, project management, and innovative approaches. Selection will be made by the Ark-Tex Private Industry Council (ATPIC).

Those interested in receiving a RFP packet should contact Peggy White, Manager of Employment and Training, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505, (214) 832-8636, or Building A, Centre West, 911 Loop 151. The deadline for submission of proposals is 5 p.m., June 15, 1990.

Issued in Wake Village, Texas on May 16, 1990.

TRD-9005076 James D. Goerke  
Executive Director  
Ark-Tex Council of Governments

Filed: May 22, 1990

For further information, please call: (214) 832-8636

◆ ◆ ◆  
**Texas Department of Banking**  
Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On May 21, 1990, the banking commissioner received an application to acquire control of Charter Bank-Northwest, Corpus Christi, by Sam Kane, Corpus Christi.

Additional information may be obtained from: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on May 21, 1990.

TRD-9005093

William F. Aldridge  
Director of Corporate Affairs  
Texas Department of Banking

Filed: May 22, 1990

For further information, please call: (512) 479-1200

◆ ◆ ◆  
**Texas Department of Commerce**  
Request for Proposals

The Texas Department of Commerce (Commerce) requests offers from qualified companies or organizations to administer the Foreign Credit Insurance Association (FCIA) Umbrella Policy.

The applicant selected must demonstrate the necessary criteria and experience listed in the qualifications section and will be required to perform the various services listed in the scope of services section. The acceptance of an offer by Commerce, made in response to this request, will be based on its evaluation of the factors described below.

**Scope of Services.** The successful candidate will be required to render the following services: assist Texas exporters in securing FCIA umbrella on behalf of Commerce; satisfy all application requirements necessary for Commerce export clients requesting FCIA coverage; act as the liaison between FCIA and Commerce export clients; be available to counsel clients on selecting appropriate export insurance policies; participate in marketing the FCIA Umbrella policy on behalf of Commerce; be available in recommending lenders willing to make loans to exporters with the FCIA Umbrella policy; submit to FCIA, on a timely basis, all reporting requirements as set forth by FCIA; have their own umbrella policy; have a Texas office preferably in Austin, but another major Texas city will be acceptable; and satisfy all other conditions required of administrators as set forth by FCIA.

**Commerce Participation.** The Commerce export finance office will do the following: take the lead in marketing the FCIA umbrella policy; procure basic information from interested FCIA clients and subsequently forward this information to the designated administrator for application processing.

**Applicant Qualifications.** Each applicant must demonstrate or provide evidence to the satisfaction of Commerce that such entity: has the experience to coordinate and organize services as an FCIA administrator; has a thorough understanding of all policies offered by FCIA; will comply with any and all laws and regulations as they relate to providing services under this request for proposal; and can commence FCIA administrator role by July 1, 1990.

Please provide evidence of the above requirements and a proposal which includes: a detailed description of the plan of action to fulfill the requirements described in the scope of services; resumes of applicant's staff who will be assigned to work with the Commerce export finance office; and please indicate method and amount of compensation to Commerce, taking into consideration the duties performed by Commerce.

Your response must be received no later than 5 p.m., June 1, 1990. Responses received after this deadline will not be considered. We anticipate entering into the resulting contract on June 15, 1990. No funds will be provided by Commerce for the proposed services.

Commerce reserves the right to accept or reject any or all offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost

effectiveness of any offer received. Selected candidates may be asked to make oral presentations to Commerce. Commerce is under no legal obligation to enter into a contract with an offer on the basis of this request and intends any material provided herein only as a means of identifying the scope of services requested.

The state assumes no responsibility for expenses incurred in preparing responses to this solicitation. Please address your responses to Ed Sosa, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711. (512) 320-9662.

Issued in Austin, Texas, on May 18, 1990.

TRD-9005046 William D. Taylor  
Executive Director  
Texas Department of Commerce

Filed: May 21, 1990

For further information, please call: (512) 320-9662

◆ ◆ ◆  
**Texas Education Agency**  
Notice of Contract Award

**Description.** This notice is filed pursuant to Texas Civil Statutes, Article 6252-11c. After publication of a request for contractor services in the January 26, 1990, issue of the *Texas Register* (15 TexReg 460), the Texas Education Agency on May 10, 1990, executed a contract with Cyberlink Corporation, 1790 30th Street, Boulder, Colorado 80301, to conduct a feasibility study for design of an integrated telecommunication system for the public school system. Services to be performed include assessments of existing services and facilities, design of telecommunications network(s), and a recommended infrastructure for a system to serve the public school system.

**Cost and Dates.** The total amount of the contract is \$99,778.56. The beginning date of the contract is May 11, 1990, and the ending date is October 9, 1990.

**Due Date of Documents.** Four reports are due as follows: June 22, 1990, for completion of services and concept analysis; July 6, 1990, for traffic and infrastructure investigations; August 31, 1990, for network and management options; and September 28, 1990, for five-

year plan, phase-one criteria, equipment and facilities specifications, and electronic publishing recommendations.

Issued in Austin, Texas, on May 22, 1990.

TRD-9005137 W. N. Kirby  
Commissioner of Education

Filed: May 22, 1990

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

◆ ◆ ◆  
**State Finance Commission**  
Correction of Error

The State Finance Commission submitted a proposed section which contained errors as published in the May 4, 1990, issue of the *Texas Register* (15 TexReg 2549).

In §3.22(a)(4), the first sentence has a colon after the word "loan" instead of a semicolon. It should read "loan; provided, however..."

In §3.22(a)(4), there is a comma instead of an apostrophe after the word "homeowners." It should read "...of homeowners' association..."

In §3.22(c), there is a comma after the word "of" which should be deleted.

In §3.22(e)(3), there is a comma after the word "attorneys" instead of an apostrophe. It should read "...report, attorneys' fees for..."

◆ ◆ ◆  
**Texas Department of Health**  
Licensing Actions for Radioactive  
Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Houston	Biotech Laboratories, Inc.	L04396	Houston	0	05/07/90
Throughout Texas	Malcolm Pirnie, Inc.	L04406	San Antonio	0	05/08/90

AMENDMENTS TO EXISTING LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Beasley	Hudson Products Corporation	L02370	Houston	27	05/01/90
Beaumont	St. Elizabeth Hospital	L00269	Beaumont	48	04/30/90
Beaumont	Baptist Hospital of Southeast Texas, Inc.	L00821	Beaumont	21	05/10/90
Beaumont	Outpatient Diagnostic Center, Ltd.	L03888	Beaumont	6	05/09/90
College Station	Texas A & M University	L00448	College Station	66	05/04/90
Fort Worth	Bell Helicopter Textron	L03023	Fort Worth	4	05/03/90
Grand Prairie	North Carrier Diagnostic Center	L03852	Grand Prairie	2	05/10/90
Houston	Lyondell Petrochemical Company	L00187	Houston	33	04/30/90
Houston	University of Texas M.D. Anderson Cancer Center	L00466	Houston	46	04/27/90
Houston	Methodist Hospital	L00972	Houston	18	04/27/90
Houston	Mallinckrodt, Inc.	L03008	Houston	21	05/10/90
Houston	M.B.A. Laboratories	L02571	Houston	5	05/
Hurst	Allied Clinical Laboratories, Inc.	L03759	Hurst	4	05/
Marshall	Memorial Hospital	L02572	Marshall	8	04/26/90
Midland	Physicians & Surgeons Hospital	L03386	Midland	12	05/04/90
Paris	St. Joseph's Hospital and Health Center	L03199	Paris	3	05/07/90
Pearland	EFEH and Associates	L03568	Houston	2	04/30/90
Throughout Texas	City of San Antonio	L03762	San Antonio	2	04/20/90
Throughout Texas	Halliburton Logging Services, Inc.	L00442	Fort Worth	69	04/26/90
Throughout Texas	Smith Energy Services	L03667	Golden, Colorado	5	04/30/90
Throughout Texas	Clearwater Constructors Inc.	L04011	Austin	2	04/30/90
Throughout Texas	MQS Inspection Incorporated	L00087	Elk Grove Vill, IL	50	05/01/90
Throughout Texas	C. A. Turner Construction Company	L04293	Port Arthur	2	05/02/90
Throughout Texas	Petroleum Inspection, Inc.	L01673	Magnolia	18	05/04/90
Throughout Texas	Tuboscope, Inc.	L00287	Houston	84	05/01/90
Throughout Texas	Texaco, Inc.	L00247	Bellaire	56	05/03/90

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Throughout Texas	Schlumberger Well Services	L01833	Houston	75	05/07/90
Throughout Texas	McClelland Consultants (Southwest), Inc.	L00058	Houston	33	05/04/90
Throughout Texas	Schlumberger Well Services	L00109	Houston	32	05/07/90
Throughout Texas	Wim Engineering & Testing, Inc.	L04142	Longview	3	05/08/90

Throughout Texas	Computalog Wireline Services, Inc.	L04286	Houston	2	05/04/90
Throughout Texas	Pledger Kennedy Rogers Kalkoney - Consulting Engineer	L03733	Brenham	5	05/09/90
Throughout Texas	Reinhart and Associates, Inc.	L03189	Austin	11	05/03/90
Throughout Texas	Progressive Metals, Inc.	L02831	Waller	19	05/07/90

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Houston	Maurer Tools, Inc.	L03040	Houston	8	04/30/90
Pasadena	AES Deepwater, Inc.	L03746	Pasadena	5	04/27/90
San Antonio	Medical Center Ophthalmology	L01343	San Antonio	11	04/30/90
Throughout Texas	Cummings Wireline Service, Inc.	L03604	Somerset	7	05/03/90

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Throughout Texas	J. H. Strain and Sons, Inc.	L04187	Tye	2	05/07/90

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health,

1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on May 18, 1990.

TRD-9005036 Robert A. MacLean, M.D.  
Deputy Commissioner for Professional Services  
Texas Department of Health

Filed: May 21, 1990

For further information, please call: (512) 835-7000.

◆ ◆ ◆  
**Texas Department of Mental Health  
and Mental Retardation**  
Correction of Error

The Texas Department of Mental Health and Mental Retardation submitted a notice of Public Hearing which contained an error as submitted by the department in the May 22, 1990, issue of the *Texas Register* (15 TexReg 2863).

The second paragraph of the notice should read as follows. "Consistent with this mandate, the Texas Department of Mental Health and Mental Retardation is sponsoring a public hearing in May. The purpose of this hearing is to solicit comments on the draft Annual Plan for New Bed Development in the Texas ICF/MR program for fiscal year 1991.

◆ ◆ ◆  
**Texas Water Commission**  
Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the

Following information is submitted.

An enforcement order was issued to the City of Tyler, Permit Number 10653-001, on May 17, 1990, assessing \$46,800 in administrative penalties with \$11,700 in deferred penalties. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Samita Mehta, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on May 22, 1990.

TRD-9005139 Gloria A. Vasquez  
Notices Coordinator  
Texas Water Commission

Filed: May 22, 1990

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



Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Allied Transport Company, Inc., No SWR Number, on May 17, 1990, assessing \$95,680 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting the Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on May 22, 1990.

TRD-9005140 Gloria A. Vasquez  
Notices Coordinator  
Texas Water Commission

Filed: May 22, 1990

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



### Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of May 14-18, 1990.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received

within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

Technical Environmental Systems, Incorporated; LaPorte; Class I hazardous industrial solid waste storage facility; on a 12.5-acre tract of land on the east side of State Highway 134, approximately 700 feet from the intersection of State Highway 225 in LaPorte, Harris County; HW50225; amendment; 45-day notice.

Mort L. Hall; Houston; Hall Business Park Wastewater Treatment Facility; approximately 2,900 feet east of U.S. Highway 59 and 1,900 feet south of Little York Road in the City of Houston in Harris County; 13111-01; renewal.

Henry P. Knolle Farms; Sandia; a dairy; approximately 3.5 miles southeast of the intersection of State Highway 359 and County Road 360 in Jim Wells County; 03172; new.

Mega Development Company; Houston; Fort Bend County, MUD Number 57 Wastewater Treatment Facility; approximately one mile east and two miles north of the intersection of FM Roads 1463, 359, and 1093 in Fort Bend County; 13044-01; renewal.

Northwest Harris County Municipal Utility District Number 9; Houston; wastewater treatment facility; approximately 1/3 mile south of Grant Road in Harris County; 11948-01; renewal.

Terry Taylor; Carthage; Seven Acres Sewage Treatment Plant; approximately 1.5 miles north of the City of Jewett, 1,700 feet south of the confluence of the West Fork of Panther Creek and Panther Creek in Leon County; 12997-01; renewal.

City of Texas City; wastewater treatment facility; approximately one mile north of State Highway Loop 197 and four miles east of State Highway 146, in the northeast portion of the City of Texas City, Galveston County; 10375-01; renewal.

Thousand Trails, Incorporated; Bellevue; wastewater treatment facility approximately one mile west of FM Road 47 and approximately 1.15 miles south of FM Road 35 in Rains County; 12861-01; renewal.

Gary Viss; San Angelo; a dairy; on State Highway 208, approximately 2.1 miles south of the intersection of State Highway 208 and FM Road 2105 in Tom Green County; 03186; new.

Issued in Austin, Texas, on May 21, 1990

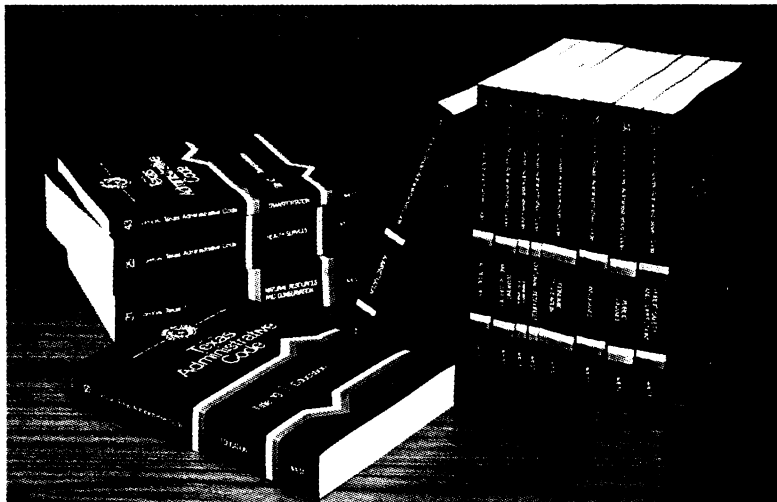
TRD-9005050 Brenda W. Foster  
Chief Clerk  
Texas Water Commission

Filed: May 21, 1990

For further information, please call: (512) 463-7906



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